

Unit 21

Workforce & Small Business
Equity Program



Unit 21 Topics:

- Role of inspector for these programs
- Aspirational targets and contract goals
- Commercially useful function (CUF) criteria
- DBE Trucking
- EEO, ADA and Workforce



Construction Manual: Chapter 18 Workforce and Small Business Equity Programs

Contracts with Federal funding may include up to three different Workforce and Small Business Equity programs:

- Disadvantaged Business Enterprise (DBE)
- Equal Employment Opportunity (EEO)
- On-the-Job Training (OJT)/Apprenticeship



DBE Program

Key Monitoring & Compliance Topics

- Policy
- Goals and Commitments
- Termination or Substitution of DBE's
- CUF Reviews
- Summary Reports of Subcontractors Paid



DBE Program Policy

- Set by the Director of ODOT
- Ensure non-discrimination in USDOT-assisted contracts
- Level playing field for DBEs to compete fairly
- Narrowly tailored program
- Ensure only eligible firms participate
- Help remove barriers to participation of DBEs
- Developing DBEs to compete outside the program
- Give same priority as compliance with other legal obligations to USDOT



DBE Program: Goals and Commitments

- There are DBE contract goals and an Overall DBE Goal
- Current Overall DBE Goal: 11.6%
(RN 5.0%, RC 6.6%)
- When OCR assigns a DBE goal to a project, the Prime must commit sufficient work to DBEs to meet the goal
- DBE requirements are in the Special Provisions
- PM staff monitors DBE program compliance throughout project
- OCR Field Coordinator provides project compliance review and technical assistance



Race-Conscious vs Race-Neutral

- Race-conscious DBE participation means a measure or program that is focused specifically on assisting only DBE's and excludes participation by others= **DBE contract goals.**
- Race-neutral DBE participation means any participation by a DBE through customary competitive procurement procedures= ****DBE's win contracts without mandating their participation.**
- **** Small contracting, unbundling, maintenance programs, bonding, access to capital, etc.**



DBE CUF Reviews

What constitutes “commercially useful function” or “CUF”?

To perform a commercially useful function, a DBE must carry out its contract responsibilities by *actually performing, managing, and supervising* the work involved.

According to Normal Industry Practices

ODOT may only credit payments toward DBE goals if the DBE performs a CUF

When to Perform a CUF Evaluation

The PM or designated representative must perform at least one CUF review for every DBE:

- For each 12-month period the DBE works on the Project (early or peak is better than waiting until the end)
- When a significant change in the operation of the DBE occurs (new equipment is used or work crews change)
- When a significant Change Order affects the DBE's Work (for example, a new type of work is added)
- After termination and substitution of a DBE (for the new DBE)



FIVE factors must be evaluated when determining whether a DBE is performing a “Commercially Useful Function”

1. DBE Management
2. DBE Equipment
3. DBE Workforce
4. DBE Materials
5. DBE Performance

Management and Control

- 1) The DBE supervisor is an off-season part time employee of the Prime and consults the Prime's office on hiring decisions.



Note on CUF Form

- 2) The DBE firm owner/superintendent visits the work site, is informed of the work progress, and demonstrates managerial decision-making. Eligible DBE owner retains power to hire and fire.



Note on CUF Form

Equipment

- DBE is expected to perform work with equipment it owns, is buying, leases or rents (approved written agreement required)
- DBE directly controls and supervises operation of equipment
- DBE provides operators
 - Exception for specialty equipment
 - Exception for leased owner-operated trucks
- DBE "regular dealer" suppliers must have long-term leases for supplemental distribution equipment (usually trucks) and provide the operators



**Equipment – Trucking
Special Crediting and Lease Rules**

- DBE must own and operate at least one truck on the project.
- DBE may lease trucks from:
 - Other DBEs (includes Owner Operators) for full credit
 - Non-DBEs (including Owner Operators) for credit, but NOT to exceed the value of work by DBE trucks
- No DBE credit for work by trucks leased from Prime
- PM to independently monitor and verify DBE truck work on random, unannounced basis



Daily DBE Trucking Log (Form 734-2916)

Required for committed DBE Trucking Subcontractors

- Must maintain daily DBE trucking log of all trucks it uses on the project
- ODOT form or approved equal must include all information, including certification
- Submit completed form(s) weekly
- Within 14 days of the first recorded date of the log.

