Commercially Useful Function (CUF) is the term utilized to evaluate whether a firm that is certified as a Disadvantaged Business Enterprise (DBE) controls all components of a business and is directly responsible for the execution of the work they are contracted to perform. The firm also carries out its responsibilities by actually performing, managing, and supervising the work involved.

The DBE must also be responsible, with respect to materials and supplies used in the contract, for negotiating price, determining quality, quantity, ordering the material installing (when applicable), and paying for the material.

The firm must maintain control over 5 key elements:

- Management/Supervision
- Workforce/Labor
- Equipment
- Material/Supplies
- Performance

NYSDOT and sub-recipients (project sponsors) have a responsibility to ensure that the prime contractor has effectively met their responsibility under the contract. CUF monitoring must be performed and documented to ensure the DBE firm was responsible for their portion of the work of the contract by actually performing, managing, and supervising the work involved.

This assurance is necessary due to the fact that only DBE firms whom are determined to be independent in operations can have their contract values applied toward the prime contractors DBE goal requirements.

This guide will provide you with a basic understanding of the five areas under the Commercially Useful Function review and steps to ensure the review is captured and saved for reporting purposes.
DBE Performance & Commercially Useful Function (CUF)

Highway firms certified in the DBE program typically perform in four (4) categories:

- Contractor (Prime or Subcontractor)
- Trucker
- Regular Dealer (Supplier)
- Manufacturer

To determine whether a DBE subcontracting firm 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.

This manual will provide an overview of each category, typical CUF questions, and a list of documents to review and/or observations to be made. However, keep in mind that Red flags can arise in any of these categories. Red flags do not necessarily indicate a CUF violation; however they could warrant further review. In those instances, please contact your Regional Civil Rights expert for guidance.
Department and sub-recipient field staff must verify that the DBE firm is managing the work that it has been contracted to perform.

Specifically, the DBE firm must perform the following functions:

- Schedule work operations, order equipment, materials, and supplies
- Prepare and submit payrolls, hire and fire employees
- The DBE firm owner must supervise daily operations; personally, or with a full time superintendent, employed by the DBE firm. 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** 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 firm;
- The DBE’s owner is not aware of the status of the work or the performance of the business;
- Inquiries by the Department, sub-recipient or FHWA representatives are answered by the prime contractor.
In order to be considered an independent business, a DBE firm must keep its own workforce; DBE firms cannot “share” employees. The DBE firm shall perform its work with employees normally employed by and under the DBE’s control. All work must be performed by the DBE’s regular employees, or those hired by the DBE firm for the project from a source, such as a labor union. The DBE firm, in all instances, must have direct supervision over all of its employees.

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

The DBE firm must perform at least 30% of the total cost of its contract with its own workforce. The DBE firm 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 for workforce and labor may include, but are not limited to:

- DBE employees are being supervised by another contractor
- Work performed by personnel normally employed by the prime or another business
- Employees are being paid by someone other than the DBE firm
A DBE firm should own the necessary equipment to perform the operations of their business for the scope of work they were contracted to perform and bring this equipment with them to the project and/or arrange for delivery.

A DBE firm may lease specialized equipment from a contractor, excluding the prime, if it is consistent with normal industry practices, and at rates competitive for that area. The lease must specify terms of the agreement, must be for a short period of time and involve specialized pieces of equipment to be used. The lease may include an operator for the equipment. The operation of the equipment must be subject to the full control of the DBE firm.

Red flags for equipment may include, but are not limited to:

- Equipment used by the DBE firm belongs to the prime contractor or another contractor with no formal agreement
- Equipment signs and markings cover another owner’s identity (e.g., magnetic signs)
- DBE trucking firm uses trucks owned by the prime or another company
The DBE firm must be responsible for the material and supplies it uses in the performance of its contracts. As an on-site contractor, the DBE firm would typically be hired to both furnish the material and install it with its own labor force. The DBE firm must demonstrated that they negotiated the price of materials, determining the quality and quantity of materials, ordered the necessary materials, received invoices and paid for the materials.

However, DBE firms can be utilized by the prime as non on-site companies to supply material for the project, for example.

- The term NON-SUBCONTRACTOR references firms which fall into the following categories and are certified DBE firms hired to assist with DBE goal attainment:

  - Material Suppliers
  - Manufacturers
  - Professional Services/Engineering
  - Fabricators
  - Brokers
  - Trucking (both on-site and off-site)
The DBE firm must maintain responsibility for the performance, management, and supervision of a distinct element of the work by assuming financial risks appropriate for the amount of work to be performed, and performing within its certification specialty areas.

