



DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMERCIALY USEFUL FUNCTION (CUF) COMPLIANCE OVERVIEW FOR PRIME PROVIDER PROJECT MANAGERS

DECEMBER 12, 2018



Agenda

Topic	Presenter
<ul style="list-style-type: none">• Welcome - Housekeeping• DBE Program Authority• DBE Goals and Participation• DBE Program Provider Responsibilities• PEPS DBE Standard Operating Procedures• PEPS Report on Federally Funded Contracts – DBE CUF Reviews• Commercially Useful Function (CUF) Review Process• Questions• PEPS Contact Information	<p>Beth Rice – PEPS Center of Excellence (COE)</p>

End Meeting

Presentation

This presentation:

- Will be published on the Professional Engineering Procurement Services (PEPS) external webpage and available for direct access at the link shown below, under the **Resource** section of the webpage.
- Includes live links to information and PEPS resources.

The link shown below is the same link that was included in the WebEx invitation:

<https://www.txdot.gov/business/consultants/architectural-engineering-surveying.html>



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***Disadvantaged Business Enterprise
(DBE) Program Authority***

DBE Program Authorities for Professional Services

Regulations and provisions providers must comply with:

USDOT DBE Regulations (49 CFR, Part 26)

Federal Funding Assistance from FHWA

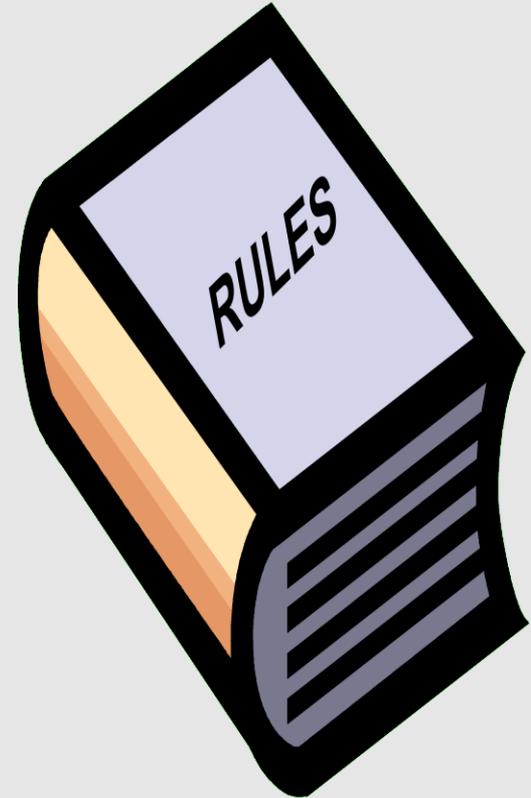
Professional Services Contracts

- Architectural
- Engineering
- Surveying

Regulatory Authorities and Requirements

Regulatory Authorities

- Title 49 – Transportation, Code of Federal Regulations (CFR) Part 26 – Participation By Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. Reference the electronic CFR at the following link: [Title 49 Subtitle A Part 26](#)
- Provision 49 CFR can be found at the following link: [§26.55 How is DBE participation counted toward goals?](#)





DBE Goals and Participation

Monitoring DBE Activity

As a recipient of federal funds, TxDOT is required to set contract goals.

TxDOT must ensure and verify that work committed to DBE firms is performed by DBE firms.

TxDOT must keep a running tally of all DBE Participation, both race conscious and race neutral.

TxDOT must perform a Commercially Useful Function (CUF) Review on all DBE firms that are performing services on the contract.

