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Civil Rights Disadvantaged Business Enterprise Evaluating a Commercially Useful Function (CUF)

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To meet disadvantage business enterprise (DBE) goals, you must verify that a DBE firm has a necessary and useful role in the project

A prime contractor can subcontract work to disadvantaged business enterprises, or DBEs, to meet an agency's goal of DBE participation on federally funded contracts. For the contractor to count the DBE firm's work toward the goal, the DBE firm must serve what's called a commercially useful function or CUF.

The DBE firm has a necessary and useful role

- Manages and performs work
- Supervises employees
- Supplies equipment and materials

This means that the DBE firm has a necessary and useful role in the project. For example, the firm must manage and perform the work, supervise the employees, and supply the equipment and materials.

Appearance of DBE Participation

If the firm serves only to provide the appearance of DBE participation, the work is not a commercially useful function and cannot count toward a DBE goal. Agencies that receive federal funds are required to ensure that DBEs are performing a CUF through evaluation activities.

3 Primary Activities in every evaluation

Let's look at the three primary activities in every evaluation. The first activity is a review of the agreements between the agency and the prime contractor, and between the prime contractor and any DBE subcontractor.

Review

An agency employee reviews these agreements to identify the DBE firms the contractor has committed to use and to become familiar with each DBE firm's scope of work.



Next, an agency employee inspects the job site to check that the DBE firm is performing and managing the work. The inspector's activities include making general observations and interviewing DBE personnel.



For example, the agency employee might ask the DBE's supervisors, workers, and equipment operators: "Who do you report to?" and "Who signs your paychecks?" They might also confirm that the DBE firm's logo is on the equipment.



Lastly, an agency employee reviews project-related documents such as payroll,

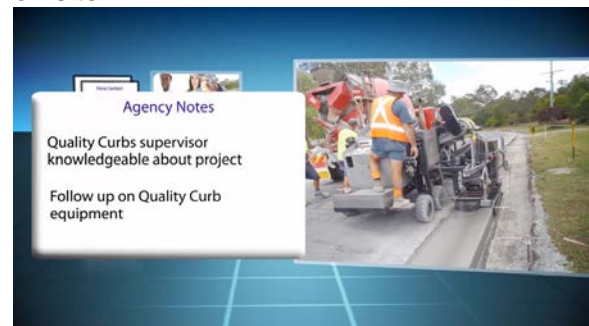
invoices, and delivery tickets. This verifies who is paying employees as well as ordering and paying for materials.



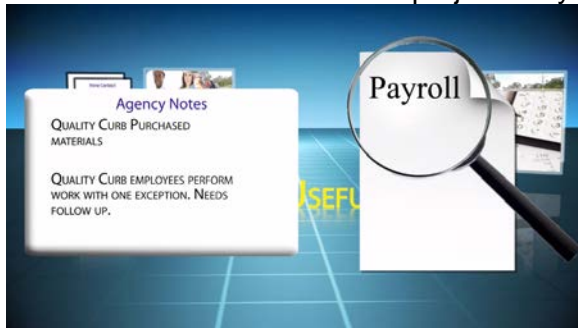
In practice DBEs are classified as contractors, truckers, regular dealers, or manufacturers. Let's follow along as an agency employee evaluates a CUF for contractor. In our example, the DBE firm, Quality Curbs, is charged with constructing curb and gutter.



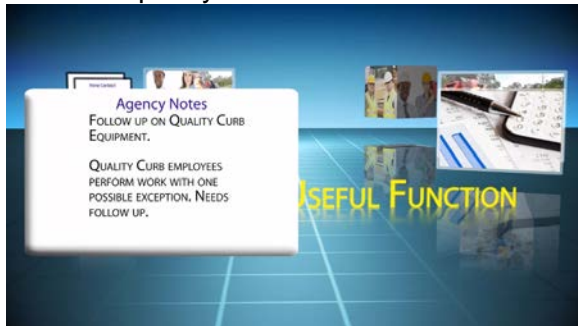
Early in the project the agency's project manager reviews the prime contract and the subcontract and verifies that Quality Curbs appears in the prime contractor's DBE list and will be paid \$200,000 to construct curb and gutter. According to the agreement, Quality Curbs will provide all equipment and personnel and a supervisor will be present on site.



