



Alaska Department of Transportation and Public Facilities

Civil Rights Office

Commercially Useful Function (CUF) Monitoring and Verification

CUF HIGHLIGHTS

1. A Disadvantaged Business Enterprise (DBE) contractor performs a Commercially Useful Function (CUF) when the firm is contracted to perform a service on a federally-funded project, and only when the DBE is using its own equipment (company-owned or leased by agreement), employees, purchasing of supplies, employee payroll, and on-site managers for workforce.
2. Documentation by the on-site engineer from the beginning of a project to its completion is vital to oversight on federal-aid projects. It is the objective of the Civil Rights Office (CRO), and the Alaska Department of Transportation and Public Facilities (Alaska DOT&PF), to employ DBEs whenever possible. The use of DBEs at a given percentage of the total yearly contracting is a federal mandate, directly impacts federal funding, and contract compliance.
3. The CUF performs a significant role in federal-aid projects. CUFs ensure that a DBE is not being used as a “pass-through” by the prime contractor. A “pass-through” is having one or more DBEs listed as subcontractors that are performing only part of their contracted work, but receiving the full contract amount. Pass through is defined as: *extra participant in a transaction, contract or project, through which funds are passed in order to obtain the appearance of DBE participation. A DBE performs a CUF only when it is actually performing, managing, and supervising the work.*
4. The on-site engineer should perform an initial CUF inspection when a DBE firm first arrives on-site. This will familiarize the on-site engineer with the companies and workers involved in the project, and will determine the readiness of the DBE to complete their contract obligations. This first CUF will be filed with all other initial contract files submitted to the Regional Contract Compliance Liaison (RCCL) for signature. The RCCL will then forward the form to the CRO Research Analyst.
5. During the progress of the project, it is the responsibility of the on-site engineer to keep a daily log of DBE processes, equipment, workforce changes, or problems.

Any discrepancies noted should have a follow-up, and reasonable explanations for noted problems should be documented as comments on CUF forms.

6. Any worker, equipment, or process problems with DBE performance noted throughout the project, which have no explanation, should be immediately brought to the attention of the RCCL and the CRO. This will be looked at by the CRO team and punitive actions, if any, will be determined.
7. At project completion, a final CUF inspection will be performed and submitted by the on-site engineer. This is part of the final closeout documentation which is submitted to the regional RCCL upon project completion.
8. Increased oversight will add to the responsibilities of the on-site engineer, but is a necessity for federal-aid projects. The statutes originate from FHWA guidance, and is in an effort to tamp down fraud on federal contracts while continuing to insure DBEs have an equal opportunity for receiving bid awards.

DEFINING A CUF

Subcontractors – (100% credit)

- Performs specific work items with own forces pursuant to a contract agreement with prime.
- Must perform at least 30% of contracted work with its own work force.
- Furnish and install materials and supplies.
- Count 100% of primes payment to DBE toward contract goal (labor and materials) -49 CFR §26.55(a)

Trucking Firms/Haulers – Two Options:

Option 1: The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. (DBE Trucking firm can count other trucks leased from another DBE or equipment dealership/rental.)

Option 2: Permits limited DBE credit for non-DBE trucks, but it cannot exceed the value of transportation services provided by the DBE trucks

Example: DBE firm has 3 trucks, it can lease up to 3 non-DBE trucks but uses DBE employees/drivers. (New rule, requires approval from FHWA before it can be used.)

Red Flags for Trucking DBEs

- ✓ DBE trucks never at jobsite
- ✓ Unfamiliar trucks at jobsite (DBE & Non-DBE trucks)

- ✓ Prime using its trucks for work committed to DBEs
- ✓ Large trucking commitment – compared to DBE capacity
- ✓ DBE does not own the right type of truck for the contract work
- ✓ Drivers do not know who they work for when asked

Regular Dealers (i.e. suppliers) -- Credit 60% DBE

Manufacturers – Credit 100% DBE

Service Providers (consultant/broker) – Reasonable fees and commission.

