



Manual Notice 2019-1

From: Michael D. Bryant, Director, Civil Rights Division *MDB*

Manual: District DBE Compliance and Monitoring Guide (for projects let prior to Feb. 2017)

Effective Date: April 1, 2019

Purpose

The *District DBE Compliance and Monitoring Guide (for projects let prior to Feb. 2017)* provides guidance for the District staff on the federal and state requirements of the DBE Program. This Guide contains the processes and procedures to be used by TxDOT to successfully accomplish all phases of DBE compliance from project initiation to project close-out. The procedures include District DBE Coordinator (DDC) responsibilities with respect to both federal requirements and state requirements.

Contents

The following sections have been modified to reflect changes in policies and procedures:

- ◆ New Chapter 6, Section 6 (pg. 21)
 - A new section has been added to include instructions for completing a CUF/MPR Review Report.

Supersedes

The version of this manual effective April 1, 2019 supersedes any previous versions of this manual.

Contact

Civil Rights Division, CivilRights@txdot.gov, (512) 416-4700



District DBE Compliance and Monitoring Guide (*for projects let prior to Feb. 2017*)

March 2019

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Introduction

The Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program is authorized by 49 Code of Federal Regulations (CFR) Part 26. The DBE Program objectives include ensuring nondiscrimination in the award and administration of federally-assisted highway contracts by helping to remove barriers to encourage DBE participation and also to ensure only firms that fully meet the eligibility standards are permitted to participate.

It is the responsibility of TxDOT's Civil Rights Division (CIV), in coordination with TxDOT districts, to implement, monitor, and enforce DBE Program compliance. This responsibility includes monitoring individual DBE contract goals and providing DBE oversight to local governments in an effort to meet TxDOT's annually established DBE Program goal.

Overview

The District DBE Coordinator (DDC) Standard Operating Procedures (SOP) is intended to assist the DDC, and other designated personnel at TxDOT districts and area offices (AOs) in performing quality compliance and oversight of the DBE Program for federally-assisted construction projects. The DDC SOP is also intended to assist the DDC with providing DBE oversight on Local Government (LG) federally-assisted contracts.

The contents of this SOP have been designed to help district personnel and local government liaisons:

- Be clear on departmental, district, and local government responsibilities in complying with DBE Program compliance and enforcement;
- Have thorough guidelines and checklists for monitoring performance and enforcing compliance in key DBE Program areas; and
- Have access to forms and reference tools to maintain quality oversight and comprehensive communication with Prime Contractors and DBE Subcontractors.

This SOP does not create new legal requirements or change current legal requirements. Instead, it reflects the expectations for DBE Program compliance as implemented by TxDOT's CIV and is intended to serve as a basic procedural reference. The legal requirements related to complying with the federal DBE Program for federally-assisted construction contracts are contained in the Federal Regulations, and Special Provisions cited in this SOP. Every effort has been made to ensure that the information contained in this SOP is accurate and up-to-date.

2 Selected Authorities & References

Federal Regulation

49 C.F.R., Part 26 (entitled Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs) - Office of the Secretary of Transportation ensures nondiscrimination in the award and administration of Department of Transportation (DOT) contracts in the highway, transit, and airport financial assistance programs; focused on the participation of Disadvantaged Business Enterprises, or DBEs.

Federal Provisions

Federal Highway Administration Form 1273 (entitled Required Contract Provisions: Federal-Aid Construction Contracts) a collection of contract provisions and proposal notices that are required by regulations promulgated by the FHWA and other Federal agencies and must be physically incorporated in each federal-aid contract and subcontract.

TxDOT Special Provisions

Special Provision 000-007 (entitled Disadvantaged Business Enterprise in Federal Aid Contracts) intended to carry out the U. S. DOT policy of ensuring nondiscrimination in the award and administration of federally-assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts.

Item 9 - Measurement & Payment (entitled Payment Provisions for Subcontractors) an amendment of TxDOT Standard Specifications for Construction and Maintenance of Highways, Streets, and Bridges that addresses retainage and payment provisions for subcontractors.

Texas Administrative Code

Texas Administrative Code Title 43, Part I, Chapter 9, Subchapter J, Rules §9.2 – §9.242 (entitled Transportation, Texas Department of Transportation, Contract and Grant Management, Disadvantaged Business Enterprise (DBE) Program) State of Texas policies and procedures related to TxDOT's Disadvantaged Business Enterprise (DBE) program in compliance with Transportation Code, §201.702, and Title 49, Code of Federal Regulations, Part 26, and consistent, to the extent possible, with Government Code, Chapter 2161. Applicable to all department contracts and purchases funded in whole or in part with federal funds received from the U.S. Department of Transportation through the Federal Highway Administration, Federal Transit Administration, or the Federal Aviation Administration.

TxDOT Construction Division Manual

Construction Contract Administration Manual (CCAM) provides District Engineers, Area Engineers, and their various representatives, including inspectors and record keepers with guidance for administering construction contracts.

TxDOT Local Government Office Manual

Local Government Projects Policy manual (LGPP) provides information related to district responsibilities associated with the administration and oversight of highway improvement contracts and related transportation projects let or administered by Local Governments to include municipalities, counties, regional mobility authorities (RMAs), local toll authorities and certain private entities.

TxDOT Local Government Guide

Summary of Best Practices Guide (SoBP) provides a reference and workbook to assist the Local TxDOT Offices and the LG with the administration of LG Projects.

3 Definitions

Department - refers to the Texas Department of Transportation (TxDOT).

Disadvantaged Business Enterprise - a for-profit small business that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged, whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Federally-Assisted Contract - is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

Good Faith Effort - means a contractor's efforts to achieve a DBE goal by its scope, intensity, and appropriateness to the objective, can reasonably be expected in order to fulfill the program requirement.

Local Government - includes municipalities, counties, regional mobility authorities (RMAs), and local toll authorities and may even include private entities.

Race-conscious - means a measure or program that is focused specifically on assisting only DBEs, including women-owned businesses.

Race-neutral - means any participation by a DBE through customary competitive procurement procedures.

Texas Unified Certification Program or "TUCP" - is a certification process for the Federal Disadvantaged Business Enterprise (DBE) Programs in Texas.

USDOT - means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

4 Table of Acronyms

Acronym	Description
AE	Area Engineer
AO	Area Engineer's Office
CCAM	Construction Contract Administration Manual
CFR	Code of Federal Regulations
CIV	Civil Rights Division
CST	Construction Division
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DDC	District Disadvantaged Business Enterprise Coordinator
DDCOD	District Disadvantaged Business Enterprise Coordinator or Designee
DE	District Engineer
DOC	Director of Construction
DWR	Daily Work Report
FHWA	Federal Highway Administration
GFE	Good Faith Effort
LG	Local Government
LGPP	Local Government Project Procedures
MOU	Memorandum of Understanding
MPR	Monthly Progress Report
RC	Race Conscious
RN	Race Neutral
SMS	Subcontractor Monitoring System
SOP	Standard Operating Procedure
TAC	Texas Administrative Code
TUCP	Texas Unified Certification Program
TxDOT	Texas Department of Transportation

Table of Acronyms List

5 Roles and Responsibilities

5.1 CIV Program Specialist Role

The CIV Specialist will provide the following DBE program support to districts:

- Provide necessary contract information regarding individual DBE contract goals and commitments;
- Maintain necessary data and records on eligible DBEs;
- Disseminate reports and updates that affect DBE monitoring and compliance at the district level;
- Conduct district DBE Program compliance audits to verify compliance procedures are implemented; and
- Provide general program technical support regarding federal, state, and local requirements for DBE compliance.

5.2 DDC Role

The DDC, in conjunction with district and AO staff, will administer DBE program compliance and will perform the following:

- Implement and monitor approved DDC Standard Operating Procedures (SOP) for DBE contract administration and compliance;
- Serve as the district liaison between the CIV and external entities;
- Collect, review, and report data related to district DBE compliance;
- Perform reviews and audits of construction contracts, associated construction records and activities;
- Perform Commercially Useful Function (CUF) reviews, to determine compliance as it relates to the DBE Program requirements;
- Coordinate resolutions relating to contract disputes involving DBE compliance issues;
- Maintain contact with external parties, such as the Federal Highway Administration, contractors, subcontractors, and the general public on DBE issues;
- Coordinate and delegate DBE compliance responsibilities with district and AO staff; and
- Provide general oversight and DBE Program technical support to Local Governments (LG) on federal aid construction projects.

The CIV will conduct district DBE Program compliance audits. DDCs will provide requested documentation and reports to demonstrate DBE Program compliance procedures are being implemented and that the LG contracts are being properly monitored for DBE compliance oversight.

Districts may also be audited directly by FHWA for DBE compliance, in which district cooperation and any necessary coordination through the CIV will be expected. Districts cited in FHWA audits will need to notify the CIV via email to enable the CIV to assist with addressing any DBE noncompliance issues.

5.3 Delegation of Responsibilities

The delegation of DDC responsibilities will be decided by each district.

The table below lists the recommended levels of responsibility and limits of delegation.

	Responsibility	Delegation Limit
Delegation Of Responsibilities	Receiving the Commitment Package	DDC Only
	Attending Pre-Construction Meetings	DDCOD
	Reviewing DBE Subcontracts for DBE Compliance	DDCOD
	Entering Monthly Progress Reports (MPRs)	DDCOD
	Monitoring Monthly Progress Reports	DDC Only
	Performing CUF Reviews	DDCOD
	Approving DBE Replacements, and Terminations	DDC Only
	Reviewing, Approving, and Denying Good Faith Efforts (GFE)	DDC Only
	Reviewing and Approving Joint Check Agreements	DDCOD
	Addressing Prompt Payment Issues	DDCOD
	Processing Final Reports & Close-Outs	DDC Only
	Monitoring Local Government DBE Compliance	DDC Only

5.4 Delegation of Authority & Enforcement

AUTHORITY

Each district will decide what authority will be delegated when enforcing and responding to non-compliance issues concerning the DBE Program.

The table below lists instances of noncompliance issues and suggested levels of delegation:

DBE Program Subject	Noncompliance Issues	Authority to Respond and Execute	Delegation of Authority
Subcontracts	<ul style="list-style-type: none"> ▪ Failure to subcontract with a certified DBE at the time of contract execution. ▪ Decrease in DBE subcontract amount from the commitment agreement. ▪ Change in the description of work according to the DBE commitment. ▪ Failure to include a termination clause not consistent with DBE regulations and special provisions. ▪ Failure to include Prompt Payment language consistent with Prompt Payment regulations and special provisions. 	DOC	AE/DDC
MPRs	<ul style="list-style-type: none"> ▪ Failure to submit MPRs. ▪ Failure to reconcile amounts paid to date. 	DOC	AE/DDC
Termination Replacement	<ul style="list-style-type: none"> ▪ Failure to provide a detailed explanation for the termination request. ▪ Failure to provide concurrence from DBE Subcontractor being terminated. ▪ Failure to receive prior approval to terminate and or replace a DBE Subcontractor or Supplier. ▪ Failure to make a GFE to replace a DBE Subcontractor or Supplier. 	DE	AE/DDC/DOC
Goal Credit	<ul style="list-style-type: none"> ▪ Failure of DBE to perform a CUF. 	DE	AE/DDC/DOC
Joint Check	<ul style="list-style-type: none"> ▪ Failure to receive prior approval to use joint check. ▪ Failure to comply with the proper use of joint check. 	DE	AE/DDC/DOC
Prompt Payment	<ul style="list-style-type: none"> ▪ Failure to adhere to Prompt Payment Provision. 	DE	AE/DDC/DOC
Goal Shortfall	<ul style="list-style-type: none"> ▪ Failure to make a GFE to meet DBE goal requirements. 	DE	AE/DDC/DOC

ENFORCEMENT

If the district determines the Prime Contractor has failed to satisfy GFE requirements in the performance of the contract, or has violated any provision of 49 CFR Part 26; Texas Administrative Code (TAC), Title 43, Part 1, Chapter 9, Subchapter J, Rules 9.200 -9.242; or the DBE provisions of the contract, the district may impose any of the following sanctions:

- A letter of reprimand;
- Contract termination;
- Required participation in DBE outreach programs;
- Required participation in DBE mentor program;
- Liquidated damages; and
- Any other remedy available by law.

Factors to be considered in imposing sanctions include:

- The magnitude and the type of DBE noncompliance;
- The degree of the contractor's culpability;
- Any steps taken to rectify the situation;
- The contractor's record of performance on other projects including:
 - The Prime Contractor's annual DBE participation above the DBE goals;
 - The Prime Contractor's annual DBE participation on projects without goals;
 - The number of complaints the department has received from DBEs about the Prime Contractor;
 - The number of times the Prime Contractor has been previously sanctioned; and
- If a Prime Contractor falsified, misrepresented, or withheld information.

