

DBE 101

Internal Training for WSDOT & Local Agencies

OFFICE OF EQUITY AND CIVIL RIGHTS
Stefanie Enochs, External Civil Rights Lead

March 27, 2025

Pre-Construction Meetings



Pre-Construction Meetings

Invitations

1. Include OECR in every pre-con meeting
2. Use your Regional OECR email
3. EEO & TERO



Things to Remember Document



Pre-Construction Meetings

Things to Remember Document

1. DMCS
 - Information
2. Prompt Pay
 - (Standard Spec 1-08.1)
3. Withholdings
 - (Standard Specs 1-08.1)
4. Retainage Release
 - [GSP 1-08.1(1)]



Pre-Construction Meetings

Things to Remember Document | First Page

1. DMCS
2. PROMPT PAY
3. WITHHOLDINGS
4. RETAINAGE RELEASE

DBE Program Things to Remember – Name of Project

Contract # DBE Condition of Award (COA) goal set as % with XXX Training Hours.

COA Committed DBEs as listed on DBE Utilization Certification and Written Confirmation forms at bid opening and MJ Hughes Bid Item Breakout and COA amounts that must be achieved as part of the prime's identification as the successful bidder:

- | | |
|---|------|
| 1. Subcontractor #1 - BI# – description | \$\$ |
| 2. Subcontractor #2 - BI# -description | \$\$ |

NOTE - work items indicated as Partial are expected to achieve or exceed the DBE COA commitment amounts BEFORE any part of work item(s) can be performed by other subs or prime.

DBE Commitment Total =\$\$ (commitment amount is incorporated into the contract and shall meet or exceed the commitment to not be breach of contract).

Diversity Management and Compliance System (DMCS) - Standard Spec 1-08.1(7)A

1. WSDOT Office of Equity and Civil Rights will enter COA subcontractors in the Diversity Management & Compliance (DMCS) System **but prime shall enter ALL other firms used/performing on the project into DMCS.** *NOTE – Per Standard Spec 1-08.1(1) Subcontracting, all work that is not performed by the Contractor will be considered as subcontracting (with two potential specific exceptions).
2. Prime and subprime(s) shall certify monthly to the actual amounts paid to all firms that were used as subcontractors, lower tier subcontractors, manufacturers, regular dealers, or service providers on the contract, including all DBE firms, in DMCS for WSDOT engineer review.
3. Online User Manuals are available on WSDOT's website at [Equal opportunity in contracting, diverse business programs page](#); go to the "Diversity Management and Compliance System (B2GNow)" section, and to the [DMCS user manuals](#) topic. Or within DMCS, User Manuals are available under *Help & Support*.

Prompt Payment Standard - Standard Spec 1-08.1(7)B

1. Prime shall comply with the requirements of the **10-day** prompt pay provisions and RCW 39.04.250, 39.76.011, 39.76.020, and 39.76.040, and GSP 1-07.11.OPT3 (and per [49 CFR §26.29\(a\)](#)), in particular regarding prompt payment to subcontractors.
2. Once WSDOT has paid prime, prime shall make payment to their first-tier Subcontractor(s) no later than 10 (ten) calendar days after receipt of payment for work satisfactorily completed and enter payments in DMCS.
3. **If not paid within 10 days, the Standard Specification 1-08.1 withholding procedures shall be followed.**

Withholdings Standard Specs 1-08.1 Whenever prime withholds payment to a subcontractor for **any reason including** disputed amounts and **retainage** ([49 CFR §26.29](#)), prime shall provide notice within 10 calendar days to subcontractor and WSDOT Engineer to include:

- a. Accounting of payments to date;
- b. Dollar value of the withholding and the reason for amount withheld; and
- c. Explanation of what must occur to have the withheld amount released.

Monthly Retainage Report and Retainage Release - Standard Spec 1-08.1(7)C

1. **Monthly Retainage Report** ([WSDOT form 272-065](#))-prime completes form monthly for ALL subcontractors on the project regardless of whether or not retainage was/is held -- due to PEO and cc email to OECR at [region email](#) within **15 calendar days** after receipt of prime's monthly progress payment.
2. [49 CFR §26.29\(c\)](#) - subcontractor's work is defined as satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by WSDOT. When WSDOT has made an incremental acceptance of a portion of a prime's contract, the work of a subcontractor covered by that **acceptance is deemed to be satisfactorily completed.**
3. Prime has **ten days** from date of written request from subcontractor to release retainage or provide subcontractor with written notification (see also Withholdings in next section, below) regarding why work was not satisfactorily completed & resolution to achieve completion.
4. [49 CFR §26.55\(h\)](#) - Do not count the participation of a DBE subcontractor toward a prime's final compliance with its DBE obligations/commitment on a contract until the amount being counted has actually been paid to the DBE.