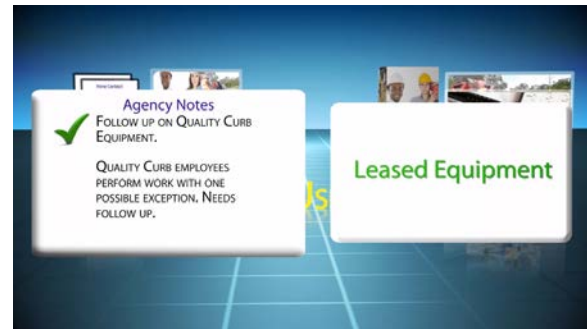
While at the job site, the project manager talks with the Quality Curb supervisor and records in the project diary that the supervisor is knowledgeable about the project and schedule. The project manager observes that a piece of equipment used to construct the curbs and gutters does not belong to Quality Curbs. He notes this in his diary for follow-up. The project manager does a field records review, inspecting invoices and delivery tickets, and verifying that Quality Curbs bought the concrete and other materials. The project manager documents these results in the project diary.



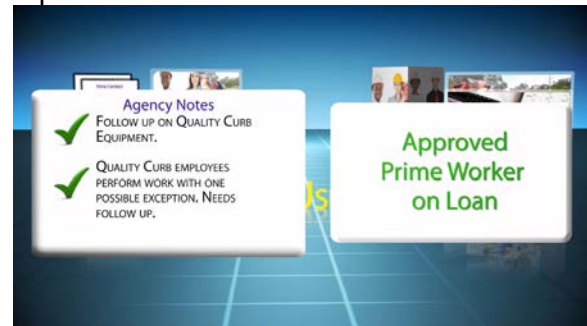
Additionally, the project manager inspects the payrolls of the prime and all subcontractors to identify employee names and to verify that employees constructing the curbs are on Quality Curbs' payroll. During this activity, the project manager finds one worker who appears on two payrolls, both the prime's and Quality Curbs'. He notes in his diary to follow up on this discrepancy.



Before confirming that Quality Curbs is performing a CUF, the project manager needs to check why he observed the equipment of another company on the job site and why one worker appears on the payroll of both the prime and the DBE firm.



In a follow-up discussion with the Quality Curb supervisor the project manager learns that the equipment he saw was leased while Quality Curbs' equipment underwent repairs.

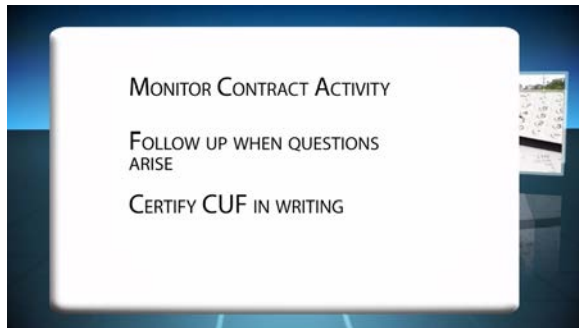


He also learns that the prime contractor's worker was on loan for two days to cover for a sick employee and that agency personnel had approved this temporary arrangement.



With all questions satisfied, the project manager certifies in writing that Quality Curbs manages and performs the work using its own employees, provides all necessary equipment, and supplies the materials.

Had the agency determined the DBE was not providing a CUF, corrective action would be necessary to meet contract requirements and maintain federal funding.



As our example illustrates, agencies must regularly monitor contract activity, follow up when questions arise, and certify in writing that DBE firms are performing a commercially useful function.



The documents your agency gathers during your review are used to support the required written certification and any necessary compliance and enforcement actions. You can find links to additional tips and checklists for evaluating a CUF on the Federal-aid Essentials website.

Additional Resources

- Link to electronic version of Disadvantage Business Enterprise regulations for 49 CFR Part 26
<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr;sid=92d9b02a789cc3908c21c7fde2363b70;rgn=div5;view=text;node=49%3a1.0.1.1.20;idno=49;cc=ecfr>
- Official questions and answers covering Disadvantage Business Enterprise regulations for 49 CFR Part 26
<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-questions-and-answers-26>
- FHWA tips on evaluating a commercially useful function
<http://www.fhwa.dot.gov/federal-aidessentials/commusefunction.pdf>

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This Companion Resource is the script content for the video production of the same name.