[Trucking Log Link](#)



Full Shift Verification & CUF Review

- Independently review and verify the trucks DBE uses on the Project
 - Without prior notice to the Contractor or Subcontractor(s)
 - At least 10% of total value of the DBE trucking
- CUF Review – Form 3B still required:
 - Reference the independent verification results on the CUF review form



Equipment – RED Flags

- Equipment leased/used with payment deducted from Prime's payments to DBE
- Equipment used by DBE belongs to Prime or another firm with no formal lease agreement
- Equipment signs and markings cover another owner's identity (e.g., magnetic signs)
- A DBE trucking firm uses Prime's trucks



Equipment Application

- 1) DBE is subcontracted to install a stealth rail on a bridge. DBE rents a crane for 2 days to temporarily remove an historic feature. Crane is rented with an operator from a 3rd party. An approved rental agreement is on file. DBE otherwise uses its own equipment and workforce to install the rail.



Note on CUF Form

- 2) DBE is subcontracted to temporarily remove an historic feature, but does not own or lease equipment capable of performing the removal. DBE “borrows” a crane from the Prime to remove the feature.



Note on CUF Form

(Lacks equipment essential to work)

Workforce



Standard Practice

- DBE keeps a regular workforce
- DBE is not “sharing” employees with non-DBE contractors
- DBE is responsible for payroll and labor compliance for all its employees



Red Flags

- Movement of employees between contractors
- Employee paid by DBE and Prime
- Employee working for Prime in morning, and DBE in afternoon

	Materials	
Counted when DBE:		Red Flags:
<ul style="list-style-type: none">▪ Negotiates the cost and arranges delivery, AND▪ Takes ownership, AND▪ Pays for materials and supplies, AND▪ Determines the quantity and is responsible for quality		<ul style="list-style-type: none">▪ Materials for the DBE ordered/paid for by Prime▪ 2-party checks (from both Prime and DBE) to supplier▪ Materials essential to DBE's work are delivered or billed to another firm.▪ Materials submittals (certs or drawings) are prepared by another contractor

	Performance	
Counted when DBE:		Red Flags:
<ul style="list-style-type: none">▪ Is responsible for the performance of a distinct element of the work▪ Manages its own workforce▪ Supervises its own work▪ Completes at least 30% of the work of its subcontract with its own labor and equipment		<ul style="list-style-type: none">▪ Work is being done jointly by DBE firm & another contractor▪ Work is outside of DBE's known experience and capability▪ Work volume is beyond DBE's capacity▪ Agreement with the Prime erodes control or independence of the DBE

Inspector's Role: Observations and Daily Reports

- Keep accurate records of equipment used
- Keep accurate records of crews working that day
- Keep accurate records of whether the DBE is performing work with its own labor/equipment
- Watch out for workforce overlap between DBE/Prime/other contractors

Information noted on the Inspector's Daily Reports may help you when completing the CUF Review Form 3B.



Addressing Red Flags

Not every red flag means DBE fraud, but every red flag you observe should be reported:

- On the CUF Review Form 3B (734-2165) **and**
- To the Project Manager for review **and** follow-up with the FC
- Contact the OCR FC for technical assistance

See the DBE Work Plan Proposal Form 3A (734-2165A) to identify how DBE said it would perform its work. Note discrepancies!



Start when DBE mobilizes onto the job.

Compare with Form 3A – are there any changes?

Even if answer is “yes” please provide details regarding DBE work performance, personnel, materials or equipment on this project document.

Give Details:

- What did you see?
- How do you know?
- Who told you?

Check/Compare Payrolls and note the dates that you checked.

If equipment is leased or rented – check lease agreements and compare with Form 3A.

DBE CUF (Form 3B)

Show Instructions Hide Instructions

COMMERCIALLY USEFUL FUNCTION REPORT – FORM 3B (CUF)
Disadvantaged Business Enterprise

Contractor and Contract Information

1. DBE BUSINESS NAME: _____ 2. SUBCONTRACT ID: _____ 3. CONTROLLING CONTRACTOR (IF APPLICABLE): _____ 4. DBO# CONTRACT NO: _____

Disadvantaged Business Enterprise Information

5. DBE PRIMARY OWNER: _____ 6. PHONE: _____ 7. DBE START DATE: _____ 8. EST DBE COMPLETION DATE: _____

A. DBE Work

9. BID ITEM: _____ 10. BID ITEM DESCRIPTION: _____ 11. EST % COMPLETE: _____

ADD ANOTHER: _____

B. Personnel Required

12. Do DBE employees appear to have knowledge of and control over the methods of work on their bid items observed on-site? Yes No IF NO, EXPLANATION REQUIRED: _____

