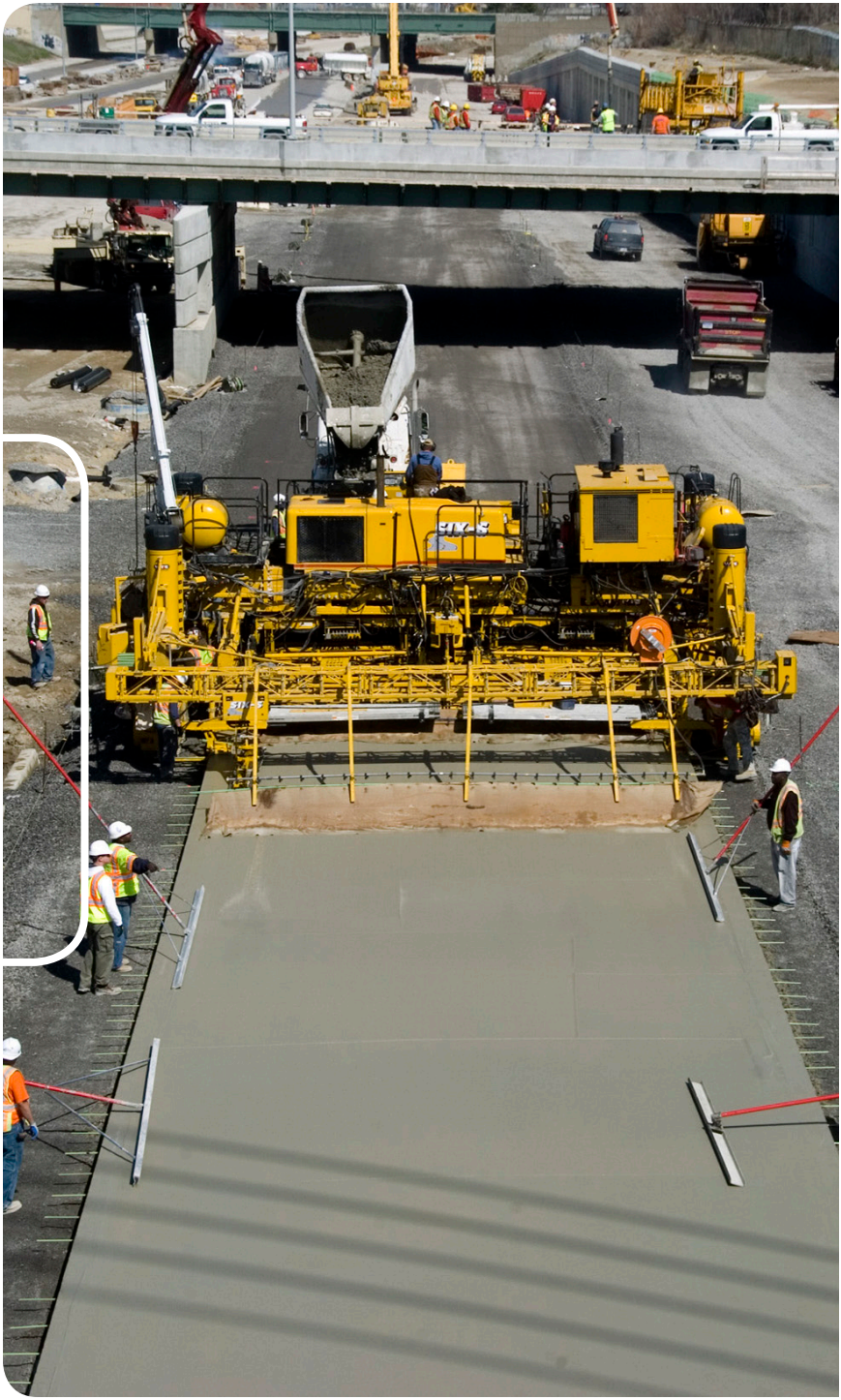
DBE

DISADVANTAGED BUSINESS ENTERPRISE

Program Guide For Commercially Useful Function (CUF) Monitoring on all Federal-Aid Projects

MDOT

Michigan Department of Transportation



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Overview of Key Components for Monitoring for Commercially Useful Function (CUF)

All CUF violations should immediately be reported to the Office of Business Development. Contact CUF Specialist Ben Baftiu at 313-965-5557 or Frank Adams at 248-302-4589 if there is a CUF violation, or if you have questions.

