

### 26.1 General Discussion

A 10 percent National aspirational goal was established by U.S. DOT for the participation of Disadvantaged Business Enterprises (DBEs) in transportation contracting, as a tool to evaluate equal opportunity in the award and administration of U.S. DOT-assisted contracting and address the effects of past and current discrimination. Requirements of the DBE Program, as prescribed in [49 CFR Part 26](#) and USDOT's official interpretations (i.e. Questions and Answers), apply to all recipients (and subrecipients) of highway, transit, and airport funds.

A local agency, when participating in programs funded in whole or in part with federal funds made available by the Washington State Department of Transportation (WSDOT), must adhere to WSDOT's DBE Participation Plan.

While WSDOT's Office of Equal Opportunity (OEO) has the overall responsibility for administration and implementation of WSDOT's DBE Program, local agencies (as subrecipients) also have an important role to ensure that their federally-assisted contracts are administered in accordance with [49 CFR Part 26](#) and the state's approved DBE Program Participation Plan, which is available on WSDOT's website.

WSDOT's OEO, in coordination with Local Programs, will conduct compliance reviews of the local agency's administration of the DBE Plan. Local agencies found to be in noncompliance may be subject to formal enforcement action (suspense or loss of federal funds and/or CA status). A finding of noncompliance will result from the failure to comply with the requirements of WSDOT's DBE Plan.

The following assurance statement shall be included in all federally-assisted advertisements, agreements, contracts, and all subcontracts:

- *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 USDOT-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, or (4) Disqualifying the contractor from future bidding as non-responsible.*

### 26.2 Procedures

1. **Local Agency DBE Liaison Officer** – The local agency is responsible for ensuring program compliance and monitoring its contractor's and/or Consultant's DBE activities. To accomplish this, a DBE liaison officer must be appointed by the Local Agency. This liaison officer must be an administrator responsible to the chief executive of the agency. This administrator should have the authority to delegate the responsibility to the people who perform the contractor compliance function. The liaison officer's duties are to ensure compliance with the DBE Plan by the local agency and by their contractors/consultants.

2. **DBE Firm(s) Certification** – The Washington State Office of Minority and Women’s Business Enterprise (OMWBE) is the sole authority in the State of Washington to perform certification of all minority business enterprises, women business enterprises, and socially and economically disadvantaged business enterprises for programs administered by any State, local, or Federal agency. This statutory authorization extends to and binds all USDOT DBE Program recipients in the State of Washington. In order to count as DBE participation by prospective bidders on federally funded projects, firms must be currently, certified by OMWBE. The directory of currently certified DBE firms is available on the OMWBE’s website. The directory list can be accessed via OMWBE’s website at [omwbe.diversitycompliance.com](http://omwbe.diversitycompliance.com) (Diversity Management and Compliance System - DMCS) or by calling 360-664-9770 or toll free (866) 208-1064. Firms not listed in the OMWBE’s database will not count towards DBE participation on new contracts.

3. **UDBE Firm(s) Certification** – WSDOT is required to maintain a narrowly tailored DBE Program, which means that only groups which face discrimination can participate in the race or gender-conscious portion of the program.

Based on the results of WSDOT’s 2012 DBE Disparity Study, and subsequent waiver, participation by non-minority women owned DBEs cannot be counted towards race/gender-conscious DBE goals. Non-minority women-owned DBE firms do, however, remain part of the overall DBE program and can be counted as race/gender-neutral participation.

While the waiver is in place, all other certified DBE firms are being referred to as Underutilized Disadvantaged Business Enterprises (UDBE). UDBE firms are a subset of the DBE certification. To determine if a firm is a UDBE (and therefore able to count towards race/gender conscious UDBE goals), refer to OMWBE’s DBE Directory of Certified Firms (e.g., Search Certified Firm Directory, then Search by Reference at bottom of page). UDBE firms count as participation towards the COA goals for federally funded contracts awarded after June 1, 2017.

4. **Establishment of Project UDBE Goals** – The Local Programs Project Development Engineer will review each construction project or consultant agreement to determine if it involves work or scope elements that are conducive to UDBE participation. To initiate this review, the local agency must submit an engineer’s estimate for a construction project or a detailed scope and cost estimate for a consultant agreement with their suggested UDBE goal, to the Region Local Programs Engineer when the contract work or consultant agreement scope is determined. The estimate must show the item quantities or scoping costs of the project.

- Construction funding will NOT be obligated prior to the project review and determination of UDBE goals.
- PE costs will be obligated, but the Local Agency CANNOT advertise for Consultant Services, prior to a UDBE goal determination for the agreement.

