



May 3, 2017

Mary Hull Caballero  
Auditor of the City of Portland  
City of Portland  
1221 SW 4<sup>th</sup> Ave, Room 320  
Portland, OR 97204

Subject: D/M/W/ESB Certified Firms – Recommendations

Dear Mary,

If you have any questions in review of this packet, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "J. Carlsen", is placed below the word "Sincerely".

Jeff Carlsen  
General Manager – Vice President  
STELLAR J CORPORATION  
(360) 225-7996 Ext. 254 Office  
(360) 518-3295 Cell  
(360) 225-8007 Fax  
jeffcarlsen@stellarj.com  
1363 Down River Drive  
Woodland, WA 98674

No	Description
<b>1</b>	<b>Why are we here? Council Meeting 4-12-17</b>
	<i>"So what did we learn from this procurement that we can apply to future procurements to get better numbers" - Nick Fish 4/12/17</i>
	<i>Question: How to increase D/M/W/ESB's Participation?</i>
	<i>Answer: <b>Require it</b></i>
<b>2</b>	<b>Recommendations - Lessons Learned</b>
	How is now NOT required participation?
	a. BES Solicitation Review - 20% Aspirational Goals - Subcontractor Equity Program - "SEP"
	Market Examples of Required participation:
	b. Alternate Requirement No. 1 - WSDOT - Koontz Bridge 9% DBE COA - Reached 9%. Stellar J selected at bid time and incorporated an additional \$4,680 above low bid prices to achieve the 9%. Net effect was minimal - a 0.5% add to owners price.
	c. Alternate Requirement No. 2 - City of Des Moines - 19% DBE COA - Reached 21%. Stellar J selected at bid time and incorporated an additional \$74,000 above low bid prices to achieve 21%. Net effect was a 2.2% add to owners price.
	If you want better numbers... set the minimum required % as a Condition of Award.
	Market reaction - discussion
<b>3</b>	<b>Recent Matters - Stellar J</b>
	a. Airport Way Requirements - Awarded, pending contract execution. Council Meeting 5/3
	b. Alder Requirements - Low Bid, Pending Intent to Award
	c. SEI Requirements - Current Rejected Status, SJC requested reconsideration and Award
<b>4</b>	<b>Go Forward Plan</b>
	Council Meeting Status 5/3
	Meeting with Commissioner Fish 5/5

## CITY OF PORTLAND SUBCONTRACTOR EQUITY PROGRAM

### 1. PROGRAM DESCRIPTION

The Portland Plan as adopted by Resolution 36918 was developed to make Portland a prosperous, educated, healthy and equitable city, recognizing that advancing equity must be at the core of our plans for the future. The Portland Plan includes a frame work for equity to guide plan implementation and improve City operational and business practices, support actions that promote accountability, close disparity gaps and increase community engagement. It is the intent of the City Council to achieve equity in City government policies, procedures and practices. Equity in contracting and workforce opportunities in the City are essential to achieving the vision of the Portland Plan.

As such, the City has a compelling governmental interest to ensure that its projects and resources provide employment opportunities for Oregon State certified disadvantaged, minority, women, and emerging small businesses (collectively, "D/M/W/ESBs") in order to address historic underutilization. Therefore, the City's Subcontractor Equity Program (the "Subcontractor Equity Program" or "Program") applies to all City-Owned Projects and all City-Sponsored Projects as described below. On projects subject to the Program, the entity responsible for subcontractor selection (the "Contractor") shall be obligated to comply with the Program for all subcontracting opportunities (regardless of value).

City-Owned Projects means contracts that have \$150,000 or more of Hard Construction Costs.

City Resources means funds provided by the City (regardless of the source) in the form of loans, grants or payments. City Resources also include the difference between the purchase price paid by a private entity and the fair market value of such property.

City – Sponsored Projects means contracts that provide for the disposition of the city-owned property and/or provide City Resources that result in a privately-owned project that has \$150,000 or more of Hard Construction Costs.

### 2. ASPIRATIONAL GOALS

The Program has an aspirational goal of twenty percent (20%) of Hard Construction Costs for D/M/W/ESB subcontractor utilization on projects subject to the Program (the "Aspirational Goal"); within the Aspirational Goal, a further goal of 14% D/M/WBE utilization is desired. The City encourages Contractors to diversify their D/M/W/ESB subcontractor utilization from all available divisions of work.

A directory of D/M/W/ESBs can be found by visiting the State of Oregon's Office of Minority, Women and Emerging Small Business website at: <http://www4.cbs.state.or.us/ex/dir/omwesb/>.

### 3. SUBMISSION OF REQUIRED DOCUMENTATION FOR CITY-OWNED PROJECTS SUBJECT TO COMPETITIVE BIDDING

- A. **FORM 1 - SUBCONTRACTOR COMMITMENT CERTIFICATION: DUE DAY AFTER BID OPENING BY 2:00 PM FROM ALL BIDDERS.**



1. If a bidder meets the Aspirational Goal, a completed and signed Form 1 is all that is required for submission for the Subcontractor Equity Program. The City will verify whether the Aspirational Goal has been met. If the City finds that the Aspirational Goal has not been met, the bidder will be notified and must submit additional documentation, or Form 2 as required.
2. Form 1 must list ALL Subcontractors to be used on the project, their corresponding type of work, the subcontract amount, and certification status, if applicable, regardless of the dollar amount. If the project includes bid alternates for additional work, bidders shall list ALL first-tier subcontractors that will be used if the City elects to do such additional work. Bidders must identify all types of work that will be self-performed. Form 1 will become a part of the resulting contract for the project. Failure by the apparent low bidder to complete and submit Form 1, will result in the bid being non-responsive and the bid will be rejected.

**B. FORM 2 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM APPARENT LOW BIDDER IF ASPIRATIONAL GOALS ARE NOT MET**

1. If a bidder does not meet the Aspirational Goal, both a completed Form 1, as well as Form 2 will be required. A completed Form 2 will be due upon the City's request.
2. Bidders must have contacted D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. Bidders must have obtained a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. Failure to obtain three (3) written bids from D/M/W/ESB subcontractors may result in bid rejection. Bidders shall submit additional information and provide clarification upon request.
4. If for any reason the apparent low bidder is not awarded the contract or its bid is rejected, the next apparent low bidder shall be reviewed and a determination will be made as to the need of a Form 2 submittal.

**4. SUBMISSION OF REQUIRED DOCUMENTATION FOR CITY-SPONSORED PROJECTS NOT SUBJECT TO COMPETITIVE BIDDING**

**A. FORM 1 - SUBCONTRACTOR COMMITMENT CERTIFICATION: DUE WITHIN 14 DAYS OF BID OPENING, UNLESS OTHERWISE SPECIFIED**

1. If a Contractor meets the Aspirational Goal, a completed and signed Form 1 is all that is required for submission for the Subcontractor Equity Program. The City will verify whether the Aspirational Goal has been met. If the City finds that the Aspirational Goal has not been met, the Contractor will be notified and must submit additional documentation, or Form 2 as required.
2. Contractor must identify all types of work that will be self-performed. Form 1 must list ALL Subcontractors to be used on the project, their corresponding type of work, the subcontract amount, and certification status, if applicable, regardless of the dollar amount. Form 1 will become a part of the resulting contract for the project.



**B. FORM 2 – D/M/W/ESB BIDS RECEIVED LOG: DUE UPON REQUEST FROM CONTRACTOR, IF ASPIRATIONAL GOALS ARE NOT MET**

1. If a Contractor does not meet the Aspirational Goal, both a completed Form 1, as well as Form 2 will be required. A completed Form 2 will be due upon the City's request.
2. Contractor must have contacted D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. Contractor must have obtained a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. Failure to obtain three (3) written bids from D/M/W/ESB subcontractors may result in bid rejection. Contractor shall submit additional information and provide clarification upon request.

**5. REQUIREMENTS FOR ALL PROJECTS SUBJECT TO THE PROGRAM**

**A. MONTHLY SUBCONTRACTOR PAYMENT AND UTILIZATION REPORT (MUR): DUE BY THE 15<sup>th</sup> OF EACH MONTH**

The Contractor shall complete and submit the Monthly Subcontractor Payment and Utilization Report ("MUR") by the 15<sup>th</sup> of each month once work has commenced. The MUR must list the contract amounts and payment amounts to **ALL** Subcontractors (including D/M/W/ESB subcontractors) and second-tier subcontractors. All first-tier subcontractors with second-tier subcontractors must also submit a MUR on a monthly basis. The City will provide a copy of the MUR electronically prior to the due date of the first MUR.

