

1 (October 3, 2022)

2 **Disadvantaged Business Enterprise Participation**

3 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 and
4 USDOT's official interpretations (i.e., Questions & Answers) apply to this Contract.
5 Demonstrating compliance with these Specifications is a Condition of Award (COA) of this
6 Contract. Failure to comply with the requirements of this Specification may result in your
7 Bid being found to be nonresponsive resulting in rejection or other sanctions as provided
8 by Contract.
9

10 **DBE Abbreviations and Definitions**

11 **Broker** – A business firm that provides a bona fide service, such as professional,
12 technical, consultant or managerial services and assistance in the procurement
13 of essential personnel, facilities, equipment, materials, or supplies required for
14 the performance of the Contract; or, persons/companies who arrange or
15 expedite transactions.
16

17 **Certified Business Description** – Specific descriptions of work the DBE is
18 certified to perform, as identified in the Certified Firm Directory, under the Vendor
19 Information page.
20

21 **Certified Firm Directory** – A database of all Minority, Women, and
22 Disadvantaged Business Enterprises currently certified by Washington State.
23 The on-line Directory is available to Bidders for their use in identifying and
24 soliciting interest from DBE firms. The database is located under the Firm
25 Certification section of the Diversity Management and Compliance System web
26 page at: <https://omwbe.diversitycompliance.com>.
27

28 **Commercially Useful Function (CUF)** – 49 CFR 26.55(c)(1) defines
29 commercially useful function as: *"A DBE performs a commercially useful function*
30 *when it is responsible for execution of the work of the contract and is carrying*
31 *out its responsibilities by actually performing, managing, and supervising the*
32 *work involved. To perform a commercially useful function, the DBE must also be*
33 *responsible, with respect to materials and supplies used on the contract, for*
34 *negotiating price, determining quality and quantity, ordering the material, and*
35 *installing (where applicable) and paying for the material itself. To determine*
36 *whether a DBE is performing a commercially useful function, you must evaluate*
37 *the amount of work subcontracted, industry practices, whether the amount the*
38 *firm is to be paid under the contract is commensurate with the work it is actually*
39 *performing and the DBE credit claimed for its performance of the work, and other*
40 *relevant factors."*
41

42 **Disadvantaged Business Enterprise (DBE)** – A business firm certified by the
43 Washington State Office of Minority and Women's Business Enterprises, as
44 meeting the criteria outlined in 49 CFR 26 regarding DBE certification.
45

46 **Force Account Work** – Work measured and paid in accordance with Section 1-
47 09.6.
48

49 **Good Faith Efforts** – Efforts to achieve the DBE COA Goal or other
50 requirements of this part which, by their scope, intensity, and appropriateness to
51 the objective, can reasonably be expected to fulfill the program requirement.
52

1 **Manufacturer (DBE)** – A DBE firm that operates or maintains a factory or
2 establishment that produces on the premises the materials, supplies, articles, or
3 equipment required under the Contract. A DBE Manufacturer shall produce
4 finished goods or products from raw or unfinished material or purchase and
5 substantially alters goods and materials to make them suitable for construction
6 use before reselling them.
7

8 **Reasonable Fee (DBE)** – For purposes of Brokers or service providers a
9 reasonable fee shall not exceed 5% of the total cost of the goods or services
10 brokered.
11

12 **Regular Dealer (DBE)** – A DBE firm that owns, operates, or maintains a store,
13 warehouse, or other establishment in which the materials or supplies required
14 for the performance of a Contract are bought, kept in stock, and regularly sold
15 to the public in the usual course of business. To be a Regular Dealer, the DBE
16 firm must be an established regular business that engages in as its principal
17 business and in its own name the purchase and sale of the products in question.
18 A Regular Dealer in such items as steel, cement, gravel, stone, and petroleum
19 products need not own, operate or maintain a place of business if it both owns
20 and operates distribution equipment for the products. Any supplementing of
21 regular dealers' own distribution equipment shall be by long-term formal lease
22 agreements and not on an ad-hoc basis. Brokers, packagers, manufacturers'
23 representatives, or other persons who arrange or expedite transactions shall not
24 be regarded as Regular Dealers within the meaning of this definition.
25