For alternate construction contracting delivery (such as Design-Build), Local Agencies shall request approval from Region Local Programs Engineer. If a local agency has any other projects tied to a federally funded project that utilizes one set of bid documents, the total of both projects are considered as a federal aid project for UDBE goal setting purposes.

The goals for federal aid projects will be set under one of the following categories based on the projected participation level during the year to achieve WSDOT's overall goal:

- Mandatory Goal
- Voluntary Goal

The Local Programs Project Development Engineer will then establish a UDBE goal for the construction contract or consultant agreement. The elements considered by WSDOT in determining state and local agency project contract or consultant goals are as follows:

#### A. Elements

- a. Geographical location of the project;
- b. Type(s) of work included in the project, i.e., structure, roadway, new construction;
- c. Availability of UDBE firms certified to perform the type(s) of work;
- d. Potential subcontractable items.
- e. Total dollar value of the contract.

The attainment accomplished through this analysis will be reviewed periodically to determine the appropriateness of the method of setting goals.

#### B. Goal Setting Process

- a. Review the department's overall UDBE goal and the means to meet the goal.
- b. If the contract includes federal funds, a UDBE goal is considered.
- c. If the total agreement or contract amount is under \$100,000.00 then a Mandatory goal is not assigned. However, a Voluntary goal of 10% will apply to the agreement or contract. (Shown in DMCS as FSBE goal of 10%.)
- d. Review the bid items and determine which scopes of work that the prime contractor/consultant is likely to perform (i.e., the prime contractor is required to perform at least 30% of the project total, while it is recommended for a prime consultant). Typically, grouped types of work that exceed 30% are considered as possible prime contractor/consultant work and are not considered when evaluating for UDBE goal calculation.
- e. Evaluate the remaining bid items and determine which items are typically grouped for subcontracting (e.g. traffic control, electrical, guardrail, etc.).
- f. Of these items, determine which ones lend themselves to UDBE participation. In other words, are there UDBEs shown in OMWBE's Directory of Certified Firms that are certified to perform the types of work likely to be subcontracted.
  - i. Mobilization is not an item considered when determining which items a prime contractor will subcontract to another contractor. This is not to say that subcontractors (UDBE or non-UDBE) do not include mobilization costs in their quotes, or that they are not paid for mobilization – only that mobilization is not considered a subcontract item when determining a UDBE goal.

- ii. Force Account work will be considered at 50%
  - g. No UDBE goal shall be set at less than 2%.
4. **DBE Provisions in the Plans, Specifications, and Estimates (PS&E)** – After the mandatory or voluntary goals are determined, the applicable WSDOT General Special Provision (GSP), for the type of goal set, as outlined above shall be included in the PS&E. These GSPs are available on the WSDOT website or from the Region Local Programs Engineer. Only the WSDOT GSPs are approved for use on a FHWA funded project.

To complete the UDBE requirements in the PS&E one of the following applies. When a mandatory goal is established, DOT [Form 272-056U](#), UDBE Utilization Certification, DOT [Form 422-031U](#), UDBE Written Confirmation, DOT Form 272-058, Underutilized Disadvantaged Business Enterprise Trucking Credit Form **MUST** be included. These forms shall be included in the proposal given to each bidder. These forms are available from the Region Local Programs Engineer.

When a voluntary goal is established, the UDBE Utilization Certification and the UDBE Written Confirmation forms are not required. However, the contractor shall submit a SBE plan to Local Agency **PRIOR** to receiving notice to proceed. The Local Agency will forward the SBE plan to the Region Local Programs Engineer within **15 days** of contractor beginning work.

### 26.3 Contract Procedures

1. **Bid Opening** – Each bid proposal must be reviewed to determine if the bid is responsive. For a contract with goals, each proposal shall contain the UDBE Utilization Certification, UDBE and Written Confirmation form, and the UDBE Trucking Credit Form completed by the contractor. If the prime is proposing to use a UDBE broker they must also submit the broker agreement as part of the bid package.

Failure to accurately complete these forms will be considered as evidence that the proposal is nonresponsive and, therefore, is not eligible for award.

