



Purpose

Provide guidance to staff regarding updated DBE Contract requirements, use of the Diversity Management and Compliance System (DMCS) (aka B2GNow), and clarity on other DBE related responsibilities for FHWA funded projects. This bulletin also rescinds the joint Memorandum issued by the State Construction Office and the Office of Equal Opportunity dated May 16, 2018.

This bulletin does not include all of the roles and responsibilities that are required to ensure the individual requirements of the DBE Program are met. Refer to the appropriate guidance manuals for specific requirements when processing each of the documents addressed below.

With the exception of the On-Site Review responsibilities, any of the listed responsibilities/tasks may be shifted between the Region Office of Equal Opportunity (OEO) staff and the Project Engineer's Office (PEO) provided it is requested and mutually agreed to between the Region and Headquarters OEO in writing.

Background

In 2017, WSDOT implemented DMCS to monitor DBE participation, track all Subcontractor payments and monitor attainment of Condition of Award (COA) Commitments. Use of the system resulted in changes to project, region and headquarters staff tasks and responsibilities with regard to associated efforts.

Additional requirements addressed in this bulletin are conditions of the Conciliation Agreement between WSDOT and FHWA, and the approved DBE Participation Plan.

Guidance

New Information and Requirements

Supplemental UDBE Documentation for Contract Award

Supplemental information is required to award Contracts with UDBE COA requirements. Each document must be received timely, and some have a correction period as allowed by Federal law.

- Contract Ad & Award shall:
 - Perform initial bid opening review for responsiveness
- HQ OEO shall:
 - Review all the supplemental UDBE documentation submitted for the five apparent lowest bidders



- Provide bid responsive review to Contract Ad & Award immediately after 48 hours of bid opening
- Follow up directly with the bidder if corrections are required
- Provide bid clearance to Contract Ad & Award within five working days of bid opening if applicable requirements are met

Region Specific Mailboxes

Region specific mailboxes have been created to receive DBE subcontract and monthly retainage report submittals. Region OEO staff will monitor their region specific mailboxes. The current email address for each Region is listed below for reference only.

Eastern Region – ERegionOEO@wsdot.wa.gov

North Central Region – NCRegionOEO@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

DBE Subcontract

Prior to a DBE performing work on the project, the Contractor is required to submit a copy of the executed subcontract between the DBE and the Contractor that hired them to the appropriate email address identified in the contract.

- Region OEO staff shall:
 - Track and verify that all required DBE subcontracts have been received
 - Notify the PEO of non-submittal
 - Review DBE subcontracts for federal compliance
 - Provide PEO with language to inform Contractor of non-compliance
 - Upload received DBE subcontracts into DMCS
- PEO staff shall:
 - Communicate non-compliance/non-submittal with the Contractor as necessary
 - Enforce Contract remedies for non-compliance/non-submittal



Lease Agreements

DBEs are required to submit all lease agreements for equipment utilized on the project that they do not own. Use of the Prime Contractor's equipment by a DBE is not allowed and cannot be credited as countable participation.

- The PEO shall:
 - Receive submitted lease agreement information
 - Forward documentation to Region OEO
- Region OEO shall:
 - Review and upload lease agreements into DMCS

Lease agreements submitted by DBE trucking companies are not covered under this section, and will be addressed under "Truck Unit Listing Log".

Truck Unit Listing Log

DBE trucking companies are required to electronically submit a Truck Unit Listing Log that includes all of the trucks that will be used on-site, both owned and leased. The Truck Unit Listing Log must be submitted by the DBE to count participation.

- The PEO shall:
 - Review and accept submitted Truck Unit Listing Logs
 - Ensure lease agreements are attached if trucks are not owned by the DBE
 - Field Verify that all trucks used on-site are included on the accepted Truck Unit Listing Log
 - Contact the Contractor if trucks are used on the project that are not included on the accepted Truck Unit Listing Log
 - Upload the accepted and field verified Truck Unit Listing Logs into DMCS
- Region OEO shall:
 - Determine DBE Credit if discrepancies are discovered during the field verification process or if Truck Unit Listing Logs are not received timely

Commercially Useful Function On-Site Reviews (DBE Contractors, DBE Subcontractors, Regular Dealers and Manufacturers)

Changes to the On-Site Review form will require a shared responsibility to complete. The new Commercially Useful Function On-Site Review form is a comprehensive review that will be completed by the Project Inspector, Office Engineer and the appropriate Region OEO staff.