26 **DBE Commitment** – The scope of work and dollar amount the Bidder indicates
27 they will be subcontracting to be applied towards the DBE Condition of Award
28 Goal as shown on the DBE Utilization Certification Form for each DBE
29 subcontractor. This DBE Commitment will be incorporated into the Contract and
30 shall be considered a Contract requirement. The Contractor shall utilize the COA
31 DBEs to perform the work and supply the materials for which they are
32 committed. Any changes to the DBE Commitment require the Engineer's prior
33 written approval.
34

35 **DBE Condition of Award (COA) Goal** – An assigned numerical amount
36 specified as a percentage of the Contract. Initially, this is the minimum amount
37 that the Bidder must commit to by submission of the Utilization Certification Form
38 and/or by Good Faith Effort (GFE).
39

40 **DBE COA Goal**

41 The Contracting Agency has established a DBE COA Goal for this Contract in the
42 amount of: *** \$\$1\$\$ ***
43

44 **Crediting DBE Participation**

45 Subcontractors proposed as COA must be certified prior to the due date for bids on
46 the Contract. All non-COA DBE subcontractors shall be certified before the
47 subcontract on which they are participating is executed.
48

49 DBE participation is only credited upon payment to the DBE.
50

51 The following are some definitions of what may be counted as DBE participation.
52

1 **DBE Prime Contractor**

2 Only take credit for that portion of the total dollar value of the Contract equal to
3 the distinct, clearly defined portion of the Work that the DBE Prime Contractor
4 performs with its own forces and is certified to perform.
5

6 **DBE Subcontractor**

7 Only take credit for that portion of the total dollar value of the subcontract that is
8 equal to the distinct, clearly defined portion of the Work that the DBE performs
9 with its own forces and is certified to perform. The value of work performed by
10 the DBE includes the cost of supplies and materials purchased by the DBE and
11 equipment leased by the DBE, for its work on the contract. Supplies, materials
12 or equipment obtained by a DBE that are not utilized or incorporated in the
13 contract work by the DBE will not be eligible for DBE credit.
14

15 The supplies, materials, and equipment purchased or leased from the
16 Contractor or its affiliate, including any Contractor's resources available to DBE
17 subcontractors at no cost, shall not be credited.
18

19 DBE credit will not be given in instances where the equipment lease includes
20 the operator. The DBE is expected to operate the equipment used in the
21 performance of its work under the contract with its own forces. Situations where
22 equipment is leased and used by the DBE, but payment is deducted from the
23 Contractor's payment to the DBE is not allowed.
24

25 When the subcontractor is part of a DBE Commitment, the following apply:
26

- 27 1. If a DBE subcontracts a portion of the Work of its contract to another firm,
28 the value of the subcontracted Work may be counted toward the DBE
29 COA Goal only if the lower-tier subcontractor is also a DBE.
30
- 31 2. Work subcontracted to a lower-tier subcontractor that is a DBE may be
32 counted toward the DBE COA Goal only if the lower-tier subcontractor
33 self performs a minimum of 30 percent of the Work subcontracted to
34 them.
35
- 36 3. Work subcontracted to a non-DBE does not count towards the DBE COA
37 Goal.
38

39 **DBE Subcontract and Lower Tier Subcontract Documents**

40 There must be a subcontract agreement that complies with 49 CFR Part 26 and
41 fully describes the distinct elements of Work committed to be performed by the
42 DBE.
43

44 **DBE Service Provider**

45 The value of fees or commissions charged by a DBE firm behaving in a manner
46 of a Broker, or another service provider for providing a bona fide service, such
47 as professional, technical, consultant, managerial services, or for providing
48 bonds or insurance specifically required for the performance of the contract will
49 only be credited as DBE participation, if the fee/commission is determined by
50 the Contracting Agency to be reasonable and the firm has performed a CUF.
51

1 **Force Account Work**

2 When the Bidder elects to utilize force account Work to meet the DBE COA Goal,
3 as demonstrated by listing this force account Work on the DBE Utilization
4 Certification Form, for the purposes of meeting DBE COA Goal, only 50% of the
5 Proposal amount shall be credited toward the Bidder's Commitment to meet the
6 DBE COA Goal.

7
8 One hundred percent of the actual amounts paid to the DBE for the force
9 account Work shall be credited towards the DBE COA Goal or DBE participation.