The delegated district or AO personnel with authority will notify the Prime Contractor in writing of the determination of any appropriate noncompliance action. The notice will include the reasons for the determination and specify the resulting sanctions, if any.

COOPERATION BY PARTICIPATING CONTRACTORS

In accordance with 49 CFR 26.109 (c), all participants in the DBE program (including, but not limited to, Prime Contractors, DBE firms, Local Governments, complainants and appellants) are required to cooperate fully and promptly with TxDOT compliance reviews, certification reviews, investigations, and other requests for information. Failure of participants to cooperate shall be grounds for appropriate action against the party involved (e.g., with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a Prime Contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

FRAUDULENT PARTICIPATION

In accordance with 49 CFR 26.107, the USDOT may initiate suspension or debarment proceedings against:

1. A firm that does not meet DBE eligibility criteria and attempts to participate on a federally-assisted contract as a DBE on the basis of false, fraudulent, or deceitful statements or representations, or under circumstances indicating a serious lack of business integrity or honesty; and
2. A firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria to be a DBE.

The districts, in coordination with the CIV, will bring to the attention of the Department of Transportation any false, fraudulent or dishonest conduct in connection with the DBE Program.

6 DDC Procedures

6.1 Receiving the Commitment Package

Upon approval of the DBE commitment, the CIV will forward a copy of the DBE commitment package to the DDC. The DDC will forward the commitment package, or make it available through a shared document system, to any designated district or AO personnel who will need it to monitor DBE compliance.

The DDCs are responsible for reviewing the items below to make sure they have received a complete commitment package. If the package is incomplete, the DDCs should contact their CIV Specialist.

The DBE commitment package will include the following based on DBE type:

- DBE Commitment Worksheet SMS.2701;
- DBE Commitment Agreement Form(s) Form 4901;
- DBE Material Supplier Commitment Agreement Form(s) Form 4901-M/S;
- DBE Trucking Commitment Agreement Form(s) Form 4901-T;
- Applicable DBE Hauling Lease Agreements; and
- Applicable Motor Vehicle Division VIN verification.

6.2 District Trucking Review Procedures

Beginning with the February 2017 letting, District Staff will be required to review and approve the Disadvantaged Business Enterprise (DBE) Trucking Utilization - Form 2660 (see Attachment B). This review and approval process must be conducted prior to any hauling services being performed for DBE credit.

To request access to the Texas Department of Motor Vehicles (TxDMV), Vehicle Titles and Registration site, contact the CIV Compliance Section at CIV_Compliance@txdot.gov.

The following steps describe the DBE Trucking Utilization review process.

1. Review the boxes at the top of the form to make sure they have been properly filled in.

Project #:	County:	Contract-CSJ:
Name of DBE Trucking Company	Total Committed Dollar Amount of the Utilization Plan	Number of Dump Trucks, Tractors/ Trailers (specify)
	\$	

If the prime has submitted a subcontract for approval, verify that the work description matches information in DMS. If a request for subcontract approval is not needed, Form 2660 must still be submitted.

2. Review the responses to the following questions.
 - a. These questions should always be completed.
 - b. If not completed, return the form to the prime so the questions can be completed.

TO BE COMPLETED BY THE DBE TRUCKING FIRM		
1. Number of hours contracted or quantities to be hauled?		
2. Number of fully operational trucks owned by DBE?	Dump trucks:	Tractors/trailers:
3. Number of leased trucks to be used?	Provide copies of lease agreement(s).	

- Once you are logged in, you will see the Vehicle Titles and Registration Motor Vehicle Inquiry (MVI) landing page.

Vehicle Titles and Registration Motor Vehicle Inquiry (MVI)

1 [Inquiry by Registration \(Single Plate Number\)](#)

[Inquiry by Registration \(Multiple Plate Numbers\)](#)

[Inquiry by Vehicle Identification Number \(VIN\)](#)

[Inquiry by Placard Number](#)

2 [Inquiry by Document Number](#)

[Inquiry by Previous Document Number](#)

Notice: Personal information (Name and Address) contained in motor vehicle records is restricted and cannot be disclosed.

[Verify or Change Password](#)

- Vehicle verification can be done one of 2 ways; (1) *Inquiry by Registration (Single Plate Number)* or (2) *Inquiry by Vehicle Identification Number (VIN)*.

EXAMPLE 1: VTR Inquiry by Registration (Single Plate Number)

VTR Inquiry by Registration (Single Plate Number)

Enter Expiration Year: Enter Plate Number: *

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LIC R204393 SEP/2017 OLD # R204393 SEP/2016 EMT 18300 GWT 80000
AFFORTIONED TRK SINGLE FLT, STKR REG CLASS 06 $ 0.00 MCLENNAN
CNTY
TITLE 05000041594114028 ISSUED 11/27/2013 ODOMETER N/A REG DT 08/24/2016
YR:1997 MAK:FRB MODL: BDY STYL:TR VEH CLS:TRK>1 SALE PRC: $0.00
VIN: 1XP5DB9X9VD433479 BODY VIN: N/A COLOR: BLACK
PREV OWN AMERICAN EXCHANGE BANK, HENRYETTA, OK
OWNER MARION KYLE POTTER., 12100 SPRING VALLEY RD, 00000000000000000000-.
MOODY, TX, 76557
PLATE AGE: 1 LAST ACTIVITY 10/08/2016 XIRRNW OFC: 275
REMARKS DIESEL. DATE OF ASSIGNMENT: 2013/11/18. PAPER TITLE.

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EXAMPLE 2: VTR Inquiry by Vehicle Identification Number (VIN)

VTR Inquiry by Vehicle Identification Number (VIN)