DBE INTERVIEW STEPS AND CAUTIONS

1. **Review of all agreements between the Department, Prime Contractors, and any DBE Subcontractor at start of project. *Complete Form 25A-298 CUF Monitoring Report. Send the completed form to the RCCL.***
 - a. This first step in the CUF review process allows the project engineer to identify contracted DBEs, the DBE commitment from the prime contractor, and the scope of work to be executed by DBE firms.
 - b. A daily project log will be kept by the project engineer detailing daily operations and possible necessary follow-ups.

Major Review Steps

1. Review the subcontract agreement
2. Review what function the DBE was hired to perform
3. Identify DBE On-Site Representatives
4. DBE employees
5. Look at DBE Equipment
6. Logos, marking, or magnetic signs
7. Owned or leased?

Red Flags

- ✓ Supervision of DBE employees by other Contractor
- ✓ DBE provides little or no supervision of work
- ✓ DBE's Superintendent is not a regular employee
- ✓ Supervision is performed by personnel associated with the Prime Contractor or any other firm or business

- ✓ DBE firm's owner is not aware of the status of the work or the performance of the business
- ✓ Inquiries by recipient are answered by the Prime Contractor

2. Inspection of job site work being performed. Ensure DBE subcontractors are both managing and performing contracted work as per contract.

Several activities are undertaken by the project engineer on the job site.

- a. General observations such as equipment markings, management, supplies.
- b. Interviewing DBE personnel; “Who do you report to?”; “Who signs your paychecks?”; “Who is the project manager?”, and any other pertinent questions which may arise during daily operations.

Red Flags

- ✓ Employee paid by DBE and Prime
- ✓ Movement of employees between Contractors
- ✓ Employee working for Prime in morning and DBE in afternoon
- ✓ Equipment used by DBE Firm belongs to the Prime Contractor or another Contractor with no formal lease agreement
- ✓ Equipment signs and markings cover another Owner's identity, usually through the use of magnetic signs

3. On project completion, the project engineer will review all project related documents, and follow-up on questions arising and noted in project log.

- a. Review of DBE payroll.
- b. Review of supply invoices
- c. Review of delivery tickets
- d. Any additional reviews or follow-ups necessary to ensure DBE subcontractors are paying employees directly, as well as, ordering and paying for materials/supplies

Red Flags

- ✓ Materials for the DBE ordered, or paid for, by the prime contractor
- ✓ 2 Party Checks (joint checks) From Prime to DBE Subcontractor and Supplier or Manufacturer. Joint check OK with State approval
- ✓ Materials or Supplies necessary for the DBE firm's performance are delivered to, billed to or paid by another business
- ✓ A DBE Prime Contractor only purchases materials while performing little or no work

4. Final checks on outstanding questions, or concerns. Complete Form 25A-299 CUF Verification. Send completed form to RCCL.

- a. Ensure all employees utilized worked only for DBE subcontractor.
- b. All equipment used was owned or leased by the DBE subcontractor.
- c. All work performed met contract requirements, and was of sufficient quality.

Red Flags

- ✓ Work being done jointly by DBE firm and another contractor
- ✓ The work to be performed outside of the DBE's known experience or capability
- ✓ Any portion of the work performed by the Prime Contractor or any other firm
- ✓ The DBE firm is working without a subcontract agreement
- ✓ A DBE Prime Contractor subcontracts more than customary or standard industry practice
- ✓ Agreement between the Prime and DBE artificially inflates the DBE participation
- ✓ Agreement that erodes the ownership, control or independence of the DBE Subcontractor
- ✓ DBE works for only one Prime Contractor or a large portion of the Firm's contracts are with one Contractor
- ✓ The volume of work is beyond the capacity of the DBE Firm



**STATE OF ALASKA
DEPARTMENT OF TRANSPORTATION
AND PUBLIC FACILITIES**

DBE CUF Monitoring Report

25A-298

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..."

This form is to be used by Construction Administration field staff to perform CUF reviews on DBE prime contractors, DBE subcontractors, and DBE joint ventures. Perform a minimum of one review for each DBE on a federally-assisted project each construction season. The review should be conducted when the DBE first begins work, and when the DBE first begins work on subsequent construction seasons. Monitor compliance through the course of the project.

