

To Whom It May Concern:

TRAFFIC CONTROL SERVICES & COMMERCIALLY USEFUL FUNCTION

Date: July 12, 2016

Purpose

This Construction Bulletin provides guidance for evaluating if traffic control work performed by a Disadvantaged Business Enterprise (DBE) is a commercially useful function (CUF) and eligible for participation under the terms established in 49 CFR §26.55.

Guidance

Under the terms established in 49 CFR §26.55, a DBE firm performs a CUF when it is “*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.*” The intent is that the subcontracting experience is meaningful and independent in the best interest of developing the DBE as a subcontractor. The DBE must be in responsible control of their work (i.e., money, materials, personnel and equipment). WSDOT only receives DBE credit towards meeting its overall program goal for work that qualifies as a CUF. The prime contractor only receives DBE credit when the DBE is performing a CUF.

The following is guidance specific to brokering, flagging and traffic control services as these are the most common categories of DBE traffic control encountered:

Brokering

Consideration as a CUF in the capacity of brokering is limited.

DBE Credit: allowed for the reasonable fees or commission charged by a DBE broker or a DBE behaving in the manner of a broker. To be considered reasonable, the fee must not be excessive as compared with fees customarily paid for similar services. Brokering will be identified on the DBE Utilization Certification form.

Flagging

When the DBE traffic control company provides “Flagging” as specified in the description of work in the DBE Utilization Certification:

- A closer examination of CUF is warranted. The contract specifies, “*In order for a DBE traffic control company to be considered to be performing a CUF, the DBE must be in control of its work inclusive of supervision. The DBE shall employ a Traffic Control Supervisor who is directly involved in the management and supervision of the traffic control employees and services.*”
- The project Traffic Control Supervisor (TCS) must be employed by the DBE, be under the direct control of the DBE and be responsible for managing and supervising the flagging operation and perform the duties required in Section 1-10.2(1)B.
- All flaggers must be employed by the DBE
- The DBE firm must provide the flagging equipment (e.g. paddles, hard hats, vests)

DBE Credit: when providing both flaggers and TCS, the value of the labor is eligible as DBE credit. Supplying other materials or equipment is not a requirement for the flagging labor to be a CUF.

Traffic Control Services

When the DBE traffic control company provides “Traffic Control Services” as specified in the description of work in the DBE Utilization Certification:

- The project TCS must be employed by the DBE and be responsible for managing and supervising the traffic control work and operation on a daily basis.
- The TCS must perform all the duties in Section 1-10.2(1)B.
- The DBE traffic control company must supply the traffic control items involved in their work such as cones, barrels, signs, etc.
- The DBE traffic control company may not lease/use equipment from the prime. Any use of the prime’s equipment will bring the entire DBE effort into question with regard to performing a CUF.
 - The prime may provide and operate the Transportable Attenuators and Portable Changeable Message Signs(PCMS) so long as no credit is taken for supplying or operating them
 - Intentions for the prime to provide and operate attenuators or PCMS’s must be clearly identified in the commitment and costs shown in the bid item breakdown.

DBE Credit: when providing all traffic control services verified as a CUF, the entire subcontracted amount may be credited. When attenuators or PCMS’s are owned/leased by the prime, no credit is allowed for their supply or operation.

NOTE:

- Practices that knowingly violate CUF criterion may not be excused by not taking credit for that portion of the work. Discovery of such a violation will likely result in none of a DBE’s work being eligible for DBE credit.
- After the DBE traffic control firm has met their obligation under their subcontract and total DBE commitment, the prime contractor may utilize the DBE subcontractor for additional work. If the prime violates CUF criterion in performing this added work, they may no longer report any of the payments made to the subcontractor as DBE credit.

Additional Information

If you have questions about these changes, please contact the Project Engineer.