



U.S. Department of Transportation

**Departmental Office of Civil Rights (DOCR)
Federal Aviation Administration (FAA)
Federal Highway Administration (FHWA)
Federal Transit Administration (FTA)**

Commercially Useful Function (CUF) Monitoring

**Disadvantaged Business Enterprise
(DBE) Program**

Learning Outcomes

1. Define and differentiate CUF & counting
2. Identify the key monitoring & enforcement requirements and their importance
3. Distinguish the various DBE functions and how they are counted
4. Discuss available CUF tools & resources



Learning Outcome #1

Define and Differentiate CUF and Counting



Fundamental CUF Requirement

“A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.”

[49 CFR § 26.55\(c\)\(1\)](#)



CUF

- CUF relates to the independent performance of work by a DBE according to the contracting functions described in [49 CFR § 26.55](#). These functions may include construction contractor, service provider, manufacturer, regular dealer, broker, and trucking.
- CUF pertains to counting and is NOT, in and of itself, a certification issue



Counting

- The value of a DBE's participation is based on its actual function
- Certain limitations apply, e.g., material purchases and leases from the prime or its affiliates, non-DBE trucking, etc.
- Counting requires accountability through **verification** of the DBE's performance



Learning Outcome #2

Identify the CUF Monitoring & Enforcement Requirements and their Importance - 49 CFR § 26.37(b)



Fundamental CUF Requirement

- [§ 26.37\(b\)](#)—"Your DBE Program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is **actually performed by the DBEs** to which the work was **committed...**"
- Compliance with [49 CFR § 26.55](#)



Monitoring and Enforcement Requirements

[USDOT Guidance \(posted 8/22/2018\)](#)

- Requires recipients to monitor **every** contract on which DBE participation is claimed
- Includes “written certification” – **a signed and dated** document of the CUF review by the person(s) who performed it



Monitoring and Enforcement Requirements (part 2)

[USDOT Guidance posted 8/22/2018](#)

- The CUF review must ensure that DBE participation is accurately counted and credited
- Trained staff must evaluate DBEs while active on the project at an early stage;
- Cannot conduct CUF monitoring **only** at project closeout



Monitoring and Enforcement Summary



- Ensures that the DBE's actual role is consistent with how its participation is counted by the recipient
- Ensures contractors are complying with their DBE commitments to meet contract goals
- Ensures a level playing field; preserves opportunities for DBEs



Learning Outcome #3

Distinguish the Various DBE Functions and How they are Counted



Counting by Function

- Construction Contractor/Subcontractor (100%)
- Trucking Firms/Haulers (recipients must choose one of two options)
- DBE Suppliers:
 - ✓ Regular Dealers (60%)
 - ✓ Manufacturers (100%)
- Services Providers:
 - ✓ Bona fide services (entire amount of fees or commissions deemed reasonable)
 - ✓ Other services (reasonable amount of fees or commissions related to assistance only)



DBE Construction Contractor/Subcontractor

- Performs a **distinct element** of work with its own forces under a contract
- Typically furnishes and installs materials
- “Labor only” (performs distinct element but excludes cost of materials)
- Count 100% the cost of labor and supplies purchased or leased by the DBE - [49 CFR § 26.55\(a\)\(1\)](#)



DBE Contractor/Subcontractor (Materials and Equipment)

- DBE must negotiate price, order the materials, and pay for the materials and supplies. [49 CFR § 26.55\(c\)\(1\)](#)
- DBE must be responsible for quantity and quality of materials. [49 CFR § 26.55\(c\)\(1\)](#)
- May not count cost of material, supplies, equipment purchased/leased from prime or its affiliates. [49 CFR § 26.55\(a\)\(1\)](#)



DBE Trucking

- DBE trucking requirements apply to the hauling of debris or materials not owned by the DBE
 - Do not confuse with trucking performed as part of a DBE's construction contract
 - Do not confuse with regular dealer distribution equipment requirements

[49 CFR § 26.55\(d\)](#)



DBE Trucking (Counting)

