



**Washington State
Department of Transportation**

Disadvantaged Business Enterprise Program Participation Plan

M 3142

Revised December 15, 2023
In Response to 49 CFR Part 26, et al

**Washington State Department of Transportation
Office of Equal Opportunity**

ENGLISH

Title VI Notice to Public

It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equity and Civil Rights (OECR). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OECR's Title VI Coordinator at (360) 705-7090.

Americans with Disabilities Act (ADA) Information

This material can be made available in an alternate format by emailing the Office of Equity and Civil Rights at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

ESPAÑOL

Notificación de Título VI al Público

La política del Departamento de Transporte del Estado de Washington (Washington State Department of Transportation, WSDOT) es garantizar que ninguna persona, por motivos de raza, color u origen nacional, según lo dispuesto en el Título VI de la Ley de Derechos Civiles de 1964, sea excluida de la participación, se le nieguen los beneficios o se le discrimine de otro modo en cualquiera de sus programas y actividades. Cualquier persona que considere que se ha violado su protección del Título VI puede presentar una queja ante la Oficina de Equidad y Derechos Civiles (Office of Equity and Civil Rights, OECR) del WSDOT. Para obtener más información sobre los procedimientos de queja del Título VI o información sobre nuestras obligaciones contra la discriminación, comuníquese con el coordinador del Título VI de la OECR al (360) 705-7090.

Información de la Ley sobre Estadounidenses con Discapacidades (ADA, por sus siglas en inglés)

Este material puede estar disponible en un formato alternativo al enviar un correo electrónico a la Oficina de Equidad y Derechos Civiles a wsdotada@wsdot.wa.gov o llamando a la línea sin cargo 855-362-4ADA(4232). Personas sordas o con discapacidad auditiva pueden solicitar la misma información llamando al Washington State Relay al 711.

한국어 - KOREAN

제6조 관련 공지사항

워싱턴 주 교통부(WSDOT)는 1964년 민권법 타이틀 VI 규정에 따라, 누구도 인종, 피부색 또는 출신 국가를 근거로 본 부서의 모든 프로그램 및 활동에 대한 참여가 배제되거나 혜택이 거부되거나, 또는 달리 차별받지 않도록 하는 것을 정책으로 하고 있습니다. 타이틀 VI에 따른 그/그녀에 대한 보호 조항이 위반되었다고 생각된다면 누구든지 WSDOT의 평등 및 민권 사무국(OECR)에 민원을 제기할 수 있습니다. 타이틀 VI에 따른 민원 처리 절차에 관한 보다 자세한 정보 및/또는 본 부서의 차별금지 의무에 관한 정보를 원하신다면, (360) 705-7090으로 OECR의 타이틀 VI 담당자에게 연락해주시십시오.

미국 장애인법(ADA) 정보

본 자료는 또한 평등 및 민권 사무국에 이메일 wsdotada@wsdot.wa.gov 을 보내시거나 무료 전화 855-362-4ADA(4232)로 연락하셔서 대체 형식으로 받아보실 수 있습니다. 청각 장애인은 워싱턴주 중계 711로 전화하여 요청하실 수 있습니다.

русский - RUSSIAN

Раздел VI Общественное заявление

Политика Департамента транспорта штата Вашингтон (WSDOT) заключается в том, чтобы исключить любые случаи дискриминации по признаку расы, цвета кожи или национального происхождения, как это предусмотрено Разделом VI Закона о гражданских правах 1964 года, а также случаи недопущения участия, лишения льгот или другие формы дискриминации в рамках любой из своих программ и мероприятий. Любое лицо, которое считает, что его средства защиты в рамках раздела VI были нарушены, может подать жалобу в Ведомство по вопросам равенства и гражданских прав WSDOT (OECR). Для дополнительной информации о процедуре подачи жалобы на несоблюдение требований раздела VI, а также получения информации о наших обязательствах по борьбе с дискриминацией, пожалуйста, свяжитесь с координатором OECR по разделу VI по телефону (360) 705-7090.

Закон США о защите прав граждан с ограниченными возможностями (ADA)

Эту информацию можно получить в альтернативном формате, отправив электронное письмо в Ведомство по вопросам равенства и гражданских прав по адресу wsdotada@wsdot.wa.gov или позвонив по бесплатному телефону 855-362-4ADA(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.(4232). Глухие и слабослышащие лица могут сделать запрос, позвонив в специальную диспетчерскую службу штата Вашингтон по номеру 711.

tiếng Việt – VIETNAMESE

Thông báo Khoản VI dành cho công chúng

Chính sách của Sở Giao Thông Vận Tải Tiểu Bang Washington (WSDOT) là bảo đảm không để cho ai bị loại khỏi sự tham gia, bị từ khước quyền lợi, hoặc bị kỳ thị trong bất cứ chương trình hay hoạt động nào vì lý do chủng tộc, màu da, hoặc nguồn gốc quốc gia, theo như quy định trong Mục VI của Đạo Luật Dân Quyền năm 1964. Bất cứ ai tin rằng quyền bảo vệ trong Mục VI của họ bị vi phạm, đều có thể nộp đơn khiếu nại cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng (OECR) của WSDOT. Muốn biết thêm chi tiết liên quan đến thủ tục khiếu nại Mục VI và/hoặc chi tiết liên quan đến trách nhiệm không kỳ thị của chúng tôi, xin liên lạc với Phó Trí Viên Mục VI của OEER số (360) 705-7090.

Thông tin về Đạo luật Người Mỹ tàn tật (Americans with Disabilities Act, ADA)

Tài liệu này có thể thực hiện bằng một hình thức khác bằng cách email cho Văn Phòng Bảo Vệ Dân Quyền và Bình Đẳng wsdotada@wsdot.wa.gov hoặc gọi điện thoại miễn phí số, 855-362-4ADA(4232). Người điếc hoặc khiếm thính có thể yêu cầu bằng cách gọi cho Dịch vụ Tiếp âm Tiểu bang Washington theo số 711.

العربية – ARABIC

العنوان 6 إشعار للجمهور

تتمثل سياسة وزارة النقل في ولاية واشنطن (WSDOT) في ضمان عدم استبعاد أي شخص، على أساس العرق أو اللون أو الأصل القومي من المشاركة في أي من برامجها وأنشطتها أو الحرمان من الفوائد المتاحة بموجبها أو التعرض للتمييز فيها بخلاف ذلك، كما هو منصوص عليه في الباب السادس من قانون الحقوق المدنية لعام 1964. ويمكن لأي شخص يعتقد أنه تم انتهاك حقوقه التي يكفلها الباب السادس تقديم شكوى إلى مكتب المساواة والحقوق المدنية (OEER) التابع لوزارة النقل في ولاية واشنطن. للحصول على معلومات إضافية بشأن إجراءات الشكاوى وأو بشأن التزاماتنا بعدم التمييز بموجب الباب السادس، يرجى الاتصال بمنسق الباب السادس في مكتب المساواة والحقوق المدنية على الرقم (360) 705-7090.

معلومات قانون الأمريكيين ذوي الإعاقة (ADA)

يمكن توفير هذه المواد في تنسيق بديل عن طريق إرسال رسالة بريد إلكتروني إلى مكتب المساواة والحقوق المدنية على wsdotada@wsdot.wa.gov أو عن طريق الاتصال بالرقم المجاني: (4232) 855-362-4ADA. يمكن للأشخاص الصم أو ضعاف السمع تقديم طلب عن طريق الاتصال بخدمة Washington State Relay على الرقم 711.

中文 – CHINESE

《权利法案》Title VI公告

<華盛頓州交通部(WSDOT)政策規定，按照《1964年民權法案》第六篇規定，確保無人因種族、膚色或國籍而被排除在WSDOT任何計畫和活動之外，被剝奪相關權益或以其他方式遭到歧視。如任何人認為其第六篇保護權益遭到侵犯，則可向WSDOT的公平和民權辦公室(OEER)提交投訴。如需關於第六篇投訴程式的更多資訊和/或關於我們非歧視義務的資訊，請聯絡OEER的第六篇協調員，電話(360) 705-7090。

《美国残疾人法案》(ADA)信息

可向公平和民權辦公室發送電子郵件wsdotada@wsdot.wa.gov或撥打免費電話 855-362-4ADA(4232)，以其他格式獲取此資料。听力丧失或听觉障碍人士可拨打711联系Washington州转接站。

Af-soomaaliga – SOMALI

Ciwaanka VI Ogeysiiska Dadweynaha

Waa siyaasada Waaxda Gaadiidka Gobolka Washington (WSDOT) in la xaqiijiy in aan qofna, ayadoo la cuskanaayo sababo la xariira isir, midab, ama wadanku kasoo jeedo, sida ku qoran Title VI (Qodobka VI) ee Sharciga Xaquuqda Madaniga ah ah oo soo baxay 1964, laga saarin ka qaybgalka, loo diidin faa'iidooyinka, ama si kale loogu takoorin barnaamijyadeeda iyo shaqooyinkeeda. Qof kasta oo aaminsan in difaaciisa Title VI la jebiyay, ayaa cabasho u gudbin kara Xafiiska Sinaanta iyo Xaquuqda Madaniga ah (OEER) ee WSDOT. Si aad u hesho xog dheeraad ah oo ku saabsan hanaannada cabashada Title VI iyo/ama xogta la xariirta waajibbaadkeena ka caagan takoorka, fadlan la xariir Iskuduwaha Title VI ee OEER oo aad ka wacayso (360) 705-7090.

Macluumaadka Xeerka Naafada Marykanka (ADA)

Agabkaan ayaad ku heli kartaa qaab kale adoo iimeel u diraa Xafiiska Sinaanta iyo Xaquuqda Madaniga ah oo aad ka helayso wsdotada@wsdot.wa.gov ama adoo wacaaya laynka bilaashka ah, 855-362-4ADA(4232). Dadka naafada maqalka ama maqalku ku adag yahay waxay ku codsan karaan wicitaanka Adeega Gudbinta Gobolka Washington 711.

If you have difficulty understanding English, you may, free of charge, request language assistance services by calling 360-705-7050 or email us at: ITDSerivceDesk@wsdot.wa.gov

ESPAÑOL – SPANISH

Servicios de traducción

Aviso a personas con dominio limitado del idioma inglés: Si usted tiene alguna dificultad en entender el idioma inglés, puede, sin costo alguno, solicitar asistencia lingüística con respecto a esta información llamando al 360-705-7050, o envíe un mensaje de correo electrónico a: ITDSerivceDesk@wsdot.wa.gov

한국어 – KOREAN

번역 서비스

영어로 소통하는 것이 불편하시다면 360-705-7050, 으로 전화하시거나 다음 이메일로 연락하셔서 무료 언어 지원 서비스를 요청하실 수 있습니다: ITDSerivceDesk@wsdot.wa.gov

русский – RUSSIAN

Услуги перевода

Если вам трудно понимать английский язык, вы можете запросить бесплатные языковые услуги, позвонив по телефону 360-705-7050, или написав нам на электронную почту: ITDSerivceDesk@wsdot.wa.gov

tiếng Việt – VIETNAMESE

các dịch vụ dịch thuật

Nếu quý vị không hiểu tiếng Anh, quý vị có thể yêu cầu dịch vụ trợ giúp ngôn ngữ, miễn phí, bằng cách gọi số 360-705-7050, hoặc email cho chúng tôi tại: ITDSerivceDesk@wsdot.wa.gov

العَرَبِيَّةُ – ARABIC

خدمات الترجمة

إذا كنت تجد صعوبة في فهم اللغة الإنجليزية، فيمكنك مجاناً طلب خدمات المساعدة اللغوية عن طريق الاتصال بالرقم 360-705-7050 أو مراسلتنا عبر البريد الإلكتروني : ITDSerivceDesk@wsdot.wa.gov

中文 – CHINESE

翻译服务

如果您难以理解英文，则请致电：360-705-7050，或给我们发送电子邮件：ITDSerivceDesk@wsdot.wa.gov，请求获取免费语言援助服务。

Af-soomaaliga – SOMALI

Adeegyada Turjumaada

Haddii ay kugu adag tahay inaad fahamtid Ingiriisida, waxaad, bilaash, ku codsan kartaa adeegyada caawimada luuqada adoo wacaaya

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Subpart A – General Requirements

Section 26.1: Objectives

The objectives of the DBE Program are:

- a. To ensure nondiscrimination in the award and administration of USDOT-assisted highway, transit, and airport contracts;
- b. To create a level playing field on which DBEs can compete fairly for USDOT- assisted contracts;
- c. To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet DBE eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to DBE participation in USDOT-assisted contracts;
- f. To promote the use of DBEs in all types of USDOT-assisted contracts and procurement activities conducted by recipients/sub-recipients;
- g. To assist the development of firms that can compete successfully in the marketplace outside of the DBE program; and
- h. To provide flexibility to recipients/sub-recipients in establishing and providing opportunities for DBEs.

WSDOT has developed this plan as a requirement of 49 CFR Part 26 and as a guideline and procedural manual to ensure DBEs have fair and equal access to compete for contracts, subcontracts and agreements on USDOT financially assisted projects.

Section 26.3: Applicability

Pursuant to 49 CFR Part 26.3, the DBE Program applies to USDOT financial assistance where WSDOT and its sub-recipients expend federal-aid funds including, but not limited to:

- a. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L 102-240, 150 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L 105-178, 112 Stat. 107;
- b. Federal Transit funds authorized by Titles I, III, V and VI of ISTEA Pub. L. 102- 240 or by Federal transit law in Title 49, U.S. Code or Titles I, III and V of the TEA-21, Pub. L. 105-178;
- c. Airport funds authorized by 49 U.S.C. 47101; and
- d. FAST Act - Fixing America's Surface Transportation Act.

Entities receiving Federal financial assistance through WSDOT (i.e., sub-recipients) are subject to the requirements of 49 CFR Part 26, and therefore are required to adopt and comply with WSDOT's DBE Program Participation Plan. WSDOT's Local Agency Guidelines (LAG) Manual provides additional guidance to sub-recipients on DBE program expectations.

WSDOT will provide its sub-recipients written notice of the USDOT's approval of WSDOT's DBE Program Participation Plan (including a link to an electronic version of the approved Plan for their use). The sub-recipients shall then provide written confirmation of their adoption of the Plan.

Sub-recipients are expected to work collaboratively with Local Programs and OEO in conducting periodic reviews and/or DBE program audits to ensure their compliance with WSDOT's approved DBE Program Plan and 49 CFR Part 26.

All federal guidance, manuals, policy statements, and directives used or relied upon by WSDOT, or any of its sub-recipients, to implement the DBE Program shall be revised to correspond to the provisions contained within the DBE Program Participation Plan and approved by FHWA. In the event of any conflict between the DBE Program Participation Plan with any manual, policy statement, or directive relied upon by WSDOT or any of its sub-recipients in the implementation of the USDOT approved DBE Plan, the DBE Program Participation Plan shall prevail. Where there is a conflict, federal law prevails over state law.

Section 26.5: Definitions

WSDOT has adopted the DBE program definitions of 49 CFR Part 26.5. For a complete list of official definitions pertaining to the USDOT DBE program, see www.ecfr.gov/cgi-bin/text-idx?SID=3d4a36cb8c0e45d725d273a4b52e2d4d&mc=true&node=pt49.1.26&rgn=div5&se49.1.26_15a

The following are additional terms/definitions used by WSDOT in its program implementation, as mentioned throughout this document:

Bid Item Breakdown/Written Confirmation form is a supplemental bid document which lists each separate bid item under which the DBE will be performing work as part of the Condition of Award Goal. It further defines the scope of work and the value of the work as they relate to each bid item for the broader scope of work identified on the Utilization Certification form.

CFR means the Code of Federal Regulations.

Commercially Useful Function (CUF) means a DBE is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a CUF, the DBE 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.

Condition of Award (COA) Goal (pertains to bid-build projects) means an assigned numerical percentage of the bid amount of the contract. This is the minimum amount that the bidder must commit to by submission of the Utilization Certification Form and/or by Good Faith Efforts (GFE) at the time of bid. The Bid Item Breakdown/Written Confirmation form will further describe by line item the scopes of work as identified on the DBE Utilization form and require the confirmation of both the bidder and the potential Subcontractor. The COA goal will also be applied to change orders associated with the contract as managed by the project engineer office on WSDOT or Local Agency projects, with OEO approval. To be considered responsive/successful the bidder/contractor must demonstrate good faith efforts in achieving the goal. The bidder/contractor can demonstrate the good faith efforts in either of two ways:

1. The contractor/bidder has obtained sufficient DBE participation to meet the established Condition of Award goal; or
2. The contractor/bidder provides documentation that evidences its good faith efforts to meet the goal, even though it did not succeed in obtaining sufficient DBE participation to do so.

Consultant means one who gives expert or professional advice.

Contract in this plan means contract, sub-contract, consultant agreement (inclusive of Master agreement, project specific agreement, or task order), purchase order, materials invoice, or any other legally binding document between a Prime Contractor/Prime consultant and their Subcontractor/subconsultants/. Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contracting Opportunity means a procurement action (by a recipient/sub-recipient/contractor/subcontractor/consultant/subconsultant) to obtain a product or service commercially.

DBE Performance/Participation Plans means plans submitted by Bidders /Consultants that outlines in detail how the Bidder/Consultant will meet Performance/Participation goals or inclusion requirements. Performance/Participation plans are associated to Design Build projects and Consultant Services contracts containing DBE goals.

DBE Utilization Certification Form means the form that Prime Contractor submits on Condition of Award projects that identifies which DBE(s) the Prime Contractor is committing to use, the scope(s) of work that the DBE is contracted to perform on the project, and the associated dollar amount. The form is attached as Appendix 1. The Bid Item Breakdown/Written Confirmation form (mentioned above) is used in conjunction with the DBE Utilization Certification Form. The DBE Utilization Certification form is not used in Design-Build, GCCM, or other alternate delivery method contracts (ref. DBE Performance Plan below).

Diversity Management and Compliance System (DMCS) is the database which tracks payments to Prime Contractor/Prime Consultants and all Subcontractor/subconsultants on all WSDOT projects and those Local Agency projects receiving Federal Financial Assistance from WSDOT.

Design-build (or design/build, and abbreviated D-B or D/B accordingly) is a project delivery system used in the construction industry. It is an alternative delivery method (ADM) to deliver a project in which the design and construction services are contracted by a single entity known as the design-builder or design-build contractor.

The scope of work and dollar amount that the Design-Builder indicates they will be Subcontracting to certified DBEs, as shown in the DBE Performance Plan submitted with the Design-Builder's Proposal, and for subsequent Work opportunities arising from the Project. The DBE Commitment amount will be incorporated into the Contract and shall be considered a Contract requirement. The Design-Builder shall utilize DBEs to perform the work and supply the materials for which they are committed. Any changes to the DBE Commitment, as described in the DBE Performance Plan, shall require the WSDOT Engineer's prior written approval.

Directory of Certified Firms or DBE Directory means the OMWBE-created directory of certified DBE firms. This directory is available on OMWBE's website at: www.omwbe.wa.gov. This is the only recognized Directory of DBE firms. The NAICS code and information contained in the "Description of Work" column must comport with the work described on the DBE Utilization Certification.

General Contractor/Contractor Managed (GC/CM) is an Alternative Delivery Methodology (ADM) project that allows an owner to engage a construction manager who provides constructability input during the design phase. At a percentage point in the design completion the owner and the construction manager negotiate a “guaranteed maximum price for the construction.”

Goal means an objective, numerically expressed as a percentage of the total project dollar amount, that contractors are required to make good faith efforts to achieve.

North American Industry Classification System (NAICS) Codes means the six-digit code used to determine whether or not a business is considered a small business as determined by the Small Business Administration. The NAICS code designations are described in the North American Industry Classification Manual-United States, which is available on the internet at the U.S. Census Bureau website: www.census.gov/eos/www/naics. OMWBE, as the Unified Certification Program (UCP) agent for Washington state, determines which NAICS codes most specifically defines the type of work that the DBE firms are certified to perform.

Sub-recipient means a local agency, other jurisdiction or non-profit organization that receives financial assistance on a project from USDOT through WSDOT.

WSDOT OEO means the Washington State Department of Transportation Office of Equal Opportunity and is the office that ensures compliance with the requirements of 49 CFR Part 26.

Section 26.7: Non-discrimination Requirements

WSDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, national origin, or disability.

In administering its DBE program, WSDOT will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, or disability.

WSDOT has instituted a complaint process for any sub-recipient, contractor, subcontractor/subconsultant, or consultant that believes they have been discriminated against based on the aforementioned factors. See the WSDOT External Discrimination Complaint Procedure and Form (Appendix 2).

Complaints can be filed by the public through email at oeoecrbcomplaints@wsdot.wa.gov and by phone at 360-705-7090.

Section 26.11: Record Keeping Requirements

Section 26.11(a): USDOT Uniform Report

WSDOT will report DBE participation to the FTA and FHWA through the USDOT “Uniform Reports of DBE Awards or Commitments and Payments” Report semi-annually or annually for FAA.

The Uniform Report of DBE Awards or Commitments and Payments Form will be completed per the instructions of 49 CFR Part 26, Appendix B.

Section 26.11(b): Other Data

In order to monitor the progress of its DBE Program, WSDOT and its sub-recipients shall maintain a record keeping system that identifies and assesses DBE contract awards, Prime Contractor/Prime Consultants’ progress in achieving DBE subcontract goals, and other DBE inclusion efforts. WSDOT and its sub-recipients will maintain records showing:

1. Procedures followed by WSDOT and its sub-recipients to identify and assess DBE contract awards and progress in achieving prescribed goals;
2. Specific efforts to identify and award contracts to DBEs and/or purchase from DBEs;
3. Amount paid to each DBE subcontractor/subconsultant by a contractor and reported to WSDOT or its sub-recipient on a monthly basis; and
4. Amount paid to each DBE subcontractor/subconsultant by a contractor based on the information contained in the Diversity Management and Compliance (DMCS) system and/or “DBE Monthly Report” for the Public Transportation Division (PTD) and reported to the WSDOT or its sub-recipient and obtained at the conclusion of each project. This information will be reported from PTD. These reports will include at a minimum:
 - a. The number of contracts awarded to DBEs and or purchases using DBEs;
 - b. A description of the general categories of contracts awarded to DBEs and/or purchases using DBEs;
 - c. The dollar value of contracts awarded to DBEs and/or purchases using DBEs;
 - d. The percentage of the dollar value of all contracts awarded to DBEs and/or purchases using DBEs;
 - e. Whether or not the DBE goal was met or exceeded, and by what amount, specified in the bid documents or proposals;
 - f. Written confirmation from the Prime Contractor/Prime Consultant that no retainage has been withheld from the DBE subcontractor/subconsultant(s);
 - g. A written certification from the contracting agency engineer on each federal-aid contract with a DBE goal stating that the project staff has reviewed the contracting records and monitored the work site and determined that the DBE(s) committed at contract award (or subsequently) actually performed the work (with their own forces) for which they were committed. If the project goal is not met the agency will document the reason(s) for the shortfall and what, if any enforcement action was taken; and
 - h. The required records and reports provide information relating to firms owned and controlled by minorities separately from information relating to firms owned and controlled by women.

Records shall be available upon request of an authorized officer or employee of the federal government or WSDOT OEO staff and for projects using FTA funds.

WSDOT and its sub-recipients will submit reports conforming in frequency and format to existing contract reporting requirements of the applicable departmental elements.

Where no such contract reporting requirement exists, DBE reports will be submitted quarterly.

WSDOT will submit to FHWA, all reports as listed and defined by the FHWA/WSDOT Stewardship agreement as well as other reports as requested. In addition, WSDOT will submit to FTA and FAA, all data and information as required/requested by these modes.

Section 26.11(c): Bidders List

WSDOT and its sub-recipients will create and maintain a bidders list consisting of all the firms bidding on USDOT-assisted projects. The bidders list will contain information about bidders submitting quotes, contracts or bids as contractors, consultants, sub-consultants and subcontractor/subconsultants.

The list will include all firms that bid on prime contracts or bid/quote subcontracts (successful and unsuccessful) on USDOT-assisted projects including both DBEs and non-DBEs. The list will also include the following information:

- a. Firm name;
- b. Firm address;
- c. Firm's status as a DBE or non-DBE;
- d. The age of the firm; and
- e. The annual gross receipts of the firm, in ranges.

WSDOT OEO will conduct an annual survey for both WSDOT let contracts and Local Agencies receiving federal-aid funds through WSDOT's Local Programs Division of contractors and subcontractor/subconsultants. The survey will remain open from October 1 through September 30.

WSDOT Local Programs Division requires (through its Local Agency Guidelines) bidders on Local Agency projects with Federal Financial Aid to participate in the Bidders List Survey generated by WSDOT OEO.

Section 26.11(d):

WSDOT OEO will work collaboratively with the Office of Minority and Women's Business Enterprise (OMWBE) to ensure the following records are maintained in accordance with federal and state statutory requirements:

- a. DBE program application packages;
- b. Affidavits of No Change;
- c. Change Notices; and
- d. Certification On-Site Review documents.

Once a DBE is decertified, OMWBE records the information in the U.S. Department of Transportation's (USDOT) database (per 26.85(f)(1)) and maintains the records for seven years. These records are scanned and maintained in the DBE Certification program.

WSDOT and its sub-recipients will maintain records for three years past completion of each contract for FHWA and FAA; six years after the life of equipment, life of building or grant services for FTA funded projects; and six years after completion of the project for FTA funded projects.

Section 26.11(e):

WSDOT OEO will work collaboratively with the Office of Minority and Women's Business Enterprise (OMWBE) to report to the USDOT Office of Civil Rights the following information no later than January 1 of each year:

1. The percentage and the location in the state of certified DBE firms listed in the UCPs DBE directory who are controlled by the following:
 - a. Women;
 - b. Socially and economically disadvantaged individuals (other than women); and
 - c. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

OMWBE collects this data at time of certification in the DBE Certification program.

Section 26.13: Assurances

26.13(a)

WSDOT and all sub-recipients will follow the requirements of 49 CFR Part 26, including insertion of DBE clauses in grant agreements and contracts with federal aid. WSDOT will require sub-recipients to take all steps necessary to carry out all applicable parts of 49 CFR Part 26 and will ensure its sub-recipients comply with the regulations. Pursuant to 49 CFR Part 26.13, WSDOT has signed the following assurance applicable to all USDOT-assisted contracts and subcontracts and their administration:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The above assurance will be incorporated in all FHWA and FTA projects containing Federal Financial Assistance, and FAA financial assistance agreements with WSDOT sub-recipients.

26.13(b)

Pursuant to 49 CFR Part 26.13, each contract WSDOT and its sub-recipients sign with a contractor, and each subcontract the contractor signs with a subcontractor/subconsultant (regardless of tier), shall include the following assurance:

The contractor, sub-recipient or subcontractor/subconsultant shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- a. Withholding monthly progress payments;
- b. Assessing sanctions;
- c. Liquidated damages; and/or
- d. Disqualifying the contractor from future bidding as non-responsible.

On projects with FHWA financial assistance, assurances from subcontractor/subconsultants (all tiers) shall be physically included in each contract/subcontract by way of the FHWA Form 1273, the DBE General Special Provisions (GSPs), or, in the case of a consultant contract, including the assurance statement as a provision of the contract. WSDOT OEO will review all DBE/FSBE subcontracts to ensure compliance with the required inclusion language while Project Engineer Office or Local Agency staff will randomly review all non-DBE/FSBE subcontracts during the Request to Sublet process to ensure this information is included. If this information is absent, WSDOT OEO will notify the appropriate WSDOT Headquarters office, which will in turn work collaboratively with WSDOT OEO in determining contract administration actions to be taken.

For Local Agency projects receiving Federal Financial Assistance, WSDOT OEO will notify the appropriate Local Programs personnel should DBE/FSBE subcontracts not include the required assurances. WSDOT Local Programs will notify the Local Agency of the deficiency and will work collaboratively with WSDOT OEO in determining actions to be taken.

PTD sub-recipients are required every year to sign a certification and assurance for non-discrimination and perform quarterly reporting of DBE activity, as well as meeting the language built into their agreement with WSDOT that contains the FTA required language.

Section 26.15: Exemptions/Waivers

When applying for an exemption and/or waiver WSDOT will follow the requirements of 49 CFR 26.15

Subpart B – Administrative Requirements

Section 26.21: Program Plan Updates

WSDOT will submit DBE Program Participation Plan updates to the appropriate USDOT operating administration (FHWA) for review and approval, on an annual basis or anytime there are significant changes in administration of its DBE program.

WSDOT will inform its sub-recipients of DBE program changes as they occur.

WSDOT must continue to carry out [its] program until all funds from [FHWA's] financial assistance has been expended." – per 49 CFR 26.21(c)

Section 26.23: Policy Statement

WSDOT's Policy Statement is attached to this Plan as Appendix 3.

Section 26.25: DBE Liaison Officer

The WSDOT Office of Equal Opportunity (OEO) Director, is designated by the Washington State Secretary of Transportation as WSDOT's DBE Liaison (DBELO). In that capacity, the DBELO is responsible for all aspects of the DBE program and ensuring that WSDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to WSDOT's Secretary of Transportation concerning DBE program matters.

An organizational chart displaying the DBELO's position in the organization is found in the Appendix 4. The DBELO is responsible for developing, implementing, and monitoring the DBE program in coordination with other appropriate officials, and for managing the Department's civil rights programs. The DBELO may assign day-to-day DBE program responsibilities to other WSDOT OEO DBE program staff, as appropriate (i.e., DBE Program Manager, DBE Community Engagement Manager, etc.). The DBELO is the liaison internally to the various divisions within WSDOT and is responsible for ensuring that those divisions coordinate with the DBELO on matters related to implementation of the DBE program, as well as the community/public.

The responsibilities of the DBELO and/or his/her designee include, but are not limited to, the following:

- a. Advise the Secretary of Transportation and executive and senior managers on achievements to date and on DBE matters currently underway, including receiving direction from the Secretary on unresolved matters. Evaluate and report on the DBE program's effectiveness and provide recommendations to the Secretary for modifying internal processes and procedures to align with federal requirements and to achieve continuous improvement of the DBE program;
- b. Establish standard operating procedures (inclusive of data collection methods, performance measures, et al) for implementing the DBE Program requirements; develop reports; and interface with USDOT operating administrations (FHWA, FTA, FAA) regarding program approvals and performance in accordance with federal regulations and the WSDOT-FHWA Stewardship Agreement;

- c. Develop and implement policy pertaining to DBE Program implementation, ensure consistency and compliance with program standards, and coordinate and assist with external/internal communications, including communications from the Construction Division and project engineering offices;
- d. Monitor and evaluate program effectiveness and provide reports as required by USDOT/USDOT operating administrations, and as directed by WSDOT's Secretary of Transportation;
- e. In coordination with division directors, develop WSDOT's contract and overall goals for DBE participation;
- f. WSDOT OEO's data analyst will review and analyze monthly, quarterly, and annual reports of race/gender neutral and race/gender conscious efforts for progress in achieving overall goal attainment (including maintaining a running tally of DBE participation), and develop plans of action/adjustments, as needed, to improve progress;
- g. In coordination with the region administrators and division directors, provide technical assistance and information to DBEs and non-DBE Prime Contractor/Prime Consultants and subcontractor/subconsultants to ensure they understand contract specifications related to their work;
- h. Ensure consistency in implementation and compliance with the DBE program by confirming that the manuals, processes, procedures and other guidance related to the administration of the DBE program by Local Programs, State Construction Office, Consultant Services, Ferries, Public Transportation, Rail, and Aviation divisions on DBE program matters is consistent with 49 CFR Part 26 and this DBE participation plan;
- i. Conduct Commercially Useful Function (CUF) reviews/Comprehensive Contract Compliance reviews of DBEs, and take action, as appropriate, including reporting violations to the respective USDOT operating administration, and potential certification issues to OMWBE;
- j. Provide technical assistance and direction to the Construction Division and project engineering offices, Local Programs, Consultant Services, Ferries, Public Transportation, Rail, and Aviation divisions in resolving DBE contract compliance disputes/complaints and perform investigations as appropriate. Resolution goal is 30 days or less from date issue received;
- k. Work collaboratively with WSDOT division directors in determining sanctions for violations of the contract DBE provisions. Sanction letters will be signed by the DBELO and the director of the applicable division;
- l. In collaboration with the division directors, develop and evaluate the WSDOT's general specifications, guidelines, policies, and regulations affecting the DBE program, and implement changes to improve performance;
- m. Manage the DBE Support Services Program, including community outreach and training, and work with OMWBE regarding DBE recruitment and certification;

- n. Manage the interagency agreement between WSDOT and OMWBE, including oversight and direction to the OMWBE regarding DBE certification activities such as outreach and training, and monitoring and annually reviewing DBE certification activities of the OMWBE to ensure the effective administration of the Unified Certification Program (UCP);
- o. Implement changes within WSDOT OEO as necessary for continuous improvement of program performance;
- p. Oversee the civil rights program activities performed by the designated Equal Employment Opportunity (EEO) Officers, located in each of WSDOT's six regions and at Washington State Ferries (WSF);
- q. Perform all pre-award and post-award good faith effort determinations (when submitted) on WSDOT and Local Agency federal-aid projects;
- r. Perform all Good Faith Effort administrative reconsideration hearings that are applicable during the bidding process on WSDOT and Local Agency federal-aid projects. The DBELO will ensure that the Reconsideration Hearing Officer has not been involved in the initial determination of non-responsiveness;
- s. Ensure that all sub-recipients of the Local Programs and Public Transportation divisions comply with the DBE plan;
- t. Network with the women and minority-owned business community to gain additional feedback on program delivery, and proposed process improvements;
- u. Network with WSDOT regional and division offices with responsibilities related to the DBE program to gain an understanding of actions being taken related to the DBE program; ensure these actions are consistent with USDOT DBE Program requirements and are effective in improving program performance;
- v. Coordinate with each region to develop ongoing networking opportunities with prime and DBE firms, and to inform prime and DBE and non-DBE subcontractor/subconsultants about future contracting opportunities. These networking and outreach activities should occur approximately once per calendar quarter throughout the state, depending on contracting opportunities. OMWBE, WSDOT OEO, district offices, regional project engineers, and regional Tribal Employment Rights Office (TERO) liaisons should be included in these activities;
- w. Work collaboratively with assistant secretaries, division directors, and stakeholders to provide guidance regarding program implementation, compliance monitoring, issue resolution, and process improvements to increase the effectiveness of the DBE Program. Resolution goal is 30 days or less from date issue received;
- x. Work collaboratively with OMWBE on strategies to increase the number of certified DBE subcontractor/subconsultants and the capacity of DBE subcontractor/subconsultants to participate in WSDOT projects;
- y. Arrange for/conduct DBE program training for internal staff, and contractors/subcontracts; and
- z. Other activities that directly relate to the effective implementation of WSDOT's DBE Program.

The DBELO is assisted by other divisions within WSDOT to ensure success of the DBE program. The following describe the role/responsibilities of these liaisons:

Headquarters (HQ) Construction Office

The WSDOT HQ Construction Office oversees the central contract administration of WSDOT highway construction projects. HQ Construction Office will collaboratively work with OEO to administer and resolve contract administration issues and compliance violations related to DBE- related specifications. Following are the responsibilities of the HQ Construction Office, relative to the DBE Program:

- a. The contract goal setting process is led by WSDOT OEO. The HQ Construction Office will assist WSDOT OEO in goal setting for individual federal-aid construction projects and management of the overall program goal;
- b. Project offices and regions will work collaboratively with Headquarters Construction and WSDOT OEO in conducting periodic reviews and/or DBE program audits;
- c. In collaboration and concurrence with WSDOT OEO, Local Programs, and stakeholders, develop General Special Provisions and contract language to ensure the DBE Program is administered in accordance with the DBE Program Participation Plan and 49 CFR Part 26;
- d. Ensure documentation required to effectively implement the DBE Program (e.g., Design-Build DBE Performance Plan and updates, Bid-Challenges, Change Orders involving DBE Participation, Good Faith Efforts, DBE Onsite Review Forms, Updated DBE Performance Plan, etc.) adequately reflects DBE program requirements;
- e. Assist WSDOT OEO by providing required contracting/project information necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);
- f. HQ Construction Ad & Award is the receiver of all design-bid-build bid documents. All DBE documents required of bidders (e.g., Utilization certification form, DBE Written Confirmation form, Bid Item Breakdown form, Trucking Credit form, and GFE) will be reviewed and cleared by WSDOT OEO prior to award;
- g. Work with stakeholders to develop clear expectations and accountability measures for contractors with DBE participation requirements;
- h. Any action to reduce/change the COA DBEs scope of work or commitment amount will be considered either a partial or full termination (depending on the circumstances) and WSDOT will require the Contractor to follow WSDOT's termination and substitution process in either case. Any deletion of work scope, reduction of financial compensation, or addition to the work scope affecting Condition of Award DBEs will be processed via Change Order requiring the State Construction Office and HQ OEO approval. Such Change Order is required whether the change is made by WSDOT because of an original quantities' underrun or WSDOT initiated change, or the Contractor; including those instances when there is a modification to the subcontract agreement between the Contractor and the DBE subcontractor/subconsultant. If the termination and substitution process is not followed, the Contractor will not be entitled to any payment for COA work not performed by the existing DBE. Substitution of a COA DBE cannot occur without termination. The Project Engineer will discuss the Contractor's plan for substitution as part of the termination approval process.

- i. Work collaboratively with WSDOT OEO to administer DBE training to WSDOT construction personnel and the contracting industry, to ensure that construction (HQs & region) staff (project engineers, et al.) possess sufficient knowledge of DBE program requirements to effectively monitor and certify DBE participation during construction, and that contractors are kept abreast of current DBE contract requirements;
- j. Coordinate with WSDOT OEO to ensure Standard Specifications, General Special Provisions, the Construction Manual, and any other contract administration procedural guides (e.g., Design Build Manual, Design-Build templates, et al) are in alignment with the DBE Participation Plan;
- k. Ensure that project staff coordinate with WSDOT OEO to ensure the timely conduct of DBE CUF on-site reviews of all DBEs performing on federal-aid projects, and promptly report potential violations to WSDOT OEO for further review and/or investigation. This includes comparing information listed on the Request to Sublet with the DBE Bid Item Breakdown form to ensure there are no discrepancies;
- l. Ensure that WSDOT Field Inspectors have written documentation to record observations of DBE work conducted on-site that is separate and distinct from other on-site documentation. If completed as part of an Inspector's Daily Report (IDR), the IDR must have a section specifically for recording observations of DBE work on the project as observed by WSDOT Field Inspectors on-site;
- m. Ensure that project staff support and cooperate with WSDOT OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;
- n. Work with WSDOT OEO in monitoring and enforcing contract DBE requirements on federal-aid contracts (i.e., prompt payment/return of retainage, termination, substitution, et al.). The Project office will work with OEO to resolve problems as they arise/are identified. WSDOT OEO Region personnel will work directly with the WSDOT Project Office in providing termination substitution approval with the final authority residing with WSDOT OEO. Resolution goal is 30 days or less from the date issue is received;
- o. PEOs, assisted by WSDOT OEO Region personnel, will ensure that the Prime Contractor/Prime Consultant or sub-prime has listed all subcontractor/subconsultants, lower tier subcontractor/subconsultants, manufacturers, regular dealers, and service providers in the Diversity Management and Compliance System (DMCS) and that the Prime Contractor/Prime Consultant or sub-prime reports payments to those subcontractor/subconsultants monthly; the PEO in coordination with WSDOT OEO Region personnel will monitor DMCS for any discrepancy in payments reported by subcontractor/subconsultants. Any payment (including \$0 payments) reported to a subcontractor/subconsultant, lower tier subcontractor/subconsultant, manufacturer, regular dealer, or service provider will be acknowledged by the firm receiving payment and will note any discrepancies within 30 days of posting by the prime or sub-prime;

- p. In coordination with WSDOT OEO (Region OEO staff), investigate potential violations of contract DBE requirements, as appropriate, and provide information and input to WSDOT OEO when sanctions are being considered. The DBELO in consultation the State Construction Engineer will be responsible for determining what sanctions are taken;
- q. Other activities (in coordination with WSDOT OEO) that directly relate to the effective implementation of WSDOT's DBE Program;
- r. The assigned WSDOT Project Engineer shall report via the Final DBE Utilization Plan Report that they have reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs, via the final DBE Utilization Plan Form – See Appendix 7. This report will also certify that the monitoring of prompt payment and retainage release to all subcontractor/subconsultants, regardless of whether the subcontractor/subconsultant is a certified DBE firm, has been ensured.

Local Programs (LP)

WSDOT Local Programs Division is responsible for administering all local agency projects with Federal Highway Administration funding. WSDOT Local Programs will work collaboratively with WSDOT OEO to identify and resolve issues at the local agency level associated with the DBE Program. This will be accomplished by a continued collaborative effort to update the Local Agency Guidelines (LAG) on an immediate (if necessary) and annual basis. The following are the responsibilities of the WSDOT Local Programs Division, relative to the DBE Program:

- a. The contract goal setting process is led by WSDOT OEO. The WSDOT Local Programs Division has been delegated goal setting authority for individual local agency federal-aid projects and manages the local agency portion of the overall program goal. WSDOT Local Programs will obtain approval from WSDOT OEO on all goal set within the threshold as approved by FHWA. Once WSDOT Local Programs has set a project goal, they will send it to WSDOT OEO for approval. WSDOT OEO will have 48 hours to review and respond to WSDOT Local Programs with the concurrence with or change to the goal set;
- b. Local agencies will work collaboratively with Local Programs and WSDOT OEO in conducting periodic reviews and/or DBE program audits;
- c. Coordinate with WSDOT OEO to ensure that the LAG Manual is in alignment with the DBE Participation Plan;
- d. Work in collaboration with WSDOT OEO, Construction, and stakeholders to develop General Special Provisions and contract language to ensure the DBE Program is administered by local agencies in accordance with the DBE Program Participation Plan and 49 CFR Part 26;
- e. Consult with WSDOT OEO on DBE matters associated with local agency federal-aid projects;

- f. Ensure that documentation such as monthly Retainage Forms, Truck Unit Listing Logs, etc., required to effectively implement the DBE Program is transmitted to WSDOT Region OEO in accordance with WSDOT developed processes and procedures;
- g. Gather information, documents, etc., necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);
- h. Any action that causes a reduction or change to the COA DBEs scope of work or commitment amount will be considered either a partial or full termination (depending on the circumstances) and the Local Agency will require the Contractor to follow the termination and substitution process in either case. Any deletion of work scope, reduction of financial compensation, or addition to the work scope affecting Condition of Award DBEs will be processed via Change Order requiring WSDOT Local Programs and WSDOT Region OEO approval. Such Change Order is required whether the change is made by the Local Agency because of an original quantities' underrun or Local Agency initiated change, or the Contractor; including those instances when there is a modification to the subcontract agreement between the Contractor and the DBE subcontractor/subconsultant. If the termination and substitution process is not followed, the Local Agency will ensure that the Contractor will not be entitled to any payment for COA work not performed by the existing DBE. Substitution of a COA DBE cannot occur without prior written approval by Region OEO. The Local Agency will discuss the Contractor's plan for substitution as part of the termination approval process and communicate the Contractor's substitution plan with WSDOT Region OEO. Substitution cannot occur without WSDOT Region OEO approval.
- i. In collaboration with WSDOT Region OEO administer DBE training to local agency personnel and contractors to ensure that local agency construction staff (i.e., project engineers, et al) possesses sufficient knowledge of current DBE program requirements to effectively monitor and certify DBE participation during construction;
- j. Assist WSDOT OEO in reviewing local agency's compliance with WSDOT's DBE Participation Plan. Coordinate with WSDOT OEO to ensure Standard Specifications, General Special Provisions, and the Local Agency Guidelines Manual are in alignment with the DBE Participation Plan;
- k. Ensure that Local Agency staff complete the initial CUF on-site reviews of all DBEs performing on federal-aid projects and submit those to Region OEO within the timeframe established on the on-site review form. Local Agency staff must promptly report potential violations to WSDOT Region OEO for further review and/or investigation;
- l. Ensure that Local Agencies have a written documentation process to record observations of DBE work conducted on-site that is separate and distinct from other on-site documentation. If completed as part of an Inspector's Daily Report (IDR), the IDR must have a section specifically for recording observations of DBE work on the project as observed by Local Agency staff on-site.
- m. Ensure that Local Agency staff support and cooperate with WSDOT OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;

- n. Ensure that local agencies monitor and enforce DBE program provisions on federal-aid contracts in accordance with the record keeping requirements outlined in the Local Agency Guidelines (LP will outline issues in the LAG manual under a new section “record keeping requirements”), including monitoring progress payments and return of retainage to ensure compliance with prompt payment requirements, conducting CUF on-site reviews and reporting potential violations to OEO for further review/ investigation. Local Agency Project Engineers will submit a Final DBE Utilization Plan Report prior to the closing of the project by the Local Agency certifying to monitoring all aspects of the DBE program including the prompt payment and return of retainage to all subcontractor/subconsultants regardless of DBE status;
- o. Take enforcement action, as appropriate, when local agencies do not comply with the DBE requirements of WSDOT’s DBE Program Plan and 49 CFR Part 26;
- p. Maintain a monthly running tally of payments made to DBEs on local agency-administered federal-aid contracts, comparing attainment to commitments;
- q. Other activities (in coordination with WSDOT OEO) that directly relate to the effective implementation of WSDOT’s DBE Program; and
- r. Prime Contractor/Prime Consultant and subcontractor/subconsultant will report payment information in the DMCS, on a monthly basis. Local Agency staff will review DMCS monthly to ensure that information reported by the Prime Contractor/Prime Consultant/Prime Consultant and any sub-primes has been properly reported and will respond to prompt pay issues that may occur, DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Regional OEO will be the Primary Compliance Officer and the WSDOT Regional Local Programs staff will be the Secondary Compliance Officer. Local Agency staff (non-WSDOT staff) will have view only rights to monitor DMCS. (See Appendix 6 for DMCS Process)

Listed below is a Roles and Responsibilities Memorandum of understanding between Headquarters Local Programs Division and the Office of Equal Opportunity. The intent of this document is defined Roles and Responsibilities between Local Programs and OEO, both in Headquarters and Region level. This document serves as a guideline of working together in a cooperative and harmonious manner. If the team discovers items as defined in this document are not working or unattainable, the team will bring the concerns in a positive manner to the supervisor and headquarters for further discussion.

**Roles and Responsibilities
WSDOT OEO/ WSDOT LP**

Pre-Award		HQ LP	Region LP	LPA	HQ OEO	Region OEO
1.	Goal Setting	Primary			Secondary	
2.	Bid Clearing	Primary			Secondary	
3.	Pre-Award GFE	Support			Primary Review	
4.	DMCS		Oversight 2	Primary		Oversight 1
Program Compliance						
5.	DB Performance Plan Reviews		Submission	Receipt/ Review	Secondary	Primary
6.	Investigations	Concurrence	Support	Support	Intake	Primary
7.	Pre-Con Mtgs		Primary	Scheduler		Support
8.	Onsite Reviews/CUF	Support	Review/ Forward	Primary	Support	CUF Completion
9.	Joint Check Approval		Review/ Forward	Receipt		Approval / Upload
10.	Subcontract Reviews				Approve	Primary
11.	Regular Dealer				Concur/ Approve	Primary
12.	Prompt Pay	Review	Review/ Support	Primary	Support	Monitor
COA changes						
13.	GFE Post Award	Support	Secondary	Primary	Support	Approve
14.	COA Under-runs	Concurrence	Secondary	Primary	Concurrence	Termination/ GFE Approval
15.	DBE Terminations / substitution	Approve	Support	Primary	Concurrence (primary)	Concurrence (backup)
16.	Prime Payment Eligibility	Approve	Review	Notification	Concurrence	Investigate
17.	Project DBE Closure / DMCS Upload	Concurrence	Support	Primary	Support	Approve

1. The initial review and setting of goals are performed by HQ Local Programs Division. Once the LP Division has completed their review, they will submit the proposed goal to HQ OEO for concurrence. Any conflict to the proposed goal will be discussed between HQ LP and HQ OEO to achieve a final goal product.
2. The initial clearing of bids on Local Agency projects containing a DBE or FSBE goals will be accomplished by HQ LP. Any bid rejections will be provided to HQ OEO for concurrence.
3. If a bidder has selected box 5 of the Utilization Certification form and submitted a Good Faith Effort package by following required procedures, HQ LP will forward that documentation to HQ OEO for GFE analysis. HQ OEO will have five (5) working days to conduct the GFE analysis and return a decision to HQ LP.

4. Local Agencies will be the primary in responsibility for ensuring all required data entry of prime contractors and sub-contractors occurs. Local Agencies are responsible for monitoring required DMCS data entry and for notifying region LP of any discrepancies or missing data. Region OEO will review data entered in DMCS (while conducting the CUF review) to ensure its accuracy. In addition, Local Agencies will ensure that all prompt pay data is up to date and accurate in DMCS.
5. For alternative delivery methodologies, current specifications require bidders to submit a Performance/Participation plan outlining how that bidder will be successful in both meeting any DBE/FSBE program goals on the project, as well as detailing what efforts and means the bidder would use to ensure the inclusion of DBE program certified firms through the duration of the project. These plans will be provided by the Local Agency to region OEO who will conduct a review of the submitted Performance/Participation plan. Region OEO will have seven (7) business days to complete their review and provide a categorical rating back to the Local agency for inclusion in their scoring process.
6. WSDOT OEO Management will be responsible for investigating DBE program related and Prompt Pay complaints (subjected to the future OAH process). WSDOT DBE Program Managers will assign any required investigations to their direct reports. Once the investigation is complete, it will be shared with HQ LP for concurrence of the findings.
7. Local Agencies with DBE/FSBE program goals will be responsible for ensuring region OEO are invited to pre-construction meetings. When Region OEO are unable to attend the pre-construction meeting, Region OEO will provide Region LP with a checklist of DBE program items that must be covered at the pre-construction meeting (add future checklist to LAG).
8. Local Agencies will complete their sections of the applicable Onsite (CUF) review form. Once they have completed their sections, they will forward (within 10 days from conducting their interviews) the onsite review form to Region Local Programs who in turn will submit the form to HQ LP and Region OEO concurrently. Region OEO will complete their section of the form within 30 days from the date the Onsite review is received by Region OEO. Any finding of not performing CUF will be immediately inform with HQ LP and Region LP. HQ OEO will issue a letter of findings to the Local Agency with HQ Local Programs receiving a copy of the letter. Develop supporting document per types of work. Add checklist for LAG.
9. Any request to a Local Agency regarding the use of joint checks must be provided to the Region Local Programs for review. Region Local Programs will in turn obtain approval from Region OEO. Region OEO will ensure that the request for use of a joint check was initiated by the DBE firm, the joint check request form has been completed and submitted with the signed and dated copy of the joint check agreement composed by the three parties (Prime Contractor, Subcontractor, and Supplier) prior to approving a joint check request. Region LP and Region OEO personnel will ensure that joint checks are only used for the purchase of materials used with a furnish and install subcontract. Region OEO will upload the approved joint checks to DMCS.

