

## COMMERCIALLY USEFUL FUNCTION (CUF) REVIEW

A CUF review is required on each DBE firm working on any federally-funded construction project, regardless of whether there is a DBE goal. This review should be conducted while the DBE is actually working on the project. Federal regulation 49 CFR 26.55 states: "A DBE performs a commercially useful function when it is responsible for execution of the work on the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved..." This form is for the purpose of monitoring DBEs compliance with the CUF requirements for obtaining DBE credit on projects. CUF definition and violation red flags can be found on the back of this form. For more information, contact OBD at (248) 302-4589 or at [MDOT-CUF@Michigan.gov](mailto:MDOT-CUF@Michigan.gov). Additional guidance on material suppliers are included as pages 2 & 3 of this form. Additional FHWA CUF guidance can be found at: [www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf](http://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf).

REVIEWER'S NAME (Print clearly)	REVIEWER'S AGENCY	REVIEWER'S PHONE NUMBER
PROJECT NUMBER (ID)	CONTRACTOR THAT THE DBE FIRM IS WORKING FOR	
DBE FIRM BEING REVIEWED	FIELD INSPECTION DATE	

DESCRIBE DBE'S SCOPE OF WORK. [Review DBE Commitment MDOT Form 2653 subcontract, trucking worksheet (MDOT Form 4101) and/or purchase order(s), truck ticket(s), etc., to assist in determination of 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
<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

### EMPLOYEES

Does the DBE firm have employees on the job?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Do they appear on the DBE firm's payroll? If no, provide details below.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Do they appear on any other contractor's payroll?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Does the DBE firm employ a supervisor or foreman who is onsite directing their work? If so, provide their name below.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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### PERFORMANCE

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

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**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.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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If leased, does the driver have the lease agreement (MDOT Form 4111) in their truck and does it identify the DBE?

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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**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.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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If delivery of material was observed, did the DBE use the delivery equipment listed on the blue sheet? If no, explain below.

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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Identify the basis for acceptance of the materials the DBE provides (e.g., visual inspection, tested stock, general certification, approved manufacturer, etc.)

### EQUIPMENT

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

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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### CUF

Does it appear the DBE is performing a CUF? (See CUF explanation card)

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
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COMMENTS / EXPLANATIONS

The signature below is verification that the reviewer observed the DBE performing its commercially useful function. Any CUF problems were documented (MDOT Form 4109, IDR, report, etc.), addressed, and reported to the Office of Business Development (OBD).

SIGNATURE OF PROJECT ENGINEER / P.E.'S DESIGNEE	DATE
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### INSTRUCTIONS FOR SUBMISSION

**Within 10 days of signature**, save a copy of this completed form to ProjectWise and/or to the appropriate project office file.

**If a follow up is needed by OBD:** (ProjectWise users) Advance the workflow and OBD staff will be notified; (Non-ProjectWise Users) e-mail this form to [MDOT-CUF@Michigan.gov](mailto:MDOT-CUF@Michigan.gov) (please be sure to indicate the Region where the project is located in the subject line of the e-mail). Questions, contact OBD at (248) 302-4589 or at [MDOT-CUF@Michigan.gov](mailto:MDOT-CUF@Michigan.gov).

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

In order for a contractor to receive DBE credit on Michigan Department of Transportation 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 Michigan Department of Transportation guidelines.

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

1. DBE Firm 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 firm owners or superintendents are rarely or never seen on the project.

#### Equipment

- Payments are deducted by the prime contractor for equipment used by the DBE firm on the project.
- The equipment used by the DBE firm belongs to the Prime contractor or another contractor with no formal long term lease agreement (large, highly specialized equipment, such as a Crane, is an exception).
- Magnetic equipment signs and/or markings cover another company logo or other information (TRUCKING ONLY).

#### Workforce

- Movement of DBE's employee(s) to/from other contractors.
- DBE's employee(s) paid by the prime.
- DBE's employee(s) working for another company on the project.
- DBE's employee(s) not familiar with DBE firm's owner/supervisors/key personnel.

#### Materials

- Materials for the DBE are ordered, billed to, and/or paid for by the Prime contractor or another company other than the DBE.
- 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).
- Invoices for the materials do not indicate that the DBE is the customer and/or list the Prime's employee as the contact person.
- The prime places requirements on the DBE regarding where to purchase project materials.
- The source of the materials comes from the Prime contractor or an affiliate of the Prime Contractor.
- Records/Documents to review for material suppliers: Invoices, Delivery tickets or Bills of lading, Purchase orders, Canceled checks, Joint check agreement (If applicable).

#### 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 MDOT form 2653.
- 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 with 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 Business Development (OBD).

## Guidance for Monitoring DBE Material Suppliers

1. DBE supplier monitoring by the project offices and corresponding completion of MDOT Form 4109 reports require that the prime submit documentation that the project office staff can refer to, especially in cases where products are delivered off-site.
2. When there is a commitment for DBE supplier participation on a federal project, the project office staff and the successful bidder or prime should establish what supporting documentation will be acceptable and sufficient for monitoring purposes. This can be done during the pre-construction meeting and/or prior to the delivery of the supply items. Supporting documentation should be submitted to the project office as it becomes available. Some of this documentation may include materials certifications, purchase orders, invoices, bills, joint check agreements, verifications of payment by the DBE to the manufacturer, payments by the contractor to the DBE supplier (i.e., checks/bank statements, 2124 reports/MERS, etc.), delivery tickets, bills of lading, etc.
3. Project office staff should be sure their instructions to the successful bidder or prime regarding documentation submittal is recorded in the pre-construction meeting minutes.
4. Prime contractors cannot take regular dealer or manufacturer credit when they fail to provide documentation of DBE supplier participation requested by the project office. Notify the Office of Business Development via the MDOT Form 4109 report when prime contractors fail or refuse to provide requested DBE supplier documentation and information.
5. Project office staff should notify the Office of Business Development via the MDOT Form 4109 report when documentation provided indicates vendors or contractors other than the DBE suppliers are providing materials that were supposed to be secured by the DBE suppliers.
6. Whenever possible and practical, project office staff should visibly monitor deliveries of materials provided by DBE suppliers, noting company names on vehicles, etc.
7. Project office staff are encouraged to take pictures when questionable activities are observed, such as materials being dropped off in the manufacturers' vehicles or delivered by contractors and vendors other than the DBE supplier. Provide this information to the Office of Business Development as soon as possible along with a MDOT Form 4109 report: [MDOT-CUF@Michigan.gov](mailto:MDOT-CUF@Michigan.gov) or (248) 302-4589.