



## Tips on Evaluating a Commercially Useful Function

Of all the many elements in the DBE program there is one that can have the most detrimental impact on the ability of the prime contractor to meet its contract goal as well as the ability of a recipient to meet its overall goal. This element is commonly referred to as Commercially Useful Function or “CUF”. Both the prime contractor and INDOT receive credit toward the DBE goal (contract and overall) only when a DBE working on a contract performs a CUF. DBEs generally perform work on a contract either as a subcontractor, a trucker, a manufacturer, a regular dealer, or a broker. While each of these categories is evaluated differently when determining whether the DBE has performed a CUF and for counting credit, there is one guiding principle that must be followed. 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 prime contractor is ultimately responsible for ensuring that a DBE performs a CUF. Failure of a DBE to perform a CUF can result in various actions being taken by INDOT (i.e., denying or limiting credit towards the contract goal; requiring the prime to make good faith efforts to replace any lost DBE participation; and withholding progress payments). Certification and CUF are separate and distinct issues. Certification decisions address the nature of a firm's ownership and structure while CUF primarily concerns the role a firm has played in a particular transaction. Even if the certification process has identified the DBE's ability to perform in a particular capacity, it is important to review and determine what and how a DBE actually performs during the performance of the contract.