10. Prime contractor will provide directly to Region OEO (via the Region OEO mailbox) a copy of the subcontract between the Prime Contractor and their Subcontractors (for projects containing federal-aid funding) prior to the Subcontractor starting work on the project. (check with agencies for contract submittal)
11. For Regular Dealer participation to be countable, all requests for Regular Dealer participation must be turned in no less than five (5) business days prior to bid opening to HQ OEO. HQ OEO will review the request, ensure that all Regular Dealer requirements have been met and then list the firm on WSDOT OEO's website as approved for that specific project.
12. Local Agencies will be responsible for ensuring federal and state prompt pay statutes are being complied with. As stated above, Local Agency will be responsible for ensuring that DMCS prompt pay data is being entered. Region OEO will monitor DMCS to ensure these actions are occurring and to ensure the Local Agency is forwarding completed Monthly retainage forms to them. Region Local Programs and HQ OEO will provide support as needed. (to be revised based on the OAH process)
13. Local Agencies will notify Region Local Programs of any under runs in meeting the committed COA or in the Prime Contractor meeting any commitments to a DBE/FSBE. Region Local Programs will immediately notify HQ Local Programs and Region OEO of the potential under run to the DBE/FSBE goal or DBE/FSBE Subcontractor commitment.
14. Same as item 13.
15. Local Agencies will not allow a prime contractor to terminate a DBE/FSBE without first obtaining approval from HQ Local Programs with the concurrence of HQ OEO. The local agency will require to provide supporting document for such termination. This process may be divided into two sections: (1) request for termination, and (2) request for substitution and/or GFE. A timely approval of the termination request may be necessary since the contractor will likely continue to be charged working days. Any substitution of a COA DBE shall follow the same approval process as the termination. However, the substitution will likely not have the same level of urgency as the termination.
16. In the event where the contractor has violated the rules in accordance with 49 CFR Part 26, Region OEO may be assigned (by HQ OEO) to perform an investigation on a federally funded local agency project. HQ OEO will review and concur with the result of the investigation. The final results shall be shared with the HQ Local Programs. HQ Local Programs will review the results of the investigation and determine if the work (in whole or in part) is not eligible for federal reimbursement, HQ LP will work in conjunction with Region LP to inform the local agency and not provided the financial support for the work.
17. The Local Agency will notify Region Local Program personnel when a project has reached Physical Completion. Region LP shall collect the following documents as part of the project closure: Final DBE Utilization Report, Final Retainage Report, and all applicable GFE's. These documents will be submitted to HQ LP. HQ LP will perform a final review to ensure completeness prior to submitting to Region OEO. Region OEO will have 30 calendar days to review DMCS data entry and upload documents in DMCS for final records.

Washington State Ferries (WSF)

The WSDOT WSF is responsible for administering all ferry and terminal related projects for WSDOT. WSF will work collaboratively with HQ Construction and WSDOT OEO to administer the DBE Program on projects with USDOT funding. Following are key responsibilities of WSF relative to the DBE Program:

- a. The contract goal setting process is led by WSDOT OEO. The WSF will assist WSDOT OEO in goal setting for individual WSF federal-aid projects and management of the overall program goal;
- b. WSF will work collaboratively with OEO in conducting periodic reviews and/or DBE program audits;
- c. Ensure that documentation required to effectively implement the DBE Program is transmitted to WSDOT OEO in accordance with WSDOT developed processes and procedures;
- d. Ensure that WSDOT Field Inspectors have written documentation to record observations of DBE work conducted on-site that is separate and distinct from other on-site documentation. If completed as part of an Inspector's Daily Report (IDR), the IDR must have a section specifically for recording observations of DBE work on the project as observed by WSDOT Field Inspectors on-site;
- e. Gather contracting/project information necessary to effectively implement the DBE Program, (e.g. change order documentation, field staff documentation, etc.);
- f. Any action to reduce/change the COA DBEs scope of work or commitment amount will be considered either a partial or full termination (depending on the circumstances) and the WSF will require the Prime Contractor/Prime Consultant to follow the termination and substitution process in either case. Any deletion of work scope, reduction of financial compensation, or addition to the work scope affecting Condition of Award DBEs will be processed via Change Order requiring WSF and WSDOT Region OEO approval. Such Change Order is required whether the change is made by the WSF because of an original quantities underrun or WSF initiated change, or the Prime Contractor/Prime Consultant; including those instances when there is a modification to the subcontract agreement between the Prime Contractor/Prime Consultant and the DBE subcontractor/sub-consultant. If the termination and substitution process is not followed, the WSF will ensure that the Prime Contractor/Prime Consultant will not be entitled to any payment for COA work not performed by the existing DBE. Substitution of a COA DBE cannot occur without termination. The WSF will discuss the Contractor's plan for substitution as part of the termination approval process and communicate the Contractor's substitution plan with WSDOT Region OEO. Substitution cannot occur without WSDOT Region OEO approval.
- g. Assist WSDOT OEO and HQ Construction in administering DBE training to personnel and contractors, to ensure that construction staff (i.e., project engineers, et al) possesses sufficient knowledge of DBE program requirements to effectively monitor and certify DBE participation during project activities and those contractors are kept abreast of current DBE contract requirements;
- h. Ensure that project staff conducts CUF on-site reviews of all DBEs performing on a federal-aid project and promptly report potential violations to WSDOT OEO for further review and/or investigation;

- i. Ensure that project staff support and cooperate with WSDOT OEO staff in reviewing certified payrolls, verifying/validating through a review of cancelled checks, et al, that payments made are consistent with the DBEs participation;
- j. Monitor and enforce contract DBE requirements on federal-aid contracts (i.e., prompt payment/return of retainage, termination, substitution, et al). Work with WSDOT OEO as needed to resolve problems as they arise/are identified. Resolution goal is 30 days or less from date issue received;
- k. In collaboration with WSDOT OEO, take enforcement action, as appropriate, when contractors do not comply with the DBE requirements of WSDOT's DBE Program and 49 CFR Part 26;
- l. Maintain a monthly running tally of payments made to DBEs on WSF- administered Federal-aid contracts, comparing attainment to commitments;
- m. Other activities (in coordination with WSDOT OEO) that directly relate to the effective implementation of WSDOT's DBE Program;
- n. The WSDOT DBELO will be responsible for determining appropriate sanctions where noncompliance is found to exist;
- o. For each contract, the WSF Engineer will document in the Final DBE Utilization Plan Report that they have reviewed the contracting records and monitored the work site and determined that work committed to the DBEs at contract award (and subsequently) was actually performed by said DBEs. WSF will submit a Final DBE Utilization Plan Report prior to the closing of the project by WSF certifying to monitoring all aspects of the DBE program including the prompt payment and return of retainage to all subcontractor/subconsultants regardless of DBE status.
- p. Prime Contractor/Prime Consultants and subcontractor/subconsultants will be reporting payment information in the Diversity Management and Compliance System (DMCS), on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. WSDOT Region OEO will be the Primary Compliance Officer and the Agreement Manager will be the Secondary Compliance Officer.

WSDOT Planning Division

WSDOT Planning Division will work collaboratively with WSDOT OEO to identify and resolve issues associated with the DBE Program. This will be accomplished by a continued collaborative effort on an immediate (if necessary) and semi-annual basis. The following are the responsibilities of the WSDOT Planning Division, relative to the DBE Program:

- a. According to FHWA, the federal funds WSDOT MPO receives do not fall under 49 CFR Part 26. However, the MPO is required to monitor the use of DBEs and ensure inclusion of data in WSDOT's semi-annual report to FHWA. WSDOT MPO will coordinate their reporting data with OEO.
- b. WSDOT Planning Division will coordinate with WSDOT OEO to ensure that the Planning Division's processes and procedures are in alignment with the DBE Participation Plan;
- c. WSDOT Planning Division will work in collaboration with WSDOT OEO to ensure MPO/RTPO consultant agreements, Instructions to Proposers, and Requests for Proposals language are in alignment with the DBE Program and administered in accordance with the DBE Program Participation Plan and 49 CFR Part 26;

- d. Consult with WSDOT OEO on DBE matters associated with Planning Division agreements where DBE requirements are included as part of the MPO/RTPO receiving federal funds;
- e. Ensure that WSDOT Planning Division have a written documentation process to record observations of DBE work conducted on-site that is separate and distinct from other on-site documentation. If completed as part of a project diary or some other form of agreement documenting process the documentation must have a section specific for recording observations of DBE work on the project as observed by the MPO/RTPO as applicable;

Consultant Services Office (CSO)

The CSO is responsible for administering all WSDOT professional service (e.g. architectural, engineering, etc.) agreements. As such, CSO and WSDOT OEO work together to develop and administer the DBE Program on projects with USDOT funding.

Following are the responsibilities of the CSO relative to the DBE Program:

- a. CSO will assist WSDOT OEO in goal setting for individual Federal-aid projects and management of the overall program goal. Agreement goals are set by WSDOT OEO;
- b. CSO will work collaboratively with Local Programs and WSDOT OEO in conducting periodic reviews and/or DBE program audits;
- c. In coordination with WSDOT OEO, CSO will develop processes, procedures and methodologies that are consistent with 49 CFR Part 26, and gather information necessary to effectively implement the DBE Program (e.g. change orders/contract supplements, on-site reviews, prompt payments) on professional service contracts. See WSDOT's Consultant Services Manual, Chapter 700, for details on implementation of DBE program requirements associated with consultant contracts (www.wsdot.wa.gov/publications/manuals/fulltext/M27-50/ConsultantServiceManual.pdf Chapter 700 of the CSO Manual here);
- d. CSO will ensure that documentation required to effectively implement the DBE Program (e.g., SBE Participation Plan, DBE Onsite Review Forms, etc.) is transmitted to OEO in accordance with WSDOT developed processes and procedures;
- e. For contracts with DBE goals, all impacts to DBE consultant and sub-consultants shall be processed as a supplement or amendment. Supplements or amendments must be processed for DBEs whose scopes of work or dollar totals are changed. OEO must review and approve with these supplements or amendments prior to execution;
- f. CSO will assist WSDOT OEO in administering training to WSDOT personnel responsible for originating, administering or managing professional service agreements with consultants, as well as training to the consultant community;
- g. CSO will assist WSDOT OEO and the LP Division in administering professional services contract training to local agency personnel;
- h. CSO will maintain a monthly running tally of payments made to DBEs on consultant services agreements, comparing attainment to commitments;
- i. CSO will monitor and enforce DBE requirements on federal-aid consultant agreements (i.e., prompt payment, termination, substitution, et al.). Work with WSDOT OEO to resolve problems as they arise/are identified. Resolution goal is 30 days or less from date issue received;

- j. CSO will verify and document that DBE consultants are performing a CUF on consultant agreements, and report potential violations to WSDOT OEO for further review and/or investigation;
- k. For consultant agreements with DBE goals, CSO will ensure that CUF on-site reviews are conducted and assist OEO with further reviews and/or investigations as necessary;
- l. In coordination with WSDOT OEO, CSO will conduct other activities that directly relate to the effective implementation of WSDOT's DBE Program;
- m. The WSDOT DBELO will be responsible for determining appropriate sanctions where noncompliance is found to exist;
- n. The WSDOT Region Consultant Liaison will submit a Final DBE Utilization Plan Report to the WSDOT Consultant Services Office and Region OEO certifying they have monitored all aspects of the DBE program including the prompt payment and return of retainage (if retainage was withheld) prior to the closing of the project to all subconsultants regardless of DBE status.; and
- o. Prime consultants and sub-consultants will be reporting payment information in the Diversity Management and Compliance System (DMCS), on a monthly basis. DMCS will be monitored internally by region personnel on a bi-monthly basis. The WSDOT Project Manager be the Primary Compliance Officer on all projects and WSDOT OEO will be the Secondary Compliance Officer on all projects.
- p. WSDOT Region Consultant Liaison will ensure that agreements and/ or task orders containing federal aid funding are monitored and will enforce DBE program provisions in accordance with the approved WSDOT DBE Participation Plan and the Consultant Services manual, including the monitoring of progress payments and return of retainage (if applicable) to ensure compliance with prompt payment requirements. The WSDOT Region Consultant Liaison will ensure DBE CUF on-site CUF reviews are completed and will report potential violations to WSDOT OEO for further review/investigation.

Consultant Agreement Compliance

Work committed to DBEs by the prime consultant must be performed by the designated DBE or a WSDOT approved substitute. DBE consultant work items will not be performed by the prime consultant, in lieu of sub-consulting, without prior approval by WSDOT.

In the event work committed to a DBE does not exist within the contract as anticipated, the prime consultant shall make every reasonable good faith effort to meet the contract goal through DBE utilization in other items of work in the scope of work to meet the contract goal. The good faith efforts employed by the consultant will be reviewed by WSDOT Region OEO for a determination of efficacy. www.wsdot.wa.gov/publications/manuals/fulltext/M27-50/ConsultantServiceManual.pdf (CSO Manual, Chapter 700)

WSDOT reserves the right to inspect all records of the prime consultant and its sub-consultants and all records of the DBEs concerning consulting agreements.

The prime consultant will provide WSDOT Consultant Services Office copies of the completed and signed agreements with the DBEs. These agreements shall be submitted to OEO, prior to the DBE beginning work.

Public Transportation Division (PTD)

The PTD is responsible for administering transit grants with FTA financial assistance. As such, PTD and WSDOT OEO work collaboratively to develop and administer the DBE Program on PTD projects with USDOT funding. Following are the responsibilities of the PTD relative to the DBE Program:

- a. The contract goal setting process is led by WSDOT OEO. The PTD will assist WSDOT OEO in goal setting for individual PTD federal-aid projects and management of the overall program goal;
- b. PTD will work collaboratively with WSDOT OEO in conducting periodic reviews and/or DBE program audits;
- c. Develop processes, procedures and methodologies (in coordination with WSDOT OEO) to oversee contractors and/or sub-recipients that are consistent with 49 CFR Part 26, and gather contractor and/or sub-recipient information necessary to effectively implement the DBE Program. For construction projects PTD will ensure sub-recipients comply with requirements (e.g. change orders, onsite reviews, and prompt payments);
- d. Ensure that the documentation required to effectively implement the DBE Program (e.g., Quarterly Report of Amounts Credited as DBE Participation (payments) are submitted by the grantee and reviewed and approved by the PTD. Ensure sub-recipients complete DBE Onsite Review Forms and other associated DBE documentation;
- e. For construction projects, all impacts to Condition of Award (COA) DBEs, shall be processed by its sub-recipients as change orders. Change orders must be processed for COA DBEs whose scopes of work or dollar totals are changed;
- f. Assist WSDOT OEO in administering training to PTD personnel responsible for originating, administering or managing professional services contracts with consultants, as well as training to the sub-recipients' community;
- g. Assist PTD sub-recipients in complying with FTA DBE requirements. These activities include solicitation, documentation and reporting of DBE opportunities and activity;
- h. Track payments made to DBEs on PTD contracts, comparing attainment to commitments; including contracting and/or purchasing made and reported by its sub-recipients;
- i. Oversee compliance and enforcement of DBE requirements on federal-aid PTD contracts and those issued by its sub-recipients. Work with WSDOT OEO to resolve problems as they arise/are identified. The DBELO will be responsible for determining what sanctions are taken. Resolution goal is 30 days or less from date issue received;

Other activities (in coordination with WSDOT OEO) that directly relate to the effective implementation of WSDOT's DBE Program;

Section 26.27: Financial Institutions

Per 49 CFR Part 26.27, WSDOT encourages Prime Contractor/Prime Consultant/Prime Consultants to utilize the services of financial institutions owned and controlled by socially and economically disadvantaged individuals. Following is a link to the Federal Reserve Statistical Release of Minority- Owned Depository of Institution, which lists the Minority-Owned banks in Washington State. www.federalreserve.gov/supervisionreg/minority-depository-institutions.htm
www.fdic.gov/regulations/resources/minority/mdi.html

WSDOT will work with other state and federal agencies such as the Office of Minority and Business Enterprises (OMWBE) or the US Department of Transportation (USDOT) Small Business Resource and Training Center (SBRTC) to identify institutions that are not listed on the above referenced link.

Section 26.29: Prompt Payment

This section applies to WSDOT let projects and to Local Programs projects.

26.29(a)

WSDOT and subrecipient Federal-aid contracts contain a contract clause requiring prompt payment within 10 days (per State law) from the date that the Prime Contractor/ Prime Consultant receives each payment from the contract owner.

WSDOT's Standard Specification 1-08.1(1) (a copy of which may be found here <https://wsdot.wa.gov/publications/manuals/fulltext/M41-10/Division1.pdf>) pertaining to prompt payment and return of retainage, is applied to all Federal-aid projects. All Contractors/ Consultants must comply with these contract specifications in addition to the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and

39.76.040. WSDOT will ensure that prompt payment provisions are included in all contracts and subcontracts. WSDOT and Local Agency personnel will spot- check contracts, subcontracts and other documents, i.e. task orders, master agreements, etc. to ensure compliance with this part.

As part of the monitoring process, WSDOT has established the DMCS database for recording payments to all contractors, subcontractor/subconsultants, and lower tier subcontractor/subconsultants. Prime Contractor/Prime Consultants must report all payments, regardless of amount, to all subcontractor/subconsultants, and subcontractor/subconsultants to all lower tier subcontractor/subconsultants, on a monthly basis. Subcontractor/subconsultants and lower tier subcontractor/subconsultants will acknowledge any reported payment within 30 days of reporting in DMCS, note any discrepancies, and report any retainage being withheld. Payment is considered made when the payment is actually mailed to the subcontractor/subconsultant or when an electronic funds transfer has been made. Instances where a payment has been processed by the Prime Contractor/Prime Consultant or subcontractor/subconsultant (with lower tier subcontractor/subconsultants) but not actually mailed or transmitted via an electronic funds transfer to the subcontractor/subconsultant will be considered withheld and must follow the process below.

In the event the Prime Contractor/Prime Consultant, or the subcontractor/subconsultant with a lower tier subcontractor/subconsultant, withholds payment for any reason (see section 26.29(e) below) the prime or subcontractor/subconsultant must report that payment as a \$0 and record the reason the amount is being withheld in addition to following the procedure outlined in 26.29(e) below. This includes instances when the Prime Contractor/Prime Consultant or subcontractor/subconsultant withholds payment because of the failure of the subcontractor/subconsultant or lower tier subcontractor/subconsultant to timely return a lien/waiver release. In the event that a payment is being withheld, the Prime Contractor/Prime Consultant or subcontractor/subconsultant (with lower tier subcontractor/subconsultants) must notify the subcontractor/subconsultant from which payment is being withheld within 10 calendar days of the receiving payment from WSDOT or the Local Agency. This notice must also contain information as to what the subcontractor/subconsultant must do in order to receive payment.

Once retainage has been released, the payment will be recorded in DMCS by the prime or subcontractor/subconsultant and will be indicated by selecting the “Final Payment” option. The subcontractor/subconsultant or lower tier will then accept or reject the final payment based on whether all outstanding amounts, to include retainage, have been paid.

26.29(b)

Pursuant to 49 CFR Part 26.29(b)(2), WSDOT does not withhold retainage from Prime Contractor/Prime Consultants on federal-aid contracts. Prime Contractor/Prime Consultants can, however, withhold retainage from subcontractor/subconsultants. All contractors shall comply with WSDOT *Standard Specifications* Section 1-08.1(1), as well as the requirements of RCW 60.28.11.

26.29(c)

The contractor or subcontractor/subconsultant shall submit a monthly retainage report listing all subcontractor/subconsultants or lower tier subcontractor/subconsultants regardless of DBE status, and indicate the amount of retainage withheld for the covering period and the aggregate amount withheld to date. The form will be submitted within 15 calendar days of the receipt of the progress payment from either WSDOT or the Local Agency.

Once the subcontract has been satisfactorily completed, the subcontractor/subconsultant's retainage or retainage bond shall be released by the contractor within 10 calendar days from the date in which all of the subcontract work is complete. If the contractor determines that the subcontractor/subconsultant has not achieved satisfactory completion of the subcontract, the contractor must provide the subcontractor/subconsultant with written notice stating specifically why the subcontract work is not satisfactorily completed and what is required to achieve completion. The contractor shall release the subcontractor/subconsultant's retainage or retainage bond within eight calendar days after the subcontractor/subconsultant has satisfactorily completed the work identified in the notice.

WSDOT or the Local Agency shall not issue final payment to the contractor until the contractor has submitted a final Retainage Form indicating that all retainage withheld has been released to all subcontractor/subconsultants.

Under the DBE regulations, a subcontractor/subconsultant's work is satisfactorily completed when all of the tasks (work scopes) identified in the subcontract have been completed and documented, as appropriate. Under the DBE regulations, a DBE's work is deemed to have been satisfactorily completed when WSDOT makes incremental payments to the Prime Contractor/Prime Consultant for work that covers the work of the DBE subcontract. In determining whether satisfactory completion has been achieved, the contractor may require the subcontractor/subconsultant to provide documentation as mandated by Federal or State statutes such as an approved affidavit of wages paid. If there is a conflict between the DBE regulations and what is mandated by a subcontract, the DBE regulations will prevail.

26.29(d)

WSDOT Project Offices, Region OEO personnel and Local Agencies will monitor prompt payment through its electronic tracking system (DMCS) on a monthly basis. Any red flags found in the course of that monitoring will result in an immediate assessment by Region OEO, WSDOT Project Office, or Region Local Program personnel of next step actions. If the contractor fails to comply with the contract prompt payment and return of retainage requirements, this could be viewed as a breach of contract (under 26.13(b)) subject to one or more of the actions described below.

- Reflected in the Prime Contractor/Prime Consultant's Performance Evaluation;
- Withholding monthly progress payments;
- Assessing sanctions as provided by the contract, subcontract, or by law under applicable prompt payment statutes;
- Liquidated damages; and/or
- Cancellation, termination or suspension of the contract, in whole or in part

In addition, the subcontractor/subconsultant may seek (under separate action) recovery against the contractor under applicable Washington State prompt pay statutes or any other remedies provided for by law.

26.29(e)

The following further defines WSDOT's procedures pertaining to prompt payment requirements.

WSDOT Project Engineer or the Local Agency will ensure that the Contractor and all subcontractor/subconsultants make payment to all subcontractor/subconsultants of whatever tier in accordance with the requirements of RCW 39.04.250. This will be accomplished by the weekly monitoring of DMCS.

WSDOT Project Engineer or the Local Agency shall also ensure that if a contractor or subcontractor/subconsultant withholds payment from a subcontractor/subconsultant, they follow the procedures as described in Standard Specifications Section 1-08.1(1). If the Contractor fails to provide sufficient or timely notice, both to WSDOT or the Local Agency and the subcontractor/subconsultant, WSDOT or the Local Agency will take actions necessary to achieve compliance, including discussing at the weekly meeting and sending written correspondence. Compliance issues will be escalated as described in 1-07.11 until compliance is achieved.

Once notification is made by the Contractor to the subcontractor/subconsultant and WSDOT Project Engineer or the Local Agency, the WSDOT Project Engineer or the Local Agency will continue to monitor payment status in order to ensure that payment is released by the Contractor when it should be according to the remedies required in the notification. Copies of the withholding notifications should be filed in DCMS. If the withholding is not resolved prior to the next progress estimate payment to the Contractor, the WSDOT Project Engineer or the Local Agency will withhold an amount equal to the amount withheld from the sub-contractor from the next progress estimate payment to the Contractor. If the withholding is not justifiable or the Contractor fails to comply with the prompt pay requirements, the WSDOT Project Engineer shall consult with the State Construction Office and the Local Agency shall consult with WSDOT Local Programs to determine the appropriate use of the remedies described in Section 1-08.1(1), No. 7. The withholding period shall not last more than two progress payment periods without resolution. Any extension of time will require DBELO approval.

The prime consultant will provide a letter to WSDOT showing amounts paid to sub-consultants. No credit for DBE participation shall be given until the sub-consultant has received payment.

Consultant Services Office uses the following clause to ensure all consulting contractors pay sub-consultants in a timely fashion:

Sub-consultant Prompt Payment

The following procedure shall apply to all subcontracts entered into as a part of this contract:

Requirements

1. The consultant shall make payment to the sub-consultant within 10 days of payment received from the contract owner for satisfactorily completed work.
2. If the consultant determines that the sub-consultant has not achieved satisfactory completion of the subcontract, the consultant must provide the sub-consultant with written notice, stating specifically why the subcontracted work is not satisfactorily completed and what has to be done to achieve completion. A copy of this letter will be provided to WSDOT, Project Owner (as applicable) and WSDOT OEO.

Failure by a prime consultant to comply with these directives may result in the following sanctions:

1. Withholding of payments to the consultant under the contract until the contractor complies;
2. Cancellation, termination, or suspension of the contract, in whole or in part; and/or
3. WSDOT OEO reserves the right to apply other sanctions as provided by law if it determines that the prime consultant withholding retainage was acting in bad faith and against the purposes/best interests of the DBE Program.

Payment Verification

Contract progress payments made for WSDOT projects are automatically uploaded into Diversity Compliance Management System (DCMS) on the first day of the month immediately following the month in which the payment was made (i.e., a payment made in January is automatically uploaded on February 1st). On Local Agency projects, the Prime Contractor/Prime Consultant is required to report payments received from the local agency in the same manner. The Prime Contractor/Prime Consultant is then required to input payments made to subcontractor/subconsultants and lower-tier subcontractor/subconsultants. The subcontractor/subconsultant is then responsible to acknowledge payments in DMCS within 30 days of notification of a reported payment. They may flag a payment as partial or late and can denote discrepancies with payment. If the DMCS system shows a discrepancy, both the prime contract/consultant and subcontractor/subconsultant are prompted to respond to the discrepancy in an attempt to resolve the issue between the parties. If the discrepancy is not resolved, the WSDOT Project Engineer or Local Agency will follow up via email to the subcontractor/subconsultant asking for specifics pertaining to the reported discrepancy and will notify WSDOT Region OEO of the issue.

The WSDOT Project Engineer should request that WSDOT Region OEO verify, or correct contact information entered into DMCS if a subcontractor/subconsultant fails to confirm payments received within 30 days. The WSDOT Project Engineer shall consult with WSDOT Region OEO staff to remedy the situation prior to the next payment cycle.

For Local Agency projects, the Agency should request that WSDOT Regional Local Programs verify or correct subcontractor/subconsultant contact information. WSDOT Regional Local Programs will forward the request to WSDOT Region OEO staff who will verify or correct contact information entered into DMCS if a Subcontractor/subconsultant/ fails to confirm payments received within 30 days. WSDOT Local Programs Division shall consult with the WSDOT Region OEO staff to remedy the situation prior to the next payment cycle.

The WSDOT Project Engineer and Local Agency are required to monitor the payment status for each subcontractor/subconsultant and should do so frequently, but no less than once per month. The recommended practice is that a Compliance Audit List for the specific month be printed and presented to the Prime Contractor/Prime Consultant along with any information provided by WSDOT Region OEO staff regarding contact with the Subcontractor/subconsultants pertaining to discrepancies in DMCS. The WSDOT Project Engineer or Local Agency should ensure that any red flags are explained. Any “partial payment” flags should be compared against the notification. If there are “partial payment” flags and the WSDOT Project Engineer or Local Agency has not received notification of withholding the WSDOT Project Engineer or Local Agency should follow up with the Contractor and find out why.

WSDOT OEO will notify the WSDOT Project Engineer or Region Local Programs Division of any red flags in DMCS that need more investigation.

On all projects, the Contractor shall certify to the actual amounts paid to all firms that were used as Subcontractor/subconsultants, lower tier subcontractor/subconsultants or certified, manufacturers, regular dealers, or service providers on the Contract regardless of the firm’s status as a Disadvantaged, Minority, Small, Veteran, or Women’s Business Enterprise. This certification shall be submitted to the Engineer on a monthly basis using the DMCS database every month between Execution of the Contract and Physical Completion Contract Completion regardless of whether payments were made or work occurred until the subcontractor/subconsultant’s work is complete and any retainage withheld has been returned and reported as a payment. On Local Agency projects, in addition to the previously

mentioned reporting requirements, the contractor/consultant will report amounts received from the Local Agency until Contract Completion. Until the above elements have been complied with, Physical Completion will not be granted.

The Contractor shall comply with the requirements of RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040, regarding prompt payment to all Subcontractor/subconsultants. Whenever the Contractor withholds payment to a Subcontractor/subconsultant for any reason including disputed amounts, the Contractor shall provide notice within 10 calendar days of receiving payment from the Agency to the Subcontractor/subconsultant with a copy to the Contracting Agency identifying the reason for the withholding and a clear description of what the Subcontractor/subconsultant must do to have the withholding released. Retainage withheld by the Contractor prior to completion of the Subcontractor/subconsultants work is exempt from reporting as a payment withheld and is not included in the withheld amount unless the retainage is not being released in accordance with 26.29(c). The Contracting Agency's copy of the notice to Subcontractor/subconsultant for deferred payments shall be submitted to the Engineer concurrently with notification to the Subcontractor/subconsultant.

The following procedure shall apply to all subcontracts entered into as a part of WSDOT's DBE Program:

- a. Upon request, the engineer will provide a copy of any or all progress payment estimates, with regard to contract payments to any interested party to the project;
- b. The contractor shall make payment to the lower tier subcontractor/subconsultant no later than 10 calendar days after receipt of payment for work satisfactorily completed by the lower tier subcontractor/subconsultant, to the extent of the lower tier subcontractor/subconsultant's interest therein;

If a contractor believes that they have the right under the contract or subcontract to withhold payment, in part or whole, from a lower tier subcontractor/subconsultant, they shall provide immediate notification to that lower tier subcontractor/subconsultant and the WSDOT Project Engineer or Local Agency within the 10 calendar day payment requirement. The WSDOT Project Engineer or the Local Agency (in conjunction with notifying WSDOT Local Programs) will then notify WSDOT Region OEO. The notice shall include an accounting of payments to date, the value and reason for the withheld amount, and an explanation of what is required to have the withheld amount released. The lower tier subcontractor/subconsultant shall be paid within eight calendar days after the subcontractor/subconsultant completes the remedial action identified. The engineer will withhold the same amount of funds from the contractor as was withheld if the issue is not resolved by the next progress estimate;

- a. Every subcontract and lower tier subcontract shall have a dispute resolution process incorporated for resolving issues between the parties to the subcontract, or one shall be established as necessary;
- b. If the parties agree, WSDOT or the local agency will make a third party neutral available, provided the parties to the dispute agree that the cost of doing so is split between them;

- c. As stated in Section 26.13 above, failure by a contractor or subcontractor/ subconsultant to comply with these requirements is viewed as a breach of contract and may result in one or more of the following:
 1. Reflection in the Prime Contractor/Prime Consultant's performance evaluation;
 2. Withholding monthly progress payments;
 3. Assessing sanctions;
 4. Liquidated damages;
 5. Disqualifying the contractor from future bidding as non- responsible;
 6. Cancellation, termination, or suspension of the contract/agreement, in whole or in part; and/or
 7. Other sanctions as provided by the contract, subcontract, or by law under applicable prompt payment statutes, including RCW 39.04.250.

Section 26.31: DBE Directory

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) is the Unified Certification Program approved by USDOT for DBE certification. WSDOT has an interagency agreement with OMWBE to provide DBE certification. As the UCP, OMWBE maintains and regularly updates a directory of certified firms.

- a. OMWBE maintains and makes available to all persons an online DBE directory identifying all firms certified by the Washington Uniform Certification Program (UCP). The listing for each firm includes the firm's name, address, phone number, fax number, email, and contact person;
- b. For each certified DBE firm, the DBE directory also lists the NAICS code(s) along with a work description that more clearly defines the distinct elements of work (under the assigned NAICS) that the DBE is certified to perform. Prime Contractor/Prime Consultants/proposers shall use the NAICS code(s) in conjunction with the firm's work description to identify the distinct element(s) of work that the DBE firm will perform on the contract;
- c. OMWBE's DBE directory includes all certified DBEs that can reasonably be expected to compete for intermodal transportation-related work; and
- d. If a firm's DBE certification is temporarily suspended by OMWBE, the firm will be removed from the DBE directory pending OMWBE's determination on continued eligibility.

The DBE directory is located online at <https://omwbe.wa.gov/directory-certified-firms> . OMWBE updates to the online directory daily. A hard copy of OMWBE's DBE directory is available upon request.

Section 26.33: Overconcentration

Per 49 CFR Part 26.33, if WSDOT, or any of its sub-recipients, determine that DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunities of non-DBE firms to participate in this type of work, WSDOT will devise appropriate measures to address the over-concentration.

WSDOT OEO will determine if DBE firms are over-concentrated, statewide or in specific geographic locations, by evaluating the percentage of DBE versus non-DBE participation in the specific scope of work. If DBE contractors are completing an amount of work that is unduly burdening to non-DBE subcontractor/subconsultants on all USDOT financially assisted contracts, then it will be determined that DBEs participating in this scope of work are over-concentrated.

To alleviate over-concentration in a specific scope of work, WSDOT may utilize the following measures:

- a. Technical and business development assistance to the DBEs through the DBE Supportive Services Program;
- b. Removing that portion of work as a sub-contractible item when setting individual project goals;
- c. Decreasing the goals and participation credit counted for DBEs in that specific scope of work (e.g. count Condition of Award attainment at 50 percent versus 100 percent) thereby leaving the remaining 50 percent to be made up by another DBE or other type of work;
- d. Encourage Prime Contractor/Prime Consultants to utilize DBEs in areas other than those which are over-concentrated; and
- e. Any other measure that would assist DBEs in performing other types of work.

In accordance with 26.33, WSDOT will obtain the approval of the concerned federal transportation modal for its determination of overconcentration and the measures WSDOT will use to address the overconcentration. Once approved, the measures become part of WSDOT's DBE program.

Section 26.35: Business Development Program

WSDOT has established a DBE Business Development Program as part of its DBE Supportive Services (DBE/SS) Program. The DBE Business Development Program (BDP) is designed to provide targeted assistance to DBEs, helping them to become self-sufficient and compete successfully outside of the DBE Program. WSDOT's DBE

BDP is funded with FHWA's DBE SS funding (23 CFR 230, Subpart B). Consistent with 23 CFR 230, Subpart B and 49 CFR Part 26 Appendix C, assistance is provided to DBEs through consultants and OEO staff in the following areas:

1. General Office Management
 - a. Record-Keeping/Employee Reporting
 - b. Budgeting
 - c. Accounting
 - d. Human Resources/Staffing

2. Construction Bid Preparation
 - a. Blueprint Reading/Take-Offs
 - b. Estimating and Bidding
 - c. Assembly of Bid Documents
 - d. Full Service Construction Plan Center
3. Contract Administration/Construction Management
 - a. Cost Management
 - b. Project Control
4. Long Term Business Development
 - a. Business Plan Preparation/Review
 - b. Feasibility Analyses
 - c. Marketing
 - d. Financial Planning
 - e. Loan/Bonding/Insurance Application Preparation/Review

The OEO Business Development Advisor (BDA) has day-to-day responsibility for implementing WSDOT's BDP for the Office of Equal Opportunity, oversees consultant and DBE BDP caseload management.

The Process for Applying for the DBE Development Program

The OEO DBE Support Services program is marketed through community engagement, through the OEO website, in literature specific to DBE/SS, and in the weekly OEO newsletter. These free of charge and first-come first-served services are eligible for certified DBEs in Washington State. Firms interested in enrolling take the following steps:

- Fill out an online application expressing interest in program;
- Intake form/application is reviewed for eligibility (including business plan if firm has one);
- If eligible, the applying firm will go through a business review from the current administrator with assistance from participating agencies; and
- After review, the firm is matched to the technical assistance resource that would most benefit the goal of the firm.

OEO receives monthly updates of DBE progress through a report and counselor record forms matching monthly invoicing, indicating services received.

Other Areas on a Case-by-Case Basis: WSDOT OEO maintains a toll-free DBE/SS hotline, (888) 259-9143, and email address, dbess@wsdot.wa.gov. The purpose of the hotline and email is to provide customers with direct access to DBE/SS. OEO DBE/SS personnel monitor both the toll-free phone line and the email to respond to requests for assistance. The types of assistance provided are mentioned above. Consultants are determined through processes and procedures administered by the WSDOT Consultant Services Office outlined in Section 26.

Section 26.37: Monitoring & Enforcement Mechanisms

26.37(a)

WSDOT OEO will monitor and ensure compliance with the DBE program requirements as described in this Participation Plan, the General Special Provisions, Standard Specifications, Construction Manual, Design-Build Manual and Templates, and the Local Agency Guidelines (LAG) Manual. WSDOT OEO's monitoring efforts include:

- Subcontract Reviews – WSDOT OEO will review DBE subcontract documents to ensure compliance with 49 CFR Part 26, and WSDOT contract provisions;
- CUF Onsite Reviews of all DBEs participating in the project;
- Investigations of DBE complaints;
- Other reviews/monitoring efforts as deemed necessary.

When violations are discovered, WSDOT will utilize methods of enforcement most suited to the violation. Examples of WSDOT enforcement mechanisms include notations on the contractor performance report, monetary sanctions, and, for repeated violations, exclusion from bidding on WSDOT funded projects.

Remedies for Contract Violations

When a contractor violates the DBE provisions of the contract, WSDOT or its sub-recipients may incur damages. These damages consist of additional administrative costs including, but not limited to, the inspection, supervision, engineering, compliance, and legal staff time and expenses necessary for investigating, reporting, and correcting violations as well as loss of federal funding. Damages attributable to a contractor's violations of the DBE provisions may be deducted from progress payments due to the contractor or from the performance bond held by WSDOT or its sub-recipients. Before any money is withheld, the contractor will be provided with a notice of the basis of the violations and an opportunity to respond in writing. WSDOT will make a final determination as to the sufficiency of the contractor's response to the alleged violation.

A decision by WSDOT or its sub-recipients to recover damages for a DBE violation does not limit their ability to suspend or revoke the contractor's pre-qualification status or seek other remedies as allowed by federal or state law. For instance, in the event of a contractor's noncompliance with any nondiscrimination provision of its contract, WSDOT may impose such contract sanctions as it determines to be appropriate, including but not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

In appropriate circumstances, WSDOT or its sub-recipients may also refer the contractor to state or federal authorities for additional sanctions.

26.37(b)

WSDOT uses multiple methods to ensure that work committed to DBEs is actually performed by the DBEs. Such methods include:

- **Review of DBE subcontracts** – WSDOT OEO Region staff review DBE subcontracts to identify the scope of work under the contract, as well as determining if the contract contains language that is in conflict with the DBE program requirements;
- **Job Site Observations** – Project Field Inspectors monitor all job site activities, including work being performed by DBEs each working day. Field Inspectors record daily activities and observations of the DBE work in the Inspector's Daily Report (IDR) under the DBE onsite monitoring section. If Field Inspectors observe questionable behavior/violations of the contract DBE requirements, they engage WSDOT OEO assistance in addressing the issues. The project IDRs are referred to during CUF reviews. Local Agencies must ensure that daily observations of DBE work on the project occurs and the observations reported in a similar way to that previously described. If the Local Agency uses a form other than the WSDOT IDR form, the Local Agency form must contain a specific section for recording the daily observations of DBE work or provide a separate form specific to documenting the observations of the DBE work on a daily basis by the Local Agency.
- **Commercially Useful Function Onsite Review Form** – These three-part forms are a snapshot review of a DBE's work on the project. These reviews are conducted during the peak of the DBE firm's work on the project, including one for each construction season or for a change in work scope. The first part of the form is completed by WSDOT or Local Agency project office. The second section of the form is completed by the WSDOT or Local Agency Field Inspectors and reviewed by the Project Engineers outlining the observations of the DBE's work on the project. The third part of the form is completed by WSDOT Region OEO and consists of a document review and determination of whether the DBE performed a CUF. Some examples of documents reviewed include but are not limited to:
 - Certified Payrolls of both the prime and DBE
 - Proof of payment documentation provided by DBE for purchases made specific to the project
 - Documents showing ownership or the lease or rental of equipment used by the DBE to include verification of DBE trucking firm's one owned truck
 - Lease or rental agreements for office space
 - Joint check agreements
 - Any change orders between the parties that impact the DBE's work
- Monthly Progress Payment Reporting compliance as noted in section 26.29 above.
- **Complaint Investigation Reviews** – When a DBE complaint is filed, WSDOT OEO performs a thorough investigation and produces an investigation report of the observations and findings.
- **Final DBE Utilization Plan Report** – Upon the project reaching physical completion, the Project Manager or Project Engineer will certify in writing, that they have reviewed the contract records and monitored the work site, and determined that the DBE(s) performed their subcontract work with their own forces, along with the assurance that prompt pay requirements were followed.

- If WSDOT Staff, Local Agencies, or OMWBE staff become aware of suspected or admitted fraud within the DBE program, they are to notify WSDOT OEO within two business days.

Fraud and Abuse

In addition to enforcement mechanisms available under WSDOT's legal authority, WSDOT will bring to the attention of the USDOT (FHWA/FTA/FAA/Office of Inspector General (OIG)) any false, fraudulent, or dishonest conduct in connection with the DBE Program, so that USDOT can take the necessary actions as provided in 49 CFR 26.109.

If OEO conducts a Commercially Useful Function review, or other investigation under the authority of 49 CFR Part 26, and determines the prime and/or DBE is behaving fraudulently, the proper investigative and legal authorities will be notified and may result in contractual and/or monetary damages.

If WSDOT or OMWBE staff becomes aware of suspected or admitted fraud within the DBE program, they are required to notify WSDOT OEO within two business days.

In an effort to decrease fraud and abuse in the DBE Program, WSDOT has implemented a Fraud and Abuse Hotline. The toll-free phone number is (877) 856-3770 and the email address is fraudhotline@wsdot.wa.gov. The more information a complainant can provide, the more expeditiously the investigation can proceed.

Complaints can be anonymous; however, the complaint can be handled more thoroughly if the complainant can provide contact information. WSDOT will not investigate vague, ambiguous or elusive complaints. Complaints against WSDOT will be reviewed/investigated by the appropriate operating administration of the USDOT (FHWA, FTA, and FAA). Complaints against local agencies will be investigated by WSDOT OEO (in coordination with WSDOT Local Programs).

Examples of fraud include, but are not limited to:

- Contract fraud
- Kickbacks
- Wrongful claims

Examples of activities that may result in additional oversight/review include, but are not limited to:

- Unapproved substitutions of DBEs
- Failure to follow contract procedures
- Sharing of equipment and/or employees

26.37(c)

WSDOT and its sub-recipients track (and monitor) DBE payments using an electronic tracking system called the Diversity Management and Compliance System (DMCS) as previously noted in section 26.29.

WSDOT utilizes DMCS as its running tally, comparing DBE payments to the DBE commitments. However, attainment also takes into account CUF determinations, terminations and substitutions, change orders, and so on. For example, if a DBE is found to not be performing a CUF, then attainment is affected and WSDOT must take appropriate steps to account for any differences.

Section 26.39: Small Business Participation

WSDOT established a Federal Small Business Enterprise Program which was initially approved by FHWA on July 12, 2012. Subsequently, changes were made which were approved by FHWA as a pilot program and became effective May 9, 2019; an outline of the program can be accessed at <https://wsdot.wa.gov/EqualOpportunity/sbe.htm>. Elements of WSDOT's Federal Small Business Enterprise (FSBE) Program include the following: monitoring of certified firms for performance of CUF, ensuring conformance with prompt pay regulations, and goal setting methodology that does not interfere with the implementation of the DBE program.

FSBE program requirements can be found at the following General Special Provisions link: www.wsdot.wa.gov/publications/fulltext/projectdev/gsp/pdf/1-07.11.OPT7.FR1.PDF

Small Works Roster Process

The small works roster process may be used in lieu of published advertisement when the total estimate including sales tax is less than \$350,000. This can be beneficial to DBEs because the projects are smaller in size and there is no need for unbundling. In addition, if the project is less than \$50,000, per RCW 39.04.155(3)(a), the limited public works process can be utilized where the payment and performance bond requirements can be waived. Also, no published advertisement is required. Bidders are selected from the appropriate small works roster by prequalification work class and county. All other contract requirements remain the same. The bid opening, award and execution process remains the same as for contracts greater than \$350,000 except that these processes may be conducted in the region (See RCW 39.04.155 and WAC 468-15 in Appendix 10).

Purpose

1. Provide an alternative advertisement process for selection of bidders in lieu of a published advertisement for projects estimated to cost less than \$350,000 including sales tax;
2. Provide a fair, cost effective method of advertising contracts through the small works roster process;
3. Provide a clear, concise method for selection of qualified bidders;
4. Reduction in project cost for published advertisement;
5. Potential reduction in project cost for printing plans and specifications; and
6. Increase contracting opportunities for small companies.

Rules

1. Project estimated cost must be less than \$350,000 including sales tax. (RCW 39.04.155);
 - a. Breaking a project into units, or accomplishing a project in phases, is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process. (RCW 39.04.155)
2. Must invite all the bidders on the applicable small works roster. (RCW 39.04.155);
3. Bidders must be prequalified on the applicable small works roster to receive bid documents;

4. WSDOT formally advertises for small works roster applicants once per year each December. However, a firm may request to be placed on a small works roster at any time. A solicitation for small works roster participants is posted at: www.wsdot.wa.gov/biz/contaa/prequal/Small%20Works%20Questionnaire_420-020.pdf year around. (RCW 39.04.155);
5. Published advertisement of the project is not required;
6. All other rules as applicable to the Plans Preparation Manual M 22-31 and statutes apply;
7. WSDOT Headquarters Contract Ad & Award Office maintains WSDOT's small works rosters and provides a listing of qualified contractors for every small works project; and
8. Bid results shall be submitted to ContractAd&Award@wsdot.wa.gov immediately following bid opening.
 - a. Results shall be available on the Contract Ad & Award Small Works Roster website available at: www.wsdot.wa.gov/biz/contaa/WSDOTPRO/SWROSTER/default.htm.

Procedures

1. Project staff determines whether or not the project is eligible for the small works roster based on the total estimate including sales tax;
2. Prepare plans and specifications, and bid proposal form per WSDOT's Plans Preparation Manual M 22-31;
 - a. Buy America provisions are not required when there are no Buy America eligible items to be permanently incorporated into the contract or when the value of these items is less than \$2,500;
 - b. State funded non-highway contracts may use a Solicitation for Quotations; and
 - c. For questions about contract documents, contact HQ Contract Ad & Award for more information.
3. Determine the length of the advertisement period. Federally funded contracts must be on ad for at least one week; and
4. Contact WSDOT HQ Contract Ad & Award Office by phone 360-705-7835 or email ContractAd&Award@wsdot.wa.gov and request a Pre-Ad Template and a Small Works Roster Project Check sheet. Complete these forms and return them to ContractAd&Award@wsdot.wa.gov.
 - a. Request contract number from HQ Contracts Payment Section:
 - i. HQ Contract Ad & Award will send an advertisement notice to every contractor who is eligible. A list of interested contractors will be provided after the pre-ad period;
 - ii. Provide each of the companies from the list above that indicated an interest in the contract with a bid package;
 - iii. Receive and open sealed bids;
 - iv. Evaluate bids for responsiveness; and
 - v. Email bid results to HQ Contract Ad & Award Office.
 - b. Follow all other procedures in the WSDOT Advertisement and Award Manual, www.wsdot.wa.gov/publications/manuals/fulltext/M27-02/AdandAward.pdf, for bid opening, award, and execution of the project.

Subpart C – Goals, Good Faith Effort, and Counting

Section 26.45: Overall Goals

Every three years WSDOT OEO develops separate and distinct overall DBE goals for each USDOT funding source: FAA, FHWA, and FTA (e.g., FY 2021-2023). Recognizing the significant differences between the distributions of these funds, separating the DBE goals allows WSDOT to appropriately tailor the DBE program to the relative industry.

In setting its overall goals, WSDOT OEO utilizes a disparity study to determine the level of participation one would expect to achieve in the absence of present and past effects of discrimination. WSDOT OEO's most current Disparity Study can be viewed at <https://wsdot.wa.gov/sites/default/files/2017/09/11/OEO-DisparityStudy-2017.pdf>.

We will begin using our overall goal on October 1 of each year unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

A detailed description of WSDOT's most recent methodology for establishing its FHWA, FTA, and FAA overall goals can be found at: <https://wsdot.wa.gov/EqualOpportunity/default.htm>

Section 26.47: Failure to Meet Goals

26.47(c)

If WSDOT falls short of its overall DBE goal in any given fiscal year, WSDOT OEO will submit a shortfall analysis of the previous year's contracting activities and establish specific steps and milestones to correct the reasons for the non-attainment within 90 days of the end of the fiscal year.

The respective operating administration may impose conditions on WSDOT as part of its approval of the shortfall analysis and corrective actions.

Section 26.49: Transit Vehicle Manufacturer Goals

Transit Vehicle Procurements are excluded from the overall triennial goal calculation process.

Transit vehicle manufacturers wanting to do business with WSDOT or its sub-recipients must establish and submit for FTA's approval an overall percentage goal. These goals should be set in accordance with 49 CFR Part 26.45 and 26.49(b).

Transit vehicle manufacturers may make the certification required by 49 CFR Part 26.49(a) if they have submitted the overall goal to FTA and it has been approved or not disapproved.

WSDOT may, with FTA approval, establish project-specific goals for DBE participation in the procurement of Transit Vehicle Manufacturers in lieu of requiring transit vehicle manufacturers to certify that they have complied with 49 CFR Part 26.

WSDOT may, with FHWA or FAA approval, use the procedures of 49 CFR Part 26.49 with respect to procurements of vehicles or specialized equipment. If WSDOT decides to do so, the manufacturers of the equipment must meet the same requirements, including goal approval by FHWA or FAA, as transit vehicle manufacturers must meet in FTA financially assisted procurements.

Section 26.51(a-c): Means to Achieve Overall Goals

- (a) WSDOT and its sub-recipients strive to meet the maximum portion of its overall triennial DBE goal by using race-neutral means. WSDOT considers Race-neutral participation as:
- Any time a DBE wins a prime contract through the customary competitive procurement process.
 - Any time a DBE is awarded a subcontract on a contract which does not contain a COA goal.
 - Any time a DBE is used above and beyond the COA DBE Goal on a project.
- (b) WSDOT's race-neutral means include:

WSDOT established a Federal Small Business Enterprise Program which was approved by FHWA as a "pilot" program and became effective May 9, 2019; an outline of the program can be accessed at {<https://wsdot.wa.gov/sites/default/files/2016/05/10/SBE-Participation-Plan.pdf>}. Elements of WSDOT's Federal Small Business Enterprise (FSBE) Program include the following:

- Unbundling Contracts Analysis
- Small Business Set-Asides
- Developmental Goals - Consulting
- Small Business Goals
- Small Business Certification
- Alternative Acquisition Strategies Evaluation
- DBE Advisory Group
- Prime Contractor/Prime Consultant-DBE Meet and Greet Forums
- Safe Harbor program for Consultants

WSDOT will meet the maximum feasible portion of its triennial goal through the race-neutral measures listed below.