**B. SUBCONTRACTOR CHANGES AFTER BID SUBMISSION**

1. If any subcontractor is added or replaced after the bid is submitted or the contract is awarded, the selected Contractor shall make good faith efforts to solicit bids from D/M/W/ESBs for the work to be performed.
2. The Contractor must contact D/M/W/ESB subcontractors in writing to advise them of potential subcontracting opportunities and ensure that they have an equal opportunity to compete for work by providing all subcontractors the same information and informing them of the date and time that sub-bids are due.
3. The Contractor must obtain a minimum of three (3) written bids from D/M/W/ESB subcontractors that specialize in the type of work that will be subcontracted. The Contractor shall submit additional information and provide clarification upon request.
4. The Contractor shall complete and submit to the Contract Compliance Specialist the Subcontractor Change/Request Form and include supporting documentation of the foregoing prior to making any changes.
5. The Contractor shall not add, delete, or replace any subcontractor without prior written consent of the Chief Procurement Officer.

**C. REVIEW OF RECORDS**

In the event that the City reasonably believes that a violation of the requirements of the Subcontractor Equity Program has occurred, the City may review the records and pertinent documentation of the Contractor, as well as any subcontractor, to determine whether a violation has occurred.

**D. PENALTIES FOR NONCOMPLIANCE**

A Contractor's failure to comply with the Subcontractor Equity Program may result in a breach of contract, possible disqualification of the Contractor's ability to bid on or receive future contracts, including as provided under Portland City Code 5.34.530, and/or the assessment of penalties. In the event of a breach of contract, in addition to any other remedies that the City may have, the City may take any or all of the following actions:

1. The City may withhold all or part of any progress payment(s) until the Contractor has remedied the breach of contract. In the event that progress payments are withheld, the Contractor shall not be entitled to interest on such payments. If a subcontractor has not complied with the Subcontractor Equity Program, the City may elect to withhold only such subcontractor's portion of the progress payment.
2. The City has an expectation that if a Contractor is awarded a contract, and identifies that it intends to subcontract with D/M/W/ESB subcontractor(s), then the Contractor will actually use such D/M/W/ESB subcontractor(s). Therefore, the contract will include the following provisions:
  - a. The Contractor acknowledges and agrees that it would be difficult, if not impossible, to assess the actual damage incurred by the City for the Contractor's failure to comply with the Subcontractor Equity Program. If the Contractor fails to comply with the provisions of Section 5.B, the Contractor agrees to pay the sum of \$2,000 for each violation. These penalties are independent of any liquidated damages that may be assessed under other provisions of the contract.
  - b. If the Contractor fails to utilize any D/M/W/ESB subcontractor as identified on Form 1, or in its Contracting Plan, the Contractor shall pay \$2,000 for each violation.

Exceptions to this requirement are for approved change orders, reductions in scope of work as requested by the City, failure of a D/M/W/ESB subcontractor to complete work or having breached the subcontract, and substitution requests approved by the City.

**ATTACHMENTS:**

Subcontractor Commitment Certification (Form 1)  
D/M/W/ESB Bids Received Log (Form 2)

All forms are available on the Procurement Services website at: <http://www.portlandoregon.gov/bibs/45307>





Part 2 of this Form applies solely to work being subcontracted to non-certified firms.

Total Non-Certified Firms	\$
---------------------------	----

Part 3 of this Form applies solely to work being self-performed by the bidder. If the bidder is not using any subcontractors the bidder shall submit and write "self-performing all work" on this Form.

## BIDDER WILL SELF-PERFORM

By typing your name on this document below, the bidder acknowledges and certifies that this Form accurately represents receipt of and consent from the listed DMWESB firm; that it had direct contact with the named DMWESB firms regarding participation and the use of the referenced itemized quote below for the performance of the project. Bidder certifies, if awarded this project, that it shall award subcontracts to or enter into agreements with the named DMWESB's.

Bidder's Authorized Representative (Type)

Date \_\_\_\_\_

Name of Bidder (Company Name)

For Housing Bureau Projects, please email to [Cathleen.Massier@portlandoregon.gov](mailto:Cathleen.Massier@portlandoregon.gov).

*\* If bidder's DMW & DMWESB participation commitments (Form 1-Part 1) are less than the ASPIRATIONAL GOALS; upon request, Bidder must also submit Form 2, documentation of good faith efforts as evidence of actions to secure DMWESB participation. Bidder's documentation of good faith efforts shall meet the requirements provided in the Subcontractor Equity Program specification.*

CITY OF PORTLAND  
DMWESB BIDS RECEIVED LOG  
FORM 2

Bidder Name:

Project Name:

[illegible]



Helping Business do Business Since 1893

**I-5, 93rd Avenue Southwest and Koontz Road bridges - Special repair**  
**Thurston & Lewis Counties, WA, #8978; MP 69.39 - MP 69.40 & MP 99.28 - MP 99.29**

**Bids due: 11 am Nov 16, 2016**

**Addenda: addendum 1 (11/14)**

**Public notice: 342612**

**Estimated cost: \$1 - \$1.25 million**

**Owner: WSDOT Administration, PO Box 47360, 310 Maple Park Drive SE, Room 2D20, Olympia WA 98504**

**Owner Agent: WSDOT Contract Ad & Award Office, PO Box 47360, 310 Maple Park Ave. SE, Room 1A23, Olympia, WA 98504-7360, 360-705-7835, fax 360-705-6810, ContractAd&Award@wsdot.wa.gov**

**Submittal Docs: \$25 non-refundable from Owner Agent**

**Bids to: Owner**

**Invitation #: 8978**

**DJC Ref #: 2000167102**

**Completion: 85 working days**

**Bond: 5%**

**URL: [link]**

**Notes:** Additional project information is available on the owner's website. Contains 9% DBE goal.

**Scope:** Class 6. FA No. ER-1603(001) - Work requires removing and replacing existing prestressed concrete girders and reconstructing associated bridge superstructure, and traffic control. \*\* The project involves 33 items, which includes: 222 lf prestressed concrete girder; 8 tons HMA Class 1/2" PG 64-22; 430 lf temp barrier; 1,130 lf temp pavement marking-long duration; 340 lf conduit pipe. Lump sum bids are for shoring or extra excavation Class A; permanent signing; bridge mounted sign bracket; temp traffic control; structural and roadway survey; and SPCC plan. Superstructure includes: 15,600 lb epoxy coated steel rebar; 1,700 lb steel rebar; 47 cy concrete Class 4000D; 9 cy concrete Class 4000; 4 ea elastomeric bearing pad; 6 ea elastomeric girder stop pads; 12 lf elastomeric expansion joint seals; 174 lf traffic barrier; 344 lb bridge mounted utility concrete insert; 17 ea reinstall salvaged bolt-down expansion joint modular unit; 60 lf concrete curb and railbase; 63 lf reinstalling thrie beam guardrail; 68 lf reinstalling salvaged metal bridge rail; and 54 sy deck seal.

First pub: 10/21/16  
 Created: 10/18/16  
 Updated: 11/28/16

Project Docs  
 at Plancenter.com  
 Click to load

Planholders: Prime Bidders	Fax	Phone	Email	Added
CA Carey Corp., Issaquah, WA	425-392-8295	425-392-8016		10-20
Cascade Bridge, Vancouver, WA	360-737-6579	360-737-6576		10-20
Ceccanti Inc., Tacoma, WA	253-537-6943	253-537-2990	jon@ceccantiinc.com	10-27
Hamilton Construction Co., Springfield, OR	541-746-7635	541-746-2426		10-20
Legacy Contracting Inc., Stayton, OR	888-249-2203	503-749-1818		11-08
Massana Construction Inc., Gig Harbor, WA	253-313-5462	253-313-5420		10-27
Max J Kuney Company, Spokane, WA	509-534-6828	509-535-0651	maxkuney@maxkuney.com	10-20
MJ Hughes Construction, Vancouver, WA	360-828-5871	360-314-2024		11-08
Quigg Bros. Inc., Aberdeen, WA	360-532-3449	360-533-1530	johnq@quiggbros.com	11-08
Rognlins Inc., Aberdeen, WA	360-532-5761	360-532-5220		10-20
SB Structures LLC, Kent, WA	253-872-7171	253-872-6750		10-20
Stellar J Corporation, Woodland, WA	360-225-8007	360-225-7996		10-27
Wildish Standard Paving Co., Eugene, OR	541-683-7722	541-485-1700		10-20



standards prescribed in paragraph 7 of this Special Provision, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the government and to keep records. Records shall at least include, for each employee, their name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, the Contractors will not be required to maintain separate records.