13. Is the superintendent or foreman employed exclusively by the DBE? Yes No NAME OF SUPERINTENDENT/FOREMAN EMPLOYED EXCLUSIVELY BY DBE: _____
NAME AND TITLE OF PERSON TO WHOM SUPERINTENDENT/FOREMAN REPORTS: _____

14. List the names and craft classifications of the DBE crew observed on the site:

LAST NAME	FIRST NAME	CRAFT CLASSIFICATION	TO BE COMPLETED IN OFFICE OR ON DBE PAYROLL?	PREVIOUS/OTHER PAYROLL?	REPORTS TO (LAST, FIRST)
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____
_____	_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____

CUT THE CONTRACTOR NAME AND DATE OF EACH PAYROLL REVIEWED. PROVIDE ADDITIONAL INFORMATION IF NEEDED: _____

C. Equipment Required

15. List major equipment used by the DBE to complete bid items observed. If not already provided with Work Plan Form 3A, attach rental/lease agreements and/or registrations.

BID ITEM	EQUIPMENT	OWNED?	LEASED?	LEASED FROM	RENTED?	RENTED FROM
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____
_____	_____	<input type="checkbox"/>	<input type="checkbox"/>	_____	<input type="checkbox"/>	_____

16. Are all personnel and equipment under the direct supervision of the DBE owner or a superintendent/foreman who reports to the DBE owner? Yes No EXPLAIN WHY OR WHY NOT (REQUIRED): _____

D. Supplies and Materials Required

17. List material suppliers for bid items observed:

BID ITEM	SUPPLIER NAME	ADDRESS, CITY, STATE, ZIP	PHONE
_____	_____	_____	_____
_____	_____	_____	_____

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CUF Reviewer signs and notes the dates of the Daily Reports or other documents (e.g., delivery tickets) that show the DBE was on site or performed the work.

It is important to follow the electronic document process as outlined on the new form and return the document to your OCR Field Coordinator for review, signature and entry into CRCT.

Project Manager must sign off on the review.

State here whether DBE performed a CUF:

**“In Compliance”
or
“Not in Compliance”**

Show Instructions Hide Instructions

E. Prime/Other Resources

18. Has any contractor performed, on behalf of the DBE, a substantial amount of work _____ designated to the DBE? Yes No IF YES, EXPLANATION REQUIRED: _____

F. Additional Information

CUF Reviewer:
Ensure you listed any document(s) you reviewed in determining your findings (e.g., payrolls, invoices, delivery tickets, etc.). Compare the completed CUF Report – Form 3B with the DBE Work Plan Form 3A to determine if there was deviation from what was proposed by DBE firm and make notes accordingly. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.
By entering your name in the box below, you certify that the information contained in this report is true and accurate to the best of your knowledge and that you have not altered any previously entered content. You further agree that entering your name in the box and submitting this report using a password-protected e-mail account is the equivalent of a manual signature for the purposes of this report.

Does the DBE owner appear to have operational control over the work contracted? Yes No EXPLAIN WHY OR WHY NOT (REQUIRED): _____

CUF REVIEWER COMMENTS (FIELD EXPANDS AS YOU TYPE. CLICK TAB TO SEE TEXT IN EXPANDED FIELD.)

CUF REVIEWER NAME	TITLE	DATE	CREW NUMBER	E-MAIL
_____	_____	_____	_____	_____

Project Manager:
Ensure you reviewed the CUF Reviewer findings and that the findings are supported by observations and documentation, and determine whether you believe the DBE is in compliance with the requirements to perform a commercially useful function. Review the completed CUF Report - Form 3B and the DBE Work Plan Form 3A and make notes accordingly. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.
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PROJECT MANAGER COMMENTS (FIELD EXPANDS AS YOU TYPE. CLICK TAB TO SEE TEXT IN EXPANDED FIELD.)

CUF COMPLIANCE – Based on the known DBE work activities on the project and information contained herein, I believe the DBE listed above is:
 In Compliance Not in Compliance with CUF requirements.

If it is believed the DBE is not performing a CUF on this project, contact the Office of Civil Rights Field Coordinator for further guidance.