10
11 **Temporary Traffic Control**

12 If the DBE firm only provides "Flagging", the DBE firm must provide a Traffic
13 Control Supervisor (TCS) and flagger(s), which are under the direct control of
14 the DBE. The DBE firm shall also provide all flagging equipment for its
15 employees (e.g. paddles, hard hats, and vests).

16
17 If the DBE firm provides "Traffic Control Services", the DBE firm must provide a
18 TCS, flaggers, and traffic control items (e.g., cones, barrels, signs, etc.) and be
19 in total control of all items in implementing the traffic control for the project.

20
21 **Trucking**

22 DBE trucking firm participation may only be credited as DBE participation for the
23 value of the hauling services, not for the materials being hauled unless the
24 trucking firm is also certified as a supplier of those materials. In situations where
25 the DBE's work is priced per ton, the value of the hauling service must be
26 calculated separately from the value of the materials in order to determine DBE
27 credit for hauling

28
29 The DBE trucking firm must own and operate at least one licensed, insured and
30 operational truck on the contract. The truck must be of the type that is necessary
31 to perform the hauling duties required under the contract. The DBE receives
32 credit for the value of the transportation services it provides on the Contract
33 using trucks it owns or leases, licenses, insures, and operates with drivers it
34 employs.

35
36 The DBE may lease additional trucks from another DBE firm. The DBE who
37 leases additional trucks from another DBE firm receives credit for the value of
38 the transportation services the lessee DBE provides on the Contract.

39
40 The trucking Work subcontracted to any non-DBE trucking firm will not receive
41 credit for Work done on the project.

42
43 The DBE may lease trucks from a truck leasing company (recognized truck
44 rental center) but can only receive credit towards DBE participation if the DBE
45 uses its own employees as drivers.

46
47 **DBE Manufacturer and DBE Regular Dealer**

48 One hundred percent (100%) of the cost of the manufactured product obtained
49 from a DBE manufacturer may count towards the DBE COA Goal.

50
51 Sixty percent (60%) of the cost of materials or supplies purchased from a DBE
52 Regular Dealer may be credited toward the DBE Goal. If the role of the DBE

1 Regular Dealer is determined to be that of a Broker, then DBE credit shall be
2 limited to the fee or commission it receives for its services. Regular Dealer
3 status and the amount of credit is determined on a Contract-by-Contract basis.
4

5 DBE firms proposed to be used as a Regular Dealer must be approved before
6 being listed as a COA/used on a project. The WSDOT Approved Regular Dealer
7 list published on WSDOT's Office of Equal Opportunity (OEO) web site must
8 include the specific project for which approval is being requested. For purposes
9 of the DBE COA Goal participation, the Regular Dealer must submit the Regular
10 Dealer Status Request form a minimum of five calendar days prior to bid
11 opening.
12

13 Purchase of materials or supplies from a DBE which is neither a manufacturer
14 nor a regular dealer, (i.e. Broker) only the fees or commissions charged for
15 assistance in the procurement of the materials and supplies, or fees or
16 transportation charges for the delivery of materials or supplies required on the
17 job site, may toward the DBE COA Goal provided the fees are not excessive as
18 compared with fees customarily allowed for similar services. Documentation will
19 be required to support the fee/commission charged by the DBE. The cost of the
20 materials and supplies themselves cannot be counted toward the DBE Goal.
21

22 Note: Requests to be listed as a Regular Dealer will only be processed if the
23 requesting firm is a material supplier certified by the Office of Minority
24 and Women's Business Enterprises in a NAICS code that falls within
25 the 42XXXX NAICS Wholesale code section.
26

27 **Disadvantaged Business Enterprise Utilization**

28 To be eligible for award of the Contract, the Bidder shall properly complete and
29 submit a Disadvantaged Business Enterprise (DBE) Utilization Certification with the
30 Bidder's sealed Bid Proposal, as specified in Section 1-02.9 Delivery of Proposal.
31 The Bidder's DBE Utilization Certification must clearly demonstrate how the Bidder
32 intends to meet the DBE COA Goal. A DBE Utilization Certification (WSDOT Form
33 272-056) is included in the Proposal package for this purpose as well as instructions
34 on how to properly fill out the form.
35

36 The Bidder is advised that the items listed below when listed in the Utilization
37 Certification must have their amounts reduced to the percentages shown and those
38 reduced amounts will be the amount applied towards meeting the DBE COA Goal.
39