Option 1

- **DBE Trucks:** (owned, insured and operated by the DBE's drivers)
- **Non-DBE truck leases** (without operators) **from a truck leasing company**
- **Leases from other DBEs**, incl. owner/operators
- **Lower-tier subcontracts with other DBEs**

[49 CFR § 26.55\(d\)\(3\),\(4\)&\(6\)](#)



DBE Trucking (Counting)

Trucking Leases under Option #1

- Can be for a specific contract of any duration
- Under Option #1, the DBE may lease trucks **without drivers** from a non-DBE truck leasing company*. [49 CFR § 26.55\(d\)\(6\)](#)

*means any company that is willing to lease a truck (w/o driver), provided a customary lease agreement is executed



DBE Trucking (Counting)

Option 1

Example: DBE trucks log 110 hours, non-DBE trucks log 25 hours*; unit cost is \$150/hour under the DBE's subcontract.

Eligible DBE participation = $110 * \$150 = \$16,500$

*may give credit for fees/commissions for arranging non-DBE trucks leases



DBE Trucking (Counting)

Option 2 (aka 1 for 1)

- Permits credit for non-DBE trucking participation, not to exceed the value of transportation services provided by the DBE
- Requires a record of all DBE/non-DBE trucking activity
- Requires US DOT OA approval

[49 CFR § 26.55\(d\)\(5\)](#)



DBE Trucking (Counting)

Option 2 Counting (aka 1 for 1)

Example 1: DBE trucks log 30 hours, non-DBE trucks log 30 hours; 60 hours at unit price of \$150/hr.

$$60 * \$150 = \$9,000$$



DBE Trucking (Counting)

Option 2 Counting

Example 2: DBE trucks log 40 hours; non-DBE trucks log 60 hours; unit price is \$150/hr.

Total hours= 100:

40(DBE hours)+ 40(non-DBE hours)

80*\$150= **\$12,000**

20 (non-DBE hours); may count commission for arranging leases (or non-DBE subcontracts)



Regular Dealer Types

- Dealers with establishments where products specified under the contract are kept and regularly sold
- Bulk item dealers: not required to have establishments and products on-hand if they own and operate distribution equipment for those products
- **Count 60%**



Evaluating Regular Dealers: w/Establishments

- Did the DBE have possession?
 - Drawn from the DBE's inventory per definition. [49 CFR § 26.55\(e\)\(2\)\(ii\)](#)
 - If not, the DBE should have physical possession before delivery (as opposed to delivery by a third party directly from a manufacturer)



Evaluating Regular Dealers: Bulk Items

- Bulk items must be delivered using distribution equipment owned and operated by the DBE* [49 CFR § 26.55\(e\)\(2\)\(ii\)\(B\)](#)
- DBE must have a long-term lease for supplemental distribution equipment used [49 CFR § 26.55\(e\)\(2\)\(ii\)\(B\)](#)
 - Long-term lease defined within the recipient's DBE Program
 - Not ad hoc or contract-by-contract arrangement
 - Multi-year contracts with a third-party hauler **do not meet definition** of a “lease”

*Assumes that the DBE did not supply from an inventory that it manages



Manufacturers

- DBE manufacturer maintains a **factory** or **establishment** that produces or alters materials on the premises to meet contract specifications
- **Count 100%**



[49 CFR § 26.55\(e\)\(1\)\(i\)](#)



DBE Service Providers

- Bona fide services*:
 - Professional, technical, managerial, insurance, etc.
- Other Services**:
 - Brokers, packagers, manufacturer's reps., (arrange or expedite the procurement of goods and services)

*Count entire amount of fees or commissions **if reasonable, including resulting product costs** (i.e., plans, drawings, studies, etc.)

**Count reasonable amount of fees or commissions for assistance, including transportation charges

[49 CFR § 26.55\(a\)\(2\)](#)



Learning Outcome #4

Discuss Available CUF Tools and Resources



Enhanced Training and Tools

CUF Oversight and Monitoring Tools

- Sample CUF forms
 - Contractor/Trucking
 - Regular Dealer/Manufacturer
 - Service Provider
- Regular Dealer Determination Tool



Questions