PROJECT MANAGER NAME	DATE	PHONE	E-MAIL
_____	_____	_____	_____

Field Coordinator:
Ensure you reviewed the CUF Reviewer findings and Project Manager's determination, note whether you are in agreement, and make any additional comments as needed. If in doubt, request to review supporting documents and to receive clarification from the Project Manager. Contact the DBE Program Manager for additional guidance if needed. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.
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FIELD COORDINATOR COMMENTS (FIELD EXPANDS AS YOU TYPE. CLICK TAB TO SEE TEXT IN EXPANDED FIELD.)

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COMMERCIALLY USEFUL FUNCTION REPORT – FORM 3B (CUF)

Disadvantaged Business Enterprise

Contractor and Contract Information

1. DBE BUSINESS NAME	2. SUBCONTRACT ID	3. CONTROLLING CONTRACTOR (IF APPLICABLE)	4. ODOT CONTRACT NO.
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Disadvantaged Business Enterprise information

5. DBE PRIMARY OWNER	6. PHONE	7. DBE START DATE	8. EST DBE COMPLETION DATE
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A. DBE Work

9. BID ITEM	10. BID ITEM DESCRIPTION	11. EST % COMPLETE
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B. Personnel Required

12. Do DBE employees appear to have knowledge of and control over the methods of work on their bid items observed on-site?	<input type="checkbox"/> Yes <input type="checkbox"/> No	IF NO, EXPLANATION REQUIRED
13. Is the superintendent or foreman employed exclusively by the DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No	NAME OF SUPERINTENDENT/FOREMAN EMPLOYED EXCLUSIVELY BY DBE NAME AND TITLE OF PERSON TO WHOM SUPERINTENDENT/FOREMAN REPORTS

14. List the names and craft classifications of the DBE crew observed on the site:

LAST NAME	FIRST NAME	CRAFT CLASSIFICATION	TO BE COMPLETED IN OFFICE	
			ON DBE PAYROLL?	PRIME/OTHER PAYROLL?

LIST THE CONTRACTOR NAMES AND DATES OF EACH PAYROLL REVIEWED. PROVIDE ADDITIONAL INFORMATION IF NEEDED

C. Equipment Required

15. List major equipment used by the DBE to complete bid items observed. If not already provided with Work Plan Form 3A, attach rental/lease agreements and/or registrations.	RENTED? RENTED FROM
BID ITEM	EQUIPMENT

16. Are all personnel and equipment under the direct supervision of the DBE owner or a superintendent/foreman who reports to the DBE owner?

<input type="checkbox"/> Yes <input type="checkbox"/> No	EXPLAIN WHY OR WHY NOT (REQUIRED)
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D. Supplies and Materials Required

17. List material suppliers for bid items observed:	PHONE
BID ITEM	SUPPLIER NAME

E. Prime/Other Resources

18. Has any contractor performed, on behalf of the DBE, a substantial amount of work Yes No
designated to the DBE?

IF YES, EXPLANATION REQUIRED

F. Additional Information

CUF Reviewer:

Ensure you listed any document(s) you reviewed in determining your findings (e.g., payrolls, invoices, delivery tickets, etc.). Compare the completed CUF Report – Form 3B with the DBE Work Plan Form 3A to determine if there was deviation from what was proposed by DBE firm and make notes accordingly. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.

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Does the DBE owner appear to have operational control over the work contracted? Yes No

EXPLAIN WHY OR WHY NOT (REQUIRED)

CUF REVIEWER COMMENTS (FIELD EXPANDS AS YOU TYPE. CLICK TAB TO SEE TEXT IN EXPANDED FIELD.)

CUF REVIEWER NAME

TITLE

DATE

CREW NUMBER

E-MAIL

Project Manager:

Ensure you reviewed the CUF Reviewer findings and that the findings are supported by observations and documentation, and determine whether you believe the DBE is in compliance with the requirements to perform a commercially useful function. Review the completed CUF Report - Form 3B and the DBE Work Plan Form 3A and make notes accordingly. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.

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CUF COMPLIANCE – Based on the known DBE work activities on the project and information contained herein, I believe the DBE listed above is:

In Compliance Not in Compliance with CUF requirements.

If it is believed the DBE is not performing a CUF on this project, contact the Office of Civil Rights Field Coordinator for further guidance.