Attach additional documentation supporting DBE's CUF. Additional documentation may include, but is not limited to, photos of DBE performing work; photos of DBE's equipment or trucks with DBE firm name and certification number; and copies of subcontracts.

Reviewer Name:

Project Name:

AKSAS No.:

Federal Project No.:

Reviewer Agency:

DBE Contractor Name::

DBE Start Date:

DBE Representative Interviewed:

Supervisor to DBE Representative Interviewed:

DBE Performing as:

Prime

Subcontractor

Joint Venture

Provide a brief description of the DBE's scope of work:

Supervision

YES NO

Does the DBE have a superintendent or foreman supervising the project?

Does the superintendent or foreman work exclusively for the DBE?

Employees

YES NO

Does the DBE have employees on the job?

Do they appear on DBE payrolls?

Do they appear on a review of the prime contractor's certified payroll?

Who assigns work to DBE employees?

Performance

YES NO

Has another contractor performed any of the DBE's scope of work?

If yes, who and which work items were performed?

Equipment

YES NO

Does DBE own or lease equipment?

Does DBE use prime contractor's equipment?

Supplies/Materials:

YES NO

Did the DBE purchase all materials and supplies for the DBE work? (provide copies of invoices if available)

PHOTOS *(Attach photos of DBE firms in action if available.
If unavailable, please state so below.)*

Please provide comments if any aspect of the DBE's work appears NOT to be consistent with a CUF. Consult the attached CUF Monitoring Report Additional Guidance.

REVIEWER SIGNATURE:

DATE:

DBE/ON-SITE REPRESENTATIVE SIGNATURE:

DATE:

Date submitted to RCCL:

Regional Contract Compliance Liaison Review/Accept:

Print Name

Signature

DATE:

CUF Monitoring Report

Additional Guidance

While DBEs are occasionally awarded prime contracts, DBEs primarily work as subcontractors or lower tier subcontractors. Subcontractors typically perform specific contract items and provide their own labor and materials. To determine whether a DBE subcontractor is performing a CUF, five (5) distinct operations must be considered: management, workforce, equipment, materials, and performance.

These areas must be evaluated to make a CUF determination, and that determination needs to be considered on a case-by-case basis.

Consider the following when completing the Monitoring Report:

- Is the amount and nature of work subcontracted consistent with normal industry practices;
- Is the subcontract amount commensurate with the work that is actually being performed to be credited towards the goal;
- When the DBE furnishes materials, the DBE must be responsible for negotiating the price, for determining the quality and quantity of the material, ordering the material, and paying for it;
- A DBE firm would typically be hired to both furnish the material and install it with its own labor force;
- Is the DBE's role limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation? In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE contract goal?

Normal Industry Practice:

Would the DBE be performing in the same manner if there was no DBE program? Would the DBE perform the same or similar work on non-federally assisted contracts? If the answer to either of these is no, then the amount or nature of the work may not be consistent with Normal Industry Practice.

Monitoring:

A DBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from the non-DBE firm, project staff should refer the matter to the DOT&PF CRO to consider DBE eligibility under 49 CFR 26.87.



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**DBE CUF Verification
25A-299**

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..."

This form is to be used by Construction Administration field staff to verify CUF for DBE prime contractors, DBE subcontractors, and DBE joint ventures. Verify CUF for each DBE on a federally-assisted project. The verification review should be conducted when the DBE is substantially finished with their portion of the project work and should consider the compliance monitoring (inspection) performed by Construction Administration staff through the course of the project.

Attach additional documentation supporting DBE's CUF. Additional documentation may include, but is not limited to, photos of DBE performing work; photos of DBE's equipment or trucks with DBE firm name and certification number; and copies of subcontracts.

DOT&PF INTERVIEWER NAME	DOT&PF INTERVIEWER AFFILIATE (IF CONSULTANT)	PHONE NUMBER
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PROJECT NUMBER (ID)	PRIME CONTRACTOR NAME
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DBE CONTRACTOR NAME

DESCRIBE DBE'S SCOPE OF WORK. [Review DBE Commitment, subcontract, trucking worksheet and/or purchase order(s), truck ticket(s), CUF Form 25A-298, etc., to assist in determining CUF compliance.]