Enter Vehicle Identification Number: *

```

LIC R110588 MAR/2016 OLD # R53174 MAR/2015 EMT 17900 GWT 80000
AFFORTIONED TRK SINGLE FLT, STKR REG CLASS 06 $ 0.00 DALLAS CN
TY
TITLE 05752839515090811 ISSUED 03/20/2008 ODOMETER N/A REG DT 04/08/2015
YR:1993 MAK:FRB MODL: BDY STYL:TR VEH CLS:TRK>1 SALE PRC: $0.00
VIN: 1XP5DB9X3PD324969 BODY VIN: N/A COLOR: UNKNOWN
PREV OWN D & P TRUCKING, IRVING, TX
OWNER D & P TRUCKING, 1002 S BALLEWOOD ROAD, IRVING, TX, 75060
LIEN 03/10/2008, WAYNE GEIGER, PO BOX 903, KEMP, TX, 75143
PLATE AGE: 1 LAST ACTIVITY 04/18/2015 XIRRNW OFC: 277
REMARKS DIESEL. PAPER TITLE.

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7. Review contact information for completeness.
 - a. Name and title should be printed, and each party on the form should sign and date the form.

6.3 Attending Pre-Construction Meetings

It is recommended the DDCOD attend the Pre-Construction meeting for all federally-assisted construction contracts to discuss key DBE Program requirements with Prime Contractors using the “DBE Instructions to Contractors on Federally Assisted Contracts.” handout. (See Attachment A).

It is also recommended that the DDCOD review the Commitment Package prior to the Pre-Construction meeting to become familiar with any unique DBE circumstances needing to be addressed with the Prime Contractor.

The DDCOD will ensure Pre-Construction meeting minutes and sign-in sheets are recorded in the project file to verify DBE compliance was discussed.

6.4 Reviewing DBE Subcontracts for Compliance

The DDCOD will ensure DBE subcontract or purchase order copies are furnished by the Prime Contractor and when necessary review subcontracts to ensure DBE Program compliance.

This requirement is not to be confused with the Construction Contract Administration Manual (CCAM) Chapter 10 Section 4 subcontract approval requirement.

The DDCOD will review the subcontract for the following:

- The DBE’s certification date is current, per the TUCP Directory, at the time of subcontract execution;
- The description of work does not differ from the commitment. If it differs, contact the Prime Contractor to resolve the discrepancy;
- The subcontract amount is the same as the commitment amount. If less, contact the Prime Contractor to resolve the discrepancy. (If the subcontract amount more than the commitment amount no further action is needed);
- Subcontract default and or termination clause is consistent with the DBE termination and replacement requirements. If not, contact the Prime Contractor to resolve the discrepancies.
- Subcontract payment language is consistent with required Prompt Pay regulations and provision. If not, contact the Prime Contractor to resolve the discrepancies.

6.5 Reporting Goal Credit and Monitoring DBE Performance

The DDC and the designated district and AO staff will be responsible for monitoring individual DBE goals for each federally assisted contract. Goal reporting should reflect allowable goal credit based on DBE type. Denied goal credit should be promptly communicated with the Prime Contractor to keep accurate track of the DBE goal progress.

MONITORING DBE PERFORMANCE FOR GOAL CREDIT

The following section provides guidelines and examples when monitoring allowable DBE goal credit based on DBE type:

Goal Credit %	Description of DBE Work
Count 100%	Count the total value of work performed by the DBE's own forces. May include cost of supplies and materials obtained by the DBE for the work of the contract, supplies purchased or equipment leased by the DBE (NOT to include supplies and equipment purchased or leased from the Prime Contractor or its affiliate).
Count 100%	Count the total value of work subcontracted by a DBE Subcontractor, if the work is subcontracted to another DBE Subcontractor. (Work that a DBE subcontracts to a non-DBE firm does NOT count toward DBE goals - see exception for DBE haulers).
Count 100% DBE and Match DBE Value for Non-DBE Lessees (Haulers)	Count the total value of transportation services provided by a certified DBE for the trucks it owns, insures, and operates using drivers it employs. Count the total value of trucks the DBE leases from another DBE. Count the total value of transportation services the DBE leases from non-DBEs, not to exceed the value of transportation services provided by DBE-owned trucks on the contracts. (See Attachment B).
Count 100% (Manufacturer)	Count the total value of the material, if the material supplies are purchased from a DBE manufacturer. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment under the contract and of the general character described by the specifications.
Count 60% (Regular Dealer)	Count the total value of the material, if the materials are purchased from a DBE regular dealer. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
Count 100% of fees or commissions (Broker)	Count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site provided it is determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Monitoring DBE Performance for Goal Credit

NOTIFICATION OF DBE DECERTIFICATION

The CIV will send notification, to the DDC, of a DBE that has been decertified and will provide the decertification date and any supporting information. The DDC will ensure the Prime Contractor acts in accordance with Special Provision 000-007 and continue to fulfill contractual DBE commitment obligations and consider DBE allowable goal credit.

MONITORING MONTHLY PROGRESS REPORTS (MPR)

DBE Monthly Progress Report Form 4903 will be submitted by the Prime Contractor to the DDCOD. Data will be entered and reported based on the District Delegation of Responsibilities, however, the DDC has the ultimate responsibility of reviewing data for DBE compliance, including monitoring proper goal credit allowance and verifying that reports are being submitted in a timely manner.

The Prime Contractor is required to report race-conscious and race-neutral participation. Verify the prime has included race-neutral participation on the Monthly Progress Payment form and that expenditures are entered in SMS. This should be noted in the RC/RN column of the Monthly Progress Report Form (4903).

Compare monthly DBE payments on the Monthly Progress Payment form with SMS to verify amounts agree. If there are adjustments, add comments on the Monthly Progress Report form and attach SMS print screen to the form.

Adjustments to the DBE expenditure amounts (e.g., corrections or disallowance of DBE goal credit) must be completed when identified SMS. Any required adjustments must be made within 30 calendar days in order to ensure that accurate expenditure information is reported to FHWA. Any discrepancies beyond the reporting period must be reported to CIV_Reporting@txdot.gov. The reporting periods to DOT include:

- October 1 through March 31 due on June 1
- April 30 to September 30 due on December 1

When monitoring MPRs, the DDCOD will review and ensure the following:

- A district process is in place to monitor that all MPRs are being submitted and entered into SMS for each federally-assisted contract;
- Prime Contractors are contacted if the amounts paid to date do not reconcile;
- Proper DBE goal credit is being applied for expenditures paid to DBEs, DBE haulers; and DBE Suppliers. Refer to DBE goal credit guidance table listed above.

When Monitoring MPRs for Race-Neutral credit, the DDCOD will review and ensure the following:

- Race-Neutral DBE dollars have been reported on the DBE MPR and posted in SMS; and
- Review subcontractor approval requests for DBE Firms not listed on the commitment and post as Race Neutral in SMS.
- Race-Neutral DBE dollars have been reported on the DBE MPR and posted in SMS; and
- Review subcontractor approval requests for DBE Firms not listed on the commitment and post as Race Neutral in SMS.

DBE PRIME CONTRACTOR PAYMENTS TO NON-DBE SUBCONTRACTORS

DBE Prime Contractors may receive credit toward the DBE goal for work performed by its forces and work subcontracted to DBEs. In the event a DBE Prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902. Upon receipt, DDCOD will e-mail form SMS.4902 to the CIV at CIV_Compliance@txdot.gov.

District Project close out is not required for DBE Prime Contractor projects.

PERFORMING QUALITY COMMERCIALY USEFUL FUNCTION REVIEWS

The DDC will monitor and ensure the implementation and compliance of CUFs performed on DBE Subcontractors, Hauling firms, and Suppliers. The DDC will provide technical support to designated district and AO personnel concerning the proper steps to be utilized when conducting CUF reviews and when responding to contractors regarding areas of noncompliance.

The CUF review should be completed by the Area Office within 60 days of initiation. The CUF review should be submitted with all supporting documentation (invoice(s), payroll, pictures, equipment, DWR, and list of employees). Only attach one invoice unless it is determined that more than one is needed to substantiate CUF findings. The Area Office will submit the completed CUF form to the DDC, who must review and finalize within 30 days.

CUF reviews are accomplished through the use of three different types of CUF review forms, depending on the function of the DBE:

- CUF Review Form 2183 (professional & scientific services)
- CUF Review Form 2669 (material suppliers)
- CUF Review Form 2182 (all other subcontractors)

Staff must perform CUF reviews on DBE Prime Contractors.

The DDCOD conducting CUF reviews will do the following:

- Conduct a minimum of one CUF Review for each DBE for each project;
- Utilize and complete the appropriate CUF form for each review;
- FHWA has published a guidance document entitled “FHWA Tips on Evaluating a Commercially Useful Function.” The DDCOD may use this guidance document to identify key factors in determining whether a CUF is being performed (see Attachment C); and
- Submit copies of the completed CUF form and all back-up documentation (pictures, material invoices and equipment verification) to the office that maintains the file of record and notify the DDC that the CUF review has been completed. If there is a finding of noncompliance, a copy of the CUF form with proposed action must be forwarded to the DDC.

Once a CUF has been completed, the DDC will be responsible for the following:

- Ensure CUFs have been completed for each DBE, have been conducted properly, and being checked for accuracy and completion;
- Verify that the CUF Review has been entered in SiteManager;

- Coordinate with designated district and AO staff if responding to CUF findings of noncompliance that require action and attention;
- Coordinate with the DDCOD to provide written notification to the DBE when it is determined that the DBE is not performing a CUF;
- Coordinate with the DDCOD to notify the CIV if further guidance is needed before making a final CUF determination or before contacting the DBE regarding CUF noncompliance;
- Notify the DBE in writing, the findings of noncompliance (see Attachment D); and
- Once the DBE has responded, within the allowed 10 days, and the determination of non-compliance still stands, notify the Prime Contractor of any denial of DBE goal credit and forward a copy to the DDC and the CIV Specialist. Ensure denied amounts are reconciled in SMS.

The CUF/MPR review report is a monitoring tool to ensure that CUF reviews and Monthly Progress Payments are current and accurate for all DBEs on active projects. The review report is completed in CIV's SharePoint site, which can be accessed through Crossroads (see Attachment Q).

The DDC must complete one CUF/MPR review per DBE, per each active project, and submit to CIV by the fifteenth day following the end of the quarter. If the submission date falls on a weekend or holiday, submit on the next business day.

Reporting Periods	CUF/MPR Submission Deadline
January 1 st thru March 31 st	April 15 th
April 1 st thru June 30 th	July 15 th
July 1 st thru September 30 th	October 15 th
October 1 st thru December 31 st	January 15 th

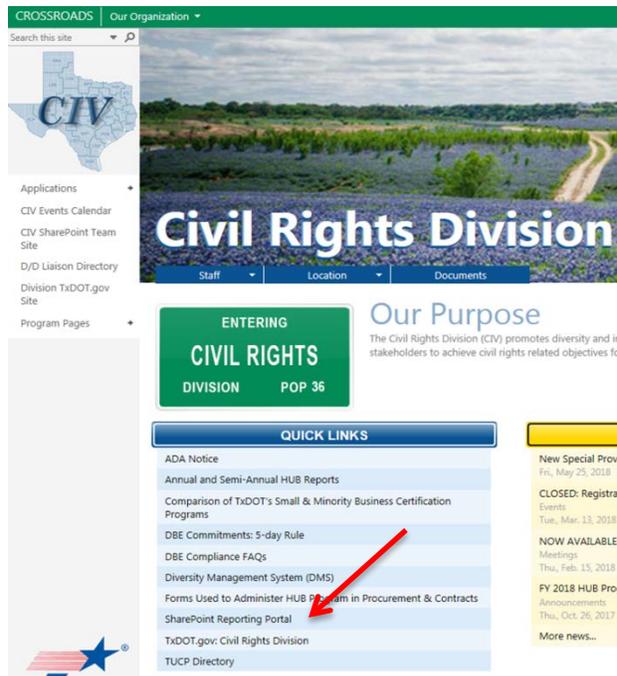
The CUF/MPR review report is a monitoring tool to ensure that CUF reviews and Monthly Progress Payments are current and accurate for all DBEs on active projects.

The review report is completed in CIV's SharePoint site, which can be accessed through Crossroads.

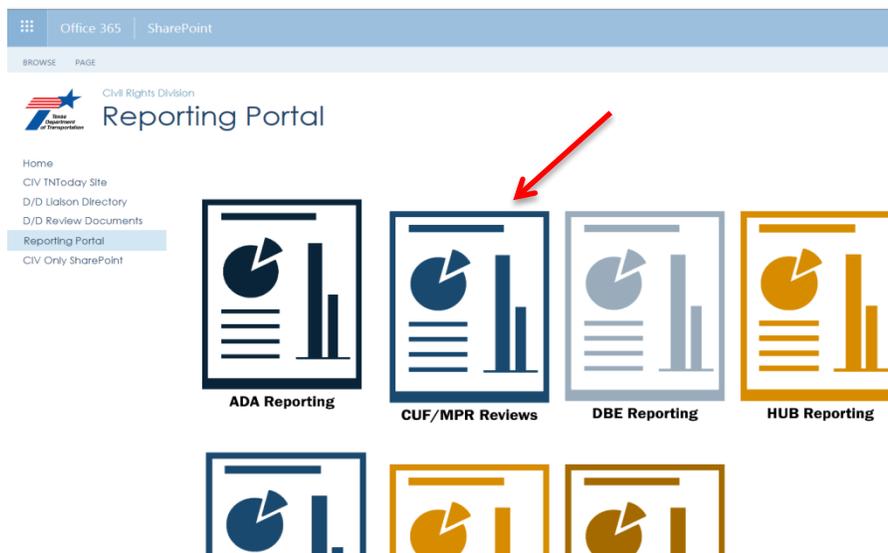
The DDC must complete one CUF/MPR review per DBE, per each active project, and submit to CIV by the fifteenth day following the end of the quarter. If the submission date falls on a weekend or holiday, submit on the next business day. However, if a CUF review has been completed for a DBE, only complete MPR questions and submit.

6.6 Completing a CUF/MPR Review Report

Step 1: Navigate to the Civil Rights Division page through Crossroads and select **SharePoint Reporting Portal** under “Quick Links.”



Step 2: Select the icon **CUF/MPR Reviews** to navigate to the report.



Step 3: You can create a new report for a new project and/or edit an existing form. Once a project/CSJ # has a report started, a new report will NOT need to be made for that project. You will have the capability to edit for updates and corrections at any time. As DBEs start working on a project as the job progresses, you can simply add them to the report you have already created.

To create a new form, select the **New** icon.

To edit an existing form, select the CSJ under the **Name** column.



Step 4: Once the form is open, enter the CSJ (XXXX-XX-XXX). Select the appropriate District from the drop-down menu.

CUF/MPR Review Report

CSJ
(Use XXXX-XX-XXX format)

District

Step 5: Insert the DBE firm's information (Name, Start Date). Select the appropriate check box/boxes:

Commercially Useful Function Review:

Monthly Progress Report Review:

CUF/MPR Review Report

CSJ
(Use XXXX-XX-XXX format) 123-45-6789

District **Amarillo District**

DBE Information DBE Firm Name: ABC Trucking

DBE Start Date: 11/12/2018

Commercially Useful Function Review:

Monthly Progress Report Review:

Step 6: Clicking **Commercially Useful Function Review** will populate questions to be answered if a CUF Review is being monitored on a project.

DBE Information **DBE Firm Name:** ABC Trucking

DBE Start Date: 11/12/2018

Commercially Useful Function Review:

Monthly Progress Report Review:

CUF Review Initiation Date: 11/15/2018

Estimated CUF Review Completion Date:

Actual CUF Review Completion Date:

Goal Credit Type: RC RN

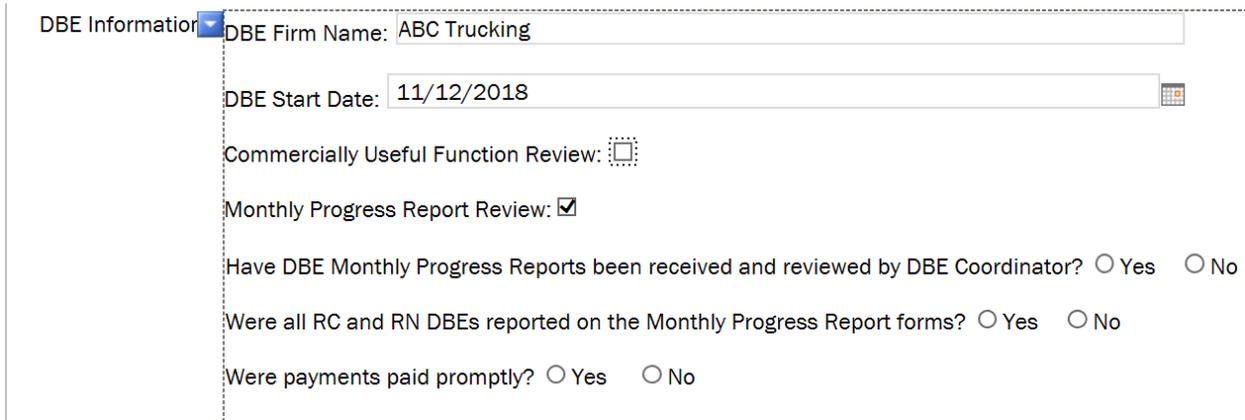
Has the CUF Review been recorded in a tracking system? Yes No

Has the CUF Review been approved by DBE Coordinator? Yes No

Does DBE appear to be performing a Commercially Useful Function (CUF)? Yes No

If no CUF, was payment deducted? Yes No

Step 7: Clicking **Monthly Progress Report Review** will populate questions that will need to be answered for all projects that have a monthly audit. These questions will be answered as a review for each quarter.



DBE Information

DBE Firm Name: ABC Trucking

DBE Start Date: 11/12/2018

Commercially Useful Function Review:

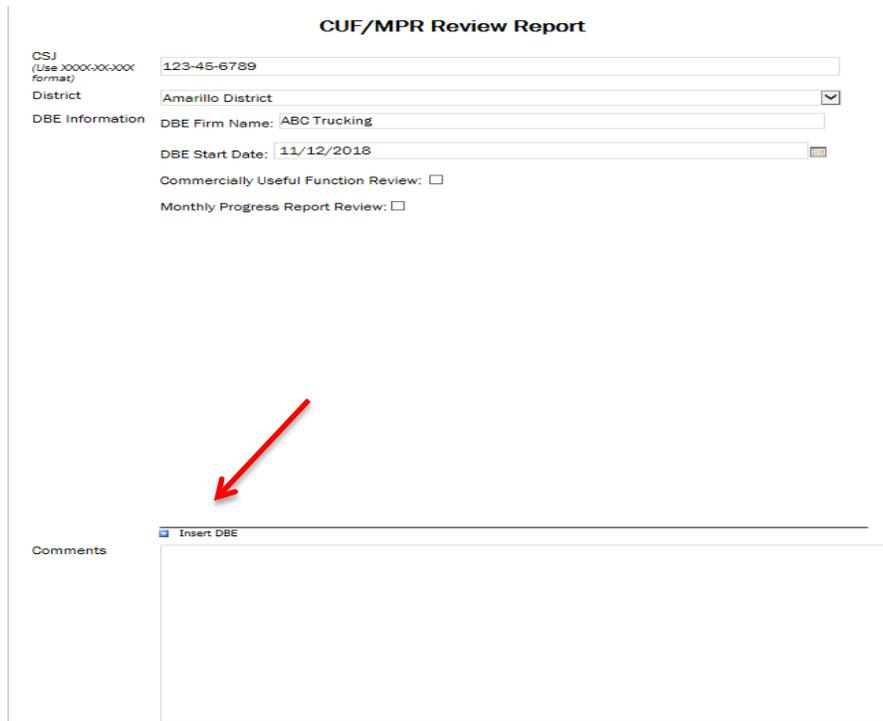
Monthly Progress Report Review:

Have DBE Monthly Progress Reports been received and reviewed by DBE Coordinator? Yes No

Were all RC and RN DBEs reported on the Monthly Progress Report forms? Yes No

