

## District Disadvantaged Business Enterprise Coordinator (DDC) Standard Operating Procedures (SOP)

The Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program is authorized by 49 CFR Part 26. The DBE Program applies only to Highway Construction Contracts involving federal-aid funds. The Office of Civil Rights (OCR) has the overall responsibility of implementing and coordinating the Department's DBE Program. Annual and individual DBE project goals are established by the OCR for the Department's federal-aid highway construction contracts. DBE goals are recommended to local entities for non-TxDOT managed projects.

The OCR in conjunction with TxDOT districts will be responsible for monitoring and ensuring DBE program compliance. In an effort to streamline field coordination at the District level, the position of District DBE Coordinator (DDC) has been established. The DDC will play a vital role by assisting the OCR with the coordination and assurance that TxDOT's DBE program requirements are being met.

The District Engineer has the authority to delegate responsibilities assigned to the DDC or to other district personnel as necessary. The District Delegation of Signature Authority Document should reflect this accordingly.

### Project Records/Data Reporting

#### **DBE Commitment Package:**

- Upon approval of the commitments, the OCR will forward a copy of the DBE Commitment Package to the DDC. The DBE Commitment Package may include the following:
  - Cover Letter to Contractor
  - DBE Commitment Worksheet **Form SMS.2701**
  - DBE Commitment Agreement Form(s) **Form 4901**
  - DBE Material Supplier Commitment Agreement Form(s) **Form 4901-M/S**
  - DBE Trucking Commitment Agreement Form(s) with truck checklist **Form 4901-T**
- DDC is responsible for forwarding a copy of this package to the Area Office and the construction records auditor.

#### **Pre-construction Meetings:**

- DDC or other district representative should attend pre-construction meetings for all projects with DBE goals.
- DBE Program requirements will be discussed at each pre-construction meeting.

- Ensure DBE program requirements are documented in the pre-construction meeting minutes.

### **DBE Monthly Progress Report (MPR) Form 4903:**

- The DDC will review the DBE MPR for the following:
  - Verify DBE(s) listed on the commitment worksheet are included on the DBE MPR
  - Verify data is being recorded in the Subcontractor Monitoring System (SMS) utilizing the D1 Screen
  - Verify that the prime contractor has been contacted if a DBE listed on the commitment is not listed on the DBE MPR
  - Reconcile that the amount being reported as paid to date on the DBE MPR matches the amount paid to date in SMS
  - Verify that the amounts reported in SMS are validated according to the 4901-T. Adjustments may be required; verify actual payments to DBE haulers
  - Contact the prime contractor if the amounts paid to date do not reconcile
  - Verify that only 60% of the expenditures paid to a DBE regular dealer/material supplier is entered into SMS
  - Verify that Race Neutral DBE dollars have been reported on the DBE MPR and SMS

### **DBE Prime Contractor Payments to Non-DBE Subcontractors Form 4902:**

- Upon receipt from DBE Prime Contractors, DDC will submit to the OCR, Goal Setting and Data Reporting Branch, **Form 4902**, DBE Prime Contractor Payments to Non-DBE Subcontractors. This is a MPR detailing payments made by the DBE prime contractor to non-DBEs on the project. This money will be deducted by the OCR.

### **DBE Subcontractor Approval**

- DDC will verify that the subcontractor approval request quantities are not less than the commitment worksheet.
- DDC will ensure the prime contractor submits a copy of the executed subcontract agreement including all tiered DBE subcontracts.
- DDC will verify that the prime contractor has resolved any discrepancies.
- DDC will refer to the Texas Unified Certification Program (TUCP) directory and SMS to verify Race Neutral DBE subcontractors are certified to perform the items of work. If a discrepancy is found, address the issue with the prime contractor and OCR.
- DDC will identify and enter Race Neutral DBE(s) on the D1 Screen in SMS at the time the subcontractor approval request is approved.

- For any hauling firm being considered for Race Neutral Credit, DDC will perform vehicle registration verification before allowing DBE goal credit consideration.
- DDC will notify the prime contractor in writing if Race Neutral Credit is denied.

