

WAC 468-19-020 Commercially useful function (CUF). (1) A MWBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a CUF, the MWBE 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 material itself. Paying for materials are subject to the joint check rules established herein.

(2) A MWBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of MWBE participation.

(3) If a MWBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, or the MWBE 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, WSDOT will presume it is not performing a commercially useful function.

(4) When a MWBE is presumed not to be performing a CUF pursuant to subsection (3) of this section, the MWBE may present evidence to rebut this determination. It may be determined that the firm is performing a CUF given the type of work involved and normal industry practices.

(5) The following factors are used in determining whether a MWBE trucking company is performing a commercially useful function:

(a) The MWBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting MWBE goals.

(b) The MWBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(c) The MWBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(d) The MWBE may lease trucks from another MWBE firm, including an owner-operator who is certified as a MWBE. The MWBE who leases trucks from another MWBE receives credit for the total value of the transportation services the lessee MWBE provides on the contract.

(e) The MWBE may also lease trucks from a non-MWBE firm, including from an owner-operator. The MWBE that leases trucks equipped with drivers from a non-MWBE is entitled to credit for the total value of transportation services provided by non-MWBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by MWBE-owned trucks or leased trucks with MWBE employee drivers. Additional participation by non-MWBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the WSDOT office of equity and civil rights.

(i) The MWBE may lease trucks without drivers from a non-MWBE truck leasing company. If the MWBE leases trucks from a non-MWBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

(ii) For purposes of this paragraph, a lease must indicate that the MWBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the MWBE, so long as the lease gives

the MWBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the MWBE.

[Statutory Authority: RCW 39.04.155, 43.19.727, 47.01.101, 47.28.030, and chapter 39.19 RCW. WSR 24-05-030, § 468-19-020, filed 2/12/24, effective 3/14/24.]