DBE firm pass-through schemes can be evident when the DBE firm is limited to that of an extra participant on a contract through which funds are passed in order to obtain the appearance of DBE firm participation. In this case, the prime contractor performs the work of the DBE firm with its own forces, runs the payroll through the DBE firm to create the illusion that employees are working for the DBE firm, pays the DBE firm a small sum, and uses the DBE firms name on invoices, trucks, and/or equipment.

Bottom line, a DBE firm cannot lack the labor, equipment, financial resources or expertise to perform the work they are contracted to do.
Who must have a CUF Review?

Every DBE firm assigned to a project

How often does a DBE CUF Monitoring Report have to be completed?

Once per project

Who must perform the CUF Review?

A NYSDOT or sub-recipient employee or their designee

A project is State funded. Does it require a CUF review?

No, only Federally Funded projects require the formal documentation, however if you have a State project and you suspect that the MBE or WBE firms are not in control of their work you should contact the Compliance Officer assigned to your Region.

What do I do if a CUF Assessment Report reflects possible concerns?

Notify your Compliance Officer. Concerns on a project do not always indicate a violation of CUF and as such, suspicious actions by the DBE must be further evaluated.
CUF MONITORING REPORT

• OBTAINING THE FORM

• SAVING THE REPORT

SITE-MANAGER (DOT PROJECTS)
APPIA (LOCAL-LET PROJECTS)

Notes:
- If you do not have Adobe LiveCycle Designer and have difficulty saving forms you can still use the form however you will need to print, scan and save as PDF.
- External user can obtain the form from the NYSDOT home page.
Double Click on the IntraDOT desk top icon and select the organizations tab.
Click on “Click Here To Connect To The Office of Construction’s Internet Page”
Click on Forms

OFFICE OF CONSTRUCTION
- Forms
- Guidance, Manuals, & Computer Applications
- Construction Civil Rights
- Fuel, Asphalt, & Steel Price Adjustments
- Materials Approved List
- Safety & Health Information
- Links
- Letting CPM Schedules
- Primavera

https://www.dot.ny.gov/portal/gis/portal/9

DOING BUSINESS WITH NYS DOT > BUSINESS CENTER > CONTRACTORS > OFFICE OF CONSTRUCTION

Engineering Division - Office of Construction

Brian K. DeWald, P.E., Acting Director (518) 457-6473

General Information
- Forms
- General Information & Computer Applications
- Bid & Letting Information
- Primavera for Construction
- Construction Civil Rights
- Fuel, Asphalt, & Steel Price Adjustments
Click on Civil Rights

Select the CUF form and save the file to desired location. Complete the form (see following slide).
Complete the header information.
Complete Table A or B (appropriate Table will appear after work category is selected).
Complete the assessment information.
Keep the completed report available on file for review by FHWA or the Department.

### Project Information

<table>
<thead>
<tr>
<th>Region</th>
<th>Contract No.</th>
<th>Prime Contractor</th>
</tr>
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</table>

<table>
<thead>
<tr>
<th>DBE Work Category</th>
<th>DBE Firm Name</th>
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</table>

### DBE Information - Work

Complete Table A for the DBE Firm's Work Category selected above.

<table>
<thead>
<tr>
<th>Core Work Code</th>
<th>Briefly describe observations of Work/Materials/Equipment</th>
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<tbody>
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Check this box to see guidance for this Section.

Code3AssocWk
How to attach the completed form to the Diary in SiteManager:

Log onto Site Manager and select Project Manager from the Available groups window.
Double click Daily Work Reports, then select Diary
Click the Attachment icon on the top task bar, then click on the OLE button
Click on the Create From File tab in the Insert Object window. Click Browse, then navigate to where the report was saved. Double click on the file. Then click the OK button.
Enter a name in the top Name field (cannot use capitals, spaces, or special characters - just type a basic description and leave the more detailed description for the description field.

Click on the Add All button. Then click Add and Save
In the Civil Rights tab in the Diary, indicate {DBE firm NAME} CUF Assessment Report performed (report Attached)
ATTACHING A CUF REPORT IN APPIA

1. Create a CUF Attachment group in APPIA
   a. Reference Data/ Reference List/ Attachment Groups/ change
      i. ***Add New Group***/ change/ Add Value/ Save

2. Fill out the CUF Monitoring Report as directed, for each DBE on the project

3. In APPIA, expand attachment headings
   a. Add / under Group pick “CUF”/ browse to find file (CUF Report)/ save
   b. If necessary, add remarks prior to saving
   c. Forward form to appropriate civil rights officer if red flags exist