Monthly Project Process/ Prompt Pay Reporting

Welcome to your monthly project progress reports. You are receiving these reports because this project is a recipient of USDOT federal funding and is therefore pursuant to the Code of Federal Regulations title 49 part 26 regarding the Disadvantaged Business program. There are two reports enclosed in this email, the Subcontractor Payment Report, and the Prompt Payment Report. These reports are generated from our Diversity Management Compliance System (DMCS) which is powered by B2GNow. It will be imperative that you enter in all payments into this system monthly so that information is reflected accurately in these reports.

- **Subcontract Payment Report:** This report will track the project's progress monthly. In it you will find a list of all your subcontracts and payments to date to your subcontractors/subconsultants, suppliers, distributors, etc. You will get two snapshots of your progress reflected in Payment Participation (how your contract participation is currently performing) and Contract Participation (where your contract participation is likely to land).

Summary of this project:

- o Contract Progress:
- o Contract Goal:
- o Payment Participation:
- o Contract Participation:

Analysis:

- o Participation progress is Good:
- o Participation progress is Fair:
- o Participation progress Needs Work:

Prompt Pay Report w/Attachment

- Prompt Payment Report: This report displays how promptly you paid your subcontractors and if your payments were “prompt” pursuant to RCW title 39 chapter 39.04 section 39.04.250 which states: When payment is received by a contractor or subcontractor for work performed on a public work, the contractor or subcontractor shall pay to any subcontractor not later than ten days after the receipt of the payment, amounts allowed the contractor on account of the work performed by the subcontractor, to the extent of each subcontractor's interest therein. Please note that the prompt payment regulation applies to both your certified and non-certified subcontractors.

Summary of this project:

- o # of Subcontractors
- o # of Subcontractors payments reflecting 10+ days

Analysis:

- o No potential prompt payment violations:
- o Potential prompt payment violations:

Monthly Retainage Report Form (272-065)



Monthly Retainage Report

Agency Name:					Federal Aid Number:		
Prime Contractor Name:					Contract Number:		
Contract Name:					Month/Year or Report:		
Subcontractor Name	Start Date	Percent Complete	Monthly Amount of Retainage Withheld	Total Amount of Retainage Withheld	Retainage Released Date	Date Subcontractor's Work (physical and paper) Completed	Remarks

If you have additional subcontractors, which you are withholding retainage from, please complete additional forms. If you are not withholding retainage from any subcontractors, please list their name above and indicate "no retainage withheld" in the remarks column.

Monthly Retainage Reports will be submitted next month. I certify that the above provided information is accurate.

Yes, this is the Final Monthly Retainage Report Certification. I certify that the contracting records have been reviewed and all retainage withheld from subcontractors payments have been released.

Prime Contractor Signature

Title

Date

DOT Form 272-065
Revised 10/2023

- ALL subcontractors on the project regardless if retainage was/is held -- due within **15 calendar days** after receipt of prime's monthly progress payment.
- Prime has **10 days** from date of written request to release retainage or provide withholding notice.
- **Do not** count the participation of a DBE commitment on a contract until the amount being counted has been paid to the DBE.

Pre-Construction Meetings

Things to Remember Document



5. GSP 1-07.11\OPT3 DBE:
 - a. Commercially Useful Function (CUF)
 - b. On-Site Reviews (OSR)
 - c. Joint Check
 - d. Termination, in whole or in part
 - e. Change orders
 - f. Good Faith Efforts (GFE) – Appendix A
 - g. DBE/FSBE Truck Unit Listing Log
6. Subcontracts

DBE General Special Provision (GSP)