- 40 • Force account at 50%
- 41 • Regular dealer at 60%
- 42

43 In the event of arithmetic errors in completing the DBE Utilization Certification, the
44 amount listed to be applied towards the DBE COA Goal for each DBE shall govern
45 and the DBE total amount shall be adjusted accordingly.
46

47 Note: The Contracting Agency shall consider as non-responsive and shall
48 reject any Bid Proposal submitted that does not contain a DBE
49 Utilization Certification Form that accurately demonstrates how the
50 Bidder intends to meet the DBE COA Goal.
51

1 **Disadvantaged Business Enterprise Written Confirmation Document(s)**

2 The Bidder shall submit a Disadvantaged Business Enterprise (DBE) Written
3 Confirmation Document (completed and signed by the DBE) for each DBE firm listed
4 in the Bidder's completed DBE Utilization Certification submitted with the Bid. Failure
5 to do so will result in the associated participation being disallowed, which may cause
6 the Bid to be determined to be nonresponsive resulting in Bid rejection.

7
8 The Confirmation Documents provide confirmation from the DBEs that they are
9 participating in the Contract as provided in the Bidder's Commitment. The
10 Confirmation Documents must be consistent with the Utilization Certification.

11
12 A DBE Written Confirmation Document (WSDOT Form 422-031) is included in the
13 Proposal package for this purpose.

14
15 The form(s) shall be received as specified in the special provisions for Section 1-02.9
16 Delivery of Proposal.

17
18 It is prohibited for the Bidder to require a DBE to submit a Written Confirmation
19 Document with any part of the form left blank. Should the Contracting Agency
20 determine that an incomplete Written Confirmation Document was signed by a DBE,
21 the validity of the document comes into question. The associated DBE participation
22 may not receive credit.

23
24 **Selection of Successful Bidder/Good Faith Efforts (GFE)**

25 The successful Bidder shall be selected on the basis of having submitted the lowest
26 responsive Bid, which demonstrates a good faith effort to achieve the DBE COA
27 Goal. The Contracting Agency, at any time during the selection process, may request
28 a breakdown of the bid items and amounts that are counted towards the overall
29 contract goal for any of the DBEs listed on the DBE Utilization Certification.

30
31 Achieving the DBE COA Goal may be accomplished in one of two ways:

32
33 1. By meeting the DBE COA Goal

34 Submission of the DBE Utilization Certification, supporting DBE Written
35 Confirmation Document(s) showing the Bidder has obtained enough DBE
36 participation to meet or exceed the DBE COA Goal, the DBE Bid Item
37 Breakdown and the DBE Trucking Credit Form, if applicable.

38
39 2. By documentation that the Bidder made adequate GFE to meet the DBE
40 COA Goal

41 The Bidder may demonstrate a GFE in whole or part through GFE
42 documentation ONLY IN THE EVENT a Bidder's efforts to solicit sufficient
43 DBE participation have been unsuccessful. The Bidder must supply GFE
44 documentation in addition to the DBE Utilization Certification, supporting
45 DBE Written Confirmation Document(s), the DBE Bid Item Breakdown form
46 and the DBE Trucking Credit Form, if applicable.

47
48 Note: In the case where a Bidder is awarded the contract based on
49 demonstrating adequate GFE, the advertised DBE COA Goal will not
50 be reduced. The Bidder shall demonstrate a GFE during the life of the
51 Contract to attain the advertised DBE COA Goal.
52

1 GFE documentation, the DBE Bid Item Breakdown form, and the DBE Trucking
2 Credit Form, if applicable, shall be submitted as specified in Section 1-02.9.

3
4 The Contracting Agency will review the GFE documentation and will determine if the
5 Bidder made an adequate good faith effort.

6
7 **Good Faith Effort (GFE) Documentation**

8 GFE is evaluated when:

- 9
10 1. Determining award of a Contract that has COA goal,
11
12 2. When a COA DBE is terminated and substitution is required, and
13
14 3. Prior to Physical Completion when determining whether the Contractor has
15 satisfied its DBE commitments.

