

DBE PERFORMANCE - COMMERCIALLY USEFUL FUNCTION CERTIFICATION

North Dakota Department of Transportation, Civil Rights
SFN 62120 (9-2022)

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 for the purposes of reviewing DBE's for compliance with the CUF requirements for credit.

A minimum of one CUF review must be performed for each DBE on each project with or without a DBE goal. The review should be conducted when the **DBE first begins work**, and compliance should be monitored throughout the course of the project.

This form is to be filled out by NDDOT personnel or consulting engineers. DBE's must not fill out any portion of the form.

This form is to be uploaded via CARS when completed. Civil Rights is notified when the form is uploaded and will review the form for completeness. If any edits are required, the individual that filled out the form will be contacted with the required revisions and instructed to re-upload it. Once forms are considered approved, Civil Rights will sign and re-upload, which is the final step in the process.

PCN	Project Number(s)		
District			County
Prime Contractor	Contact Person	Email	
Address			
DBE Firm	Owner	Email	
Address			
Date Contract/Subcontract Signed	Start Date of DBE's Work	Date DBE to Complete Work	Date of Review

Type of Operation

Sub-Contractor Trucker Manufacturer Regular Dealer/Supplier

Describe the type of work observed

Sections 1-5 must be completed in full for every DBE, no matter the type. If certain sections do not apply, No or N/A must be marked and a full explanation must be given in the comments portion of each section.

1. Management

a. Is there a legal contract executed by the DBE to perform a distinct element of work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. Name of the on-site representative working for DBE firm:
c. On-site representative reports to:
d. Has the on-site representative been identified as an employee of the DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
e. Has this individual ever appeared on any other contractor's payroll? (check payrolls in LCPtracker for confirmation) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A

f. Does the DBE on-site representative effectively manage the job without interference from any other non-DBE contractor? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
g. Who does the DBE on-site representative contact for hiring, firing, or to modify the contract?	
h. Has the DBE owner been present on the job-site? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
i. Does the DBE appear to have control over methods of work on its contract items? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
j. Is the DBE maintaining its own payroll? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
k. Who prepares the DBEs certified payroll?	Certified payrolls are not required for suppliers and some truck drivers. If you are unsure, please reference the Davis Bacon Handbook for guidance.
l. Is the DBE actually scheduling work activities, material deliveries, and other related actions required for prosecution of the work? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
m. Did the DBE subcontract any items or portions of the work to any other firm? DBE must perform at least 30% of total contract themselves. Any work completed by non-DBE's does not count towards DBE participation (except for trucking 1:1 ratio) <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
If yes, what % was subcontracted?	
Name of the firm:	
Comments required for all "No or N/A" responses:	

2. Equipment

a. List the major self-propelled (engine) equipment used by the DBE:	
b. Does the equipment have the DBE's markings or emblems? <input type="checkbox"/> Yes <input type="checkbox"/> No If another firm's markings are discernible, note the name:	
c. Is the DBE's equipment <input type="checkbox"/> Owned <input type="checkbox"/> Leased from:	
d. If leased, is there a formal agreement identifying the terms and parties? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
e. Is the equipment under the direct supervision of the DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
f. Is the operator of the leased equipment the DBE's employee? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A If not the DBE's, whose employee is he/she?	
g. If the equipment is leased, is the payment for the equipment deducted from the work performed? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Comments required for all "No or N/A" responses:	

3. Workforce

a. List the name of the DBE's crew as observed during the operation described above:
b. Has any of this crew ever shown up on any other contractor's payroll? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
c. Does the DBE's workforce know who they work for? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
d. Are the DBE's employees working on a distinct element of work, independently without assistance of other participating contractors? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
e. Is the DBE the only contractor providing pay and other compensation (i.e. benefit plans) to its personnel? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comments required for all "No or N/A" responses:

4. Materials

a. Is the DBE contracted to furnish and install a contract item? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. Is the quality and quantity of the materials controlled by the DBE? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
c. If two party checks used, who are the parties identified as payable to:
d. Who makes arrangements for delivery of materials?
e. Material invoices made out to:
f. Who scheduled delivery of materials?
g. Does the invoice name the DBE as the supplier? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
h. In whose name are materials shipped?
i. Does the prime contractor direct whom the DBE is to obtain the material from and at what price? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comments required for all "No or N/A" responses:

5. Performance

a. Does the DBE appear to have control over methods of work on its contract items? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
b. Has any other contractor performed any amount of work specified in the DBE contract? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A
Comments required for all "No or N/A" responses:

In section 6, only the subsection that applies to the type of DBE firm you are interviewing needs to be filled out. You do not need to select No or N/A for subsections that do not apply. Example: If the DBE is a subcontractor, none of section 6 is required, but if they are a supplier you must fill out the Regular Dealer/Supplier subsection completely.

6. Other Work Categories

Truckers:

<p>a. Are DBE trucks present on the job site?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p> <p>Are they <input type="checkbox"/> Owned <input type="checkbox"/> Leased from</p> <p>If leased, is there a formal agreement identifying the terms and parties?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>b. Was at least one DBE-owned and operated truck used in the hauling process?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>c. Are the rates appropriate?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>d. Is there an approved subcontract or written agreement?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>e. Who are the parties?</p>
<p>f. Are DBE employees shown on the certified payroll? Note: Owner Operators and other trucking employees may not be required to submit certified payrolls. Reference the Davis Bacon Handbook for guidance.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>Comments required for all "No or N/A" responses:</p>