DBE Goals and Participation for Federally Funded Contracts

Race-conscious participation (RC)

Federally Funded Projects with DBE Goal

RC DBE participation requirements to count toward the contract goal

DBE Goal Credit Applies to:

- DBE prime provider or subprovider who performs at least 30% of the work utilizing their own work force
- DBE firm is required to be certified in the North American Industry Certification Standard (NAICS) code for the type of services to be performed on the contract to receive RC DBE goal credit
- DBE firm must perform a Commercially Useful Function (CUF) to be counted toward RC goal credit – CUF Review Required

Race-neutral participation (RN)

Federally Funded Projects without DBE Goal

RN DBE participation requirements to count beyond the contract goal

DBE Goal Credit Applies to:

- DBE prime provider or subprovider who performs at least 30% of the work utilizing their own work force
- DBE firm **is not** required to be certified in the North American Industry Certification Standard (NAICS) code for the type of services to be performed on the contract to receive RN DBE goal credit
- DBE firm must perform a CUF to be counted toward RN goal credit – CUF Review Required

TxDOT Overall Annual DBE Goal

Overall DBE Goal 12.6% FY 2017 to 2019

- The goal represents a percentage of federal dollars
- Only DBE firms that are shown to perform a CUF will receive goal credit
- If the goal is not being met, then documentation to support a Good Faith Effort (GFE) to meet the goal must be submitted for evaluation.

A DBE firm must be performing a CUF to count towards either Race Conscious (RC) or Race Neutral (RN) goals on the contract

Texas Unified Certification Program (TUCP)

- To verify DBE firm status, search the **TUCP Directory** that can be found at:
<https://txdot.txdotcms.com/FrontEnd/VendorsearchPublic.asp>
- The **TUCP Directory** is solely for the purpose of identifying those DBE firms that are certified in the State of Texas.
- **PEPS Pre-certified Work Category and North American Industry Classification System (NAICS) Work Codes for Federally Funded Contracts** can be found at:
<http://ftp.dot.state.tx.us/pub/txdot/ppd/dbe-naics-codes.pdf>



A DBE firm may request additional (NAICS) work codes from an authorized certifying agency. For more information, reference TxDOT's **Diversity Management System** webpage at:
<https://txdot.txdotcms.com/>



*DBE Program
Provider Responsibilities*

Prime Provider Responsibilities

The prime provider shall:

Demonstrate an adequate good faith effort (GFE) to meet the assigned DBE goal for the contract to be awarded a federally funded contract.

Meet the assigned DBE goal for the contract by self performance, and/or by utilizing DBE subprovider services identified in Exhibit H-1 of the contract, and commitments identified in Exhibit H-2 when issuing a Work Authorization.

Ensure commitments are being met for the contract, and that monthly reporting on all DBE and Non-DBE subprovider activities are entered into TxDOT's reporting system utilizing the provider portal of PS-CAMS.

Prime Provider Responsibilities

Submit Project Team Composition (PTC) for Advertised Contract.

Ensure that the same teaming of DBE and Non-DBE Subproviders are included in Exhibit H-1 of the contract.

Ensure that all DBE subproviders have completed and signed an Exhibit H-2 commitment in Work Authorizations (WAs).

Enter Monthly Progress Assessment Reports (PAR) and Payments to all subproviders into PS-CAMS.

Ensure program compliance and commitments are met to all subproviders on the team.

Coordinate with the PEPS SC and TxDOT Project Manager on Good Faith Efforts when applicable.

PEPS External Webpage – PS-CAMS



Consultants

[Architectural, Engineering and Surveying Consultants](#)

Page Options

Manage Active Contracts with PS-CAMS

[Texas Department of Transportation](#) > [Business](#) > [Consultants](#)
> [Architectural, Engineering and Surveying Consultants](#)

Contact Us

Professional Services - Contract Administration Management System (PS-CAMS) is an online reporting system designed for use by firms with active TxDOT contracts. Project managers can submit required reporting information directly into the system and view their contract data.

The PS-CAMS online reporting system supports direct entry of the following information:

- Monthly reporting for HUB or DBE utilization (H-3 and H-6 form submission)
- Initial projection and monthly updates of spending projections (required for all firms with active professional services contracts and work authorizations; not applicable to vendors with purchase order contracts)

Obtain User ID for PS-CAMS

1. To obtain a User ID, follow these instructions for completing and submitting the three forms:

- [PS-CAMS External User Information Sheet](#)
- [Request for External Access to TxDOT Information Systems \(Form 1980\)](#)
- [Information Security Compliance Agreement \(Form 1828b\)](#)

2. In approximately three days you will receive an email with your User ID and login instructions.

Instructions for Using PS-CAMS

Follow these instructions to log in and begin using the PS-CAMS online reporting system.