PROJECT MANAGER NAME

DATE

PHONE

E-MAIL

Field Coordinator:

Ensure you reviewed the CUF Reviewer findings and Project Manager's determination, note whether you are in agreement, and make any additional comments as needed. If in doubt, request to review supporting documents and to receive clarification from the Project Manager. Contact the DBE Program Manager for additional guidance if needed. Ensure you complete your section and comments as appropriate. If previously entered content needs to be updated or corrected, please return the form to that person for updating. Do not change anything that you did not enter.

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FIELD COORDINATOR COMMENTS (FIELD EXPANDS AS YOU TYPE. CLICK TAB TO SEE TEXT IN EXPANDED FIELD.)

FIELD COORDINATOR NAME	DATE	PHONE	E-MAIL	
32. SAVE AS...	33. PRINT FORM		34. SUBMIT BY E-MAIL	CLEAR FORM DATA

Who and When – CUF Review Process

- PM designated staff (usually the Project Inspector) must perform a CUF review of **each** DBE working on the Project
- PM reviews and approves (comments, recommendations, findings)
- Field Coordinator review and provides comments, concurrence
- Office of Civil Rights (OCR) enters CUF information into database
- PM consults with FC or OCR on any required corrective action

TAKEAWAY: A DBE does NOT perform a CUF if...
...it is merely an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation.

Paid Summary Report (PSR)

- DBE regulations require ODOT to collect and monitor payment data for all subcontractors.
- ODOT is required to report DBE/MWESB utilization and payment data to:

- » FHWA
- » Governor's Office
- » Legislature



Paid Summary Report (PSR)

- **Prime submits** monthly Paid Summary Report Form for all Subcontractors
- **PM forwards** a copy of the completed PSR Forms to the FC
- **FC reviews** the report
 - Alerts the PM if there are any discrepancies
 - OCR enters into Civil Rights Compliance Tracking (CRCT) database

Note: If there is no compliant CUF record or payment data, we are not allowed to report the DBE payments to FHWA!



Equal Employment Opportunity (EEO) Program

Ensures equal employment opportunity to all individuals regardless of:

- Race
- Religion
- Sex
- Color
- National origin
- Age
- Disability
- Sexual Orientation
- Gender Identity



EEO Program – Posting Requirements Equal Employment Opportunity is THE LAW

- This poster is available in both English and Spanish versions.
- Poster needs to be up at the job site accessible to employees.
- Inspectors should routinely check the poster is up at the beginning of projects.
- Contained in and applies to all federal-aid contracts and subcontracts valued \$10,000 or more.



Americans with Disabilities Act (ADA)

- The ADA is a federal law that applies to all projects, regardless of funding source.
- All ODOT new facilities are built to current standards or guidance. Alterations to existing facilities trigger specific responsibilities.
- Office of Civil Rights collects data and can assist with resolving the ADA concerns.
- All ADA requests or complaints need to be forwarded to OCR or Ask ODOT. ODOT is required to document all ADA requests and complaints and how they are resolved.



OJT/Apprenticeship Program Purpose

- To ensure skilled workers are trained and available by offering training in the highway construction trades
- Use affirmative actions to recruit from a diverse pool of applicants including minorities and women



If your project has OJT/Apprenticeship

(A federally required program that may be required on state funded projects)

- Number of hours is included in the training special provisions
- Number of hours is a bid item (ROA = \$20/hour)
- Contractor is to submit a Training Program at the pre-construction meeting, indicating how they intend to fill the requirement.
 - **Training can be subcontracted**
- PM's office forwards Training Program and Apprentice/Trainee Approval Requests to Civil Rights FC for approval
- Inspectors need to know who the trainees/apprentices are and type of work they are performing

Throughout the project:

- Contractor to submit Monthly Progress Records
 - PM/Project Inspector validate against Payrolls/Dailies
- Forward copies of these to Civil Rights Field Coordinator to track progress of trainees/apprentices.
- Confirm that payment is made to the Contractor under the bid item.



Tribal Employment Rights Ordinance (TERO)



Key Inspection Points

- Fill out CUF reports when DBE is on site
- Complete necessary DBE trucking verifications
- Pay attention to trainees and apprentices
- Keep accurate records of sub equipment and operators
- Pay attention to DBE activities and coordination
- Contact Civil Rights if any questions arise
- Make sure proper postings are on site



Unit 21 Review:

- ✓ Role of inspector for Office of Civil Rights programs
- ✓ Aspirational targets and contract goals
- ✓ Commercially useful function (CUF) criteria
- ✓ DBE trucking
- ✓ EEO and Workforce