### DBE Subcontracts

- DDC will verify that all DBE subcontracts are available for review; refer to Special Provision 008-084.
- DDC will review the subcontract agreement for scope of work, federal requirements and DBE Certification at the time of subcontract execution.
- DDC will review the subcontract to verify that the total amount is equal to or greater than the Commitment Agreement Form.
- DDC will monitor the DBE subcontracts for compliance with the required documents that need to be physically incorporated into the subcontracts.
- DDC will direct non-compliance issues to the Area Engineer for enforcement. Non-compliance issues should be addressed within 30 days and copy OCR.

### DBE Substitution/Replacement

Prime Contractor submits request for substitution/replacement to the Area Office.

- DDC receives the written request and/or **Substitution Replacement Form 2228** with supporting documentation from the Area Office.
- DDC will contact the DBE firm being removed to verify the contractor's assertion that the DBE is unwilling or unable to perform the work. If contact is unsuccessful, document attempts. An "unable/unwilling" determination should be made by the district (i.e., the contractor's ability to negotiate a more advantageous contract with another subcontractor will **not** be considered a valid basis for the substitution).
- DDC must verify that the prime contractor does not count work on items being substituted toward the DBE goal prior to approval of the substitution.
- The DDC will verify the status of the replacement/substitution DBE by utilizing the TUCP directory and SMS. DDC should receive from the prime contractor the signed DBE Commitment Agreement Form for the certified DBE that will replace the removed DBE. The DBE Commitment Agreement Form must include the following:
  - The items of work to be performed
  - The quantity, unit of measure, unit price and total cost for each item of work to be performed or materials to be supplied

- The total amount of the DBE commitment
  - An explanation of the function to be performed if the DBE is a material supplier; allow 60% for regular dealer
  - A scanned or faxed copy, followed by the original with signatures of the prime contractor and the proposed DBE
  - The prime contractor will only receive goal credit consideration if the DBE is certified for the type of work being performed
  - For DBE hauling firms, the DBE Trucking Commitment Agreement **Form 4901-T** must be submitted
- The DDC forwards all supporting documentation to the OCR.
  - The DDC notifies the Prime Contractor and DBE by letter of the approval/denial of the substitution/replacement request, after coordinating with OCR.
  - The OCR will update the commitment worksheet and provides revised copy to DDC.
  - If the contractor fails to justify the substitution/replacement and/or the DBE contacted is willing and able to perform the work, the DDC will deny the request.
  - If the replacement does not address the total shortfall, a Good Faith Effort (GFE) should be submitted by the prime contractor for review; refer to DBE Special Provision 000-461(3) (c), contractor's responsibilities.

### Close Out Procedures

- DDC receives the DBE Final Report **Form SMS.4904**.
- DDC checks SMS D1 screen to ensure dollars match the report and that Race Neutral DBE(s) are included on the final report.
- DDC checks the SMS D2 Screen to ensure that the DBE goal percentage was met as shown on the commitment.
- If the goal and the commitment are met clear the project.
- DDC will e-mail OCR and attach a copy of the DBE Final Report, all DBE goal shortfalls will be reported to OCR with recommendations **prior** to close out.
- If the goal and/or the commitment are not met, the DDC will check the following:
  - Review final project estimate for DBE item under runs. Under runs may be justification for DBE goal shortfall
  - All GFE documentation
  - Commercially Useful Function (CUF) findings which resulted in non-compliance and denial/reduction in goal credit consideration

- If additional information is needed, the DDC will contact the Area Office and/or Contractor to determine why the goal and/or commitment were not met and request supporting documentation.
- Upon receipt of supporting documentation from the Area Office and/or Contractor, OCR will be contacted with proposed action. Then the DDC will determine if the goal shortfall is justified. If justified, the project should be cleared with comments using the SMS D2 screen.
- If DBE goal shortfall is not justified, the DDC must forward to the OCR. If it is determined no GFE was conducted by the prime contractor, the DBE goal shortfall will be elevated to the Assistant Executive Director for Support Operations.

### DBE Joint Checks Agreements

The DDC will be responsible for approving the use of joint check agreements in accordance with Department policies specified in Special Provision 000---461.

- DDC will request documentation that verifies the DBE or supplier has requested the use of joint checks.
- Upon approval, a copy of the **Joint Check Approval Form 2178** will be sent to the Area Office and the contractor by the DDC.
- DDC should monitor joint check usage by checking the material invoices for both the prime contractor and DBE company name.
- Audit copies of front and back of cancelled joint checks to verify proper endorsement.
- DDC should verify that the DBE subcontractor is responsible for ordering and scheduling delivery of the materials.