DBE Support Services Program

WSDOT will maximize outreach efforts to the DBE contracting community and the use of DBE Support Services to increase the utilization and support of DBEs that participate on upcoming WSDOT projects. Support Services WSDOT provides the following supportive services to DBEs:

- Immediate and long-term business management, record keeping, financial and accounting capabilities;
- Long-term development assistance to increase opportunities to participate in more varied and significant work, and to achieve eventual self-sufficiency;
- Programs on contracting procedures and specific contract opportunities;
- Assistance in obtaining bonding or financing;
- Assistance to start-up firms, particularly in fields with historically low DBE participation;
- Identification of potential highway-related DBEs and prequalification assistance; and
- In an effort to increase awareness of the DBE Supportive Services program, WSDOT has developed a DBE Supportive Services hotline (888) 259-9143, email address dbess@wsdot.wa.gov, and website: www.wsdot.wa.gov/EqualOpportunity/DBE.htm

Outreach and Networking

WSDOT engages in a number of outreach efforts to minority and women's organizations to enhance DBE opportunities in WSDOT projects. These efforts include, but are not limited to:

- Sponsorship of the annual Regional Contracting Forum held in Seattle, Washington, in partnership with state, local and federal agencies. Last year's event attracted approximately 2,000 individuals.
- Works with organizations such as the Northwest Minority Supplier Diversity Council, Women in Construction, USDOT's Small Business Transportation Resource Center, the Women's Transportation Seminar, Tabor 100, the National Association of Minority Contractors, Association of General Contractors, American Council of Engineering Companies, the Office of Minority and Women's Business Enterprises and other groups to promote the DBE Program.
- Establishing an internal Washington State DBE Advisory Group comprised of WSDOT divisions and local agencies, among others, that will advise WSDOT on DBE issues, including but not limited to, goal setting, outreach, training, etc.

Emerging Contractor Support Initiatives

WSDOT recognizes the necessity of developing new and innovative race-neutral contractor support services and has begun implementing new programs and resources (e.g., Capacity Building Mentorship Program; Minority, Small, Veteran and Women's Business Enterprise Program; remodeled DBE Support Services Program, etc.). This process involved examining other states' strategies, as well as working with the DBE Advisory Group, construction, consulting, minority and women business organizations to improve our programs and services.

- (c) WSDOT's overall goal-setting methodology includes a projection of race-conscious and race-neutral projections.

Section 26.51(d-g): Contract Goals

DISADVANTAGED BUSINESS ENTERPRISE INDIVIDUAL GOAL SETTING METHODOLOGY

To fulfill the Washington State Department of Transportation's (WSDOT) responsibility under 49 CFR § 26.51(e), a weighted methodology to determine the Disadvantaged Business Enterprise (DBE) individual contract goals will be utilized.

Pursuant to 49 CFR § 26.51(e)(1), WSDOT shall only set contract goals on projects which contain subcontracting opportunities. To meet the requirements of 49 CFR § 26.45, WSDOT based its overall goals on a Disparity Study from Colette Holt & Associates, a nationally recognized disparity study and consulting firm. As part of the study, contract data for federal fiscal years 2012 to 2015 were analyzed.

Project goal considerations:

Projects receiving federal financial assistance, with a total contract value in excess of \$100,000, are considered for race-conscious goal setting. WSDOT shall set goals rounded to the nearest percentage and shall not set a condition of award goal of less than two percent. Both the project size minimum and the two percent goal thresholds will ensure WSDOT is only setting individual contract goals on projects with sufficient subcontractable

opportunities. WSDOT will only set individual project goals when the preliminary engineers estimate or design process for the project is 80 percent or more complete.

Projects with a dollar value over \$100 million will be evaluated to determine if a separate overall goal should be set for the project following the requirements of 49 CFR Part 26.45 (avoids upsetting the state's monitoring of regular program participation).

Step 1 Baseline Goal

The aforementioned Disparity Study provides the DBE availability by North American Industry Classification System (NAICS) codes to calculate the goal for step 1. (See Availability Appendix)

This step uses statistical data derived from the Disparity Study to calculate a baseline project goal.

1. Review the bid items, group by work scopes, and assign NAICS codes to each work scope.
2. Use the availability percentage from the Study for each work scope group by the NAICS code.
3. The work scope group amount multiplied by DBE availability percentage equals the estimated DBE participation amount (i.e. work scope x DBE availability = DBE participation amount)
4. Total DBE participation amount divided by the project engineer's estimate (before tax) = the weighted DBE participation amount.
5. the weighted DBE Participation figure derived from the previous step will be ratcheted up for projects located in areas with a high concentration of DBEs¹ and ratcheted down for smaller projects located in remote areas. The multipliers may be adjusted depending on where we are in achieving Agency's race-conscious goal.

Step 2 Adjustments

This step considers other evidence available to WSDOT that impacts the availability of certified firms. WSDOT may adjust the individual project goal based upon the following factors:

1. Adjustments to the DBE availability figure in Step 1 may be made based on evidence pertaining to the opportunities for and ability of DBE firms to participate. Such evidence may include, but is not limited to, current overall DBE goal attainment, specialized projects, additional insurance requirements (e.g. longshoreman's insurance) and remote location in combination with small engineers estimate, lack of available certified firms, or other circumstances in which a DBE goal would pose an unreasonable mobilization cost.
2. WSDOT will consider historical DBE attainment information for projects of a similar nature and compare this to the Step 1 statistical result. For similar contracts, the Diversity Monitoring and Compliance System, hosted by B2GNow, will calculate a weighted value for the participation on the historical contracts. The participation value may be used as the Step 2 DBE Goal.
3. If relevant, the Step 1 DBE Participation Figure may be modified with the Step 2 Adjustments, listed above, to create an individual project goal.

¹ The Directory of Certified firms provides DBE firms available in the surrounding project areas.

Final Goal

A Final DBE Project Goal will be established utilizing step 1, or step 2 if necessary. Standard rounding will be applied to arrive at the nearest whole percentage.

EXAMPLE:

Within a WSDOT engineer's preliminary estimate of a typical highway construction project, a breakdown of the total dollar values assigned to each contract is typically included.

Example Work Classification Preliminary Estimate		
Mobilization		\$54,839.00
Class 1	Clearing, grubbing, grading and draining	\$14,445.00
Class 3	Bituminous surface treatment	\$230,222.50
Class 4	Asphalt concrete paving	\$103,963.00
Class 11	Guardrail	\$10,050.00
Class 12	Pavement markings (excluding painting)	\$27,169.00
Class 25	Bridge deck repair	\$17,635.00
Class 27	Signing	\$1,000.00
Class 30	Surveying	\$5,000.00
Class 35	Precast median barrier	\$7,890.00
Class 37	Impact attenuators	\$14,000.00
Class 38	Paint striping	\$18,606.80
Class 53	Traffic control	\$99,110.00
Contract Total:		\$603,930.30

To create an individual contract goal, the DBE availability percentage is then applied to the individual classes of contract total as illustrated below:

Work Classification Preliminary Estimate

Class	Class Total	NAICS	DBE Availability	DBE Availability Dollar Amount
Mobilization	\$54,839.00	N/A	N/A	\$0.00
Class 1	\$14,445.00	237310	18.90%	\$2,730.11
Class 3	\$230,222.50	237310	18.90%	\$43,512.05
Class 4	\$103,963.00	237310	18.90%	\$19,649.01
Class 11	\$10,050.00	237310	18.90%	\$1,899.45
Class 12	\$27,169.00	237310	18.90%	\$5,134.94
Class 25	\$17,635.00	237310	18.90%	\$3,333.02
Class 27	\$1,000.00	237310	18.90%	\$189.00
Class 30	\$5,000.00	541370	24.20%	\$1,210.00
Class 35	\$7,890.00	237310	18.90%	\$1,491.21
Class 37	\$14,000.00	561990	4.60%	\$644.00
Class 38	\$18,606.80	237310	18.90%	\$3,516.69
Class 53	\$99,110.00	561990	4.60%	\$4,559.06
Contract Total: \$603,930.30			DBE Total Availability: \$87,868.53	
Baseline Contract Goal: \$87,868.53/\$603,930.30			14.76%²	
<p>Adjustment if the contract is in the area with a high concentration of DBEs: 14.76% x 1.2 = 17.71% Project DBE Goal = 18% Note: The "half round up" method will be used for rounding to the nearest whole number. If the percentage is 0.49 or less the agency will round down to the next whole number. If it is 0.50 or higher, the agency will round up to the next whole number.</p>				

² The individual contract goal, will be expressed only as a percentage of the contract, is the DBE Total Availability in Dollars divided by the Contract Total. Mobilization is not evaluated as DBE availability does not exist due to the nature of this work scope and DBEs cannot grow and develop in Mobilization.

Section 26.53: Good Faith Efforts Procedures

26.53(a): Selection of Successful Bidder

WSDOT's bid process is based on responsiveness of the bidder(s). When WSDOT assigns a DBE contract goal, award of the contract is based on the lowest responsive bidder having demonstrated good faith efforts (GFE) to meet the goal.

WSDOT OEO uses the following process to ensure bidders are considered responsive in their bids and therefore eligible for award. All bidders are required to submit the below documentation as part of their bid. Only the first five bidder's packages are reviewed for responsiveness unless one or more are rejected necessitating a review of the next five bidders and so on until the lowest responsive bidder is determined.

During the bid clearance process, WSDOT OEO or Local Programs will compare all documents for irregularities such as DBE subcontractors listed for work they are not certified to perform, DBE participation amounts that differ between documents and official Prime bid, or DBE subcontract work that is substantially higher than engineer's estimates to determine responsiveness.

WSDOT OEO reviews the following documents as part of the clearance process:

1. DBE Utilization Certification form (form not applicable to design-build projects), filled out and submitted as a supplement to the sealed bid proposal at the time of bid. It includes the name of the bidder (proposal holder) submitting bid, name of the project, name of the Disadvantaged Business Enterprise, their project role, the description of work the DBE will be performing, the amount subcontracted to DBE and the amount to be applied towards goal. If bidder is unsuccessful in their attempts to solicit sufficient DBE participation to meet the COA Contract goal, a good faith effort must be submitted in accordance with Section 1-02.9 of the Contract;
2. Bid Item Breakdown/Written Confirmation form, submitted within 48 hours of due date for bids. The bidder and potential subcontractor shall complete the form according to the form's instructions. The Bidder will only send this form to the DBEs listed on the DBE Utilization Certification form. Total amounts shown for each DBE shall match the amount shown on the DBE Utilization Certification form. A Bid Item Breakdown/Written Confirmation form that does not conform to the DBE Utilization Certification form or reflects a different scope of work and/or amount of DBE participation will be considered nonresponsive unless the difference in amount can be easily determined to be the result of an error consisting of a transposition of numbers. After execution and once the contract has been entered into CCIS this form is uploaded into CCIS by WSDOT OEO. Meeting or exceeding the DBE COA Goal will be evaluated after the time of bid opening under the following conditions and restrictions,
 - Bidder has entered amount on the proposal form sufficient to meet the amount of DBE COA for each bid item as shown on the Committed DBE Bid Item Breakdown/DBE Written Confirmation documents Form.
3. DBE Trucking Credit form (as applicable) submitted within 48 hours of due date for bids. The bidder fills out Part A, while the DBE Trucking firm(s) is responsible for filling out Part B. The form must be signed by both parties.
4. Good Faith Efforts Documentation (only required when a bidder is unsuccessful (in whole or in part) in its attempts to obtain enough DBE commitments to meet the contract goal).

The above documents must be submitted at the time specified in section 1-02.9 of the contract.

- WSDOT OEO will review all responsive documents noted above to ensure that they have been filled out in accordance with the directions provided on each form. Forms not filled out as indicated by the instructions will result in the bidder being considered non-responsive;
- De minimis errors consisting of spelling mistakes will not be considered as being improperly filled out. Inconsistencies in dollar value between the Bid Item Breakdown and the Utilization Certification will default to the higher dollar value listed as long as the inconsistencies can be easily determined as an error consisting of a transposition of numbers;

Between award and execution, the Prime Contractor/Prime Consultant shall provide the additional information described below. Failure to comply shall result in the forfeiture of the Bidder's Proposal bond or deposit.

A list of all firms who submitted a bid or quote in attempt to participate in the project, whether they were successful or not. Include the business name and mailing address. (Note: The firms identified by the Contractor may be contacted by the Contracting Agency to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three years.

Once the documents listed above have been received, reviewed, and approved by WSDOT OEO, a memo is sent to Contract Ad & Award and WSDOT Region OEO indicating the DBE manager's approval or non-approval of the Prime Contractor/Prime Consultant's bid documents.

The bidder can demonstrate GFE in either of two ways:

1. Document that the Bidder has obtained sufficient DBE participation to meet the DBE Goal:
 - By asserting through the responsive bid documents that it has obtained enough DBE participation to meet the goal; or
2. The bidder has not obtained enough in DBE commitments to meet the goal, but has submitted adequate documentation that demonstrates the bidder's good faith efforts to meet the goal.
 - The bidder must submit the DBE Utilization Certification form with its proposal, checking the box at the bottom of the form that the bidder has not obtained sufficient DBE commitments to meet the goal. GFE documentation from any bidder shall be submitted within 48 hours of the due date for proposals.

3. GFE Analysis/Review Process

- WSDOT OEO will review and analyze all submitted Good Faith Effort documents in Pre-Award status. WSDOT OEO will utilize the requirements established in 49 CFR 26.53 and 49 CFR 26 Appendix A as the foundation of the review process. However, Appendix A is not intended to be an all-inclusive list. A one-size-fits-all approach is neither desirable, nor possible. Mere pro forma efforts by bidders are not considered GFE towards meeting a contract DBE goal. In addition to Appendix A, WSDOT will:
- Take into consideration the fact that other bidders may have been successful in finding enough participation to meet the goal. This in itself, is not the determinant factor in accepting or rejecting the apparent low's good faith effort;
- Review GFE to determine the extent to which bidder made enough work available for subcontracting, in order to reasonably meet the goal;
- Review the quality, quantity and intensity of the bidders' GFE (e.g., was the bidder actively and aggressively trying to meet the goal);
- Scrutinize and investigate by line item prices that appear overly inflated and align to the potential of being an unrealistic estimate for the sole purpose of meeting a COA goal; and more.

Upon receipt of a GFE analysis request, WSDOT OEO will have five business days to review, analyze, and write up a determination. Once a determination is made, it will be sent to state construction or local programs with the findings. The Prime Contractor/Prime Consultant then has three days to request a reconsideration hearing, at which time an individual will be chosen as an independent official to preside over the hearing.

Design-Build projects (and other projects procured using alternate project delivery methods such as General Contractor/Construction Manager (GC/CM)), are also competitively bid but are awarded based on Apparent Best Value.

Design-build projects do not have a condition of award (COA) goal. Rather, when a DBE goal is assigned to a Design-Build contract, proposers are required to submit a DBE Performance Plan with their proposals, that describes the methods (subcontract opportunities, commitments, outreach and other GFE) that they will use to achieve the DBE goal over the life of the project. The DBE Performance Plans are evaluated by OEO, as part of the proposals. Once a proposer is selected, project staff and OEO will monitor the Design-Builder's GFE (progress) towards achieving the goal on a monthly basis to determine the quality, genuineness, and effectiveness of the efforts.

Sanctions

If it is determined that the contractor's failure to meet all or part of the DBE COA commitment is due to inadequate good faith efforts throughout the life of the contract, including failure to submit timely, required good faith efforts information and documentation; the contractor may be required to pay a DBE penalty equal to the amount of the unmet commitment, in addition to the sanctions outlined in Section 1-07.11(5).

Notice: If the contractor or any subcontractor/subconsultant, consultant, regular dealer, or service provider is deemed to be in non-compliance, the contractor will be informed in writing, by certified mail by the engineer that sanctions will be imposed for failure to meet the DBE COA commitment and/or submit documentation of good faith efforts. The notice will state the specific sanctions to be imposed, which may include impacting a contractor or other entity's ability to participate in future contracts.

WSDOT Standard Specifications 1-07.11(5) Sanctions

In the event that the contractor is found in noncompliance with the provisions of Section 1-07.11 (www.wsdot.wa.gov/publications/manuals/fulltext/M41-10/SS2018.pdf), the contracting agency may impose such contract sanctions as it or the Federal Highway Administration may determine necessary to gain compliance including, but not limited to: The contractor's pre-qualification may be suspended or revoked pursuant to WAC 468-16.

1. The contract may be suspended, in whole or in part, until such time the contractor is determined to be in compliance by the contracting agency;
2. The contracting agency may refer the matter to the Federal Highway Administration (FHWA) for possible federal sanctions;
3. and the contract may be terminated.

Local Programs GFE Guidelines

The process for bid clearance and GFE is the same as noted above. WSDOT Region OEO personnel will conduct the GFE analysis on local agency projects.

Section 26.53(b): Information to be Submitted

To be considered responsive and eligible for Award of a bid-build contract with DBE goals, a bidder shall comply with the requirements of the OEO DBE Contract Award Requirements (those requirements can be accessed here: [www.ecfr.gov/current/title-49/subtitle-A/part-26#p-26.53\(b\)](http://www.ecfr.gov/current/title-49/subtitle-A/part-26#p-26.53(b)))

Section 26.53(c)

WSDOT OEO will ensure that all DBE Program information is complete and accurate and adequately documents the bidder good faith efforts before committing the agency to the performance of the contract by the bidder.

WSDOT OEO reviews all DBE Program related Bid documents following bid opening, and provides a notice to WSDOT Ad and Award that the bid(s) is clear for award or is nonresponsive.

Section 26.53(d): Administrative Reconsideration

If WSDOT determines the apparent low bidder has submitted good faith effort documentation that was determined to be inadequate, WSDOT will, before awarding the contract, provide the apparent low bidder an opportunity for reconsideration.

During the Administrative Reconsideration process the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it made adequate good faith efforts to meet the goal. This documentation shall be provided to the office comprising the initial bid process and from there, it is forwarded to the OEO office for reconsideration. Only documentation of good faith efforts associated with meeting the required condition of award goal made prior to bid opening shall be considered. WSDOT will not consider new documentation during the Administrative Reconsideration process. The process is only available for determining whether the submitted good faith effort packages were sufficient. The Administrative Reconsideration process will not be used for adjudicating any other issue of responsiveness:

1. The bidder must request reconsideration within 48 hours of GFE determination and schedule a reconsideration hearing within seven calendar days of notification of being nonresponsive or forfeit the right to reconsideration;
2. The reconsideration decision will be made by the DBELO or their designated representative who did not take part in the original determination;
3. The bidder shall have the opportunity to meet in person with the reconsideration official for the purpose of setting forth the bidder's position as to why the GFE documentation demonstrates a sufficient effort;
4. The reconsideration official shall provide the bidder with a written decision on reconsideration within five working days of the hearing explaining the basis for the finding; and
5. The results of the reconsideration process are binding and are not administratively appealable to USDOT.

Section 26.53(e)

As described above (under 26.53(a)), WSDOT OEO evaluates all Federal-aid contracts for DBE goals (including Design-Build contracts). When evaluating design-build contracts for DBE goals, WSDOT OEO reviews estimates received from the Design office for both the Design and Construction phases of the project. WSDOT OEO analyzes the estimates for DBE availability in each phase to establish DBE goals. WSDOT/Local Agencies maintain full oversight responsibility for monitoring and enforcing DBE participation and contract compliance on Design-Build projects. The following applies when DBE goals are assigned to a design-build contract:

1. To be eligible for award of this contract, each proposer shall submit a DBE Performance Plan (in Appendix D, of their proposal); and
2. The DBE Performance Plan is one of the factors that WSDOT considers in the technical evaluation scoring process. WSDOT's Instructions to Proposers (ITP) template contains instructions/expectations as to the content of a DBE Performance Plan. WSDOT OEO is responsible for reviewing and rating the content of the DBE Performance Plan submitted by each proposer. WSDOT OEO Personnel involved in the review analysis of the DBE Performance Plans must sign a Statement of Non-disclosure form prior to receiving the Plans for evaluation from the Design-Build Project Facilitator. WSDOT OEO's evaluation of the DBE Performance Plans will result in an adjectival rating of Poor, Fair, Good, Very Good, or Excellent based on the identified strengths and weaknesses. The adjectival rating becomes part of the overall score of the proposals.

Evaluation of good faith efforts and crediting DBE participation will be conducted throughout the life of the project, pursuant to 49 CFR Part 26.

Section 26.53(f): Substitutions/Terminations

WSDOT's contract DBE provisions contain requirements associated with termination and substitution.

Termination/substitution of all or part of DBE (or an approved substitute) subcontract work will only be allowed for good cause, and with prior written approval of the WSDOT or the Local Agency. If the contractor terminates a DBE without prior written approval of WSDOT or the Local Agency and WSDOT OEO, the contractor will not be entitled to any payment for work or material associated with that subcontract, nor will the contractor receive credit towards the DBE goal for that work. All substitutions/terminations must be approved by both WSDOT or the Local Agency (in writing) and WSDOT OEO prior to substituting/terminating a DBE. Written approval will only be granted if the termination is for good cause.

For purposes of the DBE program, good cause includes the following circumstances:

- a. The listed DBE subcontractor/subconsultant fails or refuses to execute a written contract;
- b. The listed DBE subcontractor/subconsultant fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor/subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of the Prime Contractor/Prime Consultant;
- c. The listed DBE subcontractor/subconsultant fails or refuses to meet the Prime Contractor/Prime Consultant's reasonable, nondiscriminatory bond requirements;
- d. The listed DBE subcontractor/subconsultant becomes bankrupt, insolvent, or exhibits credit unworthiness;
- e. The listed DBE subcontractor/subconsultant is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to CFR Parts 180, 215 and 1,200 or applicable state law;
- f. WSDOT OEO has determined that the listed DBE subcontractor/subconsultant is not a responsible contractor, i.e. multiple CUF failures;
- g. The listed DBE subcontractor/subconsultant voluntarily withdraws from the project and provides WSDOT or the Local Agency written notice of its withdrawal;
- h. The listed DBE is ineligible to receive DBE credit for the type of work required;
- i. A DBE owner dies or becomes disabled and therefore, the listed DBE contractor is unable to complete its work on the contract; and
- j. Other documented good cause determined by WSDOT or the Local Agency that compels the termination of the DBE subcontractor/subconsultant.

When a reduction in the DBE's scope of work (as described in the Contractor's DBE Utilization Certification form and Bid Item Breakdown) occurs, it is viewed as a partial termination, thereby requiring the contractor to follow WSDOT's termination and substitution process.

Before transmitting a request to terminate and/or substitute a DBE subcontractor/subconsultant to the WSDOT or the Local Agency, the Prime Contractor/Prime Consultant must give notice in writing to the DBE subcontractor/subconsultant, with a copy to WSDOT or the Local Agency, of its intent to request to terminate and/or substitute, and the reason for the request.

The Prime Contractor/Prime Consultant must give the DBE five days to respond to the Prime Contractor/Prime Consultant's notice and advise the contracting agency and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the contracting agency should not approve the Prime Contractor/Prime Consultant's action. The contractor must provide proof that the DBE was provided five days to respond either through certified mail documentation or email read receipt. If required as a matter of public safety, WSDOT or the Local Agency may allow for a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by bidders in design-build contracts.

Each federal-aid contract containing a DBE goal includes the contract clause required by Part 26.13(b) stating that, "failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies that WSDOT deems appropriate if the Prime Contractor/Prime Consultant fails to comply with the requirements of this section."

WSDOT and its sub-recipients shall apply these requirements to DBE bidders for prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, WSDOT shall count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractor/subconsultants and DBE suppliers.

WSDOT and its sub-recipients will require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractor/subconsultants be performed in accordance with 49 CFR Part 26.

WSDOT OEO has final approval authority (with collaboration and recommendations of the appropriate Headquarters Division office) over all substitutions of DBE subcontractor/subconsultants after bid opening and during the execution of the contract. Any DBE firm that is found by WSDOT or the Local Agency to have been decertified/suspended or becomes unable or unwilling to perform their work, will be replaced by the contractor with another certified DBE to meet the project goal, at no additional cost to WSDOT or the Local Agency.

Documentation of a "good faith effort" may be accepted in lieu of an actual substitution of another DBE firm.

The following are some examples of conditions that WSDOT OEO will not consider as good cause for termination/substitution:

- a. The successful low bidder fails to inform the DBE prior to bid submittal that the bidder's union agreements require the bidder's subcontractor/subconsultants to have their own union agreements.

- b. The successful low bidder fails to inform the DBE prior to bid submittal of bonding requirements that the bidder will impose on its subcontractor/subconsultants.
- c. If the Prime Contractor/Prime Consultant seeks to terminate a DBE it relied upon to obtain the contract so that the Prime Contractor/Prime Consultant can self-perform the work for which the DBE contractor was engaged or so that the Prime Contractor/Prime Consultant can substitute another DBE or non-DBE contractor after contract award;

Once the Prime Contractor/Prime Consultant has an approval to substitute a DBE, prior to the substitute DBE starting work on the project, a Written Confirmation form from the substitute DBE must be submitted to WSDOT/Local Agency.

Section 26.53(g)

Good Faith Efforts Applicable to DBE Substitution

If WSDOT provides prior written approval to terminate a COA DBE, the contractor must make good faith efforts to substitute the original DBE with another DBE for at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts in replacing the DBE are evaluated in the same manner as previously listed.

As part of the termination/partial termination process, WSDOT will request the contractor to submit GFE documentation within seven days of the approved termination/partial termination, detailing whether the contractor was able to find additional substitute participation or its plan for doing so. The contractor may request an additional seven days to submit the required documentation. WSDOT OEO will provide a written determination to the contractor stating whether good faith efforts have been demonstrated.

Section 26.55: DBE Participation Counting

Counting DBE Participation (26.55(a))

The OMWBE DBE Directory contains the list of firms certified as DBEs. DBEs are certified in the NAICS code(s) that most closely represents the type of work that the DBE has been determined to have the ability to control. Recognizing that NAICS codes are broad classifications of work, and do not necessarily reflect the most distinct elements of work that a DBE is certified to perform, OMWBE has created work descriptions that more closely define the work that the DBE performs. Credit for DBE participation is only granted for work performed by DBEs under their assigned NAICS code, as further defined in the corresponding work description under each DBE's certification profile.

DBEs proposed as COA must be certified in the type of work (NAICS code and associated work description) that they will perform on the contract, prior to the due date for bids on the contract. In certain situations, such as entering into subcontracts with non-COA DBEs later in the project, DBEs shall be certified before the subcontract on which it is participating is executed and prior to starting work on that project.

WSDOT will not count DBE participation toward the contractor's contract goal until the amount being counted has been paid to the DBE for work performed, and only in cases where the DBE has been determined by WSDOT to have performed a CUF. As such, it is incumbent upon the Prime or Sub-Prime Contractor/Prime Consultant to ensure that

all relevant information regarding when the DBE will be on-site and performing work is communicated to WSDOT or the Local Agency so that a CUF review can be performed.

When a DBE participates on a contract, WSDOT and its sub-recipients will:

- a. Only count the value of the work actually performed by the DBE (with its own forces) towards DBE goals, either race-conscious or race-neutral.
- b. Count the entire amount of work performed by the DBE that is performed by the DBE's own workforce. This includes the cost of supplies, and materials and other resources obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE, except those purchased or leased from the Prime Contractor/Prime Consultant or any of its affiliates.

Credit shall be deducted from meeting the COA goal or race-neutral participation when:

- a. WSDOT OEO has determined the DBE failed to perform a CUF.
- b. Back-charges to a DBE do not count as DBE participation towards DBE goals.
- c. When the DBE has been decertified. Attainment achieved by a DBE on a project prior to decertification may count towards participation.

Credit towards meeting the contract goal varies, depending on the type of work the DBE performs. The varying types of credit are as follows:

- DBE Prime Contractor/Prime Consultant participation counts as 100 percent only for the work the DBE Prime Contractor/Prime Consultant is certified to perform, and performs with its own resources and personnel forces. All Prime Contractor/Prime Consultants are required to perform at least 30 percent of the total contract.
- DBE subcontractor/subconsultants count as 100 percent only for that portion of the subcontract work that the DBE subcontractor/subconsultant is certified to perform. In addition, the DBE must be determined to be performing a CUF (with its own forces) on the subcontract in order to count towards the contract's DBE goal. All DBE subcontractor/subconsultants are required to perform at least 75 percent of their subcontract with their own forces (regardless of tier).
- Force account work. When the contractor elects to utilize force account work to meet the DBE COA goal (as demonstrated by listing this force account work on the DBE Utilization Certification Form), only 50 percent of the proposal amount listed on the Utilization Certification shall be credited.

DBE Manufacturers

- a. Per 26.55 (e) (1) (ii), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- b. In order to count as a DBE manufacturer, the firm must be certified by OMWBE as a manufacturer with a corresponding work description.
- c. If materials or supplies are obtained from a DBE who has been certified by OMWBE as a manufacturer, 100 percent of the cost of materials or supplies can count toward the DBE goal, as long as the DBE performed a CUF.

Regular Dealers

Regular dealer status is determined on a contract-by-contract basis. A DBE firm wishing to be utilized as a regular dealer for WSDOT/Local Agency federal-aid projects must submit a request in writing to WSDOT OEO. Once OEO receives that request, an onsite visit is scheduled with the requesting firm to determine whether or not the firm meets minimum criteria i.e. storefront operation or dealer in bulk items. The onsite visit is also used to confirm inventory and type of products to be provided. Once a firm has been determined by OEO to meet initial criteria, that firm will be required to submit a request to OEO to be used as an approved regular dealer on a specific contract. For Bid-build projects the project specific request must be submitted to OEO no less than five (5) business days prior to bid opening . (See Regular Dealer Request Form at <https://wsdot.wa.gov/sites/default/files/2016/05/09/OEO-Regular-Dealer-Project-Request.pdf>). For Design-Build projects, the request to be recognized as a Regular Dealer must be submitted and approved prior to the Regular Dealer providing materials or equipment.

- a. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract and described by the specifications of the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
- b. To be a regular dealer, the firm must be 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.
- c. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.
- d. If materials or supplies are obtained from a DBE who has been approved by WSDOT OEO as a regular dealer for the project, 60 percent of the cost of materials or supplies purchased from the regular dealer may be credited toward meeting the DBE goal.
- e. If the role of the DBE regular dealer is determined to be that of a broker, then the DBE credit shall be limited to the fee or commission it receives for its services. Documentation will be required to support the fee/commission charged by the DBE.

Once WSDOT OEO has received the request, an initial onsite visit will be scheduled with the firm and a review will be conducted to review and confirm the requesting firm's qualifications as a regular dealer. If it is determined that the firm qualifies as a regular dealer, WSDOT OEO will approve the firm's request for regular dealer status for that contract. WSDOT OEO will list the firm on an Approved Regular Dealers List, which will be maintained by WSDOT OEO. A list of approved regular dealers is available on OEO's website at www.wsdot.wa.gov/sites/default/files/2017/12/04/DisadvantagedBusinessEnterprise-list-ApprovedDealers.pdf.

Once a Regular Dealer has been qualified and placed on the Regular Dealer list, the contractor will submit the required contract-specific request which includes the specific items required by the contract the Regular Dealer is to supply. WSDOT Region OEO will then verify that the Regular Dealer meets the criteria to provide those items specific to that contract in order to count toward the project goal.

Requests for regular dealer status will only be processed if the firm is certified by OMWBE in a NAICS code that falls within the wholesale (supplier) classification.

Trucking/Hauling

In order to count DBE participation for the services of trucking firms (certified by OMWBE), the DBE must be performing a CUF. The DBE receives credit for the value of the transportation services it provides on a contract using trucks that it owns, insures, and operates, using drivers it employs. If the DBE firm is a trucking firm, 100 percent of its participation will be counted towards the goal, so long as all subcontractor/subconsultants are DBE certified.

DBE participation credit is applied only to the cost of transportation (hauling), not to the materials being transported (unless the DBE is also certified as a supplier of the materials being hauled and the materials are from the DBE's owned or leased supply site).

The WSDOT OEO will be responsible for ensuring that only firms certified for trucking as a DBE by the UCP shall be cleared and approved for countable DBE program participation on WSDOT let and Local Programs let projects.

The language in General Special Provisions 1-07.11 includes the requirements pertaining to both DBE Trucking forms and the procedures related to the forms.

When the Contractor lists a DBE for trucking/hauling on the Utilization Certification form (Form #272-056), the Contractor shall submit a Disadvantaged Business Enterprise (DBE) Trucking Credit Form (Form #272-058) in accordance with Standard Specifications Section 1-02.9, Delivery of Proposal. An incorrect/incomplete form may result in the Contractor's bid being rejected.

The DBE Trucking Credit Forms (as applicable), shall be received either with the Bid Proposal or as a Supplement to the Bid. The documents shall be received no later than 48 hours (not including Saturdays, Sundays and Holidays) after the due date for delivery of the Proposal. To be considered responsive, Bidders shall submit a completed UDBE Trucking Credit Form for each DBE Trucking firm listed on the UDBE Utilization Certification.

When submitting a Request to Sublet for the DBE trucking firm, the Contractor will also be required to submit a Truck Unit Listing Log to WSDOT or the Local Agency listing all trucks that the DBE firm intends to use on the project. If the DBE will be supplementing its trucks with rented/leased trucks, the Contractor will be required to include copies of the DBE's truck rental/lease agreements with the Truck Unit Listing Log. In order to count DBE participation on the project, one or more of the trucks used by the DBE in performance of its work on the project must be owned by the DBE and at least one DBE owned truck shall be in use at all times DBE trucking work is being performed on the project. A DBE Firm is considered owning the truck when they are listed as either the Registered or Legal Owner on the applicable State's issued vehicle registration. The WSDOT Project Engineer or Local Agency will not accept or approve a Request to Sublet for a DBE firm performing any type of trucking until he/she is in receipt of a completed and accepted DBE Truck Unit Log form. The DBE Truck Unit Listing Log shall be updated by the Contractor and DBE and submitted to the WSDOT Project Engineer or Local Agency for approval prior to utilizing any new or additional trucks on the project. Incomplete or incorrect supplemental information will be returned for correction prior to approval of the Request to Sublet Work. The WSDOT Project Engineer or Local Agency Field Inspectors will validate that those trucks listed on the DBE Truck Unit Listing Log are the same as those performing work on the project site. Any trucks not listed on the form will be noted by the Inspector who will notify the WSDOT Project Engineer or Local Agency of the unlisted trucks. The Contractor and DBE have 48 hours to send an updated form to the WSDOT Project Engineer or Local Agency.

Brokers

DBE brokers, packagers, ad hoc suppliers, and manufacturers representatives' commission or fees on the contract are all that are counted towards DBE participation. Count the entire amount of fees or commissions charged by a DBE for providing a bona fide service (e.g. professional, technical or managerial consulting) or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract toward DBE goals, provided WSDOT determines the fees to be reasonable and do not exceed 5% of the total value of goods or services provided by the broker.

Rental/lease agreements

- a. In order to perform a CUF, a DBE must be responsible for the execution of the work for which it is contracted, by actually performing, managing, and supervising the work using its own employees and equipment.
- b. All rental/lease agreements need to be pre-approved by WSDOT OEO prior to the start of work by the DBE firm. The lease agreement should be submitted to the project office, which will then forward it to WSDOT Region OEO. WSDOT Region OEO will provide a response on whether the agreement is approved to the WSDOT Project Office or Local Agency within five business days. The WSDOT Project Office or Local Agency will advise the Prime Contractor/Prime Consultant and DBE of the status of the approval.
- c. In the case of a documented emergency where unreasonable hardship could be caused to a project due to such occurrences such as equipment failure, the WSDOT Region EEO officer or Local Agency can approve rental/lease agreements in order to prevent project work stoppage. All relevant documentation in such instances will be immediately forwarded to WSDOT Region OEO.
- d. Count the work a DBE subcontracts to another firm only if the other firm is a DBE. Work that a DBE subcontracts to a non-DBE firm does not count towards DBE participation or goal, and could result in a determination that the DBE is not performing a CUF.
- e. Prior to contract execution, if a Prime Contractor/Prime Consultant has made a commitment to utilize an ineligible DBE but a contract or subcontract has not been executed, the DBE does not count towards the overall triennial goal or COA goal. WSDOT will require the Prime Contractor/Prime Consultant to meet the COA goal with an eligible DBE firm or demonstrate good faith efforts to do so.

Joint Venture (26.55(b))

DBEs participating in a joint venture counts towards DBE participation only for the work the DBE contractor has performed using its own resources. OEO has the responsibility for approval of Joint Venture Agreements involving DBEs. The process for WSDOT approving DBE Joint Ventures is as follows:

- a. If WSDOT's Contract Ad and Award approves the Joint Venture Contractor Prequalification, the prequalification documentation will be reviewed by OEO to determine if the DBE has sufficient management and financial capabilities.
- b. If the DBE is participating in a joint venture as a subcontractor/subconsultant, WSDOT Contract Ad and Award will not be involved in the DBE Joint Venture approval process.

- c. OEO will work with WSDOT's Contract Ad and Award Office to determine if the work history, equipment, and key personnel of the DBE firm are adequate to perform the joint venture.
- d. OEO will review the Joint Venture Agreement to determine if the information contained within accurately reflects the DBEs present certification.
- e. Using business descriptors, OEO will confirm that the DBE is certified to perform the scopes of work indicated on the proposal.
- f. OEO will review the certification documentation and review the last on-site review forms to determine if a new on-site review is necessary.
- g. If a DBE Joint Venture is determined to be the apparent low bidder on a contract, the DBE partner will submit a bid item break out letter to OEO, PTD, or LP for sub-recipients. This document will contain:
 - The item(s) of work the DBE will perform;
 - Equipment which will be used to perform the work; and
 - Personnel and supervisors who will be performing the work.
- h. The non-DBE joint venture partner shall not exercise supervision, management, or control over the elements of work assigned to the DBE partner. Any practice, arrangement, or condition that erodes the independence or inhibits the DBE firm in performing a CUF on its selected items of work shall prevent in that firm's participation from being counted towards project or overall DBE goals. Such practices, arrangements, or conditions may also jeopardize the DBEs certification;
- i. Upon approval, the WSDOT Construction Office and OEO, or LP and PTD for sub-recipients, will provide an approval letter to the firms with the following language:
 - *If you are the apparent low bidder, you will be required to provide specific bid items and dollar amounts for the work performed by the (name of the DBE/JV) prior to execution of the contract. (Name of the DBE/JV) shall be held responsible to perform the distinct elements of the work therein described, with its own work force, equipment and supervision to be credited toward the DBE contract goal. Further, (name of non - DBE/ JV) shall not exercise direct supervision, management or control over the elements of the work assigned to (name of DBE/JV). Any practice, arrangement or condition that erodes the independence of (name of DBE/JV) or inhibits the firm in the performance of a Commercially Useful Function, on its elements of work shall result in the loss of credit toward the DBE contract goal.*
- j. If the DBE joint venture partner becomes unwilling or unable to perform the work, the other joint venture partner shall make good faith efforts to replace the joint venture partner as mentioned in Section 16 – Good Faith Efforts Procedures.
- k. If WSDOT does not approve the Joint Venture Agreement, a letter detailing the reasons for the disapproval will be sent to the contractors on the proposed joint venture agreement.

26.55(c): Commercially Useful Function

WSDOT OEO conducts Commercially Useful Function reviews under the authority of 49 CFR Part 26 in order to count a DBE's participation and ensure all obligations under the contract awarded to DBEs are met. Specifically, 49 CFR Part 26.55(c) (1) provides that a DBE performs a CUF when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

Prime Contractor/Prime Consultants or Prime Consultants are ultimately responsible for ensuring DBE firms are performing CUF. Because the requirements of 49 CFR 26.55 state that countable participation can only be awarded if a DBE firm is performing a CUF, it is incumbent upon the Prime Contractor/Prime Consultant to notify WSDOT or the Local Agency of when a DBE firm will be on site in order to have a CUF review. If no CUF is performed to confirm the DBE firm is indeed performing a CUF, no countable participation will be awarded to that Prime Contractor/Prime Consultant for the DBE's work on the contract.

All WSDOT projects, Sub-recipient projects, and Consultant Service Agreements containing federal-aid funding are subject to CUF reviews. WSDOT project offices and Sub-recipients are responsible for over-seeing the conduct and performance of DBE firms on their projects.

WSDOT project offices and Sub-recipients shall inform WSDOT OEO of suspected CUF violations.

To ensure that all requirements of 49 CFR 26.55 are being met, WSDOT OEO will review the role and performance of DBEs during execution of contracts, to ensure DBEs are performing a Commercially Useful Function (CUF).

WSDOT project staff and WSDOT Region OEO will complete a two-step DBE Onsite Review Form on every DBE firm working on a project with federal funding regardless of whether or not the DBE firm is performing in a race-neutral or race-conscious capacity. On multi-year projects, a new on-site review will be conducted for each DBE each year:

- Information shall be entered into the Diversity Management Compliance System (DMCS) for WSDOT-administered projects; or
- By the Headquarters Local Programs Division after their review.

If a red flag is noted on an Onsite Review form, WSDOT Region OEO staff will perform more in-depth CUF reviews. These in- depth reviews may also be conducted under the following circumstances:

- A complaint of alleged non-compliance;
- Based on information received by WSDOT OEO (note: sub-recipients shall inform WSDOT OEO of suspected CUF violations and WSDOT OEO will conduct a CUF review with the assistance of the subrecipient); or
- At the request of USDOT (FHWA, FTA, FAA).

WSDOT OEO will, in conducting CUFs, review multiple documents, conduct interviews, and observe the DBE firm during work operations. OEO will assess five areas related to the DBE:

- Management
- Personnel
- Equipment,
- Materials
- Performance

The WSDOT Region OEO person reviewing the On-Site Review will evaluate the work subcontracted, industry practices, whether the amount the DBE firm is to be paid under their subcontract agreement is commensurate with the work it is actually performing on the contract, the credit being claimed for that work, and other factors relevant to the assessment of CUF.

To determine whether the work of the DBE firm listed in a subcontract agreement is commensurate with the work it is actually performing on the jobsite, WSDOT OEO will look at the dollar value of the subcontract in conjunction with the work listed as being performed under that subcontract. That information will then be compared to what work is actually being performed on the project site. If the work actually being performed does not comport with the subcontract agreement, WSDOT OEO will look at similar subcontract agreements and actual work performed by other DBE firms; this will include any quotes by other DBE and non-DBE firms for the same contract work. This process will also be used to determine industry practice. After determining industry practice and comparing the work listed in the subcontract with that actually being performed on the contract, WSDOT OEO will render a CUF decision. For those instances where the DBE firm or Prime Contractor/ Prime Consultant has artificially inflated rates or participation in order to be awarded the contract, or when there are other indications of a possible pass-through, the information will be forwarded to the Office of Inspector General for FHWA for further investigation.

WSDOT Region OEO conducting the CUF will determine the finding based on a preponderance of the evidence. However, the DBELO has the authority to override the finding of the WSDOT Region OEO staff person, if good cause exists to do so. In the event that a firm is found non-performing CUF, they will be notified of the decision in writing.

Should a DBE firm be found non-performing CUF, the firm will have ten (10) days from the date of the decision letter to submit any written/documentation evidence they feel rebuts the finding of non-performance should the firm choose to do so. The DBELO or his/her designee will review the written documentation provided and render a final written decision within fifteen (15) days.

Only work performed by DBEs with the corresponding NAICS code and work description for which they are certified on the DBE Directory shall count towards the goals.

DBEs proposed as COA must be certified prior to the due date for bids on the contract. All non-COA DBEs shall be certified before the subcontract on which it is participating is executed and prior to starting work on that project.

WSDOT will not count DBE participation toward the contractor's contract goal until the amount being counted has actually been paid to the DBE (for work performed).

Pursuant to 49 CFR Part 26.55, When a DBE participates on a contract, WSDOT and its sub-recipients will:

- a. Only count the value of the work actually performed by the DBE towards DBE goals, either race-conscious or race-neutral.
- b. Count the entire amount of work performed by the DBE that is performed by the DBEs own workforce. This includes the cost of supplies, and materials and other resources obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE, except those purchased or leased from the Prime Contractor/Prime Consultant or any of its affiliates.

- c. In accordance with 49 CFR 26.55, a DBE firm must perform a minimum of 30% of the work of their subcontract with their own personnel. Under Washington State statutes, a subcontractor cannot sub-let out more than 25% of their subcontract.

The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function:

- a. For DBE Trucking operations to be countable the bidder must submit a completed Trucking Credit form (272-058) as part of their bid package on Bid-build projects and prior to a trucking firm starting work on a Design-build project. The prime contractor will be required to submit a completed Truck Unit Listing Log form (350-077) prior to the trucking firm starting work on the project. In addition, the trucking subcontractor will complete the Truck Unit Listing Log on a daily basis and turn completed forms to the prime who will in turn submit them to Region OEO personnel on a weekly basis.
- b. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed;
- c. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the contract; this means that at least one DBE owned truck must be in operation during all times DBE trucking work is being performed. In the State of Washington, ownership is recognized by either legal ownership or registered ownership as shown on the vehicle registration issued by the WA State Department of Licensing or similar agency for another state.
- d. If a DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, the total value of the hauling services is eligible for DBE credit provided the DBE performed a CUF;
- e. The DBE receives credit only for the value of the transportation services it provides on the contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. If trucks are being leased by the DBE trucking firm, the lease must indicate that the DBE has exclusive use of and control over the trucks. This does not preclude the leased truck from working for others, provided it is with the consent of the DBE and the lease provides the DBE first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE;
- f. The DBE may lease trucks from another DBE firm including an owner-operator who is certified, provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the contract;
- g. In any lease or owner-operator situation, as described in requirements d and e above, the following rule applies:
 - A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms of the agreement. The agreements must be submitted and approved by the contracting agency prior to the beginning of the work. The agreement must show the leaser's name, truck description and agreed upon amount and method of payment (hour, ton, or per load). All lease agreements shall be for a long-term relationship, rather than for the individual project. This requirement does not apply to owner- operator arrangements; and

- h. Credit may only be claimed for DBE trucking firms operating under a subcontract or a written agreement approved by WSDOT/LPA prior to performing work.
- The rental/lease agreement must provide the DBE firm with exclusive authority of use during the duration of the agreement. All rental/lease agreements for trucks must be sent to OEO for approval. OEO will have five business days to provide a response back to the project office, which in turn will advise the Prime Contractor/ Prime Consultant and DBE of the status of the approval.

WSDOT does not use the option of “one-for-one” counting allowed by 49 CFR 26.55 (d). A DBE trucking firm will not receive credit for any work performed by non-DBE lessees.

Where a DBE trucking firm acts as a broker, it shall only receive credit for its fees and services in accordance with 49 CFR 26.55 (a) (2), provided the firm is certified as a broker on OMWBE’s directory of certified firms.

If a DBE is decertified while working on a contract, as a prime or subcontractor/ subconsultant, only the work prior to decertification counts towards the overall triennial goal or COA goals.

However, if the DBEs ineligibility is caused solely by graduation, the DBE may continue to count towards the overall triennial DBE goal and COA goal on that contract only.

26.55(c)(1), 26.71(b): Joint Checks

A joint check is a two-party check between a DBE, a Prime Contractor/Prime Consultant/ design-builder and the supplier of material/supplies. Joint checks are not allowable (towards DBE goal credit) to pay any other creditors (e.g., lower tier subcontractor/subconsultants, Unions, equipment rentals, et al). The check is issued by the contractor/design- builder as payer to the DBE subcontractor/subconsultant and the material supplier jointly (to guarantee payment to the supplier) for items to be incorporated into a specific project. The DBE must release the check to the supplier, while the contractor/design-builder acts solely as the guarantor.

The DBE firm must be the initiator of a joint check request and control the joint check transaction. Failure to do so impacts the DBE’s ability to perform a CUF, which reduces/ limits goal credit as well as compromises the independence required of DBE certification.

Prior to its use, a joint check agreement, signed by all parties involved, must be submitted to the contracting agency for review and approval, using the DBE Joint Check Request Form (Appendix 19). The joint check agreement must describe the conditions of the arrangement, the WSDOT/Local Agency contract number, expected use of the joint checks, including a detailed description of the materials (and quantities) being procured under the joint check, and consequences if agreement is not fulfilled. The Joint Check Request Form and the Joint Check Agreement must be submitted and approved by OEO prior to its use. The use of joint checks will be closely monitored by the project office and WSDOT Region OEO to ensure that their use does not conflict with the DBE regulations. Joint check arrangements not approved prior to use will result in DBE’s failure to perform CUF and non-countable DBE participation.

To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE must “be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself.”

If the Contractor controls any of this process (e.g., negotiating price, determining quality and quantity, ordering, or paying the material supplier directly), the Contractor shall not be entitled to DBE credit towards the goal, as it relates to the material costs. WSDOT or the Local Agency are responsible for monitoring this process carefully to ensure that it does not conflict with any part of 49 CFR Part 26 (and corresponding DBE Q&As), and that the DBE has retained final decision-making responsibility throughout the process.

The following are some general conditions that must be met by all parties regarding joint check use:

- Once the joint check agreement is approved, the prime may issue a two-party check (signatures of DBE and supplier required as the endorsement to the checks) and provide the check to the DBE firm for delivery to the supplier;
- The DBE firm has 48 hours to deliver the check to the supplier;

The supplier must agree to language in the Joint Check Agreement that stipulates the joint check funds can only be used to pay for materials related specifically to that project, and that the supplier upon receipt of the joint check funds will release said materials to the DBE and provide a copy of the invoice (stamped paid in full) to the DBE firm who in turn will provide a copy to the Prime Contractor/Prime Consultant.

- The use of joint checks must be a commonly recognized business practice in the industry;
- If the Prime Contractor/Prime Consultant makes joint checks available to one DBE subcontractor/subconsultant, the service must be made available to all subcontractor/subconsultants (DBE and non-DBE);
- The relationship between the DBE and its suppliers should be established independently of and without interference by the Prime Contractor/Prime Consultant. The DBE has final decision-making responsibility concerning the procurement of materials and supplies, including which supplier to use;
- The Prime Contractor/Prime Consultant, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the joint check agreement. Copies of cancelled checks must be submitted to the project office with the payment information for the period in which the joint check was issued;
- The Contractor, DBE, and supplier each have an independent duty to report any changes from the original approved joint check agreement; and
- The DBE remains responsible for all other elements of 49 CFR 26.55(c) (1).

Failure by the DBE/Contractor to adhere to the joint check provisions will result in the DBE's work (covered by the joint check agreement) not being allowed to count towards the Prime Contractor/Prime Consultant's DBE goal, and the prime may be found in violation of the DBE specifications (subject to penalties, as described in the Assurances section).