DBE PARTICIPATION SHEETS (MDOT FORM 0178) (BLUE SHEET)

A Disadvantaged Business Enterprise (DBE) participation sheet/commitment sheet is not a contract; it is a commitment to work on a contract which has DBE goals. In order to monitor for a CUF, individuals monitoring projects should review subcontracts, purchase orders, etc. to understand work contracts of the DBE firm.

COMMERCIALLY USEFUL FUNCTION

When a DBE participates in a contract, only the value of the work actually performed by the DBE, its managers, workers, equipment, and materials will count toward DBE goals.

- A DBE performs a CUF when it is responsible for the execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising work involved.
- The DBE also is responsible for negotiating price, determining quantity and quality, ordering, installing (where applicable) and paying for materials and supplies used on the contract.
- Work subcontracted by a DBE to a non-DBE does not count toward DBE goals.

DBE TRUCKING

Prime contractors are responsible for ensuring that DBE truckers meet their commitments. Primes are responsible even if trucking participation is delegated to a subcontractor on the project. Primes also must request DBE goal-modification approval from the MDOT Office of Business Development.

The DBE is responsible for the managing and supervising of its entire trucking operation on a contract. There cannot be a false arrangement for the purpose of meeting DBE goals.

The DBE trucker must own and operate at least one fully licensed, insured, and operational truck used on the contract.

The prime contractor receives credit for the total value of the transportation services a DBE trucker provides on the contract using trucks it owns, insures, and operates, using drivers it employs.

- A DBE trucker also may lease/broker trucks from non-DBEs, except from the prime or affiliates of the prime.
- For MDOT purposes, a leased/broker agreement covers the DBE's use of another company's vehicles and drivers.
- A DBE may supplement its fleet using lease/broker agreements.
- Full credit can be counted for leased/brokered trucks that are owned, operated, and insured by other DBEs.
- A DBE who leases/brokers trucks from a non-DBE may take full credit for an equal number of non-DBE trucks.

For example, a DBE owns three trucks and leases four trucks from other DBEs, for a total of seven DBE trucks. The prime contractor may take full credit for a maximum of seven leased trucks from non-DBEs. In this example, full credit is given for a total of 14 DBE and non-DBE trucks.

- If a DBE leases trucks from a non-DBE, the prime contractor is entitled to credit for the total value of transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees provide the prime contractor credit for only the fee or commission the DBE trucker receives as a result of the lease arrangement.
- For MDOT purposes, all leased/brokered trucks must display the name and MDOT vendor identification number of the DBE trucking firm that the truck(s) are being leased to. (DBEs can use their discretion to ensure the leased/brokered trucks have identifying documentation on the project at all times.)

On the DBE Participation Sheet (MDOT Form 0178, also referred to as a "blue sheet"), a DBE must specify the number of trucks to be used on the job, the date work is expected to begin, and a full description of the type of work to be performed (including what is being hauled and the locations to and from). On the DBE Heavy Construction Trucking Credit Worksheet (MDOT Form 4101), a DBE must list the trucks to be used on the job in detail, as specified.

If a DBE is unable to provide the number of trucks committed to a contract when needed, the reason for this must be documented immediately in writing and submitted to the prime contractor and to the Field Services Section of MDOT's Office of Business Development.

For information about trucker equipment, leasing, utilizing non-DBE truckers, etc., call Alicia Banks at 517-335-6537.

DBE SUPPLIERS

A DBE supplier is responsible for negotiating price, determining quality and quantity, ensuring MDOT requirements related to material(s) used on a contract are met, and ordering and paying for the materials or supplies used.

- Invoices for materials should be invoiced to the DBE firm, not to the prime contractor.

There are three DBE supplier classifications: manufacturer, regular dealer, and broker. Each classification is based on the individual material or supply the DBE provides. This means some DBEs may be certified in more than one supplier classification. For example, a DBE could be a manufacturer of sand and a broker of steel.

- **DBE manufacturers:** Count 100 percent of the cost of the materials or supplies purchased from DBE manufacturers toward DBE goals.

  Although a DBE may be certified as a manufacturer, if the materials used on the contract have not been produced by the DBE on its premises, the DBE is not acting as a manufacturer and can not count credit as a manufacturer.

