**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
CONSTRUCTION BULLETIN

Updated DBE Contract Requirements/Roles & Responsibilities
Bulletin #2019-03, Page 2 of 8
Date: May 14, 2019

- 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 – NRegionOEO@wsdot.wa.gov
- Northwest Region – NWRRegionOEO@wsdot.wa.gov
- Olympic Region – ORegionOEO@wsdot.wa.gov
- South Central Region – SRegionOEO@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
John Huff
Office of Equal Opportunity
HUFFJ@wsdot.wa.gov
360-705-7010
# Disadvantaged Business Enterprise Program

## Roles Matrix

<table>
<thead>
<tr>
<th>Pre-Contract</th>
<th>Region</th>
<th>Process Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Goal Setting</strong></td>
<td>primary</td>
<td>support review</td>
</tr>
<tr>
<td><strong>Regular Dealer Determination</strong></td>
<td>primary</td>
<td>support</td>
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<table>
<thead>
<tr>
<th>Contract Procurement</th>
<th>Region</th>
<th>Process Description</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Utilization Certification, Written Confirmation, Bid Item Breakdown, Trucking Credit Form, and Good Faith Effort (if required)</strong></td>
<td>primary</td>
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</tbody>
</table>

<table>
<thead>
<tr>
<th>Contract Administration and Compliance</th>
<th>Region</th>
<th>Process Description</th>
</tr>
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<tbody>
<tr>
<td></td>
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<tr>
<td><strong>COA Award Letter Package</strong></td>
<td>primary</td>
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<tr>
<td><strong>DBE Utilization Plan</strong></td>
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<tr>
<td><strong>Preconstruction Meetings</strong></td>
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<tr>
<td><strong>Design Build DBE Performance Plan Review (Mandatory WSDOT Project Goal)</strong></td>
<td>approve</td>
<td>primary</td>
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<tr>
<td><strong>Design-Build Inclusion Manager (if required based on project size)</strong></td>
<td>primary</td>
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</tr>
<tr>
<td><strong>MSV/WBE Participation Plan Review (State Fund Projects)</strong></td>
<td>primary</td>
<td>support</td>
</tr>
<tr>
<td><strong>SBE Inclusion Plan Review (Voluntary Goal)</strong></td>
<td>primary</td>
<td>support</td>
</tr>
<tr>
<td>Process Description</td>
<td>Headquarters OEO</td>
<td>Headquarters ASCE</td>
</tr>
<tr>
<td>---</td>
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</tr>
<tr>
<td>Monitor DBE/MSVWBE performance</td>
<td>support</td>
<td>support</td>
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<tr>
<td>DBE On-Site Reviews</td>
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<td>primary</td>
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<tr>
<td>MSVWBE On-Site Review</td>
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<td>primary</td>
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<tr>
<td>Investigate Issues and Complaints</td>
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<tr>
<td>Compliance Reviews</td>
<td>approve</td>
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<tr>
<td>Joint checks and broker agreements</td>
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<td></td>
</tr>
<tr>
<td>Lease Agreements (other than DBE trucking companies)</td>
<td>support</td>
<td>primary</td>
</tr>
<tr>
<td>Region Specific Mailbox (email address)</td>
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<tr>
<td>DBE Subcontracts</td>
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<tr>
<td>Truck Unit Listing Log</td>
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</tr>
<tr>
<td>DBE Subcontractor Payment Monitoring (prompt pay)</td>
<td>support</td>
<td>support</td>
</tr>
</tbody>
</table>

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.

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.

PEO performs on-site reviews for all MSVWBEs used on all projects. Region OEO reviews and uploads on-site reviews into DMCS.

PEO 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.

PEO reviews documents and determines if it is reasonable and appropriate. PEO forwards the document to Region OEO for approval.

PEO receives lease agreements and forwards to Region OEO. Region OEO reviews and uploads into DMCS.

Monitor incoming messages that will transmit DBE subcontracts and monthly retainage reports.

Region OEO reviews all DBE subcontracts. PEO will address missing subcontracts with the Prime Contractor.

PEO reviews, performs field verification and uploads into DMCS. Region OEO determines DBE Credit if trucking form not received timely.

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.
<table>
<thead>
<tr>
<th>OEO</th>
<th>ASCE</th>
<th>OEO</th>
<th>EEO</th>
<th>CN</th>
<th>PEO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Monthly Retainage Report</td>
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<td>support</td>
<td></td>
<td></td>
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</table>

## COA Changes

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

## 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 |
| Conduct EEO Contract Compliance reviews | review | support | primary |
| Decertified Firms Notice | primary |
| Region OEO shall coordinate with PEO to communicate with contractors. |
| Region OEO provides notice to PEOs and Region EEO regarding changes to a DBE’s certification status. |