Were payments paid promptly? Yes No

Step 8: As a reminder, this report allows you to enter information for multiple DBEs per project. Do not create a separate report just because a project has more than one DBE. To add a new DBE to an existing form, locate the **Insert DBE** button, and click to populate the questions. Complete the information for any additional DBEs. If you answered any of the questions with a “No,” provide comments on reasoning. When leaving a comment, include the date of the comment.



CUF/MPR Review Report

CSJ (Use xxxxxx-xxxx format) 123-45-6789

District Amerillo District

DBE Information

DBE Firm Name: ABC Trucking

DBE Start Date: 11/12/2018

Commercially Useful Function Review:

Monthly Progress Report Review:

Comments

Insert DBE

6.7 Approving DBE Termination Requests

A Prime Contractor may not terminate, for convenience, a Race Conscious DBE listed on its contract, without prior written approval from the district. A Prime Contractor seeking to terminate a DBE is required to provide a written request to terminate and include supporting evidence that the DBE was unwilling or unable to complete the work of its contract prior to the termination request.

Supporting documentation for termination requests include:

- Termination letter;
- DBE statement of concurrence or rebuttal of the termination request;
- A signed DBE letter of voluntary removal, if applicable; and
- Statement of DBE non-response, if applicable.

The DDC will review necessary documentation provided by the Prime Contractor and will make a determination to approve or deny termination requests. The DDC will provide the determination in writing to the Prime Contractor and DBE within (7) business days, of the request, to terminate. (See Attachment E and F for sample letters)

The DDC may consult with the CIV Specialist regarding more complex cases when making final determinations.

When to approve termination requests

- The Prime Contractor has submitted the necessary form and documentation to support the listed DBE is unwilling and unable to perform the work and therefore good cause exists to terminate the original DBE. (See table below for descriptions of “Good Cause”)
- The DBE has submitted concurrence for termination or has submitted a signed voluntary removal request that has been confirmed by the DDC.

Note: If the DBE termination is approved and will result in a DBE goal shortfall, the Prime Contractor must provide supporting documentation to show that a GFE was performed.

Reasons for Good Cause for Termination Requests

DBE fails or refuses to execute a written contract	DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
DBE fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements	DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
DBE is ineligible to work on federally assisted or state projects because of suspension or debarment proceedings	District has determined that the DBE is not a responsible contractor
DBE voluntarily withdrawals from the project and provides the district with written notice of its withdrawal	DBE is ineligible to receive DBE credit for the type of work required
A DBE owner dies or becomes disabled, resulting in the DBE being unable to complete its work on the contract	DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
DBE fails or refuses to execute a written contract	Other documented good cause

When to deny termination requests

- The Prime Contractor fails to submit the proper documentation to justify the termination request;
- The Prime Contractor is attempting to negotiate a more advantageous contract with another subcontractor;
- The Prime Contractor is attempting to perform the work with its own resources and or those of an affiliate, a Non-DBE firm, or with another DBE Firm offering a lower contract price;
- The DBE requested to be terminated has objected to the termination and is willing and able to perform the work.

APPROVING DBE REPLACEMENT REQUESTS

The DDC will review necessary documentation provided by the Prime Contractor and will make a determination to approve or deny requests. The DDC will provide the determination in writing to the Prime Contractor within (7) calendar days of the initial request (see Attachment G and H for sample letters). The DDC may consult with the CIV Specialist, if necessary, prior to making a final determination.

If the replacement request is approved the Prime Contractor will need to provide the following:

- DBE Program Replacement Request Form 2228; and
- A signed DBE Commitment Form 4901, 4901 M/S, or 4901-T for the certified DBE that will replace the terminated DBE.

REVIEWING THE COMMITMENT FORM FOR REPLACEMENTS

The DDC will review the commitment form for inaccurate, incomplete or missing information and will notify the Prime Contractor in writing of any discrepancies or issues requiring a response.

The DDC will review/verify the following:

- The project, county, and CSJ matches the project replacement;
- Signatures of the Prime Contractor and the proposed DBE;
- The DBE is certified per the TUCP (print the directory listing for project file);
- The DBE is certified per the TUCP for the type of work to be performed;
- The bid item, description, unit of measure, and unit price quantity are checked against project bid line items;
- Quantity does not exceed line items;
- If the DBE is a manufacturer, question 1 has been completed on Form 4901-M/S;
- If the DBE is a regular dealer, questions 2 thru 4 have been completed on Form 4901-M/S; and
- If DBE is a hauling firm, questions 1 thru 3 on Form 4901-T have been completed; and if applicable, question 4 has been completed.

The DDC will verify the Prime Contractor does not count work on items being replaced toward the DBE goal prior to approval.

RESPONDING TO GOOD FAITH EFFORTS FOR TERMINATION REQUESTS

If terminating the original DBE will result in a DBE goal shortfall, the Prime Contractor will provide supporting documentation in writing to show that a good faith effort was performed.

The DDC will review documentation provided by the Prime Contractor to ensure good faith efforts proved to be directed at finding another DBE to perform at least the same amount of work under the contract as the terminated DBE.

The DDC will review the good faith effort and all supporting documentation and will make a final determination to approve or deny the request. The DDC will send a written notification to the Prime Contractor that the good faith effort has been approved or denied; (see Attachment I and J for sample letters). If the DBE goal waived in whole or in part then forward notification copy to the CIV.

6.8 Reviewing, Approving, and Auditing Joint Checks

TxDOT's DBE Program allows the use of joint checks between the Prime Contractor and DBE Subcontractors through joint check agreements.

REVIEWING AND APPROVING JOINT CHECK REQUESTS

The DDCOD will be responsible for approving the use of joint checks in accordance with Department policies specified in Special Provision 000-007. The Prime Contractor will submit the DBE Joint Check Approval Form 2178 to the DDCOD for approval.

The DDCOD will be responsible for ensuring the following has been provided:

- Documentation supporting the DBE requested the usage of joint checks;
- Documentation supporting the joint check agreement is between the Prime Contractor, DBE, and Supplier; and
- Documentation supporting the DBE was denied credit from the Supplier and the denial response was included.

In the approval analyses ensure the following:

- The Supplier is not the Prime Contractor or an affiliate of the Prime Contractor; and
- The DBE is responsible to both furnish and install the material.

The DDCOD will send notification of the final determination of the joint Check request to the Prime Contractor. (see Attachment K and L for sample letters)

Allowable goal credit will begin the date the joint check request is approved.

The DDCOD will periodically monitor the use of joint checks for DBE compliance according to the following:

- The DBE is responsible for ordering and scheduling delivery of the materials;
- The Prime Contractor issuing the check acts solely as a guarantor;
- Copies of the front and back of cancelled joint checks support the DBE signs the joint check and releases it to the Supplier, not to the Prime Contractor; and
- The DBE's account with the Supplier is in the DBE's name only.

6.9 Addressing Prompt Payment Issues

For federally assisted projects, the Prime Contractor is required to submit the Prompt Payment Certification Form 2177 to the Area Engineer.

This certification is in accordance with TxDOT's prompt payment procedure to certify the Prime Contractor paid all subcontractors and suppliers from the previous month's payments and retainage was released for those whose work is complete.

The Prime Contractor must submit the certification form monthly during the course of the project and the month following final acceptance.

Prompt payment compliance is typically monitored at the AO level, however; when needed, the DDC may be asked to work with the AEO on an on-going basis to ensure any prompt payment issues involving DBE firms are being addressed.

Refer to prompt payment instruction listed in Chapter 11 Section 3 of the CCAM for information and guidance regarding prompt payment.

6.10 Processing Final Reports & Close-Outs

The DBE Final Report Form 4904 will be submitted by the Prime Contractor to the DDCOD. Data will be entered and reported based on the District Delegation of Responsibilities, however, the DDC has the ultimate responsibility of reviewing final reporting data for DBE compliance, including monitoring proper goal credit allowance and verifying that the report has been submitted upon project completion.

The DDC will check SMS for the following:

- Dollar amounts match the report, including Race-Neutral dollar amounts; and
- The overall assigned DBE goal percentage was met as shown on the commitment.

If the goal and individual commitments are met the DDC will perform the following:

- Clear the project in SMS; and
- E-mail the Final Report Form to the CIV at CIV_Compliance@txdot.gov.

If the goal and or the individual commitment are not met, in full, consider the following shortfall scenarios.

DBE SHORTFALL SCENARIOS

- The final report reflects the overall DBE goal met, but reflects an individual DBE commitment not met in whole or part. The Prime Contractor should have provided a statement to justify the individual shortfall;
- The final report reveals the goal is not met, in whole. The Prime Contractor should have submitted documentation supporting good faith efforts.

The DDC will check for the following possible circumstances when reviewing DBE goal shortfalls.

- Verify if there is a final project estimate for DBE item under-runs. Under-runs may be a justification for DBE goal shortfalls. If applicable, the Prime Contractor should have furnished a statement pertaining to the under-run shortfall. It is suggested the Prime Contractor utilize the DBE Goal Underrun Table. (see Attachment M)
- Verify through project records if there are any DBE goal waivers approved at the time of conditional award or during the project.
- Verify if there are CUF findings, which resulted in a noncompliance and a denial or reduction in goal credit occurred.

If the Prime Contractor has not provided a clear explanation to justify the DBE goal shortfall based on all the documentation provided, the DDCOD will request additional information from the Prime Contractor.

The DDC will make a final determination whether the goal shortfall is justified and forward to the CIV, the following:

- Final Report Form 4904;
- Copy of SMS D2 Screen;
- Supporting GFE documentation; and
- The Final Approval Letter sent to Prime Contractor
 - If it is determined the shortfall was justified, the DDC will clear the project in SMS and will submit notification to the Prime Contractor that the DBE good faith effort and goal waiver was accepted.

If it is determined the shortfall is not justified and or good faith efforts were not conducted by the Prime Contractor, the DBE goal shortfall issue and determination will be escalated to the Director of the CIV for further guidance.

6.11 Records Retention

Records retention is the final step in the project closeout process. The project records the Prime Contractor has collected must be retained. Supporting documentation for the project must be securely filed and available upon request for audits or reviews by TxDOT, FHWA, or other government officials. Federal regulation requires the retention of all federal-aid project records for a minimum of three years after final payment.

Per TxDOT and Texas State Retention Schedule (5.1.001 and Government Code, 441.1855), records for all contracts must be kept for 7 years after close if executed, renewed or amended on or after September 1, 2015. For contracts executed, renewed or amended on or before August 31, 2015 records must be retained for 4 years after close.

6.12 Monitoring DBE Compliance for Local Government Contracts

CIV has developed resources to assist LGs with their DBE program contract administration responsibilities.

- Guidance to Local Governments for Monitoring DBE Goal Performance (See Attachment O).
- Local Government Project DBE Compliance Monitoring Checklist (Form 2658) (See Attachment P).
- These resources help the LGs monitor their compliance in the following areas:
 - Commitments
 - Good faith efforts
 - Administrative reconsideration
 - Subcontracts
 - Pre-construction meetings
 - Monthly progress reports
 - Joint checks
 - Terminations
 - Substitutions
 - Prompt payment and retainage
 - Commercially useful function reviews
 - Change orders
 - Determination of noncompliance
 - Final reports & close-outs

DISTRICT RESPONSIBILITIES:

TxDOT has responsibility for the construction of all Federal-aid projects, and is not relieved of such responsibility by authorizing performance of the work by a local public agency. TxDOT is responsible for ensuring that such projects receive adequate supervision and inspection to ensure that projects are completed in conformance with approved plans and specifications such as the DBE requirements as outlined in 49 CFR Part 26. District staff should:

1. Become familiar with the District's role and responsibility in monitoring LGs for DBE program compliance. Refer to the Guidance for Local Governments document above.
2. Become familiar with the LG's DBE contract administration responsibilities. Refer to Attachment N.
3. Provide the LG liaison Attachment O and Attachment P.
4. Meet with the LG liaison to make sure he or she understands the LG's DBE contract administration responsibilities. Provide technical assistance.
5. Instruct the LG to use the checklist to document compliance with the DBE program requirements during the course of the project.
6. Inform the LG to retain the checklist and to have it available for inspection by TxDOT district staff.
7. Keep approved DBE commitments on file for each federal-aid project with a DBE goal.
8. Obtain "DBE Monthly Progress Report" (Form 4903) from the LG (even if the DBE goal is zero).
9. Update the "DBE Monthly Progress Report" spreadsheets and post on the LGPs' SharePoint site by the 20th of every month. (access to the SharePoint site is granted by the LGP section of TPP).