DBE Trucking Companies Utilizing 1:1 Ratio

<p>a. Does the on-site monitoring of trucks provide a means to identify and count non-DBE and DBE haulers, ensuring non-DBE hauling is limited to the value of DBE hauling?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>b. Was credit for only fees and commissions given for additional non-DBE hauling that exceeded the value of DBE hauling?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>c. Considering the value/running tally of DBE and non-DBE hauling completed to date, as compared to remaining hauling, does it appear that the DBE commitment will be met?</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>d. Was the DBE's truck(s) on site each day the non-DBE match trucks were on site? If not, the non-DBE match trucks do not count towards the participation each day the DBE was absent.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>e. List the names of the non-DBE companies the DBE utilized as match trucks:</p>
<p>Comments required for all "No or N/A" responses:</p>

Regular Dealers/Suppliers (Count 60% of the cost of materials/supplies purchased/leased):

<p>a. Were the actual products provided by the DBE the same (type and quantity) as those described in the prime's commitment, purchase order, or the DBE's subcontract? If "No" reevaluate eligible DBE participation before proceeding.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>

<p>b. Does the DBE have an establishment where the products, or those of the general character described by the specifications and required under the contract, are kept and regularly sold/leased? If "YES" proceed to Question C. If "NO" skip to Question E.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>c. Did all products come from the DBE's establishment or did the DBE have physical possession of the products prior to delivery? (Attach delivery/shipping documents that show the product origin and name of delivery agent/company or operator's name and employer.) If "YES" skip to Question G. If "NO" proceed to Question D.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>d. Did the majority of products come from the DBE's establishment or did the DBE have physical possession of the majority of products prior to delivery? If "YES" make counting adjustments as appropriate and skip to Question G. If "NO" DBE's primary role is not that of a regular dealer; count fees and commissions as appropriate, provide comments below, and proceed to CUF Determination section.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>e. Are the products considered bulk items or specialty items not typically stocked? If "Yes" proceed to Question F. If "NO" DBE is not acting as a regular dealer; count only fees and commissions, provide comments below, and proceed to CUF Determination section.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>f. Did the DBE own (or have a long-term lease) and operate the distribution equipment used to deliver the products? (Attach delivery/shipping documents that indicate vehicle ownership and operator's name/employer). If "YES" proceed to Question G. If "NO" DBE is not acting as a regular dealer; count only fees and commissions, provide comments below, and proceed to CUF Determination section.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>g. Did the DBE own the products sold or leased? (Attach documents reviewed: inventory records, payment records, material ownership certification, etc.) If "YES" DBE is a regular dealer; count 60% of the total value of materials sold or leased. If "NO" DBE is not a regular dealer; count fees and commissions, provide comments below, and proceed to CUF Determination section.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>Comments required for all "No or N/A" responses:</p>

Manufacturer

<p>a. Were the actual products manufactured by the DBE the same (type and quantity) as those described in the prime's commitment, purchase order, or the DBE's subcontract? If "NO" reevaluate eligible DBE participation before proceeding.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>b. Do shipping documents, material certifications, or other information indicate that the final products were manufactured (blended, modified, fabricated, etc.) at a facility maintained or operated by the DBE? (Attach documents reviewed). If "YES" count 100% of the materials/supplies/articles purchased by prime. If "NO" DBE is not acting as a manufacturer. Count only fees and commissions and provide comments below. Proceed to CUF Determination section.</p> <p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A</p>
<p>Comments required for all "No or N/A" responses:</p>

<p>General Notes:</p>	
<p>If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?</p>	
<p>Did the action correct the deficiency? <input type="checkbox"/> Yes <input type="checkbox"/> No</p>	
<p>Date of Review</p>	<p>Date of Correction</p>

Based on the above review, the DBE is an independent business, executing a distinct element of work, and actually performing, managing, and supervising the work specified in the DBE's contract, and may therefore be counted toward the Department's DBE Goal.

Project Engineer/Manager Signature	NDDOT District or Consulting Company	Date
Project Engineer/Manager Name	Project Engineer/Manager Email	
Civil Rights Division Signature		Date

CUF Determinants

Materials

- The DBE is ordering materials, and invoices indicate the DBE is the customer
- The contact person is employed by the DBE
- The DBE is paying for the materials
- The use of joint checks have been approved

Red Flags

- Materials for the DBE are ordered, or paid for, by the prime contractor
- Invoices do not indicate the DBE is the customer
- The prime's employee and phone number is listed as the contact
- Materials come from the prime's stockpile or an affiliate of the prime

Records/Documents

- Invoices
- Material on Hand documents
- Delivery Tickets, Haul Tickets, Bills of Lading
- Joint Checks
- Cancelled Checks
- Subcontract Agreement

DBE Regular Dealers/Suppliers

- The DBE has a regular trade with a variety of customers
- The DBE has an inventory of the materials and/or supplies under the contract
- For bulk items, the DBE both owns and operates distribution equipment
- The use of joint checks has been approved by the department
- The DBE is responsible for the delivery

Red Flags

- The DBE supplies a product on an ad hoc basis in relation to a particular contract or contractor
- The DBE acts as the middleman in the transaction
- The DBE supplements the distribution equipment without having a long-term lease
- The DBE does not regularly sell the materials or supplies required under the contract
- Materials are drop-shipped from the commercial manufacturer
- The DBE's employees are not operating the leased distribution equipment
- All of the materials are special ordered
- The DBE does not inventory the material

Records/Documents

- Invoices
- Delivery tickets, Haul tickets or Bills of Lading
- Purchase order
- List of inventory
- Cancelled checks

DBE Manufacturers

- Maintain a factory or establishment that produces on the premises the materials or supplies required on the contract
- Alter or fabricate the product
- DBE is scheduling work operations

Red Flags

- Materials come from the prime's stockpile
- The DBE only orders the materials or supplies but does not alter the product
- The DBE does not have a factory, warehouse, or establishment to produce or alter the products

Records/Documents

- Purchase order
- Material sources
- Material invoices and billing invoices
- Bills of Lading, Shipping Tickets