- The PEO will begin the process and is responsible for:
 - Completing the Project Engineer Office portion of the review as noted on the Commercially Useful Function On-Site Review form (Section 1 and 2)
 - Enter the date the PEO portion of the review is complete in CCIS
 - Sign and send the original form to Region OEO within ten calendar days
- Region OEO shall:
 - Return deficient reviews to the PEO for correction
 - Complete their portion of the review as noted on the Commercially Useful Function On-Site Review form
 - Notify PEO promptly if review indicates that participation is at risk
 - Sign and send the original form to HQ OEO for approval
- HQ OEO shall:
 - Review completed Commercially Useful Function On-Site Review and determine if the DBE performed a commercially useful function
 - Notify the PEO promptly if it is determined that observed/interviewed DBE is not performing a commercially useful function
 - Sign and upload the completed Commercially Useful Function On-Site Review into DMCS
- Regular Dealers – Region OEO staff will contact PEO to coordinate timing of Commercially Useful Function On-Site Reviews

Monthly Retainage Report

Each month, the Contractor is required to submit a completed Monthly Retainage Report to the appropriate email address identified in the Contract. The report must be submitted until every Subcontractor and lower tier Subcontractor's retainage has been released.

- Region OEO shall:
 - Track and verify that Monthly Retainage Reports have been received
 - Notify the PEO of non-submittal
- PEO staff will:
 - Communicate non-compliance with the Contractor as necessary
 - Enforce contract remedies for non-compliance



Existing Roles and Responsibilities previously addressed in the rescinded Memorandum

Request to Sublet (RTS)

- The PEO shall verify that the Subcontractor has been added in DMCS.
 - If the Subcontractor is not in DMCS notify the Prime Contractor of the deficiency and request correction.
 - The PEO shall proceed with RTS approval regardless of DMCS status.
 - The PEO shall follow up to ensure that deficiencies are corrected within 30 days of the first payment to the Subcontractor.
- The PEO shall verify DMCS information entered by the Prime Contractor is accurate by comparing it to the RTS.
 - A U/DBE Subcontractor performing certified and non-certified work requires that two lines be entered into DMCS.
 - The PEO shall verify that the Prime Contractor has done so as appropriate.
 - The PEO shall verify that the Description of Work is correct.
 - The PEO shall approve or deny "pending" addition requests on the "Sub" tab.
- The PEO has the option to update the Subcontract amount in DMCS when a modified RTS is received. That way it is consistent with CCIS.
- The PEO is not responsible to enter the COA Commitment amounts into DMCS for UDBE COA Subcontractors. This action is performed by Headquarters OEO.

Payment Verification

Contract progress payments are automatically uploaded into DMCS on the first day of the month for payments made the previous month.

- The PEO shall compare Subcontractor payments reported by the Prime Contractor to the progress estimate and the corresponding progress of Subcontractor bid item work in the field.
 - The PEO shall verify as described no later than the last working day of the month*

**The plan is to change the Standard Specifications to require reporting by a specified day of the month. Once effective, payments may be reviewed as early as the reporting due date.*

- The PEO shall monitor and remedy with the Prime Contractor, as appropriate, Subcontractor reported discrepancies shown in red text in the system.
 - The PEO shall do so 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.
- The Prime Contractor is required to notify the Subcontractor and the Washington State Department of Transportation (WSDOT) of withheld payments.
 - When the PEO becomes aware of a withheld Subcontractor payment that is not reported they shall remedy the situation with the Prime Contractor.
 - The PEO shall withhold the same amount from the Prime Contractor on the next estimate as the Prime Contractor has withheld from the Subcontractor.
- The PEO shall request that the Regional OEO staff verify or correct contact information entered into DMCS if a Subcontractor fails to confirm payments received within 30 days.
 - The PEO shall consult with the Regional OEO staff to remedy the situation prior to the next payment cycle.

COA Commitment Monitoring

Payments reported are not to be monitored at the bid item level. The requirement is that the aggregate amount of payments reported for certified work meets or exceeds the COA Commitment amount to the specified COA UDBE.

- If the aggregate amount paid for certified work to the COA UDBE equals or exceeds the COA Commitment amount, no further action is required.*
**Project offices are not required to explain bid item underruns provided the COA Commitment amount is achieved.*
- The PEO shall provide an explanation for any bid item underrun or owner initiated change if it results in the aggregate amount paid for certified work to a COA UDBE being less than the COA Commitment amount.
 - The explanation shall include the bid item number, bid item name, original planned quantity, paid quantity and the reason for the underrun.
 - The PEO shall provide the explanation to the Region OEO staff.
 - The Region OEO staff shall review and approve the explanation.
 - The Region OEO staff shall discuss any deficient documents with the PEO and remedy; unresolved issues shall be escalated to the ASCE for resolution.