10. Conduct a review of LG federally funded projects with an assigned DBE goal.
 - a. Verify information on Form 2658;
 - b. Assess LG's contract administration of DBE program requirements;
 - c. Make recommendations regarding corrective actions deemed necessary and appropriate;
 - d. Provide technical assistance;
 - e. Maintain compliance review report and supporting documentation; and
 - f. Follow-up on LG's corrective actions. Document corrective actions in a final review report.

Attachments

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Attachment A

DBE Instructions to Contractors on Federally Assisted Contracts

DBE INSTRUCTIONS TO CONTRACTORS ON FEDERALLY ASSISTED CONTRACTS

1. COMMUNICATION & CORRESPONDENCE

- The Area Office or District DBE Coordinator (DDC) will be your primary contact for submitting DBE reports, forms, and for DBE related questions or concerns.
Your Area Office or DDC contact is _____ at _____
- DBE forms found at <http://www.txdot.gov/business/resources/doing-business/dbe.html>

2. SUBCONTRACTS

- Refer to the DBE federal and state regulation authorities that govern DBE and federal subcontracting (49 CFR Part 26, FHWA 1273).
- All subcontracts, including all tiered DBE subcontract agreements, are required to be provided to TxDOT.
- The DBE Special Provision shall be physically included in subcontract.
- Only DBE firms certified at the time of execution of a subcontract/purchase order are eligible for DBE goal participation.
- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the subcontractor is itself a DBE.

3. GOAL CREDIT & MONTHLY PROGRESS REPORTS

- Refer to your commitment package to review the contract DBE goal requirement
- Review the allowable goal credit per DBE type at: [Title 49 Subtitle A Part 26 § C 26.55](#)
- Monthly and Final Reports are required and will be reviewed for goal credit allowance.
Review the following MPR forms, based on DBE type, located at the TxDOT DBE forms link for instructions and deadlines:
DBE Prime Contractor Payments to Non-DBE Subcontractors SMS. Form 4902 (DBE Prime Contractor) and Monthly Progress Report Form SMS.4903 (DBE Subcontractor)
 - MPRs are due 15 days after the end of a calendar month
 - Report both Race Conscious and Race Neutral DBE payments

4. TERMINATION & REPLACEMENT

- Written requests for termination and replacement are required to be approved to receive goal credit and must be submitted with supporting documentation.

5. COMMERCIALLY USEFUL FUNCTION (CUF)

- The DBE Subcontractor must be performing a CUF to receive goal credit.
- More information on CUF can be found at: [Title 49 Subtitle A Part 26 § C 26.55](#)

6. JOINT CHECKS

- The request to use joint checks must be approved before goal credit will be allowed.
- Review the DBE Joint Check Approval Form 2178 for instructions and proper completion. Note:
 - The DBE must initiate the use of joint checks.
 - Proper documentation will be required for approval.
 - Joint checks usage will be reviewed on an on-going bases for proper use and endorsements.

7. PROMPT PAYMENT

- Review the prompt payment obligations in your contract.
- Review the Prompt Payment Certification Form 2177 for proper completion.
- Prompt Payment Certifications are due monthly.

8. FINAL REPORTS & GOAL SHORTFALLS

- Review the DBE Final Report Form 4904 for proper completion and deadlines.
Note: Race-Conscious and Race- Neutral amounts must be reported
- Good Faith Effort justifications will be required if the goal and or the commitment are not met.

Attachment C
Trucking Goal Credit Example



DDC SOP Trucking Goal Credit Examples

Trucking Credit Example 1

Firm	Trucks used for DBE X's work on the project	Allowable Goal Credit	Non-Allowable Goal Credit
DBE Firm X	DBE Firm X using two of its own trucks on the contract. 	\$20,000	N/A
DBE Firm Y	DBE Firm X leases two trucks from DBE Firm Y 	\$20,000	N/A
Non DBE Firm Z	DBE Firm X leases six trucks equipped with drivers from Non-DBE Firm Z 	\$40,000	20,000
Total Combined Goal Credit allowed for DBE X using DBE and Non-DBE Leased Equipment			00

DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks.

Trucking Credit Example 2

Firm	Trucks used for DBE X's work on the project	Allowable Goal Credit	Non-Allowable Goal Credit
DBE Firm X	DBE Firm X using two of its own trucks on the contract. 	\$20,000	N/A
Non DBE Firm Z	DBE Firm X uses its own employees to drive trucks leased from Firm Z 	\$20,000	N/A
Total Combined Goal Credit allowed for DBE X using DBE and Non-DBE Leased Equipment			00

DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

Attachment D FHWA Tips on Evaluating a CUF

FHWA Tips on Evaluating a Commercially Useful Function

Of all the many elements in the DBE program there is one that can have the most detrimental impact on the ability of the prime contractor to meet its contract goal as well as the ability of a recipient to meet its overall goal. This element is commonly referred to as commercially useful function or “CUF”. How can just one element of the program have such an impact achieving the results Congress intended when it established the DBE program?

Both the prime contractor and the State Transportation Agency (STA) receive credit toward the DBE goal (contract and overall) only when a DBE working on a contract performs a CUF. DBEs generally perform work on a contract either as a contractor, a trucker, a regular dealer, or a manufacturer. While each of these categories is evaluated differently when determining whether the DBE has performed a CUF, there is one guiding principle that must be followed. Under the terms established in 49 CFR §26.55, a DBE firm performs a CUF when it is:

"Responsible for execution of the work of the contract or a distinct element of the work . . . by actually performing, managing, and supervising the work involved."

The question contract administrators often face is, “What are the management, supervision, and performance actions of a DBE firm that satisfactorily meet this requirement?” Evaluating these areas will form the basis to render a determination that a DBE has in fact performed a CUF. The contract is the one key reference point for any contract administrator and it is essential for this evaluation process. The contract has an effective description of the work to be performed by a DBE and is a legally recognized document.

The USDOT DBE regulations identify the following key factors that should be analyzed when determining whether a CUF is being performed:

- Evaluation of the amount of work subcontracted, whether it is consistent with normal industry practices;
- Whether the amount the firm is paid under the contract is 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. As a contractor, a DBE firm would typically be hired to both furnish the material and install it with its own labor force;
- Whether the DBE’s 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. In essence, was the role merely a contrived arrangement for the purpose of meeting the DBE contract goal?

In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those performed by non-DBEs. A DBE must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm’s role must not be a superfluous step added in an attempt to obtain credit towards the goal.

Normal Industry Practice

One of the most important elements to consider in any analysis of whether the DBE is performing a CUF is determining whether its role on the project is consistent with “normal industry practice.” This means, one must determine if the DBE is performing the work or services in the manner normally performed by all contractors—DBEs and non-DBEs. However, even if a DBE is performing pursuant to normal industry practices if those practices, in fact, erode the ability of the DBE to control its work and remain independent, the practice may affect how much can be credited toward the DBE goal and may raise questions about the DBE eligibility.

One general rule of thumb that can be considered is whether a DBE would be performing in the same manner if there was no DBE program. As further evidence of meeting normal industry practice, one must consider if the DBE performs this work on non-federally assisted contracts.

Monitoring

In keeping with normal contract requirements, it is the primary responsibility of the prime contractor to ensure that the DBE is performing a CUF. The STA, as the contracting agency, has oversight responsibility to ensure that the prime contractor has effectively met this responsibility under its contract with the STA.

The STA needs to have sufficient field personnel and general headquarters staff to monitor the performance of work performed by DBEs on all federal aid projects, including those of sub-recipients. Contractors, DBEs, local public agencies, and all employees are required to cooperate in carrying out this responsibility. The STA should establish and enforce monitoring procedures that include the following:

- Clearly written directives defining the role and interrelationship of the STA’s various departmental staff responsible to monitor and evaluate the contractor’s compliance with the DBE contract provisions;
- Procedures that spell out specific monitoring activities and responsibilities of a project level monitoring program;
- Exchange of information between departmental, central and field offices in reporting accomplishments, violations and enforcement; and
- Procedures for the application of appropriate sanctions once a determination of failure to meet the DBE contract requirements is made.

DBE Performance - CUF

Highway firms certified in the DBE program typically perform in four (4) categories: prime or subcontractor, trucker, regular dealer, and manufacturer. The following is an overview of each category, typical CUF questions, and a list of documents to review.

While DBEs are occasionally awarded prime contracts, DBEs primarily work as subcontractors for the prime. 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 situations need to be reviewed on a case by case basis. Some of the CUF questions cited below may also be quite adaptable to the other three types of work categories.

MANAGEMENT

The DBE must manage the work that has been contracted to its firm. Management includes, but is not limited to:

- Scheduling work operations;
- Ordering equipment and materials;
- Preparing and submitting certified payrolls;
- Hiring and firing employees.

The DBE owner must supervise daily operations, either personally, or with a full time, skilled and knowledgeable superintendent employed by and paid wages by the DBE. The superintendent must be present on the job site and under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions for the firm. Mere performance of administrative duties is not considered supervision of daily operations.

Red Flags

Red flags are questionable practices which may warrant further review. The red flags for management operations may include, but are not limited to:

- The DBE owner or superintendent provides little or no supervision of the work;
- The DBE's superintendent is not a regular employee of the firm or supervision is performed by personnel associated with the prime contractor, or another business;
- Key staff and personnel are not under the control of the DBE;
- The DBE's owner is not aware of the status of the work or the performance of the business;
- Inquiries by department or FHWA representatives are answered by the prime contractor.

Typical CUF questions could include:

- Is there a written legal document executed by the DBE to perform a distinct element of work?
- Who does the on-site DBE representative report to?
- Has this individual ever shown up on any other contractor's payroll?
- Has the DBE owner been present on the jobsite?

Typical documentation to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Payrolls

WORKFORCE

In order to be considered an independent business, a DBE must keep a regular workforce. DBEs cannot "share" employees with non-DBE contractors, particularly the prime contractor. The DBE shall perform its work with employees normally employed by and under the DBE's control. All work must be performed with a workforce the DBE controls, with a minimum of **30%** of the work to be performed by the DBE's regular employees, or those hired by the DBE for the project from a source, such as a labor union. The DBE, in all instances, must have direct supervision over all of its employees.

The DBE must be responsible for payroll and labor compliance requirements for all employees performing on the contract and is expected to prepare and finance the payrolls. Direct or indirect payments by any other contractor are not allowed.

The DBE must perform at least 30% of the total cost of its contract with its own workforce. The DBE must not subcontract a greater portion of the work than would be expected on the basis of normal industry practice for the type of work involved.

Red Flags

Some questionable workforce practices which may warrant further review include, but are not limited to:

- Supervision of DBE employees by another contractor;
- Actual work is performed by personnel normally employed by the prime contractor or another business;
- Employees are paid by the DBE and the prime contractor.

Typical CUF questions could include:

- Who prepares the DBE's certified payroll?
- Have any of the DBE's employees ever shown up on any other contractor's payroll?
- Who does the DBE on-site representative contact for hiring, firing or to modify the contract due to site condition changes or change orders?
- Asking DBE employees on the jobsite who they report to and who signs their checks.

Typical Documents to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Certified payrolls
- Copies of cancelled checks, if necessary

EQUIPMENT

A DBE may lease specialized equipment from a contractor, excluding the prime, if it is consistent with normal industry practices and at rates competitive for the area. The lease must specify the terms of the agreement. The lease must be for a short period of time and involve a specialized piece of equipment to be used at the job site. The lease may include an operator for the equipment who remains on the lessor's payroll if this is a generally acceptable practice within the industry. The operation of the equipment must be subject to the full control of the DBE.

The DBE is expected to provide the operator for non-specialized equipment and is responsible for all payroll and labor compliance requirements. A separate lease agreement is required. All lease agreements should be approved by the STA prior to the DBE starting the work.

On a case by case basis, the STA may approve the DBE to lease a specialized piece of equipment from the prime. However, the STA must ensure that the lease amount is not counted toward the contract goal. Equipment leased and used by the DBE with payment deducted from the prime contractor's payment (s) to the DBE is not allowed.

Red Flags

Some questionable equipment practices which may warrant further review include, but are not limited to:

- Equipment used by the DBE belongs to the prime contractor or another contractor with no formal lease agreement;
- The equipment signs and markings cover another owner's identity, usually through the use of magnetic signs;