Additional Resources

- [Prime Provider Evaluation Criteria](#)
- [FAQ](#)

Contact Us

PS-CAMS Administrator
(512) 416-2712
[Email](#)

PEPS External Webpage and PS-CAMS Links

- **PEPS External Webpage:**
<https://www.txdot.gov/business/consultants/architectural-engineering-surveying.html>

- **Manage Active Contracts with PS-CAMS:**
<https://www.txdot.gov/business/consultants/architectural-engineering-surveying/managed-contracts.html>
 - PS-CAMS Consultant Portal – Gaining Access
Power Point Instructions

 - PS-CAMS Consultant Portal – Using the Portal
PowerPoint Instructions

 - PS-CAMS Administrator email address for help
or questions: <https://www.txdot.gov/contact-us/form.html?id=des-pscams-email>





*PEPS DBE Standard Operating
Procedures (SOP)*

PEPS DBE Standard Operating Procedures

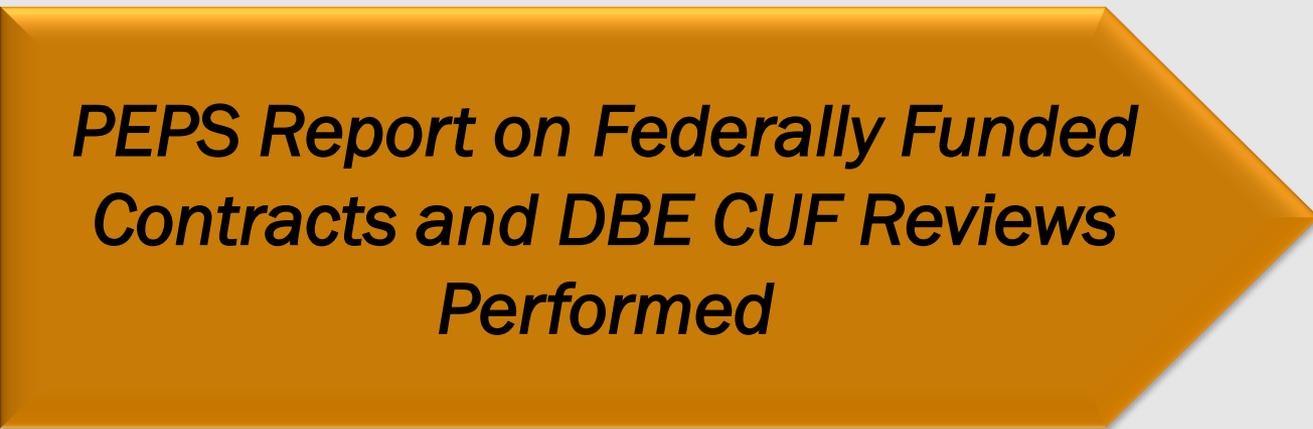
Monitor and review data entered by prime provider into the provider portal of PS-CAMS for DBE Monthly Progress Assessment Report (Exhibit H-3).

Monitor data entered by prime provider into the provider portal of PS-CAMS for payments made to subproviders .

Monitor Prompt Payment (PP) compliance for all DBE and Non-DBE subproviders on the contract.

Conduct a Commercially Useful Function (CUF) review for each DBE prime provider and subprovider on the contract.

Review and approve any applicable Good Faith Efforts, Terminations or Substitutions.



***PEPS Report on Federally Funded
Contracts and DBE CUF Reviews
Performed***

Monitoring DBE Activity

Provider is responsible for monitoring and reporting progress towards meeting the DBE goal for the contract. (The data entered is at the contract level and is rolled up for all work authorizations executed under the contract.)