- The PEO shall attach the explanation to the Final DBE Utilization Plan Report (DOT Form 272-055).
- The PEO shall require a Good Faith Effort (GFE) of the Prime Contractor when the aggregate amount paid for certified work to a COA UDBE is less than the COA Commitment amount for any reason other than as bid item underrun or owner initiated change.
 - The Project Office shall provide the GFE to the Region OEO staff.
 - The Region OEO staff shall provide GFE approval.
 - The PEO shall consult with the Region OEO staff and shall propose a sanction to the Assistant State Construction Engineer (ASCE) for processing when the GFE is found to be inadequate.

Absent a COA UDBE substitution, a change order reducing the COA Commitment is not required if a GFE is approved.

- Headquarters OEO staff shall enter the COA Commitment amount into DMCS when a UDBE COA Subcontractor is performing both COA Commitment and non-Commitment work.

Change Order Processing

- The PEO shall process a change order anytime there is a substitution to the UDBE performing the COA work.
 - The Region OEO staff shall approve all COA UDBE substitutions, and provide change order concurrence prior to executing the change order.
- All change orders shall include incidental changes, as appropriate, to the COA Commitments as a part of that change order.
 - The Region OEO staff shall approve the incidental COA changes, and provide change order concurrence prior to executing the change order.
- Changes to the COA Commitment bid item values does not require a change order.

Termination of a DBE

- The PEO shall require the Contractor shall follow the DBE termination procedures when work assigned to a DBE is deleted in whole or part by either the WSDOT or the Contractor.
- The PEO shall require the Contractor to follow the termination procedures when the Contractor has established Subcontractor quantities, (not the WSDOT determined Bid Items) made those quantities their COA Commitment, and the committed quantities underrun. This will be considered a partial deletion.



- For example this may happen when a DBE is performing only part of a lump sum or large unit item.

Certification Related Approvals

- The Region OEO staff shall approve all certification related document requirements. (joint checks, lease agreements, trucking related documents and etcetera)
 - The Region OEO staff shall discuss any deficient documents with the PEO and unresolved issues shall be escalated to the ASCE for resolution.

Final DBE Utilization Plan Report - Processing

- The PEO shall attach a printout from the Compliance Audit Summary tab to the final DBE Utilization Plan Report after all final contract payments have been made.

Resources

Construction/OEO Roles and Responsibilities Matrix

As of the release date of this bulletin updated forms, GSP, Standard Specification and Construction Manual language have not been published. This information will be made available by June 1, 2019 and this section will be updated to reflect current contract and guidance language.

Implementation Plan

The updated UDBE Contract requirements are scheduled to be incorporated into all FHWA funded Contracts advertised on or after June 1, 2019.

Contact Information

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Disadvantaged Business Enterprise Program Roles Matrix

	Headquarters		Region				Process Description
	OEO	ASCE	OEO	EEO	CN	PEO	
Pre-Contract							
Goal Setting	primary		support			review	Project goals are set by HQ OEO. Project Office questions or concerns about project goals will be directed to Region OEO.
Regular Dealer Determination	primary		support				HQ OEO approves regular dealer requests and enters information into CCIS.
Contract Procurement							
Utilization Certification, Written Confirmation, Bid Item Breakdown, Trucking Credit Form, and Good Faith Effort (if required)	primary						Contract Ad & Award verifies for responsiveness. HQ OEO reviews five lowest bids and provides bid clearance within five days of Bid Opening. Provides bid responsive review to Contract Ad & Award immediately after 48 hours of bid opening.
Contract Administration and Compliance							
COA Award Letter Package	primary						Uploaded into DMCS after Contract is awarded.
DBE Utilization Plan						primary	The Bid Item Breakdown becomes the DBE Utilization Plan after the Contract is awarded. PEO verifies that sublet requests align with the approved utilization plan and requests contractor updates as appropriate. HQ OEO enters into CCIS.
Preconstruction Meetings			support			primary	PEO allows time for Region OEO to provide introduction, connect with project DBE firms, and present available resources. As the project manager, the PEO discusses the change process and stresses the importance of communication and compliance.
Design Build DBE Performance Plan Review (Mandatory WSDOT Project Goal)	approve		primary				Region OEO receives Performance Plan from the DB Procurement Lead, and provides comments and scoring recommendations. HQ OEO reviews and approves scoring recommendations before they are returned to the DB Procurement Lead.
Design-Build Inclusion Manager (if required based on project size)						primary	Evaluates as Key Personnel in the SOQ by the evaluation team.
MSVWBE Participation Plan Review (State Fund Projects)			primary	support		support	PEO sends plan to Region OEO for review and acceptance.
SBE Inclusion Plan Review (Voluntary Goal)			primary	support		support	PEO sends plan to Region OEO for review and acceptance.

