

**COMMERCIALLY USEFUL FUNCTION (CUF) REVIEW**

Performance of a CUF review is required on each DBE subcontractor on a Kentucky Transportation Cabinet let federally-assisted construction project. The review should be conducted when the DBE first begins work. Monitoring is to be done through the course of the project. Federal regulation 49 C.F.R. 26.55 states: "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 for the purposes of reviewing DBEs for compliance with the CUF requirements for obtaining DBE credit on this project.

REVIEWER'S NAME (Print clearly)	REVIEWER'S AGENCY	REVIEWERS PHONE NUMBER (    )-    -
PROJECT NUMBER (ID)	PRIME CONTRACTOR	
DBE FIRM BEING REVIEWED	FIELD REVIEW DATE	

DESCRIBE DBE'S SCOPE OF WORK: (Review DBE Commitment form, subcontract, trucking worksheet and/or purchase order(s), truck tickets(s), etc., to assist in determination of CUF compliance.)

**REGARDING DBE'S FOREMAN/SUPERINTENDENT** (completed by the Field Inspector/Resident Engineer)

Name of DBE's Foreman/Superintendent:

Is the Foreman/Superintendent exclusively employed by DBE:    Yes     No

Who does the Foreman/Superintendent directly report to:

**REGARDING DBE'S EMPLOYEES**

Name of the DBE employees working today:

Do the DBE's employees receive work assignments from DBE foreman/superintendent?    Yes     No

**REGARDING DBE'S EQUIPMENT** (Completed by the Field Inspector/Resident Engineer)

Listing of DBE major equipment on-site today:

Does the equipment have the DBE's name or logo?    Yes     No

If another firm's name or logo is shown, identify the firm name:

Does the equipment belong to the DBE?    Yes     No     Leased

**TRUCKING (If Applicable)**

Does the DBE trucking firm own or lease their trucks? Yes  No  If **Yes**, obtain verification of ownership or lease documents in the name of the DBE firm.

Does the DBE employ drivers for trucks owned or leased by the company? Yes  No

Listing of Federal and State DOT numbers on trucks owned by DBE:

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COMMENTS/EXPLANATIONS:

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The signature below is verification that the reviewer observed the DBE performing its commercially useful function. Any CUF problems were documented, addressed, and reported to the Office of Civil Rights and Small Business Development (OCRSBD).

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REVIEWER'S SIGNATURE

DATE

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**Within 10 days of signature, a copy of this completed form is to emailed to: [KYTC.DBECUFMonitoring@ky.gov](mailto:KYTC.DBECUFMonitoring@ky.gov)**

**OR faxed to (502) 564-2114**

Call OCRSBD staff at (502) 564-3601 with questions/concerns

**Place original in the project file.**

## **What Constitutes a Commercially Useful Function (CUF)?**

In order for a contractor to receive DBE credit on Kentucky Transportation Cabinet projects the DBE must perform a CUF. To perform a CUF a DBE must carry out all contract responsibilities by performing, managing, and supervising its work while utilizing their own equipment. Also, the DBE must be paid in accordance with Kentucky Transportation Cabinet guidelines.

### **Five Key Areas to Monitor for CUF Compliance**

1. DBE Company Management
2. DBE Equipment Handling
3. DBE Workforce
4. DBE Contractually Supplied Materials
5. DBE Performance

### **CUF Violation Red Flags**

#### **Management**

- Supervision of DBE employees done by another contractor.
- The DBE provides little or no supervision of contracted work.
- The DBE's superintendent is not a regular, full-time, exclusive employee of the DBE.
- Supervision is performed by personnel associated with another company.
- The DBE hasn't been issued a subcontract, purchase order or other contractual document.
- DBE firm's owner is not aware of the status of the work, the employees and/or the performance of the business.
- DBE company owners are rarely or never seen.

#### **Equipment**

- The equipment is used by the DBE firm but the payments are deducted by the prime contractor.
- The equipment is used by the DBE firm belongs to another contractor with no formal long term lease agreement (large, highly specialized equipment, such as a crane, is an exception).
- Magnetic equipment signs and markings cover another company logo or other information.

#### **Workforce**

- Movement of the DBE employees to/from other contractors.
- Employee(s) paid by the prime.
- Employee(s) working for another company on the project.
- Employee(s) not familiar with DBE Company owners/supervisors/key personnel.

#### **Materials**

- Materials for the DBE are ordered and/or paid for by another contractor.
- Joint (2-party) checks are sent directly to the suppliers of the DBE firm without the knowledge or consent of the DBE.
- The DBE does not deliver the agreed to joint (2-party) check to its supplier(s).
- Materials or supplies to be obtained by the DBE are delivered to, billed to, or paid for by another contractor.
- The prime places requirements on the DBE regarding where to purchase project materials.

#### **Performance**

- Some of the DBE work is being done jointly with another contractor.
- The work to be performed is outside of the DBE's known experience or capability (DBE certifications/prequalification categories).
- The DBE performs work without a subcontract, purchase order or other signed contractual document.
- A DBE subcontracts more of its work than is customary or standard industry practice (50%).
- DBE participation on a project is less than the prime's commitment on approved DBE Plan.
- Lack of evidence of ownership, control and/or independence of the DBE.
- The DBE works for only one prime contractor or a large portion of the DBE's contracts are the one contractor.

**Note:** Noting a red flag does not automatically mean there is a CUF violation. However, notice of red flag(s) should be documented and reported to the Office of Civil Rights and Small Business Development (OCSBDD).