15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

16. Additional assistance for Federal Construction Contractors on contracts administered by Washington State Department of Transportation or by Local Agencies may be found at:

Washington State Dept. of Transportation  
Office of Equal Opportunity  
PO Box 47314  
310 Maple Park Ave. SE  
Olympia WA  
98504-7314  
Ph: 360-705-7090  
Fax: 360-705-6801  
<http://www.wsdot.wa.gov/equalopportunity/default.htm>

**(August 3, 2015)**

***Disadvantaged Business Enterprise Condition of Award Participation***

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

**DBE Abbreviations and Definitions**

**Broker** – A business firm that provides a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or

1 supplies required for the performance of the Contract; or, persons/companies  
2 who arrange or expedite transactions.  
3

4 **Disadvantaged Business Enterprise (DBE)** – A business firm certified by the  
5 Washington State Office of Minority and Women's Business Enterprises, as  
6 meeting the criteria outlined in 49 CFR 26 regarding DBE certification.  
7

8 **Commercially Useful Function (CUF)**

9 49 CFR 26.55(c)(1) defines commercially useful function as: "A DBE performs  
10 a commercially useful function when it is responsible for execution of the work  
11 of the contract and is carrying out its responsibilities by actually performing,  
12 managing, and supervising the work involved. To perform a commercially  
13 useful function, the DBE must also be responsible, with respect to materials  
14 and supplies used on the contract, for negotiating price, determining quality  
15 and quantity, ordering the material, and installing (where applicable) and  
16 paying for the material itself. To determine whether a DBE is performing a  
17 commercially useful function, you must evaluate the amount of work  
18 subcontracted, industry practices, whether the amount the firm is to be paid  
19 under the contract is commensurate with the work it is actually performing and  
20 the DBE credit claimed for its performance of the work, and other relevant  
21 factors."  
22

23 **DBE Commitment** – The dollar amount the Contractor indicates they will be  
24 subcontracting to be applied towards the DBE Condition of Award Goal as  
25 shown on the DBE Utilization Certification Form, and in the Bid Item break  
26 down for each DBE Subcontractor. This DBE Commitment amount will be  
27 incorporated into the Contract and shall be considered a Contract requirement.  
28 Any changes to the DBE Commitment shall require Engineer's approval.  
29

30 **DBE Condition of Award (COA) Goal** – An assigned numerical percentage of  
31 the Bid amount of the Contract. This is the minimum amount that the Bidder  
32 must commit to by submission of the Utilization Certification Form and/or by  
33 Good Faith Effort (GFE). The DBE COA Goal will also be applied to change  
34 orders associated with this Contract.  
35

36 **DBE Directory of Certified Firms** – A publication listing all Minority, Women,  
37 and Disadvantaged Business Enterprises currently certified by the  
38 Washington State Office of Minority and Women's Business Enterprises  
39 (OMWBE). The on-line Directory is available to contractors for their use in  
40 identifying and soliciting interest from DBE firms whose participation on a  
41 contract may be counted toward achievement of the assigned DBE COA Goal.  
42

43 **Description of Work** – Specific descriptions of work that the DBE is certified  
44 to perform, as identified in the OMWBE Directory of Certified Firms, under the  
45 DBE's profile page.  
46

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

51 **Manufacturer (DBE)** – A DBE firm that operates or maintains a factory or  
52 establishment that produces on the premises the materials, supplies, articles,



1 or equipment required under the Contract. A DBE Manufacturer shall produce  
2 finished goods or products from raw or unfinished material or purchase and  
3 substantially alters goods and materials to make them suitable for construction  
4 use before reselling them.

5  
6 **Regular Dealer (DBE)** – A DBE firm that owns, operates, or maintains a store,  
7 warehouse, or other establishment in which the materials or supplies required  
8 for the performance of a Contract are bought, kept in stock, and regularly sold  
9 to the public in the usual course of business. To be a Regular Dealer, the DBE  
10 firm shall engage in, as its principal business and in its own name, the  
11 purchase and sale of the products in question. A Regular Dealer in such items  
12 as steel, cement, gravel, stone, and petroleum products need not keep such  
13 products in stock if it owns or operates distribution equipment. Brokers and  
14 packagers shall not be regarded as Regular Dealers within the meaning of this  
15 definition.

16  
17 **DBE COA Goal**

18 → The Contracting Agency has established a COA Contract Goal in the amount of: \*\*\*  
19 nine percent (9%) of the contract total for COA DBE goals \*\*\*. ←

20  
21 **DBE Eligibility/Selection of DBEs**

22 A Directory of Certified Firms is available at the OMWBE web site. A description of  
23 specific items of work that a DBE is certified to perform is shown in the directory on  
24 the DBE's profile page.

25  
26 **Crediting DBE Participation**

27 Subcontractors proposed as COA must be certified prior to the due date for bids on  
28 the Contract. All non-COA DBE Subcontractors shall be certified before the  
29 subcontract on which it is participating is executed.

30  
31 DBE participation cannot be counted toward the Contractor's contract goal until the  
32 amount being counted has actually been paid to the DBE.

33 The following are some examples of what may be counted as DBE participation. In  
34 all cases the DBE must be certified for the work being considered and must be  
35 capable of performing a CUF during the execution of the Work.

36  
37 **DBE Prime Contractor**

38 A DBE Contractor may only take credit for that portion of the total dollar value  
39 of the Contract equal to the distinct, clearly defined portion of the Work that the  
40 DBE performs with its own forces.

41  
42 **DBE Subcontractor**

43 Only that portion of the total dollar value of the subcontract equal to the  
44 distinct, clearly defined portion of the Work that the DBE performs with its own  
45 forces. Include the cost of supplies and materials obtained by the DBE for its  
46 work on the contract, and equipment leased by the DBE.

47  
48 The supplies, materials, and equipment purchased or leased from the  
49 Contractor or its affiliate shall not be credited. Including any Contractor's  
50 resources available to DBE subcontractors at no cost.  
51



1 If a DBE subcontracts a portion of the Work of its contract to another firm, the  
2 value of the subcontracted Work may be counted toward the DBE COA Goal  
3 only if the DBE's Lower-Tier Subcontractor is also a DBE. Work subcontracted  
4 to a non-DBE does not count towards the DBE COA Goal.

5  
6 Count expenditures toward DBE COA Goal only if the DBE is performing a  
7 commercially useful function (CUF) on that contract.

8  
9 **DBE Subcontract and Lower Tier Subcontract Documents**

10 There must be a subcontract agreement that complies with 49 CFR Part 26  
11 and fully describes the distinct elements of Work committed to be performed by  
12 the DBE. The subcontract agreement shall incorporate requirements of the  
13 primary Contract. Subcontract agreements of all tiers, including lease  
14 agreements shall be readily available at the project site for the Engineer  
15 review.

16  
17 **DBE Broker/Packager**

18 The value of fees or commissions charged by a DBE Broker or a DBE  
19 behaving in a manner of a Broker for providing a bona fide service, such as  
20 professional, technical, consultant, managerial services, or for providing bonds  
21 or insurance will only be credited towards meeting the DBE COA Goal if the  
22 firm is determined to be performing a CUF.

23  
24 **Force Account Work**

25 When the Contractor elects to utilize force account Work to meet the DBE COA  
26 Goal, as demonstrated by listing this force account Work on the DBE  
27 Utilization Certification Form, for the purposes of meeting DBE COA Goal, only  
28 50% of the Proposal amount shall be credited toward the Contractors  
29 Commitment to meet the DBE COA Goal.

30  
31 One hundred percent of the actual amounts paid to the DBE for the force  
32 account Work shall be credited towards DBE COA Goal.

33  
34 **Trucking**

35 The DBE trucking firm receives credit for the value of the transportation  
36 services it provides on the Contract using trucks it owns or leases, licenses,  
37 insures, and operates with drivers it employs.

38  
39 The Work that a DBE trucking firm performs with trucks it leases from other  
40 certified DBE trucking firms qualify for 100% DBE credit.

41  
42 Only the fees/commissions the DBE receives for arranging the transportation  
43 services provided is credited when trucks are leased from non-DBE trucking  
44 firm. The trucking Work subcontracted to any non-DBE trucking firm will not  
45 receive credit for Work done on the project.

46  
47 Truck registration and lease agreements shall be readily available at the  
48 project site for the Engineer review.

**DBE Manufacturer and DBE Regular Dealer**

If materials or supplies are obtained from a DBE Manufacturer, 100 percent of the cost of materials or supplies can count toward the DBE COA Goal. The DBE Manufacturer shall be certified as such by OMWBE.

Sixty percent (60%) of the cost of materials or supplies purchased from a DBE Regular Dealer may be credited toward meeting the DBE COA Goal. If the role of the DBE Regular Dealer is determined to be that of a Broker, then the DBE credit shall be limited to the fee or commission it receives for its services. Regular Dealer status is granted on a Contract-by-Contract basis.

A firm wishing to be approved as a Regular Dealer must submit a request in writing to WSDOT for approval, no later than ten working days prior to Bid opening. The Approved Regular Dealers List is published on WSDOT's Office of Equal Opportunity (OEO) web site.

Purchase of materials or supplies from a DBE which is neither a manufacturer nor a regular dealer, (i.e. Broker) only the fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, can count toward DBE COA Goal, provided the fees are not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves cannot be counted toward DBE COA Goal.

