

Counting DBE Participation

Training Overview

- Counting DBE Suppliers
- Commercially Useful Function (CUF)
- Entering DBE Payments

Counting DBE Suppliers – Why?

When utilizing DBE subcontractors, the total work performed by the DBE firm counts towards the project's DBE goal...

...however...

This is not the case for DBE suppliers...

Counting DBE Suppliers – Why?

DBE regulations, 49 Code of Federal Regulations (CFR) Part 26, dictate the various crediting potential for DBE suppliers

Counting DBE Suppliers – How?

DBE Suppliers Crediting Classifications =

1. DBE Manufacturers
2. DBE Regular Dealers
3. DBE Brokers (not a manufacturer or regular dealer)

Counting DBE Suppliers – How?

1. If the materials or supplies are obtained from a DBE **manufacturer**, count 100 percent of the cost of the material or supplies toward DBE goals.

A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the material, supplies, articles, or equipment required under the contract and the general character described by the specifications.

Counting DBE Suppliers – How?

2. If the material or supplies are purchased from a **DBE regular dealer**, count 60 percent of the material or supplies toward DBE goals.

For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

Counting DBE Suppliers – How?

3. For materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, but rather a **Broker**, count the entire amount of fees or commissions charged for assistance in the procurement of the material and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, towards DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

Counting DBE Suppliers – To Summarize...

- Supplies from DBE Manufacturer = 100% of cost of materials counted towards project DBE goal
- Supplies from DBE Regular Dealer = 60% of cost of materials counted towards project DBE goal
- Supplies from DBE Broker = Only the fee or commission the broker charges for the procurement counts towards the project DBE goal

Counting DBE Suppliers – Further Clarification

To assist in determining whether a supplier should be classified as a Regular Dealer vs. a Broker, consider the following two questions:

1. Does the firm “regularly” engage in the purchase and sale or lease, to the general public in the usual course of its business, of products of the general character involved in the contract and for which DBE credit is sought.

- and –

2. Is the role that the firm plays on the specific contract in question consistent with the regular sale or lease of the products in question

The answer to both questions **must** be “Yes” in order for the supplier to classify as a Regular Dealer

Counting DBE Participation - CUF Evaluation

- **Actual performance** dictates how a DBE firm's participation in a project is credited towards the project's goal
- Performance must be evaluated first-hand by a responsible official of grant recipient (or a consultant hired to administer the project on their behalf)
- Performance must be evaluated in conjunction with a Commercially Useful Function (CUF) evaluation

Counting DBE Participation– CUF Evaluation

Rule: Only count project expenditures paid to a DBE contractor, supplier, service provider, or trucker toward DBE goals if the DBE firm is performing a commercially useful function on that contract.

Counting DBE Participation– CUF Evaluation

1. 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.

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 materials itself.

Counting DBE Participation– CUF Evaluation

1. (continued) To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

Counting DBE Participation– CUF Evaluation

2. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.

In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBE's do not participate.

Counting DBE Participation– CUF Evaluation

3. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved you must presume that it is not performing a commercially useful function.

Counting DBE Participation– CUF Evaluation

4. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, The DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function.
5. Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

Counting DBE Participation– CUF Evaluation

- To assist you in making a CUF evaluation, the Department has developed the [Commercially Useful Function Report, EO-354AV](#).
- A CUF is to be completed for **all DBEs** working on federally assisted transportation projects, including subcontractors and trucking firms.
- The EO-354 must be completed within five days of a DBE performing on a federally assisted project.

Counting DBE Participation– CUF Evaluation

- If not all questions can be answered and/or all supporting documentation is not yet available, the form should be completed to the extent possible.

As soon as additional questions can be answered and/or supporting documentation becomes available, the form should be completed.

Counting DBE Participation– CUF Evaluation

- If all questions within the respective [EO-354AV](#) are marked/answered 'Yes' or 'N/A' then no further action is required. The form should be kept with the project records for auditing purposes.
- When any questions is answered 'No', then the form must be faxed as indicated on page 2 of the [EO-354AV](#). A 'No' answer does not necessarily mean there is a CUF violation; it only identifies that further review and analysis is needed.

Counting DBE Participation – CUF Evaluation

- Grantees are not expected to be experts in understanding the DBE program.
- Any further investigation and determination regarding CUF would be handled by PennDOT's Bureau of Equal Opportunity (BEO).
- BEO may follow up with the grantee to obtain additional information and/or supporting documentation.
- Once BEO has completed its investigation regarding a potential CUF violation, they would provide the grantee the final determination and if applicable any corrective action.

Counting DBE Participation – How to...

- Once the grantee has completed its evaluation of the DBE firm's performance, they must submit payment information in the DOTgrants system.
- Payments must be entered for all DBE firms performing on federally assisted transportation projects.
- Payments made to DBE firms above and beyond a project's DBE goal or payments made to DBE firms when no goal exists on the project must be entered. This DBE participation is known as race neutral. The more race neutral participation generated the less contract goals will be imposed.

Counting DBE Participation – How to...

- If payments were made to a DBE manufacturer or a DBE contractor/subcontractor, the full dollar value of the payment would be submitted.
- If the DBE firm was performing as a regular dealer then only 60% of the payment would be entered into DOTgrants.

Counting DBE Participation – How to...

- If the DBE firm was performing as a broker, only their fee or commission would be eligible towards the DBE goal. The grantee would multiply the cost of the material times the fee or commission (usually expressed as a percentage) in order to determine the portion of the payment that would count towards goal. The grantee would submit the payment information in DOTgrants according to that calculation.

i.e.: $\text{cost of materials} \times \text{fee/commission of broker} =$
portion of the payment counted towards project DBE goal

Counting DBE Participation – Remember...

If you have questions or concerns while completing the CUF form, you may contact the DBE/Title VI Division Chief, Dustin Hobaugh, at 717-783-1081 or dhobaugh@pa.gov to request further guidance.

Questions or concerns regarding entering payment information into DOTgrants can be directed to the Grants Section Manager, Gabby Trucco at 717-705-1223 or gtrucco@pa.gov.