Provider enters monthly Progress Assessment Report (PAR) to include payments to subproviders into the PEPS PS-CAMS provider portal. (There will be a delay between invoices submitted, and payment made to the subproviders to allow for PEPS invoice processing and payment to the provider.)

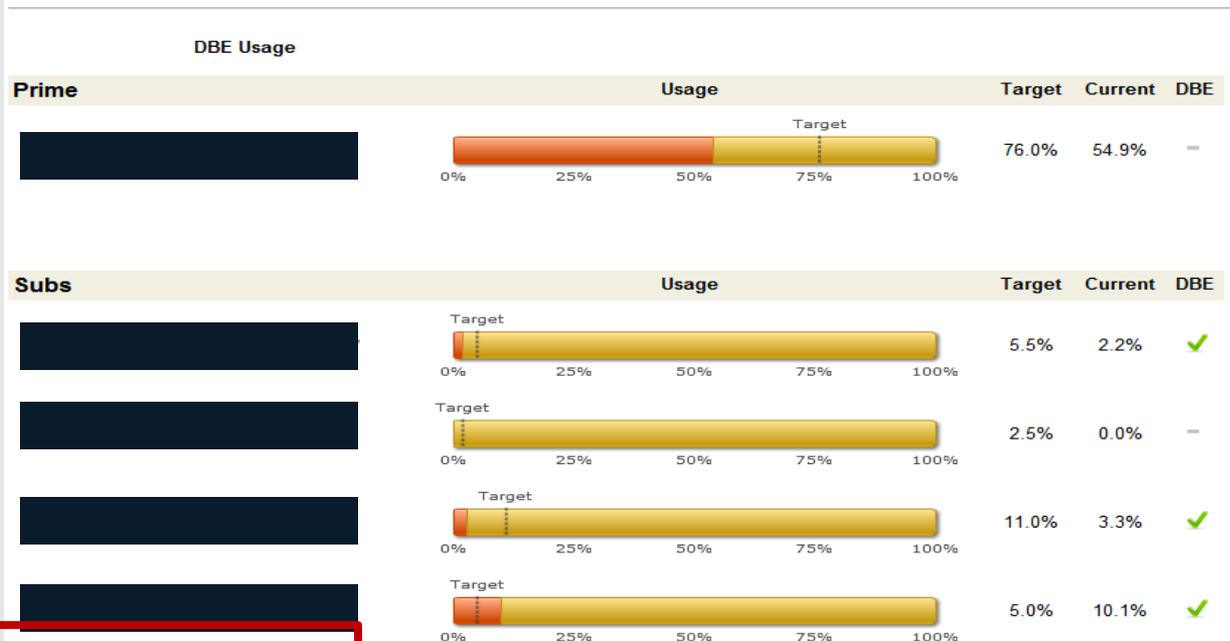
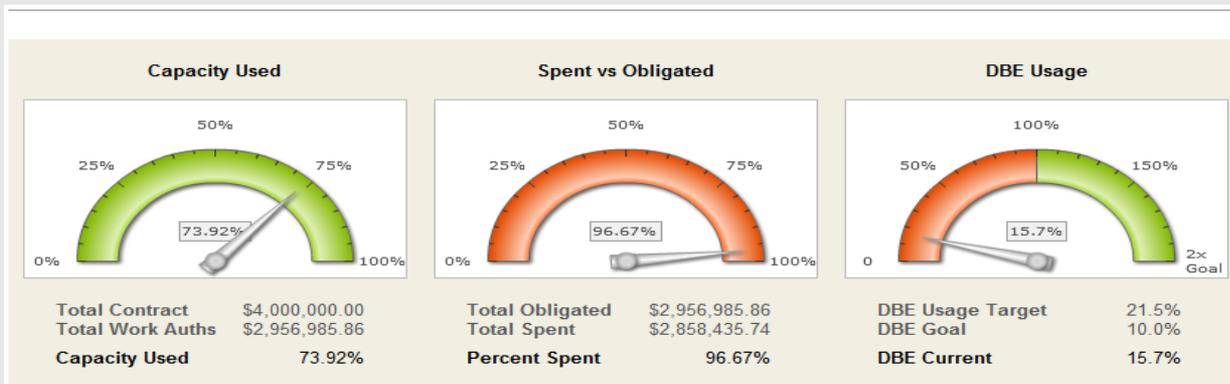
PEPS Service Center verifies that the Monthly PAR has been entered into PS-CAMS. (Verified for prior month entry.)