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

**Disadvantaged Business Enterprise Utilization Certification FORM # 272-056 EF**

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

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

- Force account at 50%
- Regular dealer at 60%

In the event of arithmetic errors in completing the Disadvantaged Business Enterprise Utilization Certification the amount listed to be applied towards the DBE

COA Goal for each DBE shall govern and the DBE total amount shall be adjusted accordingly.

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

**Disadvantaged Business Enterprise Written Confirmation Document(s) FORM # 422-031 EF**

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

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

A Disadvantaged Business Enterprise Written Confirmation Document (form No. 422-031 EF) is included in your Proposal package for this purpose.

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

It is prohibited for the Bidder to require a DBE to submit a Written Confirmation Document with any part of the form left blank. Should the Contracting Agency determine that a Written Confirmation Document was signed by a DBE that was not complete; the validity of the document comes into question and the associated DBE participation may not receive credit.

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

The successful Bidder shall be selected on the basis of having submitted the lowest responsive Bid, which demonstrates a good faith effort to achieve the DBE COA Goal. Achieving the DBE COA Goal may be accomplished in one of two ways, as follows:

**1. By meeting the DBE COA Goal**

The best indication of GFE is to document, through submission of the Disadvantaged Business Enterprise Utilization Certification and supporting Disadvantaged Business Enterprise Written Confirmation Document(s) that the Bidder has obtained enough DBE participation to meet or exceed the assigned DBE COA Goal. That being the case, no additional GFE documentation is required. Or;

**2. By documentation that the Bidder made adequate GFE to meet the DBE COA Goal**

The Bidder may demonstrate a GFE in whole or part through GFE documentation ONLY IN THE EVENT a Bidder's efforts to solicit sufficient

1 DBE participation have been unsuccessful. In this case, the Bidder must  
2 supply GFE documentation in addition to the Disadvantaged Business  
3 Enterprise Utilization Certification, and supporting Disadvantaged  
4 Business Enterprise (DBE) Written Confirmation Document(s).  
5

6 **Note:** In the case where the Bidder was awarded the contract based on  
7 demonstrating adequate GFE the advertised DBE COA Goal will not  
8 be reduced to the Bidder's partial commitment. Further, the Bidder  
9 shall demonstrate a GFE during the life of the Contract to attain the  
10 DBE COA Goal as assigned to the project.  
11

12 GFE documentation shall be received, as specified in the special provisions for  
13 Section 1-02.9 Delivery of Proposal.  
14

15 Based upon all the relevant documentation submitted in Bid or as a supplement to  
16 Bid, the Contracting Agency shall determine whether the Bidder has demonstrated  
17 sufficient GFE to achieve DBE participation. The Contracting Agency will make a  
18 fair and reasonable judgment of whether a Bidder that did not meet the DBE COA  
19 Goal through participation, made adequate good faith efforts as demonstrated by  
20 the GFE documentation.  
21

#### 22 **Good Faith Effort (GFE) Documentation**

23 The following is a list of types of actions, which would be considered as part of the  
24 Bidder's GFE to achieve DBE participation. It is not intended to be a mandatory  
25 checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of  
26 efforts may be relevant in appropriate cases.  
27

- 28 1. Soliciting through all reasonable and available means (e.g. attendance at  
29 pre-bid meetings, advertising and/or written notices) the interest of all  
30 certified DBEs who have the capability to perform the Work of the  
31 Contract. The Bidder must solicit this interest within sufficient time to allow  
32 the DBEs to respond to the solicitation. The Bidder must determine with  
33 certainty if the DBEs are interested by taking appropriate steps to follow  
34 up initial solicitations.  
35
- 36 2. Selecting portions of the Work to be performed by DBEs in order to  
37 increase the likelihood that the DBE COA Goal will be achieved. This  
38 includes, where appropriate, breaking out contract Work items into  
39 economically feasible units to facilitate DBE participation, even when the  
40 Contractor might otherwise prefer to perform these Work items with its  
41 own forces.  
42
- 43 3. Providing interested DBEs with adequate information about the Plans,  
44 Specifications, and requirements of the Contract in a timely manner to  
45 assist them in responding to a solicitation.  
46
- 47 a. Negotiating in good faith with interested DBEs. It is the Bidder's  
48 responsibility to make a portion of the Work available to DBE  
49 subcontractors and suppliers and to select those portions of the Work  
50 or material needs consistent with the available DBE subcontractors  
51 and suppliers, so as to facilitate DBE participation. Evidence of such  
52 negotiation includes the names, addresses, and telephone numbers



1 of DBEs that were considered; a description of the information  
2 provided regarding the Plans and Specifications for the Work selected  
3 for subcontracting; and evidence as to why additional agreements  
4 could not be reached for DBEs to perform the Work.

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

- 18  
19 4. Not rejecting DBEs as being unqualified without sound reasons based on  
20 a thorough investigation of their capabilities. The Contractor's standing  
21 within its industry, membership in specific groups, organizations, or  
22 associations and political or social affiliations (for example union vs. non-  
23 union employee status) are not legitimate causes for the rejection or non-  
24 solicitation of bids in the Contractor's efforts to meet the DBE COA Goal.  
25  
26 5. Making efforts to assist interested DBEs in obtaining bonding, lines of  
27 credit, or insurance as required by the recipient or Contractor.  
28  
29 6. Making efforts to assist interested DBEs in obtaining necessary  
30 equipment, supplies, materials, or related assistance or services.  
31  
32 7. Effectively using the services of available minority/women community  
33 organizations; minority/women contractors' groups; local, State, and  
34 Federal minority/women business assistance offices; and other  
35 organizations as allowed on a case-by-case basis to provide assistance in  
36 the recruitment and placement of DBEs.  
37  
38 8. Documentation of GFE must include copies of each DBE and non-DBE  
39 subcontractor quotes submitted to the Bidder when a non-DBE  
40 subcontractor is selected over a DBE for Work on the Contract. (ref.  
41 updated DBE regulations – 26.53(b)(2)(vi) & App. A)

42  
43 **Administrative Reconsideration of GFE Documentation**

44 Any Bidder has the right to reconsideration but only for the purpose of reassessing  
45 the GFE documentation that was originally submitted with their Bid, and determined  
46 to be inadequate.

- 47  
48 • The Bidder must request within 48 hours of GFE determination and  
49 schedule a reconsideration hearing within seven calendar days of  
50 notification of being nonresponsive or forfeit the right to reconsideration.  
51

- The reconsideration decision on the adequacy of the Bidder's GFE documentation shall be made by an official who did not take part in the original determination.
- Only the GFE documentation submitted and evaluated to meeting the required DBE COA Goal shall be considered. Bidder shall not introduce new documentation at the reconsideration hearing.
- The Bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the Bidder's position as to why the GFE documentation demonstrates a sufficient effort.
- The reconsideration official shall provide the Bidder with a written decision on reconsideration within five working days of the hearing explaining the basis for their finding.

#### **Procedures between Award and Execution**

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

1. Additional information for all successful DBEs as shown on the Disadvantaged Business Enterprise Utilization Certification:
  - a. Correct business name, federal employee identification number (if available), and mailing address.
  - b. List of all Bid items (with a clear description of the Work to be performed) assigned to each successful DBE, including the dollar value.
  - c. Description of partial items (if any) to be sublet to each successful DBE specifying the Work committed under each item to be performed and including the dollar value of the DBE portion.
  - d. Total amounts shown for each DBE shall match the amount shown on the Disadvantaged Business Enterprise Utilization Certification. A breakdown that does not conform to the Disadvantaged Business Enterprise Utilization Certification or that demonstrates a different amount of DBE participation than that included in the Disadvantaged Business Enterprise Utilization Certification will be returned for correction.
2. A list of all firms who submitted a bid or quote in attempt to participate in this project whether they were successful or not. Include the business name and mailing address.

**Note:** The firms identified by the Contractor may be contacted by the Contracting Agency to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three-years.

**Procedures after Execution**

**Commercially Useful Function (CUF)**

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

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

The 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 the funds are passed in order to obtain the appearance of DBE participation.

The Engineer will use the following factors in determining whether a DBE trucking company is performing a CUF:

- The DBE shall be responsible for the management and supervision of the entire trucking operation. The owner demonstrates business related knowledge, shows up on site and is active in running the business.
- The DBE finances are independently controlled by the DBE.
- The DBE shall with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract. Employees are shown exclusively on the DBE payroll.
- The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.
- Lease agreements for trucks shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others provided it is with the consent of the DBE and the lease provides the DBE absolute priority for use of the leased truck.

- Leased trucks shall display the name and identification number of the DBE.
- Leased trucks shall be driven by DBE employees included in the DBE's payroll.