### Prompt Payment

The Prime Contractor is required to provide the Area Engineer the Prompt Payment Certification **Form 2177** (for Federal-Aid projects let after April 2006) to certify that all subcontractors and suppliers were paid from the previous month's payments and retainage was released for those whose work is complete. A final Prompt Payment Certification Form is required to complete the project records and must be received the month following final acceptance at the end of the project.

- DDC will provide assistance to area offices when prompt payment issues involve DBE subcontractors and suppliers.

## Commercially Useful Function (CUF)

The DDC will monitor CUF compliance reviews performed on DBE subcontractors, and DBE hauling firms. The DDC will perform a CUF Compliance Desk Audit on DBE Material Suppliers; see *Attachment 1*. This will include both Race Conscious and Race Neutral DBE(s). DDC will instruct project personnel concerning the proper steps to be utilized when conducting CUF Reviews.

The DDC or Area Office will conduct a minimum of one CUF Review for each construction DBE using the CUF Project Site Review **Form 2182**. Input CUF information into Subcontractor Generic Field in SiteManager. The initial review should be conducted when the DBE first begins work on the project or as soon as possible.

Refer to the attached CUF **Form 2182** for details concerning the actual review to be performed.

- DDC may utilize the following to determine whether or not CUF reviews have been performed:
  - SiteManager District-Wide CUF Report
  - DBE MPR and/or the SMS D1 screen to cross-check approved DBEs

DDC receives a copy of all CUF Project Site Review Forms and supporting documentation from the area office.

- DDC reviews the form for the following:
  - Accuracy
  - Completion
  - Comments which may require action
- DDC may contact the OCR for any needed assistance to determine if the DBE is not performing a CUF.
- DDC will notify OCR in the event an in depth CUF is needed prior to contacting the Prime.
- DDC will provide written notification to the prime contractor, DBE and OCR when it is determined that the DBE is not performing a CUF.
- The DBE will be given the opportunity to submit a written rebuttal to the district regarding non-compliance on CUF requirements within 15 calendar days of receipt of certified letter.

- DDC will deny DBE goal credit as a result of the finding by revising the amounts listed in SMS if necessary. DBE goal credit will be denied from the date it was determined that the DBE was not performing a CUF.

### CUF Review (DBE Hauling Firms)

DDC will instruct project personnel concerning the proper steps to be utilized when monitoring trucking firms to ensure DBE hauling firm is using trucks owned and leased by DBE.

- The following points need to be emphasized:
  - Project personnel should have a copy of the DBE Trucking Agreement Form with applicable lease agreements for the project.
  - Vehicles identified should match the commitment agreement by license plate numbers or other vehicle information numbers.
  - Notify DDC immediately if a truck performing DBE hauling items appears on the project and is not listed on the DBE commitment agreement. DDC will investigate and notify prime contractor and area office.
  - Document DBE company name on truck and unit number in DWR
  - Sample, DBE Trucking Credit Worksheet , See *Attachment 2*

### DBE Prime Contractor Procedures

Project personnel may perform CUF reviews as needed and document by hard copy and place in the project files.

*Note: SiteManager does not have the functionality to document CUFs performed on DBE Prime Contractors.*

### Local Government Contract Oversight

- DDC will ensure that all contract provisions involving the DBE program are followed.
- DDC may provide guidance to local governments on DBE Program compliance.
- DDC may provide recommendations to the District Director of Construction for DBE program enforcement.
- DDC will notify the OCR if enforcement is imposed.

- DDC will conduct periodic reviews (at least two periodic reviews or project site visits during the life of the project) to ensure compliance with DBE program requirements.
- DDC will monitor projects to ensure DBE goal are meet, and notify OCR of any goal shortfalls.
- At final inspection, ensure that all DBE program requirements, including goal satisfaction, have been accomplished; forward the DBE Final Report to the OCR.
- DDC will notify the OCR if further guidance is required.

For additional guidance, follow the Construction Contract Administration Manual, Chapter 16, Local Government Contract Oversight, and the Local Government Project Procedures (LGPP) Manual, Module 11 – Construction.