- A DBE trucking business uses trucks owned by the prime contractor.

Typical CUF questions could include:

- List the major self-propelled (engine) equipment used by the DBE. Determine if the equipment belongs to the DBE. Is it owned or leased?
- If leased, is there an agreement identifying the terms and parties? Is it signed by the DBE owner?
- Does the equipment have the DBE's markings or emblems?
- Is the equipment under the direct supervision of the DBE?
- Is the operator of the leased equipment the DBE's employee?
- If the equipment is leased, is the payment for the equipment deducted from the work performed?

Typical Documents to evaluate:

- Written contract
- Daily inspection reports and project diaries
- Leases

MATERIALS

For a DBE contractor (furnish and install) to receive credit for supplying materials, the DBE must perform the following four functions: (1) negotiate price; (2) determine quality and quantity; (3) order the materials; and (4) pay for the material itself. If the DBE does not perform all of these functions, it has not performed a CUF with respect to obtaining the materials, and the cost of the materials may not be counted toward the DBE goal. Invoices for the material should show the payor as the DBE.

While the regulations tell recipients to consider normal industry practices, this does not overrule the requirement that the DBE must perform the four functions enumerated above. For example, even if standard industry practices in certain areas of the country allow no subcontractor to perform all four functions enumerated above (e.g. manufacturers will only negotiate with a prime, thereby eliminating the DBE's ability to negotiate the price), the "furnish" portion of the transaction does not lend itself to the performance of a CUF by the DBE, and credit cannot be given for the acquisition or cost of the materials.

Red Flags

Some questionable material supply practices which may warrant further review include, but are not limited to:

- Materials for the DBE are ordered, or paid for, by the prime contractor;
- Two party checks or joint checks are sent by the prime to the supplier or manufacturer, instead of sent by the DBE;
- Materials or supplies necessary for the DBE's performance are delivered to, billed to, or paid by another business;
- Materials are delivered to the jobsite by a party separate from the DBE;
- Payment for materials is deducted by the prime contractor from payments to the DBE for work performed;
- A DBE prime contractor only purchases materials while performing little or no work.

Typical CUF questions could include:

- Is there a written contract executed by the DBE to perform a distinct element of work? Is the work to be performed by a DBE a "furnish and install" item of work?
- Who makes arrangements for delivery of materials?
- Who are the material invoices made out to?
- Who scheduled delivery of materials?
- In whose name are materials shipped?
- Who actually delivered the materials?
- If two party checks are used, who are the parties identified as payable to?

Typical Documentation to evaluate:

- Written contract
- Delivery tickets
- Invoices
- Daily inspection reports and project diaries

PERFORMANCE

The DBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations).

Red Flags

Some questionable performance practices which may warrant further review include, but are not limited to:

- Work is being done jointly by the DBE and another contractor;
- The work to be performed by the DBE is outside of the DBE's known experience or capability;
- Any portion of the work designated to be performed by a DBE subcontractor is performed by the prime contractor or any other firm;
- The DBE is working without a subcontract approved by the department, except in the case of trucking;
- A DBE prime contractor subcontracts more than 50% of the contract value;
- The agreement between the prime contractor and DBE artificially inflates the DBE participation;
- An agreement that erodes the ownership, control or independence of the DBE subcontractor;
- A 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.

Typical CUF questions could include:

- Does the DBE on-site representative effectively manage the job site without any interference from the prime contractor?
- Does the DBE appear to have control over methods of work on its contract items?
- Is the DBE actually scheduling work activities, material deliveries and other related actions required for execution of the work?
- Has any other contractor performed any amount of work specified in the DBE's contract?

Typical Documents to evaluate:

- Written contract
- Daily inspection reports or project diaries

DBE TRUCKING FIRMS

To be certified in the DBE program as a trucking firm, the DBE is required to own and operate at least one fully licensed, insured, and operational truck used on the contract. To perform a CUF, a DBE must also be responsible for the management and supervision of the entire trucking operation or a specified portion of the trucking operation to which it has been committed. There cannot be a contrived arrangement for the purpose of meeting a DBE goal.

A DBE can supplement its fleet by leasing a truck(s) from an established equipment leasing business open to the general public. The lease must indicate that the DBE has exclusive use of and control over the truck. This requirement does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Otherwise, the DBE does not receive full credit for DBE participation.

Leased trucks must display the name and identification number of the DBE. The DBE trucker must also hold the necessary, where appropriate, license, hauling permit, etc., as required by the State to transport material on public highways.

To count the value of DBE trucking services toward a contract goal, the following can occur:

- The DBE may lease trucks from another DBE, including an owner-operator that is certified as a DBE. The DBE can count the entire value of services performed by these DBE trucks.
- The DBE may also lease trucks from non-DBEs and owner--operators. The DBE can count the value of these trucking services up to the value of services performed by the DBE trucks used on the contract.
- DBE participation can be counted for the value of services of non-DBE trucks that exceed the value of the services performed by DBE trucks only in the amount of the fee or commission a DBE receives as a result of the lease arrangement.

In order for the STA or subrecipient to monitor the performance of a DBE trucking firm, the work to be performed must be covered by a subcontract approved by the STA prior to performing the work. Additional documentation required when the DBE leases equipment is a valid lease to be provided to the STA for appropriate action. To be considered valid, the lease must include such items as the lessor's name, list of trucks to be leased by vehicle identification number (VIN), and the agreed upon amount of the cost and method of payment. It should be the responsibility of the DBE to provide the operator's fuel, maintenance and insurance for all leased trucks.

Typical CUF questions could include:

- Do the trucks used on the project belong to the DBE?
- If leased, is there a formal lease identifying the terms and parties?
- Are the rates appropriate?
- Is there an approved subcontract?
- If so, who are the parties?
- Are the DBE's employees shown on the certified payrolls?

Typical Documentation to evaluate:

- Subcontracts
- Leases
- Payroll records
- Daily inspection reports and project diaries

DBE REGULAR DEALERS

In order for a firm to operate as a regular dealer, it must perform CUF, and must also comply with other requirements applicable to regular dealers. It must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. In addition, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business, except as noted below.

It is important to make a distinction between a regular dealer and a firm that supplies a product on an *ad hoc* basis in relation to a particular contract or contractor. A regular dealer has a regular trade with a variety of customers. One of the key considerations of being a regular, established dealer is the presence of an inventory of materials and/or supplies. A regular dealer assumes the actual and contractual responsibility for the provision of the material and/or supplies.

A firm may be a regular dealer in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an *ad hoc* or contract-by-contract basis.

If a DBE meets the requirements of a regular dealer, it may count 60% of the cost of the materials, if reasonable, toward the contract goal. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

Typical CUF questions could include:

- Does the regular dealer have an established storage facility and inventory?
- Does the dealer have a business that sells to the public on a routine basis in the product being supplied?
- Does the business stock the product for use on the project as a normal stock item?
- Who is delivering and unloading the material?
- Is distribution equipment owned or leased, long term by the DBE, used in delivering the product?
- For bulk items, where does the material come from? Does the DBE have a distribution agreement?

Typical Documentation to evaluate:

- Purchase Orders
- Invoices
- Delivery Tickets

DBE MANUFACTURERS

As described in 26.55(e)(1)(ii), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Examples of such items could be a concrete ready mix plant, a crushing operation, or a steel or concrete fabricating plant.

Typical CUF questions could include:

- Is the business's primary function to manufacture construction products?
- Does the business stock the product altered for this project as a normal stock item?
- Is the quality of the materials controlled by the DBE?
- Does the DBE purchase the raw material used in its plant?

Typical Documents to evaluate:

- Purchase orders
- Bill of lading
- Shipping tickets

Sanctions for Compliance and Enforcement

The prime contractor is ultimately responsible for ensuring that a DBE performs a CUF. Failure of a DBE to perform a commercially useful function should result in the STA taking specific definitive actions to enforce the CUF requirement of the contract. Some of the actions an STA could take include, but are not limited to, the following:

- Deny or limit credit towards the contract goal;
- Require the prime to make GFE to replace the DBE to meet the goal on remaining work;
- Withhold progress payments;
- Terminate the contract;
- Reduce the contractor's prequalification limit.

Some questions that could be part of an evaluation procedure:

- If a CUF was not performed by the DBE, what action was taken to correct the deficiency?
- Did the action taken correct the deficiency?

List of Typical Documentation to Collect:

- Executed contracts

- Material/ supply agreements
- Invoices of materials/supplies
- Equipment titles of ownership
- Equipment lease/rental agreements
- Hauling tickets
- Delivery tickets
- Canceled checks
- Project inspection/diaries
- Payroll records

When a DBE is presumed not to be performing a CUF, the DBE may present evidence to rebut this presumption. Decisions regarding CUF determinations are subject to review by concerned operating administrations, such as the FHWA. However, CUF decisions are not appealable to USDOT, they are contract administration issues.

CUF & Certification

Certification and commercially useful function are separate and distinct issues. Certification decisions address the nature of a firm's ownership and structure while CUF primarily concerns the role a firm has played in a particular transaction. Even if the certification process has identified the DBE's ability to perform as a contractor, regular dealer, or manufacturer, it is important to review and determine what and how a DBE actually performs during the performance of the contract.

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, the STA should address this matter. An STA may commence a proceeding under 26.87 to determine the continued eligibility of the DBE firm.

In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE. If fraud is suspected the STA should contact the DOT Office of Inspector General.

Attachment E
Notification of CUF Noncompliance Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

DBE Owner
Business Name
DBE Address
City, State Zip Code

Subject: Notification of Commercially Useful Function Noncompliance
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district conducted a Commercially Useful Function (CUF) review on your firm for the above mentioned project, on <Date>.

Based on the findings from the review, it has been determined that your firm is not performing a CUF, in accordance with 49 CFR Part 26.55 and DBE Special Provision 000–007 as contained within the contract.

The CUF review revealed the following findings of DBE noncompliance:

- Bullet list findings of noncompliance
- Bullet list findings of noncompliance

When a DBE is presumed to not be performing a CUF, the DBE may present evidence to rebut the presumption. Your firm has ten (10) days from the date you receive this letter to respond to these findings in writing.

If you have any questions concerning our determination or require further information concerning this matter, please feel free to contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment F
Termination Approval Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: DBE Termination Approval
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the request submitted <Date> to terminate <Terminated DBE Firm> as a Disadvantaged Business Enterprise (DBE) to the original DBE commitment on the above referenced project.

After a review of the documentation and the response from the DBE, it has been determined that your request to terminate has been approved.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC: <Terminated DBE>

Attachment G
Termination Denial Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: DBE Termination Request Denial
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the request submitted <Date> to terminate Disadvantaged Business Enterprise (DBE) firm <enter DBE Firm> from the original DBE commitment on the above referenced project.

After a review of the documentation submitted, including the response from <Proposed Terminated DBE Name>, it appears that, given the opportunity, this firm is able and willing to perform on the project. Therefore, the request is denied.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC: <Proposed Terminated DBE Firm>

Attachment H
Replacement Approval Letter



Texas Department of Transportation

125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: DBE Replacement Approval
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the request submitted <Date> to substitute <New DBE Firm> as a replacement for <Enter DBE being replaced> to the original Disadvantaged Business Enterprise (DBE) commitment on the above referenced project.

This request for replacement has been approved. <New DBE Name> will be added to the DBE commitment as a replacement for <Terminated DBE> and will perform <\$X.XX> of the overall DBE goal.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment I