The DBE may lease trucks from another DBE including a DBE owner-operator. The DBE who leases trucks from another DBE shall claim participation for the total value of the transportation services the lessee DBE provides on the Contract.

#### **Joint Checking**

A joint check is issued by a Contractor to a Subcontractor and to a material supplier for items or services to be incorporated into a project.

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

The approval to use joint checks and the use will be closely monitored by the Engineer. To receive DBE credit for performing a CUF with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself." The Contractor shall submit DBE Joint Check Request Form for the Engineer approval prior to using a joint check.

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

#### **Prompt Payment**

Refer to Section 1-08.1 for Prompt Payment requirements associated with this contract.

#### **Reporting**

All certified DBE Work whether COA or race neutral participation is reported. The Contractor shall submit a Monthly Report of Amounts Credited as DBE Participation to the Project Engineer each month, regardless of whether payments were made or Work occurred, between Execution of the Contract and the final amounts paid to DBE contractor or Completion of the Contract using the application available at: <https://remoteapps.wsdot.wa.gov/mapsdata/tools/dbeparticipation/>. The monthly report is due 20 calendar days following the end of the month. After Execution of the Contract, the Contractor shall send an e-mail to DBEAdmin@wsdot.wa.gov containing the following information: the first and last name, e-mail address, title and phone number of the person that will be submitting the above documents for the Contractor. The e-mail shall include the WSDOT contract number they will be reporting on. After receipt of this



1 information by WSDOT, the Contractor will receive an e-mail containing their  
2 username and password for the application and a link to the application.  
3 Reporting instructions are available in the application.  
4

5 In the event that the payments to a DBE contractor have been made by an  
6 entity other than the Contractor, as in the case of a lower-tier Subcontractor or  
7 supplier, then the Contractor shall obtain evidence of payments from the  
8 paying entity and report these payments to the Engineer.  
9

#### 10 **Changes in COA Work Committed to DBE**

11 The Contractor shall utilize the COA DBEs to perform the work and supply the  
12 materials for which each is committed unless approved by the Engineer. The  
13 Contractor shall not be entitled to any payment for work or material completed by  
14 the Contractor or subcontractors that was committed to be completed by the COA  
15 DBEs.  
16

#### 17 **Owner Initiated Changes**

18 The Engineer will consider the impact on DBE participation in instances where  
19 the Engineer changes Work that was committed to a DBE at the time of  
20 Contract Award. In such instances, the Contractor shall not be required to  
21 substitute for the Work but is encouraged to do so. The Engineer may direct  
22 DBE participation or solicitation of DBEs as part of a change order.  
23

#### 24 **Contractor-Initiated Changes**

25 The Contractor cannot reduce the amount of work of a COA DBE without good  
26 cause, even if the Contractor continues to meet the DBE COA Commitment  
27 through other means. Reducing a COA DBE's Commitment is viewed as a  
28 partial DBE termination, subject to the procedures below.  
29

#### 30 **Original Quantity Under runs**

31 In the event that Work committed to a DBE firm as part of the COA underruns  
32 the original planned quantities the Contractor is encouraged to substitute the  
33 remaining applicable Work to another DBE but is not required to do so.  
34

#### 35 **Contractor Proposed DBE Substitutions**

36 Requests to substitute a COA DBE must be for good cause (see DBE  
37 termination process below), and requires the written approval of the Engineer.  
38 After receiving a termination with good cause approval, the Contractor may  
39 only replace a DBE with another certified DBE. When any changes  
40 encountered between Contract Award and Execution that result in a  
41 substitution of COA DBE, the substitute DBE shall be certified prior to the due  
42 date for bids on the Contract.  
43

#### 44 **DBE Termination**

45 Termination of a COA DBE (or an approved substitute DBE) is only allowed in  
46 whole or in part with prior written approval of the Engineer. The Contractor  
47 must have good cause to terminate a COA DBE.  
48

49 Good cause typically includes situations where the DBE Subcontractor is  
50 unable or unwilling to perform the work of its subcontract. Good cause may  
51 exist if:  
52

- The DBE fails or refuses to execute a written contract.
- The DBE fails or refuses to perform the Work of its subcontract in a way consistent with normal industry standards.
- The DBE fails or refuses to meet the Contractor's reasonable nondiscriminatory bond requirements.
- The DBE becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The DBE is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal law or applicable State law.
- The DBE voluntarily withdraws from the project, and provides written notice of its withdrawal.
- The DBE's work is deemed unsatisfactory by the Engineer and not in compliance with the contract.
- The DBE's owner dies or becomes disabled with the result that the DBE is unable to complete its Work on the contract.

Good cause does not exist if:

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

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

When a COA DBE is terminated, or fails to complete its work on the contract for any reason, the Contractor shall substitute with another DBE, substitute other DBE participation or provide documentation of GFE. A plan to achieve the COA DBE Commitment shall be submitted to the Engineer within 2 working days of the approval of termination or the Contract shall be suspended until such time the substitution plan is submitted.

1  
2 **Decertification/Graduation**

3 When a DBE is "decertified" or "graduates" from the DBE program during the  
4 course of the Contract, the participation of that DBE shall continue to count  
5 towards the DBE COA Goal as long as the subcontract with the DBE was  
6 executed prior to the decertification notice. The Contractor is obligated to  
7 substitute when a DBE does not have an executed subcontract agreement at  
8 the time of decertification/graduation.  
9

10 **Consequences of Non-Compliance**

11 **Breach of Contract**

12 Each contract with a Contractor (and each subcontract the Contractor signs  
13 with a Subcontractor) must include the following assurance clause:  
14

15 The Contractor, subrecipient, or Subcontractor shall not discriminate on the  
16 basis of race, color, national origin, or sex in the performance of this contract.  
17 The Contractor shall carry out applicable requirements of 49 CFR Part 26 in  
18 the award and administration of DOT-assisted contracts. Failure by the  
19 Contractor to carry out these requirements is a material breach of this contract,  
20 which may result in the termination of this contract or such other remedy as the  
21 recipient deems appropriate, which may include, but is not limited to:

- 22  
23 (1) Withholding monthly progress payments;  
24  
25 (2) Assessing sanctions;  
26  
27 (3) Liquidated damages; and/or  
28  
29 (4) Disqualifying the Contractor from future bidding as non-responsible.  
30

31 **Notice**

32 If the Contractor or any Subcontractor, Consultant, Regular Dealer, or service  
33 provider is deemed to be in non-compliance, the Contractor will be informed in  
34 writing, by certified mail by the Engineer that sanctions will be imposed for  
35 failure to meet the DBE COA Commitment and/or submit documentation of  
36 good faith efforts. The notice will state the specific sanctions to be imposed  
37 which may include impacting a Contractor or other entity's ability to participate  
38 in future contracts.  
39

40 **Sanctions**

41 If it is determined that the Contractor's failure to meet all or part of the DBE COA  
42 Commitment is due to the Contractor's inadequate good faith efforts throughout the  
43 life of the Contract, including failure to submit timely, required Good Faith Efforts  
44 information and documentation, the Contractor may be required to pay DBE penalty  
45 equal to the amount of the unmet Commitment, in addition to the sanctions outlined  
46 in Section 1-07.11(5).  
47

48 **Payment**

49 Compensation for all costs involved with complying with the conditions of this  
50 Specification and any other associated DBE requirements is included in payment  
51 for the associated Contract items of Work, except otherwise provided in the  
52 Specifications.



## **Advertisement For Bids**

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**NOTICE IS HEREBY GIVEN** that sealed bids will be received by the Engineering Division of the City of Des Moines, Washington, until 2:00 P.M., on Monday, February 1, 2016 in the Engineering Building, 21650 11<sup>th</sup> Avenue South, Des Moines, WA 98198

Bid opening will occur at approximately 2:15 P.M., on Monday, February 1, 2016 in the Public Works Service Center, 2255 South 223<sup>rd</sup> Street, Des Moines, WA 98198, at which time all bids will be publicly opened and read aloud for:

**City of Des Moines  
Redondo Boardwalk Repair Project  
Federal Aid No. ER-1501(008)  
Contract No. TA-5662**

The City will hold a Pre-Bid meeting for interested plan holders at 10:00 A.M., on Tuesday, January 19, 2016 at the boat ramp near project site.

Work contemplated to be performed under this contract is as follows:

- Removal and Disposal of existing timber boardwalk
- Precast deck slabs.
- Precast crossbeams.
- Pile encapsulation
- Pedestrian Rail
- Access Ladders
- Cast-in-place closure pour
- Cast in place span 1
- Staining
- Pedestrian Lighting
- Provide temporary fencing, erosion control, and property restoration.
- Erosion Control
- Pedestrian Safety Improvement at S. 287th
- Pavement Markings
- And all incidental items necessary to complete the Work as described in the Plans and Specifications.