Additionally, WSDOT Region OEO will collaborate with WSDOT Project Engineer Offices and/or Local Agency project staff in the obtaining of copies of invoices stamped paid in full, collecting copies of the checks processed through the bank to ensure the use of joint checks are in compliance with CUF requirements on federal-aid projects. WSDOT OEO Region personnel, WSDOT Project Engineer Office and Region Local Programs personnel the joint check process as part CUF requirements.

26.55(e): Brokering

The Bidder shall indicate on the DBE Utilization Certification form the use of a broker. The value of fees or commissions charged by a DBE Broker, a DBE behaving in a manner of a Broker, or another service provider for providing a bona fide service, such as professional, technical, consultant, managerial services, or for providing bonds or insurance specifically required for the performance of the contract will only be credited as DBE participation, if the fee/commission is determined by the Contracting Agency to be reasonable and the firm has performed a CUF. A reasonable fee/commission shall not be greater than 5% of the value of the brokered service.

Subpart D – DBE Certification Application and Standards

Section 26.61: Burdens of Proof

In determining whether to certify a firm as eligible to participate as a DBE, OMWBE applies the standards of 49 CFR 26.61.

The firm seeking certification has the burden of demonstrating to OMWBE, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 Subpart D & E concerning group membership, business size, economic disadvantage, ownership, and control.

OMWBE holds a rebuttable presumption that members of the designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in 49 CFR 26.67(a). Applicants have the obligation to provide OMWBE with information concerning their economic disadvantage (see 49 CFR 26.67).

OMWBE makes determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, business size, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

OMWBE will not accept records of self-certification, and will not automatically certify firms as DBEs that may have received Small Business Association certification or other self-identifying programs.

Section 26.63: Group Membership

Groups presumed to be socially and economically disadvantaged groups are: Persons who are Asian or Pacific islander: Person whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Guam, the Republic of Palau, the Federated States of Micronesia, and the Republic of Marshall Islands, Commonwealth of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Hong Kong, India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

((ii)) Persons who are black/African American: Persons having origins in any of the black racial groups of Africa;

((iii)) Persons who are Hispanic/Latino: Persons of Mexican, Puerto Rican, Cuban, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

- (iv) Persons who are Native American or Alaska native: Persons who are members or descendants of a federal or state recognized Indian tribe or Alaska native corporation;
- (v) Persons who are native Hawaiian

OMWBE verifies citizenship or permanent residency for all applicants by collecting a signed, notarized statement that the applicant is a citizen or legal permanent resident. OMWBE collects tribal cards or other documents that support an applicant's status with federally or state recognized Indian tribes. OMWBE recognizes that being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the presumed to be socially and economically disadvantaged groups.

OMWBE verifies that individuals claiming to be Native American are enrolled members of a federally or state recognized Indian tribe, Alaska Natives, or Native Hawaiians, by requiring documentation such as a Tribal enrollment card or other evidence that supports the applicant's claim.

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR 26.61(c)), OMWBE has a well-founded reason to question the individual's claim of membership in that group, OMWBE will require the individual to present additional evidence that he or she is a member of the group. OMWBE provides the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence. In determining a group membership classification, OMWBE considers whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. OMWBE may require the applicant to produce appropriate documentation of group membership.

In implementing this section, OMWBE takes special care to ensure it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate 49 CFR 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

If there is a determination that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis using the guidance found in Appendix E of 49 CFR Part 26.

Section 26.65: Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards.

OMWBE applies current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts. OMWBE utilizes this website to verify current SBA business size standards: www.sba.gov/document/support--table-size-standards

Even if the applicant meets the requirements of paragraph (1) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$26.29 million. OMWBE understands that the Secretary adjusts this amount for inflation from time to time.

OMWBE collects the firm's signed, business tax returns to review gross receipts. Audited financial statements and/or income statements and/or other documents may be accepted on a case-by-case basis.

To determine if the firm has any affiliates, OMWBE reviews the firm's responses to questions on the uniform certification application, and reviews the eligible owner's personal tax returns to identify any other businesses that are owned that may need to be further evaluated, specifically the Schedule E to determine if there are any undisclosed businesses the eligible owner(s) have an ownership interest in, and asks questions during the onsite interview. OMWBE utilizes the guidance provided in the FAA Online Training, reviews SBA and USDOT decisions concerning affiliation, USDOT's Official Guidance, and the SBA regulations, 13 CFR part 121.

Section 26.67: Determination of Social and Economic Disadvantage

Determination of Social Disadvantage:

OMWBE requires all DBE applicants to submit a signed, notarized certification that the company's disadvantaged owner(s) are a member of one of the groups in 49 CFR Part 26.67(a).

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. OMWBE makes a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. The applicant firm has the burden of demonstrating to OMWBE, by a preponderance of the evidence, that the individuals who own and control are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, OMWBE uses the guidance found in Appendix E of 49 CFR Part 26. OMWBE requires that applicants provide sufficient information to make determinations under the guidance of Appendix E of 49 CFR Part 26.

Determination of Economic Disadvantage:

OMWBE requires applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. This same affidavit also requires each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million. The affidavit utilized is from the uniform certification application.

OMWBE requires each individual who made the aforementioned certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. OMWBE uses the uniform personal net worth statement provided by USDOT to ensure this process is not unduly lengthy, burdensome, or intrusive.

OMWBE does not require owners whose ownership and control are not relied upon for DBE certification to submit a personal net worth statement.

OMWBE does not require spouses of owners applying for DBE certification to disclose their assets if they are not involved in the operation of the business. OMWBE does request relevant information on a case-by-case basis. OMWBE does request information concerning the assets of the disadvantaged owner's spouse where needed to clarify whether assets have been transferred to the spouse. OMWBE recognizes the definition of spouse to

include same-sex or opposite-sex couples that are part of a domestic partnership or civil union recognized under State law.

In determining net worth, OMWBE excludes an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). Exclusions for net worth purposes are not exclusions for asset valuation or access to capital or credit purposes. OMWBE does not reduce an individual's net worth based on contingent liabilities.

Only the present value, less the tax and interest penalties, that would accrue if the assets were distributed at the present time is counted with respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences. The burden is on the applicant to perform this calculation. OMWBE may request back up documentation to support the calculations.

OMWBE requires signed, personal tax returns. OMWBE collects supporting documentation on a case-by-case basis. OMWBE recognizes that a one-size fits all approach where we substantiate every line item regardless of magnitude, is administratively burdensome.

OMWBE does not request additional documentation that is unduly lengthy, burdensome, or intrusive.

Notwithstanding any provision of Federal or state law, OMWBE does not release an individual's personal net worth statement or any documents pertaining to it to any third party without the written consent of the submitter. OMWBE will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85

OMWBE rebuts an individual's presumption of economic disadvantage in two ways:

- If the statement of personal net worth that an individual submits under paragraph of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's economic disadvantage is rebutted. OMWBE does not have a proceeding to rebut the DBEs status as economically disadvantaged in this case.

If the statement of personal net worth and supporting documentation that an individual submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. OMWBE considers factors that include, but are not limited to, the following:

- a. Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- b. Whether the income was unusual and not likely to occur in the future;
- c. Whether the earnings were offset by losses;
- d. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- e. Other evidence that income is not indicative of lack of economic disadvantage; and
- f. Whether the total fair market value of the owner's assets exceed \$6 million.

When OMWBE has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, OMWBE starts a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual.

The proceeding follows the procedures of Part 26.87. In such a proceeding, OMWBE has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. OMWBE may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage.

If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her personal net worth remains above that amount.

OMWBE does not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

Except as set forth in the above paragraph, OMWBE will attribute to an individual claiming disadvantaged status any assets that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

OMWBE reviews the uniform certification application, the statement of personal worth submitted with the application, and business and personal tax returns to determine if there have been any transfers within two years. OMWBE also reviews any other supporting documentation submitted such as bank statements, titles, trusts, and separate property agreements. OMWBE also performs property searches to verify answers to the questions on the application and statement of personal net worth. If an applicant is a trustee and/or beneficiary of a revocable or irrevocable trust, OMWBE collects a copy of the trust and analyzes equity attributable to applicant.

OMWBE also includes the value of any ownership interest the owner may have in businesses other than the firm that is the subject of a DBE certification application or that is already a certified DBE in a personal net worth calculation.

OMWBE follows the guidance below when there is an application for DBE certification by an individual who is not a member of a group presumed to be socially and economically disadvantaged as outlined in 49 CFR Part 26 – Appendix E.

Determinations Under 49 CFR Part 26 – Appendix E (Individual Determination of Social and Economic Disadvantage):

Social Disadvantage

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups, and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control.

Evidence of individual social disadvantage must include the following elements:

- At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged.
- Personal experiences of substantial and chronic social disadvantage in American society, not in other countries.
- Negative impact on entry into or advancement in the business world. OMWBE considers education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

Education - OMWBE considers such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures that discouraged the individual from pursuing a professional or business education.

Employment - OMWBE considers such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

Business history - OMWBE will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

Economic Disadvantage:

- Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged. Information that must be submitted includes:
- Each individual claiming economic disadvantage must describe the conditions that are the basis for the claim in a narrative statement, and must submit personal financial information.

In considering diminished capital and credit opportunities, the factors to be examined, related to the personal financial condition of any individual claiming disadvantaged status, will include:

- Personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not.

- The financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals. This will be used to evaluate the individual's access to credit and capital. The financial profiles to be compared will include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

In considering economic disadvantage, transfers of assets within two years will be considered as following:

- Assets will be attributed to an individual claiming disadvantaged status which have been transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses or some other form of essential support.
- Assets will not be attributed to an individual claiming disadvantaged status which have been transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

In determining an individual's access to capital and credit, assets that may be considered include ones that the individual transferred within such two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

Section 26.69: Determination of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, OMWBE considers all the facts in the record, viewed as a whole.

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. OMWBE collects proof of contribution of capital at the time of application. This is typically in the form of a cancelled check or bank statements that show a withdrawal from a personal account and a deposit into a business bank account. If the contribution of capital is through a loan, OMWBE reviews documentation regarding the value of the assets used as collateral for the loan, guarantors, who the loan was from, and in some cases proof of repayment. If the business started more than 3 years prior to application, OMWBE requests proof of ongoing capital contribution. This may include additional cash paid into the business or loans/lines of credits in which the eligible owner

is the guarantor. If the applicant is unable to provide any proof of capital contribution, OMWBE accepts a statement sworn to by the eligible owners of the amount of the original investment, where the funds came from, and what was purchased with the funds.

The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

OMWBE reviews business tax returns to ensure that the distributions are commensurate with their ownership interests. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:

- The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
- The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

The owner's expertise must be:

- In a specialized field;
- Of outstanding quality;
- In areas critical to the firm's operations;
- Indispensable to the firm's potential success;
- Specific to the type of work the firm performs; and
- Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

The individual whose expertise is relied upon must have a significant financial investment in the firm.

OMWBE always deems as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individual:

- As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
- Through inheritance, or otherwise because of the death of the former owner.

OMWBE presumes as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

- Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- Involved in the same or a similar line of business; or
- Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to OMWBE, by clear and convincing evidence, that:

- The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

OMWBE applies the following rules in situations in which marital assets form a basis for ownership of a firm:

- When marital assets (other than the assets of the business in question) held jointly or as community property by both spouses are used to acquire the ownership interest asserted by one spouse, OMWBE deems the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. OMWBE does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification. OMWBE has created a Spousal Renunciation of Rights form to assist firms.

OMWBE may consider the following factors in determining the ownership of a firm. However, OMWBE does not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

- A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph 8 of this section;

- There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
- Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, OMWBE gives particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Section 26.71: Determination of Control

In determining whether socially and economically disadvantaged owners control a firm, OMWBE considers all the facts in the record, viewed as a whole.

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

In determining whether a potential DBE is an independent business, OMWBE scrutinizes relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

OMWBE collects lease agreements, equipment lists, insurance and bonding agreements, and other documentation to review.

OMWBE considers whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

OMWBE examines the firm's relationships with Prime Contractor/Prime Consultants to determine whether a pattern of exclusive or primary dealings with a Prime Contractor/Prime Consultant compromises the independence of the potential DBE firm. OMWBE collects contracts, when available, to assist in evaluating the applicant's independence. OMWBE does not require contracts as a condition of certification.

In considering factors related to the independence of a potential DBE firm, OMWBE considers the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions that limit the customary discretion of the socially and economically disadvantaged owners.

There can be no restrictions through corporate charter provisions, by-law provisions, contracts, or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR 26.69(j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

In a corporation, disadvantaged owners must control the board of directors.

In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, OMWBE does not deny certification solely on the ground that the person lacks the license or credential. However, OMWBE does take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

OMWBE does consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. OMWBE

may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, OMWBE may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity.

Except as otherwise provided in this paragraph, OMWBE will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as OMWBE does in other situations, without regard to whether or not the other persons are immediate family members.

If OMWBE cannot determine that the socially and economically disadvantaged owners (as distinct from the family as a whole) control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm can demonstrate to OMWBE, by clear and convincing evidence, that:

The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, OMWBE may consider whether the firm owns equipment necessary to perform its work. However, OMWBE does not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a Prime Contractor/Prime Consultant or other party that compromises the independence of the firm.

OMWBE grants certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to OMWBE only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. OMWBE does not, in this situation, require that the firm be recertified or submit a new application for certification, but OMWBE does verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described in terms of the most specific available NAICS code for that type of work. Recognizing that NAICS codes can be overly broad, for purposes of the DBE program OMWBE also applies a detailed work description to more specifically describe the scope of work under the assigned NAICS that the DBE has the ability to control.

A correct NAICS code is one that describes, as specifically as possible, the principle goods or services which the firm would provide under contract to DOT recipients. If OMWBE determines that the DBE has the ability to control different types of businesses, OMWBE will assign additional NAICS codes, as appropriate.

Firms and OMWBE check carefully to make sure that the work codes and work descriptions are kept up-to-date and accurately reflect work which OMWBE has determined the firm's owners can control. The firm bears the burden of providing detailed company information OMWBE needs to make an appropriate work code designation.

If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that OMWBE, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and WSDOT will rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

OMWBE is not precluded from changing a certification classification or description if there is a factual basis in the record. However, OMWBE does not make after-the- fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, OMWBE generally does not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the On-the-Job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Section 26.73: Other Rules Affecting Certification

Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. OMWBE does not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. However, OMWBE does consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program. Repeated failure to perform CUF could call into question a firm's certification. In such situations, OMWBE will commence a review to determine if the firm continues to meet the DBE eligibility requirements.

OMWBE evaluates the eligibility of a firm on the basis of present circumstances. OMWBE does not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

OMWBE does not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of 49 CFR Part 26, the firm is eligible for certification.

DBE firms and firms seeking DBE certification shall cooperate fully with OMWBE requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided below, a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm) cannot be an eligible DBE.

If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, OMWBE may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

OMWBE will certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

EXAMPLE 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

EXAMPLE 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

EXAMPLE 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so the OMWBE may certify the subsidiary, if all other requirements are met.

EXAMPLE 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, the OMWBE will not certify it because it fails to meet control requirements.

EXAMPLE 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so the OMWBE will not certify the subsidiary.

EXAMPLE 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of 49 CFR 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

OMWBE does not require a DBE firm to be prequalified as a condition for certification.

A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR 26.71. In addition, to avoid being affiliated with other businesses owned by the tribe or organization, a legally binding mechanism (firewall) must be in place to prevent the firms from accessing the resources of the tribe or organization's other businesses.

OMWBE applies the following special rules to the certification of Alaska Native Corporations (ANCs).

Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

- The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors.
- The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
- The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program. Self-certification through the SBA does not meet this standard.

As a recipient to whom an ANC-related entity applies for certification, OMWBE does not use the DOT uniform application form (see Appendix F of 49 CFR Part 26). OMWBE obtains from the firm documentation sufficient to demonstrate that entity meets the requirements.

An ANC firm is considered certified by the SBA if the certifying agency finds that the ANC firm meets the requirements of (i) and (ii) above, and the certifying agency finds that it satisfies any one of the following factors:

- The ANC firm provides documentation that it is a current participant in the SBA's 8(a) Business Development program;
- The ANC firm provides documentation that it has been certified by SBA as a SDB within three years of the date it self-certifies as an SDB;
- The ANC firm provides documentation that it has received certification from another Federal procuring agency that it qualifies as an SDB;
- The ANC firm provides documentation that it has submitted an application for SDB certification to a federal procuring agency and has not received a negative determination regarding that application;
- The certifying agency has received correspondence from the SBA, pursuant to 13 CFR 121.1001(b)(6), that the ANC firm meets the SBA's applicable size standard for participation in the SBA SDB program; or
- The ANC firm provides correspondence from the SBA, pursuant to 13 CFR 121.1001(b)(7), that the ANC firm meets the SBA's applicable size standard for participation in the SBA SDB program.

For ANC firms that self-certify under the SBA's SDB program, OMWBE will advise ANC firms to first obtain a determination from the SBA, pursuant to 13 CFR 121.1001(b)(7), that the firm meets the applicable size standard from the SDB program before applying for DBE certification.

ANC firms may also request that OMWBE seek a size determination from the SBA pursuant to 13 CFR 121.1001(b)(6) as part of its DBE application.

OMWBE must make a determination on the application within 90-days of receiving all information necessary to make a determination. As such, in cases where the ANC firm requests that the certifying agency obtain a size determination from the SBA, OMWBE's 90-day period of time will not begin until it receives such determination from the SBA.

If an ANC-related firm does not meet all the conditions of paragraph(i)(1) of this section, then it must meet the requirements of paragraph 10 of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

DBE Application/Reporting Changes

To apply for certification, firms should apply online at omwbe.wa.gov or contact OMWBE at 360-664-9750.

Firms seeking DBE certification are charged an application fee by OMWBE. OMWBE received approval from FHWA (in March 2013) to charge an application fee of \$25.00 and an annual update fee of \$20.00. OMWBE will waive this fee should a firm provide a statement of financial hardship. Whenever OMWBE seeks to increase/change fees associated with DBE certification, they will submit the proposal(s) to FHWA for approval.

Each year, prior to the anniversary of a firm's certification, OMWBE requires DBEs to submit an affidavit affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in the information provided in its application form, except for changes they have notified OMWBE about. OMWBE also requests business tax returns to confirm the firm's size and gross receipts. OMWBE evaluates the information to confirm that firms continue to meet the eligibility criteria for certification. If additional information is required to make a certification determination, OMWBE will make a written request for information.

OMWBE does not request additional documentation that is unduly lengthy, burdensome, or intrusive.

Should a firm fail to respond OMWBE will initiate decertification proceedings in accordance with 49 CFR Part 26.87.

OMWBE notifies all currently certified DBE firms of these requirements at the time the firm is originally certified. This notification informs DBEs to submit the affidavit regarding the firm's continued eligibility each year. OMWBE also informs the firm's owner(s) that they are required to notify OMWBE in writing of any changes in its ownership, control, size, personal net worth, or activities within thirty (30) days of the change(s).

Subpart E – Certification Procedures

Section 26.81: Unified Certification Procedures

WSDOT and its sub-recipients participate in the Unified Certification Program (UCP). The Office of Minority and Women Business Enterprises (OMWBE) is the USDOT-approved UCP for the State of Washington. OMWBE administers the UCP through an interagency agreement with WSDOT. WSDOT ensures that OMWBE has sufficient resources and expertise to carry out the DBE certification requirements of 49 CFR Part 26. OMWBE shall:

- Ensure that current DBE certification review staff have successfully completed all nine of the USDOT certification training modules before they begin to review certification applications;

- Ensure that current DBE certification review staff have viewed USDOT's "Recorded Presentation of the Rule," which describes changes to the DBE rules instituted through the DOT final rule issued October 2, 2014 (found at www.transportation.gov/civil-rights/disadvantaged-businessenterprise/dbe-final-rule-and-program-activities) before they begin to review certification applications;
- Ensure that current certification review staff have completed all new, revised, or updated training modules or materials when USDOT makes them available through its website;
- Maintain accurate training records for all certification review staff; and,
- Ensure that OMWBE staff who have not documented their completion of the mandatory training and viewing of the "Recorded Presentation of the Rule," shall not be permitted to review certification applications.

OMWBE makes all certification determinations on behalf of WSDOT. OMWBE's certification decisions are binding on WSDOT and its sub-recipients. If WSDOT and/or a USDOT operating administration have reason to believe that a certification determination was made in error (e.g., non-compliant with the regulations), OMWBE will be requested to revisit/investigate the firm's eligibility.

DBE certifications are considered pre-certification, meaning that DBEs must be certified in the appropriate NAICS (and work description) prior to the due date for bids on contracts that the DBE seeks to perform.

OMWBE maintains an electronic Directory of Certified Firms as referenced in 26.31 above.

WSDOT remains ultimately responsible to USDOT for assuring certifications performed by OMWBE are consistent with 49 CFR Part 26, notwithstanding OMWBE as the UCP.

OMWBE is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

All certification analysts perform reviews of DBE files, with two positions currently assigned to solely reviewing DBE files..

OMWBE ensures that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.

Section 26.83: Procedures in Making Certification Decision

OMWBE uses the certification criteria stated above to determine the eligibility of firms to participate as DBEs. OMWBE makes certification decisions based on the totality of the circumstances.

WSDOT ensures that only firms certified as eligible DBEs under this section participate as DBEs in WSDOT's DBE program.

OMWBE takes all the following steps in determining whether a DBE firm meets the standards of subpart D of this part.

OMWBE performs on-site visits to the principal place of business of all DBE firms. OMWBE interviews the principal officers of the firm and reviews their resumes and/or work histories. OMWBE will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in WSDOT's jurisdiction or local area, and such a visit is feasible. OMWBE may rely upon the site visit report of any other recipient with respect to a firm applying for certification. In such instances where OMWBE will be required to perform an on-site in an applicant's residence, OMWBE may verify the applicant's residency by driving past and/or reviewing ownership or lease documents. OMWBE will also coordinate a review of the applicant's home office via Skype or other similar technology and complete the interview with the principal officers of the firm at a public location.

OMWBE will perform follow up onsite interviews for certified DBEs as specified in the OMWBE and WSDOT interagency agreement.

OMWBE does the following:

- Analyze documentation related to the legal structure, ownership, and control of the applicant firm;
- Analyze the bonding and financial capacity of the firm;
- Determine the work history of the firm, including contracts it has received and work it has completed;
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- Obtain completed Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years;
- Require potential DBEs to complete and submit an appropriate application form. The OMWBE will use the application form provided in Appendix F of 49 CFR Part 26 without change or revision. OMWBE may provide in its DBE program, with the approval of the concerned operating administration, supplementing the form by requesting additional information not inconsistent with this part;
- OMWBE ensures that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.
- OMWBE reviews all information on the form prior to making a decision about the eligibility of the firm. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information OMWBE has obtained about that firm (e.g., including application materials or the report of a site visit, if OMWBE has made one to the firm), OMWBE promptly makes the information available to the other recipient.

OMWBE safeguards from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once OMWBE has certified a DBE, it shall remain certified until and unless OMWBE has removed its certification, in whole or in part, through the procedures of 49 CFR Part 26.87, except as provided in 49 CFR Part 26.88.

OMWBE does not require DBEs to reapply for certification or undergo a recertification process. OMWBE may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate, in light of changed circumstances (e.g., of the kind requiring notice or relating to suspension of certification under 49 CFR Part 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to OMWBE that leads OMWBE to question the firm's eligibility, OMWBE may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

All DBEs must inform OMWBE in writing of any change in circumstances affecting the DBEs ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided to OMWBE's application form. Changes in management responsibility among members of a limited liability company are covered by this requirement. The DBE must attach supporting documentation describing in detail the nature of such changes.

The notice must take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE must provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR 26.109(c).

A DBE must provide to OMWBE, every year on the anniversary of the date of the DBEs certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the OMWBE above.

The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of this Part, documenting this affirmation with supporting documentation of the DBE firm's size and gross receipts (e.g. submission of Federal tax returns). If the DBE fails to provide this affidavit in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

OMWBE has 90 days, upon receipt of a complete application, to reach a final determination regarding certification of a DBE. The 90 day timeline begins once OMWBE has received the application fee. If OMWBE cannot reach a final determination within the 90 days, OMWBE may extend the review process once for 60 days. OMWBE provides the applicant firm written notice explaining the reasons for the extension. If OMWBE fails to make a determination, within 90 days of receipt of a complete application, the application is deemed a constructive denial of the applicant firm, on the basis of which the firm may appeal to USDOT under 49 CFR Part 26.89.

OMWBE advises each applicant within 30 days from the receipt of the fee for the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

Except as otherwise provided, if an applicant for DBE certification withdraws its application before OMWBE has issued a decision on the application, the applicant can resubmit the application at any time.

OMWBE does not apply the waiting period provided under 49 CFR 26.86(c) before allowing the applicant to resubmit its application. However, OMWBE does place the reapplication at the “end of the line” behind other applications that have been made since the firm’s previous application was withdrawn. OMWBE may also apply the waiting period provided under 49 CFR 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before it makes a decision.

Section 26.85: Interstate Certification

This section applies with respect to any firm that is currently certified in a home state outside Washington.

When a firm currently certified in its home state applies to OMWBE for DBE certification, OMWBE may, at its discretion, accept the home state’s certification and certify the firm, without further procedures.

To obtain certification in this manner, the firm must provide to OMWBE a copy of its certification notice from the home state.

Before certifying the firm, OMWBE must confirm that the firm has a current valid certification from the home state. OMWBE can do so by reviewing home state’s electronic directory or obtaining written confirmation from the home state.

In any situation in which OMWBE chooses not to accept the home state’s certification of a firm as provided in paragraph (2) of this section, the applicant firm must provide the information in paragraphs (3)(a) through (d) of this section to OMWBE.

- The applicant must provide to OMWBE a complete copy of the application form, all supporting documents, and any other information it has submitted to the home state or any other state related to the firm’s certification. This includes affidavits of no change (see 49 CFR 26.83(j)) and any notices of changes (see 49 CFR 26.83(i)) that it has submitted to the home state, as well as any correspondence it has had with the home state’s UCP or any other recipient concerning its application or status as a DBE firm.
- The applicant must also provide to OMWBE any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, if the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform OMWBE of this fact and provide all documentation concerning this action to OMWBE.

If the applicant has filed a certification appeal with DOT (see 49 CFR 26.89), it must inform OMWBE of the fact and provide its letter of appeal and DOT’s response to OMWBE.

The applicant must submit an affidavit sworn to by the firm’s owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

This affidavit must affirm that it has submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by 49 CFR 26.85(c)(1), is an identical copy of the information submitted to the home state.

If the on-site report from the home state supporting a firm's certification in the home state is more than three years old, as of the date of its application to OMWBE, OMWBE may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

When it receives from an applicant firm all the information required by paragraph (3) of this section, OMWBE must take the following actions:

- Within seven days contact the home state and request a copy of the site visit review report for the firm [see 49 CFR 26.83(c)(1)], any updates to the site visit review, and any evaluation of the firm based on the site visit.
- As the home state, OMWBE must transmit this information to a requesting state within seven days of receiving the request. A pattern by a state of not making such requests in a timely manner or by not complying with such requests in a timely manner is noncompliance.

OMWBE will determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in Washington. Reasons for making such a determination may include the following:

- Evidence that the home state's certification was obtained by fraud;
- New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
- The home state's certification was factually erroneous or was inconsistent with the requirements of this part;
- Washington state law requires a result different from the law of the home state; and
- The information provided by the applicant firm did not meet the requirements of paragraph (3) of this section.

Unless OMWBE determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Washington, OMWBE will, no later than 60 days from the date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.

If OMWBE determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Washington, OMWBE will, no later than 60 days from the date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice stating the reasons for its determination.

This notice will state with particularity the specific reasons why OMWBE believes that the firm does not meet the requirements of this part for DBE eligibility and must offer the firm an opportunity to respond to OMWBE with respect to these reasons.

The firm may elect to respond in writing, to request an in-person meeting with OMWBE's decision maker to discuss OMWBE's objections to the firm's eligibility, or both. If the firm requests a meeting, OMWBE will schedule the meeting to take place within 30 days of receiving the firm's request.

The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this part with respect to the particularized issues raised by OMWBE's notice. The firm is not otherwise responsible for further demonstrating its eligibility to OMWBE.

The decision maker for OMWBE is an individual who is thoroughly familiar with the provisions of this part concerning certification.

OMWBE issues a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

The firm's application for certification is stayed pending the outcome of this process.

A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89.

If OMWBE does not receive from the home state a copy of the site visit review report by a date 14 days after it has made a timely request for it, OMWBE may hold action required by paragraphs (4)(b) through (d) of this section in abeyance pending receipt of the site visit review report. In this event, OMWBE will, no later than 30 days from the date on which it received from an applicant firm all the information required by paragraph (3) of this section, notify the firm in writing of the delay in the process and the reason for it.

When OMWBE denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (4) (d) of this section, or decertifies a firm, in whole or in part, the OMWBE will make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. OMWBE will enter the following information:

- The name of the firm;
- The name(s) of the firm's owner(s);
- The type and date of the action; and
- The reason for the action.

OMWBE checks the DOCR website before certifying any firm and for each firm when processing annual updates.

For any such firm that is on the list, OMWBE will promptly request a copy of the listed decision from the UCP that made it.

As the UCP receiving such a request, OMWBE will provide a copy of the decision to the requesting UCP within 7 days of receiving the request.

As the UCP receiving the decision, OMWBE will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Section 26.86: Denials of Initial Requests for Certification

When OMWBE denies a request by a firm, which is not currently certified with OMWBE, to be certified as a DBE, OMWBE will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based, will be made available to the applicant, on request.

When OMWBE denies a firm's application, the firm may not reapply until 12 months have passed from OMWBE's action. The time period for reapplication begins to run on the date the explanation required is received by the firm. An applicant's appeal of OMWBE's decision to the Department pursuant to 49 CFR Part 26.89 does not extend this period.

When OMWBE denies DBE certification to a firm certified by the SBA, it will notify the SBA in writing. The notification will include the reason for denial.

When OMWBE makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under 49 CFR 26.89.

Section 26.87: Removing a DBEs Eligibility

In the event OMWBE proposes to remove a DBEs certification, OMWBE will follow procedures consistent with 49 CFR 26.87.

To ensure separation of functions in a decertification proceeding, OMWBE has an interagency agreement with the Office of Administrative Hearings (OAH) to serve as hearing officer and decision maker in decertification proceedings. Per the interagency agreement with OAH, the Administrative Law Judge has 10 days from the date of the hearing to issue a decision. The assigned OAH Administrative Law Judge is knowledgeable of the DBE Program and eligibility standards, and is not involved in initial eligibility determinations or any decision to initiate a decertification proceeding.

One of the training elements provided to OAH Administrative Law Judges specific to DBE program requirements is the online training provided by the National Highway Institute for FHWA for DBE/ACDBE Certification Training.

Ineligibility complaints:

Any person may file a written complaint with OMWBE alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. OMWBE is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in 49 CFR Part 26.109(b).

OMWBE will review records concerning the firm, any material provided by the firm and the complainant, and other available information. OMWBE may request additional information from the firm or conduct any other investigation that OMWBE deems necessary.

If OMWBE determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, OMWBE will provide written notice to the firm that OMWBE proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If OMWBE determines that such reasonable cause does not exist, OMWBE will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

Recipient-initiated proceedings:

If, based on notification by the firm of a change in its circumstances or other information that comes to OMWBE's attention, OMWBE determines that there is reasonable cause to believe that a currently certified firm is ineligible, OMWBE will provide written notice to the firm that OMWBE proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

DOT directive to initiate proceeding:

If the concerned operating administration (FHWA, FTA, FAA) determines that information in OMWBE's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm OMWBE certified does not meet the eligibility criteria of this part, the concerned operating administration may direct OMWBE to initiate a proceeding to remove the firm's certification.

The concerned operating administration must provide OMWBE and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

OMWBE will immediately commence and prosecute a proceeding.

Hearing:

When OMWBE notifies a firm that there is reasonable cause to remove its eligibility, OMWBE will give the firm an opportunity for an informal hearing, at which time the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

In such a proceeding, OMWBE bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

OMWBE will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under 49 CFR 26.89, the OMWBE will provide a transcript of the hearing to DOT and, on request, to the firm. OMWBE will retain the original record of the hearing. OMWBE may charge the firm only for the cost of copying the record.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, OMWBE bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as OMWBE would during a hearing.

Separation of functions:

OMWBE will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. Currently, OMWBE has an agreement with the Washington State Office of Administration Hearings to preside over eligibility hearings.

Grounds for Decision:

OMWBE may base a decision to remove a firm's eligibility only on one of the following grounds:

- a. Changes in the firm's circumstances since the certification of the firm by the recipient that renders the firm unable to meet the eligibility standards of this part;
- b. Information or evidence not available to OMWBE at the time the firm was certified;
- c. Information relevant to eligibility that was concealed or misrepresented by the firm;
- d. A change in the certification standards or requirements of the Department since OMWBE certified the firm; or
- e. OMWBE's decision to certify the firm was clearly erroneous;
- f. The firm has failed to cooperate with OMWBE (see 49 CFR Part 26.109(c)).
- g. The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see 49 CFR Part 26.73(a) (2)); or
- h. The firm has been suspended or debarred for conduct related to the DBE program. The notice required above must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures above.

Notice of decision:

Following OMWBE's decision, OMWBE will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.

The notice will inform the firm of the consequences of the OMWBE's decision and of the availability of an appeal to the Department of Transportation under 49 CFR 26.89.

OMWBE will send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed the OMWBE to initiate the proceeding, provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

Status of firm during proceeding:

A firm remains an eligible DBE during the pendency of OMWBE's proceeding to remove its eligibility unless the firm has had its certification suspended in accordance with 49 CFR 26.88.

The firm does not become ineligible until a final determination under 49 CFR 26.87 has been issued.

Effects of removal of eligibility:

When a firm's eligibility is removed, WSDOT/subrecipient will take the following action:

- a. When a Prime Contractor/Prime Consultant has made a commitment to use the ineligible firm, or WSDOT/subrecipient has made a commitment to use a DBE Prime Contractor/Prime Consultant, but a subcontract or contract has not been executed before OMWBE issues the decertification decision notice, the ineligible firm does not count toward the contract goal nor WSDOT's overall goal. WSDOT will direct the Prime Contractor/Prime Consultant to meet the contract goal with an eligible DBE firm or demonstrate to WSDOT that it has made a good faith effort to do so;
- b. If a Prime Contractor/Prime Consultant has executed a subcontract with the firm before OMWBE has notified the firm of its ineligibility, the Prime Contractor/Prime Consultant may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where WSDOT subrecipient has let a prime contract to a DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the OMWBE issued the notice of its ineligibility shall not count toward WSDOT's overall goal, but may count toward the contract goal.

Exception:

- If the DBEs ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, WSDOT/subrecipient may continue to count its participation on that contract toward overall and contract goals.

Availability of appeal:

- When OMWBE makes an administratively final removal of a firm's eligibility, the firm may appeal the removal to the U. S. Department of Transportation (USDOT), per 49 CFR 26.89.

Section 26.88: Summary Suspension of Certification

OMWBE will immediately suspend a DBEs certification without adhering to the requirements in 49 CFR Part 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

OMWBE may immediately suspend a DBEs certification without adhering to the requirements in 49 CFR Part 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify OMWBE in writing of any material change in circumstances as required by 49 CFR Part 26.83(i) of this part or fails to timely file an affidavit of no change under Part 26.83(j).

In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, OMWBE shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

The concerned operating administration may direct OWMBE to take action pursuant to if it determines that information available to it is sufficient to warrant immediate suspension.

When a firm is suspended, OMWBE shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to OMWBE information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, OMWBE must either lift the suspension and reinstate the firm's certification or commence a decertification action under Part 26.87 of this part. If OMWBE commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of OMWBE to either lift the suspension and reinstate the firm or commence a decertification proceeding, is appealable to the U.S. Department of Transportation under 49 CFR Part 26.89 of this part, as a constructive decertification.

Section 26.89: Appealing Certification Decisions to the USDOT

Any firm that is denied certification or whose eligibility is removed may appeal OMWBE's decision in a certification matter to DOT. Such appeals may be sent to:

U. S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue SE4
Washington, DC 20590-0001

Pending USDOT's decision in the matter, OMWBE's decision remains in effect. USDOT does not stay the effect of OMWBE's decision while it is considering an appeal.

To file an appeal, the firm must send a letter to USDOT within 90 days of the date of OMWBE's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that OMWBE failed to consider, or what provisions the recipient did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

When it receives an appeal, USDOT requests a copy of the recipient's complete administrative record in the matter. If OMWBE is the recipient, OMWBE will provide the administrative record, including a hearing transcript, within 20 days of the Department's request. USDOT may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, OMWBE will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to OMWBE to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

USDOT makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. USDOT may supplement the administrative record by adding relevant information made available by the USDOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a USDOT Operating Administration or other appropriate USDOT office; a recipient; or a firm or other private party.

As a recipient, when OMWBE provides supplementary information to USDOT, OMWBE shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

USDOT affirms OMWBE decision unless it determines, based on the entire administrative record, that OMWBE's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

If USDOT determines, after reviewing the entire administrative record, that OMWBE's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses OMWBE's decision and directs OMWBE to certify the firm or remove its eligibility, as appropriate. OMWBE will take the action directed by the Department's decision immediately upon receiving written notice of it.

USDOT is not required to reverse OMWBE's decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to OMWBE with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case to OMWBE for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

USDOT does not uphold OMWBE's decision based on grounds not specified in OMWBE's decision.

USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT provides written notice of its decision to OMWBE, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). USDOT will also notify the SBA in writing when USDOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for USDOT's decision, including specific references to the evidence in the record that supports each reason for the decision.

It is USDOT's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

All decisions under this section are administratively final and are not subject to petitions for reconsideration.

Section 26.91: Effect of USDOT Certification Appeal Decisions

If OMWBE is the recipient from whose action an appeal under 49 CFR Part 26.89 is taken, the decision is binding. It is not binding on other recipients.

If OMWBE is a recipient to which a USDOT determination under 49 CFR Part 26.89 is applicable, OMWBE will take the following action:

- If USDOT determines that OMWBE erroneously certified a firm, OMWBE must remove the firm's eligibility upon receipt of the determination without further proceedings on OMWBE's part. This is effective on the date of OMWBE's receipt of the Department's determination, the consequences of a removal of eligibility set forth in 49 CFR Part 26.87(i) take effect;
- If USDOT determines that OMWBE erroneously failed to find reasonable cause to remove the firm's eligibility, OMWBE must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR 26.87;
- If USDOT determines that OMWBE erroneously declined to certify or remove the eligibility of the firm, OMWBE must certify the firm, effective on the date of OMWBE's receipt of the written notice of the Department's determination;
- If USDOT determines that OMWBE erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, OMWBE must take appropriate corrective action as determined by the Department; and
- If USDOT affirms OMWBE's determination, no further action is necessary.

Where USDOT has upheld OMWBE's denial of certification to or removal of eligibility from a firm, or recommended the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where USDOT has recommended reversal of OMWBE's denial of certification to or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision.

Section 26.109: Information Confidentiality Cooperation Retaliation

WSDOT will ensure compliance to this section in accordance with following both Federal and State statutes as they relate to availability of records and confidentiality of information related to complaints.

WSDOT will ensure that all participants in the USDOT's DBE Program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

WSDOT will ensure that its work environments are free from intimidation, threats, coercion, and/or discriminatory action against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If one violates this prohibition, one is not in noncompliance with this part.

Questions or Concerns

Questions or concerns regarding the DBE Program Participation Plan should be sent to:

Director, Office of Equal Opportunity
Washington State Department of Transportation
P.O. Box 47314
Olympia, Washington 98504-7314
360-705-7090



Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: _____ certifies that the DBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named DBEs. (If necessary, use additional sheets.)

Box 2: _____

Column 1 Name of DBE <small>(See instructions)</small>	Column 2 Project Role <small>(See instructions)</small>	Column 3 Description of Work <small>(See instructions)</small>	Column 4 Dollar Amount Subcontracted to DBE <small>(See instructions)</small>	Column 5 Dollar Amount to be Applied Towards Goal <small>(See instructions)</small>

Disadvantaged Business Enterprise _____ Total DBE Commitment Dollar Amount _____
 Condition of Award Contract Goal Box 3 Box 4

5 By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

Instructions for Disadvantaged Business Enterprise Utilization Certification Form

Box 1: Name of Bidder (Proposal holder) submitting Bid.

Box 2: Name of the Project.

Column 1: Name of the Disadvantaged Business Enterprise (DBE). DBE firms can be found using the Diversity Management and Compliance System web page: <https://wsdot.diversitycompliance.com>. Repeat the name of the DBE for each Project Role that will be performed.

Column 2: The Project Role that the DBE will be performing as follows;

- Prime Contractor
- Subcontractor
- Subcontractor (Force Account)
 - Work sublet as Force Account must be listed separately.
- Manufacturer
- Regular Dealer
 - Work sublet to a Regular Dealer must be listed separately.
 - Regular Dealer status must be approved prior to Bid submittal by the Office of Equal Opportunity, Washington State Department of Transportation, on each Contract.
- Broker
 - Work sublet to a Broker must be listed separately.

List each project role to be performed by a single DBE individually on a separate row. The role is used to determine what portion of the amount to be subcontracted (Column 4) may be applied toward meeting the goal (column 5).

Column 3: Provide a description of work to be performed by the DBE. The work to be performed must be consistent with the Certified Business Description of the DBE provided at the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com>

- A Bidder subletting a portion of a bid item shall state “**Partial**” and describe the Work that is included.
 - For example; “Electrical (Partial) – Trenching”.
- “Mobilization” will not be accepted as a description of Work.

Column 4: List the total amount to be subcontracted to each DBE for each Project Role they are performing.

Column 5: This is the dollar amount for each line listed in the certification that the prime intends to apply towards meeting the COA Contract goal. It may be that only a portion of the amount subcontracted to a DBE in Column 4 is eligible to be credited toward meeting the goal **See Note 1, Note 2, Note 3**. The Contracting Agency will utilize the sum of this column (Box 4) to determine whether or not the bidder has met the goal. In the event of an arithmetic error in summing column 5 or an error in making appropriate reductions in the amounts in column four, **See Note 1, Note 2, Note 3**, then the mathematics will be corrected and the total (Box 4) will be revised accordingly.

Note 1: For Work sublet as Force Account the bidder **may only claim 50%** of the amount subcontracted (Column 4) towards meeting the goal (Column 5). This information will be used to demonstrate that the DBE contract goal is met at the time that the bidder submits their bid. For example; amount sublet as force account = \$100,000 (Column 4) equates to $(\$100,000 \times 50\%) = \$50,000$ (Column 5) to be applied towards the goal.

Note 2: For Work sublet to a Regular Dealer the bidder **may only claim 60%** of the cost of the materials or supplies (Column 4) towards meeting the goal (Column 5). For example; Material cost = \$100,000 (Column 4) equates to $(\$100,000 \times 60\%) = \$60,000$ (Column 5) to be applied towards the goal

Note 3: For Work sublet to a Broker the bidder **may only claim the fees** paid to a Broker towards meeting the goal (Column 4). For example; amount sublet to a broker = \$100,000 (Column 4) equates to $(\$100,000 \times \text{reasonable fee } \%) = \$$ (Column 5) to be applied towards the goal.

Box 3: Box 3 is the COA Contract goal which is the minimum required DBE participation. The goal stated in the Contract will be in terms of a dollar amount or a percentage in the Contract. When expressed as a percentage you must multiply the percentage times the sum total of all bid items as submitted in the Bidder’s Proposal to determine the dollar goal and write it in Box 3. In the event of an error in this box, the Contracting Agency will revise the amount accordingly.

Box 4: Box 4 is the sum of the values in column 5. **This value must equal or exceed the COA Contract goal amount written in Box 3 or;**

Box 5: Check Box 5 if insufficient DBE Participation has been achieved and a good faith effort is required. Refer to the subsection titled, *Selection of Successful Bidder/Good Faith Efforts (GFE)* in the Contract.

See the Disadvantaged Business Enterprise Participation specification in the Contract for more information.



Disadvantaged Business Enterprise Utilization Certification

To be eligible for Award of this Contract the Bidder shall fill out and submit, as a supplement to its sealed Bid Proposal, a Disadvantaged Business Enterprise (DBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a DBE Utilization Certification which properly demonstrates that the Bidder will meet the DBE participation requirements in one of the manners provided for in the proposed Contract. **Refer to the instructions on Page 2 when filling out this form or the Bid may be rejected. An example form has been provided on Page 3.** The successful Bidder's DBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: A Plus Construction Company _____ certifies that the DBE firms listed below have been contacted regarding participation on this project. If this Bidder is successful on this project and is awarded the Contract, it shall assure that subcontracts or supply agreements are executed with named DBEs. (If necessary, use additional sheets.)

Box 2: US 395, Spokane City Limits to Stevens County Line - Paving and Safety _____

Column 1 Name of DBE <small>(See instructions)</small>	Column 2 Project Role <small>(See instructions)</small>	Column 3 Description of Work <small>(See instructions)</small>	Column 4 Dollar Amount Subcontracted to DBE <small>(See instructions)</small>	Column 5 Dollar Amount to be Applied Towards Goal <small>(See instructions)</small>
A Plus Construction Company	Prime	Asphalt and concrete paving, asphalt milling, preleveling and pavement repair	N/A	900,000
In the Line Services, Inc.	Subcontractor (Force Account)	Crack sealing	20,000	10,000
In the Line Services, Inc.	Subcontractor	Guideposts, joint seal, pavement markers, temporary signage, construction sign installation	200,000	200,000
The Everything Guys, LLC	Regular Dealer	Rental and sales of highway construction and related equipment and materials	100,000	60,000
Optimus Prime Trucking, Inc.	Subcontractor	Dump Trucking	50,000	50,000
Metalheads, Inc.	Manufacturer	Dowel Bars	75,000	75,000
Erosion Under Control Co.	Broker	Erosion control blankets, straw bales and wattles, sand bags	15,000	250

EXAMPLE

Disadvantaged Business Enterprise 356,968.16 Total DBE Commitment Dollar Amount 1,295,250
 Condition of Award Contract Goal Box 3 Box 4

5 By checking Box 5 the Bidder is stating that their attempts to solicit sufficient DBE participation to meet the COA Contract goal has been unsuccessful and good faith effort will be submitted in accordance with Section 1-02.9 of the Contract

DOT Form 272-056
Revised 02/2018



Combined DBE Bid Item Breakdown and Confirmation

1. Project Name 2. Contract No. 3. Prime Contractor 4. Committed DBE Firm

This form is only to be sent and completed by subcontractors listed on the DBE Utilization Certification Form.

The bidder and the listed DBE acknowledge and certifies that this form accurately represents receipt of and consent from the listed DBE firm as to the use of the referenced itemized quote below for the development of Work identified in the bidders Utilization Certification attached by reference for the above referenced project. The bidder and the listed DBE acknowledge and certifies the bidder has provided and the DBE has received the Utilization Certification for the listed DBE. Written confirmation from each listed DBE firm that it is participating in the contract in the-kind and amount of work provided in the prime contractor's commitment.

Contractor shall complete and submit this form to the Contracting Agency in accordance with Section 1-02.9 of the Contract. Failure to provide detailed DBE information to the Contracting Agency in accordance with Section 1-02.9 of the Contract may cause for Bid rejection.

Complete a separate form for each committed DBE.

Table with 11 columns: 5. Bid Item No., 6. Line Item Description (If Partial, Explain Work to be Performed), 7. Partial?, 8. Quantity, 9. Unit, 10. Unit Price, 11. Total Price. Includes a Total Amount row at the bottom.

Contractor and committed DBE contractor must sign each sheet to certify its content and completion of the form. This certification is made under federal and state laws concerning false statements. The firm's representative signing below understands that supporting documentation is subject to audit and that the documentation will be retained for minimum of six years from the project acceptance date.

Committed DBE Contractor

12. DBE Contractor Representative Name 13. DBE Contractor Representative Title 14. Phone 15. DBE Contractor Representative Signature 16. Date

Prime Contractor

17. Contractor Representative Name 18. Contractor Representative Title 19. Phone 20. Contractor Representative Signature 21. Date

Instructions for Combined Disadvantaged Business Enterprise (DBE) Bid Item Breakdown and Confirmation Form

- Box 1: Provide the Name of the project as stated in the proposal package.
- Box 2: Provide the Contract Number as stated in the proposal package.
- Box 3: Provide the Name of the bidder (Proposal holder) submitting Bid.
- Box 4: Provide the Name of the Disadvantaged Business Enterprise (DBE) Firm. DBE Firms can be found using the search tools under the Firm Certification section of the Diversity Management and Compliance System (DMCS) webpage <https://wsdot.diversitycompliance.com>.
- Column 5: Provide the Bid Item Number (as it appears in the bid proposal).
- Column 6: Provide the line item description of the work to be performed by the DBE.
- Column 7: If the DBE is performing only part of the bid item, mark "Partial". Specify the distinct elements of work to be performed by the DBE firm and provide a complete description of these partial items (in column 6). If the DBE is performing the entire bid item, mark "Complete".
- Column 8: Provide the estimated quantity for the specific bid item. For trucking firms, use hour or another unit of measure.
- Column 9: Provide type of unit used. For trucking firms, use hour or another unit of measure.
- Column 10: Provide the estimated total unit cost amount per bid item.
- Column 11: Provide the amount of the bid item being used to fulfill the DBE goal. The work to be performed must be consistent with the Certified Business Description of the DBE provided in the DMCS webpage <https://wsdot.diversitycompliance.com>. Mobilization up to 10% is acceptable. If mobilization is more than 10% additional information and/or justification may be requested. The total amount shown for each DBE shall match the amount shown on the DBE Utilization Certification Form.
- Box 12: Provide the name of the DBE contractor's representative.
- Box 13: Provide the title of the DBE contractor's representative.
- Box 14: Provide the contact number of the DBE contractor's representative.
- Box 15: Provide the signature of the DBE contractor's representative.
- Box 16: Provide the date, the form was signed.
- Box 17: Provide the name of the prime contractor's representative available to contact regarding this form.
- Box 18: Provide the title of the prime contractor's representative.
- Box 14: Provide the contact number of the prime contractor's representative.
- Box 15: Provide the signature of the prime contractor's representative.
- Box 16: Provide the date, the form was signed.

Use Additional Sheets if necessary.

DOT Form 830-005
Revised 12/2021

Appendix 2 WSDOT's External Complaint Procedures

WSDOT OEO DBE COMPLAINT PROCESS

Complaints can be filed by the public through email at oeoecrbcomplaints@wsdot.wa.gov and by phone at 360-705-7090.

When a complaint is submitted by phone, the complainant will still be required to submit the complaint via email for OEO to have a written record of the complaint. Complainant is requested to give the following information:

- Name
- Complainant's Company Name
- Type of complaint
- City/county the complaint occurred
- Project number
- Company Name who is in possible violation
- Contact number, email address of person filing complaint

If paper documents are filed, they are to be date stamped on the date received by WSDOT OEO.