1-07.11.OPT3

DBE General Special Provision (GSP) 1-07.11.OPT3

1. DBE/FSBE Truck Unit Listing Log (WSDOT Form 350-077) - supplemental information shall be submitted in an electronic format to the Engineer prior to any trucking services being performed for DBE credit. Logs shall be submitted and accepted by the Engineer no later than ten calendar days of utilizing applicable trucks. Each DBE trucking firm shall complete a Daily DBE/FSBE Truck Unit Listing Log (same form) for each day that the DBE performs trucking services for DBE credit. The Daily DBE/FSBE Truck Unit Listing Log forms shall be submitted by Friday of the week after the Work was performed by email to regional email

2. Commercially Useful Function (CUF) 49 CFR §26.55 - prime may only take credit for the payments made for work performed by the DBE that is actually performing, managing, and supervising the work that is determined to be performing a CUF. Payment must be commensurate with the work actually performed by the DBE and applies to all DBEs performing work on a project, whether or not the DBEs are COA or not.

3. On-Site Review (OSR) – WSDOT Field Engineer/Inspector will conduct a minimum of one on-site review for each DBE (COA or non-COA) for each construction and for each primary scope of work to ascertain whether DBEs are performing a CUF. A DBE performs a CUF when it is carrying out its responsibilities of its contract in accordance with the requirements of the 49 CFR §26.55. OSR shall be conducted at periodic intervals:

WSDOT Field Inspector shall perform these on-site reviews for all DBE's performing work on the project, whether Condition of Award work or other work, so DBE must inform prime & prime must inform WSDOT PEO accordingly & timely when DBEs are on the project performing work.

4. Joint Check - is a check between a subcontractor and the prime to the supplier of materials/supplies, and must be approved in advance by WSDOT, in order to receive credit. The check is issued by prime as payer to the subcontractor and the material supplier jointly for items to be incorporated into the project. Joint checks can only be initiated or requested by the subcontractor.

5. Change Orders – any changes affecting DBE commitment or work scope must be processed as a change order.

6. Termination in whole or in part (per 49 CFR §26.53(f)(1)(i)) – Prime cannot reduce the amount of work committed to a COA DBE without good cause. Reducing DBE commitment is viewed as partial DBE termination, and therefore subject to the GSP termination procedures. prime shall provide DBE subcontractor and engineer with written notice regarding termination and give DBE subcontractor five (5) days to respond prior to terminating the DBE subcontractor.

7. Good Faith Efforts (GFE) & 49 CFR §26.53(g) – is required in the event the commitment amount will not be achieved. If a COA DBE fails to complete its work on the contract for any reason, prime shall substitute with another DBE to perform at least the same amount of work under the contract or provide documentation of GFE. Prime should use Appendix A to guide and document any such GFE submissions.

Pre-Construction Meetings

Things to Remember Document | Subcontractors

FHWA-1273 – Revised October 23, 2023

8. Subcontracts

- a. [Federal Highway Administration \(FHWA\) Form 1273](#) must be physically incorporated to all subcontract(s) and lower-tier subcontracts.
- b. [49 CFR §26.13\(b\)](#) each subcontract prime signs with a subcontractor must include the assurance from this section.
- c. [49 CFR §26.29\(b\)](#) - must ensure prompt and full payment of retainage from prime to all subcontractors within **10 days** (per [RCW 39.04.250 \(1\)](#)) after the subcontractor's work is satisfactorily completed.
- d. [49 CFR §26.29\(e\)\(1\)](#) - subcontract must include a dispute resolution process incorporated into subcontract(s).
- e. Include provisions from Standard Spec 1.08.1 in every subcontract and lower tier subcontract. Collectively, lower tier subcontractors shall not do work that exceeds 25% of the total amount subcontracted to prime's Subcontractor/Subprime.
- f. [49 CFR 26.53\(j\)](#) - Prime must make available upon request a copy of all DBE subcontracts. **All DBE subcontracts must be submitted to WSDOT OECR PRIOR to the DBE firm's start of work on the project – email to region email and cc Engineer Office.**

REMINDER: WSDOT PEO to provide OSR backup documentation along with each completed DBE OSR form, and send to Regional Email:

1. Copy of the executed applicable DBE subcontract
2. An approved Request To Sublet (RTS);
3. The IDR for the day the OSR was performed.
4. One week's Certified Payroll (CP) for both the DBE & Prime, for the same week the OSR was conducted (LP)
5. If the DBE is a "Furnish & Install", also provide the following:
 - a. The invoices for materials delivered that day of the OSR performed.
 - b. Proof of payment made by the DBE to the source of the materials delivered that day.