DDC SOP 3.10.doc – Microsoft Word



Attachment 1  
Commercially Useful Function  
(CUF) Audit Form



**TEXAS DEPARTMENT OF TRANSPORTATION  
COMMERCIALLY USEFUL FUNCTION (CUF) AUDIT FORM  
DISTRICT**

DBE Owner:

DBE Firm:

Date:

You are receiving this notice because you have recently undergone a CUF review and your firm has since been identified as a Material Supplier, regular dealer or manufacturer on federal-aid projects let after April 2006.

A CUF is project specific and deals with goal credit and counting. In accordance with 49 CFR Part 26.55, a DBE performs a CUF when it is responsible for the execution of the contract work and carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

Your firm has been identified as material supplier on the projects listed below. Please complete the questions and provide the documents requested on the following pages. You may make additional copies of the attached pages as necessary. Please provide this information within ten (10) business days of receiving this form. This request is granted by the authority of the federal DBE Program at 49 CFR Part 26.

If you have any questions concerning this matter or require further assistance please contact  
at ( ) - or ( ) - fax.

<b>Project ID</b>	<b>CSJ</b>	<b>County</b>	<b>Prime Contractor</b>

**\*Please return this form with your documents.**



TEXAS DEPARTMENT OF TRANSPORTATION  
CUF COMPLIANCE QUESTIONNAIRE  
DISTRICT

DBE Company Name:	
DBE Representative/Title:	
Project ID or CSJ:        -        -        Prime Contractor:	
1. Provide a description of the materials and/or supplies you will be supplying on the project?	
2a. Are you providing materials and/or supplies to be used on the project to a firm other than the prime contractor? Yes <input type="checkbox"/> No <input type="checkbox"/>	
b. If yes provide the name of the contractor and the primary contact person: _____	
c. Provide a copy of your subcontract agreement or purchase order.	
d. Provide a copy of your firm's price quotation to the prime or subcontractor for which you will supply materials and/or supplies.	
3a. Explain your firm's process for negotiating and/or obtaining prices for materials and supplies. _____ _____	
b. Who is responsible for the acquisition of the materials and/or supplies? Provide name(s) and title(s). _____	
c. Is the individual(s) listed above employed by your firm? Yes <input type="checkbox"/> No <input type="checkbox"/>	
4a. Provide the names of the suppliers from whom you are receiving materials and/or supplies. _____ _____ _____	
b. Provide a recent sample of invoices from each supplier/manufacturer listed above. <i>Attachment 1</i>	
5a. Approximately how many employees does your firm have? Full time                      Part-time	
b. Provide a copy of the latest filed TWC Quarterly Report.	

c. Provide the name and title of the individual(s) responsible for placing orders with the supplier(s). \_\_\_\_\_

d. Is the individual listed above a full time employee of your firm? Yes  No

If no provide name, title, and employer: \_\_\_\_\_

6a. Does your firm stock/inventory the materials required under the contract as a normal part of your business? Yes  No  Regular Dealers must provide a list of inventory.

b. Who at your firm is responsible for releasing the materials required under the contract?

Provide name(s) and title(s): \_\_\_\_\_

c. Provide copies of billing invoices from your firm to the prime contractor or subcontractor.

7a. Does your firm have the capability to deliver the materials or supplies? Yes  No

b. Who is responsible for delivering the materials and/or supplies to the project?

Provide all applicable agreements.  
\_\_\_\_\_

c. Provide a list of major equipment your firm utilizes in handling or altering the materials and/or supplies. \_\_\_\_\_

8. Did the prime contractor or another subcontractor assist you with obtaining the major equipment listed in 7c above or assist you with financing for the equipment? Yes  No

9a. How are your suppliers paid for the materials and/or supplies you are providing for this project?

Directly by the DBE  Directly by the prime or subcontractor  Paid via joint check

b. Provide copies of cancelled checks for materials, employees, and payments from the contractor.

10. Provide the following information regarding payments to your firm:

\$ Amount billed:

\$Amount paid to date:

\_\_\_\_\_  
Print Name of DBE Owner / Representative

\_\_\_\_\_  
Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

Attachment 2  
DBE Trucking Credit Worksheet