16
17 49 CFR Part 26, Appendix A is intended as general guidance and does not, in itself,
18 demonstrate adequate good faith efforts. The following is a list of types of actions,
19 which would be considered as part of the Bidder's GFE to achieve DBE participation.
20 It is not intended to be a mandatory checklist, nor is it intended to be exclusive or
21 exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- 22
23 1. Soliciting through all reasonable and available means (e.g. attendance at
24 pre-bid meetings, advertising and/or written notices) the interest of all
25 certified DBEs who have the capability to perform the Work of the Contract.
26 The Bidder must solicit this interest within sufficient time to allow the DBEs
27 to respond to the solicitation. The Bidder must determine with certainty if
28 the DBEs are interested by taking appropriate steps to follow up initial
29 solicitations.
30
31 2. Selecting portions of the Work to be performed by DBEs in order to increase
32 the likelihood that the DBE COA Goal will be achieved. This includes, where
33 appropriate, breaking out contract Work items into economically feasible
34 units to facilitate DBE participation, even when the Bidder might otherwise
35 prefer to perform these Work items with its own forces.
36
37 3. Providing interested DBEs with adequate information about the Plans,
38 Specifications, and requirements of the Contract in a timely manner to
39 assist them in responding to a solicitation.
40
41 a. Negotiating in good faith with interested DBEs. It is the Bidder's
42 responsibility to make a portion of the Work available to DBE
43 subcontractors and suppliers and to select those portions of the Work
44 or material needs consistent with the available DBE subcontractors
45 and suppliers, so as to facilitate DBE participation. Evidence of such
46 negotiation includes the names, addresses, and telephone numbers
47 of DBEs that were considered; a description of the information
48 provided regarding the Plans and Specifications for the Work selected
49 for subcontracting; and evidence as to why additional agreements
50 could not be reached for DBEs to perform the Work.
51

1 b. A Bidder using good business judgment would consider a number of
2 factors in negotiating with subcontractors, including DBE
3 subcontractors, and would take a firm's price and capabilities as well
4 as the DBE COA Goal into consideration. However, the fact that there
5 may be some additional costs involved in finding and using DBEs is
6 not in itself sufficient reason for a Bidder's failure to meet the DBE
7 COA Goal, as long as such costs are reasonable. Also, the ability or
8 desire of a Bidder to perform the Work of a Contract with its own
9 organization does not relieve the Bidder of the responsibility to make
10 Good Faith Efforts. Bidders are not, however, required to accept
11 higher quotes from DBEs if the price difference is excessive or
12 unreasonable.

13
14 4. Not rejecting DBEs as being unqualified without sound reasons based on a
15 thorough investigation of their capabilities. The Bidder's standing within its
16 industry, membership in specific groups, organizations, or associations and
17 political or social affiliations (for example union vs. non-union employee
18 status) are not legitimate causes for the rejection or non-solicitation of bids
19 in the Bidder's efforts to meet the DBE COA Goal.

20
21 5. Making efforts to assist interested DBEs in obtaining bonding, lines of credit,
22 or insurance as required by the recipient or Bidder.

23
24 6. Making efforts to assist interested DBEs in obtaining necessary equipment,
25 supplies, materials, or related assistance or services.

26
27 7. Effectively using the services of available minority/women community
28 organizations; minority/women contractors' groups; local, State, and
29 Federal minority/women business assistance offices; and other
30 organizations as allowed on a case-by-case basis to provide assistance in
31 the recruitment and placement of DBEs.

32
33 8. Documentation of GFE must include copies of each DBE and non-DBE
34 subcontractor quotes submitted to the Bidder when a non-DBE
35 subcontractor is selected over a DBE for Work on the Contract. (ref.
36 updated DBE regulations – 26.53(b)(2)(vi) & App. A)

37
38 **Administrative Reconsideration of GFE Documentation**

39 A Bidder has the right to request reconsideration if the GFE documentation submitted
40 with their Bid was determined to be inadequate.

- 41
42 • The Bidder must request within 48 hours of notification of being
43 nonresponsive or forfeit the right to reconsideration.
44
45 • The reconsideration decision on the adequacy of the Bidder's GFE
46 documentation shall be made by an official who did not take part in the
47 original determination.
48
49 • Only original GFE documentation submitted as a supplement to the Bid
50 shall be considered. The Bidder shall not introduce new documentation at
51 the reconsideration hearing.
52

- The Bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the Bidder's position as to why the GFE documentation demonstrates a sufficient effort.
- The reconsideration official shall provide the Bidder with a written decision on reconsideration within five working days of the hearing explaining the basis for their finding.