REQUIRED CONTRACT PROVISIONS FEDERAL-AID CONSTRUCTION CONTRACTS

- I. General
- II. Nondiscrimination
- III. Non-segregated Facilities
- IV. Davis-Bacon and Related Act Provisions
- V. Contract Work Hours and Safety Standards Act Provisions
- VI. Subletting or Assigning the Contract
- VII. Safety: Accident Prevention
- VIII. False Statements Concerning Highway Projects
- IX. Implementation of Clean Air Act and Federal Water Pollution Control Act
- X. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion
- XI. Certification Regarding Use of Contract Funds for Lobbying
- XII. Use of United States-Flag Vessels:

ATTACHMENTS

A. Employment and Materials Preference for Appalachian Development Highway System or Appalachian Local Access Road Contracts (included in Appalachian contracts only)

I. GENERAL

1. Form FHWA-1273 must be physically incorporated in each construction contract funded under title 23, United States Code, as required in 23 CFR 633.102(b) (excluding emergency contracts solely intended for debris removal). The contractor (or subcontractor) must insert this form in each subcontract and further require its inclusion in all lower tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services). 23 CFR 633.102(e).

The applicable requirements of Form FHWA-1273 are incorporated by reference for work done under any purchase order, rental agreement or agreement for other services. The prime contractor shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider. 23 CFR 633.102(e).

Form FHWA-1273 must be included in all Federal-aid design-build contracts, in all subcontracts and in lower tier subcontracts (excluding subcontracts for design services, purchase orders, rental agreements and other agreements for supplies or services) in accordance with 23 CFR 633.102. The design-builder shall be responsible for compliance by any subcontractor, lower-tier subcontractor or service provider.

Contracting agencies may reference Form FHWA-1273 in solicitation-for-bids or request-for-proposals documents, however, the Form FHWA-1273 must be physically incorporated (not referenced) in all contracts, subcontracts and lower-tier subcontracts (excluding purchase orders, rental agreements and other agreements for supplies or services related to a construction contract). 23 CFR 633.102(b).

2. Subject to the applicability criteria noted in the following sections, these contract provisions shall apply to all work

performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract. 23 CFR 633.102(d).

3. A breach of any of the stipulations contained in these Required Contract Provisions may be sufficient grounds for withholding of progress payments, withholding of final payment, termination of the contract, suspension / debarment or any other action determined to be appropriate by the contracting agency and FHWA.

4. Selection of Labor: During the performance of this contract, the contractor shall not use convict labor for any purpose within the limits of a construction project on a Federal-aid highway unless it is labor performed by convicts who are on parole, supervised release, or probation. 23 U.S.C. 114(b). The term Federal-aid highway does not include roadways functionally classified as local roads or rural minor collectors. 23 U.S.C. 101(a).

II. NONDISCRIMINATION (23 CFR 230.107(a); 23 CFR Part 230, Subpart A, Appendix A; EO 11246)

The provisions of this section related to 23 CFR Part 230, Subpart A, Appendix A are applicable to all Federal-aid construction contracts and to all related construction subcontracts of \$10,000 or more. The provisions of 23 CFR Part 230 are not applicable to material supply, engineering, or architectural service contracts.

In addition, the contractor and all subcontractors must comply with the following policies: Executive Order 11246, 41 CFR Part 60, 29 CFR Parts 1625-1627, 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The contractor and all subcontractors must comply with: the requirements of the Equal Opportunity Clause in 41 CFR 60-1.4(b) and, for all construction contracts exceeding \$10,000, the Standard Federal Equal Employment Opportunity Construction Contract Specifications in 41 CFR 60-4.3.

Note: The U.S. Department of Labor has exclusive authority to determine compliance with Executive Order 11246 and the policies of the Secretary of Labor including 41 CFR Part 60, and 29 CFR Parts 1625-1627. The contracting agency and the FHWA have the authority and the responsibility to ensure compliance with 23 U.S.C. 140, Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794), and Title VI of the Civil Rights Act of 1964, as amended (42 U.S.C. 2000d et seq.), and related regulations including 49 CFR Parts 21, 26, and 27; and 23 CFR Parts 200, 230, and 633.

The following provision is adopted from 23 CFR Part 230, Subpart A, Appendix A, with appropriate revisions to conform to the U.S. Department of Labor (US DOL) and FHWA requirements.