2. **Is the DBE/UDBE Firm Certified by OMWBE** – The UDBE firm named by the contractor in the bid proposal shall be certified as a UDBE firm by OMWBE and currently shown in the (DMCS) to be eligible for work on a FHWA funded project. To verify whether a firm is certified as a UDBE and eligible to perform work on a FHWA funded project, you must refer to OMWBE's Directory of Certified Firms which is available at [www.omwbe.diversitycompliance.com](http://www.omwbe.diversitycompliance.com) and document your effort in the project file. Suspended DBE Firms will not be shown in DMCS. Firms that are suspended (and not shown) cannot be used to meet the condition of award goal nor be counted as DBE/UDBE participation on any new contracts issued subsequent to the date of suspension. Questions related to the content of the directory can be directed to OMWBE at 360-664-9770 or toll free 866-208-1064. To meet the goals for the project, DBE firms that are not certified or certified UDBE firms that are suspended at the time of bid opening will not be accepted by the local agency for participation, as a Condition of Award (COA) Contractor/Subcontractor on the project.

### 3. Selection of the Successful Bidder

#### A. Selection of Successful Bidder (when a mandatory goal is established)

- a. The successful bidder shall be selected on the basis of having submitted the lowest responsive bid and, in order to be responsive, making good faith efforts to meet the UDBE goal. The bidder can meet this requirement in either of two ways:
  1. Documenting that it has obtained enough UDBE participation (commitments) to meet the goal; or,
  2. Documenting that it has made adequate Good Faith Efforts (GFE) to meet the established UDBE goal. A bidder is required to submit GFE documentation with their proposal only in the event that the bidder's efforts to solicit sufficient UDBE participation were unsuccessful.

GFE means that the bidder must show that it took all necessary and reasonable steps to achieve the UDBE goal, and by their scope, intensity, and appropriateness to the objective, the bidder could reasonably be expected to obtain sufficient UDBE participation, even if the bidder was not fully successful in meeting the established UDBE goal. Efforts done as a matter of form or for the sake of appearance are not considered "good faith efforts" to meet the contract requirements for UDBE utilization.

- b. Should the low and otherwise responsive bidder fail to attain the goal and not provide adequate GFE documentation in the bid submittal, its bid will be determined to be nonresponsive, and the next low responsive bid will be reviewed for acceptance.

Agencies that have projects with mandatory UDBE goals, shall submit the bid tabs, the UDBE Utilization Certification, the UDBE Written Confirmation Document, the UDBE Trucking Credit form, and any broker agreements (as applicable) of the apparent low bidder, to the Region Local Programs Engineer (LPE) to obtain concurrence to award, **before** the contract is officially awarded to the apparent low bidder. Failure to gain LPE concurrence **prior to award** on every project with UDBE goals and subsequent award of a contract to a nonresponsive bidder will jeopardize the project's federal funding.

- c. If the apparent low bidder submits GFE documentation with the bid, the Local Agency will submit the documentation to Local Programs for approval action prior to awarding the project. GFE documentation must include copies of each UDBE and non-UDBE subcontractor quote submitted to the bidder when a non-UDBE subcontractor was selected over a UDBE for work on the contract.

- B. **After Award** – The Local Agency will request that the apparent low bidder submit a description of the specific bid items each UDBE subcontractor named in the UDBE Utilization Certification will perform, within five (5) working days following the award. This description, dollar amount, and name of the UDBE firm is identified in the award letter and made Condition of the Award (COA) of the contract.

- C. **Administrative Reconsideration** – If Local Programs determines that the apparent successful bidder failed to meet the UDBE goal and that GFE was inadequate, the bidder will have the right to request reconsideration. The Bidder must request within 48 hours of notification of being nonresponsive or forfeit the right to reconsideration.
- a. WSDOT’s decision on reconsideration shall be made by an official who did not take part in the original determination that the bidder failed to meet the goal (as described above).
  - b. The bidder shall have the opportunity to meet in person with said official to discuss their good faith effort package. The bidder’s position must be based on its bid submittal. The bidder may provide further explanation/clarification of the information and materials in the bid submittal, but no new material or information will be considered by the official in reaching a decision on reconsideration.
  - c. WSDOT shall send the bidder a written decision on reconsideration, explaining the basis for their findings.
  - d. The result of the reconsideration process is not administratively appealable to the USDOT.
- D. **Brokering** – If the apparent low bidder selects an UDBE Broker (or a service provider for providing a bona fide service) to meet part of the established UDBE goal, a UDBE Broker Agreement is required to be submitted as part of the Proposal or as a Supplement to the Bid. To be considered responsive, the Broker Agreement shall document the fees or commissions charged. The fee/commission shall be reasonable as determined by WSDOT.
- E. **Trucking** – When a UDBE Trucking firm is used to meet the established UDBE goal, the UDBE Trucking Credit Form (DOT Form 272-058) is required to be submitted as part of the Proposal or as a Supplement to the Bid. The Form shall identify the items to be hauled, the type of trucks to be used, and the number of trucks currently owned by the UDBE firm.
4. **Condition of Award Letter** – The condition of award letter carries the same contractual obligation as the contract specifications and is only required when a mandatory goal is established for a project. An example of a zero goal award letter appears in [Appendix 46.43](#) and an example of a mandatory goal award letter appears as [Appendix 46.44](#). The information contained in the body of these examples must be included in the local agency award letter. If a portion of an item is sublet to a UDBE and the remainder is done by the contractor or another subcontractor, the UDBE’s work must be shown in detail. Also, any UDBE suppliers and manufacturers shall be shown.