DBE Bid Item Breakdown

The Bidder shall submit a DBE Bid Item Breakdown Form (WSDOT Form 272-054) as specified in the Special Provisions for Section 1-02.9, Delivery of Proposal.

DBE Trucking Credit Form

The Bidder shall submit a DBE Trucking Credit Form (WSDOT Form 272-058), as specified in the Special Provisions for Section 1-02.9, Delivery of Proposal.

Note: The DBE Trucking Credit Form is only required for a DBE Firm listed on the DBE Utilization Certification as a subcontractor for "Trucking" or "Hauling" and are performing a part of a bid item. For example, if the item of Work is Structure Excavation including Haul, and another firm is doing the excavation and the DBE Trucking firm is doing the haul, the form is required. For a DBE subcontractor that is responsible for an entire item of work that may require some use of trucks, the form is not required.

Procedures between Award and Execution

After Award and prior to Execution, the Contractor shall provide the additional information described below. Failure to comply shall result in the forfeiture of the Bidder's Proposal bond or deposit.

1. A list of all firms who submitted a bid or quote in attempt to participate in this 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.

Procedures after Execution

Commercially Useful Function (CUF)

The Contractor may only take credit for the payments made for Work performed by a DBE that is determined to be performing a CUF. Payment must be commensurate with the work actually performed by the DBE. This applies to all DBEs performing Work on a project, whether or not the DBEs are COA, if the Contractor wants to receive credit for their participation. The Engineer will conduct CUF reviews to ascertain whether DBEs are performing a CUF. A DBE performs a CUF when it is carrying out its responsibilities of its contract by actually performing, managing, and supervising the Work involved. The DBE must be responsible for negotiating price; determining quality and quantity; ordering the material, installing (where applicable); and paying for the material itself. If a DBE does not perform "all" of these functions on a furnish-and-install contract, it has not performed a CUF and the cost of materials cannot be counted

1 toward DBE COA Goal. Leasing of equipment from a leasing company is
2 allowed. However, leasing/purchasing equipment from the Contractor is not
3 allowed. Lease agreements shall be provided prior to the subcontractor
4 beginning Work. Any use of the Contractor's equipment by a DBE may not be
5 credited as countable participation.
6

7 The DBE does not perform a CUF if its role is limited to that of an extra
8 participant in a transaction, contract, or project through which the funds are
9 passed in order to obtain the appearance of DBE participation.
10

11 In order for a DBE traffic control company to be considered to be performing a
12 CUF, the DBE must be in control of its work inclusive of supervision. The DBE
13 shall employ a Traffic Control Supervisor who is directly involved in the
14 management and supervision of the traffic control employees and services.
15

16 The following are some of the factors that the Engineer will use in determining
17 whether a DBE trucking company is performing a CUF:
18

- 19 • The DBE shall be responsible for the management and supervision of
20 the entire trucking operation for which it is responsible on the
21 contract. The owner demonstrates business related knowledge,
22 shows up on site and is determined to be actively running the
23 business.
24
- 25 • The DBE itself shall own and operate at least one fully licensed,
26 insured, and operational truck used on the Contract. The drivers of
27 the trucks owned and leased by the DBE must be exclusively
28 employed by the DBE and reflected on the DBE's payroll.
29
- 30 • Lease agreements for trucks shall indicate that the DBE has
31 exclusive use of and control over the truck(s). This does not preclude
32 the leased truck from working for others provided it is with the
33 consent of the DBE and the lease provides the DBE absolute priority
34 for use of the leased truck.
35
- 36 • Leased trucks shall display the name and identification number of the
37 DBE.
38

39 **Truck Unit Listing Log**

40 In addition to the subcontracting requirements of Section 1-08.1, each DBE
41 trucking firm shall submit supplemental information consisting of a completed
42 Primary UDBE/DBE/FSBE Truck Unit Listing Log (WSDOT Form 350-077) and
43 all Rental/Lease agreements (if applicable). The supplemental information shall
44 be submitted in an electronic format to the Engineer prior to any trucking
45 services being performed for DBE credit. Incomplete or incorrect supplemental
46 information will be returned for correction. The corrected Primary Truck Unit
47 Listing Log and any Updated Primary Truck Unit Listing Logs shall be submitted
48 and accepted by the Engineer no later than ten calendar days of utilizing
49 applicable trucks. Failure to submit or update the DBE Truck Unit Listing Log
50 may result in trucks not being credited as DBE participation.
51