The Contracting Agency has established a Condition of Award (COA) contract goal in the amount of nineteen percent (19%) of the contract total for COA Disadvantaged Business Enterprise (DBE) goals.

Access to bidding information (plans, specifications, addenda, and Bidders List) is available through City of Des Moines' on-line plan room. Free-of-charge access is provided to Prime

**Bidders, Subcontractors, and Vendors by going to www.bxwa.com and clicking on "Posted Projects", "Public Works", and "City of Des Moines." This on-line plan room provides Bidders with fully usable on-line documents; with the ability to: download, view, print, order full/partial plan sets from numerous reprographic sources, and a free on-line digitizer/take-off tool. Bidders must "Register" in order to receive automatic e-mail notification of future addenda and to place themselves on the "Self-Registered Bidders List." Bidders that do not register will not be automatically notified of addenda and will need to periodically check the on-line plan room for addenda issued on this project. Contact Builders Exchange of Washington at 425-258-1303 should you require assistance.**

All bid proposals shall be accompanied by a bid proposal deposit in cash, certified check, cashier's check, postal money order, or bid bond made payable to the City of Des Moines in an amount not less than five percent (5%) of the amount of such bid proposal. Bid bonds shall be in a form satisfactory to the City Attorney. Should the successful bidder fail to enter into such contract and furnish satisfactorily the bond within the time stated in the specifications, the bid proposal deposit will be forfeited to the City of Des Moines.

The City reserves the right to reject any or all bids and to waive informalities in the bidding and to make the award as deemed to be in the best interest of the City. No bidder may withdraw his bid for a period of thirty (30) days after the date set for the bid opening.

All schedules on the Bid Proposal must be completed, or the bid shall be considered non-responsive. Basis for award shall be the lowest total Bid for Schedules A and B included in the Proposal.

"The (City of Des Moines) in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award."

By order of the City Council of the City of Des Moines.

CITY OF DES MOINES  
Bonnie Wilkins, City Clerk

Published: **The Seattle Times – January 11, January 18, 2016**

**The Daily Journal of Commerce – January 11, January 18, 2016**

- 1 13. The Contractor, in fulfilling its obligations under these specifications, shall implement  
2 specific affirmative action steps, at least as extensive as those standards prescribed  
3 in paragraph 7 of this Special Provision, so as to achieve maximum results from its  
4 efforts to ensure equal employment opportunity. If the Contractor fails to comply with  
5 the requirements of the Executive Order, the implementing regulations, or these  
6 specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.  
7  
8 14. The Contractor shall designate a responsible official to monitor all employment  
9 related activity to ensure that the company EEO policy is being carried out, to submit  
10 reports relating to the provisions hereof as may be required by the government and  
11 to keep records. Records shall at least include, for each employee, their name,  
12 address, telephone numbers, construction trade, union affiliation if any, employee  
13 identification number when assigned, social security number, race, sex, status (e.g.,  
14 mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours  
15 worked per week in the indicated trade, rate of pay, and locations at which the work  
16 was performed. Records shall be maintained in an easily understandable and  
17 retrievable form; however, to the degree that existing records satisfy this requirement,  
18 the Contractors will not be required to maintain separate records.  
19  
20 15. Nothing herein provided shall be construed as a limitation upon the application of  
21 other laws which establish different standards of compliance or upon the application  
22 of requirements for the hiring of local or other area residents (e.g., those under the  
23 Public Works Employment Act of 1977 and the Community Development Block Grant  
24 Program).  
25  
26 16. Additional assistance for Federal Construction Contractors on contracts  
27 administered by Washington State Department of Transportation or by Local  
28 Agencies may be found at:  
29

30 Washington State Dept. of Transportation  
31 Office of Equal Opportunity  
32 PO Box 47314  
33 310 Maple Park Ave. SE  
34 Olympia WA  
35 98504-7314  
36 Ph: 360-705-7090  
37 Fax: 360-705-6801  
38 <http://www.wsdot.wa.gov/equalopportunity/default.htm>  
39  
40

41 (December 8, 2014 APWA GSP, Option B)

42 **Disadvantaged Business Enterprise Condition of Award Participation**

43 The Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 26 apply to  
44 this Contract. Demonstrating compliance with these specifications is a Condition of  
45 Award (COA) of this Contract. Failure to comply with the requirements of this specification  
46 may result in your bid being found to be nonresponsive and may be rejected.

47 **DBE COA Goal**

48 The Contracting Agency has established a COA Contract goal in the amount of:  
49 nineteen percent (19%).  
50



1 **DBE Eligibility/Selection of DBEs**

2 A Directory of Certified DBE Firms denoting the Description of Work the DBE  
3 Contractors are certified to perform is available at:

4  
5 [www.omwbe.wa.gov/certification/index.shtml](http://www.omwbe.wa.gov/certification/index.shtml).

6  
7 The directory provides plain language on the Description of Work that the listed  
8 DBE's have been certified by the Office of Minority and Women's Business  
9 Enterprises (OMWBE) to perform. The Bidder shall use the Directory of Certified  
10 DBE Firms to confirm if a DBE is certified for the "Description of Work" the Bidder  
11 lists on the DBE Utilization Certification form # 272-056 EF (see form  
12 instructions) and therefore qualifies for credit towards the COA goal.

13  
14 **Crediting DBE Participation**

15 **Joint Venture**

16 When a DBE performs as a participant in a joint venture, only that portion of the  
17 total dollar value of the Contract equal to the distinct, clearly defined portion of  
18 the Work that the DBE performs with its own forces shall be credited.

19  
20 **DBE Prime Contractor**

21 A DBE Prime Contractor may only take credit for that portion of the total dollar  
22 value of the Contract equal to the distinct, clearly defined portion of the Work  
23 that the DBE Prime performs with its own forces.

24  
25 **DBE Subcontractor**

26 When a DBE firm participates as a Subcontractor only that portion of the total  
27 dollar value of the Contract equal to the distinct, clearly defined portion of the  
28 Work that the DBE performs with its own forces shall be credited.

- 29
- 30 • Include the cost of supplies and materials obtained by the DBE for the  
31 Work in the Contract including supplies purchased or equipment leased  
32 by the DBE.
    - 33 • However, you may not take credit for supplies, materials, and  
34 equipment the DBE Subcontractor purchases or leases from the  
35 Prime Contractor or its affiliate. In addition, Work performed by a  
36 DBE, utilizing resources of the Prime Contractor or its affiliates shall  
37 not be credited.
  - 38
  - 39 • In very rare situations, a DBE firm may utilize equipment and/or  
40 personnel from a non-DBE firm other than the Prime Contractor or its  
41 affiliates. Should this situation arise the arrangement must be short-term  
42 and have prior written approval from the Office of Equal Opportunity  
43 (OEO).
  - 44
  - 45 • Count the entire value of fees or commissions charged by a DBE firm for  
46 providing a bona fide service, such as professional, technical, consultant,  
47 managerial services, or for providing bonds or insurance.
  - 48
  - 49 • When a DBE subcontracts to another firm, the value of the subcontracted  
50 Work may be counted as participation only if the DBE's lower tier  
51 Subcontractor is also a DBE. Work that a DBE subcontracts to a non-  
52 DBE firm shall not be credited.

- When non-DBE Subcontractor further subcontracts to a lower-tier Subcontractor or supplier who is a certified DBE, then that portion of the Work further subcontracted may be credited as DBE participation, provided it is a distinct clearly defined portion of the Work that the DBE is certified to perform and the DBE Subcontractor performs the Work with its own forces.
- If a firm is not certified as a DBE at the time of the execution of the contract, their participation cannot be counted toward any DBE goals.