Other Examples: CSO/State Examples



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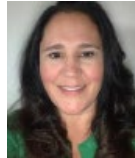
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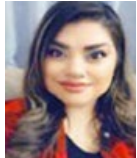
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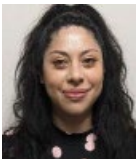


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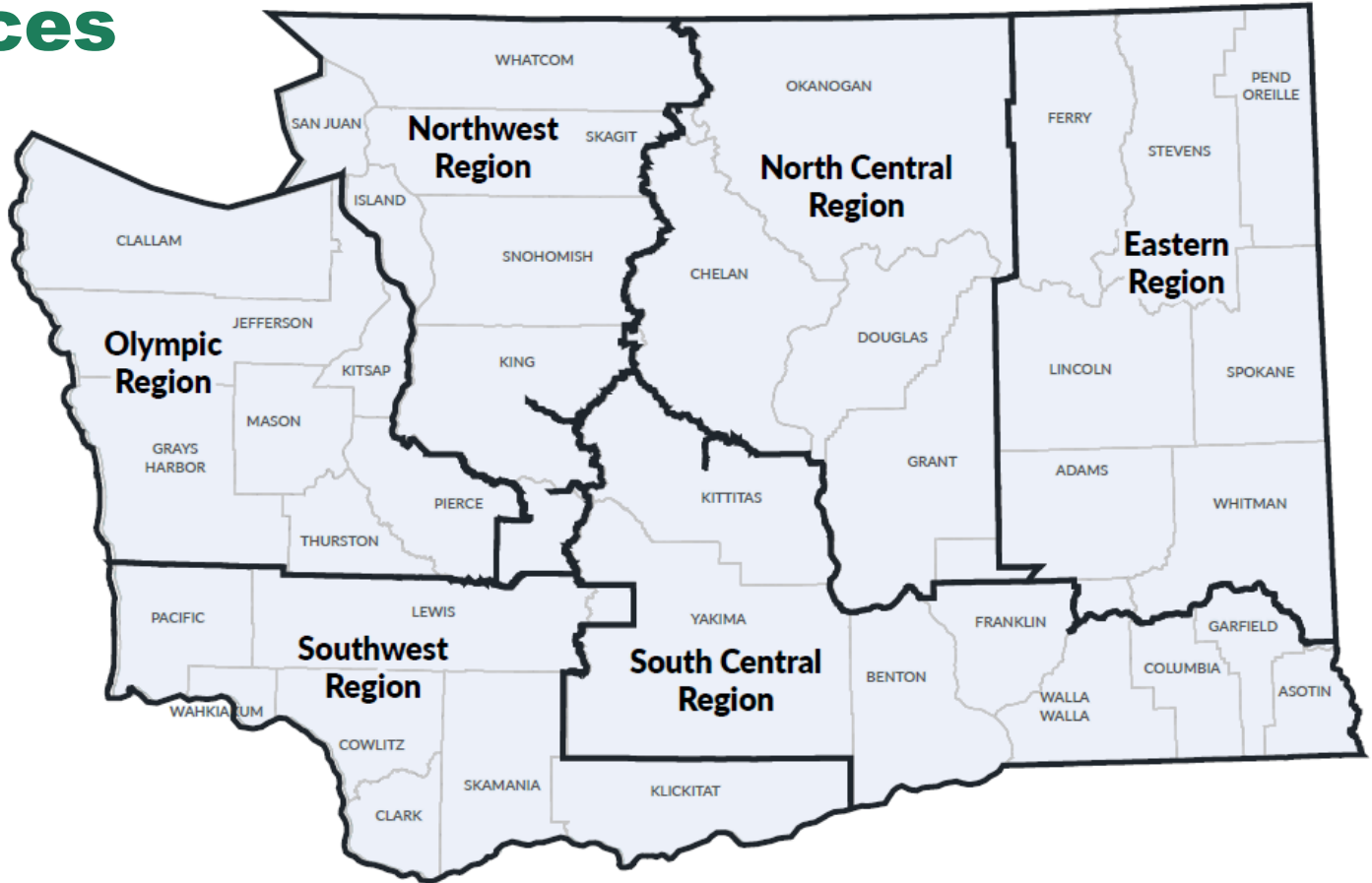


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Resources

Regional Map



Resources

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