Each DBE trucking firm shall complete a Daily Truck Unit Listing Log for each day that the DBE performs trucking services for DBE credit. The Daily Truck Unit Listing Log forms shall be submitted by Friday of the week after the Work was performed by email to the following email address for the region administering the Contract:

Eastern Region - ERRegionOEO@wsdot.wa.gov
North Central Region - NCRRegionOEO@wsdot.wa.gov
Northwest Region - NWRRegionOEO@wsdot.wa.gov
Olympic Region - ORRegionOEO@wsdot.wa.gov
South Central Region - SCRegionOEO@wsdot.wa.gov
Southwest Region - SWRegionOEO@wsdot.wa.gov
Washington State Ferries - FerriesOEO@wsdot.wa.gov

Joint Checking

A joint check is a check between a subcontractor and the Contractor to the supplier of materials/supplies. The check is issued by the Contractor as payer to the subcontractor and the material supplier jointly for items to be incorporated into the project. The DBE must release the check to the supplier, while the Contractor acts solely as the guarantor.

A joint check agreement must be approved by the Engineer and requested by the DBE involved using the DBE Joint Check Request Form (form # 272-053) prior to its use. The form must accompany the DBE Joint Check Agreement between the parties involved, including the conditions of the arrangement and expected use of the joint checks.

The approval to use joint checks and the use will be closely monitored by the Engineer. 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, installing and paying for the material itself." The Contractor shall submit DBE Joint Check Request Form to the Engineer and be in receipt of written approval prior to using a joint check.

Material costs paid by the Contractor directly to the material supplier are not allowed. If proper procedures are not followed or the Engineer determines that the arrangement results in lack of independence for the DBE involved, no DBE credit will be given for the DBE's participation as it relates to the material cost.

Prompt Payment

Prompt payment to all subcontractors shall be in accordance with Section 1-08.1. Prompt payment requirements apply to progress payments as well as return of retainage.

Subcontracts

Prior to a DBE performing Work on the Contract, an executed subcontract between the DBE and the Contractor shall be submitted to the Engineer. The executed subcontracts shall be submitted by email to the following email address for the region administering the Contract:

Eastern Region – ERRegionOEO@wsdot.wa.gov
North Central Region – NCRRegionOEO@wsdot.wa.gov

Northwest Region – NWRegionOEO@wsdot.wa.gov
Olympic Region – ORegionOEO@wsdot.wa.gov
South Central Region – SCRegionOEO@wsdot.wa.gov
Southwest Region – SWRegionOEO@wsdot.wa.gov
Washington State Ferries – FerriesOEO@wsdot.wa.gov

Reporting

The Contractor and all subcontractors/suppliers/service providers that utilize DBEs to perform work on the project, shall maintain appropriate records that will enable the Engineer to verify DBE participation throughout the life of the project.

Refer to Section 1-08.1 for additional reporting requirements associated with this contract.

Changes in COA Work Committed to DBE

The Contractor shall utilize the COA DBEs to perform the work and supply the materials for which each is committed unless prior written approval by the Engineer has been received by the Contractor. The Contractor shall not be entitled to any payment for work or material completed by the Contractor or subcontractors that was committed to be completed by the COA DBEs in the DBE Utilization Certification form.

Owner Initiated Changes

In instances where the Engineer makes changes that result in changes to Work that was committed to a COA DBE, the Contractor may be directed to substitute for the Work.

Contractor Initiated Changes

The Contractor cannot change the scope or reduce the amount of work committed to a COA DBE without good cause. Reducing DBE Commitment is viewed as partial DBE termination, and therefore subject to the termination procedures below.

Original Quantity Underruns

In the event that Work committed to a DBE firm as part of the COA underruns the original planned quantities the Contractor may be required to substitute other remaining Work to another DBE.

Contractor Proposed DBE Substitutions

Requests to substitute a COA DBE must be for good cause (see DBE termination process below), and requires prior written approval of the Engineer. After receiving a termination with good cause approval, the Contractor may only replace a DBE with another certified DBE. When any changes between Contract Award and Execution result in a substitution of COA DBE, the substitute DBE shall be certified prior to the bid opening on the Contract.