- **DBE regular dealers:** Prime contractors can count 60 percent of the cost of the materials or supplies toward DBE goals. Additionally, DBE regular dealers must deliver the materials or supplies using equipment they own or lease on a long-term, rather than ad hoc or contract-by-contract, basis. Costs of delivering materials or supplies are incidental to the cost of the material or supply. When delivery charges are calculated separately, count 60 percent of the delivery cost toward DBE goals.

While a DBE may be certified as a regular dealer, if the DBE delivers materials to the project using trucks the DBE neither owns nor leases, the DBE is acting as a broker instead of a regular dealer, and the prime contractor can only get DBE credit for fees charged by the broker.

- **DBE brokers:** Prime contractors can count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, fees or transportation charges for the delivery of materials or supplies required on a job site as DBE credit.

ASPHALT SUPPLY INFORMATION

Effective Nov. 16, 2009, MDOT implemented a new program to monitor DBE supply and delivery of liquid asphalt to MDOT projects. This program was developed in response to Federal Highway Administration (FHWA) concerns regarding the performance of a CUF when DBE liquid asphalt suppliers are used. There are three new MDOT forms associated with this program:

- MDOT Form 0192 - Petroleum Company Account(s) Information and Liquid Asphalt Cement Tractors and Trailers Information
- MDOT Form 0193 - DBE Regular Dealer Liquid Asphalt Supplier Participation Affidavit – Prime
- MDOT Form 0194 - Total Quantities of Liquid Asphalt Supplied

The successful bidder/prime contractor is responsible for compliance with the governing DBE regulations (49 CFR 26.55) that are included in each MDOT project proposal and on the internet at *www.access.gpo.gov/nara/cf/cfr-table-seach.html*. Prime contractors are to make every effort to ensure that arrangements and practices on the project are in line with DBE regulations.

In order for a prime contractor to count DBE regular dealer participation toward project goals, the following criteria must be met:

1. The DBE must directly negotiate (i.e., make arrangements for, receiving price quotes, agreeing to pricing, and ordering required grade of liquid asphalt cement) with an MDOT-approved petroleum refinery or blender for the grade of liquid asphalt cement they are providing for the project. (Note: "MDOT-approved" refers to refineries or blenders who are approved by MDOT's Construction and Technology Division and are not affiliated with the prime contractor or the project the DBE is participating on.) The prime is not to negotiate on behalf of the DBE with the MDOT-approved petroleum refinery or blender. All DBEs classified as a TBR (Asphalt and Petroleum Products – Regular Dealer) will need to provide information on their accounts with refineries/blenders on an annual basis. This is done through submitting MDOT Form 0192.
2. The DBE must arrange for the delivery of materials it supplies for the project. Documentation of the DBE's delivery of the liquid asphalt cement (such as invoices, delivery tickets, and bank statements) must be maintained by the DBE and submitted, if requested, by MDOT.
3. The DBE may use leased tractors and trailers on the project only if there are long-term lease agreements for the equipment. Any supplementation of the regular dealer's own distribution equipment shall be through a long-term lease agreement, not on an ad hoc or contract-by-contract basis. This equipment may not be leased from the prime asphalt paving contractor (or any affiliate of the asphalt paving contractor) for whom the DBE is supplying the project's liquid asphalt cement. The DBE must be able to supply all lease agreements upon request to MDOT.

4. DBEs must pay the refineries/blenders with their own funds. The prime is not to pay the refineries/blenders directly for the materials the DBE is designated to supply. Payments made by DBEs for materials they purchase must come from their own independent bank accounts. A DBE may not acquire materials using funds from bank accounts belonging to or shared with the prime contractor.
5. No sales between the prime and any of its affiliates via the DBE are to be counted toward the project DBE goal.
6. Any joint check arrangement must be pre-approved by the Office of Business Development administrator before the arrangement of transaction takes place. This is done through submitting MDOT Form 0182. A joint check is a two-party check between a subcontractor, a prime contractor, and a materials supplier. Joint checks are used to guarantee payment to the supplier for materials used by the subcontractor. MDOT Form 0183 must be used for all joint check arrangements.

Questions regarding liquid asphalt supply should be directed to Reidar Keating, OBD, at 517-241-0052.