SUBCONTRACTS AND PURCHASE ORDERS

Are purchase orders, subcontracts and/or trucking tickets, bills of lading, etc., on file in the project office? YES NO N/A

EMPLOYEES

Did the DBE firm have employees on the job?
 Do they appear on the DBE firm's payroll? If no, provide details below
 Do they appear on any other contractor's payroll? If yes, provide details below
 Did the DBE firm employ a supervisor or foreman who was onsite directing their work? If so, provide their name below.

PERFORMANCE

Has any other contractor performed any of the DBE's work? If yes, explain in the comments section.

TRUCKERS *Please note on the IDR the trucks on site for the date of review (e.g., 3 trucks labeled XYZ Company, 2 from ABC Company).*

Does a review of the load tickets indicate that hauling is being done by the DBE (must check for off-site trucking)? If no, explain below.

MATERIAL SUPPLIERS *Please note on the IDR the delivery trucks seen on site for the date of review.*

Does the DBE's name appear on invoices, delivery tickets, bills of lading, purchase orders, etc.? If no, explain below.
 If delivery of materials was observed, did the DBE use the delivery equipment listed on the blue sheet? If no, explain below.

EQUIPMENT

Does the Prime contractor's name appear on any equipment used by the DBE firm?

CUF

Does it appear the DBE is performing a CUF? (See Project Closure CUF Checks attached) Comment Below

The signature below is verification that project staff observed the DBE performing its commercially useful function. Any CUF problems were documented (form 4109, IDR, report, etc.), addressed, and reported to the Civil Rights Office (CRO) .

SIGNATURE OF INTERVIEWER	DATE
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Regional Contract Compliance Liaison Review/Accepted

Printed Name

Signature

Date

Project Closure CUF Checks

DBE Services with Commercially Useful Function (CUF) include:

- Professional
- Technical
- Managerial
- Brokerage to facilitate the procurement of materials and supplies
 - (Count entire amount of fees or commissions if reasonable)

Red Flags for work claimed as DBE utilization:

- Is work performed jointly by the DBE and another contractor?
- Is the work outside of the DBE's known experience or capability?
- Is any portion of the DBE work performed by the Prime Contractor or another firm?
- Is the DBE Firm working without a Subcontract Agreement?
- If the Prime Contractor is a DBE, is the subcontracted work more than customary or standard industry practice?
- Does an agreement between the Prime and DBE artificially inflate the DBE Utilization?
- Does an agreement erode the ownership, control or independence of the DBE?
- Does the DBE work for only one Prime Contractor?
- Are a large portion of the DBE's contracts with one Prime Contractor?
- Is the volume of the claimed DBE utilization work beyond the capacity of the DBE Firm?

Key Factors to Consider for Final Review and Verification:

- Amount of work subcontracted
- Payment commensurate with work actually performed
- Brokerage fees eligible for DBE credit may include the entire fee or commission if reasonable (49 CFR §26.55(a)[2])
- Standard Industry Practice
- DBE's role

Initial Onsite 25A-298 Inspection_ Conducted 1 week after arrival- on-site engineer, Prime, and DBE sub

Note: Phone interviews are acceptable for firms which are not on-site.

Initial 25A-298 CUF form sent to RCCL for signature.

Note: An initial CUF is required for each season of a given project.

The on-site engineer is to keep a daily log of DBE processes, equipment, or workforce changes/problems they may encounter.

Any worker, equipment, or process problems with DBE performance noted throughout the project, which have no explanation, should be immediately brought to the attention of the RCCL and the State CRO office. These will be looked at by the CRO team and punitive actions, if any, will be determined.

At project completion, a final CUF inspection 25A-299 will be performed and submitted by the on-site engineer. This is part of the final closeout documentation which is submitted to the region RCCL upon project completion. Includes signatures from Prime, subcontractor, and PE

After authorization signatures from contractors, on-site engineer, and RCCL, **all** CUF forms to be forwarded to the Alaska DOT&PF CRO office for filing with contract documentation.