When a complaint has been received, the Administrative Assistant will process the complaint by assigning a case number and entering the information into a tracking system. They will then forward to the DBE Managers within one business day upon receiving the complaint; the DBE Manager will review and assign a staff member to investigate.

The DBE Managers will review the complaint to determine if the complaint meets the requirements for their staff to investigate. If so, they will assign the case to the appropriate staff member to investigate by notifying them and forwarding any documentation regarding the complaint. The DBE Manager will then inform the Administrative Assistant or their designee who the complaint was assigned to.

The Administrative Assistant or their designee will respond to the complainant through correspondence within three (3) business days of receiving the complaint, acknowledging the complaint has been received and the case number it is has been assigned, along with contact information of the staff member investigating the complaint.

Once the staff member assigned to the case completes the process, and the case is ready to be closed, they forward all final documents to the Administrative Assistant, along with appropriate documentation of their investigation. The documents are attached to the case in SharePoint and the case is marked closed in the tracking system.

If the complaint does not meet required criteria, the managers will respond to the complainant letting them know that additional information is necessary before the complaint can move forward. The manager will contact the Administrative Assistant by email and let them know that additional information was requested from the Complainant. The Administrative Assistant will enter the appropriate documentation into the tracking system. If the manager determines that the information provided does not constitute a complaint, then the Administrative Assistant will enter the appropriate documentation into the tracking system to close the case.

Procedures for External Complaint Processing under Title VI, ADA, and related nondiscrimination statutes

A. Applicability

1. Any person, or class of persons, believing they have been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964 (Title VI), the Americans with Disabilities Act (ADA), the Washington Law Against Discrimination (WLAD; Chapter 49.60 RCW), and related nondiscrimination statutes that prohibit discrimination based on race, creed, color, national origin, familial or marital status, sex, sexual orientation, age, military status, or disability, in any program or activity administered by the Washington State Department of Transportation (WSDOT), may file a complaint with WSDOT.
2. These procedures also cover complaints of discrimination in any program or activity administered by WSDOT that relates to local agencies, contractors and other sub- recipients receiving U.S. Department of Transportation (USDOT) funding through the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), or the Federal Aviation Administration (FAA).
3. As of August 2018, the FHWA has provided new mandatory guidance for Title VI complaint processing. See *Questions and Answers for Complaints Alleging Violations of Title VI of the Civil Rights Act of 1964*; specifically, Question 2e, *How are complaints routed?*, which can be found on the FHWA Office of Civil Rights (HCR) website at the following link: www.fhwa.dot.gov/civilrights/programs/title_vi/titleviqa.cfm#Toc522787058.

Pursuant to the new guidance, ALL Title VI complaints under FHWA jurisdiction, including complaints filed against sub-recipients, must now be forwarded to the FHWA **before** WSDOT takes any action on the complaint. See Section I.C. below for new mandatory FHWA routing instructions.

4. These procedures are administrative in nature and do not provide for punitive or compensatory damages as remedies.
5. These procedures do not prohibit a Complainant from filing a formal complaint alleging discrimination with other state, local, or federal agencies, nor do they prohibit a Complainant from retaining private counsel.
6. Retaliation for filing a complaint alleging discrimination is prohibited under 49 C.F.R. § 21.11(e).
7. Complaints filed under Title VI with WSDOT in which WSDOT is the named Respondent must always be forwarded to the USDOT modality having jurisdiction (FHWA, FTA, or FAA) for investigation.

B. Informal Complaint Resolution. [NOT APPLICABLE to Title VI Complaints under FHWA jurisdiction]

1. WSDOT will make every effort to resolve complaints promptly and at the lowest level possible.
2. Informal mediation may be used to resolve complaints at any stage of the process.
3. If a complaint cannot be resolved informally, WSDOT may conduct an investigation of the complaint.

C. FHWA ONLY - Special Instructions for routing Title VI Complaints under FHWA jurisdiction.

1. FHWA is responsible for all decisions regarding whether a complaint under FHWA jurisdiction should be accepted, dismissed, or referred to another agency.
2. WSDOT must log all Title VI complaints on receipt (see Section II.B. below for detailed instructions on complaint intake).
3. After logging the complaint, WSDOT must immediately forward all Title VI complaints under FHWA jurisdiction to:

FHWA Washington Division
c/o Civil Rights Program Manager 711 S. Capitol Way, Suite 501
Olympia, WA 98501-1284
360-534-9325

4. FHWA's Washington Division Office will then forward the complaint to:

Federal Highway Administration
U.S. Department of Transportation Office of Civil Rights
1200 New Jersey Avenue, SE
8th Floor E81-105 Washington, DC 20590
202-366-0693

For determination whether the complaint should be accepted, dismissed, or referred to another agency.

5. Once the USDOT Office of Civil Rights (HRC) has decided whether to accept, dismiss, or transfer the complaint, HRC will notify the Complainant, the FHWA Division Office, WSDOT, and the sub-recipient (where applicable).
6. **ONLY AFTER** WSDOT has been instructed to do so by HRC should WSDOT begin investigation of a Title VI complaint under FHWA jurisdiction.

Investigations [Our office may not begin an investigation of a Title VI complaint under FHWA jurisdiction until instructed to do so by FHWA]

- A. Each step of the investigation process, and the basis on which the case was resolved or closed, must be thoroughly documented. For economy of language, “USDOT” will be used throughout the Investigations’ section of these procedures to mean the “USDOT modality having jurisdiction (FHWA, FTA, or FAA) over the program or activity.”
- B. OEO managers or the investigator should advise the Data and Reporting Specialist at case “milestones” (sent to FHWA, assigned to an investigator, on-site visit scheduled, etc.) and may ask the Data and Reporting Specialist to add comments to the comments section of the complaint log at any time.
- C. Complaint Intake
 1. Communications alleging discrimination may be received by mail, FedEx, hand delivery, fax, email, telephone, or other means.
 2. The original communication should be retained in native format (i.e., as it is received), along with proof of the delivery method. If hard copy documents are received, the documents should be date stamped on the date received, then scanned and saved electronically.
 - a. If received by mail – retain envelope. Save a copy of the envelope electronically along with the documents. Also save a copy of the WSDOT Office of Equal Opportunity (OEO)-endorsed, return receipt cards, if return receipt is requested.
 - b. If received by FedEx or other express mail service, retain a copy of the delivery confirmation or record of delivery, and save a copy electronically along with the documents.
 - c. If delivered in person – record the name of the person making the delivery, and the delivery date and time. This record of delivery should be initialed by the courier, if possible, and saved electronically along with the documents.
 - d. If received by fax – retain the fax cover sheet indicating transmission date and number of pages received and save it electronically along with the documents.
 3. If the documents are received by email, the initial communication (e.g., cover email) should be saved in native format.
 - a. The initial communication, including all attachments, should also be printed out and date stamped.
 - b. If the communication concerns an EEO or DBE issue, the person receiving the communication may suggest that the complainant also complete an on-line complaint form obtainable at: www.wsdot.wa.gov/EqualOpportunity/complaints.htm, though it must be made clear that the complainant is not required to do so.

4. If the communication alleging discrimination is received telephonically, the person receiving the call should type on a complaint intake form as much information about the alleged discrimination as possible, including:
 - a. The correspondent's full name and contact information (telephone number, email address, mailing address);
 - b. The name of the Respondent (person or entity alleged to have discriminated; called "recipient" in some USDOT documents);
 - c. A description of the allegations;
 - d. Location (city/county) where the alleged discrimination occurred;
 - e. Date(s) the alleged discrimination occurred;
 - f. The date and time the communication is received; and
 - g. The person receiving the communication.
 - h. If the person receiving the communication was unable to type this information on a complaint intake form when the call was received, they should transcribe the information onto a form as soon as possible after the call is completed.
5. The person who receives a communication alleging discrimination should immediately forward the communication, or recorded information about the communication (if received by telephone or in person), to the Data and Reporting Specialist responsible for logging the communication. The Data and Reporting Specialist will assign a distinct, identifying case number to the communication and record relevant information about the communication in OEO's complaint tracking system (currently in SharePoint).
6. **FHWA TITLE VI COMPLAINTS ONLY** - If the document indicates a Title VI Complaint under FHWA jurisdiction, the Data and Reporting Specialist should immediately forward the complaint to FHWA. For instructions how to route FHWA Title VI complaints, go to Section I.C. above.
7. All Other Complaints - The Data and Reporting Specialist responsible for logging the communication will then immediately forward the communication to OEO management to identify whether the communication is a complaint, or whether the complaint is deficient, and to determine next steps.
8. The Data and Reporting Specialist responsible for logging the communication must advise the correspondent who sent the communication as soon as possible in writing, but **no later than seventy-two (72) hours** after the receipt date, that their communication has been received and will be forwarded to FHWA [for Title VI Complaints under FHWA jurisdiction] or to management, for review. If the communication is received electronically and a read receipt is requested, the person receiving the communication should acknowledge receipt of the communication electronically.

- D. **Determine whether the communication is a complaint. [The FHWA makes this determination for Title VI complaints under FHWA jurisdiction.]**
1. The following documents should not be considered complaints, unless the document is accompanied by a signed cover letter specifically asking WSDOT to take action concerning the allegations:
 - a. An anonymous complaint;
 - b. Inquiries seeking advice or information;
 - c. Courtesy copies of court pleadings;
 - d. Courtesy copies of complaints addressed to other local, State, or Federal agencies;
 - e. Newspaper articles; or
 - f. Courtesy copies of internal grievances.
 2. WSDOT may still wish to take action on any of the documents in the list above. However, these documents are technically not complaints.
 3. Correspondence not initially considered to be a complaint but that nevertheless potentially involves a civil rights issue should be viewed as an inquiry necessitating further review.
 4. On determining that the correspondence requires further review, the OEO Director or Deputy Director will assign an Investigator to follow up on the inquiry to determine whether the correspondence should be considered a complaint.
 5. For correspondence viewed as an inquiry, the Investigator should call or write the person sending WSDOT the communication for clarification and further information, and to ask if the person wishes to file a formal complaint with WSDOT.
 6. After obtaining clarification and further information from the correspondent, the Investigator should consult with the OEO Director or Deputy Director before making a final determination whether the communication should be viewed as a complaint.
 7. If, after seeking clarification from the correspondent, the initial communication will not be investigated as a complaint, the correspondent should be notified in writing **within ten (10) days** of the communication's receipt date. The notification should indicate that the file will be closed; the reasons for closure; and that the correspondent is welcome to re-file the communication as a complaint.
 8. **Keeping in mind the exceptions listed below, a complaint is a written or electronic statement concerning an allegation of discrimination that contains a request to take action.** Complaints should be in writing and signed and may be filed by mail; private express delivery (e.g. FedEx); fax; in person; or by email. (See #s 9- 11 below re alternate formats and LEP considerations; and complaints received by telephone). A complaint should contain at least the following information:
 - a. A written explanation of what has happened;
 - b. A way to contact the Complainant;

- c. The basis of the complaint, e.g. race, creed, color, national origin, familial or marital status, sex, sexual orientation, age, military status, or disability;
 - d. The identification of the Respondent, e.g. person, contractor, company, agency, division, office, or other entity alleged to have discriminated;
 - e. Sufficient information to understand the facts that led the Complainant to believe that discrimination occurred; and
 - f. The date(s) of the alleged discriminatory act(s).
9. While the above indicates a complaint should be in writing and signed, WSDOT must accept complaints in alternate formats from persons with disabilities.
 - a. The complaint may be filed on a computer disk, by audio tape, or in Braille.
 - b. The Complainant may also call WSDOT and provide the allegations by telephone. The person receiving the call will transcribe the allegations of the complaint as provided over the telephone and send a written transcript of the complaint to the Complainant for review and signature.
 10. WSDOT must also ensure that persons with Limited English Proficiency (LEP) have meaningful access to the complaint process.
 - a. Complaints in languages other than English should be translated and responded to in the language in which they were sent whenever possible.
 - b. Throughout the complaint resolution process, the Investigator should be certain a LEP Complainant understands their rights and responsibilities, as well as the status of their complaint.
 11. A complaint number should be assigned to the complaint if not already assigned on initial intake (see section II.C.5. above).
 12. A separate complaint number should be assigned to each person alleging discrimination in the complaint. In addition, complaints from more than one person against the same recipient should generally be assigned separate case numbers to help WSDOT comply with the requirements of the Washington State Public Records Act (Chapter 42.56 RCW).
 13. In some cases, complaints from more than one person raising the same allegation(s) against the same Respondent may be combined into one complaint, although this should not be done if it becomes clear that the investigation will result in personally identifiable information (PII) about any of the Complainants being included in the case file. As soon as it becomes clear that the investigation will involve treatment of specific Complainants, separate complaint numbers should be assigned to protect the personal information of each Complainant.
 14. A person may file a third party complaint on behalf of another named individual(s).
 15. The complaint should then be assigned to an Investigator. The Investigator should notify the Complainant(s) immediately, identifying themselves as the Investigator assigned to the case, providing their contact information, and indicating that the Investigator will review the file to determine what additional information may be required to proceed with the case.
 16. The Investigator must review the complaint **within ten (10) calendar days** of receipt to determine what additional information is required to proceed with the investigation.

- E. **The Investigator opens an Investigative Case File. [For Title VI complaints under FHWA jurisdiction, these steps should be followed only after the FHWA instructs our office to conduct an Investigation.]**
1. After being assigned the case, the Investigator will open an Investigative Case File to hold all documents received or generated in connection with the case.
 2. The Investigator determines whether the complaint was timely filed, although for Title VI complaints under FHWA jurisdiction, FHWA will make this decision.
 - a. Complaints must be filed within 180 days of the last date of the alleged discrimination, unless the time for filing is extended (see 49 C.F.R. § 21.11(b) [Title VI] and 49 C.F.R. § 27.123(b) [ADA]).
 - b. If the Investigator believes the complaint is untimely, the Investigator should refer the complaint to the OEO Director or OEO Deputy Director for a final decision on closure of the complaint.
 - c. If it is ultimately determined that the complaint was not timely filed, the complaint may be closed without conducting an investigation. The Complainant may, however, request a waiver of the 180-day filing requirement.
 - d. The Complainant must be notified immediately that the complaint is being closed, and the reasons for closure.
 3. The Investigator determines whether WSDOT has jurisdiction, although for Title VI complaints under FHWA jurisdiction, FHWA will make this decision.
 - a. Complaints filed under Title VI with WSDOT in which WSDOT is named as the Respondent should be forwarded to USDOT for investigation.
 - b. A referral letter should be sent to USDOT along with the complaint and other documents.
 - c. The Complainant must be notified immediately that the complaint has been referred to USDOT and that WSDOT has closed the complaint.
 - d. If it becomes clear that WSDOT lacks jurisdiction over a complaint, the complaint should be referred to the appropriate enforcement authority.
 - e. A “dismissal” letter, instead of the standard acknowledgment letter described above, should be sent to the Complainant **within ten (10) business days** of receiving the complaint informing the Complainant that the complaint has been received, that the allegations fall outside WSDOT’s jurisdiction and, where applicable, that the complaint has been referred to another agency.
 4. The Investigator determines whether additional information is required.
 - a. FTA and FAA ONLY: If additional information is required, the Investigator should contact the Complainant **within ten (10) calendar days of receipt** of the complaint to request the additional information.
 - b. FHWA ONLY: If additional information is required, the Investigator should contact the Complainant within ten (10) calendar days of the referral from FHWA to request the additional information.
 - c. The Complainant will be given **fifteen (15) calendar days** to respond to the request for additional information.

- d. **FTA and FAA ONLY:** If the complaint is complete and no additional information is needed, the Investigator will send the Complainant a letter of acceptance **within ten (10) calendar days** of receipt.
 - e. **FHWA ONLY:** If the complaint is complete and no additional information is needed, the Investigator will send the Complainant a letter indicating that WSDOT will be conducting an investigation within ten (10) calendar days of receiving the referral from FHWA.
- F. **WSDOT Responsibilities**
- 1. **FHWA ONLY:** Title VI complaints under FHWA jurisdiction filed directly with WSDOT against its sub-recipients should be logged by the Data and Reporting Specialist, and forwarded immediately to FHWA.
 - 2. **FTA and FAA:** Title VI complaints filed directly with WSDOT against its sub-recipients should be processed by WSDOT in accordance with the USDOT approved complaint procedures as described in 23 C.F.R. § 200.9(b)(3).
 - 3. Complaints filed with WSDOT under Section 504 of the Rehabilitation Act of 1973 (Section 504) or the ADA should be investigated by WSDOT in accordance with approved complaint procedures as described in 49 C.F.R. § 27.13(b).
 - 4. For Title VI complaints with FHWA jurisdiction, the OEO will make every effort to complete the investigation within thirty (30) days, but no longer than sixty (60) days, from the date the referral was received from FHWA.
 - 5. For Title VI with FTA or FAA jurisdiction; complaints filed under Section 504, the ADA; or any other federal or Washington state non-discrimination statute, the OEO will make every effort to complete the investigation within thirty (30) days, but no longer than sixty (60) days, from the date the complaint was received by WSDOT.
 - 6. Title VI complaints: Pursuant to 23 C.F.R. § 200.9(b)(3), a copy of the complaint, together with a copy of WSDOT's report of investigation, shall be forwarded to the USDOT division office within sixty (60) days of the date the complaint was received by WSDOT, or the referral was received from FHWA (for Title VI complaints under FHWA jurisdiction), for final determination.
- G. **Investigative Process. [For Title VI complaints under FHWA jurisdiction, these steps should be followed only after the FHWA instructs our office to conduct an Investigation.]**
- 1. The Investigator should conduct an unbiased investigation. In addition, the Investigator should not express opinions or conclusions to the public, the Complainant, or the Respondent, concerning matters under investigation unless specifically authorized to do so.
 - 2. **Scope of the Investigation**
 - a. An investigation should be confined to the issues and facts relevant to the allegations in the complaint, unless evidence shows the need to extend the issues.
 - b. A future compliance review of the Respondent may be appropriate when issues identified during the investigation cannot be covered within the scope of the investigation.

- c. After WSDOT has accepted a complaint for investigation, the Investigator should open an Investigative Case File if one has not been opened already (see Section II.D.1. above).
 - (1) The purpose of the Investigative Case File is to establish a methodology for the systematic compilation and storage of all documents, records, and information associated with the complaint. This is done in such a manner that the Case File:
 - (a) Includes and organizes all documentation generated or obtained relevant to the complaint;
 - (b) Identifies all documentation used to support the Findings made by the OEO; and
 - (c) Allows a reader of the Findings to easily verify the facts and reasoning on which the Findings are based.
 - (2) WSDOT is responsible for all Investigative Case Files regardless of whether the agency possesses the physical documents. WSDOT will provide copies of Investigative Case Files in accordance with RCW 42.56 (Washington State Public Records Act) and related federal statutes.
 - (3) Closed Investigative Case Files must be retained **for six (6) years from the date of closure**, after which they will be destroyed in accordance with WSDOT's customary document retention policy.
- 3. The Investigator should develop an Investigative Plan (IP).
 - a. The IP is a working document intended to define the issues and lay out the blueprint to complete an investigation.
 - b. The IP is an internal document for use by the investigator to keep the investigation on track and focused on the issues and likely sources of evidence or corroboration.
- 4. Request for information and cover letter.
 - a. The investigator should prepare a Request for Information (RFI) and make contact with the Respondent **within ten (10) days from the date the complaint was accepted for investigation** to advise the Respondent of the complaint and to determine the appropriate representatives of the Respondent to interview and receive the RFI.
 - b. A cover letter should be prepared and sent with the RFI explaining the complaint under investigation. The cover letter should include the Investigator's name, contact information, and information regarding any scheduled meetings.
 - c. The Respondent should be given **thirty (30) calendar days** from the date of WSDOT's RFI to provide WSDOT with the requested information and documents. WSDOT may modify the timeframe depending on the extent of the data requested or other special circumstances.

5. Interviews
 - a. Interviews should be conducted with the Complainant, Respondent, and appropriate witnesses during the investigative process.
 - b. A written record of both telephone and in-person interviews must be created and kept in the Investigative Case File.
6. Failure by the Respondent to provide access to information.
 - a. Respondents should provide investigative access to all books, records, accounts, electronic media, audiotapes, and other sources of information or facilities necessary to determine compliance.
 - b. Failure by a Respondent to cooperate fully can be grounds for a determination of noncompliance on the part of the Respondent.
7. On-Site Visits
 - a. **All ADA complaints involving the public right-of-way require an on-site review.**
 - b. On-site visits for Title VI complaints – where FHWA has jurisdiction, these steps should only be followed upon instruction by FHWA.
 - (1) After the Investigator has received and reviewed the documents requested in the RFI from the Respondent, a determination should be made as to whether an on-site visit is needed.
 - (2) A thorough investigation can often be conducted without an on-site visit to the Respondent's facility. If all the following conditions are present, an on-site visit is usually unnecessary:
 - (a) Individuals are not the primary source of information needed (e.g. interviews are unnecessary or can be done by telephone);
 - (b) All needed information can be specified precisely in the RFI and can be easily provided by the Respondent;
 - (c) The Respondent can provide written documentation to verify its position in its response to the RFI; and
 - (d) There is good reason to conclude that the Complainant is the only person affected by the alleged discrimination.
 - (3) If the Investigator determines that an on-site visit is necessary, an on-site notification letter should be sent to the Respondent advising the Respondent of the planned visit.
 - (4) Upon completion of the on-site visit, but before returning to the home office, the Investigator should review the information and cross-check it with the IP and RFI to ensure that all needed information has been collected.
 - (5) Missing information should be gathered during an exit conference. The exit conference provides the Investigator with an opportunity to clarify any questions that may have arisen during the site visit, and to request any additional information.

8. Analyzing the evidence
 - a. The preponderance of evidence standard (evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it) is the standard used when determining compliance or violation.
 - b. The information and data collected depend upon the issues involved in the case. Properly collected and analyzed information is central to compliance investigations.
 - c. The importance of developing a thorough and complete IP of the information needed to determine compliance cannot be overemphasized.
 - d. Evidence standing alone does not prove a violation. It must be related to the policies and procedures of the Respondent and issues under investigation. To ensure the value of the collected and analyzed evidence, the Investigator should:
 - (1) Note when the document was received and from whom;
 - (2) Keep the original copy of the document clean and free from marks, tears, etc.;
 - (3) Photocopies of the documents should be made for mark up;
 - (4) Keep the documents received in a safe place so that they will not get lost or inadvertently removed by co-workers; and
 - (5) Document the circumstances under which the evidence was collected - Remember why the evidence was collected; what questions elicited the evidence; and whether any statistical techniques were applied to the evidence, and if so, what they were.
 - e. When reviewing data, the Investigator should:
 - (1) Have a clear and thorough understanding of what the document says; seek clarification where needed; never read meanings into the evidence, but accept it at face value;
 - (2) Determine relevance; know what you are looking for; recognize the presence or absence of needed information;
 - (3) Verify the evidence – cross-check the evidence; identify conflicting information and resolve the conflict, if possible;
 - (4) Assemble the evidence – develop an information flow pattern; establish a logical continuity; and
 - (5) Draw conclusions – let the evidence speak for itself; test conclusions by considering possible rebuttal arguments from both Respondent and Complainant.

9. Exit Interview

- a. The exit interview is conducted separately for the Complainant and the Respondent. The exit interview provides an opportunity for the Investigator, as well as the Respondent and the Complainant, to clarify any questions that may have arisen during the investigation, and to provide any additional information.
- b. The Investigator should explain that this exit interview may not be an end to the investigation. The Investigator should also explain the process WSDOT will follow, if a violation is found.
- c. The Investigator may have already reached a conclusion as to whether the Respondent is in compliance or noncompliance with USDOT's requirements. Should this happen, it is important that the Investigator not communicate that opinion during the exit interview.

H. **Preparing the Investigative Report (IR)/Report of Investigation (ROI)**

1. The Investigator should prepare an IR/ROI setting forth all the relevant facts obtained during the investigation. The IR/ROI should include a finding for each issue and recommendations where necessary. A copy of the IR/ROI should never be given to the Respondent or Complainant.
2. References should be used throughout the IR/ROI to direct the reader to the appropriate supporting documentation in the Investigative Case File. For large case files, it is suggested that the IR/ROI include a table of contents or index of documents and a key referencing by tab the evidence in the file relied upon in making any determination.
3. Upon review of the Investigator's IR/ROI, the OEO Director or Deputy Director may determine that additional evidence is necessary.
4. If the OEO Director or Deputy Director accepts the IR/ROI without any additional evidence, WSDOT will forward the IR/ROI and a copy of the Investigatory Case File to USDOT for review and final determination.
5. The OEO will notify Complainant and Respondent of WSDOT's findings, and indicate that the findings are subject to review and concurrence by USDOT.
6. Once USDOT has made its final decision and issued a Letter of Findings (LOF), WSDOT will notify Complainant and Respondent of USDOT's determination. The USDOT decision is final and not subject to administrative appeal.
7. If the Complainant or the Respondent is not satisfied with the USDOT's decision, the Complainant or Respondent may file an action in U.S. District Court.

Closing the file

- A. If the FHWA or OEO managers determine that the complaint will not be investigated, the managers will notify in writing the Data and Reporting Specialist responsible for logging the complaint.
 1. The Data and Reporting Specialist will prepare the appropriate documentation to close a case and mark the case as closed in SharePoint.
 2. The Data and Reporting Specialist will, where appropriate, inform the Complainant in writing that the case has been closed and why.
 3. If the case was closed because of deficiencies in the complaint, the Complainant should be informed that they are welcome to re-file the complaint if they can remedy the deficiencies.
- B. Once all action on the case has been completed and USDOT has issued a final determination, the case may be closed.
 1. All documents relevant to the case, including the initial complaint documents, documents compiled during the investigation, and any final determination, should be forwarded to the Data and Reporting Specialist for archiving.
 2. The Data and Reporting Specialist should attach all documents electronically to the case file in SharePoint, and mark the case as closed on the SharePoint complaint tracking log.



Washington State Department of Transportation

Secretary's Executive Order Number: E 1009.03

Signature on file

Roger Millar, PE, FASCE, FAICP Secretary of Transportation

August 31, 2023

Date

Disadvantaged Business Enterprise Program

I. Introduction

A. Purpose

This Secretary's Executive Order is issued to affirm the Washington State Department of Transportation's (WSDOT's) commitment to promoting equity in contracting. It is a priority for WSDOT to expand our efforts to include Disadvantaged Business Enterprise (DBE) participation in federal aid contracts and to afford DBEs fair and equal opportunity to compete for WSDOT contracts.

As a condition of receiving federal financial assistance from the United States Department of Transportation (USDOT), WSDOT has given assurance to USDOT, specifically the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA), that it will comply with Title 49 Code of Federal Regulations (CFR) Part 26.

This Secretary's Executive Order directs WSDOT divisions and offices to increase contracting opportunities for DBE businesses and to provide a welcoming and responsive environment for contractors and consultants that support such efforts.

This Secretary's Executive Order also directs WSDOT divisions and offices to identify and change internal processes so that WSDOT can achieve the goals and objectives of the DBE Program. Additionally, this Secretary's Executive Order assists WSDOT and its subrecipients with implementing and monitoring the DBE Program in order to achieve the intent of the DBE Program and DBE goal at both the project and program levels.

WSDOT benefits from the experience, perspective, knowledge, and innovation of groups, individuals, private companies, associations, and other public agencies. WSDOT will continue to seek input from our external partners into the management of the DBE and Civil Rights Programs. WSDOT will work collaboratively with our partners to develop recommendations on how to enhance development, delivery, monitoring, and measurement of directives within this Secretary's Executive Order to deliver a more successful DBE Program.

WSDOT will continue to analyze data and measure results to ensure accountability. WSDOT will track and report WSDOT expenditures for DBE firms on all consulting and construction projects funded by FHWA, FTA, and FAA. WSDOT will use year-to-year trends to identify the best monitoring, compliance, and enforcement practices.

B. Supersession

This Secretary's Executive Order supersedes and replaces the prior version with the same title, dated May 1, 2015. All references to the superseded E 1009.02 now reference E 1009.03.

C. What Has Changed

This revision makes the following changes:

- It replaces references to the Office of Equal Opportunity (OEO) with references to the Office of Equity and Civil Rights. It replaces references to the Director of OEO and the DBE Liaison Officer with references to the Senior Director of Transportation Equity.
- It makes minor changes to clarify the existing language.
- In Subsection I.A, it updates the "Purpose" statement.
- In Subsection II.A, it rearranges the listed items, clarifies language about training, and revises language about the review process for DBE participation plans. It also moves language about collaborating with the Office of Minority and Women's Business Enterprises to Subsection II.C.
- In Subsection II.B, it revises language about review of DBE participation plans and adds language about the Diversity Management and Compliance System. It also adds division names for enforcing contractual remedies and clarifies language about employee evaluations.
- In Subsection II.C, it revises language about reporting and clarifies language about DBEs bidding and performing on contracts.
- In Subsection II.D, it revises language about working with other agencies, staffing, on-site reviews, training, specifications, and goal-setting processes. It removes the previous language about required reporting, the March 2014 Conciliation Agreement, project goal-setting methodology, and the process for reviewing design-build DBE participation plans.
- In Subsection II.E, it removes language about increasing the effectiveness of all divisions and regions. It revises language about networking and engaging with other offices, other agencies, and industry partners and about gathering feedback.
- In Section III, it simplifies the language about reporting to the Deputy Secretary.
- In Section IV, it updates the contact information.
- In Section V, it replaces a webpage reference.
- In Section VI, it adds language about leadership review.

II. Secretary's Executive Order

It is the policy of WSDOT to comply with [49 CFR Part 26](#) and to provide DBEs with an equal opportunity, free of barriers, to receive and participate in USDOT-assisted contracts. It is also our policy as follows:

A. Accountability – Office of Equity and Civil Rights and Division Directors

1. The Office of Equity and Civil Rights (OECR) and division directors shall:
 - a. Create a culture/environment in which DBE firms can compete fairly for USDOT-assisted contracts.
 - b. Work with the contracting community and FHWA, FTA, and FAA to (1) create opportunities within the DBE Program to increase DBE participation, (2) provide opportunities for prime contractors to mentor DBE firms, and (3) improve the contractual relationship and opportunities between prime contractors and subcontractors.
 - c. Develop and conduct annual training in coordination with FHWA, FTA, and FAA for all employees that have involvement in the DBE Program. This training shall reinforce the importance of the DBE Program and clarify roles and responsibilities of personnel.
 - d. Prevent discrimination in the award and administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program.
 - e. Verify that only firms that fully meet [49 CFR Part 26](#) eligibility standards will count towards DBE goal participation.
2. OECR, in collaboration with division directors, shall:
 - a. Tailor WSDOT's DBE Program in accordance with applicable laws and regulations.
 - b. Set goals for DBE utilization on all federal aid contracting and purchasing to maximize opportunities for DBEs.
 - c. Develop and implement the review process for DBE participation plans for alternative design acquisition strategies. The Senior Director of Transportation Equity shall participate in the creation and implementation of this review process.
 - d. Prepare specific goals in annual plans that encourage utilization of DBEs in public works contracts, purchasing, and consultant services.
 - e. Establish monitoring processes and procedures for determining the value of DBE participation specifically applicable to trucking and broker operations.

B. Accountability – WSDOT Divisions, Regions, and Offices

WSDOT divisions, regions, and offices shall:

1. Create a culture/environment in which DBE firms are valued for their delivery of work on USDOT-assisted contracts.

2. Administer WSDOT's DBE Program in accordance with applicable laws and regulations.
3. Review the implementation of DBE participation plans for alternative design acquisition strategies in collaboration with OECR.
4. Work with industry partners, OECR, and the Office of Minority and Women's Business Enterprises (OMWBE) to create opportunities by improving communication and providing opportunities between prime contractors and subcontractors.
5. Provide reports and other information to OECR as required to meet DBE Program requirements.
6. Participate in the monitoring, oversight, and administration of contracts through the Diversity Management and Compliance System.
7. Prevent discrimination in the administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program.
8. Work with OECR and the Headquarters Construction Division or Local Programs Division to enforce contractual remedies for contractor violations.
9. Provide written certification to FHWA, FTA, and FAA regarding review of contract records, monitoring of work sites to oversee performance by condition of award DBEs, and monthly reporting at a project level regarding commitments to DBEs and payments.
10. Include mandatory competencies in annual evaluations for all employees that have involvement in the DBE Program. Monitoring the DBE Program and attainment of DBE goals will be part of performance evaluations for relevant division, region, and office employees.

C. External Inclusion and Outreach – OECR

OECR shall:

1. Report to FHWA, FTA, and FAA on performance and attainment of the DBE goals.
2. Provide training and assistance to DBEs so they can be more successful in bidding and performing on USDOT-assisted contracts.
3. Work with private companies, associations, and community members to assist in the development and mentoring of DBEs so they can compete successfully in the marketplace outside the DBE Program.
4. Attend outreach events for existing and potential DBE firms and pursue outreach strategies to sustain and improve DBE participation in USDOT-assisted contracts.
5. Identify and remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Improve and expand technical assistance, business development, training, and mentoring programs for DBEs through greater coordination with organizations, prime contractors/consultants, and individuals, as well as WSDOT divisions, regions, and offices.
7. Encourage DBEs to use technical assistance and business development services.

8. Coordinate with FHWA, FTA, and FAA to provide training for OMWBE on DBE certification and the assigning of appropriate North American Industry Classification System (NAICS) Codes.
9. Target geographic areas in the state in which DBEs are underrepresented to recruit and promote local DBE firms so that local communities may participate in federal aid projects. OECR shall do this work in collaboration with OMWBE.

D. DBE Program Administration – Divisions and Regions

Divisions and regions shall:

1. Collaborate with OECR to develop and implement policies, practices, and processes that establish and sustain a culture of WSDOT contracting that is supportive and responsive to DBEs, businesses, and contractors of all tiers working on USDOT-assisted contracts.
2. Work closely with local agencies and jurisdictions and other WSDOT divisions and offices so that policies, practices, and processes are consistent and helpful for DBEs pursuing WSDOT work.
3. Confirm that prompt payment policies and practices provide timely payments for all work performed.
4. Require prompt change order approvals by WSDOT and contractors, while maintaining the integrity of the payments being made.
5. Monitor and enforce contract provisions that require contractors of any tier to pay and release retainage per current state and federal law.
6. Identify and implement methods to regularly monitor and measure the DBE Program, including compliance by contractors, subcontractors, consultants, and vendors.
7. Perform timely investigations of issues, concerns, and complaints by either the regions or the DBE community.
8. Provide sufficient staffing, management, and other resources for overall goal attainment.
9. Monitor and track on-site reviews and report the results to OECR.
10. Provide required training to relevant WSDOT and local agency employees and confirm that there is meaningful participation. Training is required for all employees that have involvement in the DBE Program.
11. Work with internal partners and USDOT modes to continually improve specifications and goal-setting processes, incorporate national best practices, and revise practices and processes to be consistent with the DBE Program requirements.

E. Stakeholder Engagement

The Senior Director of Transportation Equity (Senior Director) is designated as the DBE Liaison Officer (DBELO). The Senior Director, in conjunction with division directors and regions, oversees and implements the DBE Program. A primary responsibility of this position is to lead efforts to increase opportunities for members of the contracting community. This collaboration will help WSDOT to use the directives

in this Secretary's Executive Order to develop, deliver, monitor, and ultimately achieve a more successful DBE Program. The Senior Director shall network and engage with divisions, regions, OMWBE, FHWA, FTA, FAA, contractors, associations, and the women and minority-owned business community to:

1. Review and gather feedback on the program's effectiveness and division activities.
2. Increase networking opportunities with prime and DBE firms and inform prime contractors and DBE and non-DBE subcontractors about future contracting opportunities.
3. Provide guidance regarding DBE Program implementation, compliance monitoring, issue resolution, and processes to improve effectiveness of the DBE Program.
4. Work collaboratively on strategies to increase the base of DBE subcontractors and the capacity of DBE subcontractors to improve delivery of the DBE Program requirements.
5. Evaluate the performance of DBE Support Services and the external Civil Rights Program.

The Senior Director will also work closely with OMWBE, which serves as the Unified Certification Program for Washington State, and with other stakeholders to strengthen, implement, and deliver a successful DBE certification program.

III. Information to Carry Out This Secretary's Executive Order

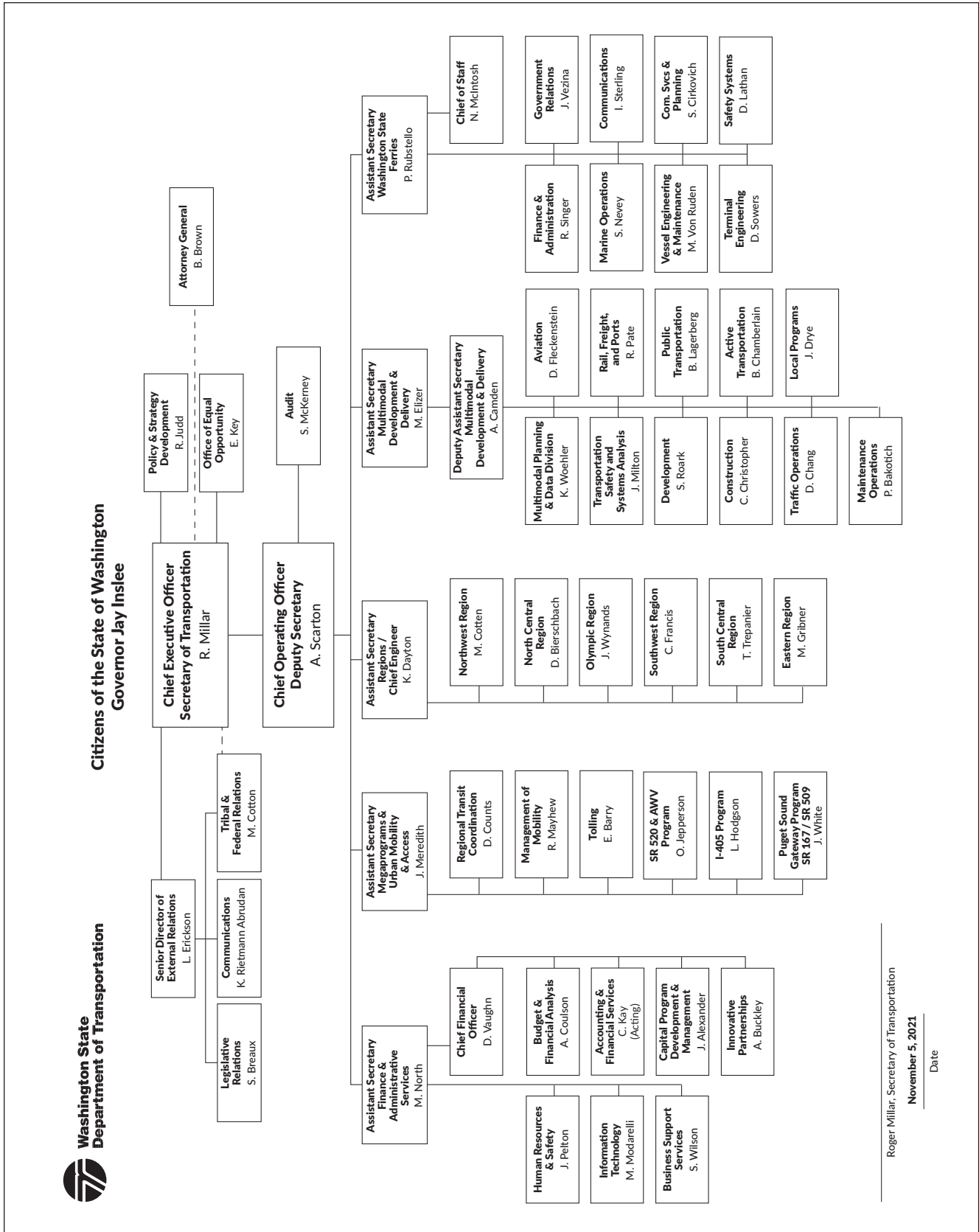
The Senior Director of Transportation Equity (Senior Director) will report directly to the WSDOT Secretary of Transportation and will have direct, independent access to the Secretary concerning DBE Program matters. The Senior Director shall be responsible for oversight of all aspects of WSDOT's DBE Program.

In addition to the responsibilities described in Section II, the Senior Director will evaluate, monitor, and support the implementation of the DBE Program and be the liaison with FHWA, FTA, and FAA. The Senior Director will have direct responsibility for establishing the overall DBE Program goals, working with OMWBE, identifying program-wide training needs, and assisting with required program training. The Senior Director will oversee the performance of timely, commercially useful function reviews and investigations by establishing management, monitoring, and reporting of these activities.

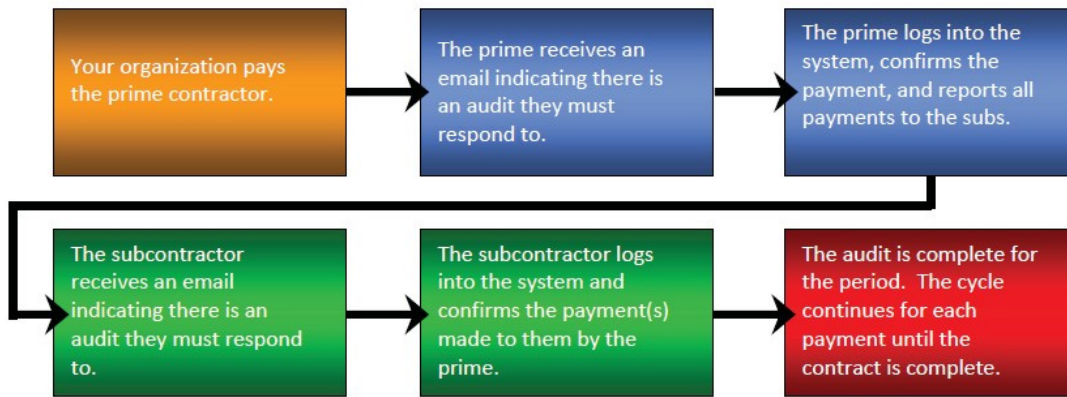
The Senior Director oversees and will use monthly, quarterly, and annual achievement reports and certifications in reporting to FHWA, FTA, and FAA. The Senior Director will also use these reports and certifications when reporting on the program to the Deputy Secretary of Transportation.

WSDOT will further develop roles and responsibilities in support of this Secretary's Executive Order and successful DBE Program and project delivery. WSDOT will incorporate these roles and responsibilities in agency policies, plans, and procedures.

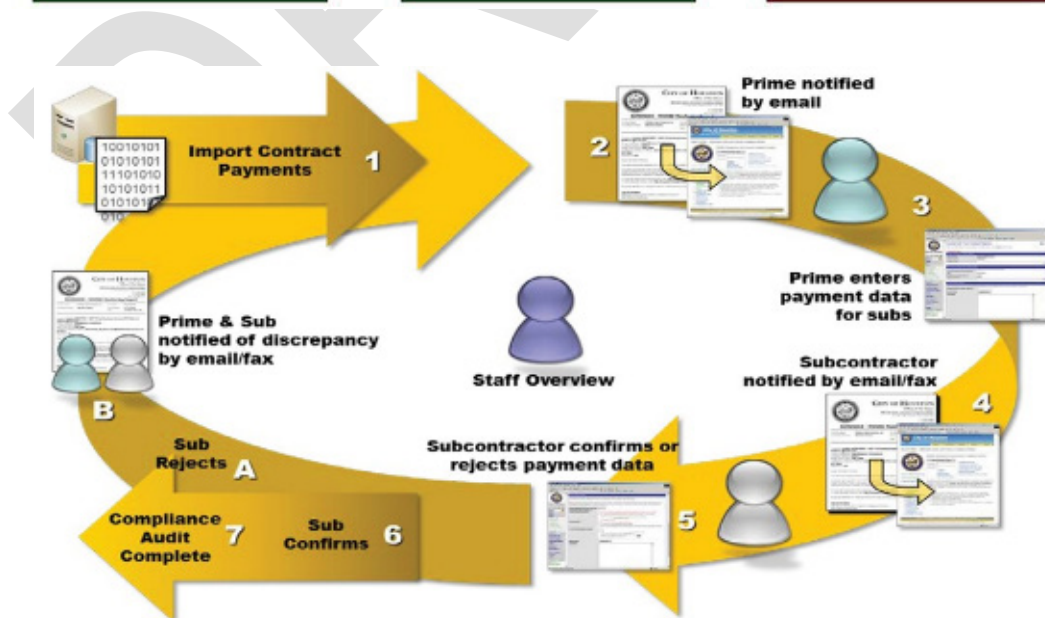
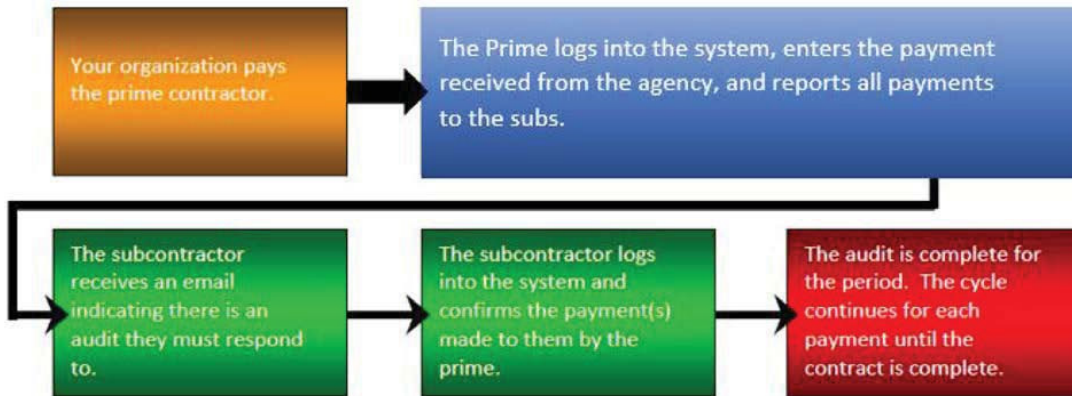
WSDOT will make this Secretary's Executive Order available to internal and external stakeholders, including DBE and non-DBE communities that perform work on USDOT-assisted contracts.



Payment Audit Process For Construction And Consultant Services Contracts:



Payment Audit Process For Local Agency Contracts:





Washington State
Department of Transportation

Final DBE Utilization Plan Report

Project Number	Federal-Aid Project Number	Region/Agency
----------------	----------------------------	---------------

Contract Title

Agency's Certification

I certify that the contracting records have been reviewed and the on-site performance have been monitored. I determined that work committed to the listed DBEs under this contract was actually performed by the listed DBEs.

X _____
Project Manager or Engineer Signature Required

Printed Signature Name

Business Phone Number

Date of Signature

A final report of DBE Contract Payment Reports must be attached in order to certify that the contracting records and on-site performance of the Disadvantaged Business Enterprises has been monitored in compliance with 49 CFR 26.37.

WSDOT Contract Original to:

Temporary Final Project Records/Project Engineer

Copies to:

Region OECR File

Local Agency Original to:

Project Record

Copies to:

WSDOT Local Programs Project Manager or Project Engineer

DOT Form 272-055
Revised 10/2023

Generated by Olga Peterman, Washington State Department of Transportation on 5/25/2021

Compliance Audit: Audit Summary for Total Contract

Help & Tools

Main View Settings Subs Docs Change Orders & Task Orders Alerts Comments Messages Closeout

Compliance Audit List Compliance Audit Summary Compliance Audit FY Site Visits Reports

WSDOT_Test_Contr: PAVING DOWN THE HIGHWAY
 Prime: AAA Good Prime
 5/22/2007 - 5/30/2008

Status: Open/Locked In
 Current Award: \$4,627,896
 Total Paid: \$4,281,960
 Goal: 19.00%
 % Credit: 3.86%
 For Credit: \$165,432

Compliance Audit Summary - Total Contract

	Current Award	=	Award Percent	Payments	=	Payments Percent	Difference (Payments - Award)
Prime Contract	\$4,627,895.80			\$4,281,960.34			
For Credit:	\$879,300.20	1 sub	19.000%	\$165,432.00	1 sub	3.863%	15.137% below goal
Goal Types							
For Credit to DBE Goal	\$879,300.20	1 sub	19.000%	\$165,432.00	1 sub	3.863%	15.137% below goal
Diverse Classifications - allows for firms to be counted toward multiple classifications; totals may exceed for credit goal amounts above							
For Credit to DBE Classification	\$879,300.20	1 sub	19.000%	\$165,432.00	1 sub	3.863%	15.137% below goal
Contract Progress	95%						
For Credit Progress	19%						

Award values may not match due to differences between overall contract goal and subcontractor assignments.

Not Meeting Goal Letter

Prime Contractor - Total Contract

Prime Contractor	Cert	Inc in Goal	Contracted % Paid %	Paid TO Prime Prime's Share
AAA Good Prime George Washington cgp@wsdot.wa.gov P 360-705-7098	Info Payments Profile Email	No	96.79% 96.07%	\$4,281,960 \$4,113,528

Subcontractors - Total Contract (2 subcontractors)

Subcontractor	Cert	Type	Inc in Goal	Contracted % Paid %	Contracted \$ Paid \$	For Credit \$
1 BBB Good Sub WSDOTSub Test25 Wsdottestsub25@gmail.com P 360-704-6383	Info Payments Profile Email	No	No	0.54% 0.07%	\$25,000 \$3,000	\$0
1 TEST-ASHLEY Ashley Bazarro ashley.bazarro@emvbe.wa.gov P 360-664-9773	Info Payments Profile Email	Sub	100% DBE +more	2.67% 3.86%	\$123,456 \$165,432	\$165,432

Customer Support

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OEO Comprehensive Contract Compliance Review Procedures

INTRODUCTION

As a direct recipient of Federal financial assistance from the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and the Federal Aviation Administration, the Washington State Department of Transportation (WSDOT) is required to implement a narrowly tailored Disadvantaged Business Enterprises (DBE) program that complies with 49 CFR, Part 26. The program must, among other things, ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs. In addition, WSDOT's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is actually performed by said DBEs.

The following is an outline of the Comprehensive Compliance Review (CCR) procedures that WSDOT's Office of Equal Opportunity (OEO) will implement for ensuring program compliance with 49 CFR, Part 26. WSDOT's OEO is tasked with the compliance and enforcement of the CFR. OEO personnel have been located in each WSDOT region in an effort to ensure that WSDOT's obligations to administer its DBE program are fulfilled. The OEO staff reviewer will have knowledge of the DBE program regulations, and WSDOT's associated procedures (e.g., construction manual, LAG manual, GSPs, et al) before going out to conduct a review.