THE MICHIGAN UNIFORM CERTIFICATION PROGRAM WEB SITE

Information about DBEs is available on the Michigan Uniform Certification Program (MUCP) Web site at: *www.michigan.gov/mdotdbe*. Once on the DBE site, click the "New searchable MUCP DBE Directory" link. You may want to bookmark this.

The MUCP site has several search functions on the right side of the screen: including "DBE Firm Name," "NAICS Code," "Type of Business," and "Work Location County."

DBE FIRM NAME

- Spell the name of the DBE correctly.
- If unsure of the correct spelling or format of a name, search on part of the name. For example, locate “A person Enterprises” by entering “son” in the box next to “DBE Firm Name.” Then press “search,” located on the right of the screen under “Work Location by County.” All businesses containing “son” in their name will appear.
- If the company has an “&” symbol in its name, make sure to spell out the word “and” while searching. For example, if you are looking for “Y & Z Industries,” type in “Y and Z.”
- The database will bring up the entire list of certified DBEs by simply typing in the first letter. This may be the easiest way to search when unsure of the spelling or full name of the business.

TYPE OF BUSINESS

This search identifies DBEs by their primary type of work. Click on the drop-down arrow (the upside-down triangle); select the best option and click on “search.”

WORK LOCATION COUNTY

You can search for DBEs by county. Click on the drop down-arrow (the upside-down triangle), select the county of interest and click on “search.”

Tip: Selecting options listed under both “Type of Business” and “Work Location County” before pressing “search” will narrow down the list of available DBEs to only those DBEs working in the type of business and county chosen.

DOWNLOADING SEARCH RESULTS

To save search results, press “download search results,” located on the right side of the screen. This will allow you to either open the search results in Microsoft Word, or save results for later viewing.

ADVANCED SEARCHES

Advanced search functions narrow down the list of available DBEs.
For example, if you are looking for a company to truck sand in Clinton County:

- On the MUCP homepage, use the pull-down arrow to select “trucking” under the Type of Business.
- Then use the pull-down arrow under Work Location County to select “Clinton” and click “search.”
    - Search results showing all DBE truckers willing to work in Clinton County will appear.
- Next, press “CTRL” and “F” at the same time. In the search box, type “sand.” Then press “Find Next” and the search engine will jump to each entry with the word “sand” in it. Continue to hit “find next” until you have seen all the entries.
    - “CTRL-F” can be used to search for a particular type of business as soon as any search results appear. Similar to searching for a vendor by name, use only a portion of the name of the type of work. For example, if you are looking for a firm to do electrical work, enter only “elect” in the search. The “find next” function will locate all firms with “elect” in their work description (i.e., electrician, electrical, electronics, etc.)
- If looking for MDOT-prequalified contractors, press “CTRL-F” and enter “prequal” in the search box. MDOT prequalification classifications are listed in parentheses in the work description for each DBE.

For further assistance, please contact one of the organizations listed under “Contact MUCP” at the top of the MUCP homepage.

All of this information, as well as additional information regarding the DBE program, is available on our Web site at: *www.michigan.gov/mdotdbe.*

Service consultant information is available by clicking on the Vendor/Consultant Services link, located on the left side of the MDOT Web site at: *www.michigan.gov/mdot*.


ROSEN
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The Michigan Department of Transportation (MDOT) Joint Check Process

Participants in a joint (two-party) check arrangement must submit an Application to Use Joint Checks (MDOT Form 0183) at least one week prior to the joint check transaction. **Submit the Application to Use Joint Checks to:**

Michigan Department of Transportation
Administrator - Office of Business Development
P.O. Box 30050
Lansing, MI 48909
Fax: 517-335-0945
E-mail: MDOT-DBE@michigan.gov

Per 49 CFR 26 sections, a joint check is a two-party check between a DBE and a prime contractor to submit to a materials supplier of the DBE. Joint checks are used to guarantee payment to the supplier for materials used by the DBE. Joint checks can only be issued for payment to the DBE firm's suppliers. The prime contractor issues a check as payer to the DBE and the materials supplier jointly to guarantee payment to the supplier for the materials/supplies used by the DBE. The use of joint checks for payment of materials/supplies is acceptable when the following conditions are met:

1. Form 0183 must be approved by the Office of Business Development (OBD) prior to issuance of the check.
2. The second party/payer (typically the prime contractor) acts solely as a guarantor.
3. The DBE must release the check to the supplier.
4. Failure to follow this procedure could be a CUF violation.
5. Copies of cancelled checks must be provided for review by MDOT upon request.