#### Trucking

Use the following factors in determining DBE credit and whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which credit is being claimed.
2. The DBE must itself own and, with its own workforce, operate at least one fully licensed, insured, and operational truck used on the Contract.
3. The DBE receives credit only for the value of the transportation services it provides on the Contract using trucks it owns or leases, licenses, insures, and operates with drivers it employs. For purposes of this requirement a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others provided it is with the consent of the DBE and the lease provides the DBE first priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
4. The DBE may lease trucks from another DBE firm including an owner-operator provided they are certified as a DBE for trucking. The DBE who leases trucks from another DBE may claim participation for the total value of the transportation services the lessee DBE provides on the Contract.
5. The DBE may also lease trucks from a non-DBE firm and may enter into an agreement with an owner-operator who is a non-DBE. The DBE shall only receive credit for the number of additional non-DBE trucks equal or less than the number of DBE trucks the firms owns or has leased/subcontracted through another DBE trucking company. The DBE must control the work of the non-DBE trucks. If the non-DBE is performing the work without supervision of that work by the DBE, the DBE is not performing a Commercially Useful Function (CUF).
6. In any lease or owner-operator situation, as described in requirement #4 and #5 above, the following rules shall apply:
  - a. A written lease/rental agreement is required for all trucks leased or rented; documenting the ownership and the terms

1 of the agreement. The agreements must be submitted and  
2 approved by the Contracting Agency prior to the beginning of  
3 the Work. The agreement must show the leaser's name, truck  
4 description and agreed upon amount and method of payment  
5 (hour, ton, or per load). All lease agreements shall be for a  
6 long-term relationship, rather than for the individual project.  
7 (This requirement does not apply to owner-operator  
8 arrangements.)  
9

10 b. Only the vehicle, (not the operator) may be leased or rented.  
11 (This requirement does not apply to owner-operator  
12 arrangements).  
13

14 7. Credit may only be claimed for DBE trucking firms operating under a  
15 subcontract or a written agreement approved by the Contracting  
16 Agency prior to performing Work.  
17

#### 18 Expenditures paid to other DBEs

19 Expenditures paid to other DBEs for materials or supplies may be counted  
20 toward DBE goals as provided in the following:  
21

##### 22 Manufacturer

23 You may claim DBE credit for 100 percent of value of the materials or  
24 supplies obtained from a DBE manufacturer.  
25

26 A manufacturer is a firm that operates or maintains a factory or  
27 establishment that produces, on the premises, the materials, supplies,  
28 articles, or equipment required under the contract. A manufacturer shall  
29 include firms that produce finished goods or products from raw or unfinished  
30 material or that purchases and substantially alters goods and materials to  
31 make them suitable for construction use before reselling them.  
32

33 In order to receive credit as a DBE Manufacturer, the firm must be certified  
34 by OMWBE as a manufacturer in a NAICS code that falls within the 31XXXX  
35 to 33XXXX classification.  
36

##### 37 Regular Dealer

38 You may claim credit for 60 percent of the value of the materials or supplies  
39 purchased from a DBE regular dealer. Rules applicable to regular dealer  
40 status are contained in 49 CFR Part 26.55.e.2.  
41

42 To be considered a regular dealer you must meet the following criteria:  
43

- 44 • WSDOT considers and recognizes a regular dealer, as a firm that  
45 owns, operates, or maintains a store, warehouse, or other  
46 establishment in which the materials or supplies required for the  
47 performance of the Contract and described by the specifications of  
48 the Contract are bought, kept in stock and regularly sold or leased  
49 to the public in the usual course of business.  
50



- Sixty percent (60%) of the cost of materials or supplies purchased from an approved regular dealer may be credited as DBE participation.

Regular dealer status is granted on a contract-by-contract basis. A firm wishing to be approved as a regular dealer for WSDOT contracted projects or Highways & Local Program administered projects must submit a request in writing to OEO for approval, no later than seven days prior to bid opening.

Once the OEO has received the request, an onsite review will be set up with the firm and a review conducted to determine the firm's qualifications. If it is determined that the firm qualifies as a regular dealer the OEO will list the firm on an Approved Regular Dealers List. The list may be accessed through the OEO Home website is at:

[www.wsdot.wa.gov/equalopportunity](http://www.wsdot.wa.gov/equalopportunity).

**Note:** Requests to be listed as a regular dealer will only be processed if the requesting firm is certified by the Office of Minority and Women's Business Enterprises in a NAICS code that fall within the 42XXXX NAICS Wholesale code section.

#### **Materials or Supplies Purchased from a DBE**

With regard to materials or supplies purchased from a DBE who is neither a manufacturer nor a regular dealer you may claim credit for the following:

1. Fees or commissions charged for assistance in the procurement of the materials and supplies.
2. Fees or transportation charges for the delivery of materials or supplies.

In either case you may not take credit for any part of the cost of the materials and supplies.

#### **Commercially Useful Function (CUF)**

The Prime Contractor has a responsibility and must treat the working relationship with the DBE such that the DBE is performing a commercially useful function. The Prime Contractor may only take credit for Work performed by a DBE that is determined to be performing a commercially useful function.

- A DBE performs a commercially useful function when it is responsible for execution of a distinct element of Work and is carrying out its responsibilities by performing, managing and supervising the Work involved. The DBE must also be responsible with respect to materials and supplies used on the Contract. For example; negotiating price, determining quality, determining quantities, ordering, installing (if applicable) and paying for the material itself.
- A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, Contract, or project through which funds are passed.

1  
2  
3 **Joint Checking Allowance**

4 Prime Contractors and DBEs must receive pre-approval by the OEO before  
5 using a joint check. Joint check requests shall be submitted by the Prime  
6 Contractor to the Contracting Agency for approval.  
7

8 When requesting approval for use of a joint checking allowance, the Contractor  
9 must distribute a written joint check agreement among the parties (including the  
10 suppliers involved) providing full and prompt disclosure of the expected use of  
11 the joint checks. The agreement shall contain all the information concerning the  
12 parties' obligations and consequences or remedies if the agreement is not  
13 fulfilled or a breach occurs. The joint check request shall be submitted to the  
14 Contracting Agency for approval prior to signing the contract agreement.  
15

16 The following are some general conditions that must be met by all parties  
17 regarding joint check use:  
18

- 19 a. It is understood that the Prime Contractor acts solely as the guarantor  
20 of a joint check.  
21  
22 b. The DBE's own funds are used to pay supplier of materials. The Prime  
23 Contractor does not make direct payment to supplier. In order to be  
24 performing a Commercially Useful Function (CUF), the DBE must  
25 release the check to the supplier (paying for the materials it-self and  
26 not be an extra participant in a transaction).  
27  
28 c. If the Prime Contractor makes joint checks available to one DBE  
29 Subcontractor, the service must be made available to all  
30 Subcontractors (DBE and non-DBE).  
31  
32 d. The relationship between the DBE and its suppliers should be  
33 established independently of and without interference by the Prime  
34 Contractor. The DBE has final decision-making responsibility  
35 concerning the procurement of materials and supplies, including which  
36 supplier to use.  
37  
38 e. The Prime Contractor and DBE shall be able to provide receipts,  
39 invoices, cancelled checks and/or certification statements of payment  
40 if requested by the Contracting Agency.  
41  
42 f. The DBE remains responsible for all other elements of 49 CFR  
43 26.55(c)(1).  
44

45 Failure by the Prime Contractor to request and receive prior approval of a joint  
46 check arrangement will result in the joint check amount not counting towards the  
47 Prime Contractor's DBE goal.

48 **Disadvantaged Business Enterprise Utilization Certification FORM # 272-**  
49 **056 EF**

50 To be eligible for award of the Contract, the Bidder shall properly complete and  
51 submit a Disadvantaged Business Enterprise Utilization Certification with the  
52 Bidder's sealed Bid Proposal, as specified Section 1-02.9 Delivery of Proposal.

1 The Bidder's Disadvantaged Business Enterprise Utilization Certification must  
2 clearly demonstrate how the Bidder intends to meet the DBE COA goal. A  
3 Disadvantaged Business Enterprise Utilization Certification (form # 272-056 EF)  
4 is included in your Proposal package for this purpose as well as instructions on  
5 how to properly fill out the form.  
6

7 In the event of arithmetic errors in completing the Disadvantaged Business  
8 Enterprise Utilization Certification the amount listed to be applied towards the  
9 goal for each DBE shall govern and the DBE total amount shall be adjusted  
10 accordingly.  
11

12 Note: The Contracting Agency shall consider as non-responsive and shall  
13 reject any Bid Proposal submitted that does not contain a  
14 Disadvantaged Business Enterprise Utilization Certification that  
15 accurately demonstrates how the Bidder intends to meet the COA goal.  
16

17 **Disadvantaged Business Enterprise (DBE) Written Confirmation**  
18 **Document(s) FORM # 422-031 EF**

19 The Bidder shall submit a complete and accurate Disadvantaged Business  
20 Enterprise (DBE) Written Confirmation Document for each DBE firm listed in the  
21 Bidder's completed Disadvantaged Business Enterprise Utilization Certification  
22 as submitted with the bid. Failure to do so will result in the associated  
23 participation being disallowed, which may result in bid rejection.  
24

25 A Disadvantaged Business Enterprise (DBE) Written Confirmation Document  
26 (form No. 422-031 EF) is included in your Proposal package for this purpose.  
27

28 The form(s) shall be received as specified in the special provisions for Section  
29 1-02.9 Delivery of Proposal.  
30

31 It is prohibited for the Bidder to require a DBE to submit a Written Confirmation  
32 Document with any part of the form left blank. Should the Contracting Agency  
33 determine that a Written Confirmation Document was signed by a DBE that was  
34 not complete; the validity of the document comes into question and the  
35 associated DBE Participation may not receive credit.  
36

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

38 The successful Bidder shall be selected on the basis of having submitted the  
39 lowest responsive Bid, which demonstrates a good faith effort to achieve the  
40 DBE COA goal. Achieving the goal may be accomplished in one of two ways,  
41 as follows:  
42

