

DBE 101

Internal Training for WSDOT and Local Programs

OFFICE OF EQUITY AND CIVIL RIGHTS
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April 1, 2025

Commercially Useful Function & Onsite Reviews



Commercially Useful Function (CUF) Audit: Why?

Purpose: A CUF audit seeks to determine the appropriate credit for work performed by the DBE and reduce fraud.



REFERENCES:

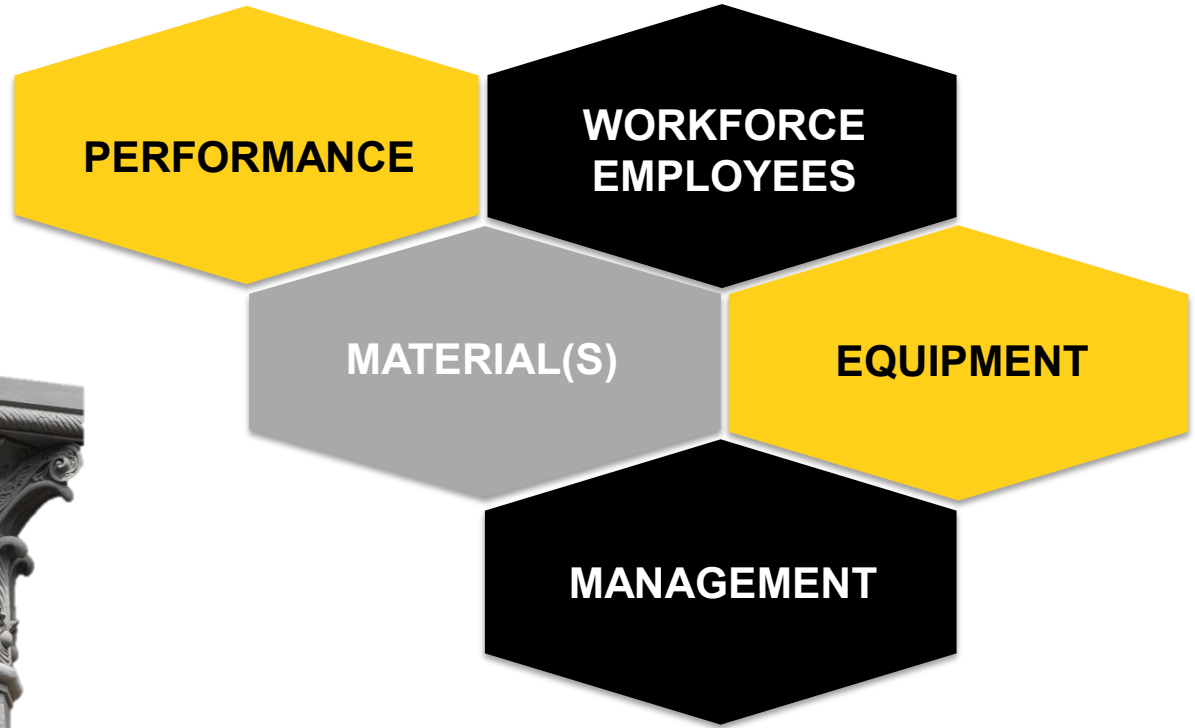
- **49 CFR 26.55(c) and GSP 1-07.11**

What is the Difference Between an On-Site Review (OSR) and a Commercially Useful Function (CUF) Review

WSDOT OECR uses the appropriate completed [Onsite Review \(OSR\) Form](#) (**272-051/272-051A** or **272-052/272-052A** or **272-064/272-064A**), along with relevant supporting documents, to determine whether the DBE performed a [Commercially Useful Function \(CUF\)](#) on a project.

On-Site Review (OSR)/Commercially Useful Function Determination

5 Components



Commercially Useful Function – What are the Requirements?

1. DBE firm(s) must perform CUF to receive countable participation
2. Prime contractor(s) are required to ensure DBE firm(s) perform CUF
3. DBE performs CUF when:
 - a. **Performs** with its own workforce, and **manages** and **supervises** the work of its employees,
 - b. **Orders** and **purchases materials** it uses from other than Prime or Prime's affiliate, and
 - c. **Owns** (or leases from other than Prime or Prime's affiliate) the **vehicles** and **equipment** it uses



Commercially Useful Function – What are the Requirements? *(continued)*

4. **GSP 1-07.11.OPT2.GR1** and **49 CFR 26.55(c)(1)** define and describe a CUF for all the different types of DBE subcontractors and their arrangements

Supplier Category Changes:

Manufacturer: 100%
participation – **NEW**

CLARIFICATION: A DBE that makes minor material modifications is not a manufacturer for goal attainment purposes

Regular Dealer: 60%
participation



Distributor: 40% participation – Permitted to drop-ship from manufacturers if the firm has a distributorship agreement or assumes all responsibility for the materials after point of origin.

