



New Jersey Department of Transportation Division of Civil Rights & Affirmative Action



Pathway to Civil Rights Compliance on Federally Assisted & State Funded Contracts Commercially Useful Function

Contractor's Checklist - Key Questions to Ask the DBE, ESBE or SBE

An element that can impact the ability of the prime contractor to meet its contract goal is commercially useful function (CUF). A prime contractor and NJDOT receive credit toward the goal (contract and overall) only when a DBE, ESBE or SBE working on a contract performs a CUF.

It is the prime contractor's responsibility to ensure the firm is performing a CUF.

A DBE, ESBE or SBE generally performs work on a contract either as a prime or subcontractor, a trucker, a regular dealer, a manufacturer or a service provider.

Each of these categories is evaluated differently when determining whether the firm has performed a CUF, there is one guiding principle that must be followed, the firm must be:

"Responsible for execution of the work of the contract or a distinct element of the work...by actually performing, managing, and supervising the work involved."

Key Factors to Analyze when Determining whether CUF is being performed:

- Evaluation of the amount of work subcontracted & whether it is consistent with normal industry practice
- Whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal
- With respect to materials, who negotiated the price of the material; who determined the quality & quantity, who ordered it, and who paid for it?
- Whether the firm's 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 participation.

Five Distinct Operations to Consider to Determine Whether CUF is Being Performed

1. **Management** – Schedule work operations; order equipment & materials; prepare & submit certified payrolls; hire and fire employees
2. **Workforce** – Keep a regular workforce; perform work with employees normally employed by and under DBE, ESBE or SBE control, and not the prime or affiliates. All work performed by workforce under DBE, ESBE or SBE control, with a **minimum** of 30% of the work performed by the DBE, ESBE or SBE's regular employees, or those hired by the DBE, ESBE or SBE for the project from a source such as a labor union.
3. **Equipment** – May lease **specialized** equipment from a contractor (excluding the prime & affiliates) if consistent with normal industry practice; the DBE, ESBE or SBE provides operator for non-specialized equipment, and is responsible for all payroll requirements.
4. **Materials** – When DBE, ESBE or SBE has a furnish and install contract, they must perform these four functions: negotiate price; determine quality & quantity of materials; order materials; pay for the materials themselves.
5. **Performance** – DBE, ESBE or SBE must be responsible for the performance, management and supervision of a distinct element of the work, in accordance with normal industry practice (except where such practices are inconsistent with the regulations).



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- Is there a written executed agreement for the firm to perform a distinct element of work?

Management:

- Who does your on-site representative report to?
- Has this individual ever shown up on any other contractor's payroll?
- Has your owner been present on the jobsite?

Workforce:

- Who prepares the firm's certified payroll?
- Who does your on-site representative contact for hiring, firing or to modify the contract due to site condition changes or change orders?
- Do the firm's employees appear on anyone else's payroll on this contract?

Equipment:

- Take note of the major self-propelled (engine) equipment used by the DBE, ESBE or SBE. Does the equipment belong to your firm? Is it owned or leased?
- If leased, is there an agreement identifying the terms and parties? Who signed the lease? (Is it the DBE, ESBE or SBE owner?)
- Does the equipment have the firm's markings or emblems?
- Is the equipment under the firm's direct supervision?
- Is the operator of the leased equipment an employee of the firm?
- If the equipment is leased, is the payment for the equipment deducted from the work performed?

Materials:

- Is the work to be performed by your firm "furnish and install" work?
- Who makes arrangements for delivery of materials?
- Who are the material invoices made out to?
- Who scheduled delivery of materials?
- In whose name are materials shipped?
- Who actually delivered the materials?
- Where specifically were the materials delivered to?

Performance:

- Do you have control over methods of work on your contract items?
- Do you actually schedule work activities, material deliveries and other related actions required for execution of your work?
- Will anyone other than your firm be performing any amount of work specified in your contract?
- If so, whom? Do you have an executed agreement with that person/firm?



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Trucking:

- Do the trucks you use belong to you or your firm?
- Are you supplementing your fleet?
- If so, is/are the leased truck(s) from an established equipment leasing business open to the general public?
- If the trucks are leased, do you have a formal lease identifying the terms and parties?
- Do/does the leased truck(s) display your firm's name and identification number?
- Is there an approved subcontract? If so, who are the parties?
- Do you submit certified payrolls?

Regular Dealers:

- Are you an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question?
- Do you own, operate, or maintain 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?
- What is the address of the store, warehouse or other establishment where the materials are located?
- Who is delivering the materials?
- Where will the materials be delivered to? What specific location/address?
- Will the trucks making the delivery belong to your firm?
- Are you supplementing your fleet?
- If so, is/are the leased truck(s) from an established equipment leasing business open to the general public?
- If the trucks are leased, do you have a formal lease identifying the terms and parties?
- Do/does the leased truck(s) display your firm's name and identification number?
- For dealers in bulk items such as petroleum products, steel, cement, gravel, stone, or asphalt, do you own and operate distribution equipment required for those products?
- Is the distribution equipment used to deliver the product, owned or leased, long term by your firm?
- For bulk items, where does the material come from? Do you have a distribution agreement?

Manufacturers:

- Is the business's primary function to manufacture construction products?
- Does the business stock the product altered for this project as a normal stock item?
- Do you control the quality of the materials?
- Do you purchase the raw material used in the plant?