	Headquarters		Region				Process Description
	OEO	ASCE	OEO	EEO	CN	PEO	
Monitor DBE/MSVWBE performance			support	support		primary	PEO monitors attainment during the life of the project using DMCS. Region OEO and Region EEO may serve as delegates and/or backup for the PEO in this role. See DMCS guidance Construction Bulletin.
DBE On-Site Reviews			primary			primary	PEO performs on-site reviews for all DBEs used on all projects. PEO staff enters the date they complete their portion of the on-site review into CCIS, and sends it to Region OEO. Region OEO completes their portion and sends to HQ OEO. HQ OEO reviews, approves and uploads on-site reviews into DMCS. Regular Dealers - Region OEO will contact PEO to coordinate timing of on-site reviews.
MSVWBE On-Site Review			support			primary	PEO performs on-site reviews for all MSVWBEs used on all projects. Region OEO reviews and uploads on-site reviews into DMCS.
Investigate Issues and Complaints	review	review	primary	support	review	support	Region OEO investigates and responds to all issues and complaints, with support from the PEO and Region EEO. HQ OEO, Region CN and the ASCE will be notified of complaints and review the final resolution.
Compliance Reviews	approve		primary	support		support	
Joint checks and broker agreements			primary			review	PEO reviews documents and determines if it is reasonable and appropriate. PEO forwards the document to Region OEO for approval.
Lease Agreements (other than DBE trucking companies)	support		primary			support	PEO receives lease agreements and forwards to Region OEO. Region OEO reviews and uploads into DMCS.
Region Specific Mailbox (email address)			primary				Monitor incoming messages that will transmit DBE subcontracts and monthly retainage reports.
DBE Subcontracts			primary			support	Region OEO reviews all DBE subcontracts. PEO will address missing subcontracts with the Prime Contractor.
Truck Unit Listing Log			support			primary	PEO reviews, performs field verification and uploads into DMCS. Region OEO determines DBE Credit if trucking form not received timely.
DBE Subcontractor Payment Monitoring (prompt pay)			support	support		primary	PEO monitors payment discrepancies in DMCS on a regular monthly basis. The PEO will address payment discrepancies with the prime contractor. See DMCS guidance Construction Bulletin.

	Headquarters		Region				Process Description
	OEO	ASCE	OEO	EEO	CN	PEO	
Monthly Retainage Report			primary			support	Region OEO reviews monthly retainage reports. PEO will address missing retainage reports with the Prime Contractor.

COA Changes							
Changes to UDBE COA		approve	concur		concur	concur	COA change orders will be approved by ASCE based on PEO recommendation, Region CN and Region OEO concurrence.
Good Faith Efforts (during contract)			approve	review		review	GFE's required when COA commitment is not met for any reason other than Bid Item quantity underrun.
COA Commitment underruns resulting from bid item quantity underrun			review	review		primary	For item quantity underruns that result in COA Commitment underruns, the PEO will explain in underrun with the Final DBE Certification document.
Payment Eligibility	approval		primary				Payment eligibility for the work that does not meet CUF.

Program Monitoring and Reporting							
Assemble the training report			review	primary			
Assemble the Region 1392 report			review	primary			

OTHER TOPICS - non contract							
Internal and external training on Civil rights and DBE program			primary				
Investigate Title VI or other issues			primary				
Periodic DBE outreach			primary				
Investigate DBE complaints		review	primary		review	support	
Provide DBE and OJT support services	support		primary				
Regular dealer annual reviews	support		primary				
Provide DMCS training and support to the region			primary	support		support	Region OEO shall coordinate with PEO to communicate with contractors.
Conduct EEO Contract Compliance reviews	review		support	primary			
Decertified Firms Notice			primary				Region OEO provides notice to PEOs and Region EEO regarding changes to a DBE's certification status.