Send a copy of this letter, a copy of the “Underutilized Disadvantaged Business Enterprise Utilization Certification and a copy of the “UDBE Written Confirmation Document” to the Region Local Programs Engineer as a part of the award documentation submittal explained in [Chapter 46](#).

Attach a copy of the letter to the contract papers that you send to your contractor for signature. The Region Local Programs Engineer shall be provided information on subletting by UDBE contractors.

5. **Between Award and Execution** – The contractor shall provide all of the information described in the GSPs including a bidders’ list for all categories (zero and mandatory goals). The list shall include all firms (names and addresses) that submitted a bid or quote (successful and unsuccessful) in an attempt to participate on the project. The local agency shall immediately notify the Region Local Programs Engineer by email with the name and address of the successful contractor for forwarding to the OEO’s contract compliance officer.

**Similarly, the Local Agency shall provide WSDOT with a list of all bidders (successful and unsuccessful) who submitted a bid on the prime contract.**

6. **Monitoring DBEs During Construction** – The local agency must place special emphasis on the DBE requirements at the preconstruction conference. Changes to the work of a Condition of Award UDBE shall be handled in accordance with the GSP. All change orders affecting the work of DBEs shall be submitted to the Region Local Programs Engineer for concurrence prior to executing the change order.

Project diary documentation of the DBEs’ activities on the project must be performed in the same manner as is done on the prime contractor and any other subcontractor’s activities.

In order to receive credit for UDBE participation (count towards the contract goal) a DBE firm must be performing a Commercially Useful Function (CUF) on that contract. See GSPs for additional information on CUF.

Hence, in addition to the project diary, the local agency must document that each DBE working on the project is performing a Commercially Useful Function (CUF). The form “DBE On-Site Review” shall be used by the local agency for purposes of documenting CUF for each DBE contractor/consultant. See [Appendix 26.54](#) for the DBE On-Site form (and instructions) for Construction Subcontractors/Regular Dealers/Manufacturers; and [Appendix 26.55](#) for the DBE On-Site review form for Architect & Engineering/Professional Services Firms. DBE On-site reviews must be conducted:

- At the start of work, and/or
- At the peak period of work, and
- Whenever changes in the performance of the work warrants its completion.

The review should be completed per on-site observations, documentation review, and interviews of contractor’s personnel. If there is evidence that a DBE firm may not be performing a CUF, immediately contact your Region Local Programs Engineer.

This completed form becomes a part of the local agency’s project records and a copy of the completed form submitted to Region Local Programs Engineer within **14 days** of form completion.

The WSDOT GSP, Disadvantaged Business Enterprise Participation Plan, and [Chapter 1](#) of the *Construction Manual* M 41-01 shall be followed to ensure compliance with DBE Program requirements.

WSDOT’s Office of Equal Opportunity (OEO) may also perform in-depth CUF’s on DBE firms performing work on Federal-aid local agency projects (as OEO determines necessary/appropriate).

7. **Prompt Payment (Progress and Return of Retainage)** – Local agencies must comply with State and Federal prompt payment laws. In addition, local agencies are expected to monitor and enforce the prompt payment requirements under State Law (as well as [49 CFR Part 26.29](#)), as regards their contracts with prime contractors. Monitoring prompt payment requires the contracting agency to verify that payments to subcontractors are commensurate with the subcontractors’ work scope, and are processed/issued within the allowed timeframe. Prompt payment violations on Federal-aid contracts are a violation of the DBE program, which is considered a breach of contract. When violations are found to exist, local agencies must enforce the terms of the contract by taking appropriate enforcement action.

State law requires payment to subcontractor within ten days of receipt by the prime contractor. Refer to 2016 *Standard Specifications* Section 1-08, Prosecution and Progress along with [RCW 39.04.250](#), [RCW 39.76.011](#), [RCW 39.76.020](#), and [RCW 39.76.040](#) for more detailed “Prompt Payment” requirements.