CCRs will be performed using a risk-based compliance approach with projects being 50% or more towards completion. Initially, WSDOT OEO will annually perform CCRs on 30 or 10% of FHWA funded projects, whichever is greater. WSDOT OEO will revisit this number annually (following an analysis of the information obtained during the reviews) to determine effectiveness of the review process. Projects selected for review will include small, medium, and large Local Agency and WSDOT let contracts.

- I. **Review all project documentation for the following**
 - a. **DBE Utilization Certification form** - be sure that the dollar amount listed is not greater than the scopes of work outlined on the bid item breakout. Compare this information with the subcontracts and approved Request to Sublet forms.
 - b. **Written Confirmation forms** – will be reviewed to ensure that the prime identified (at the time of bid submittal) the UDBE/DBE firms, their role in the contract, the scopes of work to be performed and the dollar value of the amount of compensation to the UDBE /DBE firms.
 - c. **Written Certification form** – will be reviewed to certify that the assigned Project Engineer or Project Manager has completed and signed the form acknowledging that they have reviewed contract records, monitored the work site, and determined that the UDBE/DBE performed the work of their subcontract in accordance with 49 CFR Part 26. The review will also be cross checked with bid documents to ensure the information on this form is consistent with the DBE program documents submitted at the time of bid.

- d. **Bid Item Breakdown form** – will be reviewed to ensure the Bid Item Breakdown form is consistent with the DBE Utilization Certification form, as well the Request to Sublet forms and subcontracts.
- e. **Onsite Review forms** – will be reviewed to ensure that there is a DBE on-site review form submitted for every DBE having performed/performing work on the project , and to make sure that there were multiple onsite reviews performed for multi-year projects (if the applicable DBE worked for more than one year). In the process of reviewing the form, OEO personnel will look for Commercially Useful Function (CUF) violations. The content of the form will be reviewed for missing/contradictory information. The form will be cross checked with Inspector's Daily Reports as a means of verification/comparison. OEO will ensure that the form has a completion date that is aligned to the time period when the UDBE/DBE firm was on site working.
- f. **The Request to Sublet (RTS) forms** – will be reviewed to ensure that the form is completed and that there is a RTS form for each UDBE/DBE having performed/performing work on the project. OEO will review the form to ensure that the work scopes and associated dollar amounts are equal to or greater than the Bid Item Breakdown form, the amounts listed in the subcontract, and that the form is consistent with the DBE Certification Utilization form.
- g. **Substitutions and Terminations** (if applicable)- A PE Office with expected DBE/UDBE underruns must communicate with the OEO Regional staff and demonstrate an attempt to provide additional work to other DBE/UDBE firms in order to meet the COA goal.
 - OEO region personnel will confirm through communication records and documents that the assigned project office has ensured the termination process was correctly followed prior to any UDBE/DBE being terminated .
 - The termination process, as outlined in CFR (and the GSP), must be followed even when the underrun of work is caused by WSDOT or the local agency because of a miscalculation of need at the time of the design or when a contractor does not need the quantity or work initially estimated at the time of the bid.
 - The Prime must provide the DBE/UDBE five days to respond to the letter stating the Prime's intent to terminate the DBE/UDBE. There should be documented proof that the DBE/UDBE was actually contacted by the Prime (.e.g, two-way communication between prime and affected DBE/UDBE). The letter, along with any rebuttal from the DBE/UDBE shall be included together in the submission to WSDOT by the Prime when requesting a termination.
 - GFE is required in termination/substitution situations, and the OEO staff person will review GFE documentation to ensure the termination was for good cause. OEO will not approve a GFE solely based on the prime stating UDBE/DBE solicited costs being too high and unreasonable. In any situation in which the bidder claims UDBE/DBE price gouging, OEO will review all submitted sub-quotes to determine if, in fact, the DBE/UDBE cost was truly unreasonable based upon owner estimates for that scope and industry standards.

OEO region personnel will ensure that any substitution and/or termination of a UDBE/DBE firm will be reviewed prior to starting a review/analysis of GFE documentation.

- h. **Inspector's Daily Reports (IDRs)** - OEO personnel will review IDRs to support (along with other documents) that the DBE firms are performing CUF. OEO personnel will review project emails and/or other documentation/correspondence to ensure that any DBE program or CUF issues have been brought to the attention of the Project Engineer and prime contractor for correction.
- The reviewer should look for the following in the IDRs:
 1. whether the IDRs confirm the presence of the DBE/UDBE (e.g. does the IDR mention the name of the DBE/UDBE representative that is supervising/overseeing the work being performed);
 2. is the work described in the IDR, as being performed by the DBE/UDBE, consistent with that which is described in the bid item breakout and request to sublet?
 3. do the IDRs mention issues/concerns regarding the DBE's/UDBE's work performance?
 4. Do the IDRs list DBE personnel by name and title?
 - The OEO Staff person will look at the IDRs and other documentation to assess whether a more in-depth review of the DBE/UDBE should be done to determine if the DBE/UDBE's performance is consistent with the DBE program requirements.
- i. **Good faith efforts** (if applicable) - If a bidder is unable to get enough DBE/UDBE participation on a contract by the time their bid is submitted or within 48 hours for a WSDOT project and 24 hours of a Local Programs project, they must submit a GFE packet (documentation of the efforts made to meet the goal).
- The bidder must continue to make every effort throughout the life of the contract to obtain DBE/UDBE participation when subcontract opportunities arise.
 1. OEO personnel will review GFE throughout the life of the contract – not just in situations where the bidder failed to obtain sufficient DBE/UDBE participation at time of bid, but also in situations where there is termination and substitution.
 - The OEO Compliance Specialist assigned to review the GFE submitted at the time of the bid will analyze the GFE documentation based on the qualitative effort of the contractor. The analysis should outline the strengths and weaknesses of the GFE in the bidder/contractors efforts to meet Condition of Award requirements pre-award, during the project and prior to physical completion.
- j. **Regular dealers** (if applicable) – OEO personnel will confirm that the DBE firm being used as a Regular Dealer on the project is certified as a Supplier/Wholesaler by OMWBE with appropriate NAICS code(s) assigned. OEO personnel will also ensure that the DBE "Regular Dealer" firm completed the Regular Dealer Equipment and Supply form and that the form was submitted timely in accordance with General

Special Provisions. OEO personnel will also ensure that the material/equipment being provided by the Regular Dealer is project related.

- k. **Joint Checks** (if applicable) - OEO personnel will review joint check agreements and completed Joint Check Request forms to ensure agency policies regarding the use of joint checks are being followed. OEO personnel will confirm that the following requirements have been met:
- The DBE firm requested the use of joint checks.
 - The DBE firm completed a Request to Use Joint Checks form and had the prime contractor submit to the agency for approval.
 - The prime contractor, DBE firm and the Supplier created, agreed to and signed and dated a joint check agreement.
 - That the DBE firm selected the supplier, determined the quality and quantity of the material, ordered and paid for the material, and received, signed for and inspected the material.
 - There is language in the joint check agreement that states the joint check funds can only be used to pay for materials related to that specific project
 - There is language in the joint check agreement that once the supplier receives the joint check; the supplier must release all materials to the DBE
 - The invoice for the materials needs to show paid in full; and should be made out to the DBE firm and not the prime
 - That the use of the joint check(s) was approved by the project office with concurrence from WSDOT OEO
 - That the DBE remains responsible for all other elements of 26.55(c)(1);
- l. **Payment verification** – OEO staff will review DBE payment information reported in DMCS, or DBEP, and request copies of invoices and canceled checks.
- OEO personnel will review all payment information and documents such as subcontracts, invoices, and Bid Item Breakdowns to validate that payments are commensurate with the type of work performed by the DBE/UDBE. Certified payrolls and IDRs will also be reviewed to support that the DBE/UDBE was, in fact, on the project performing the work. Any discrepancies must be reported.
- m. **Subcontracts, Master Agreements, and/or project file** – OEO personnel will review subcontracts and/or the project file to ensure the following:
- **There is a detailed description (and valuation) of the scope of work to be performed by the DBE/UDBE;**
 - FHWA 1273 (this form is required to be physically inserted into every Federal-aid construction contract);
 - The presence of takeover or termination for convenience clauses, or any other language appears to conflict with the DBE program requirements;
 - Excerpt from 49 CFR 26.13(b) regarding nondiscrimination (this assurance is contained in the Form 1273, so if the 1273 is inserted in the contract, don't expect to see the same assurance elsewhere in the subcontract)
 - Any language that limits the DBE/UDBE from managing, supervising, performing, and supplying materials for the project.

- The Request to Sublet (RTS) form to ensure that the work scopes and the amounts are equal to or greater than with the Bid Item Breakout form.
- Labor & Industries (L&I) "Statement of Intent to Pay Prevailing Wages" document has been submitted.
- Review B2GNow/DMCS - All payments made by WSDOT to the contractor will be tracked by the Project Engineer Office utilizing the Diversity Management and Compliance System (powered by B2GNow)
- Be sure that regular reporting is occurring.
- The OEO Staff member will look at internal documents (if any) held by the Project Engineer Office as they pertain to payment information to ensure compliance with DBE program regulations.

II. Commercially Useful Function (CUF)

a. Interviews

- Conduct interviews with the following, and get all contact information for:
 1. WSDOT/Local Agency Field Inspector(s);
 2. Prime contractor's on-site superintendent;
 3. Prime contractor's point-of-contact (Project Manager or Engineer);
 4. Prime Contractor employees (if needed)
 5. DBE's on-site supervisor;
 6. DBE personnel
 7. WSDOT/Local Agency Project Engineer;
 8. WSDOT/Local Agency Assistant Project Engineer (if needed)
 9. WSDOT/Local Agency Documentation Engineer;
 10. Project Office's general phone number;
- Interviews will also be conducted of other individuals who have direct knowledge relating to work performed by the DBE/UDBE firm(s).
- All interviews will be done using the prescribed forms to make certain that all interviewees are being asked the same questions.
- While conducting field interviews, the OEO Staff person will take pictures relevant to the DBEs/UDBEs firms work.
- The owner of the DBEs/UDBEs firms will be interviewed at their respective place of business. Photos will be taken of relevant equipment related to the firm's scope of work on the specific project being reviewed.
- The purpose of the interviews is to assist in determining whether the subcontractor is compliant in the following areas: Management, Personnel, Equipment, Materials, and Performance.
- Owner Interview- be sure to make sure safety measures are in place.
 1. Before owner interview: review all previous interviews to be sure to ask the owner any follow up/clarifying questions based on information discovered from DBE employees and/or WSDOT staff about the project
 2. Acquire previously requested documents from owner
 3. Take photos of the owner's facilities and staging areas
 4. Take photos of the owner's equipment and vehicles

5. Determine whether there are any other facilities or staging areas. If so, schedule visit to those areas

b. Document review

- OEO personnel will (at a minimum) review the following documents:
 1. Rental/Lease agreements (equipment and/or buildings)
 2. Vehicle registrations and/or titles
 3. Purchase orders
 4. Bills of lading or delivery invoices
 5. Inspection records
 6. Payment records
 7. Purchase orders
 8. Work orders
 9. Utilization Certification form
 10. Written Confirmation forms
 11. Bid Item Breakdowns
 12. Written Certification forms
 13. Certified Payrolls
 14. Onsite review forms
 15. Inspector Daily Reports
 16. Traffic Control Daily log
 17. Emails (As needed)
 18. Change Orders
 19. Request to Sublet forms
 20. Subcontracts
 21. OMWBE Certification Documents
- On projects occurring for only a single season, all of the certified payrolls for the Prime and the DBE/UDBE subcontractor will be reviewed. On projects of longer lengths, only a selected period of the certified payrolls for the prime contractor and DBE/UDBE subcontractors will be reviewed to make sure that DBE/UDBE employees are not shown on payrolls other than that of the DBE/UDBE firm.
- DBE's/UDBE's certification profile (work description & NAICS code assignment) from OMWBE's DBE directory.
- A copy of the DBE/UDBE firm's Washington State Labor and Industries Intent to Pay Prevailing Wages form will be collected by the OEO Staff person to confirm that the amount listed on the Intent form is the same wages being paid as noted on the certified payroll.

c. Project site visit

- Take photos of the DBE work site, preferably with the DBE employees doing work
- Take photos of the DBE equipment and vehicles
- Acquire previously requested documents



**Washington State
Department of Transportation**

**Office of Equal Opportunity
Disadvantaged Business Enterprise Program**

COMPREHENSIVE COMPLIANCE REVIEW (CCR)

YYYY-###

FOR

Project Title

Federal Aid Number:

Project Number: TA-0000/00####

Date:

Purpose:

As a direct recipient of Federal financial assistance from the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), the Washington State Department of Transportation (WSDOT) is required to implement a narrowly tailored Disadvantaged Business Enterprises (DBE) program that complies with 49 CFR, Part 26. The program must, among other things, ensure that only firms that fully meet the eligibility standards of 49 CFR Part 26 are permitted to participate as DBEs. In addition, WSDOT's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently is actually performed by said DBEs.

Authority

The following random comprehensive contract compliance review was performed by WSDOT's Office of Equal Opportunity (OEO) to ensuring contract compliance with 49 CFR, Part 26, to ensure that Prime Contractor, DBE Firm, DBE Firm, and DBE Firm are performing all aspects of the contract according to the CFR. The Project has a 12% condition of award (COA) contract goal, in which the prime contractor, Prime Contractor committed to utilizing the following DBE Firms to fulfill the COA goal.

DBE Firms listed as a COA totaling a \$Dollar Amount commitment as follows:

- DBE Firm for \$Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.
- DBE Firm for \$Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.
- DBE Firm for \$Dollar Amount to perform Work Description, for bid item number bid item # under NAICS code(s) NAICS Codes.

The Commercially Useful Function (CUF) portion of this review was performed on the COA DBE Subcontractor, DBE Firm. CUF performance is conducted pursuant to the authority stipulated in 49 CFR, Part 26.55:

49 CFR, Part 26.55, defines the performance of a CUF and how it may be monitored as follows:

"A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE 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..."

- I. Review Conducted By: Review Date:**
- II. Contact information for personnel (add additional lines if necessary)**
- A. Owner agency contact information
1. Owner name:
 2. Project contact person:
 3. Mailing address:
 4. Physical address:
 5. Telephone number:
 6. Fax number:
 7. Email:
- B. Prime contractor contact information
1. Project Contact Person:
 2. Address:
 3. Telephone Number:
 4. Fax Number:
 5. Email:
- C. DBE Contact Information
1. Owner Name:
 2. Address:
 3. Telephone Number:
 4. Fax Number:
 5. Email address:
- D. DBE Contact Information
1. Owner Name:
 2. Address:
 3. Telephone Number:
 4. Fax Number:
 5. Email address:
- E. DBE Contact Information
1. Owner Name:
 2. Address:
 3. Telephone Number:
 4. Fax Number:

5. Email:

III. Document Review

A. DBE utilization certification form

1. Is the dollar amount listed greater than the scopes of work outlined on the bid item breakout?
 Yes No

If yes, please indicate discrepancy

2. Does this information match with the subcontract?
 Yes No

If no, please explain

3. Does the information match with the request to sublet?
 Yes No

If no, please explain

B. Written confirmation form

1. Has the project office reviewed the contract records?
 Yes No

If no, please explain

2. Has the project office monitored the work site and determined that the DBE performed the work of their subcontract with their own forces?
 Yes No

If no, please explain

3. Is the information on this form consistent with the DBE utilization certification form?
 Yes No

If no, please explain

C. Bid item breakout

1. Is the bid item breakout consistent with the DBE utilization certification form?
 Yes No

If no, please explain

2. Is the bid item breakout consistent with the Request to Sublet?
 Yes No

If no, please explain

3. Is the bid item breakout consistent with the subcontract?
 Yes No

If no, please explain

D. Onsite review forms

1. Is there a DBE on-site review form submitted for every DBE having performed/performing work on the project?
 Yes No

If no, please explain

2. Are there any potential CUF violations indicated on the form?
 Yes No

If yes, please explain

3. Was the onsite review form cross checked with the IDRs for verification?
 Yes No

If there are any discrepancies noted, please explain here

4. Is there any missing or contradictory information?
 Yes No

If yes, please explain

5. Were there multiple onsite reviews performed for multi-year projects (if the applicable DBE worked for more than one year)?
 Yes No

If no, please explain

6. When were the on-site review(s) completed? **Please list DBEs separately**
- a. DBE Firm – Month Day, Year
 - b. DBE Firm – Month Day, Year
 - c. DBE Firm – Month Day, Year

7. Does the completion date of the form correspond with the time period in which the DBE/UDBE was working?
 Yes No

If no, please explain

8. When did the DBE began work on the project? **Please list DBEs separately**
- a. DBE Firm – Month Day, Year
 - b. DBE Firm – Month Day, Year
 - c. DBE Firm – Month Day, Year

E. The Request to Sublet (RTS) form

1. Is there a RTS form for each DBE having performed/performing work on the project?
 Yes No

If no, please explain

2. Are the work scopes and associated dollar amounts equal to or greater than the Bid Item Breakout form?
 Yes No

If no, please explain

3. Is the subcontract consistent with the DBE Certification Utilization form?
 Yes No

If no, please explain

F. **Substitutions and terminations** (if applicable) - A PE Office with expected DBE/UDBE underruns must communicate with OEO Regional staff and demonstrate an attempt to provide additional work to other DBE/UDBE firms in order to meet the COA goal.

1. Have the correct termination procedures been followed?
 Yes No

If no, please explain

2. The Prime must provide the DBE/UDBE five days to respond to the letter stating the Prime's intent to terminate the DBE/UDBE. There should be documented proof that the DBE/UDBE was actually contacted by the Prime (.e.g, two-way communication between prime and affected DBE/UDBE).
 - a. The letter, along with any rebuttal from the DBE/UDBE shall be included together in the submission to WSDOT by the Prime when requesting a termination. Is the letter included in the file?
 Yes No

If no, please explain

3. GFE is required for termination/substitutions. Please indicate the prime contractor's reasoning for indicating that they were unable to find a DBE/UDBE replacement.

Explain here

G. **Inspector's Daily Reports (IDRs) - Copy and paste this section, and respond for each DBE on the project**

1. Does the IDR mention the name of the DBE/UDBE representative that is supervising/overseeing the work being performed?
 Yes No

If no, please explain

2. Is the work described in the IDR, as being performed by the DBE/UDBE, consistent with that which is described in the bid item breakout and request to sublet?

Yes No

If no, please explain

3. Do the IDRs list DBE personnel by name and title?

Yes No

If no, please explain

4. Do the IDRs mention issues/concerns regarding the DBE's/UDBE's work performance?

Yes No

If yes, please explain

H. Good faith efforts (GFE) (if applicable)

1. Was a GFE submitted at the time of bid on this project?

Yes No

If yes, please explain the circumstances and detailed prime contractor efforts

2. Was a GFE submitted at the end of this project?

Yes No

If yes, please explain the circumstances and detailed prime contractor efforts

I. Regular dealers (if applicable)

1. Is there a DBE acting as a regular dealer on the project?

Yes No

If yes, which DBE firm was used as a regular dealer on this project, and list the products that they are approved to provide

2. Is the DBE that is listed as a regular dealer certified as a wholesaler or manufacturer in the certified firm directory?

Yes No

If no, please explain

3. If so, were they approved by OEO as a Regular Dealer for that specific project, prior to being listed as a Regular Dealer by the prime?

Yes No

If no, please explain

J. Joint Checks (if applicable)

1. Were there joint checks used on this project?

Yes No

If yes, please explain and list all of the amounts, and dates

2. Did the DBE firm complete a Request to Use Joint Checks form and have the prime contractor submit to the agency for approval?

Yes No

If no, please explain

3. Did the prime contractor, DBE firm and the Supplier create, agree to, and sign and date the joint check agreement?

Yes No

If no, please explain

4. Is there language in the joint check agreement that states the joint check funds can only be used to pay for materials related to that specific project?

Yes No

If no, please explain

5. Is there language in the joint check agreement that once the supplier receives the joint check, the supplier must release all materials to the DBE?

Yes No

If no, please explain

6. Does the invoice for the materials show paid in full?
 Yes No

If no, please explain

7. Is the check made out to the DBE firm and not the prime?
 Yes No

If no, please explain

8. Was the use of the joint check(s) approved by the project office with concurrence from WSDOT OEO?
 Yes No

If no, please explain

9. Did the DBE remain responsible for all other elements of 26.55(c)(1)?
 Yes No

If no, please explain

10. Were invoices and other documents provided that confirm that the materials were ordered by the DBE/UDBE, received by the DBE/UDBE, and paid for by the DBE/UDBE?
 Yes No

If no, please explain

K. Certified payroll

1. Do all employees listed on the certified payroll form match with the IDRs for dates and employees?
 Yes No

If no, please explain

L. Payment verification

1. Are all payments commensurate with the type of work performed by the DBE/UDBE?

Yes No

If no, please explain

2. Do certified payrolls and IDRs support that the DBE/UDBE was, in fact, on the project performing the work?

Yes No

If no, please explain

3. What was the process used by the project office to compare DBE/UDBE payments to the respective commitments?

Please explain

4. Does payment documentation correspond with information found in DMCS?

Yes No

If no, please explain

IV. Review subcontract and/or project file for the following:

- A. Include a detailed description (and valuation) of the scope of work to be performed by the DBE/UDBE

- B. Is the FHWA 1273 language present within the contract?

Yes No

If no, please explain

- C. Are there any takeover or termination for convenience clauses?

Yes No

If yes, please indicate here, and attach relevant section of the subcontract

D. Is there any other language that appears to conflict with the DBE program requirements?

Yes No

If yes, please indicate here, and attach relevant section of the subcontract

E. Is there an excerpt from 49 CFR 26.13(b) regarding nondiscrimination? (this assurance is contained in the Form 1273, so if the 1273 is inserted in the contract, don't expect to see the same assurance elsewhere in the subcontract)

Yes No

F. Is there any language that limits the DBE/UDBE from managing, supervising, performing, and supplying materials for the project?

Yes No

If yes, please indicate here, and attach relevant section of the subcontract

G. Are the work scopes and amounts listed on the Request to Sublet form equal to or greater than the amounts listed on the Bid Item Breakout form?

Yes No

If no, please explain

H. Does the scope of work listed on the subcontract match the work that was actually performed by the DBE?

Yes No

If no, please explain

I. Has the Labor & Industries (L&I) "Statement of Intent to Pay Prevailing Wages" document been submitted?

Yes No

V. **Payment monitoring (in addition to Item "k" under I above)**

1. Review B2GNow/DMCS for all payments made by WSDOT to the contractor

A. Is regular reporting occurring?

Yes No

If no, please explain

2. Review internal documents (if any) held by the Project Engineer Office as they pertain to payment information to ensure compliance with CFR. Are there any discrepancies?

Yes No

If yes, please explain

VI. **Interviews- Information from the CUF can be copied and pasted into this area.** If there are multiple DBEs on the project, the below information will only be included for the DBE that the CUF review was performed on.

Interviews of the following personnel were conducted: (if no significant information found from the interview, please indicate)

- A. WSDOT Project Engineer
- B. WSDOT Assistant Project Engineer
- C. WSDOT Office/Documentation Engineer
- D. WSDOT Field Engineer
- E. WSDOT Field Inspector
- F. Prime Site Superintendent
- G. DBE Owner
- H. DBE Superintendent
- I. DBE Employee
- J. DBE Employee
- K. DBE Employee
- L. DBE Employee
- M. DBE Employee
- N. Olympic Trucking Employee

VII. **Timeline**

VIII. **Observations**

IX. CUF ISSUES

Management **Yes** **No**

**If yes, please provide an explanation*

Equipment **Yes** **No**

**If yes, please provide an explanation*

Employees **Yes** **No**

**If yes, please provide an explanation*

Performance **Yes** **No**

**If yes, please provide an explanation*

Materials **Yes** **No**

**If yes, please provide an explanation*

DETERMINATION:

Firm is performing a CUF Yes No

**If the DBE firm is not performing CUF, include language explaining why. The explanation should include proper citations to the applicable CFR section(s). Your letter of non-compliance should also include similar language.*

OEO Compliance Specialist Date

DBE Compliance Manager Date

External Civil Rights Manager Date



Small Business Enterprise Participation Plan

The Washington State Department of Transportation (WSDOT) is committed to ensuring small businesses are afforded equal and fair opportunities to participate on WSDOT contracting, consulting, and procurement opportunities. WSDOT is required by Section 49 of the Code of Federal Regulations (CFR) §26.39 to include an element to its DBE Program Plan to:

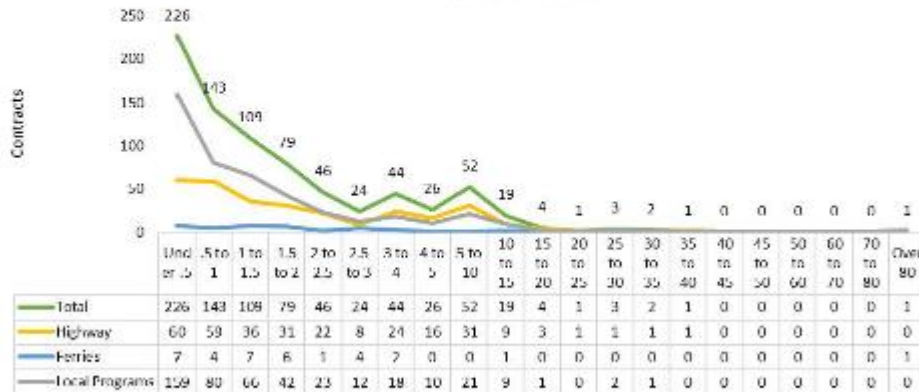
- Structure contracting requirements to facilitate competition by small business concerns;
- Take all reasonable steps to eliminate obstacles for small businesses to participate; and
- Eliminate unnecessary and unjustified bundling of contract requirements.

WSDOT is tasked with meeting the maximum feasible portion of our overall Disadvantaged Business Enterprise (DBE) goal using race and gender neutral ("race-neutral") measures. During the last three federal fiscal years (FFY 2016 through FFY 2018), WSDOT has attained, on average, 2.9 percent race-neutral participation. This lack of race-neutral participation demonstrates that WSDOT needs to adopt additional measures in order to increase our race-neutral participation. Throughout this document, WSDOT will outline additional race-neutral measures to increase small business participation, and address small business concerns. These measures are as follows:

- Unbundling Contracts Analysis
- Small Business Set-Asides
- Developmental Goals - Consulting
- Small Business Goals
- Small Business Certification
- Alternative Acquisition Strategies Evaluation

Unbundling Contracts Analysis

**WSDOT Number of Contracts by Cost Group
FFY 2016-2018**



On April 1, 2019, WSDOT performed an analysis of the Federal Highway Administration funded contracts awarded by WSDOT, Washington State Ferries and Local Programs Division for FFY 2016 through 2018. This analysis also included Washington State Ferries Federal Transit Administration funded projects. It was determined that 47 percent of these projects let were under \$1 million and 29 percent of these contracts were under \$500,000. Given that 226 of the 780 contracts were under \$500,000, WSDOT has determined that these contracts are of a size allowing SBE firms to compete as prime contractors.

Small Business Set-Asides

WSDOT maintains a Small Works Roster that consists of contractors interested in bidding on contracts under \$300,000. Currently, contractors of any size are able to bid on these projects. Small contractors frequently note frustration regarding competing with larger contractors. During the current legislative session, WSDOT will seek legislation to have contracts under \$300,000 set-aside for prime contractors with gross receipts that average less than \$23.98 million, and who are certified by the Washington State Office of Minority & Women’s Business Enterprises (OMWBE) as Small Business Enterprises. This effort is a part of the plan to increase opportunities available for small businesses. Currently, the legislation is forthcoming. Once the required legislation is passed, WSDOT will begin implementation immediately.

Prime contractors may form joint ventures with SBE firms on this work, if the SBE certified firm remains independent and performs a Commercially Useful Function (CUF), as defined in 49 CFR

§ 26.55(c). Joint Venture Agreements must be approved in advance by the WSDOT Office of Equal Opportunity.

Developmental Goals - Consulting

WSDOT will begin establishing business development and assistance requirements on the following projects:

- Federal-aid agreements with USDOT Federal Transit, Federal Aviation and Federal Highway Administration funding;
- Consulting contracts anticipated to last longer than two years; and
- Contracts anticipated to cost over \$5 million.

Throughout the term of the above agreements, the prime contractor or consultant shall pick one SBE firm they will commit to assisting with the SBE firm's development throughout the term of the contract. With each of these projects, at the time of submission, the prime consultant shall submit a plan outlining how they plan to grow and develop their chosen SBE throughout the project. The plan must consist of a detailed development plan for review and approval by the Office of Equal Opportunity. Both the SBE and the prime contractor must work to ensure the SBE firm maintains independence and control, and performs a CUF during the life of the contract.

Small Business Goals

WSDOT previously implemented 10 percent SBE voluntary goals on USDOT, FHWA, FTA and FAA funded projects with minimal success. Because voluntary goals did not result in additional race-neutral participation, WSDOT will set Small Business Enterprise enforceable project goals on federal-aid projects determined to have sufficient opportunities. WSDOT will use the individual project DBE goal setting methodology for SBE goals. This program will be implemented in the same fashion as the DBE program¹ with the following characteristics:

- Prime contractors will either have to meet the established SBE goal or demonstrate Good Faith Efforts to do so;
- Prime contractors will be required to submit SBE Utilization Certification Forms and Written Certification Forms for the SBE firms they will be using; and
- SBE firms will be required to perform a Commercially Useful Function; this will be monitored through comprehensive Commercially Useful Function Onsite Reviews.

¹ Consistent with 49 CFR Part 26

WSDOT may set both DBE/UDBE and SBE goals on federal-aid projects. WSDOT recognizes that administering more than one goal on a project may be complex. In light of this, WSDOT will work collaboratively with FHWA to develop updated contract language and forms to ensure UDBE/DBE and SBE goals and participation remains separate. This will include requiring prime contractors to specify which goal a firm's participation will count toward on the Certification Utilization Form. Additionally, DMCS allows WSDOT to monitor more than one goal on a project simultaneously.

WSDOT will strive to ensure that UDBE/DBE participation remains the priority and the SBE program will be used to enhance small business and race-neutral DBE participation.

Small Business Enterprise Certification

The Small Business Enterprise Certification Program will continue to be administered by OMWBE. Any firms self-certified as a small business enterprise will not be accepted. The certification criteria will remain the same as the DBE Program, but race, ethnicity, and gender will not be evaluated. Following is a summary of the certification criteria utilized by OMWBE:

- The applicable firm must be 51 percent or more owned and controlled by an economically disadvantaged individual meeting the Personal Net Worth requirements of 49 CFR §26.67(2);
- The applicant firm shall meet the criteria to be considered a small business as outlined in 49 CFR § 26.65;
- All firms certified as DBEs will automatically be considered SBE certified for the purposes of this program, with no additional application necessary. All other relevant certification regulations apply, except:
 - The certification decision rendered by OMWBE is final and non-appealable.
 - Failure to perform a Commercially Useful Function three or more times within two years, will result in removal from the SBE program.

Alternative Acquisition Strategies Evaluation

As part of the 2012 SBE Participation Plan and based on the USDOT Questions and Answers of 49 CFR § 26, WSDOT sought agency requested legislation for Job Order Contracting. This alternative acquisition strategy is a delivery method by which the prime contractor performs a small portion of the contract (less than 10 percent) with the remaining work being subcontracted to other firms. This delivery method is primarily used in the vertical construction industry. Upon implementing the Job Order Contracting delivery model WSDOT anticipated additional race-neutral participation. Unfortunately, WSDOT has had limited opportunity to use

the Job Order Contracting Model and therefore, had little to no impact on the race-neutral DBE participation.

WSDOT researched all other alternative design and acquisition strategies and determined the agency has legislative authority to perform the following delivery methods:

- Small Works Roster;
- Limited Public Works Roster²;
- General Contractor/Construction Manager; and
- Design Build.

When developing WSDOT's processes and procedures for alternative design and acquisition strategies, WSDOT relied upon FHWA's guidance from the development process of the *DBE – Administration and Oversight on Projects with Alternative Contracting & Procurement Methods* handbook. This handbook contains useful tools for DBE Program implementation, including lessons learned, creative programmatic enhancement, and helpful resources. WSDOT will continue to use the aforementioned handbook as its guide for enhancing our DBE Program implementation on alternative contracting methods.

From recent research, it appears that most states, including Washington, have been developing strategies to enhance the implementation of the DBE Program on these alternative acquisition strategies. As the DBE Program was initially developed for Design-Bid-Build, it has been modified to implement on alternative acquisition strategy delivery methods. WSDOT is currently focusing efforts to ensure DBE Program compliance with these new delivery methods. These enhancements include DBE contract goals on both the Design and Construction phase of the contract, updated Instruction to Proposers, new Request for Proposal requirements, new DBE Participation Plan requirements and other programmatic enhancement (e.g. Diversity Management & Compliance System). WSDOT sets aggressive, yet obtainable DBE goals on mega-projects, and will continue to focus on the enhanced implementation of the DBE Program and the proper oversight of same. WSDOT will continue to ensure DBE Program requirements are the priority, when implementing the SBE Program.

² WSDOT also has the authority for a limited public works roster. With the limited public works roster, projects less than \$35,000 are set-aside for firms with gross receipts under \$1 million. This delivery method has not been used by WSDOT as we have conflicting state law which, requires WSDOT employees to perform work in this range. WSDOT is hopeful that utilizing the Small Works Roster for SBE firms will increase our race-neutral DBE participation.

RCW 39.04.155

**Small works roster contract procedures—Limited public works process—
Definitions.**

(1) This section provides uniform small works roster provisions to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property that may be used by state agencies and by any local government that is expressly authorized to use these provisions. These provisions may be used in lieu of other procedures to award contracts for such work with an estimated cost of three hundred fifty thousand dollars or less. The small works roster process includes the limited public works process authorized under subsection (3) of this section and any local government authorized to award contracts using the small works roster process under this section may award contracts using the limited public works process under subsection (3) of this section.

(2)(a) A state agency or authorized local government may create a single general small works roster, or may create a small works roster for different specialties or categories of anticipated work. Where applicable, small works rosters may make distinctions between contractors based upon different geographic areas served by the contractor. The small works roster or rosters shall consist of all responsible contractors who have requested to be on the list, and where required by law are properly licensed or registered to perform such work in this state. A state agency or local government establishing a small works roster or rosters may require eligible contractors desiring to be placed on a roster or rosters to keep current records of any applicable licenses, certifications, registrations, bonding, insurance, or other appropriate matters on file with the state agency or local government as a condition of being placed on a roster or rosters. At least once a year, the state agency or local government shall publish in a newspaper of general circulation within the jurisdiction a notice of the existence of the roster or rosters and solicit the names of contractors for such roster or rosters. In addition, responsible contractors shall be added to an appropriate roster or rosters at any time they submit a written request and necessary records. Master contracts may be required to be signed that become effective when a specific award is made using a small works roster.

(b) A state agency establishing a small works roster or rosters shall adopt rules implementing this subsection. A local government establishing a small works roster or rosters shall adopt an ordinance or resolution implementing this subsection. Procedures included in rules adopted by the department of enterprise services in implementing this subsection must be included in any rules providing for a small works roster or rosters that is adopted by another state agency, if the authority for that state agency to engage in these activities has been delegated to it by the department of enterprise services under chapter 43.19 RCW. An interlocal contract or agreement between two or more state agencies or local governments establishing a small works roster or rosters to be used by the parties to the agreement or contract must clearly identify the lead entity that is responsible for implementing the provisions of this subsection.

(c) Procedures shall be established for securing telephone, written, or electronic quotations from contractors on the appropriate small works roster to assure that a competitive price is established and to award contracts to the lowest responsible bidder, as defined in RCW 39.04.010. Invitations for quotations shall include an estimate of the scope and nature of the work to be performed as well as materials and equipment to be furnished. However, detailed plans and specifications need not be included in the invitation. This subsection does

not eliminate other requirements for architectural or engineering approvals as to quality and compliance with building codes. Quotations may be invited from all appropriate contractors on the appropriate small works roster. As an alternative, quotations may be invited from at least five contractors on the appropriate small works roster who have indicated the capability of performing the kind of work being contracted, in a manner that will equitably distribute the opportunity among the contractors on the appropriate roster. However, if the estimated cost of the work is from two hundred fifty thousand dollars to three hundred fifty thousand dollars, a state agency or local government that chooses to solicit bids from less than all the appropriate contractors on the appropriate small works roster must also notify the remaining contractors on the appropriate small works roster that quotations on the work are being sought. The government has the sole option of determining whether this notice to the remaining contractors is made by: (i) Publishing notice in a legal newspaper in general circulation in the area where the work is to be done; (ii) mailing a notice to these contractors; or (iii) sending a notice to these contractors by facsimile or other electronic means. For purposes of this subsection (2)(c), "equitably distribute" means that a state agency or local government soliciting bids may not favor certain contractors on the appropriate small works roster over other contractors on the appropriate small works roster who perform similar services.

(d) A contract awarded from a small works roster under this section need not be advertised.

(e) Immediately after an award is made, the bid quotations obtained shall be recorded, open to public inspection, and available by at least one of the following: Telephone or electronic request.

(f) For projects awarded under the small works roster process established under this subsection, a state agency or authorized local government may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for contractor's nonpayment of: (i) Laborers, mechanics, subcontractors, materialpersons, and suppliers; and (ii) taxes, increases, and penalties under Titles 50, 51, and 82 RCW that may be due from the contractor for the project. However, the state agency or local government has the right of recovery against the contractor for any payments made on the contractor's behalf. Recovery of unpaid wages and benefits are the first priority for actions filed against the contract.

(3)(a) In lieu of awarding contracts under subsection (2) of this section, a state agency or authorized local government may award a contract for work, construction, alteration, repair, or improvement projects estimated to cost less than fifty thousand dollars using the limited public works process provided under this subsection. Public works projects awarded under this subsection are exempt from the other requirements of the small works roster process provided under subsection (2) of this section and are exempt from the requirement that contracts be awarded after advertisement as provided under RCW 39.04.010.

(b) For limited public works projects, a state agency or authorized local government shall solicit electronic or written quotations from a minimum of three contractors from the appropriate small works roster and shall award the contract to the lowest responsible bidder as defined under RCW 39.04.010. After an award is made, the quotations shall be open to public inspection and available by electronic request. A state agency or authorized local government must equitably distribute opportunities for limited public works projects among contractors willing to perform in the geographic area of the work. A state agency or authorized local government shall maintain a list of the contractors contacted and the contracts awarded during the previous twenty-four months under the limited public works process, including the name of the contractor, the contractor's registration number, the amount of the contract, a

brief description of the type of work performed, and the date the contract was awarded. For limited public works projects, a state agency or authorized local government may waive the payment and performance bond requirements of chapter 39.08 RCW and may waive the retainage requirements of RCW 60.28.011(1)(a), thereby assuming the liability for the contractor's nonpayment of laborers, mechanics, subcontractors, materialpersons, suppliers, and taxes, increases, and penalties imposed under Titles 50, 51, and 82 RCW that may be due from the contractor for the limited public works project, however the state agency or authorized local government shall have the right of recovery against the contractor for any payments made on the contractor's behalf.

(4) The breaking of any project into units or accomplishing any projects by phases is prohibited if it is done for the purpose of avoiding the maximum dollar amount of a contract that may be let using the small works roster process or limited public works process.

(5) A state agency or authorized local government may use the limited public works process in this section to solicit and award small works roster contracts to minibusinesses and microbusinesses as defined under RCW 39.26.010 that are registered contractors.

(6) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Equitably distribute opportunities" means that a state agency or authorized local government may not favor certain contractors on the appropriate small works roster over other contractors on the same roster who perform similar services.

(b) "State agency" means the department of enterprise services, the state parks and recreation commission, the department of natural resources, the department of fish and wildlife, the department of transportation, any institution of higher education as defined under RCW 28B.10.016, and any other state agency delegated authority by the department of enterprise services to engage in construction, building, renovation, remodeling, alteration, improvement, or repair activities.

[2019 c 434 § 5; 2015 c 225 § 33; 2009 c 74 § 1; 2008 c 130 § 17. Prior: 2007 c 218 § 87; 2007 c 210 § 1; 2007 c 133 § 4; 2001 c 284 § 1; 2000 c 138 § 101; 1998 c 278 § 12; 1993 c 198 § 1; 1991 c 363 § 109.]

NOTES:

Finding—Intent—2019 c 434: See note following RCW 35.23.352. **Intent—**

Finding—2007 c 218: See note following RCW 1.08.130.

Purpose—2000 c 138: "The purpose of this act is to establish a common small works roster procedure that state agencies and local governments may use to award contracts for construction, building, renovation, remodeling, alteration, repair, or improvement of real property." [2000 c 138 § 1.]

Part headings not law—2000 c 138: "Part headings used in this act are not any part of the law." [2000 c 138 § 302.]

Purpose—Captions not law—1991 c 363: See notes following RCW 2.32.180.

Chapter 468-15 WAC
SMALL WORKS ROSTER

Last Update: 12/8/23

WAC	
468-15-010	Purpose and authority.
468-15-020	Contractor prequalification.
468-15-030	Public notice required by department establishing small works roster.
468-15-040	Contractors questionnaire form—Information required.
468-15-050	Denial or removal of contractor from small works roster—Reasons.
468-15-060	Hearings procedure.

WAC 468-15-010 Purpose and authority. This roster is adopted pursuant to RCW 39.04.155, which requires a state agency establishing a small works roster or rosters to adopt rules implementing the statute. It is further intended to:

- (1) Establish procedures for solicitation of contractors interested in being placed on the department's small works roster(s).
- (2) Provide a fair and effective alternative method of contracting through the small works roster process.
- (3) Provide for a clear concise method for a contractor to qualify for placement on the department's small works roster(s).
- (4) Provide for an appeal and for a hearing procedure, for denial, suspension, or removal from a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-010, filed 1/7/03, effective 2/7/03.]

WAC 468-15-020 Contractor prequalification. No contract for the construction, alteration, improvement, or repair of any state highway, or of any other public highway to be awarded and administered by the department of transportation, may be awarded to any contractor who has not first been prequalified to perform the work per the requirements of chapter 468-16 WAC. Bidding proposals will be issued only to prequalified contractors. Only prequalified contractors will be placed on a small works roster.

[Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-020, filed 1/7/03, effective 2/7/03.]

WAC 468-15-030 Public notice required by department establishing small works roster. The department will, at a minimum once per year provide a public notice to the contracting community encouraging contractors to submit applications for inclusion on the small works roster. Such notice may be mailed directly to trade associations or to individual contractors, by publishing the notice in one trade publication of general circulation within the state, a minimum once per week for two weeks, preceding the date for establishment of the small works roster, or by any method reasonably calculated to assure that all contractors in the state of Washington are aware of the opportunity to be included on the small works roster. The notice shall include the address and phone number, of the department's contract bid and award office from which to request the required questionnaire form for application and approval to be placed on the small works roster.

[Statutory Authority: RCW 47.07.101, 39.04.155, WSR 03-03-012, § 468-15-030, filed 1/1/03, effective 2/1/03.]

WAC 468-15-040 Contractors questionnaire form—Information required. Contractors desiring to be included on a small works roster established by Washington state department of transportation pursuant to RCW 39.04.155, shall submit a completed small works roster questionnaire on a form prescribed by the secretary of transportation. Copies of the form may be obtained from the department's contract and award office. The completed questionnaire shall be prepared and transmitted to the secretary, attention: Contractor prequalification office. The questionnaire shall include the following information:

(1) The contractor's name, address, telephone number, fax number, e-mail address, and type of organization (corporation, partnership, sole proprietorship, etc.);

(2) A statement of ownership of the firm and, if a corporation, the name of the parent corporation, if any, and the names of any affiliated or subsidiary companies;

(3) State contractor's license number;

(4) State of Washington unified business identifier number (UBI) and UBI expiration date;

(5) Federal tax ID number;

(6) List of classes of work as enumerated on the form that the firm desires to be considered for such work class;

(7) Indication of those counties in which the contractor is interested in being considered for small works projects;

(8) Indication whether the contractor is certified as a minority or women's business enterprise or a disadvantaged business enterprise by the office of minority women business enterprises;

(9) List all contracts or subcontracts performed in whole or in part within the immediate three preceding years. Include the contract amount, date of completion, classes of work performed, owner or prime contractor's name, mailing address, phone number, fax number, and name of a contact person for the owner/prime for which the contractor performed the work. Only that work completed by the contractor's own organization under its own supervision will be considered for qualification. A minimum three completed projects must be listed.

(a) Personnel requirements.

(i) List principal officers and key employees indicating their years of experience in the classes of work for which qualification is sought.

(ii) A firm must have, within its own organization, qualified permanent, full-time personnel having the skills and experience including, if applicable, technical or specialty licenses, for each work class for which qualification is sought. Those firms seeking qualification for electrical work (classes 9, 16, 41, and 42) must provide photocopies of current Washington state electrical licenses. The skills and experience must be substantiated by education and practical experience on completed construction projects.

(iii) "Its own organization" shall be construed to include only the contractor's permanent, full-time employed office and site supervisory personnel. Workers of the organization shall be employed and paid directly by the prime contractor.

(b) The applicant shall list the following occurrences within the previous three years:

(i) Instances of having been denied qualification, or a license, or instances of having been deemed other than responsible by any public agency.

(ii) Convictions for felonies listed in WAC 468-16-050.

(iii) Failure to complete a contract.

(c) The small works roster questionnaire shall be processed as follows:

(i) A small works roster questionnaire will be reviewed and a written notice provided to the applicant, within thirty days of its receipt, stating whether or not the applicant has qualified for or been denied qualification for the small works roster. The applicant will be advised of lack of receipt of data corroborating project completion and error or omissions in the questionnaire and a request for additional information necessary to complete the evaluation of the applicant. If the information is not provided within twenty calendar days of the request, the application will be processed, if possible, with the information available or it will be returned to the applicant without further action.

(ii) The department will enter the contractor's information on the appropriate small works roster. The department will notify the contractor by letter of placement on the appropriate small works roster. An applicant should not consider itself enrolled on the small works roster until receipt of such written notice.

It is the responsibility of the contractor to notify the department of any incorrect information set forth in the notice, and to notify the department of any change in the information set forth in its application.

[Statutory Authority: RCW 39.04.155, 47.01.101, 47.28.030. WSR 06-24-116, § 468-15-040, filed 12/6/06, effective 1/6/07. Statutory Authority: RCW 47.01.101, 39.04.155. WSR 03-03-012, § 468-15-040, filed 1/7/03, effective 2/7/03.]

WAC 468-15-050 Denial or removal of contractor from small works roster—Reasons. A contractor may be denied placement on or, after such placement, may be removed from a small works roster for any one or more of the following reasons:

(1) Information set forth in the contractor's application is not accurate or can not be verified;

(2) The contractor fails to notify the department maintaining the small works roster of any changes in the information set forth in its original application for placement on the small works roster within thirty days of the effective date of the change;

(3) The contractor fails to respond to five solicitations for bids on jobs offered through the small works roster;

(4) The contractor's past performance demonstrates a lack of qualification in any specialty area indicated by the contractor in the application for placement on the small works roster;

(5) The contractor fails to complete and return to the department maintaining the small works roster any periodic update submitted by the department to determine the contractor's ongoing interest in maintaining its placement on the small works roster;

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[6] Conviction of the firm or its principals of violating a federal or state antitrust law by bid-rigging, collusion, or restraint of competition between bidders; or conviction of violating any other federal or state law related to bidding or contract performance; or

[7] Knowingly concealing any deficiency in the performance of a prior contract; or

[8] Falsification of information or submission of deceptive or fraudulent statements in connection with prequalification, bidding, performance of a contract, or in legal proceedings; or

[9] Debarment of the contractor by a federal or state agency; or

[10] Willful disregard for applicable laws, rules or regulations.

The reasons for the denial or removal from the small works roster must be based on acts or omissions which took place within the five years preceding the date of the most recent submitted questionnaire.

[Statutory Authority: RCW 19.01.101, 19.04.153, WSR 03-03-010, § 468-15-050, filed 1/1/03, effective 2/1/03.]

WAC 468-15-060 Hearings procedure. (1) Whenever the department believes that grounds exist to deny the contractor placement on a small works roster or to suspend or remove the contractor from the roster, notice of such grounds shall be given to the contractor by first-class mail. If the contractor fails to object or request a hearing within twenty calendar days after the mailing of said notice, then the denial, suspension or removal shall be made effective. If the contractor requests a hearing by certified mail within twenty calendar days after the mailing of the notice, a hearing shall be conducted in accordance with the procedure set forth in this section. Unless the department is otherwise prohibited from contracting with the contractor, the denial, suspension or revocation shall not become effective until the final decision of the secretary has been rendered.

(2) The secretary shall designate a hearing official to conduct any hearing held under this section. The hearing official shall furnish written notice by certified mail of a hearing to the contractor and any named affiliates at least twenty calendar days before the effective date of suspension or revocation or denial of qualification for placement on the small works roster. The notice shall state:

(a) That suspension or revocation or denial of qualification for placement on the small works roster is being considered.

(b) The effective date of the proposed action.

(c) The facts giving cause for the proposed action.

(d) The cause or causes relied upon for proposing the action, i.e., fraud, statutory violations, etc.

(e) If suspension is proposed, the duration of the suspension.

(f) That the contractor may, within twenty calendar days of receipt of the notice, attend the hearing official by certified mail, return receipt requested, information and argument in opposition to or in clarification of the proposed action.

(g) When the action is based on a conviction, judgment, or admission, fact finding shall be conducted if the hearing official determines that the contractor's submission raises a genuine dispute over material facts upon which the denial, suspension or revocation is based or whether the causes relied upon for proposing suspension or revocation exist.

(h) The time, place, and date of the hearing.

(i) The name and mailing address of the hearing official.

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[2] That proposals shall not be issued nor contracts awarded to the contractor subsequent to the dispatch of the notice of hearing pending the final decision of the secretary.

[3] The hearing official may extend the date of any hearing upon request of the contractor, but the hearing shall not be extended beyond forty-five calendar days from the date of the notice. The hearing official shall schedule and conduct the hearing within thirty calendar days of the date of the notice, except when an extension is granted as provided in this subsection.

[4] In the course of the hearing, the hearing official shall:

[a] Regulate the course and scheduling of the hearings;

[b] Rule on offers of proof, receipt of relevant evidence, and acceptance of proof and evidence as part of the record;

[c] Take action necessary to insure an orderly hearing; and

[d] At the conclusion of the hearing, issue written findings of fact and recommended administrative action to the secretary. The hearing officer shall deliver the entire record to the secretary.

[5] The contractor shall have the opportunity to be present and appear with counsel, submit evidence, present witnesses, and cross-examine all witnesses. A transcribed or taped record shall be made of the hearing unless the secretary and the contractor waive the transcript or taping requirement. The transcript or tape shall be made available, at cost, to the contractor and all named affiliates upon request.