TxDOT District or Division Project Manager evaluates the Monthly PAR that has been entered into PS-CAMS by the provider, and verifies subprovider activity for the previous month to include DBE compliance.

PEPS PS-CAMS - Dashboard

Screenshot of PS-CAMS Dashboard showing the overall status of the contract. Tracks the:

- **Contract Capacity Used**
 - ✓ Total Contract Amt
 - ✓ Total WA Amt
 - ✓ Capacity Used %
- **Spent vs Obligated**
 - ✓ Total Obligated
 - ✓ Total Spent
 - ✓ % Spent
- **DBE Usage**
 - ✓ DBE Usage Target %
 - ✓ DBE Goal %
 - ✓ DBE Current %



The names of the prime provider and subs in this example have been hidden.



***DBE - Commercially Useful Function
(CUF) Review Process***

Commercially Useful Function (CUF) – Texas Administrative Code

Texas Administrative Code

TITLE 43 TRANSPORTATION - PART 1 TEXAS DEPARTMENT OF TRANSPORTATION - CHAPTER 9 CONTRACT AND GRANT MANAGEMENT -SUBCHAPTER J DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM - RULE § 9.232 Commercially Useful Function

The following excerpts are taken from the TAC as indicated above. Reference the link shown below to review the complete rule.

(a) A DBE is considered to perform a commercially useful function (CUF) if the DBE is responsible for:

(1) the performance of the work subject to the contract and for the execution of its responsibilities by actually **performing, managing, and supervising** the work involved;

(d) A DBE is presumed not to be performing a CUF if the DBE:

(1) does not perform or exercise **responsibility for at least 30 percent of the total cost of its contract with its own work force**, or

(2) subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved.

The TAC can be found at: [RULE §9.232 Commercially Useful Function](#)

PEPS Internal CUF Review Requirements

Excerpt from the *PEPS DBE SOP*:

6.6 Performing Quality Commercially Useful Function (CUF) Reviews

On behalf of the Department, the PEPS Service Center (PEPS SC), will monitor Disadvantaged Business Enterprise (DBE) performance on services provided under a Professional Services Contract (PSC) to ensure that each DBE firm is performing a Commercially Useful Function (CUF). The CUF review shall be initiated by the PEPS SC, and shall be coordinated with the Districts and Divisions (D/D) PMs that are utilizing services on Work Authorizations (WAs) issued under a PEPS contract.

[Note: All responsibilities and steps indicated to be performed by PEPS SC may be performed by Division (DIV) Manager (or DIV designee) for DIV administered contracts for Professional Services, where applicable.]



Division initiated CUF reviews must include a cc to the PEPS SC for Divisions, along with all documentation. Any non-compliance findings shall be coordinated with the PEPS SC for Divisions.

PEPS CUF Compliance Procedures

- It is the prime provider's obligation to ensure that each certified Disadvantaged Business Enterprise (DBE) provider and/or subprovider firm that is performing services on a federal assisted contract performs a Commercially Useful Function (CUF).
- The prime provider shall receive credit toward the DBE goal based on actual payments to the DBE firm(s) that are shown to be performing a CUF.
- **A minimum of one (1) CUF review is required for each DBE provider and/or subprovider that is performing services as indicated in the Work Authorization commitment (Exhibit H-2) that is executed under a PSC contract.**

CUF Review Timelines

The following excerpt is taken from the **PEPS CUF Instructions and Checklist**.
(Note: This is an internal TxDOT checklist.)