8. **During Construction** – The prime contractor shall enter all payment information into the WSDOT DMCS ([wsdot.diversitycompliance.com](http://wsdot.diversitycompliance.com)) each month for all federal aid projects and select state funded projects. The prime contractor shall enter the amounts, received from the agency and the amounts paid to all firms involved with the contract (Zero payments shall be marked accordingly). All firms shall confirm the payments amount received from the prime contractor each month and the local agency shall verify these entries in the WSDOT Diversity Compliance System. All payment information shall be entered monthly and include the actual date of the payment.
9. **Upon Completion** – The prime contractor will record in the system, when the final payment is made to each firm and when the final payment for the project is received from the agency. Subcontractor and firms must confirm the receipt of the final payment. The agency shall make notification of final project payment to the Local Programs Project Development Engineer at the completion of the project.

In addition, for each contract, local agencies must document (in the form of a Written Certification see [Appendix 26.56](#)) that it has reviewed the contracting records and monitored the work site and determined that work committed to the UDBEs at contract award (and subsequently) was actually performed by said UDBEs – See [Appendix 26.56](#).

10. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with WSDOT’s UDBE Participation Plan.

Upon request from the OMWBE, WSDOT, or the USDOT operating administrations (e.g., FHWA), the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

## 26.4 Consultant Agreement Procedures

The consultant agreement procedures for the DBE administration differ somewhat from the construction contract approval process outlined above, as the agreement is negotiated after selection of the most qualified firm to perform the scope of work.



1. **Selection of the most qualified Firm** – After selection and negotiations with the most qualified firm and before contract execution, the Local Agency must submit the UDBE Plan and Good Faith Effort (GFE) documentation, if applicable, that was submitted by the successful firm to the Region Local Programs Engineer for concurrence. During this review, Local Programs will review the plan and GFE documentation to see if proposed UDBE firms are certified to perform the scope of work and any GFE documentation that was submitted as part of the UDBE Plan before concurrence to execute the agreement is given to the Local Agency.
2. **A Monitoring the DBE's during the life of the Agreement** – The Local Agency must place a special emphasis on the approved UDBE Plan during the life of the agreement. The consultant shall report monthly (to the local agency) on its progress towards achieving the commitments outlined in the UDBE Plan. The agency must inquire and monitor the plan to make sure the consultant is on track to meet the planned goal and if any changes are needed to the plan to ensure that the approved goal is met. If changes are needed to the original UDBE plan the local agency must submit them to the Region Local Programs office for concurrence prior to documenting that approval with an executed supplement to the consultant agreement.

In order to receive credit for DBE participation (count towards the contract UDBE goal) a DBE firm must be performing a Commercially Useful Function (CUF) on that contract. Local agency must document that each DBE working on the project is performing a Commercially Useful Function (CUF). The form “DBE On-Site Review” shall be used by the local agency for purposes of documenting CUF for each DBE consultant. See [Appendix 26.55](#) for the DBE On-Site review form for Architect & Engineering/Professional Services Firms. DBE On-site reviews must be conducted:

- At the start of work, and/or
- At the peak period of work, and
- Whenever changes in the performance of the work warrants its completion.

If there is evidence that a DBE firm may not be performing a CUF, immediately contact your Region Local Programs Engineer.

This completed form becomes a part of the local agency's project records. Additional forms are available from your Region Local Programs Engineer.

The WSDOT Local Agency Consultant Agreements and Underutilized Disadvantaged Business Enterprise Participation Plan shall be followed to ensure compliance with the DBE Program requirements.

WSDOT's Office of Equal Opportunity (OEO) may also perform in-depth CUF's on DBE firms performing work on Federal-aid local agency projects (as OEO determines necessary/appropriate).

3. **Prompt Payment (Progress Payment)** – Local agencies must comply with State and Federal prompt payment laws. In addition, local agencies are expected to monitor and enforce the prompt payment requirements under State Law (as well as 49 CFR Part 26.29), as regards their contracts with prime consultants. Monitoring prompt payment requires the contracting agency to verify that payments to subconsultants are commensurate with the subconsultants' work scope, and are

processed within the allowed timeframe. Prompt payment violations on Federal-aid contracts are a violation of the DBE program, which is considered a breach of contract. When violations are found to exist, local agencies must enforce the terms of the contract by taking appropriate enforcement action.

State law requires payment to subconsultant(s) within ten days of receipt by the prime consultant. Refer to [RCW 39.04.250](#), [RCW 39.76.011](#), [RCW 39.76.020](#), and [RCW 39.76.040](#) for more detailed “Prompt Payment” requirements.