Replacement Denial Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: DBE Replacement Request Denial
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the request submitted <Date> to add Disadvantaged Business Enterprise (DBE) firm <Proposed DBE Firm> to the original DBE commitment on the above referenced project.

After a review of the documentation submitted to add <Proposed DBE Firm Name> as a substitute, it has been determined that this request is denied for the following reasons:

- Bullet list reasons
- Bullet list reasons

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC: <Proposed Terminated DBE Firm>

Attachment J
Good Faith Effort Approval Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: Good Faith Effort Approval after Terminating a DBE
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the documentation submitted <Date> regarding your attempt to make a good faith effort to meet the overall DBE goal on the above mentioned project. This documentation was necessary as result of the DBE goal shortfall of <\$X.XX> after (choose one then erase the other option)

Terminating DBE firm <Terminated DBE> to the commitment.
or
Substituting DBE firm <Added DBE Firm Name> to the commitment.

A review of the documentation of your firm's efforts to find another DBE replacement indicates that your firm made a good faith effort to meet the goal. Therefore, the <\$X.XX> goal shortage is waived.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment K
Good Faith Effort Denial Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: Good Faith Effort Denial after Terminating or Substituting a DBE
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the documentation submitted <Date> regarding your attempt to make a good faith effort to meet the overall DBE goal on the above mentioned project. This documentation was necessary as result of the DBE goal shortfall of <\$X.XX> after (choose one then erase the other option)

Terminating DBE firm <Terminated DBE Firm Name> to the commitment.
or
Substituting DBE firm <Added DBE Firm Name> to the commitment.

A review of the documentation of your firm's efforts to find another DBE replacement indicates that your firm did not make a good faith effort to meet the DBE goal. Therefore, the <\$X.XX> goal shortage will not be waived for the following reasons:

- Bullet list reasons
- Bullet list reasons

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment L
Joint Check Request Approval Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: Joint Check Request Approval
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the Joint Check Approval request submitted <Date>. Upon review of this request and supporting documentation, it has been determined that the request for use of joint check is approved.

DBE goal credit will be allowed as of, <Date>, which is the date the request was approved. Please note that any goal credit submitted prior to this approval date will not be counted.

The district will monitor the proper use of joint checks and determine allowable DBE goal credit.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment M
District Response – Request For Joint Check Use Letter



125 EAST 11TH STREET | AUSTIN, TEXAS 78701-2483 | (512) 463-8588 | WWW.TXDOT.GOV

Date

Name of Prime Contractor Firm
Prime Contractor Business Name
DBE Address
City, State Zip Code

Subject: District Response - Request for Joint Check Use
Project/CSJ/County: <Project/CSJ/County>

Dear Mr./Ms. Last Name:

The <District Name> district has reviewed the Joint Check Approval request submitted <Date>. Upon review of this request and supporting documentation, it has been determined that the request for use of joint check is denied for the following reasons:

List Reason(s) for denial.

Should you have any questions or require further information concerning this matter, please contact <Contact Name> at <(XXX) Number>.

Sincerely,

District Representative Name
District, Title

CC:

Attachment N
DBE Goal Underrun Table

TEXAS DEPARTMENT OF TRANSPORTATION
DBE GOAL UNDERRUN TABLE

CCSJ:	Prime Contractor:
Provide a brief summary of why the DBE participation goal on this contract will not be met. Attach additional pages if necessary:	

If the shortfall is a result of a TxDOT initiated item underrun and or change order, please complete the following table:

DBE Firm Name:				ORIGINAL		REVISED		OVERRUN/ UNDERRUN
ITEM	DESCRIPTION	UNIT	UNIT PRICE	QUANTITY	ITEM COST	QUANTITY	ITEM COST	
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
			\$		\$		\$	\$
TOTALS					\$		\$	\$

Attachment O

Guidance to Local Governments for Monitoring DBE Goal Performance

Local Government Projects - LG & DDC Responsibilities		
DBE Compliance Component	Local Government Responsibility	DDC Responsibility
Project Initiation & Commitment Package	<ul style="list-style-type: none"> ▪ Ensure TxDOT approved project goals and DBE provisions are included in bid documents ▪ Accept DBE commitments for review and approval ▪ Review and approve GFEs • Submit commitment package to TxDOT 	<ul style="list-style-type: none"> ▪ Notify the LG in writing at the beginning of each project of all DBE information and necessary monthly reports • Keep an approved commitment package for the district file
Pre-Construction Meetings	<ul style="list-style-type: none"> • Conduct pre-construction meetings to provide Prime Contractor and DBE Subcontractors with pertinent DBE compliance information 	<ul style="list-style-type: none"> • Assist LG by answering technical questions regarding DBE compliance
Subcontracts	<ul style="list-style-type: none"> • Ensure DBE contract provision is included in Prime Contractor and subcontractor agreements 	<ul style="list-style-type: none"> • Perform periodic audits to ensure DBE compliance requirements are being followed by LG DBE Liaison
Goal Reporting & Monthly Progress Reports	<ul style="list-style-type: none"> • Responsible for receiving MPRs from Prime Contractor to determine allowable goal credit • Monitor Race Conscious and Race Neutral Goal Credit • Submit copies of MPRs to appropriate TxDOT DDC 	<ul style="list-style-type: none"> ▪ Update LG MPR summary sheet • Perform periodic audits to review MPRs and allowable goal credit • Notify the LG of any DBE decertification
Replacements & Terminations	<ul style="list-style-type: none"> • Receive, review and approve requests for replacement and termination • Determine if GFE has been made and determine allowable goal credit • Submit updated commitments and necessary documentation to TxDOT district 	<ul style="list-style-type: none"> • Ensure DBE compliance for replacement and termination are implemented during periodic audits
Commercially Useful Function	<ul style="list-style-type: none"> • Conduct a minimum of one CUF review on all DBE firms working on federal-aid projects and maintain CUF records • Notify the Prime Contractor if a DBE is not performing a CUF • Enforce remedies the LG has determined for non-DBE compliance 	<ul style="list-style-type: none"> • Ensure DBE compliance for CUF is being implemented and enforced during periodic audits
Final Reports & Close-Outs	<ul style="list-style-type: none"> • Receive Final Reports from Prime Contractors and determine if DBE goal and commitment were met • Review and approve GFE documentation if DBE goal and or commitment were not met • Enforce remedies the LG has determined if GFE's are not accepted 	<ul style="list-style-type: none"> • Assist the LG by answering technical questions regarding DBE compliance
Joint Checks	<ul style="list-style-type: none"> • Receive, review, and approve requests for use of joint checks • Monitor and audit joint check usage for allowable goal credit and DBE compliance 	<ul style="list-style-type: none"> • Assist the LG by answering technical questions regarding DBE compliance
Prompt Payment	<ul style="list-style-type: none"> • Receive prompt payment certifications from Prime Contractors to ensure compliance with prompt payment provisions • Respond to prompt payment noncompliance issues • Enforce noncompliance actions and remedies based on the LG's determinations 	<ul style="list-style-type: none"> • Assist the LG by answering technical questions regarding DBE compliance

Monitoring DBE Performance for GoalCredit

The following section provides guidelines when monitoring allowable DBE goal credit based on DBE type:

Goal Credit %	Description of DBE Work
Count 100%	Count the total value of work performed by the DBEs own forces. May include cost of supplies and materials obtained by the DBE for the work of the contract, supplies purchased or equipment leased by the DBE (NOT to include supplies and equipment purchased or leased from the Prime Contractor or its affiliate.)
Count 100%	Count the total value of work subcontracted by a DBE Subcontractor, if the work is subcontracted to another DBE Subcontractor. (Work that a DBE subcontracts to a non-DBE firm does NOT count toward DBE goals – see exception for DBE haulers).
Count 100% DBE and Match DBE Value for Non-DBE Lessees (Haulers)	<p>Count the total value of transportation services provided by a certified DBE for the trucks it owns, insures, and operates using drivers it employs.</p> <p>Count the total value of trucks the DBE leases from another DBE.</p> <p>Count the total value of transportation services the DBE leases from non-DBEs, not to exceed the value of transportation services provided by DBE-owned trucks on the contracts</p>
Count 100% (Manufacturer)	<p>Count the total value of the material, if the material supplies are purchased from a DBE manufacturer.</p> <p>A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment under the contract and of the general character described by the specifications.</p>
Count 60% (Regular Dealer)	<p>Count the total value of the material, if the materials are purchased from a DBE regular dealer.</p> <p>A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.</p> <p>A DBE firm may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business if the firm both owns and operates distribution equipment for the products.</p> <p>Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.</p>
Count 100% of fees or commissions (Broker)	Count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site provided it is determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

Monitoring Monthly Progress Reports – Form 4903

DBE Monthly Progress Reports (MPRs) will be submitted by the Prime Contractor directly to the LG. The LG will be responsible for submitting MPRs to the corresponding TxDOT DDC for each project. The LG will review and ensure proper DBE goal credit is being applied for expenditures paid.

Notification of DBE Decertification

If a DBE loses its status as a certified DBE, the CIV will send notification to the district, who will then notify the LG that the DBE has been decertified and will provide the date the decertification became effective and any supporting information.

The LG will ensure the Prime Contractor acts in accordance to contractual DBE commitment obligations and consider DBE eligibility for allowable goal credit.

Monitoring DBE Prime Contractor Payments to Non-DBE Subcontractors

Upon receipt, the LG will submit MPR Form 4902 DBE Prime Contractor Payments to Non-DBE Subcontractors to the DDC. This is a MPR detailing payments made by the DBE Prime Contractor to Non-DBEs on the project.

Performing Quality Commercially Useful Function Reviews

The LG will monitor the implementation and compliance of Commercially Useful Function Reviews (CUFs) performed on DBE Subcontractors.

When conducting CUF reviews, ensure the following:

- A minimum of one CUF Review for each DBE when the DBE first begins work is performed.
- Utilize and complete Form 2182A to conduct CUF reviews for DBE Subcontractors.
- Provide written notification to the DBE when it is determined that the DBE is not performing a CUF.
- Deny DBE goal credit from the date a DBE was found not performing a CUF, ensuring amounts have been reconciled for overall reporting when necessary.

Approving DBE Termination Requests

A Prime Contractor may not terminate, for convenience, a Race Conscious DBE listed on their contract, without prior written approval from the LG.

A Prime Contractor seeking to terminate a DBE will provide a written request to terminate with supporting documentation. The written request must include prior evidence that the DBE was unwilling or unable to complete the work of their contract prior to requesting termination.

Supporting documentation for termination requests include:

- Letter to Terminate;
- A signed DBE letter of voluntary removal, if applicable; and
- Statement of DBE non-response, if applicable.

The LG will review necessary documentation provided by the Prime Contractor and will make a determination to approve or deny termination requests.

The LG will contact the DBE firm being removed to verify the Prime Contractor’s assertion that the DBE is unwilling or unable to perform the work.

The LG will provide the determination in writing to the Prime Contractor within (7) calendar days of the initial request to terminate.

The LG may consult with the DDC, if necessary, regarding more complex cases where they may need guidance when making a decision.

When to approve requests

- The Prime Contractor supporting documentation supports the listed DBE is unwilling and unable to perform the work and is able to show good cause to terminate. (For further guidance, see below examples of reasons for good cause.)
- The DBE has submitted concurrence for removal or has submitted a signed voluntary removal statement.

Reasons for Good Cause for Terminations Requests	
• DBE fails or refuses to execute a written contract	• DBE fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards
• DBE fails or refuses to meet the Prime Contractor’s reasonable, nondiscriminatory bond requirements	• DBE becomes bankrupt, insolvent, or exhibits credit unworthiness
• The listed DBE is ineligible to work on federally assisted or state projects because of suspension or debarment proceedings	• LG has determined that the DBE is not a responsible contractor
• DBE voluntarily withdraws from the project and provides the LG with written notice of its withdrawal	• DBE is ineligible to receive DBE credit for the type of work required
• A DBE owner dies or becomes disabled with, resulting in the DBE being unable to complete its work on the contract	• Other documented good cause that the LG determines compels the termination of the DBE

When to deny requests

- The Prime Contractor fails to submit the proper documentation to justify the termination request.
- The Prime Contractor is attempting to negotiate a more advantageous contract with another subcontractor.
- The Prime Contractor is attempting to perform the work with its own resources and or those of an affiliate, a Non-DBE firm, or with another DBE firm offering a lower contract price.
- The DBE requested to be terminated has objected to the termination and is willing and able to perform the work.

Approving Replacements

The LG will review necessary documentation provided by the Prime Contractor and will make a determination to approve or deny replacement requests.

The LG will provide the determination in writing to the Prime Contractor within 7 working days of the initial request to substitute.

