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Civil Rights Disadvantaged Business Enterprise **Commercially Useful Function**

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Federal-aid recipients must only count the value of a Disadvantaged Business Enterprise firm's work when the DBE performs a commercially useful function



The Disadvantaged Business Enterprise Program—or DBE program—requires recipients of Federal funds to establish DBE participation goals.

DBE goals are expressed as a percentage. For example, a goal may state that "7% of the contract value is to be performed by DBEs."

To count toward the DBE goal, a DBE firm's work must serve a commercially useful function or CUF.



This means that the DBE has a necessary and useful role in the project. For example, the DBE supplies the materials and performs, manages and supervises the work. If the DBE serves only to provide the appearance of DBE participation, the work is not a commercially useful function and cannot count toward the DBE goal.

CUF violations can lead to a possible loss of Federal funding. Additionally, violations may indicate possible fraud and abuse of public funds, inaccurately inflate DBE participation, or result in the loss of contracting opportunities for other DBEs.

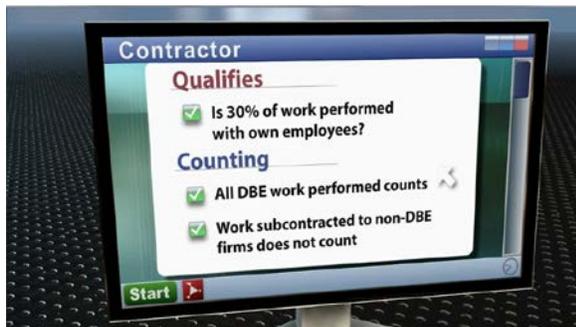
So local public agencies, or LPAs, need to understand what qualifies as DBE participation and how much of the work can count toward the DBE goal.

Once either your State department of transportation, or State DOT, or LPA determines that the work qualifies as a CUF, it then calculates the amount it can count toward its DBE goal. Generally, only the value of the work actually performed by the DBE counts toward the goal. Depending on the nature of the work, different guidance applies.

Here we will review the guidance for counting participation when the DBE firm is :

- A contractor or consultant
- A trucking firm
- Acting as regular dealer or
- A manufacturer

When a DBE firm is a contractor or consultant, the firm must perform at least 30 percent of its contract using its own employees, equipment, materials and resources. When this condition is met, all DBE work performed counts toward the DBE goals. However, work subcontracted to non-DBE firms does not count towards the goal.



For example, let's assume a DBE firm performs \$200,000, or 4 percent, of a \$5 million contract by installing cable median barrier and guardrail.

According to the proposal documents, the contractor will:

- Negotiate the price and purchase the materials that will be installed
- Provide the necessary installation equipment
- Supervise and supply the personnel to drive the guardrail posts and assemble the rails, as well as install the cable median barrier, according to specifications
- Subcontract special crash cushions and barrier end treatments at bridges to a non-DBE firm for \$20,000

After verifying that the DBE contractor has performed at least 30 percent of the work with its own employees, equipment and materials, the agency considers the effort a commercially useful function. The agency counts \$180,000 toward the DBE contract goal, the value of the firm's effort excluding work subcontracted to a non-DBE firm.

When a DBE is a trucking firm, it must oversee the entire portion of the work it is committed to perform and use at least one of its own trucks. When these conditions are met, the portion of services provided using the firm's truck plus any fees for leasing additional trucks count toward the goal.

The value of services performed with leased trucks can also count depending on the situation. For example, when another DBE firm provides those leased trucks, an LPA can count the entire value. However, an LPA can only count non-DBE trucks up to the number of the DBE trucks used.



For example, a DBE trucking firm will contribute toward a 5-percent participation goal by delivering aggregate for \$50,000. According to the proposal documents, the firm will:

- Dispatch the trucks and manage the operations
- Provide two of its own dump trucks and operators for \$25,000
- Lease, from a non-DBE firm, two additional dump trucks for \$25,000

Because the DBE trucking firm will oversee the entire operation and provide more than one truck, the effort qualifies as a CUF. In this case, the entire value of the two non-DBE trucks can be counted because there are also two trucks from the DBE firm. Therefore, the agency counts \$50,000 toward the DBE contract goal, the combined value of both the DBE and non-DBE trucks.

Check with your State DOT regarding options for counting non-DBE trucks.

A regular dealer typically has a store or warehouse out of which it sells or leases products to the public. If the DBE firm is acting as a regular dealer, 60 percent of the value of items sold to the project counts toward the DBE goals.



For example, a dealer will provide drainage pipe for \$100,000. Because the DBE firm regularly sells this product as a part of its business, the agency counts \$60,000 toward the DBE participation goal, or 60 percent of the value of the items provided.

A DBE manufacturer produces, on its premises, materials or equipment used for a project. One-hundred percent of the value of manufactured materials and equipment counts toward the DBE goals.



LPAs must regularly monitor contract activities and certify in writing that the DBEs are performing a CUF. From a review of project-related documents and on-site observations, LPAs confirm that the DBE: has negotiated and ordered the supplies and materials, is managing the work, employing and supervising workers, and supplying the necessary equipment.



The documents LPAs gather during a review are used to support the required written certification and any necessary compliance and enforcement actions.

Your State DOT's DBE plan provides guidance on steps your LPA can take to ensure all program requirements are met.

Web Resources

- Regulation on how DBE participation is counted toward goals
<http://www.ecfr.gov/cgi/t/text/text-idx?c=ecfr;sid=92d9b02a789cc3908c21c7fde2363b70;rgn=div5;view=text;node=49%3A1.0.1.1.20;idno=49;cc=ecfr#49:1.0.1.1.20.3.16.8>
- Link to a section of U.S. DOT Office of Small Disadvantaged and Business Utilization DBE Program Web site covering program requirements
<http://www.osdbu.dot.gov/DBEProgram/dbeqna.cfm>

The content of this document is not a substitute for information obtained from State departments of transportation, appropriate FHWA Division Offices, and applicable laws. Scenarios have been simplified for emphasis and do not necessarily reflect the actual range of requirements applicable to the scenario or this topic. This document was created under contract number DTFH61-11-D-00025 by the Federal Highway Administration, U.S. Department of Transportation, and is offered to the public to heighten and focus awareness of Federal-aid requirements within the local public agencies community and reinforces the importance of these necessary policies, procedures, and practices.

This companion resource is the script content for the video production of the same name.