DBE Termination

Termination of a COA DBE (or an approved substitute DBE) is only allowed in whole or in part for good cause and with prior written approval of the Engineer. If the Contractor terminates a COA DBE without the prior written approval of the Engineer, the Contractor shall not be entitled to payment for work or material

1 committed to, but not performed/supplied by the COA DBE. In addition,
2 sanctions may apply as described elsewhere in this specification.
3

4 Prior to requesting approval to terminate a COA DBE, the Contractor shall give
5 notice in writing to the DBE with a copy to the Engineer of its intent to request to
6 terminate DBE Work and the reasons for doing so. The DBE shall have five (5)
7 days to respond to the Contractor's notice. The DBE's response shall either
8 support the termination or advise the Engineer and the Contractor of the reasons
9 it objects to the termination of its subcontract.
10

11 If the request for termination is approved, the Contractor is required to substitute
12 with another DBE to perform at least the same amount of work as the DBE that
13 was terminated (or provide documentation of GFE). A plan to replace the COA
14 DBE Commitment amount shall be submitted to the Engineer within 2 days of
15 the approval of termination. The plan to replace the Commitment shall provide
16 the same detail as that required in the DBE Utilization Certification.
17

18 As mentioned above, the Contractor must have good cause to terminate a COA
19 DBE.
20

21 Good cause typically includes situations where the DBE subcontractor is unable
22 or unwilling to perform the work of its subcontract. Good cause may exist if:
23

- 24 • The DBE fails or refuses to execute a written contract.
- 25
- 26 • The DBE fails or refuses to perform the Work of its subcontract in a
27 way consistent with normal industry standards.
- 28
- 29 • The DBE fails or refuses to meet the Contractor's reasonable
30 nondiscriminatory bond requirements.
- 31
- 32 • The DBE becomes bankrupt, insolvent, or exhibits credit
33 unworthiness.
- 34
- 35 • The DBE is ineligible to work on public works projects because of
36 suspension and debarment proceedings pursuant to federal law or
37 applicable State law.
- 38
- 39 • The DBE is ineligible to receive DBE credit for the type of work
40 involved.
- 41
- 42 • The DBE voluntarily withdraws from the project and provides written
43 notice of its withdrawal.
- 44
- 45 • The DBE's work is deemed unsatisfactory by the Engineer and not in
46 compliance with the Contract.
- 47
- 48 • The DBE's owner dies or becomes disabled with the result that the
49 DBE is unable to complete its Work on the Contract.
- 50

51 Good cause does not exist if:
52

- The Contractor seeks to terminate a COA DBE so that the Contractor can self-perform the Work.
- The Contractor seeks to terminate a COA DBE so the Contractor can substitute another DBE contractor or non-DBE contractor after Contract Award.
- The failure or refusal of the COA DBE to perform its Work on the subcontract results from the bad faith or discriminatory action of the Contractor (e.g., the failure of the Contractor to make timely payments or the unnecessary placing of obstacles in the path of the DBE's Work).

Decertification

When a DBE is "decertified" from the DBE program during the course of the Contract, the participation of that DBE shall continue to count as DBE participation as long as the subcontract with the DBE was executed prior to the decertification notice. The Contractor is obligated to substitute when a DBE does not have an executed subcontract agreement at the time of decertification.

Consequences of Non-Compliance

Breach of Contract

Each contract with a Contractor (and each subcontract the Contractor signs with a subcontractor) must include the following assurance clause:

The Contractor, subrecipient, or subcontractor 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:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the Contractor from future bidding as non-responsible.

Notice

If the Contractor or any subcontractor, 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 UDBE 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.

1 **Sanctions**
2 If it is determined that the Contractor's failure to meet all or part of the DBE COA
3 Commitment is due to the Contractor's inadequate good faith efforts throughout the
4 life of the Contract, including failure to submit timely, required Good Faith Efforts
5 information and documentation, the Contractor may be required to pay DBE penalty
6 equal to the amount of the unmet Commitment, in addition to the sanctions outlined
7 in Section 1-07.11(5).
8
9 **Payment**
10 Compensation for all costs involved with complying with the conditions of this
11 Specification and any other associated DBE requirements is included in payment for
12 the associated Contract items of Work, except otherwise provided in the
13 Specifications.