4. **During Contracting Period** – The prime consultant shall enter all payment information into the WSDOT DMCS ([wsdot.diversitycompliance.com](#)) each month for all federal aid projects and select state funded projects. The prime consultant shall enter the amounts, received from the agency and the amounts paid to all firms involved with the contract (Zero payments shall be marked accordingly). All firms shall confirm the payments amount received from the prime consultant each month and the local agency shall verify these entries in the WSDOT Diversity Compliance System. All payment information shall be entered monthly and include the actual date of the payment.

5. **Upon Completion** – The prime consultant will record in the system, when the final payments are made to each firm and when the final payment for the project is received from the agency. Subcontractor and firms must confirm the receipt of the final payment. The agency shall make notification of final project payment to the Local Programs Project Development Engineer at the completion of the project.

In addition, for each contract, local agencies must document (in the form of a Written Certification, see [Appendix 26.56](#)) that it has reviewed the contracting records and monitored the work site and determined that work committed to the UDBEs at contract award (and subsequently) was actually performed by said UDBEs – See [Appendix 26.56](#).

5. **Records and Reports** – The local agency will maintain such records and provide such reports as necessary to ensure full compliance with WSDOT’s UDBE Participation Plan.

Upon request from the OMWBE, WSDOT, or the USDOT operating administrations (e.g., FHWA), the local agency shall submit the records deemed necessary for inspection, auditing, and review purposes.

## 26.5 Appendices

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| <a href="#">26.53</a> | UDBE Written Confirmation Document   |
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**Appendix 26.52** **Underutilized Disadvantaged Business Enterprise Utilization Certification**



**Underutilized 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, an Underutilized Disadvantaged Business Enterprise (UDBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a UDBE Utilization Certification which properly demonstrates that the Bidder will meet the UDBE 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 UDBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: \_\_\_\_\_ certifies that the UDBE 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 UDBEs. (If necessary, use additional sheets.)

Box 2: \_\_\_\_\_

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

Underutilized Disadvantaged Business Enterprise Condition of Award Contract Goal \_\_\_\_\_ Total UDBE Commitment Dollar Amount \_\_\_\_\_  
Box 3 Box 4

5  By checking Box 5 the Bidder is stating that their attempts to solicit sufficient UDBE 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 272-056U  
Revised 02/2018

## Instructions for Underutilized 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 Underutilized Disadvantaged Business Enterprise (UDBE). UDBE Firms can be found using the search tools under the Firm Certification section of the Diversity Management and Compliance System web page <https://wsdot.diversitycompliance.com> Repeat the name of the UDBE for each Project Role that will be performed.

Column 2: The Project Role that the UDBE 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 UDBE individually on a separate row(s). 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 the work to be performed by the UDBE. The work to be performed must be consistent with the Certified Business Description of the UDBE 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 UDBE 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 UDBE 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 UDBE 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 UDBE 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 UDBE 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.**



### Underutilized 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, an Underutilized Disadvantaged Business Enterprise (UDBE) Utilization Certification. The Contracting Agency shall consider as non-responsive and shall reject any Bid Proposal that does not contain a UDBE Utilization Certification which properly demonstrates that the Bidder will meet the UDBE 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 UDBE Utilization Certification shall be deemed a part of the resulting Contract.

Box 1: A Plus Construction Company certifies that the UDBE 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 UDBEs. (If necessary, use additional sheets.)

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

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

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

5  By checking Box 5 the Bidder is stating that their attempts to solicit sufficient UDBE 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

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**Underutilized Disadvantaged Business Enterprise (UDBE) Written Confirmation Document**

See Contract Provisions: *UDBE Document Submittal Requirements*  
*Disadvantaged Business Enterprise Participation*

THIS FORM SHALL ONLY BE SUBMITTED TO A UDBE THAT IS LISTED ON THE CONTRACTOR'S UNDERUTILIZED DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION CERTIFICATION.

THE CONTRACTOR SHALL COMPLETE PART A PRIOR TO SENDING TO THE UDBE.

**PART A: To be completed by the bidder**

The entries below shall be consistent with what is shown on the Bidder's Underutilized Disadvantaged Business Enterprise Utilization Certification. Failure to do so will result in Bid rejection.

Contract Title: \_\_\_\_\_

Bidder's Business Name: \_\_\_\_\_

UDBE's Business Name: \_\_\_\_\_

Description of UDBE's Work: \_\_\_\_\_

Dollar Amount to be Applied Towards UDBE Goal: \_\_\_\_\_

Dollar Amount to be Subcontracted to UDBE\*: \_\_\_\_\_  
\*Optional Field

**PART B: To be completed by the Underutilized Disadvantaged Business Enterprise**

As an authorized representative of the Underutilized Disadvantaged Business Enterprise, I confirm that we have been contacted by the Bidder with regard to the referenced project for the purpose of performing the Work described above. If the Bidder is awarded the Contract, we will enter into an agreement with the Bidder to participate in the project consistent with the information provided in Part A of this form.