On-Site Review (OSR):

When to do it?

- A. When the DBE performs at the peak period of its work
- B. Any time there is a change in the DBE's work compared to the work scope on the RTS and in its subcontract
- C. When there is a change in the DBE performing the work (e.g., substitution of a DBE firm)
- D. Multi-year or construction season projects, a new OSR is required for each DBE performing contract work each year
- E. Any time the DBE performs work as a first-tier subcontractor, or as a lower tier to Subprime(s) on the project, **including** when the DBE subcontracts with different entities on the project (i.e., the DBE is a first-tier sub to the Prime **and** as a lower-tier subcontractor to one or more Sub Primes)
- F. In response to a concern or allegation of abuse

Commercially Useful Function

How is it determined?



It's a process...

On-Site Review (OSR):

Which DBE On-site Review Form Should the Inspector Use?

272-051/272-051A DBE

On-Site Review
(OSR)/Commercially
Useful Function(CUF)
/Compliance Evaluation
Form – Service
Provider form is used
for:

1. Architect &
Engineering Firms
2. Professional
Services Firms

272-051/272-051A DBE

On-Site Review (OSR) /
Commercially Useful
Function(CUF)
/Compliance Evaluation
Form – Service Provider
form is used for:

1. Labor Only (i.e.,
traffic control)
2. Furnish & Install (i.e.,
concrete work)
3. Owner-Operator (i.e.,
trucking)

272-051/272-051A DBE

On-Site Review (OSR) /
Commercially Useful
Function(CUF)
/Compliance Evaluation
Form – Service Provider
form is used for:

1. Manufacturers
2. Regular Dealers
3. Distributors **(NEW)**
4. Packagers, Brokers,
Manufacturer's
Representatives,
Transaction
Facilitators

CUF Supporting Documents for OSRs



Supporting Documents for Form #272-051/272-051A DBE
Commercially Useful Function (CUF)/Compliance Evaluation Form
– **Service Provider (Architect & Engineering/Professional
Services Firms)**

CUF Supporting Documents

1. The Executed DBE Subconsultant Agreement, if not sent to Region OECR mailbox.
2. Invoices from DBE subconsultant for work performed on the date of the OSR.
3. Copies of all plans or work produced by the DBE for this project
4. Any change orders affecting the **committed** DBE subconsultant's work.
5. Prime Consultant's and DBE Subconsultant's affirmed internal payroll documents for all personnel working on this project.
6. Documentation of any COA DBE work that was terminated by the Prime and performed without WSDOT's or the Local Agency's prior written consent, if applicable.

Approved Request to Sublet (RTS) for the DBE, Form 421-012

Per Standard Specification

1-08.1(3) Subcontractor Approval:

“Work shall not be subcontracted at any tier unless the Engineer approves **in advance** and **in writing**. Each request to subcontract shall be submitted on WSDOT Form 421-012, Request to Sublet.”

Washington State Department of Transportation

Request to Sublet Work

(Program Certification - Check all that apply)

☐ Disadvantaged Business (DBE) ☐ Minority Business Enterprise (MBE) ☐ Veteran Owned Business (VOB) ☐ Public Works Small Business (PW/SBE) ☐ Small Business Enterprise (SBE)

☐ Federal Small Business (FSBE) ☐ Woman Business Enterprise (WBE)

Prime Contractor: _____ Statewide Vendor Number: _____ State Contract Number: _____

Project Title: _____ Request Number: _____

Verified that subcontractor does not have federal purchasing exclusions using www.SAM.gov

Approval is Requested to Sublet the Following Described Work to:

☐ Lower Tier Subcontractor ☐ Subcontractor ☐ United Business Identifier (UBI) ☐ Statewide Vendor Number or Federal Employer I.D. Number

Lower Tier Subcontractor/Subcontractor Name: _____

Address: _____ Telephone Number: _____

City: _____ State: _____ Zip Code: _____ Estimated Starting Date: _____

If Lower Tier Subcontractor, Name of Hiring Subcontractor: _____ Fed ID or Vendor # of Hiring Subcontractor: _____ Request to Sublet # of Hiring Subcontractor: _____

Item No.	Partial or Complete	Item Description	Work Description (if partial)	Amount

Total Sublet Amount: \$ 0.00

I understand and will ensure that the subcontractor will comply fully with the plans and specifications under which this work is being performed.