An acceptable joint check arrangement must include the following:

1. The prime contractor/payer cannot require the DBE to use a specific supplier or the prime contractor's negotiated unit price.
2. The DBE must release the check to the material supplier.
3. The DBE (not the prime/payer) negotiates the quantities, price and delivery of materials.
4. The prime contractor/payer issuing the check acts solely as guarantor.
5. The DBE releases the check to the supplier.
6. The arrangement is short-term (no more than two construction seasons) with the purpose being the DBE's establishment or increase of a credit line with the material supplier.
7. The DBE is responsible to both furnish and install the material/work item.
8. Joint checks cannot be used for any other purpose than payment to the material suppliers.

Failure to follow the above requirements could result in a CUF violation. MDOT will closely monitor joint-check activity.

Commercially Useful Function (CUF) Questions and Answers

1. **QUESTION:** How should we react as "primes" if we know a DBE firm lacks capacity? For example, if a DBE bids $5 million worth of work and only has two or three pieces of equipment with three employees.

   ANSWER: A contractor should follow the same process when reviewing any quote from a potential subcontractor. The capacity of the firm to perform the amount of work being quoted should be a factor in determining if their quote will be accepted. If it is necessary to explain this to MDOT, the contractor should document the steps taken to verify the capability of the DBE and steps taken with other subcontractors quoting similar work. The Office of Business Development (OBD) monitors DBE trucker capacity and liquid asphalt capacity.

2. **QUESTION:** Can a DBE subcontractor purchase material from the prime contractor or a sister company of the prime contractor? Can the value of the material be considered part of the DBE dollar amount?

   ANSWER: Purchases from prime contractors or their affiliates are not eligible to be counted toward the DBE goal. A DBE cannot purchase materials from any non-DBE firm working on the same project.

3. **QUESTION:** Can a prime contractor back-charge the DBE subcontractor the 1 percent for bonds and dues that is typically charged to all subcontractors?

   ANSWER: Yes, this can be done for project bonding. The amount subtracted for the bond will reduce the dollar amount allowed for DBE credit obtained. Dues should not be back-charged to the DBE subcontractor and cannot be allowed for DBE credit on the project.

4. **QUESTION:** What documentation will be required to prove Race-neutral (RN) participation on MDOT-let projects? Is RN participation only counted for work on MDOT-let projects?

   ANSWER: Any RN participation is counted toward the project on which the work was performed. Yes, RN participation can only be obtained on MDOT-let projects.

5. **QUESTION:** Is RN participation tracked (reported) like Race-conscious (RC)?

   ANSWER: Yes, RN participation is tracked and reported to FHWA as part of MDOT's overall goal attainment each fiscal year. There is an area on the Blue Sheet (Form 0178) for contractors to check when obtaining RN participation. Contractors can use this form if a DBE firm is used on a project with no DBE participation. On contracts with DBE participation, any DBE work in excess of the contract goal is recorded as RN.

6. **QUESTION:** Is it legal to provide a line of credit, insurance, material or supplies to a DBE and meet CUF requirements?

   ANSWER: No. DBE firms should obtain their own lines of credit, insurance materials and supplies. Primes can provide assistance to DBE firms. An example would be introducing the DBE to a bonding agent or referring the DBE firm to a supplier. Arranging for the purchase of materials and supplies on behalf of a DBE firm is an example of a CUF violation.

7. **QUESTION:** With regard to CUF standards and violations, does MDOT, OBD, or FHWA make the final determination if a violation occurs?

   ANSWER: It could be any of the above depending on how the CUF violation is discovered. MDOT and OBD will always be involved when there is a CUF violation. Under certain circumstances, FHWA also may be involved. For example, if FHWA discovers the violation during an audit of projects they may notify MDOT and may continue to monitor the project until the situation is properly addressed.

Contact Information

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Location	Management Staff	Duties	Telephone	E-mail
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Lansing	Tonya Doyle-Bicy, Manager	DBE Certification and External Civil Rights	517-241-4424	doyle-bicyt@michigan.gov
Lansing	Lisa Thompson, Manager	DBE Supportive Services	517-373-0791	thompsonl@michigan.gov
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