The LG may consult with the DDC, if necessary, regarding more complex cases where they may need guidance making a final determination.

The Prime Contractor seeking to substitute another DBE as a replacement will provide:

- A DBE Program Replacement Request Form 2228; and
- An applicable signed DBE Commitment Form for the certified DBE that will replace the terminated DBE.

Reviewing the Commitment Form for Replacements

The LG will review/verify the following:

- The project, county, and CSJ matches the project replacement;
- Signatures of the Prime Contractor and the proposed DBE;
- The DBE is certified per the TUCP (print the directory listing for project file);
- The DBE is certified per the TUCP for the type of work to be performed;
- The bid item, description, unit of measure, and unit price quantity are checked per project bid tabs;
- Quantity does not exceed line items listed;
- If the DBE is a manufacturer, question 1 has been completed on Form 4901-M/S;
- If the DBE is a regular dealer, questions 2-4 have been completed on Form 4901-M/S; and
- If DBE is a hauling firm, questions 1-3 on Form 4901-T have been completed and if applicable, question 4 has been completed.

The LG will verify the Prime Contractor has not and does not count work on items being replaced toward the DBE goal prior to approval of the replacement.

Once all documentation has been reviewed, the LG will make a determination to approve or deny the replacement request. Refer to guidance above for approving or denying termination requests.

Responding to Good Faith Efforts Shortfall

If terminating the original DBE results in a DBE goal shortfall, the Prime Contractor will provide the LG supporting documentation in writing to support a good faith effort shortfall waiver.

The LG will review documentation provided by the Prime Contractor to ensure good faith efforts proved to be directed at finding another DBE to perform at least the same amount of work under the contract as the terminated DBE.

The LG will make a final determination to approve or deny the request. The LG will send a written notification, by letter, to the Prime Contractor that the good faith effort has been approved or denied; and will include a copy to the DDC.

Reviewing, Approving, and Auditing Joint Checks

The TxDOT DBE Program allows the use of joint checks between the Prime Contractor and DBE Subcontractor through joint check agreements and will approve joint check requests on a case-by-case basis. The LG will be responsible for monitoring the responsible use of joint checks on DBE contracts, which includes determining allowable goal credit and auditing joint check agreements.

Reviewing and Approving Joint Check Requests

The Prime Contractor will submit the DBE Joint Check Approval Form 2178.

The LG will be responsible for ensuring the following has been provided:

- Documentation supporting the DBE requested the usage of joint checks;
- Documentation supporting the joint check agreement is between the Prime Contractor, DBE, and Supplier; and
- Documentation supporting the DBE was denied credit from Supplier and the denial response was included.

In the approval analyses ensure the following:

- The Supplier is not the Prime Contractor or an affiliate of the Prime Contractor; and
- The DBE is responsible to both furnish and install the material.

The LG will send notification of the final determination of the joint check request to the Prime Contractor.

Allowable goal credit will begin the date the joint check request is approved.

The LG will periodically monitor the use of joint checks for DBE compliance according to the following:

- The DBE is responsible for ordering and scheduling delivery of the materials;
- The Prime Contractor issuing the check acts solely as a guarantor;
- Copies of the front and back of cancelled joint checks support the DBE signs the joint check and releases it to the Supplier, not to the Prime Contractor; and
- The DBE's account with the Supplier is in the DBE's name only.

Addressing Prompt Payment Issues

The Prime Contractor is required to submit the Prompt Payment Certification Form 2177 to the LG. This certification is in accordance with TxDOT's prompt payment procedure to certify the Prime Contractor paid all subcontractors and suppliers from the previous month's payments and retainage was released for those whose work is complete.

The Prime Contractor is required to submit monthly. Upon completion of the project, it will be submitted the month following final acceptance.

Processing Final Reports & Close-Outs

The DBE Final Report Form 4904 will be submitted by the Prime Contractor to the LG.

The LG will be responsible for submitting the final to the corresponding TxDOT DDC for each project.

The LG will review and ensure:

- Dollar amounts match the report, including Race Neutral dollar amounts;
- The overall assigned DBE goal percentage was met as shown on the commitment; and
- The goal and individual commitments was met.

Addressing DBE Goal Shortfalls

The LG will review the Final Report and supporting documentation to determine if the Prime Contractor has addressed a DBE goal shortfall. Shortfalls will have either of the following scenarios:

Shortfall Scenarios:

1. The final report reflects the DBE goal was met, but also reflects individual DBE commitments were not met, then the Prime Contractor should have submitted a statement to justify the individual shortfall.
2. If the final report does not meet the DBE goal and commitment, the Prime Contractor should have submitted documentation supporting good faith efforts.

The LG will first consider if the following possible circumstances apply when reviewing DBE goal shortfalls:

- DBE item under-runs occurred. Under-runs may be a justification for DBE goal shortfalls.
- DBE goal waivers approved by LG at the time of conditional award or during project.
- CUF findings which resulted in a noncompliance and a denial or reduction in goal credit.

If the Prime Contractor has not provided a clear explanation to justify the DBE goal shortfall based on all the documentation provided, the LG will request any additional information from the Prime Contractor.

The LG will make a final determination whether the goal shortfall is justified and will send notification to DDC, along with the following:

- Final Report Form 4904;
 - Supporting GFE documentation; and
 - The Final Approval Letter sent to Prime Contractor.
1. If it is determined the shortfall was justified, the LG will clear the project and submit notification to the Prime Contractor that the DBE good faith effort and goal waiver was accepted.
 2. If it is determined the shortfall is not justified and or good faith efforts were not conducted by the Prime Contractor, the LG will proceed with a noncompliance determination. The LG may consult with the DDC, if necessary, regarding reconsideration of a noncompliance determination and related sanctions.

Attachment P
Local Government Project DBE Compliance Monitoring Checklist Form

	Local Government (LG) Project Disadvantaged Business Enterprise (DBE) Compliance Monitoring Checklist	Form 2658 (03/17) Page 1 of 4
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(To be completed by the LG)

Date	Prime Contractor
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
Project No./CSJ	Contract Amount
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
County	DBE Goal (dollar amount)*
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
LG Entity	DBE Percent*
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
LG Representative's Name/Title	Total DBE Committed Amount*
<input style="width:95%;" type="text"/>	<input style="width:95%;" type="text"/>
	Project Completion (percentage)
	<input style="width:95%;" type="text"/>

*Enter numbers only

Pre-Award Project Checklist

1. Prior to award, was the contractor's DBE participation plan reviewed and approved to ensure contract goals will be satisfied in accordance with provisions in the bid document? Yes No
2. Has the contractor's DBE participation plan been approved? Yes No
3. Is the established project goal, as set by TxDOT, included in the contract? Yes No

Please attach a copy of the contract.

If no, please explain.

4. Is the DBE special provision included in the contract? Yes No
5. Are the DBE Commitment Agreements (form SMS.4901, SMS.4901-M/S, or 2660) on file? Yes No

Please attach copies of the DBE Commitment Agreement forms.

If no, please explain.

6. Are the Commitment Agreements (form SMS.4901, SMS.4901-M/S, or 2660) signed by both the prime and the DBE? Yes No

If no, please explain.

7. Has the contractor submitted enough DBE participation to meet the goal or provided adequate documentation of Good Faith Efforts (GFE) (form 2603) to obtain DBE participation even if the contractor was not successful? Yes No

Attach approval of the contractor's GFE.

If no, please explain.

8. Are all DBEs certified under the Texas Unified Certification Program (TUCP)? Yes No

Provide a copy of the TUCP printout including the date the verification was done.

If no, please explain.

9. Do the North American Industry Classification System (NAICS) codes of all the DBE firms working on the project correspond with the work the DBEs are performing? Yes No

(If no, the DBE's participation **can NOT** count towards the DBE goal.)

Post-Award Contract Checklist

Subcontracts

1. Were all fully executed (signed) subcontracts for all DBE firms that were committed by the prime contractor collected? Yes No
2. Were the subcontracts reviewed to ensure the firms' scope of work is consistent with or exceeded what was committed at the pre-award stage? Yes No
3. Were the following special provisions included in subcontractors agreements?
 - Yes No Disadvantaged Business Enterprise in Federal Aid Contracts (000-007)
 - Yes No Measurement and Payment (Item 9)
4. Was the DBE certified at the time the subcontract was executed? Yes No
5. Is the subcontract amount the same as or greater than the commitment amount? Yes No

Joint Checks

1. Were there any joint check arrangements between the prime contractor and the DBE? Yes No
If yes, please answer 2-5 below. If no, continue to the Monthly Progress Reports section.
2. Was the DBE Joint Check Approval (form 2178) and the document from the material supplier denying the DBE credit received? Yes No
3. Was a letter provided to the contractor approving or denying the joint check agreement? Yes No
4. Did you obtain the joint check agreement signed by all parties (prime contractor, DBE and supplier)? Yes No
5. Were cancelled joint checks reviewed? Yes No

Monthly Progress Reports

The contractor must submit DBE Monthly Progress Reports (form SMS.4903) after work begins. Firms utilizing trucking must also submit form 2371. These reports are due within 15 days after the end of the calendar month. The prime contractor must report 100% of the payments made to DBE Regular Dealers, but only 60% of the payment will count towards the goal.

1. Have you received and reviewed the monthly DBE Progress Reports prior to forwarding to TxDOT? Yes No

If no, please explain.

2. Were race neutral DBEs added and reported on the monthly progress report forms? Yes No
3. Did any change orders affect DBE participation? Yes No
4. Did this result in a goal shortfall? Yes No

Commercially Useful Function

1. Have Commercially Useful Function (CUF) Reviews been conducted? Yes No
2. Were CUF reviews conducted for all DBE firms participating on the project including those not used to meet the project's DBE goal (race neutral DBEs)? Yes No
3. Are the DBEs performing a CUF? Yes No
4. Has goal credit been denied? Yes No
5. Are additional GFEs required as the result of a CUF review? Yes No

Termination/Substitution

A contractor's request to default or substitute a committed DBE requires prior written consent by the LG. The LG may provide written consent only if the contractor has good cause.

1. Has the contractor requested to terminate or substitute a committed DBE? Yes No
If yes, please answer 2-8 and attach documentation. If no, continue to the Prompt Payment Section.
2. Was the contractor's request approved? Yes No
3. The contractor must give the DBE 5 days to respond to the notice to terminate or substitute the firm.
Has the contractor notified the DBE? Yes No
4. Has the DBE responded to the notification? Yes No
5. Did the prime, its affiliate, or another firm perform the work of the committed DBE prior to your written consent?
 Yes No
(If yes, you can NOT use the work self-performed by the prime or its affiliate for goal credit.)
6. Is additional DBE participation required to meet the goal? Yes No
7. In the event that a shortfall took place, was GFE documentation from the prime contractor collected? Yes No
8. Is the Termination/Substitution (form 2228) on file? Yes No

Prompt Payment

1. Prompt Payment pertains to ALL firms not just DBEs. Did you ensure that all DBE firms were paid promptly (within 10 days of payment to the prime contractor) by collecting and reviewing Prompt Payment Certification (form 2177)?
 Yes No

Please attach a copy of the completed form 2177.

If no, please explain.

2. Has the contractor withheld payment from any subcontractor or supplier? Yes No
3. If payment was withheld from a subcontractor or supplier, has the issue been resolved? Yes No

If no, please explain.

4. Were random reviews conducted to verify prompt payment collecting and reviewing DBE invoices and corresponding cancelled checks or other proof of payment such as bank statements, electronic fund transfer, etc?

Yes No

Post Construction Checklist

The contractor must submit the DBE Final Report (form SMS.4904) to the LG the month after work is completed. The form must be kept in the project records.

1. Has the DBE Final Report been submitted? Yes No

If no, please explain.

2. Is there a goal shortfall? Yes No

3. Has the goal been met using the committed DBEs? Yes No

4. Have all the DBE firms been paid? Yes No

If no, please explain.

The LG has 10 days to provide any documents identified above that were not available at the time of the checklist submission. Failure or refusal to submit these documents may result in a determination of non-compliance.

Review Findings (To be completed by TxDOT District staff).

Printed Name of LG Representative

Printed Name of TxDOT Reviewer

Signature of LG Representative

Signature of TxDOT Reviewer

Title

Title

Date

Date

[Contact/Help](#)

Attachment Q
CUF/MPR Review Form

CUF/MPR Review Report

CSJ
(Use XXXX-XX-XXX
format)

District

DBE Information

DBE Firm Name:

DBE Start Date:

Commercially Useful Function Review:

Monthly Progress Report Review:

CUF Review Initiation Date:

Estimated CUF Review Completion Date:

Actual CUF Review Completion Date:

Goal Credit Type: RC RN

Has the CUF Review been recorded in a tracking system? Yes No

Has the CUF Review been approved by DBE Coordinator? Yes No

Does DBE appear to be performing a Commercially Useful Function (CUF)? Yes No

If no CUF, was payment deducted? Yes No

Have DBE Monthly Progress Reports been received and reviewed by DBE Coordinator? Yes No

Were all RC and RN DBEs reported on the Monthly Progress Report forms? Yes No

Were payments paid promptly? Yes No

Comments