Prime Contractor Representative and Title: _____ Date: _____

Department of Transportation Use Only

Percent of Total Contract: _____

This Request: _____ %

Previous Requests: _____ %

Sublet to Date: _____ %

Project Engineer or Designee: _____ Date: _____

☐ Approved

DOT Form 421-012 Revised 12/2014
• Previous Versions Obsolete •

Save Electronically - Do Not Print

Supporting Documents for Form **#272-052/272-052A** DBE On-Site Review (OSR) Documentation and Process –
Subcontractors

CUF Supporting Documents| *Furnish and Install Subcontractors*

1. Approved *Request to Sublet* for the DBE **Form 421-012**
2. The executed DBE subcontract if not sent to Region OECR mailbox
3. *Invoices* from DBE for materials/supplies purchased for the project and proof of DBE's payment
4. *Inspector's Daily Reports* (IDRs) for the date of the OSR
5. Photos, if available
6. Lease/rental/ownership documents from the DBE firm for vehicles and/or major equipment used on the projects
7. Prime **and** DBE *Certified Payrolls* (***from Local Agency Project Offices only, not WSDOT PEOs***)
8. Any *Change Orders*, if Condition of Award (COA) DBE
9. Any approved *Joint Check Form* **272-053** between the Prime, DBE, and a joint payee

CUF Supporting Documents | *Labor Only Subcontractors*

1. Approved *Request to Sublet* for the DBE **Form 421-012**
2. The executed DBE subcontract if not sent to Region OECR mailbox
3. Vehicle lease/rental/ownership documents from the DBE firm
4. *Inspector's Daily Reports* (IDRs) for the date of the OSR
5. Prime **and** DBE *Certified Payrolls* (**from Local Agency Project Offices only, not WSDOT PEOs**)
6. If DBE is performing temporary traffic control, include full week's worth of *Daily Traffic Control Summaries* that match to their *Certified Payrolls*



CUF Supporting Documents | Owner-Operator Subcontractors

1. Approved *Request to Sublet* for the DBE **Form 421-012**
2. Vehicle Registrations
3. Delivery and Scale Tickets for date of OSR
4. Invoices for DBE's work on date of OSR
5. *Truck Unit Listing Log* **Form 350-077** for OSR Date
6. Executed DBE subcontract or similar agreement (i.e., work order) if not sent to Region OECR mailbox
7. Prime **and** DBE *Certified Payrolls* for period covering date of OSR (**for Local Agency Projects only**)



Supporting Documents for Form **#272-064/272-064A** DBE
Commercially Useful Function On-Site Review for Supplier
Categories: **Regular Dealers/Manufacturers/Distributors**

CUF Supporting Documents| *Regular Dealers/Manufacturers/Distributors*

1. Approved *Request to Sublet* for the DBE **Form 421-012** if applicable
2. The executed *Purchase Order* or *Material/Supply Agreement*
3. Delivery Tickets and Bills of Lading
4. Prime **and** DBE *Certified Payrolls* covering the date of OSR (**Regular Dealers only**)
 - **Manufacturers** [49 CFR 26.55(e)(1)]
 - **Regular Dealers** [49 CFR 26.55(e)(2)]
 - **Distributors** [49 CFR 26.55(e)(3)]
5. Vehicle Registrations and Equipment titles/lease/rental agreements
6. Invoices

Then what?

All the relevant supporting documentation should be sent, together with the completed OSR form, by the PEO or the Local Agency (or the Local Agency's designee) to the appropriate Regional OECR mailbox (list will be provided at the end of this training).

Result

This information is then used by OECR to evaluate the Commercially Useful Function (CUF) of the DBE and make a determination as to whether the Prime Contractor will (or will not) get credit for the project, for that DBE's work, services, or supplies.



CUF Supporting Documents | *RED FLAGS*

- DBE Owner lacking expertise, experience, or equipment
- Employee(s) on payrolls of both Prime and DBE
- Employee interviewed for OSR is not on DBE's payroll
- Business names on equipment covered with paint or magnetic signs
- Orders and payment for supplies not made by DBE
- Prime always uses same DBE
- Work performed by non-DBE employees
- Prime contractor facilitated purchase of DBE-owned business
- DBE owner never present at job sit
- Prime (or a non-DBE employee) supervises DBE employee(s)
- Absence of written subcontracts
- Financial agreements between Prime and DBE (other than the subcontract or approved Joint Check)
- Joint bank accounts (Prime/DBE)

1. DBE must perform at least **30%** of the work of its subcontract with its own forces.
2. If the DBE subcontracts out more than the allowable 70% of its work (even if to another DBE) the Prime **cannot count any** of the DBE's participation.
3. If a DBE subcontracts a portion of its contract out to a lower tier non-DBE, it will not receive countable participation for the amount of the lower-tier subcontract.
4. Be sure all supporting documents **relate to the date of, or period covering the date of**, the OSR and that they are sent **with** the completed OSR form to OECR.



Resources

Regional Map



Resources

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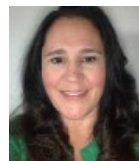
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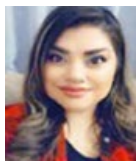
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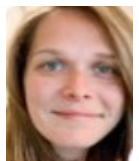


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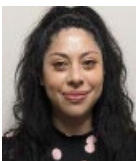


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