In actions where it has been established by conviction, judgment or admission, or where it has been established by findings made in accordance with this chapter, that the named contractor has engaged in conduct described in WAC 468-15-060 and the sole issue before the hearing official is the appropriateness of revocation of qualification or the length of suspension of qualification to be recommended to the secretary, prior judicial or administrative decision or findings shall not be subject to collateral attack.

The secretary, after receiving the record, findings of fact, and recommendations of the hearing official shall determine the administrative action to be taken. The secretary shall notify the contractor of his determination in writing.

Upon denial, suspension or revocation of qualification for placement on the small works roster, the respondent may appeal here from to the superior court of Thurston County pursuant to RCW 47.08.070. If the appeal is not made within the time prescribed in that statute, the department's action shall be conclusive.

[Statutory Authority: RCW 47.07.101, 39.04.15a. WSR 03-03-012, § 468-15-060, filed 1/7/03, effective 2/7/03.]

**Appendix 11 NAICS Code Availability - WSDOT DBE
Disparity Study – 2017**

<https://wsdot.wa.gov/sites/default/files/2017/09/11/OEO-DisparityStudy-2017.pdf>

Appendix 12 49 CFR Part 26 – Appendix A WSDOT Contract Award DBE Requirements

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

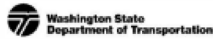
Appendix 13 WSDOT Design-Build Template

[Design-Build Template](#)

[Design-Build Manual M 3126 \(wa.gov\)](#)

Appendix 14 Guidance to RCW 39.10.300

RCW 39.10.300



UDBE/DBE Regular Dealer Project Request

This form is to be used when a certified UDBE/DBE firm is requesting to be counted as a Regular Dealer on a specific contract in which a UDBE/DBE goal has been set. Please note, the request for Regular Dealer status must be received five (5) calendar days prior to bid opening.

Company Name _____
 Company Address _____
 City _____ State _____ Zip _____
 Company Phone _____ Company Email _____
 Company Contact Person Completing This Form _____

UDBE/DBE Certification NAICS Codes and Descriptions:

NAICS Code _____ Description _____
 Example: 237310 - Construction management, highway, road, street and bridge

Contract Number and Name that the Company is requesting to act as a Regular Dealer on:

Contract Number/Federal Aid # _____
 Contract Name _____
 Bid Opening Date _____

Items specifically called for in the above listed contract that the Company will provide as a Regular Dealer¹:

By signing below you certify (or declare) under penalty of perjury under the laws of the State of Washington that the information you provided in this document are true and correct.

Signature _____ Date and Place Signed _____

Please submit this completed form to CRP@wsdot.wa.gov or via fax to (360) 705-6801.

¹ 49 CFR 26.55 – A Regular Dealer is a firm that owns, operates, or maintains 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.

Instructions for Disadvantaged Business Enterprise Utilization Certification Form

Box 1: Name of Bidder (Proposal holder) submitting Bid.

Box 2: Name of the Project.

Column 1: Name of the Disadvantaged Business Enterprise (DBE). DBE firms can be found using the Diversity Management and Compliance System web page: <https://wsdot.diversitycompliance.com>. Repeat the name of the DBE for each Project Role that will be performed.

Column 2: The Project Role that the DBE will be performing as follows;

- Prime Contractor
- Subcontractor
- Subcontractor (Force Account)
 - Work sublet as Force Account must be listed separately.
- Manufacturer
- Regular Dealer
 - Work sublet to a Regular Dealer must be listed separately.
 - Regular Dealer status must be approved prior to Bid submittal by the Office of Equal Opportunity, Washington State Department of Transportation, on each Contract.
- Broker
 - Work sublet to a Broker must be listed separately.

List each project role to be performed by a single DBE individually on a separate row. The role is used to determine what portion of the amount to be subcontracted (Column 4) may be applied toward meeting the goal (column 5).

Column 3: Provide a description of work to be performed by the DBE. The work to be performed must be consistent with the Certified Business Description of the DBE provided at the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com>

- A Bidder subletting a portion of a bid item shall state “**Partial**” and describe the Work that is included.
 - For example; “Electrical (Partial) – Trenching”.
- “Mobilization” will not be accepted as a description of Work.

Column 4: List the total amount to be subcontracted to each DBE for each Project Role they are performing.

Column 5: This is the dollar amount for each line listed in the certification that the prime intends to apply towards meeting the COA Contract goal. It may be that only a portion of the amount subcontracted to a DBE in Column 4 is eligible to be credited toward meeting the goal **See Note 1, Note 2, Note 3**. The Contracting Agency will utilize the sum of this column (Box 4) to determine whether or not the bidder has met the goal. In the event of an arithmetic error in summing column 5 or an error in making appropriate reductions in the amounts in column four, **See Note 1, Note 2, Note 3**, then the mathematics will be corrected and the total (Box 4) will be revised accordingly.

Note 1: For Work sublet as Force Account the bidder **may only claim 50%** of the amount subcontracted (Column 4) towards meeting the goal (Column 5). This information will be used to demonstrate that the DBE contract goal is met at the time that the bidder submits their bid. For example; amount sublet as force account = \$100,000 (Column 4) equates to $(\$100,000 \times 50\%) = \$50,000$ (Column 5) to be applied towards the goal.

Note 2: For Work sublet to a Regular Dealer the bidder **may only claim 60%** of the cost of the materials or supplies (Column 4) towards meeting the goal (Column 5). For example; Material cost = \$100,000 (Column 4) equates to $(\$100,000 \times 60\%) = \$60,000$ (Column 5) to be applied towards the goal

Note 3: For Work sublet to a Broker the bidder **may only claim the fees** paid to a Broker towards meeting the goal (Column 4). For example; amount sublet to a broker = \$100,000 (Column 4) equates to $(\$100,000 \times \text{reasonable fee } \%) = \$$ (Column 5) to be applied towards the goal.

Box 3: Box 3 is the COA Contract goal which is the minimum required DBE participation. The goal stated in the Contract will be in terms of a dollar amount or a percentage in the Contract. When expressed as a percentage you must multiply the percentage times the sum total of all bid items as submitted in the Bidder’s Proposal to determine the dollar goal and write it in Box 3. In the event of an error in this box, the Contracting Agency will revise the amount accordingly.

Box 4: Box 4 is the sum of the values in column 5. **This value must equal or exceed the COA Contract goal amount written in Box 3 or;**

Box 5: Check Box 5 if insufficient DBE Participation has been achieved and a good faith effort is required. Refer to the subsection titled, *Selection of Successful Bidder/Good Faith Efforts (GFE)* in the Contract.

See the Disadvantaged Business Enterprise Participation specification in the Contract for more information.

Appendix 17 USDOT QAs-49CFR-Part 26

Official Questions and Answers (Q&A's) Disadvantaged Business Enterprise Program
Regulation (49 CFR 26)



**Commercially Useful
Function (CUF)/Compliance
Evaluation Form - Service Provider**

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

- All Sections should be completed by Inspector and then sent to the Project Engineering Office (PEO) for review and validation. Inspector should include pictures to support the verification and final Office of Equity and Civil Rights (OECR) determination process.
- Within 28 days of the PEO review, the CUF form should be sent to the regional OECR officer whom will then reconcile, and determine final CUF determination. All applicable documents should be included in the submission.

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Purpose: This form serves as written certification that the elements of work performed by a Disadvantaged Business Enterprise (DBE) contractor were monitored and evaluated according to the Commercially Useful Function and counting requirements of 49 Code of Federal Regulation Part 26.55. This form also contains data and questions to supplement monitoring of payments, termination of work, or changes in contract scope that may require prompt action to ensure final compliance. This form is to be completed at the peak of work, anytime there is a significant change in the DBE's work scopes, and yearly for multi-year projects. Once the PEO has completed its portion of the review, this form shall be sent by email to the Region OECR Representative within 28 calendar days of completion. This form is to be completed based upon the reviewer's determination through observations and review of pertinent documents.

Section I - Project and Payment Data			Date:		
Contract No./ID	Project Name				
Prime Provider	DBE Goal %	LA/Region			
DBE Subcontract Amount	DBE Commitment Amount	% of DBE Work Completed			
DBE Start Date	DBE Payments to Date				
DBE Provider Name		DBE Representative			
DBE Provider Owner		DBE Representative Title			
DBE is Performing as: <input type="checkbox"/> Prime Service Provider <input type="checkbox"/> Sub Service Provider <input type="checkbox"/> Lower-tier Service Provider			Service Category: <input type="checkbox"/> Other		
Provide a brief description of the DBE's scope of work/services from the approved subcontract/sub-agreement:					
<p>The following two questions pertain to DBE participation submitted (under commitment) to meet a contract goal:</p> <p>Are the descriptions of work in the DBE's subcontract/sub-agreement and the Prime's DBE commitment consistent? <input type="checkbox"/> YES <input type="checkbox"/> NO (if "NO", how was this resolved?) <input type="checkbox"/> N/A</p>					
<p>Have there been any changes in project scope that would affect the DBE commitment? <input type="checkbox"/> YES (If "YES", describe changes in scope, impacts, and actions to resolve) <input type="checkbox"/> NO <input type="checkbox"/> N/A</p>					
Section II - Evaluation - To be completed by PEO					
Supervision & Management (Questions 1 -3 do not apply to temporary labor services)			YES	NO	N/A
1. Was all work performed directed by the DBE's supervisory personnel ? (e.g. DBE directs its own employees and controls all elements of work; approving signatures/initials on work products, title blocks and other relevant documents were those of DBE supervisory personnel)			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Do workflows indicate that the designated DBE Project Manager/Supervisor is directing all work?			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3. If the DBE project team or its representative is co-located in the prime's office, is it evident that the DBE has sufficient on-site expertise and control that allows it to manage its work independently?			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Comments Required for all "NO" or "N/A" Responses:

Performance		YES	NO	N/A
4. Did WSDOT or LA make adjustments in counting where the DBE itself sublet or outsourced any portion of its work to a non-DBE?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Did the DBE perform at least 30% of the work under its contract/agreement?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Provide the value of any DBE work (under commitment) that was terminated by the prime and performed by another firm without WSDOT's prior written consent:				
6a. Where written consent was not obtained, did/will WSDOT/LA deny payment to the prime for DBE work it self-performed or DBE work performed by another firm?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7. Did the prime make every good faith effort to replace the value of work under commitment not performed by the DBE for any reason (other than State-initiated changes in scope)?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Workforce		YES	NO	N/A
8. Based on the site visit, were the personnel observed/performing work consistent with the DBE's affirmed listing of project personnel, payrolls, or other valid document?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. With respect to professional services, are document authors and signers of certifications, stamps, seals, title blocks, etc. consistent with the DBE's affirmed listing of qualified project personnel?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Based on employee interviews, is the DBE the only service provider that is compensating the personnel performing the work? - Provide the names of DBE personnel observed or interviewed in the Comments box		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Equipment		YES	NO	N/A
11. Did the DBE use its own equipment to perform the work specified in its contract/agreement? (Total stations, computer hardware, plotters, computer automated design software, personal protective equipment, tools, and other equipment required to perform or produce the work.)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. For equipment not owned by the DBE, did the DBE lease it from a company other than the prime or an upper-tier service provider?		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. If 12. above is "NO," provide the value of equipment borrowed or leased from the prime or an upper-tier service provider: OR →		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Provide information about equipment leased or borrowed by the DBE:		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. Did the prime increase DBE participation to replace the value of equipment borrowed or leased from the prime or upper-tier service provider, as indicated in "13." above?

16. Is all equipment being operated by DBE employees and under the direct supervision of the DBE?

Comments Required for all "NO" or "N/A" Responses:

Section III - CUF Determination - to be completed by OECR

Based on the observations reported in this document, including relevant attachments, I affirm the DBE listed in Section 1 of this form has been counted in accordance with 49 CFR §26.55, and accurately reflected in our agency's reporting system. Yes No

OECR Name/Signature _____ Date _____

OECR Manager Signature (Required if CUF not met)

Determination Comments:

Form Instructions

Section 1 – Project and Payment Data (to be completed by PEO)

Fill in the information in the corresponding boxes.

Under DBE Goal % indicate the goal amount that was originally set by OECR.

Under DBE Subcontract Amount indicate the dollar amount of the DBE Subcontract.

Under DBE Commitment Amount indicate the amount committed as the condition of award (If this DBE is race neutral this amount will be zero).

Under 'DBE Performing as', select the box corresponding to the type of contract being performed by the DBE. Provide a brief description of the DBE's scope of work in the free text section.

- Indicate a response to Q1. Are the descriptions of work in the DBE's subcontract and the Prime's DBE commitment consistent? If 'NO', enter response in free text box
- Indicate a response to Q2. Have there been any changes in project scope that would affect the DBE's commitment? If 'YES', enter response describing changes in free text box

Section 2 – Evaluation (Supervision and Management, Performance, Workforce, Equipment)

1. Indicate whether all work performed directed by the DBE's supervisory personnel
2. For this question, indicate whether a designated DBE Project Manager/Supervisor is directing all work
3. Indicate if the DBE project team or its representative is co-located in the prime's office, and is it evident that the DBE has sufficient on-site expertise and control that allows it to manage its work independently
4. Indicate if WSDOT or LA made adjustments in counting
5. Indicate whether the DBE performed at least 30% of the work under its contract/agreement
6. Provide the value of any DBE work (in the box) that was terminated by the prime and performed by another firm without WSDOT's prior written consent 6a. Indicate whether WSDOT or the LA will deny payment when written consent was not obtained
7. Indicate if the prime made every good faith effort to replace the value of work under commitment not performed by the DBE for any reason
8. Indicate whether the number of DBE personnel is consistent to the IDR AND were the personnel observed/performing work consistent with the DBE's affirmed listing of project personnel
9. Indicate whether, in respect to professional services, are document authors and signers of certifications, stamps, seals, title blocks, etc. consistent with the DBE's affirmed listing of qualified project personnel
10. In regards to employee interviews, is the DBE the only service provider that is compensating the personnel performing the work. Enter DBE personnel names in free text box. Comments required for 'No' or 'N/A' responses
11. Indicate whether the DBE used its own equipment to perform the work specified in its contract/agreement not belong to, or is being leased/rented from, the prime or upper tier subcontractor.
12. Indicate IF equipment is not owned by the DBE, did the DBE lease it from a company other than the prime or an upper-tier service provider
13. If the answer to 12 above is 'NO', enter the value of equipment ; Or enter N/A
14. Enter comments about equipment as related to above Qs
15. Indicate whether the prime increased DBE participation to replace the value of equipment borrowed or leased from the prime or upper-tier service provider
16. Indicate whether all equipment being operated by the DBE firm is under the direct supervision of the DBE

Section 3 – Office of Equal Opportunity Review and Evaluation

Commercially Useful Function and Affirmation (Enter CUF Determination) Reviewer Name/Signature

Review / Affirmation Date

Manager Signature (If CUF not met)



**Washington State
Department of Transportation**

Commercially Useful Function (CUF)/Compliance Evaluation Form - Service Provider

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

- All Sections should be completed by Inspector and then sent to the Project Engineering Office (PEO) for review and validation. Inspector should include pictures to support the verification and final Office of Equity and Civil Rights (OECR) determination process.
- Within 28 days of the PEO review, the CUF form should be sent to the regional OECR officer whom will then reconcile, and determine final CUF determination. All applicable documents should be included in the submission.

DOT Form 272-051
Revised 10/2023



**Washington State
Department of Transportation**

Commercially Useful Function (CUF)/Compliance Evaluation Form - Service Provider

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

- All Sections should be completed by Inspector and then sent to the Project Engineering Office (PEO) for review and validation. Inspector should include pictures to support the verification and final Office of Equity and Civil Rights (OECR) determination process.
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**Washington State
Department of Transportation**

Commercially Useful Function (CUF)/Compliance Evaluation Form - Service Provider

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

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**Washington State
Department of Transportation**

Commercially Useful Function (CUF)/Compliance Evaluation Form - Service Provider

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

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DOT Form 272-051
Revised 10/2023



Commercially Useful Function (CUF)/ Compliance Evaluation Form - Contractor

Date of On Site Review	PEO Representative Name
Inspector Name	PEO Signature
Inspector Signature	Date Reviewed

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- Within 28 days of the PEO review, the CUF form should be sent to the regional Office of Equity and Civil Rights (OECR) officer whom will then reconcile, and verify CUF determination. All applicable documents should be included in the submission (listed below).
 - Approved Request to Sublet (RTS)
 - Inspector Daily Report (IDR) (date should match On Site Review (OSR))

If the Disadvantaged Business Enterprise (DBE) Firm is 'Furnish and Install', PEO shall submit:

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For Trucking and Hauling, the PEO shall also submit:

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Purpose: This form serves as written certification that the elements of work performed by a DBE contractor were monitored and evaluated according to the Commercially Useful Function and counting requirements of 49 Code of Federal Regulation Part 26.55. This form also contains data and questions to supplement monitoring of payments, termination of work, or changes in contract scope that may require prompt action to ensure final compliance. This form is to be completed at the peak of work, anytime there is a significant change in the DBE's work scopes, and yearly for multi-year projects. Once the Project Engineer Office has completed its portion of the review, this form shall be sent by email to the Region OECR Representative within 28 calendar days of completion. This form is to be completed based upon the reviewer's determination through observations and review of pertinent documents.

Section I - Project and Payment Data			
Project No./ID		Project Name	
Prime Contractor		DBE Goal %	LA/Region
DBE Subcontract Amount	DBE Commitment Amount		% of DBE Work Completed
DBE Start Date	DBE Payments to Date		
DBE Company Name		DBE Representative	
DBE Company Owner		DBE Representative Title	
DBE is Performing as:			Type of Arrangement:
<input type="checkbox"/> Prime Contractor <input type="checkbox"/> Subcontractor <input type="checkbox"/> Subcontractor Tier _____ <input type="checkbox"/> Trucker/Hauler			<input type="checkbox"/> Furnish and Install <input type="checkbox"/> Labor Only
Provide a brief description of the DBE's scope of work from the approved subcontract:			
The following two questions pertain to DBE participation submitted (under commitment) to meet a contract goal:			
Are the descriptions of work in the DBE's subcontract and the Prime's DBE commitment consistent?			
<input type="checkbox"/> YES <input type="checkbox"/> NO (if "NO", how was this resolved?) <input type="checkbox"/> N/A			
Have there been any changes in project scope that would affect the DBE's commitment?			
<input type="checkbox"/> YES (If "YES", describe changes in scope, impacts, and actions to resolve) <input type="checkbox"/> NO <input type="checkbox"/> N/A			
Section II - Evaluation			
Management	YES	NO	N/A
1. Does the DBE's Supervisor/Foreman direct and schedule all work activities, including material deliveries, without assistance from the prime or upper-tier subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the person who signs the DBE's certified payrolls an employee of the DBE and not the prime or upper-tier subcontractor ?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

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Comments Required for all "NO" or "N/A" Responses:

Performance	YES	NO	N/A
3. Did WSDOT or LA make adjustments in counting where the DBE itself subcontracted any portion of its work to a non-DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. Did the DBE perform at least 30% of its subcontract with its own workforce?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. Provide the value of any DBE work (under commitment) that was terminated by the prime and performed by another firm without the WSDOT's prior written consent:			
5a. Where written consent was not obtained, did/will WSDOT or LA deny payment to the prime for work it self-performed or was performed by another firm?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. Did the prime make every good faith effort to replace the value of work under commitment not performed by the DBE for any reason (other than Ownerinitiated changes in scope)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Workforce	YES	NO	N/A
7. Do DBE employee names only appear on the DBE's payrolls and not the payrolls of the prime or other contractor employed on the project?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8. Based on the review of at least one certified payroll, is the number of DBE personnel documented in the project work report/diary consistent with the number of personnel on the DBE's payroll(s)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
9. Based on employee interviews, is the DBE the only contractor providing pay and other compensation (i.e. benefit plans) to its personnel?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
10. Are the DBE's employees working on a distinct element of work, independently without assistance of other participating contractors?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Comments Required for all "NO" or "N/A" Responses:

Equipment	YES	NO	N/A
11. For equipment used in the performance of work without permanent markings, were ownership documents verified?(i.e. registrations, leases, or rental agreements)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
12. Was all equipment used by the DBE owned by the DBE, or leased/rented from a company other than the prime or upper-tier subcontractor?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
13. If 12. above is "NO," provide the value of equipment borrowed or leased from the prime or an upper-tier subcontractor: OR →	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
14. Provide information about equipment leased or borrowed by the DBE:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

15. For work under commitment, did the prime increase its DBE participation to replace the value of equipment borrowed or leased from the prime or upper-tier subcontractor, as indicated in "13." above?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
16. Is all equipment being operated by DBE employees and under the direct supervision of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Comments Required for all "NO" or "N/A" Responses:					
Materials (This section applies to "Furnish and Install" work only)			YES	NO	N/A
17. Were material shipping documents addressed to the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
18. Was the DBE on-site to receive delivery of its materials?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
19. According to the material invoice, did the DBE purchase materials from a source other than the prime or one of its affiliates? (If "NO" DBE credit is disallowed)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
20. According to the material invoice, were materials billed to the DBE or DBE Owner/representative? (Attach Invoice)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
21. Was proof of payment obtained? (Attach document such as electronic funds transfer, copy of check, signed payment certification, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
22. If a joint check was used, did it go through the proper approval process, and did the DBE present it to the manufacturer/supplier?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
Comments Required for all "NO" or "N/A" Responses:					
Trucking/Hauling (Complete only page 1 and this section for trucking contracts/subcontracts)			YES	NO	N/A
23. Briefly describe the on-site controls used to identify DBE and non-DBE haulers and to track the value of their participation, i.e. number of trips, quantities, etc. (Attach supporting documents, such as haul tickets, vehicle logs, trucking worksheets, etc.)	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
24. Was at least one DBE-owned and operated truck used in the hauling operation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
25. Does the State's approved DBE Program allow hauling credit for non-DBEs? If "NO" complete Questions 26-28. If "YES" complete Questions 29-31.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
26. Were all trucks operated by DBE owner-operators, employees of the DBE or lower-tier DBE, or leased from a non-DBE truck leasing company and operated by DBE drivers, bearing the name and USDOT identification number of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
27. Was the value of any non-DBE hauler's participation adjusted to allow only fees and commissions?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
28. Considering the value/running tally of DBE hauling completed to date, as compared to remaining hauling, does it appear that the DBE commitment will be met?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
1:1 DBE/Non-DBE Counting					
29. Does the on-site monitoring of trucks provide a means to identify and count non-DBE and DBE haulers, ensuring non-DBE hauling is limited to the value of DBE hauling?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
30. Was credit for only fees and commissions given for additional non-DBE hauling that exceeded the value of DBE hauling?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		
31. Considering the value/running tally of DBE and non-DBE hauling completed to date, as compared to remaining hauling, does it appear that the DBE commitment will be met?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>		

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Comments Required for all "NO" or "N/A" Responses:

Section III - CUF Determination - to be completed by OECR

Based on the observations reported in this document, including relevant attachments, I affirm that the DBE listed in Section 1 performed independently and has been counted in accordance with 49 CFR §26.55, and accurately reflected in our agency's reporting system.

Yes No

OECR Name/Signature

Date

OECR Manager Signature (Required if CUF not met)

Comments:

Form Instructions

Section 1 – Project and Payment Data (to be completed by Project Engineer Office)

Fill in the information in the corresponding boxes.

Under DBE Goal % indicate the goal amount that was originally set by OEER.

Under DBE Subcontract Amount indicate the dollar amount of the DBE Subcontract.

Under DBE Commitment Amount indicate the amount committed as the condition of award (If this DBE is race neutral this amount will be zero).

Under DBE Contract Type, select the box corresponding to the type of contract being performed by the DBE.

Under DBE Contract Arrangement, select the box corresponding to the work type being performed by the DBE according to the subcontract.

Provide a brief description of the DBE's scope of work in the free text section.

- Indicate a response to Q1. Are the descriptions of work in the DBE's subcontract and the Prime's DBE commitment consistent? If 'NO', enter response in free text box
- Indicate a response to Q2. Have there been any changes in project scope that would affect the DBE's commitment? If 'YES', enter response describing changes in free text box

Section 2 – Evaluation (Management, Performance, Workforce, Equipment, Materials, and Trucking/Hauling if applicable)

1. Indicate whether the person supervising the DBE and directing all work activities is the DBE Site Supervisor or Foreman
2. For this question, indicate if the DBE's certified payrolls are signed by an employee of the DBE and not the PRIME or upper tier subcontractor
3. Indicate if the owner made any adjustments to counting where the DBE subcontracted any portion of its work,
4. Indicate if the DBE performed at least 75% of work with its own workforce
5. Enter the value of DBE work (under commitment) that was terminated, and then performed by another firm
 - 5a. Indicate if any payment will be denied by the owner
6. Indicate whether Good Faith Effort(s) for replacing the value of work was sufficient
7. Indicate whether DBE employees only appear on DE payrolls or on PRIME/other contractor payrolls
8. Indicate whether the number of DBE personnel is consistent to the IDR
9. Indicate whether the DBE firm is the only contractor providing pay/other compensation to its personnel
10. Indicate whether the DBE employees are working independently without assistance from other contractors
11. Indicate whether vehicle registrations and/or lease/rental agreements were reviewed on-site for equipment without permanent markings to ensure the equipment does not belong to, or is being leased/rented from, the prime or upper tier subcontractor.
12. Indicate whether all large equipment used by the DBE is owned, leased or rented
13. If the answer to 12 above is 'NO', enter the value of equipment
14. Enter comments about equipment as related to above Qs
15. Indicate whether the prime or upper tier contractor added work to the DBE firm to make up for the loss of countable participation for the leased equipment value
16. Indicate whether all equipment being operated by the DBE firm is under the direct supervision of the DBE
17. Indicate if materials delivered to the project site were address to the DBE
18. Indicate whether the DBE firm is listed as the receiver of those item and was on site
19. Indicate whether the DBE purchased materials from a source other than from the prime or upper tier subcontractor.
20. Indicate whether the materials invoice was billed to the DBE or DBE owner (ensure invoice is attached)
21. Indicate whether proof of payment was obtained (attach supporting documentation such as copy of check, EFT, Accounting reconciliation, etc)
22. Indicate whether a Joint Check was used and if so, did it go through the required approval process and DBE 'present' the check to the manufacturer/supplier
23. Enter in the free text box comments on the on site controls used to identify the DBE, non DBE haulers and how value of participation is tracked (# of trips, quantities, etc). Attach supporting documents such as vehicle logs, worksheets etc.
24. Indicate whether at least one DBE owned and operated truck was used in hauling
25. Indicate whether the program allows for hauling credit

If 'NO', complete Questions 26-28.

If 'YES', complete Questions 29-31

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26. Indicate whether all trucks used by the DBE used bear the name and USDOT ID # of the DBE (non DBE truck leasing company)
27. Indicate whether the value of the non DBE hauler participation was adjusted
28. Indicate whether DBE commitment will be met
29. Indicate whether the monitoring of trucks provides a means to identify and count non DBE and DBE haulers
30. Indicate whether credit for fees/commissions was given
31. Indicate after review of total value, will commitment be met

Section 3 – Office of Equal Opportunity Review and Evaluation

Commercially Useful Function and Affirmation

Reviewer Signature

Review / Affirmation Date

Reviewer Name and Title

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Commercially Useful Function (CUF)/ Compliance Evaluation Form - Contractor

Date of On Site Review
Inspector Name
Inspector Signature

PEO Representative Name
PEO Signature
Date Reviewed

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 - Approved Request to Sublet (RTS)
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If the Disadvantaged Business Enterprise (DBE) Firm is 'Furnish and Install', PEO shall submit:

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For Trucking and Hauling, the PEO shall also submit:

- Daily Truck Unit Listing Log ([WSDOT Form 350-077](#)) for date the OSR was conducted



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**Washington State
Department of Transportation**

DBE/UDBE/FSBE Commercially Useful Function On-Site Review for Regular Dealer and Manufacturers

Purpose: This form serves as written certification that the elements of work performed by a Disadvantaged Business Enterprise (DBE) contractor were monitored and evaluated according to the Commercially Useful Function and counting requirements of 49 Code of Federal Regulation Part 26.55. This form also contains data and questions to supplement monitoring of payments, termination of work, or changes in contract scope that may require prompt action to ensure final compliance.

This form is to be completed for each project, for each construction season, and for each primary scope of work. If the form is submitted with missing/incomplete information, it will be returned to the Project Engineer's Office for completion. **This form shall be sent to the Region Office of Equal Opportunity Compliance Specialist within 10 calendar days of completion.**

This form is to be completed based upon the reviewer's determination through observations and review of pertinent documents.

Section I: Project and Payment Data (To be completed by Project Engineer Office/Local Agency)

Contract Number	Prime Contractor		
Contract Name			
Approximate % of DBE Work Complete			DBE Goal %
DBE Subcontract \$ Amount	DBE Commitment \$ Amount	Region/Local Agency	
DBE Start Date	Total Payments to DBE to Date	Federal Aid No.	
DBE Firm Name		DBE Firm Owner	
DBE Contract Type: <input type="checkbox"/> Regular Dealer <input type="checkbox"/> Manufacturer			
Certification Type: <input type="checkbox"/> UDBE <input type="checkbox"/> DBE <input type="checkbox"/> Federal Small Business Enterprise (FSBE)			
Description of work to be performed by the DBE: 			

Section II: Project Engineer Office/Local Agency Observations

FOR REGULAR DEALERS ONLY

1. If the material being supplied is a bulk item (i.e., aggregate, petroleum, etc.) did the DBE use its own distribution equipment? If no, please explain below (and obtain a copy of any lease agreements): Yes No N/A

2. Has a copy of the materials invoice/purchase order and delivery ticket(s) been provided to the project office? If no, please explain: Yes No N/A

FOR MANUFACTURERS ONLY

3. Is the manufacturing location considered part of the project site (Where the project construction will take place)? Yes No N/A

4. Did the product meet the project specifications? If no, please explain: Yes No N/A

Project Office Personnel

Project Office Representative:

Printed Name

Signature

Date

Section III: Office of Equal Opportunity Review and Evaluations

FOR REGULAR DEALERS ONLY

1. Is the DBE firm listed on the WSDOT Office of Equal Opportunity Regular Dealer List as an approved Regular Dealer specifically for this project? If no, please explain: Yes No N/A

2. Per the DBE purchase order/invoice, indicate the project specific product or material being supplied			
Product/Material Name	Product/Material Quantity	Product/Material Costs	
3. How is the product getting delivered to the project site? Please attach copy of delivery tickets			
4. If the product was shipped, who organized the shipping, who took possession of the products/materials, and who was invoiced for the shipping?			
5. Are material invoices for UDBE related materials billed to the Prime Contractor from the DBE Regular Dealer? Attach proof of payment from the Prime to the DBE. <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
If no, please explain below:			
FOR MANUFACTURERS ONLY			
6. Is the DBE certified by OMWBE, as noted with corresponding NAICS codes, for the work to be performed by the DBE and specific products/material to be provided for this project? <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			
7. List the DBE Major equipment used to fabricate product.			
Make/Model/Year	Owned/Leased	Condition	Logo Markings
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
			<input type="checkbox"/> Yes <input type="checkbox"/> No
8. If the equipment is leased, is there a formal agreement identifying the terms and parties? Please attach a copy of the lease agreement. If no, please explain: <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A			

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9. Per the DBE purchase order/invoice, indicate the project specific product or material being supplied		
Product/Material Name	Product/Material Quantity	Product/Material Costs

10. What type of manufacturing plant does the DBE firm have?

11. Is the DBE firm manufacturing the product at the plant or only supplying the product? Yes No N/A

12. If only supplying the product, where did the product originate? Please explain below:

13. Who and Where did the DBE firm purchase the material from to fabricate or significantly alter the material to create the product?

14. How is the product/material getting delivered to the project site? (attach copy of the delivery ticket)

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15. If the product/material was shipped, who organized the shipping and who was invoiced for the shipping?

16. Are material invoices for UDBE related materials billed to The Prime Contractor from the DBE Regular Dealer? Attach proof of payment from the Prime to the DBE Yes No N/A
If no, please explain below:

17. Did the proof of payment for materials obtained from the PEO show that payment was made by the UDBE firm? Yes No N/A
If no, please explain below:

Section IV: Commercially Useful Function Determination

Office of Equal Opportunity Personnel

OEO Review performed by:

Printed Name Signature Date

Based on work observed and records reviewed, I have determined that the DBE listed in Section 1 performed independently in accordance with the requirements of 49 CFR § 26.55 and any commitment by the prime to utilize the DBE as a condition of award. Yes No N/A

OEO DBE Compliance Manager:

Printed Name Signature Date

Form Instructions

Section 1 – Project and Payment Data (to be completed by Project Engineer Office)

Fill in the information in the corresponding boxes.

Under DBE Contract Type, select the box corresponding to the type of contract being performed by the DBE. In addition, please provide the following if applicable.

1. List the dollar amount of any work committed to the DBE firm that was not performed because of termination, partial termination, underrun, or substitution by another subcontractor or DBE firm.
2. Indicate whether the prime followed the termination process and received written concurrence for any termination or reduction in work.
3. If concurrence was not obtained, indicate if payment was withheld for the work item originally committed to the DBE, but not performed by them.
4. For any underrun in commitment, the prime is required to submit good faith effort documentation showing their efforts to obtain DBE participation after contract award. Indicate whether any good faith effort submission was approved.

Approximate % of DBE Work Completed: Enter the percent completed for the overall contracted work completed up to the date of this onsite review. (On large design-build projects this may not be exact so use best estimate in that case).

DBE Goal %: Enter the DBE Goal assigned to the project when awarded to the prime.

DBE Invoice/Purchase Order \$ Amount: Enter the total amount the prime committed to pay the DBE for completed work.

DBE Commitment \$ Amount: Enter the contracted dollar amount the DBE will receive for performing this work (This amount should be obtained from the DBE Utilization Certification form or DBE Bid Item Breakout).

Region/Local Agency: Enter the WSDOT region name or the municipality (local agency) responsible for this project.

DBE Start Date: Enter the date the DBE started working on its contracted scope of work.

Total Payment to DBE to Date: Enter the value of the dollar amount that the UDBE has been paid for work completed so far, on the date this review is completed.

Section 2 – Project Engineer Office/Local Agency Observations and Interviews

To properly complete this form, attach the following documentation:

- Purchase Orders
- Invoices
- Delivery tickets
- Cancelled checks
- Inventory List

1. Select Yes or No. If no, explain why you think the DBE did not use their own distribution equipment to supply the materials. It is important to note that items not typically kept in stock and regularly sold are considered brokered unless taken into possession and distributed by the DBE; State should apply more scrutiny relative to the products for which the DBE is certified.
2. Select Yes or No. Make sure the delivery ticket show where the products originate. If no, explain why the project office did not obtain a copy of the materials invoice/purchase order.
3. Is the manufacturer completing work on the project site? If yes, please explain.
4. This question is to ensure that product provided meets contract specifications. Select Yes or no. f no, please explain

DOT Form 272-064
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Section 3 – Office of Equal Opportunity Review and Evaluation

1. Did you check WSDOT'S Regular Dealer list to ensure the UDBE firm was approved as a Regular Dealer for this specific project?
Here is the WSDOT OEO website link to locate the Regular Dealer list: <http://www.wsdot.wa.gov/EqualOpportunity/default.htm>
2. Provide list of equipment used to complete the DBE work. From review of DBE purchase order/invoice, please provide List, quantity and cost of any materials provided by the DBE firm to the project.
3. Review Delivery of tickets and describe how the DBE delivered the product/material to the project site.
4. Provide name of the individual responsible for shipping and company responsible for paying for the shipping
5. Did OEO obtain and reviewed a formal agreement document between the prime and the DBE? If no, please explain. Review and provide proof of payment
6. Did OEO ensure the manufacturer is certified and in the OMWBE Directory @ <https://omwbe.diversitycompliance.com/>
7. Provide Lease agreement and registrations to properly answer this question
8. Provide Lease agreement
9. Provide list of equipment used to complete the DBE work. From review of DBE purchase order/invoice, please provide List, quantity and cost of any materials provided by the DBE firm to the project.
10. Provide a description of the manufacturer's plant.
11. Answer accordingly. Provide pictures if available.
12. For questions 12 through 16, provide any material invoices, delivery tickets, proof of payments and any other pertinent documentation.



Contractor Prequalification Questionnaire and Affidavit for Region Ad and Award Contracts (\$100,000 or Less)

Date	Submitted By	Business License Number
Address (Street)		Phone Number
Prime Contractor/Design-Builder		
Prequalification Requested For (Identify Project by Advertised Name)		
What is the Value of Your Firm's Assets (Net Worth)? \$		
List Two Similar Projects Your Firm Has Completed in the Last Year. (Owner's Name and Phone Number)		
1.		
Owner's Name:	Phone Number:	
2.		
Owner's Name:	Phone Number:	
Were the projects listed above completed on time? <input type="checkbox"/> Yes <input type="checkbox"/> No		
Does your firm owe any monies on any projects which were completed within the last year? (If Yes, provide a separate statement.) <input type="checkbox"/> Yes <input type="checkbox"/> No		
Have you or your firm been convicted of any criminal act involving a contractor or contracts? (If Yes, provide a separate statement.) <input type="checkbox"/> Yes <input type="checkbox"/> No		
Affidavit		
State of	County of	
<p>The undersigned, being duly sworn, deposes and says that the foregoing is a true statement of facts concerning the firm (or individual herein named). As of the date indicated: that the answers to the foregoing interrogatories are true; that this statement is for the express purpose of inducing the Washington State Department of Transportation to award the firm (or individual) a contract and that the depository, vendor, or other agency herein named is hereby authorized to supply the Washington State Department of Transportation or its agents with any information necessary to verify this statement.</p> <p>Name of Firm (Be Exact): _____</p>		
_____ Authorized Signature	_____ Authorized Signature	
_____ Authorized Signature	_____ Authorized Signature	
Sworn to before me this _____ day of _____, 20 _____		
_____ (Notary Public)		Corporate Seal(s)
Notary Seal		
Approved By _____ Region Administrator		Date _____

DOT Form 272-063 EF
Revised 02/2015

Appendix 20 *Links Page*

[Construction - General Special Provisions](#)

[Standard Specifications](#) M 41-10

[Construction Manual](#) M 41-01

[Consultant Service Manual](#) M 27-50

Appendix 21 Interagency Agreement (OMWBE)

Interagency Agreement

WSDOT # GCB 3205

**INTERAGENCY AGREEMENT
Between
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
And
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
For The
Disadvantaged Business Enterprise Certification Program**

1. Purpose and Authority

This Interagency Agreement (Agreement) exists between the Washington State Department of Transportation, hereinafter called "WSDOT", and the Office of Minority and Women's Business Enterprises, hereinafter called "OMWBE", collectively the "PARTIES" and individually the "PARTY".

The purpose of this Agreement is to document the terms and conditions under which WSDOT and OMWBE are to implement the Certification portion of the USDOT Disadvantaged Business Enterprise (DBE) Program and WSDOT's Small Business Enterprise (SBE) Program Participation Plan.

This Agreement is effective for the period of July 1, 2019 through June 30, 2021 unless terminated in accordance with the Cancellation/Termination provision of this document.

Under this Agreement, and the State of Washington Unified Certification Program (UCP), OMWBE is designated as the exclusive certification authority for purposes of Title 49 of the Code of Federal Regulations (49 CFR) Parts 23 and 26.

2. WSDOT Responsibilities

- a. WSDOT shall conduct a review of OMWBE's certification process every other year for DBE and SBE firms to ensure compliance with various federal regulations, including 49 CFR Part 26 and official guidance. The review shall be conducted in 2019 and 2021, on dates mutually agreed upon between WSDOT and OMWBE.
- b. WSDOT and OMWBE shall reconvene no more than one calendar year after each bi-annual review to discuss progress made on any recommendations made in the final review summary.

GCB 3205

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Interagency Agreement

- c. WSDOT shall review and investigate complaints filed against OMWBE regarding OMWBE's actions related to the DBE or SBE Program. The investigations will begin within 30 calendar days of receipt. Once a conclusion is reached, WSDOT will render a decision and notify OMWBE of its findings.
- d. WSDOT and OMWBE agree to cooperate in the investigation of third party complaints relating to DBE or SBE certification requirements.
- e. WSDOT shall participate in monthly meetings with OMWBE staff and representatives from Federal Highway Administration to discuss issues related to the DBE program, such as certification and decertification of firms, changes in federal regulations, questions about NAICS codes, and to develop and implement consistent interpretations, processes and procedures.
- f. WSDOT agrees to provide OMWBE copies of any Commercially Useful Function (CUF) Review Report that resulted in findings within ten calendar days of completion of the CUF review, and agrees to notify OMWBE in writing, within ten working days, of the date of suspension or disbarments for cause or other sanctions imposed on any DBE firm.
- g. WSDOT shall appoint the Director of the Office of Equal Opportunity, or the Director's designee, to act as its OMWBE liaison.
- h. WSDOT shall continue to pay for the certification and online application modules provided within the diversity platform, B2GNow.

3. OMWBE Responsibilities

- a. OMWBE shall administer the designated UCP for the implementation and maintenance of the DBE and SBE certification programs in compliance with 49 CFR parts 23 and 26. OMWBE's duties include performing DBE and SBE certification reviews, annual updates, complaint investigations, North American Industrial Classification System (NAICS) Codes reviews, miscellaneous changes, removal of firms no longer wishing to participate or continue to participate as a DBE or SBE, and corresponding proceedings in USDOT-related programs consistent with 49 CFR Parts 23 and 26 and WSDOT's DBE Participation Plan.
- b. Once a completed application is received, OMWBE shall make a determination on an application for certification within 90 calendar days. If OMWBE is unable to make a certification decision within 90 days, it shall notify the firm, and WSDOT, in writing immediately upon determination that the 90 day allotted time period is not feasible. The written notification will clearly state the reasons for the delay, and include an approximate date that the process will be completed. OMWBE shall only extend the

Interagency Agreement

processing time for a firm's application once, for an additional 60 calendar days, unless otherwise approved by USDOT. OMWBE shall only request extensions as provided by the criteria and documentation outlined in 49 CFR Parts 23 and 26. A complete application means all questions on the Uniform Certification Application form have been answered, all required documents from the form's checklist have been submitted, the affidavit and personal net worth form are signed and notarized, and payment is received in full.

- c. For certification appeals, OMWBE shall follow the procedures set forth in 49 CFR 526.89, and the WSDOT Participation Plan.
- d. OMWBE shall participate in monthly meetings with WSDOT Office of Equal Opportunity staff and representatives from Federal Highway Administration to discuss issues related to the DBE program, such as certification and decertification of firms, changes in federal regulations, questions about NAICS codes, and to develop and implement consistent interpretations, processes and procedures.
- e. OMWBE shall utilize the most current version of the NAICS Codes to determine size limitations for certification eligibility purposes and to determine the scopes of work that firms are certified to perform. OMWBE shall include the NAICS codes with applicable index entries in the directory of DBE firms. NAICS codes shall be reviewed and updated as necessary. OMWBE shall consult with WSDOT to ensure that the work description(s) and NAICS code(s) of each certified DBE firm in the directory is accurate in order to minimize bid complications for WSDOT.
- f. In accordance with 49 CFR 26, OMWBE shall issue NAICS Codes to DBE firms down to the index entries.
- g. In regard to onsite reviews, OMWBE shall:
 - i. Take photographs to include in the firm's file during the onsite visits;
 - ii. Conduct onsite reviews prior to issuing NAICS codes that differ from the scope of work the firm is presently certified to perform;

Interagency Agreement

- iii. Exercise its best efforts to conduct onsite reviews within 180 calendar days after the expiration of the four year period. In cases where there are multiple DBEs whose onsite reviews are outdated by four or more years, an extension of an additional 180 days will be granted by WSDOT to complete those reviews. OMWBE shall prioritize reviews starting with the most outdated and working forward.
 - iv. If it is known and indicated to OMWBE by WSDOT that a firm is actively bidding on a WSDOT highway related construction or consulting project, OMWBE will attempt to schedule onsite reviews for those firms first.
 - v. OMWBE agrees to use its best efforts to work with UCPs of the home states of out-of-state DBEs to secure onsite reviews that are outdated by more than four years.
- h. OMWBE shall follow the Interstate Certification standards set forth in 49 CFR Part 26.85 for firms applying for certification from another state.
- i. OMWBE shall maintain the OMWBE Directory of all Certified Firms in accordance with 49 CFR §26.81(g). The directory shall be available on its website (www.omwbe.wa.gov) and shall be updated daily. Newly certified firms shall be searchable within the online directory within 24 hours of certification.
- j. OMWBE shall accept only verified copies (i.e. signed by accountant, firm owner, or accompanied by e-verification proof of filing) of tax documents for making certification eligibility determinations.
- k. OMWBE will initiate an investigation into all complaints within 30 calendar days of receipt of the complaint. Complaints regarding OMWBE's implementation of the DBE and SBE certification program shall be handled by WSDOT pursuant to paragraph 2(c) above.
- l. OMWBE shall maintain records of all complaints in compliance with Paragraph 6(a). The complaint log should contain the following:
- 1. Date of complaint
 - 2. Complainant
 - 3. Detailed nature of the complaint, including all allegations against the DBE or SBE firm
 - 4. Status of the complaint
 - 5. Anticipated review completion date
- m. OMWBE has designated the Office of Administrative Hearings (OAH) to make the final decision regarding removal of eligibility. An Administrative Law Judge knowledgeable in the DBE and SBE programs will be assigned to hear the matter.

Interagency Agreement

- n. OMWBE shall transmit to WSDOT within 24 hours of receipt of notice from USDOT the names of DBE or SBE firms remanded back from USDOT.
- o. OMWBE shall be responsible for maintaining necessary federal reporting documentation as required by 49 CFR Parts 23 and 26.
- p. OMWBE shall continue to provide WSDOT with appropriate information and reports upon request within 15 calendar days of the request.
- q. OMWBE shall continue to provide WSDOT with DBE and SBE Certification Activity Reports within five calendar days after the end of each quarter.

4. Payment

WSDOT, in consideration of the performance by OMWBE of its responsibilities set forth in this Agreement, agrees to pay OMWBE \$2,101,000, per state biennium under the terms of this Agreement. No payments in advance or in anticipation of goods or services to be provided under this Agreement shall be made by WSDOT.

The above maximum amount will be paid in four quarterly payments annually for the activities provided under this Agreement. The quarterly payments will be \$262,625.

The Office of Financial Management will bill WSDOT quarterly. Upon receipt of these billings, WSDOT shall review the DBE Activity Reports and make the quarterly payments to OMWBE within 30 calendar days of WSDOT's receipt of the billing from OFM.

OMWBE shall refund to WSDOT the full amount of any erroneous payment or overpayment under this Agreement within 30 calendar days of receiving written notice of such erroneous payment.

5. Period of Performance

This Agreement shall be effective July 1, 2019, and terminates on June 30, 2021, unless one of the following occurs:

- a. USDOT approval of certification responsibility delegated by WSDOT to OMWBE is withdrawn. In which case, this AGREEMENT is effectively terminated on the date of notification.
- b. The AGREEMENT is amended or terminated in writing by WSDOT or OMWBE as provided in Paragraph 13.

Interagency Agreement

- c. The Washington State Legislature designates another state agency as the UCP for Washington State.

6. Maintenance and Inspection of Records

- a. OMWBE shall maintain books, records, documents, data and other evidence relating to this Agreement and performance of the services described herein, including but not limited to accounting procedures and practices which sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. OMWBE shall retain such records in compliance with the Office of the Secretary of State (SOS) Records Retention Schedules as documented on the SOS website:
<http://www.sos.wa.gov/archives/RecordsManagement/RecordsRetentionSchedulesforStateGovernmentAgencies.aspx> and for a period of no less than six years following the date of final payment.
- b. These records, including materials generated under the Agreement, shall be subject to inspection, review or audit by WSDOT and/or USDOT, personnel duly authorized by WSDOT, the Office of the State Auditor, and federal and state officials so authorized by law, regulation or agreement.
- c. OMWBE shall make its staff available to provide such technical assistance as WSDOT and/or USDOT staff may reasonably require for purposes of inspecting and copying OMWBE files and records.
- d. If any litigation, claim or audit begins before the expiration of the six year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been resolved.

7. Confidential Information

- a. To the extent allowed by law, personal, business or other confidential information collected, used, or acquired in connection with this Agreement shall be protected against unauthorized use, disclosure, modification or loss. OMWBE shall ensure its employees or agents use personal information solely for the purposes of accomplishing the services set forth herein.
- b. OMWBE shall follow state and federal laws regarding public disclosure regarding the release of confidential information if a public records request is received. In performing work under this Agreement, the PARTIES will be compiling, maintaining and exchanging confidential information. Each PARTY will utilize reasonable security procedures and protections to assure that records and documents are not

Interagency Agreement

erroneously disclosed to third parties. However, the PARTIES acknowledge that State Agencies are subject to chapter 42.56 RCW, the Public Records Act.

- c. The PARTIES also acknowledge that information contained within certification files is sensitive and confidential. Therefore, both Parties agree that information is restricted to employees who need the information to perform their assigned duties. In addition, Parties will maintain an employee policy that is consistent with the paragraph above.

8. Indemnification

Each of the PARTIES to this Agreement shall protect, defend, indemnify, and hold harmless the other PARTY, as well as its officers, officials, employees, and agents while acting within the scope of their employment as such, from any and all costs, claims, judgment, and/or awards of damages, arising out of, or in any way resulting from, each of the PARTY's negligent acts or omissions in the course of performing the PARTY's duties under this Agreement.

No PARTY will be required to indemnify, defend, or save harmless the other PARTY if the claim, suit or action for injuries, death, or damages is caused by the sole negligence of the other PARTY. Where such claims, suits, or actions result from concurrent negligence of the PARTIES, the indemnity provisions provided herein shall be valid and enforceable only to the extent of the PARTY's own negligence.

Each of the PARTIES agrees that its obligations hereunder extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, each of the PARTIES, by mutual negotiation, hereby waives, with respect to the other PARTY only, any immunity that would otherwise be available against such claims under the Industrial Insurance provisions of Title 51 RCW.

This indemnification and waiver shall survive the termination of this Agreement.

9. Independent Contractor

Each PARTY shall be deemed an independent contractor for all purposes, and the employees of each PARTY or any of its contractors, subcontractors, consultants, and the employees thereof, shall not in any manner be deemed to be employees of the other PARTY.

10. Order of Precedence

1. Applicable Federal and Washington State Statutes and Regulations;
2. Terms and Conditions contained in this Interagency Agreement; and
3. Any other provisions incorporated by reference or otherwise into the Agreement.

Interagency Agreement

11. Disputes

This Agreement shall be governed in all respects by the law and statutes of the state of Washington. The jurisdiction for any action hereunder shall be the Superior Court for the State of Washington. The venue of any action hereunder shall be in the Superior Court for Thurston County, Washington.