Name (printed): \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

# DBE On-Site Review for Construction

## Appendix 26.54 Subcontractors/Regular Dealers/Manufacturers



### DBE On-Site Review for Construction Subcontractors/Regular Dealers/Manufacturers

This document provides guidelines for reviewing Construction Subcontractors Disadvantaged Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

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

WSDOT/Local Agency will perform DBE Onsite Reviews on DBE construction subcontractors. Project owner staff is required to perform a minimum of one review for each DBE firm for each project, for each construction season, and for each primary scope of work.

**Note: If the DBE firm is a Regular Dealer/Manufacturer and is not located on the project site or is out of state, then this review needs to be accomplished by telephone.**

1. Prime Contractor:	2. Federal Aid Number:
3. DBE Subcontractor/Regular Dealer/Manufacturer:	4. Contract Number:
5. Project Engineer:	6. Region/Local Agency:
7. Project Title:	

#### SECTION #1 - SUBCONTRACTORS

8. Bid Item Number	9. Bid Item Approximate % Complete	10. Actual Work Being Performed (Note partial items)	11. Force Account	12. DBE Dollar Amount
			<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	
			<input type="checkbox"/> Yes <input type="checkbox"/> No	

13. Have you checked the Office of Minority & Women's Business Enterprises Website ( <a href="http://www.omwbe.wa.gov">www.omwbe.wa.gov</a> ) to ensure firm is certified in the above work? If no, please explain:	<input type="checkbox"/> Yes <input type="checkbox"/> No
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14. DBE Subcontractor's Start Date	15. Contract Percent Complete	16. DBE Anticipated Completion Date
------------------------------------	-------------------------------	-------------------------------------

#### DBE INTERVIEWEE QUESTIONS

17a. First Name	17b. Last Name	17c. Phone Number
18. Who does the DBE's Site Supervisor report to within his/her organization? Name: _____ Title: _____		
19. Is the DBE Interviewee exclusively employed by the DBE? If no, please explain		<input type="checkbox"/> Yes <input type="checkbox"/> No

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20. Is the DBE Interviewee shown on the DBE Payroll? (Review Payroll)				<input type="checkbox"/> Yes <input type="checkbox"/> No
21. List names and crafts of the DBE's crew as observed (Use additional sheets, if needed)				
Name	Craft			
22. Are any DBE crew members on the prime or any other project subcontractor's payroll(s)? If yes, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
23. List the DBE's Major Equipment (self-propelled). Use additional sheets if necessary				
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	
24. If the equipment is leased, is there a formal agreement identifying the terms and parties? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
<b>PERFORMANCE</b>				
25. Does the DBE effectively manage the job site (their work) without interference from the prime contractor or other subcontractors? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Does the DBE have the personnel, equipment, and resources to perform the work on this project? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
27. Do DBE personnel have the knowledge and skills for the work they are performing? If no, please explain:				<input type="checkbox"/> Yes <input type="checkbox"/> No
28. Has another contractor performed, work for the DBE? If yes, please explain?				<input type="checkbox"/> Yes <input type="checkbox"/> No
29. Has the DBE Owner been present on the Job Site? If yes how often?				<input type="checkbox"/> Yes <input type="checkbox"/> No
30. Are the personnel and equipment under direct supervision of the DBE Site Supervisor?				<input type="checkbox"/> Yes <input type="checkbox"/> No

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**SECTION #2 - REGULAR DEALERS/MANUFACTURERS** NOTE:31 THROUGH 35 ONLY APPLY TO REGULAR DEALER/MANUFACTURER

31. Per the DBE sub-contract, indicate the project specific materials/equipment being provided.

Material Name	Material Quantity	Material Costs

32. For Regular Dealers, have you checked with the WSDOT Office of Equal Opportunity Regular Dealer List to ensure the firm is listed as an approved Regular Dealer specifically to this project?  Yes  No

33. If the material being supplied is a bulk item (i.e., aggregates, petroleum, etc.), does the DBE have its own distribution equipment? If no, please explain:  Yes  No

34. Has the project office validated that only 60% of the total material cost is being counted as participation? If no, please explain:  Yes  No