PEPS CUF Review Timelines:

- Timelines will be counted by working days. Working days are considered to be Monday through Friday, excluding official TxDOT observed federal and state holidays.
- The CUF review shall be initiated by the PEPS SC within ninety days (90) working after the prime provider has received payments for an invoice where DBE services have been provided, and the payments have been entered by the prime provider into the provider portal of PS-CAMS. This applies to a certified DBE prime provider or subprovider(s).
- The CUF review shall be completed within thirty (30) working days of initiation.
- A written request for an extension of an additional thirty (30) working days may be requested in writing from PEPS COE by the PEPS SC if there is a non-compliance issue that will have to be coordinated.

PEPS CUF Review Documentation

The PEPS Service Center (SC) or PEPS Division (for Division administered contracts) will compile the following information to support the CUF review:

- Exhibit H-1 (from fully executed contract).
- Fully executed WA that is directly applicable to the DBE firm's services that were provided and billed for. (Includes copy of Exhibit H-2 from WA).
- Invoice as indicated on the CUF Review Form (showing billing for the DBE firm that is being reviewed).
- Monthly Progress report for services provided for billing period(s) as indicated on the CUF Review form.
- **Request a copy of the following documents from the prime provider:**
 - Copy of prime provider contract with DBE subprovider.
 - Copy of electronic transfer of funds or cancelled check to the DBE firm(s) that supports the payments made on the WA for the specific billing periods indicated on the CUF Review form.
 - The PEPS SC may request a separate Prompt Payment (PP) review, and that documentation will also be used to support the request for documentation noted in the CUF review.
 - The CUF review and the PP review are separate compliance reviews.

PEPS CUF Review Determination

The PEPS SC or Division (for division administered contracts) shall notify the DBE prime provider and/or subproviders of the final CUF review determination.

Compliant:

- Prepare and send a compliant email notification to the DBE firm reviewed.
- If the review is on a subprovider firm, the notification will include a cc to the prime provider.

Non-Compliant:

- Prepare and send a non-compliance email notification to the DBE firm.
- Allow and track a ten (10) working day response period after date that the DBE firm receives the email notification, to provide a written rebuttal to the non-compliance findings.
- Review the DBE firm's written response for compliance determination.
- Coordinate the response with the PEPS COE DBEC for final determination.
- Notify the DBE firm within twenty (20) working days of receipt of all written documentation received from the DBE firm of any denial (if applicable) of DBE goal credit for non-compliant services provided by the DBE firm on the WA.
- If the review is on a subprovider firm, the notification will include a cc to the prime provider.

CUF Review Summary

- Key elements of a DBE firm performing a CUF: **performing, managing, and supervising** the work using it's own work force.
- A DBE firm must be found to be compliant by performing a CUF to receive credit toward the DBE goal.
- A DBE firm that is found to be non-compliant performing a CUF, will not receive credit toward the DBE goal, and payments to the DBE firm that is non-compliant will be adjusted by PEPS in PS-CAMS.
- Payments to DBEs will determine if prime fulfilled its overall DBE goal obligation.
- Prime provider has entered all subprovider payments and monthly PAR reports into PS-CAMS.



Resource References

- **PEPS External Webpage:**
<https://www.txdot.gov/business/consultants/architectural-engineering-surveying.html>
- **Texas Administrative Code (TAC):** [RULE §9.232 Commercially Useful Function](#)
- **Code of Federal Regulations Provisions of 49 CFR 26.55(c) (4) & (5) :** [§26.55 How is DBE participation counted toward goals?](#)
- **Guidance on Good Faith Efforts (GFE):** [Appendix A to Part 26 - Guidance Concerning Good Faith Efforts](#)
- **49 CFR Subtitle A Part 26 Subpart C :** [Code of Federal Regulations - Title 49 Subtitle A Part 26 Subpart C](#)



WEBSITE
REFERENCES

PEPS DBE Compliance Contact Information

PS-CAMS Administrator email address for help or questions is :

<https://www.txdot.gov/contact-us/form.html?id=des-pscams-email>

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