In the event that a dispute arises under this Agreement, it shall be resolved as follows: WSDOT and OMWBE shall first attempt to resolve the matter by informal negotiations. If this does not bring about resolutions, each PARTY shall appoint a member to a disputes board, and these two members shall select a third board member not affiliated with either PARTY. The PARTIES shall equally share in the cost of the third disputes board member; however, each PARTY shall be responsible for its own costs and fees. The three-member board shall conduct a dispute resolution hearing that shall be informal and unrecorded. The disputes board shall render its final decision in writing, which shall be binding on the PARTIES.

12. Termination

Each PARTY may terminate this Agreement, with or without cause, upon 30calendar days' prior written notification to the other PARTY. If this Agreement is so terminated by WSDOT, WSDOT shall reimburse OMWBE for actual direct and related indirect costs incurred in the course of performance of this Agreement, as well as non-cancelable obligations as of the effective date of termination. If OMWBE terminates the Agreement, then WSDOT shall reimburse OMWBE for actual direct costs incurred as of the effective date of termination. Upon the effective date of termination, OMWBE shall immediately turn over copies of all records, files and documentation, in whatever form or format, to WSDOT.

13. Amendments to Agreement

Changes to the terms of this Agreement must be in the form of an amendment. Such amendments shall not be binding unless put in writing and signed by persons authorized to bind each of the PARTIES.

14. Authorized Representatives

WSDOT and OMWBE agree that the signatory PARTIES shown below are duly authorized officials of their respective agencies with full authority to bind each agency to the obligations set forth herein.

Interagency Agreement

15. Working Days

Working days for this Agreement are defined as Monday through Friday, excluding Washington State holidays per RCW 1.16.050.

By executing this Agreement, the parties agree to the terms and conditions contained herein.




Earl Key
Director, Office of Equal Opportunity
Washington State Department of
Transportation

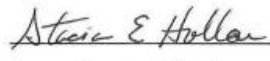


Lisa van der Lugt
Director
Washington State Office of
Minority & Women's Business Enterprises

APPROVED AS TO FORM ONLY:



Name: Albert H. Wang
Date: 7/12/19
Assistant Attorney General
(WSDOT)



Name: Stacia Hollas
Date: 7/15/19
Assistant Attorney General
(OMWBE)

Appendix 22 *Unified Certification Program Documents*

- i. OMWBE DBE Onsite Form
- ii. OMWBE Approval
- iii. OMWBE Federal Affidavit of Continued Eligibility (ACE)
- iv. OMWBE Federal 60 Day Extension Notification
- v. OMWBE Online Application Annual Renewal
- vi. OMWBE Annual Update Recertification
- vii. OMWBE Intent to Decertify
- viii. OMWBE Final Decertification Letter (DBE ACDBE)
- ix. OMWBE Federal Suspension Letter

i. OMWBE DBE Onsite Form

STATE OF WASHINGTON
 OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
 1110 Capitol Way South, Suite 150 • PO Box 41160 • Olympia, WA 98504-1160
 (360) 664-9750 • Toll free 1-866-208-1064 • Fax (360) 586-7079

ON-SITE INTERVIEW

File Number:

Date of On-site: [Click here to enter a date.](#)

Onsite Prepared by:

Firm Name:

Firm Address:

Onsite Address:

Phone:

Owner Name(s):

Type of building: [Choose an item.](#) Firm sign on door/front: [Choose an item.](#)

Firm Structure: [Choose an item.](#)

Firm Type: [Choose an item.](#)

Interview Reason: [Choose an item.](#)

GENERAL INFORMATION

1.	Person #1 interviewed	
	Position/Title with firm	
2.	Person #2 interviewed	
	Position/Title with firm	
3.	Location of on-site (e.g., job site, office, warehouse, etc.)	
	Does the firm have any other locations? If yes, where?	
	Do you own or lease the property where the firm is located? If a lease, do we have a copy of the lease? If not, please provide a copy.	Choose an item. Additional notes/Other:

OMWBE Onsite Report
Page 1

4.	What is the firm's primary line of business?	
5.	What is the firm's secondary line of business?	
6.	Including owners, how many employees take an active part in the business?	Tull-time: Part-time:

OWNERSHIP

7.	Who are the firm's owners?	Name: Title: Ownership: Percentage: % Name: Title: Ownership: Percentage: %
8.	Which of the owners are actively involved in the business and what is their principal involvement?	
9.	How did the minority/women owner(s) acquire ownership in the firm? <i>(Ask for copies if not in the file)</i>	Choose an item, If Other/Explain:
	If you purchased the business, who did you purchase it from?	
	If you received the business as a gift , from whom and explain what your relationship is and why you received the gift?	
	If started using wages/salary : What is the name of the firm you earned the salary from? Are you currently working for the firm? Do you have a W2 to provide as proof?	

	If you started the business using savings , from what source?	
	If you used a loan , can you provide the loan documents?	
	If anyone contributed expertise, equipment, vehicles and /or any other assets, please explain the nature of the contribution (<i>who & what</i>)	
10.	How much was originally invested? (<i>Ask for copies if not in the file</i>)	<input type="checkbox"/> Money \$ <input type="checkbox"/> Expertise <input type="checkbox"/> Equipment <input type="checkbox"/> Vehicles
11.	How much would you estimate the firm is worth at this time?	
12.	Do any of the <i>owners</i> owe any money to the firm? If yes, how much, why and what was the source of those funds?	Choose an item.
13.	Does the <i>firm</i> owe any money to any of the owners? If yes, how much, why and what was the source of those funds?	Choose an item.

GENERAL ADMINISTRATION

14.	What are your (the eligible owner's) daily duties?	
15.	What hours/days of the week does the firm operate?	Choose an item.

16.	How many hours per day do you (the minority/woman owner) spend doing work related to the operation of this firm?	
17.	Do you (the minority/woman owner) spend time on any other businesses or employment?	Choose an item. <i>(If no, skip to 18)</i>
	If yes, for what company and explain what the primary function of the other business is?	
	Explain what your involvement/position is with this other business?	
	What are the hours/days of operation of the other business? What are the hours/days you spend at the other business?	Hours/Days of Operation for other business: Choose an item. Hours/Days spent at other business: Choose an item.
	Is the other business OMWBE certified DBE/WBE/MBE/MWBE?	Choose an item.
18.	How are the owners compensated for their work and ownership interest? (<i>"Not compensated" is not an acceptable answer.</i>)	Choose an item. Other/Additional Notes:
	Did you reinvest profits into the firm this past year? If yes, how much was reinvested?	Choose an item. If yes, amount reinvested:
19.	Other than the owners, who are the key employees and what are their duties? <i>Key employees can be defined as those who assist the owners in the management and operations of the firm.</i>	Choose an item. Name: Title: Duties:
	Name: Title: Duties:	Name: Title: Duties:

20.	Does your firm visit job sites? If yes, who visits the job sites?	Choose an item.
	If yes, what do each of you do while at job sites?	
	If no , why not?	
21.	Describe the day-to-day functions of the company.	
22.	Is the firm engaged in any Joint Ventures or Mentor Protégé programs?	Choose an item. If yes, explain in detail:
23.	Does your firm share any of the following with any other company?	<input type="checkbox"/> None <input type="checkbox"/> Bonding/Insurance <input type="checkbox"/> Directors <input type="checkbox"/> Employees <input type="checkbox"/> Equipment <input type="checkbox"/> Office Space <input type="checkbox"/> Officers <input type="checkbox"/> Owners <input type="checkbox"/> Shop/Yard Space <input type="checkbox"/> Warehouse Other/Explain:
24.	How are major decisions made?	
	Who makes them?	
25.	Who approves the hiring and firing of employees?	
26.	Do you have a written policy and procedure manual?	Choose an item.
	<i>(For construction & Trucking) Do you have a written safety manual?</i>	Choose an item.
27.	Who wrote your policy and procedure or safety manual?	

28.	How many signatures are required for payroll and other checks? <i>(Ask for a copy of the bank signature card if not in file)</i>	Choose an item.
	Who signs the checks?	
	Are there any restrictions such as more than one signature required?	
29.	Has the firm taken out any loans? <i>(If yes, request copies)</i>	Choose an item. If yes, from whom?
	If yes, who arranged for and signed the loan agreement?	
	If any loans are currently outstanding, what is the current balance owed?	
30.	Does the Board of Directors/Managers/Members, etc. meet at least annually?	Choose an item.
	If no, the board does not meet, explain why.	
	How many members do you have on the board?	Number of board members:
	Identify who the board members are.	Name: Title: Attends all meetings? Choose an item. Name: Title: Attends all meetings? Choose an item. Name: Title: Attends all meetings? Choose an item.
31.	What type of equipment / tools do you use to perform the firm's work? <i>(Take pictures & ask for copies of equipment/tools list if not in the file)</i>	
32.	How did the firm obtain these tools / equipment?	

OMBWB Onsite Report
Page 6

33.	If the firm needs equipment that it does not own, how will it obtain that equipment?	
34.	Do you currently have equipment leases?	Choose an item.
35.	Have you ever owned a firm that has been denied certification with any office including OMWBE? If yes, what was the reason?	Choose an item. If yes, reason for denial:
	Have you ever withdrawn a certification application from any office including OMWBE? If yes, what was the reason?	Choose an item. If yes, reason for withdrawal:

PROFESSIONAL/BUSINESS SERVICES

36.	What is the service you provide to customers?	
37.	Do you have a written business and/or marketing plan? If not, please explain how you plan to market your business?	Choose an item.
38.	Who are your major competitors?	
39.	Have you ever been asked to obtain bonding? <i>(If yes, ask for a copy of the bond if not in the file)</i>	Choose an item. If yes, amount of bond: \$
40.	What type of business insurance do you have? <i>(Ask for a copy of the insurance if not in file)</i>	
41.	Do you have errors and omissions insurance: <i>(professionals – attorneys, engineers, doctors).</i> Who is covered? Identify each person and their title:	Choose an item. Name: Title: Name: Title:

42.	Do you subcontract any of your work? <i>(If no, skip to Question #43)</i>	Choose an item.
	If yes, to whom and what is the percentage for each?	Name: Percentage: % Scope:
	What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope:
		Name: Percentage: % Scope:
	Is the firm capable of performing the subcontracted work?	Choose an item.
	If yes, why does the firm subcontract this work out?	
	If no, why does the firm bid on work it cannot perform?	
43.	What specialty supplies and equipment do you use in your business? <i>(Take pictures & notes)</i>	

CONSTRUCTION FIRMS

44.	Describe the firm's bidding and estimating process <i>(Ask for sample copies)</i> .	
-----	---	--

45.	Who does the firm's take-offs? <i>Take-off is a part of the cost estimating process in the construction industry. Estimators use construction blueprints, either manually or electronically, and start "taking off" quantities of items they will need from those blueprints in order to prepare part of the estimate.</i>	
46.	Do you inspect job sites before bidding on a project?	Choose an item. If yes, explain:
47.	Do you attend pre-submission conferences?	Choose an item. If yes, explain:
48.	How are construction materials purchased for projects?	
	Who approves purchases of construction materials?	
	Who approves purchases of construction equipment and similar assets?	
49.	How does the firm monitor job costs?	
50.	What is the firm's performance bond limitation?	Aggregate limit \$ Project limit \$
	What/whose assets are used to secure the performance bond?	
51.	Who is the firm's insurance agent/company?	
52.	Explain why a contractor should be bonded?	
53.	Who handled the firm's insurance registration?	
54.	How does the firm resolve field construction disputes or problems?	

55.	Who negotiates disputed billings with prime contractors or customers?	
56.	Do you subcontract any of your work? <i>(If no, skip to next section.)</i>	Choose an item.
	If yes, to whom and what is the percentage for each?	Name: Percentage: % Scope:
	What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope:
	Is the firm capable of performing the subcontracted work?	Choose an item.
	If yes, why does the firm subcontract this work out?	
	If no, why does the firm bid on work it cannot perform?	
57.	How does the firm select subcontractors?	

VENDORS/SUPPLIERS

58.	Is the firm a...	Choose an item. If Other:
	If the firm is a manufacturer, do you have a manufacturing plant? Where is it located? <i>(Obtain copy of lease agreement or deed)</i>	Choose an item.
	If someone else owns the manufacturing plant your firm uses, do you have an agreement with the owner? <i>If yes, please provide a copy of the agreement.</i>	Choose an item.
	If a distributor/dealership, do you have a distributorship/ dealership agreement? <i>If yes, please provide a copy.</i>	Choose an item.

	If the firm is a franchise? If yes, please provide a copy of the Franchise agreement.	Choose an item.
59.	When do you take ownership title to the goods you sell? (Ask for copies of invoices, receipts, order forms, shipping receipts, etc.)	
60.	How long does the firm retain ownership of or title to the goods for sale? (Ask for copies of inventory lists, etc.)	
61.	Does your firm obtain supplies on its own credit? If yes, please request copies.	Choose an item.
	If yes, what is the credit arrangement?	
	If no, how does the firm obtain supplies?	
62.	Who made the firm's initial credit arrangements?	
63.	Which manufacturers, wholesalers, distributors, or other suppliers extend credit to the firm? (Please provide copies of these agreements.)	
64.	Does the firm keep an inventory of the items it supplies? If yes, request copies.	Choose an item.
	If yes, where are those supplies stored? (Take pictures & notes)	
	On average, how much inventory does the firm maintain?	
	If no, how does the firm provide the items supplied?	
65.	Approximately what percentage of the firm's sales will be filled directly from the firm's current inventory?	

66.	How will the product be delivered to your customer? <i>(Ask for sample copies if not in the file)</i>	<input type="checkbox"/> Firm delivers product; How? <input type="checkbox"/> Firm arranges for product delivery <input type="checkbox"/> Drop shipped from manufacturer <input type="checkbox"/> Customer arranges for product delivery <input type="checkbox"/> F.O.B. storage facility/warehouse
67.	Does the firm provide additional insurance of the product until delivery for: <i>(Ask for sample copies if not in file)</i>	<input type="checkbox"/> Theft <input type="checkbox"/> Fire <input type="checkbox"/> Other damage <input type="checkbox"/> No additional coverage
68.	What type of insurance does the firm carry? <i>(Ask for copies if not in the file)</i>	
69.	Does the firm provide any additional warranty for the product? <i>(Ask for sample copies if not in the file)</i>	<input type="checkbox"/> Untimely delivery <input type="checkbox"/> Replacement <input type="checkbox"/> Return policy <input type="checkbox"/> Damage/defective product <input type="checkbox"/> Firm fails to perform <input type="checkbox"/> Other: <input type="checkbox"/> No additional warranty coverage
	If no, who provides warranty coverage for the product?	
70.	Can the customer purchase the same goods from the same source as the firm?	Choose an item.
	If yes, what advantage do customers get from buying from you?	<input type="checkbox"/> Additional warranty <input type="checkbox"/> Additional services <input type="checkbox"/> Other:
71.	Who signs sales contracts on behalf of the firm? <i>(Ask for copies if not in the file)</i>	
72.	Who are your major suppliers? <i>(Ask for copies of agreements if not in the file)</i>	
73.	What are the terms of your distributorship agreements (if any) and amount paid for distributorship rights? <i>(Ask for copies of agreements if not in file)</i>	
74.	Do you subcontract any of your work? <i>(If yes, request copies if not in file)</i>	Choose an item.

	If yes, to whom and what is the percentage for each?	Name:	Percentage:	%
	What is the nature or scope of the subcontracted work for each?	Scope:		
		Name:	Percentage:	%
		Scope:		

TRUCKING FIRMS

75.	What equipment does your firm own and operate? <i>(Ask for copies if not in the file)</i>		
76.	Identify how many and each truck the firm <i>owns</i> and operates?	Type:	Number:
		Type:	Number:
		Type:	Number:
	Who operates the trucks?	Name:	
		Title:	
		Name:	
		Title:	
		Name:	
		Title:	
	Who does the maintenance on the truck(s)?	Name:	
		Title:	
	Who serves as truck boss?	Name:	
		Title:	
	Who handles dispatch?	Name:	
		Title:	
77.	Who did you purchase each truck from?		
	Explain & provide documentation <i>(copies)</i> of where the funds came from to buy each truck?		
78.	Do you <i>lease</i> any trucks?	Choose an item.	

	If yes, how many trucks does your firm <i>lease</i> ?	Type: Number: Type: Number: Type: Number:
	If yes, explain and provide documentation (<i>copies</i>) of who you lease the trucks from.	
79.	Where are the trucks stored? <i>(Take pictures & notes)</i>	
80.	Please demonstrate how you track trips and provide copies <i>(Review trip tickets or truck logs & request sample copies)</i> .	Verified: Choose an item. Additional notes:
81.	How do you determine what type of equipment is required for a given job?	
82.	How do you determine how much time a run might take? <i>(Ask for sample copies)</i>	
83.	What are some common road restrictions that affect how you perform your work?	
84.	What permit requirements affect your firm?	
85.	Are your permits and licensing current? <i>(request copies if not in file)</i>	Choose an item.
	Do you have a CDL? (A B or C). What is required?	
	Do any of the other owners have a CDL? (A B or C).	
	Are you hauling in the State of Washington? <i>If yes, please provide a current copy of the firm's Utilities Transportation Commission Common Carrier Permit (as required by Chapter 480-14 WAC).</i>	Choose an item.

86.	How do you determine whether Davis-Bacon applies to a job? <i>The 1931 Davis-Bacon Act requires the payment of prevailing wage rates to all laborers and mechanics on Federal or Federally assisted construction contracts.</i>	
87.	How do you determine what impact Davis-Bacon might have on your bid price?	
88.	How do you decide whether to bid by the hour or by the ton?	
89.	How does workers' compensation and unemployment regulations apply to your firm?	
90.	What sort of impact does signing a subcontract have on how you perform a job?	
91.	Do you subcontract any of your work?	Choose an item.
	If yes, to whom and what is the percentage for each?	Name: Percentage: % Scope:
	What is the nature or scope of the subcontracted work for each?	Name: Percentage: % Scope:
		Name: Percentage: % Scope:
<u>OTHER/ADDITIONAL QUESTIONS IF APPLICABLE</u>		
92.	Number of Employees (including active owners) you have? How many are minorities? How many are women?	Number of Employees: Minority employees: Female employees:
93.		
94.		
95.		

ADDITIONAL COMMENTS/RECOMMENDATIONS/OBSERVATIONS

GMWFB Onsite Report
Page 15

Onsite prepared by _____

[Click here to enter a date.](#)

QMWBE Onsite Report
Page 16

ii. OMWBE Approval

[b]usinessName]

File Number: [b]VendorNumber]

Dear [b]FirstName] [b]LastName],

The Office of Minority and Women's Business Enterprise (OMWBE) completed a certification application for your business. We are so pleased to certify your firm and wish you much success.

We have put together a list of resources, websites, and connections we hope will be helpful to you. Included in the link below are instructions on accessing your certification letter, information on the annual renewal requirements and many other useful tips for doing business in Washington.

Your firm now appears on our directory of certified firms. Please use the directory to confirm your certification status. The certification letter is for you to retain for your records so you know the date you'll need to renew with our office.

You can learn more about doing business with the state, logging into your account to find your certification letter, and more at <http://bit.ly/OMWBE-Resources>.

Please feel free to contact us at (360) 564-9750.

Sincerely,

[b]ContactPersonName]

[b]ContactPersonTitle]

[b]OMWBE[Letterhead4]
[b]Data]

[b]BusinessName]
[b]Address]

Dear [b]FirstName] [b]LastName],

Congratulations! Your firm has been certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a/an [b]CertificationType]. Information about your business is published in the OMWBE Directory located at <http://blb.ly/2au4bH2>.

Certification Number: [b]CertificationNumber]
Anniversary Date: [b]ExpirationDateFinal]

Please review each of the following:

- Each year before your anniversary date, you must submit an "Affidavit of Continued Eligibility." This form confirms there have been no changes that would affect your firm's ability to remain certified, such as changes in ownership, control, size, management, responsibility, scope of work, or personal net worth. OMWBE will send you an email 75 days before your anniversary date.
- You must inform the OMWBE in writing within 30 days of any of the changes listed above, logging into our system at <http://womebe.wa.gov/certification>. Failure to notify our office of these changes may affect your firm's eligibility for the program.
- This certification shall remain valid unless and until it has been removed in accordance with the procedures set forth in 49 CFR § 26.87.

We are pleased to certify your firm and wish you much success. You are encouraged to become an active participant on federally assisted projects. This certification permits your company to compete in federal-aid contract work as a DBE-owned and operated company. However, it does not guarantee that you will receive work.

Your firm now appears on our directory of certified firms. Please use the directory to confirm your certification status. The certification letter is for you to retain for your records so you know the date you'll need to renew with our office.

You may also want to sign up with Washington's Electronic Business Solutions (WEBS) to receive solicitation notices from state agencies, local and tribal governments and non-profit organizations throughout Washington State. If you have any questions about WEBS, please contact the Department of Enterprise Services at 360-902-7430 or wobcustomerservice@des.wa.gov.

If you have any questions or need assistance, please contact us at (360) 664-9750.

Sincerely,

[b]ContactPersonName]
Certification Analyst

Your firm is certified in the following areas:

Business Description:
[b/BusinessCapability]

North American Industry Classification System (NAICS) Codes:
[b/CommodityCodes]

iii. OMWBE Federal Affidavit of Continued Eligibility (ACE)



Affidavit of Continued Eligibility (Federal)

Use this form if you are currently certified as a Disadvantaged Business Enterprise (DBE), Airport Concessionaire Disadvantaged Business Enterprise (ACDBE), or Small Business Enterprise (SBE) to verify there have been no changes affecting your businesses' ability to meet the size, disadvantaged status, ownership, or control requirements.

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

_____(printed name) hereby swear or affirm the following:

- There have been no changes in _____'s (name of business) circumstances affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of [49 CFR Part 23](#) (ACDBE), [49 CFR Part 26](#), and [13 CFR Part 121](#).
- There have been no material changes in the information provided in the application for certification, except for any changes I have already provided written notice of to DMVBE per 49 CFR 5 26.83(i).
- I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified in 49 CFR 5 26.5, without regard to my individual qualities. (Applies to DBE and ACDBE only)
- My personal net worth does not exceed \$1.32 million, and I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business that are not socially and economically disadvantaged.
- The business continues to meet the Small Business Administration size criteria and gross receipts cap of [49 CFR Part 23](#) (ACDBE), [49 CFR Part 26](#) and [13 CFR Part 121](#).
- The businesses' average gross receipts and average employee count over the last three (3) years was:

Gross receipts _____ Employee count _____

- I have attached the businesses' most current Internal Revenue Service (IRS) business tax filing to support this affidavit.

I declare under penalty of perjury that the foregoing is true and correct. ¹

Owner's printed name _____

Owner's signature _____

NOTARY CERTIFICATE

State of _____ County of _____

Subscribed and sworn to before me this _____ day of _____, 20____

by _____

Signature of Notary Public _____

Date appointment expires _____

R 3/17

¹ Knowing and willfully providing false information to the Federal government is a violation of 18 U.S.C. Section 1001 (False Statements) and could subject you to fines, imprisonment or both.

iv. OMWBE Federal 60 Day Extension Notification



STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
1110 Capitol Way South, Suite 150 • PO Box 41160 • Olympia, WA 98501
(360) 664-9750 • Toll free 1-866-208-1064 • Fax (360) 586-7079

[DATE]

Email

FIRM NAME

Address

File Number: [#####]

Re: Notification of 60-Day Certification Application Extension

Dear :

The Office of Minority and Women's Business Enterprises (OMWBE) makes every effort to complete the review of the [Certification Type (Cert Abbreviation)] certification applications within the regulatory deadlines. The timeline starts once OMWBE receives a complete application and the processing fee.

- OMWBE determined your application with payment was received on [DATE]
- The regulatory 90-day window will close on [DATE].

The Office of Minority and Women's Business Enterprises is unable to complete the certification process within the regulatory deadline of 90 days. Title 49 CFR 26.83(k) allows for a one-time extension of 60 days. This 60-day extension has been applied to your certification application to allow for a thorough review of the application and supporting documents. We will complete our review in 60 days or less.

- The new date to complete the DBE certification application is [DATE]

I apologize for any inconvenience the delay may cause and thank you for your continued patience during the application process.

If you have any questions regarding your application, the certification process, or this extension notification, please feel free to contact me at (360) 664-9750.

Sincerely,

[Certification Analyst Name]

Certification Analyst

REV: 3/31/2020

1

§26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in §26.85 of this part.

REV: 3/31/2020

2

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of §26.87 of this part, except as provided in §26.67(h)(1) of this part.

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

REV: 3/31/2020

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

v. OMWBE Online Application Annual Renewal

[b]OMWBEletterhead[
[b]Data]

[b]First Name [b] Last Name
[b] Business Name
[b] Address]

Certification Type: [b] Certification Type]

Dear [b] First Name],

The above certification was due for renewal by [b] Application Date]. Notices were emailed to you 75 days and 45 days prior to your renewal date. Because OMWBE has not received a renewal application, we are proposing to remove your firm from our directory.

Your firm will remain certified as long as you submit your renewal application within 20 days of the delivery date of this letter. Once your application is accepted, you can disregard this letter concerning potential decertification.

Please follow the steps below to log into our online system and start your renewal application:

1. Go to omwbe.diversitycompliance.com.
2. Enter Username and Password. If this is your first time logging in, or you do not know your password, click "Forgot Password" to receive an email with instructions for resetting. Your username is the email at which you received this notification.
3. Go to your homepage by clicking "Home" on the left side menu.
4. Click "Renew/Apply for Certification" under Key Actions.
5. Follow the drill down option "Your firm is currently certified with OMWBE" to start your application.
 - Federal certification includes: DBE, ACDBE, and SBE.
 - State certification includes: MBE, WBE, MWBE, CBE, and SEDBE.

Relevant federal rules:
49 CFR § 26.83(j) of Subpart D
49 CFR § 26.109(c) of Subpart F

If an application is not submitted within 20 days of the delivery date of this letter, your firm will be decertified.

Please contact us at 206-664-9750 or TechnicalAssistance@omwbe.wa.gov if you have questions. We are available Monday-Friday from 8am-5pm.

Relevant federal rules:
49 CFR § 26.83(j) of Subpart D
49 CFR § 26.109(c) of Subpart F

Sincerely,

Office of Minority and Women's Business Enterprises
State of Washington

vi. OMWBE Annual Update Recertification

[b:BusinessName]
File Number: [b:VendorNumber]

Dear [b:FirstName] [b:LastName],

The Office of Minority and Women's Business Enterprise (OMWBE) completed a certification application for your business. We are so pleased to certify your firm and wish you much success.

We have put together a list of resources, websites, and connections we hope will be helpful to you. Included in the link below are instructions on accessing your certification letter, information on the annual renewal requirements and many other useful tips for doing business in Washington.

Your firm now appears on our directory of certified firms. Please use the directory to confirm your certification status. The certification letter is for you to retain for your records so you know the date you'll need to renew with our office.

You can learn more about doing business with the state, logging into your account to find your certification letter, and more at <https://bit.ly/OMWBE-Resources>

Please feel free to contact us at (360) 364-9750.

Sincerely,

[b:ContactPersonName]
[b:ContactPersonTitle]

[b]CMWBE[etw]head2]

[b]Date]

[b]BusinessName]

[b]Address]

Dear [b]FirstName] [b]LastName],

Congratulations! Your firm's annual review has been completed and you will remain certified by the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as a/an [b]CertificationType]. Information about your business is published in the OMWBE Directory located at <http://bit.ly/2uu43H2>.

Please use the directory to confirm your certification status, including the areas of work your firm is certified in. This letter is for you to retain for your records, so you know the date you'll need to renew with our office.

Certification Number: [b]CertificationNumber]

Anniversary Date: [b]ExpirationDateFinal]

Please review each of the following:

- Each year before your anniversary date, you must submit an "Affidavit of Continued Eligibility." This form confirms there have been no changes that would affect your firm's ability to remain certified, such as changes in ownership, control, size, management, responsibility, scope of work, or personal net worth. OMWBE will send you an email 75 days before your anniversary date.
- You must inform the OMWBE in writing within 30 days of the any of the changes listed above by logging into our system at <http://www.wa.gov/certification>. Failure to notify our office of these changes may affect your firm's eligibility for the program.
- This certification shall remain valid unless and until it has been removed in accordance with the procedures set forth in 48 CFR § 26.57.

We are pleased to certify your firm and wish you much success. If you have any questions or need assistance, please contact us at (360) 664-9750.

Sincerely,

[b>ContactPersonName]

Certification Analyst

vii. OMWBE Intent to Decertify



STATE OF WASHINGTON

OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES

1110 Capitol Way South, Suite 150 • PO Box 41160 • Olympia, WA 98501
(360) 664-9750 • Toll free 1-866-208-1054 • Fax (360) 586-7079

[Date]

Certified Mail

[First Name] [Last Name]

[Business Name]

[Street Address]

[City, State Zip]

File Number: [#####]

Dear [Name],

Thank you for submitting the annual update application for [Fed Cert Type and Abbreviation] and the Personal Net Worth Statement dated [DATE].

OMWBE has reasonable cause to remove []'s (the Firm's) eligibility as a [Fed Cert Type and Abbreviation] for the following reason:

- The presumption of economic disadvantage is rebutted under 49 C.F.R. §26.67 due to the Applicant's personal net worth being greater than \$1.32 million.

Facts [List the facts in chronological order that are important to the decision. Each sentence should contain one important fact. The examples below are to help jog your mind. The facts listed here should also be addressed in the Analysis section below].

1. OMWBE received [Firm Name]'s application for [Fed Cert. Type] on [date] as a [Business Type].
2. The Applicant submitted a signed and notarized personal net worth statement (PNW Statement) dated []. The PNW Statement reported a personal net worth of \$[]. The PNW Statement listed assets totaling \$[], consisting of \$[] in cash and cash equivalents, \$[] in retirement accounts, \$[] in brokerage and investment accounts, \$[] in real estate, \$[] in life insurance, \$[] in other personal property and assets, and \$[] in other business interests. The PNW Statement also listed \$[] in total liabilities.
3. The assets shown on the statement of personal net worth shows more than \$[#####] in assets.

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4. The PNW Statement lists the value of the Applicant's personal residence at \$[]. Zillow values this property at \$[]. The property is [describe property]. The Applicant lists a \$[] mortgage on the property.
5. The PNW Statement lists the value of the property located at [address], at \$[]. Zillow values this property at \$[]. The property is [describe property]. The Applicant lists a \$[] mortgage on the property. **REPEAT FOR ANY ADDITIONAL PROPERTIES**
6. When calculating the present market value of real estate, OMWBE uses appraised value rather than tax assessed value. If no recent appraisal is available, OMWBE uses Zillow in computing the market value of residential real estate. OMWBE will only accept the tax assessed value of properties if no more accurate method of valuation is available.
7. The mortgage balances shown for the [three] real estate holdings shown on the statement of personal net worth is zero dollars.
8. Included in the personal property reported on the PNW Statement is [a tesla, a yacht, a plane]. It also lists a \$[designer dog].
9. The business and personal tax returns show a steady income and do not show unusual income or income not likely to occur in the future. The Applicant also confirmed that this level of income was not unusual or unlikely to continue in the future, stating that she expected the Firm to generate similar levels of income for [Applicant Name] in the future.
10. The business and personal tax returns do not show distribution or wage income to be offset by losses.
11. The Applicant's [List three most recent years] personal and business tax returns do not indicate that income distributed to the Applicant was reinvested in the Firm.

Issue [One paragraph for each decert reason listed above. Include the specific section of the CFR listed below) Ex: If you have one reason listed above, then you have one brief paragraph in this section]

The statement of personal net worth and supporting documentation shows that [Owner's Name] personal net worth exceeds \$1.32 million. Therefore, [Owner's Name] presumption of economic disadvantage is rebutted under 49 C.F.R. §26.67.

Analysis

[Insert condensed version of the rule you are applying]

Under 49 C.F.R. §26.67, each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, is required to submit a signed, notarized statement of personal net worth that does not exceed \$1.32 million. If any individual's

personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

In viewing the record as a whole, OMWBE has reasonable grounds to conclude that the Applicant has a personal net worth in excess of \$1.32 million. Thus, the Applicant's presumption of economic disadvantage is rebutted, and the Firm is not eligible for DBE certification.

For purposes of rebutting the presumption of economic disadvantage, 49 C.F.R. §26.67(a)(2)(iii) and the General Instructions for Completing the Personal Net Worth Statement for DBE/AC/DBE Program Eligibility, codified in Appendix G to 49 CFR Part 26, establish the methodology by which OMWBE must calculate an applicant's personal net worth. Pursuant to the rule, OMWBE must: (1) exclude the applicant's ownership interest in their personal residence and the applicant firm, (2) value assets at their current fair market value, (3) reduce the value of retirement accounts to their present value less any tax and interest penalties for early distribution, (3) exclude liabilities owed on the applicant's personal residence, (4) count loans from the applicant firm as assets, and (5) not count contingent liabilities.

Additionally, in determining an applicant's personal net worth, OMWBE may request additional information or conduct its own investigation when it has a reasonable basis to believe that the PNW Statement submitted by the applicant is incomplete or inaccurate. In reviewing the Applicant's PNW Statement, OMWBE identified mathematical errors, where the detailed sections did not match the general summary. Based on these issues, OMWBE conducted its own investigation into the Applicant's personal net worth.

OMWBE will utilize the more detailed areas of the Applicant's PNW Statement in computing the Applicant's net worth, as the numbers used are more precise than the rounded figures reported in the summary section. Utilizing the detailed sections increases the reported value of their personal property from \$[] to \$[]; decreases the reported value of brokerage accounts from \$[] to \$[]; increases the reported value of the real estate from \$[] to \$[], and increases the reported value of their life insurance from \$[] to \$[]. In total these changes represent a net \$[] increase in the Applicant's total assets, and personal net worth.¹

Of this amount, the Applicant reported \$[] in other business interests. **[Include relevant details and analysis if appropriate]**

The Applicant also listed real property on the PNW Statement. Unless a recent independent appraisal is available, OMWBE uses Zillow.com and similar property estimation service sites in computing the market value of residential real estate. The property estimation service sites that OMWBE uses provide the most accurate estimate for the present fair market value of real estate without having to resort to a costly appraisal. OMWBE's bases its decision to use Zillow and similar sites on official USDOT guidelines authorizing the practice.

The following table outlines the real estate holdings that are considered for purposes of calculating personal net worth [Enter figures in table below]:

¹ Calculation: $(\$[] - []) + (\$[] - \$[]) - (\$[] - \$[]) + (\$[] - \$[]) - \$[]$

Property Address	Applicant Valuation	OMWBE Valuation	Mortgage
[Address]	[\$\$\$\$]	[\$\$\$\$]	[\$\$\$\$]
[Address]	[\$\$\$\$]	[\$\$\$\$]	[\$\$\$\$]
[Address]	Unreported	[\$\$\$\$] ²	[\$\$\$\$] ³

The Applicant reported [Enter Figure] in assets and [Enter Figure] in liabilities on their PNW Statement dated [DATE]. According to the information provided by the Applicant, the personal net worth exceeds \$1.32 million, actually [Enter Figure]. Therefore, decertification is appropriate under 49 C.F.R. §26.67.

However, OMWBE will reduce the value of retirement assets by applicable tax penalties. Of the [\$\$\$], [\$\$\$] is held in retirement assets that have already been adjusted for taxes. The remaining [\$\$\$] must be reduced by applicable tax penalties. As the Applicant is over [age] years old, withdrawals from retirement accounts will not incur the 10% early withdrawal penalty. [State] also does not have a state income tax, so the only applicable taxes the Applicant would have to pay on her retirement assets would be Federal income tax. If all of the Applicant's retirement assets were taxed at the maximum [year] federal income tax rate of [rate %], the [\$\$\$] in before tax retirement assets would be reduced to [\$\$\$].⁴ When combined with the [\$\$\$] after tax retirement asset, the Applicant's total retirement assets equal [\$\$\$]. This represents a [\$\$\$] increase in personal net worth, for a new total personal net worth of [\$\$\$].

These adjustments change the Applicant's personal net worth from \$[] to \$[].

[APPLY RULE TO FACT] (E.g. The Applicant's statement of personal net worth shows the Applicant's personal net worth exceeds \$1.32 million.)

[Summarize the facts listed above].

[CONCLUSION CONCERNING THIS ISSUE] (e.g., Due to the Applicant's personal net worth, the Applicant's presumption of economic disadvantage is rebutted)

Conclusion

Based on the guidelines provided by 49 C.F.R. § 26.67, the Applicant's personal net worth exceeds \$1.32 million. The Applicant faces no barriers to creating additional wealth, and does not have financial difficulty one might expect of an economically disadvantaged individual.

² OMWBE used Zillow.com to report the value of the real property

³ The mortgage was unreported. OMWBE determined the mortgage by subtracting the mortgage amounts that were reported from the total including the primary residence and applied the remaining amount to the [address] property.

⁴ Calculation: [\$\$\$] * (1 - 0.37[tax rate]) - [\$\$\$]

The Applicant's revised personal net worth of [\$\$\$\$] is over the \$1.32 million cap set by 49 C.F.R. §26.67(b). 49 C.F.R. §26.67 (b)(1)(i) requires that the presumption of economic disadvantage is rebutted for any individual whose personal net worth exceeds \$1.32 million. Therefore, OMWBE concludes that [Applicant's Name]'s presumption of economic disadvantage is rebutted.

Appeal process

You may appeal this decision within twenty (20) calendar days of the receipt of this letter. You may:

- Request an informal hearing; or
- Submit your appeal in writing. Your appeal must include information and reasons why the OMWBE should reverse this decision.

For more information see 49 C.F.R. § 26.87.

Please send your request for an informal hearing or your written appeal to:

Deputy Director
Office of Minority and Women's Business Enterprises
P.O. Box 41160
Olympia, Washington 98504-1160

If you do not make a timely request for an informal hearing, this decertification decision will become final.

Please contact me at [email address] or (360) 664-[####] with any questions.

Sincerely,

[Analyst Name]
Certification Analyst

RBV: 05/04/2021

[Deleted the section of the regulations below that do not pertain to the decertification]

§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

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(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;

(2) Whether the income was unusual and not likely to occur in the future;

(3) Whether the earnings were offset by losses;

(4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(5) Other evidence that income is not indicative of lack of economic disadvantage; and

(6) Whether the total fair market value of the owner's assets exceed \$6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

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(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix F of this part.

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viii. **OMWBE Final Decertification Letter (DBE ACDBE)**



STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
1110 Capitol Way South, Suite 150 • PO Box 41160 • Olympia, WA 98501
(360) 664-9750 • Toll free 1-866-208-1064 • Fax (360) 586-7079

[Date]

Certified Mail

[First Name] [Last Name]
[Business Name]
[Street Address]
[City, State Zip]

File Number: [#####]

Dear [First and Last Name],

Thank you for submitting the annual update application for [Fed Cert Type and Abbreviation] and the Personal Net Worth Statement (PNW Statement) dated [DATE].

OMWBE has reasonable cause to remove []'s (the Firm's) eligibility as a [Fed Cert Type and Abbreviation] for the following reason:

- The presumption of economic disadvantage is rebutted under the 49 C.F.R. §26.67¹ because your personal net worth being greater than \$1.32 million.

OMWBE previously informed you of its intent to remove [FIRM Name] from the [DBE/ACDBE/SBE] program via the Notice of Intent to Decertify dated [DATE], which is reiterated in its entirety below. [As of []], OMWBE has not received an appeal of its decision to remove the Firm's eligibility as a DBE []

Facts [List the facts in chronological order that are important to the decision. Each sentence should contain one important fact. The examples below are to help jog your mind. The facts listed here should also be addressed in the Analysis section below].

1. OMWBE received [Firm Name]'s application for [Fed Cert. Type] on [date] as a [Business Type].

¹ This refers to Title 49 of the Code of Federal Regulations, Section 67, which is included at the end of this letter for your reference.

2. The Applicant submitted a signed and notarized personal net worth statement (PNW Statement) dated []. The PNW Statement reported a personal net worth of \$[]. The PNW Statement listed assets totaling \$[], consisting of: \$[] in cash and cash equivalents, \$[] in retirement accounts, \$[] in brokerage and investment accounts, \$[] in real estate, \$[] in life insurance, \$[] in other personal property and assets, and \$[] in other business interests. The PNW Statement also listed \$[] in total liabilities.
3. The assets shown on the statement of personal net worth shows more than \$[#####] in assets.
4. The PNW Statement lists the value of the Applicant's personal residence at \$[]. Zillow values this property at \$[]. The property is [describe property]. The Applicant lists a \$[] mortgage on the property.
5. The PNW Statement lists the value of the property located at [address], at \$[]. Zillow values this property at \$[]. The property is [describe property]. The Applicant lists a \$[] mortgage on the property. **REPEAT FOR ANY ADDITIONAL PROPERTIES**
6. When calculating the present market value of real estate, OMWBE uses appraised value rather than tax assessed value. If no recent appraisal is available, OMWBE uses Zillow in computing the market value of residential real estate. OMWBE will only accept the tax assessed value of properties if no more accurate method of valuation is available.
7. The mortgage balances shown for the [three] real estate holdings shown on the statement of personal net worth is zero dollars.
8. Included in the personal property reported on the PNW Statement is [a tesla, a yacht, a plane]. It also lists a \$[designer dog].
9. The business and personal tax returns show a steady income and do not show unusual income or income not likely to occur in the future. The Applicant also confirmed that this level of income was not unusual or unlikely to continue in the future, stating that she/he/they expected the Firm to generate similar levels of income for [Applicant Name] in the future.
10. The business and personal tax returns do not show distribution or wage income to be offset by losses.
11. The Applicant's [2015, 2016 and 2017] personal and business tax returns do not indicate that income distributed to the Applicant was reinvested in the Firm.

Issue [One paragraph for each deceit reason listed above. Include the specific section of the CFR listed below) Ex: If you have one reason listed above, then you have one brief paragraph in this section]

RBV: 2/12/2021

The statement of personal net worth and supporting documentation shows that [Owner's Name] personal net worth exceeds \$1.32 million. Therefore, [Applicant's Name] presumption of economic disadvantage is rebutted under 49 C.F.R. §26.67.

Analysis

[Insert condensed version of the rule you are applying]

Under 49 C.F.R. §26.67, each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, is required to submit a signed, notarized statement of personal net worth that does not exceed \$1.32 million. If any individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted and the individual does not meet the criteria for certification.

In viewing the record as a whole, OMWBE has reasonable grounds to conclude that the Applicant has a personal net worth in excess of \$1.32 million. Thus, the Applicant's presumption of economic disadvantage is rebutted and the Firm is not eligible for DBE certification.

For purposes of rebutting the presumption of economic disadvantage, 49 C.F.R. §26.67(a)(2)(iii) and the General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility, codified in Appendix G to 49 C.F.R. Part 26, establish the methodology by which OMWBE must calculate an applicant's personal net worth. Pursuant to the rule, OMWBE must: (1) exclude the applicant's ownership interest in their personal residence and the applicant firm, (2) value assets at their current fair market value, (3) reduce the value of retirement accounts to their present value less any tax and interest penalties for early distribution, (3) exclude liabilities owed on the applicant's personal residence, (4) count loans from the applicant firm as assets, and (5) not count contingent liabilities.

Additionally, in determining an applicant's personal net worth, OMWBE may request additional information or conduct its own investigation when it has a reasonable basis to believe that the PNW Statement submitted by the applicant is incomplete or inaccurate. In reviewing the Applicant's PNW Statement, OMWBE identified mathematical errors, where the detailed sections did not match the general summary. Based on these issues, OMWBE conducted its own investigation into the Applicant's personal net worth.

OMWBE will use the more detailed areas of the Applicant's PNW Statement in computing the Applicant's net worth, as the numbers used are more precise than the rounded figures reported in the summary section. Utilizing the detailed sections increases the reported value of their personal property from \$[] to \$[]; decreases the reported value of brokerage accounts from \$[] to \$[]; increases the reported value of the real estate from \$[] to \$[]; and increases the reported value of their life insurance from \$[] to \$[]. In total these changes represent a net \$[] increase in the Applicant's total assets, and personal net worth.²

² Calculation: (\$[] - []) + (\$[] - \$[]) - (\$[] - \$[]) + (\$[] - \$[]) - \$[]

Of this amount, the Applicant reported \$[] in other business interests. **[Include relevant facts and analysis if appropriate]**

The Applicant also listed real property on the PNW Statement. Unless a recent independent appraisal is available, OMWBE uses Zillow.com and similar property estimation service sites in computing the market value of residential real estate. OMWBE uses these service sites to provide the most accurate estimate for the present fair market value of real estate without having to resort to a costly appraisal. OMWBE's bases its decision to use Zillow and similar sites on official United States Department of Transportation (USDOT) guidelines authorizing the practice.

The following table outlines the real estate holdings that are considered for purposes of calculating personal net worth **[Enter figures in table below]**:

Property Address	Applicant Valuation	OMWBE Valuation	Mortgage
[Address]	[\$\$\$\$]	[\$\$\$\$]	[\$\$\$\$]
[Address]	[\$\$\$\$]	[\$\$\$\$]	[\$\$\$\$]
[Address]	Unreported	[\$\$\$\$] ³	[\$\$\$\$] ⁴

The Applicant reported **[Enter Figure]** in assets and **[Enter Figure]** in liabilities on their PNW Statement dated **[DATE]**. According to the information provided by the Applicant, the personal net worth exceeds \$1.32 million, actually **[Enter Figure]**. Therefore, decertification is appropriate under 49 C.F.R. §26.67.

However, OMWBE will reduce the value of retirement assets by applicable tax penalties. Of the **[\$\$\$\$]**, **[\$\$\$\$]** is held in retirement assets that have already been adjusted for taxes. The remaining **[\$\$\$\$]** must be reduced by applicable tax penalties. As the Applicant is over **[age]** years old, withdrawals from retirement accounts will not incur the 10% early withdrawal penalty. **[State]** also does not have a state income tax, so the only applicable taxes the Applicant would have to pay on her/his/their retirement assets would be Federal income tax. If all of the Applicant's retirement assets were taxed at the maximum **[year]** federal income tax rate of **[rate %]**, the **[\$\$\$\$]** in before tax retirement assets would be reduced to **[\$\$\$\$]**.³ When combined with the **[\$\$\$\$]** after tax retirement asset, the Applicant's total retirement assets equal **[\$\$\$\$]**. This represents a **[\$\$\$\$]** increase in personal net worth, for a new total personal net worth of **[\$\$\$\$]**.

These adjustments change the Applicant's personal net worth from \$[] to \$[].

[APPLY RULE TO FACT] (E.g. The Applicant's statement of personal net worth shows the Applicant's personal net worth exceeds \$1.32 million.)

³ OMWBE used Zillow.com to report the value of the real property

⁴ The mortgage was unreported. OMWBE determined the mortgage by subtracting the mortgage amounts that were reported from the total including the primary residence and applied the remaining amount to the **[address]** property.

⁵ Calculation: **[\$\$\$\$]** * (1 - 0.37[tax rate]) - **[\$\$\$\$]**

[Summarized the facts listed above].

[CONCLUSION CONCERNING THIS ISSUE] (e.g., Due to the Applicant's personal net worth, the Applicant's presumption of economic disadvantage is rebutted)

Conclusion

Based on the guidelines provided by 49 C.F.R. § 26.67, the Applicants' personal net worth exceeds \$1.32 million. The Applicant faces no barriers to creating additional wealth, and does not have financial difficulty one might expect of an economically disadvantaged individual.

The Applicant's revised personal net worth of [\$\$\$\$] is over the \$1.32 million cap set by 49 C.F.R. §26.67(b). 49 C.F.R. §26.67 (b)(1)(i) requires that the presumption of economic disadvantage is rebutted for any individual whose personal net worth exceeds \$1.32 million. Therefore, OMWBE concludes that [Applicant's Name]'s presumption of economic disadvantage is rebutted.

The Firm's application for continuing eligibility of its DBE certification is denied.

The Firm's decertification is final. [FIRM NAME] is removed from the OMWBE Directory.

Appeal process

You may appeal to the U.S. Department of Transportation within ninety (90) days of this decision. Your letter must contain information and arguments to show why our decision is incorrect.

Please send your appeal to:

U.S. Department of Transportation
Departmental office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590-0001

For more information, see 49 C.F.R. § 26.89.

- If you do not submit an appeal, this decision will become final and you will have no more appeal rights.
- If you would like to reapply for certification, under 49 C.F.R. § 26.86(c), you may submit a new application (with supporting documentation) twelve (12) months from the date of receipt of this letter.

Please contact me at [email address] or (360) 664-[####] with any questions.

Sincerely,

RBV: 2/12/2021

[Analyst Name]
Certification Analyst

[Deleted the section of the regulations below that do not pertain to the decertification]

§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

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(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;

(2) Whether the income was unusual and not likely to occur in the future;

(3) Whether the earnings were offset by losses;

(4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(5) Other evidence that income is not indicative of lack of economic disadvantage; and

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(6) Whether the total fair market value of the owner's assets exceed \$6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the

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guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

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ix. OMWBE Federal Suspension Letter



STATE OF WASHINGTON
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES
1110 Capitol Way South, Suite 150 • PO Box 41160 • Olympia, WA 98501
(360) 664-9750 • Toll free 1-866-208-1064 • Fax (360) 586-7079

[Date]

Certified Mail

[Name]
[Business Name]
[Street Address]
[City, State Zip]

File Number: [#####]

Dear [Name],

The Office of Minority and Women's Business Enterprises (OMWBE) is summarily suspending FIRM NAME (the Firm) as a Disadvantaged Business Enterprise (DBE). There is adequate evidence to support that the Firm should be summarily suspended based on the following reason(s):

Adequate evidence to believe that there has been a material change in circumstances, in this instance, [control] that affects the eligibility of the Firm to remain certified under 49 Part 26.88(b)(1).

[OMWBE provided the Firm with a Notice of Intent to Decertify on [Date]. The Notice of Intent to Decertify informed the Firm that OMWBE has reasonable cause under 49 CFR 26.87(b) to remove the Firm's eligibility as a DBE, specifically that the [disadvantaged owner(s) does not [control] the Firm.]

OR (if no notice of intent has been sent yet)

[OMWBE has reasonable cause under 49 CFR 26.87(b) to remove the Firm's eligibility as a DBE, specifically that the [disadvantaged owner(s) does not [control] the Firm.]

Relevant federal rule

49 CFR §26.88 Summary suspension of certification.

49 CFR §26.88(b)(1) - A recipient may immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to

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remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

Appeal process

You may appeal this decision prior to [Insert Specific Date]. You may:

- ♦ Request an informal hearing; or
- ♦ Submit your appeal in writing. Your appeal must include information and reasons why the OMWBE's decision should be reversed.

See 49 CFR § 26.88 for more information.

Please send your request for an informal hearing or your written appeal to:

Deputy Director
Office of Minority and Women's Business Enterprises
P.O. Box 41160
Olympia, Washington 98504-1160

Please contact me at (360) 664-9750 with any questions.

Sincerely,

Sarah Erdmann
Deputy Director

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