35. Has a copy of the material invoice been provided to the project office? If no, please explain  Yes  No

**TRUCKING COMPANIES ONLY**

36. How many DBE truck(s) are on the Job Site, including other DBE firms working under subject firm scope?

37. Do all DBE truck(s) have company markings?  Yes  No

38. How many DBE truck(s) are subcontracted, leased, owner operators, or another company? (Trucks not owned by subject firm)

39. Who is supervising the subject firm DBE truck operators?

Name: \_\_\_\_\_ Firm: \_\_\_\_\_

40. Additional comments/observations

**Note: Attach any documents important to the review, i.e., Invoices, Photos, Daily Reports, Correspondence, etc.**

41. Review Conducted By (Print Name) \_\_\_\_\_ 42. Title (Print) \_\_\_\_\_

43. Signature \_\_\_\_\_ 44. Date of This Review \_\_\_\_\_

45. Date Project Engineer approved Request to Sublet: \_\_\_\_\_

This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.

# Project Office DBE On-Site Review for Architect Appendix 26.55 & Engineering/Professional Services Firms



## Project Office DBE On-Site Review for Architect & Engineering/Professional Services Firms

This document provides guidelines for reviewing Architect & Engineering (A & E)/Professional Services Disadvantage Business Enterprise (DBE) firms to verify compliance with the Commercially Useful Function (CUF) requirements of 49 CFR 26.55 which states in part:

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

WSDOT/Local Agency will perform onsite reviews on DBE A & E Consultants, and Professional Services firms. Project owner staff are required to perform a minimum of one review for each DBE for each project, for each construction season (Calendar Year) and for each primary scope of work.

NOTE: If the DBE firm is not located on the project site or is out of state, then this review needs to be accomplished by telephone.

1. Prime Contractor/Consultant:		2. Federal Aid Number:	
3. DBE Firm:		4. Contract Agreement Number:	
5. WSDOT Project Engineer:		6. WSDOT Region/Local Agency:	
7. Project Title:			
<b>INDICATE THE DBE WORK OBSERVED THIS DATE</b>			
8. Scope of Work	9. Approximate % Complete	10. Actual work being performed. <i>If more lines are needed use a continuation sheet</i>	11. DBE Dollar Amount
12. Have you checked the Office of Minority & Women's Business Enterprises Website ( <a href="http://www.omwbe.wa.gov">www.omwbe.wa.gov</a> ) to ensure firm is certified in the above work? If no, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
13. DBE Firms' Start Date:	14. WSDOT Contract Percent Complete:	15. DBE Anticipated Completion Date:	
<b>DBE PROJECT MANAGER/SUPERVISOR</b>			
16. First Name:		17. Last Name:	18. Phone Number:
19. Is the DBE Project Manager/Site Supervisor exclusively employed by the DBE? If no, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
20. Is the DBE Project Manager/Site Supervisor shown on the monthly invoice or Certified Payroll:			<input type="checkbox"/> Yes <input type="checkbox"/> No
21. Is the DBE Project Manger/Site Supervisor shown on any other firms' invoice? If yes, please explain:			<input type="checkbox"/> Yes <input type="checkbox"/> No
22. Who does the DBE's Project Manager/Site Supervisor report to within his/her organization?			
Name:		Title:	

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23. Does the work described in block #10 match the type of work listed on the executed contract/agreement?		<input type="checkbox"/> Yes <input type="checkbox"/> No
24. Who is paying this DBE firm?		
24(a). What are the negotiated rates?		
25. Are any of the DBE firm's employees assigned to this project working for any other firm's on this project? If yes, please explain:		<input type="checkbox"/> Yes <input type="checkbox"/> No
26. Has another firm performed work in place of the DBE for the scope of work identified exclusively for the DBE? Is yes, please explain:		<input type="checkbox"/> Yes <input type="checkbox"/> No
27. Is the DBE owner personally involved in the day to day operations of the company?		<input type="checkbox"/> Yes <input type="checkbox"/> No
28. Does the DBE firm appear to have control over their contracted scope of work?		<input type="checkbox"/> Yes <input type="checkbox"/> No
29. Review Conducted By (Print Name):	30. Title (Print):	
31. Signature	32. Date of this Review:	
<p><b>This form must be completed in its entirety and submitted to WSDOT Office of Equal Opportunity within two (2) weeks of its completion. If the form is submitted with missing/incomplete information, it will be returned to the PE Office for completion.</b></p>		

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Washington State  
Department of Transportation

**Final DBE Utilization Plan Report**

Project Number	Federal-Aid Project Number	Region/Agency
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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 DBE's under this contract was actually performed by the listed DBE's.

**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 OEO  File

**Local Agency Original to:**

Project Record

**Copies to:**

WSDOT Local Programs  Project Manager or Project Engineer

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