43 1. By meeting the goal

44 The best indication of good faith efforts is to document, through  
45 submission of the Disadvantaged Business Enterprise Utilization  
46 Certification and supporting Disadvantaged Business Enterprise (DBE)  
47 Written Confirmation Document(s) that the Bidder has obtained enough  
48 DBE participation to meet or exceed the assigned DBE COA contract  
49 goal. That being the case no additional GFE documentation is required.  
50 Or;  
51

52 2. By documentation that it made adequate GFE to meet the goal

1 The Bidder may demonstrate a GFE in whole or part through GFE  
2 documentation ONLY IN THE EVENT a Bidder's efforts to solicit  
3 sufficient DBE participation have been unsuccessful. In this case, the  
4 Bidder must supply GFE documentation in addition to the  
5 Disadvantaged Business Enterprise Utilization Certification, and  
6 supporting Disadvantaged Business Enterprise (DBE) Written  
7 Confirmation document(s).  
8

9 Note: In the case where the Bidder was awarded the contract based on  
10 demonstrating adequate GFE the advertised DBE goal will not be  
11 reduced to the Bidder's partial commitment. The Bidder shall  
12 demonstrate a GFE during the life of the Contract to attain the DBE  
13 Condition of Award (COA) Goal as assigned to the project.  
14

#### 15 Good Faith Efforts (GFE) Documentation

16 GFE documentation shall be received, as specified in the special provisions for  
17 Section 1-02.9 Delivery of Proposal.  
18

19 Based upon all the relevant documentation submitted in Bid or as supplement  
20 to Bid, the Contracting Agency shall determine whether the Bidder has  
21 demonstrated a sufficient GFE to achieve DBE participation. The Contracting  
22 Agency will make a fair and reasonable judgment of whether a Bidder that did  
23 not meet the goal through participation, made adequate good faith efforts as  
24 demonstrated by the GFE documentation.  
25

26 The following is a list of types of actions, which would be considered as part of  
27 the Bidder's GFE to achieve DBE participation. It is not intended to be a  
28 mandatory checklist, nor is it intended to be exclusive or exhaustive. Other  
29 factors or types of efforts may be relevant in appropriate cases:  
30

- 31 1. Attendance by the Bidder at any pre-solicitation or pre-Bid meetings  
32 that were scheduled by the Contracting Agency to inform DBEs of  
33 contracting and subcontracting or material supply opportunities  
34 available on the project;
- 35 2. Contacting local Tribes, Tribal Employment Rights Offices (TERO)  
36 concerning the subcontracting or supply opportunities in sufficient time  
37 to allow the enterprises to participate effectively;
- 38 3. Selection by the Bidder of specific economically feasible units of the  
39 project to be performed by DBEs in order to increase the likelihood of  
40 participation by DBEs even if the Bidder preferred to perform these  
41 Work items as the Prime Contractor;
- 42 4. Advertising by the Bidder in general circulation, trade association  
43 minority and trade oriented, women focus publications, concerning the  
44 subcontracting or supply opportunities;
- 45 5. Providing written notice from the Bidder to a reasonable number of  
46 specific DBEs, identified from the OMWBE Directory of Certified DBE  
47 Firms for the selected subcontracting or material supply Work, in  
48 sufficient time to allow the enterprises to participate effectively;  
49  
50  
51



6. Follow-up by the Bidder of initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. Documentation of this kind of action shall include the information outlined below:
  - a. The names, addresses, telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed-up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - b. A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the Work to be performed;
  - c. Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
7. Providing, to interested DBEs, adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply Work;
8. Negotiating in good faith with the DBE firms, and not, without justifiable reason, rejecting as unsatisfactory, Bids that are prepared by any DBE. The DBE's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations - union vs. non-union employee status - are not legitimate causes for the rejection or non-solicitation of bids in the Prime Contractor's efforts to meet the project goal;
9. Advertising and making efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
10. Making any other efforts to obtain DBE participation that were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Contracting Agency;
11. Using the services of minority community organizations, minority contractor groups, local, State, and federal minority business assistance offices and other organizations identified by WSDOT and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises; and
12. Using the WSDOT OEO DBE Supportive Services to assist you. For more information please contact the OEO by calling toll free at (888) 259-9143 or emailing [dbess@wsdot.wa.gov](mailto:dbess@wsdot.wa.gov).

#### **Administrative Reconsideration of GFE Documentation**

Any Bidder has the right to reconsideration but only for the purpose of reassessing their GFE documentation that was determined to be inadequate.

- The Bidder must request and schedule a reconsideration hearing within seven calendar days of notification of being nonresponsive or forfeit the right to reconsideration.
- The reconsideration decision on the adequacy of the Bidder's GFE documentation shall be made by an official who did not take part in the original determination.
- The Bidder shall have the opportunity to meet in person with the official for the purpose of setting forth the Bidder's position as to why the GFE documentation demonstrates a sufficient effort.
- The reconsideration official shall provide the Bidder with a written decision on reconsideration within five business days of the hearing explaining the basis for their finding.

#### **Procedures between Award and Execution**

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

1. Additional information for all successful DBE's as shown on the Disadvantaged Business Enterprise Utilization Certification:
  - a. Correct business name, federal employee identification number (if available), and mailing address.
  - b. List of all Bid items assigned to each successful DBE firm, including unit prices and extensions.
  - c. Description of partial items (if any) to be sublet to each successful DBE firm specifying the distinct elements of Work under each item to be performed by the DBE and including the dollar value of the DBE portion.
- Total amounts shown for each DBE shall not be less than the amount shown on the Disadvantaged Business Enterprise Utilization Certification. A breakdown that does not conform to the Disadvantaged Business Enterprise Utilization Certification or that demonstrates a lesser amount of DBE participation than that included in the Disadvantaged Business Enterprise Utilization Certification will be returned for correction.
2. A list of all firms who submitted a Bid or quote in an attempt to participate in this project whether they were successful or not. Include the business name and a mailing address.

Note: The firms identified by the Prime Contractor may be contacted by the Contracting Agency to solicit general information as follows: age of the firm and average of its gross annual receipts over the past three-years.

**Procedures after Execution**

**Crediting DBE Participation toward Meeting the Goal Reporting**

All DBE work whether COA or race neutral participation is reported. The Prime Contractor shall submit a Quarterly Report of Amounts Credited as DBE Participation form (422-102 EF) on a quarterly basis for any calendar quarter in which DBE has accomplished Work or upon completion of the project, as appropriate. The dollars are to be reported as specified herein.

In the event that the payments to a DBE have been made by an entity other than the Prime Contractor, as in the case of a lower-tier Subcontractor or supplier, then the Prime Contractor shall obtain the quarterly report, including the signed affidavit, from the paying entity and submit the report to the Contracting Agency.

**Changes in DBE COA participation**

**Owner initiated Change Orders**

The Prime Contractor shall demonstrate a GFE to substitute COA DBE participation when the Contracting Agency deletes Work items by change order that impact a COA DBE's Work.

When the Contract allows alternate Work methods which serve to delete or create under-runs in COA DBE Work then the Prime Contractor must provide documentation of negotiating the change with the DBE that was to perform the reduced Work and demonstrate a GFE to substitute other DBE COA participation.

**Original Quantity Under runs**

In the event that Work committed to a DBE firm as part of the COA under runs the original planned quantities the Prime Contractor shall demonstrate a GFE to substitute other DBE COA participation.

**Contractor-Initiated Proposals—General**

The Contractor cannot reduce the amount of work committed to a DBE firm at contract award without good cause and only with written concurrence from the OEO. Reducing a COA DBE's Work is viewed as a partial DBE termination, subject to the procedures below.

**DBE Termination**

A COA DBE Subcontractor may only be terminated in whole or part with the approval of the Contracting Agency (in coordination with OEO). Approval will be granted provided the Prime Contractor demonstrates that the termination is based on good cause.

Good cause typically includes situations where the DBE Subcontractor is unable or has failed to perform the work of its subcontract in accordance with normal industry standards. While not all inclusive, some examples of good cause include the following circumstances:

Good cause may exist if:

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- The listed DBE Subcontractor fails or refuses to execute a written contract.
- The listed DBE Subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards.
- The listed DBE Subcontractor fails or refuses to meet the Prime Contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE Subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE Subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
- The listed DBE Subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE is unable to complete its work on the contract.

Good cause does not exist if:

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

Prior to requesting termination, the Prime Contractor must give notice in writing to the DBE Subcontractor with a copy to the Contracting Agency of its intent to request to terminate DBE work and the reasons for doing so. The DBE Subcontractor shall have five (5) days to respond to the prime Contractor's notice. The DBE's response shall either support the termination or advise the Contracting Agency and the Prime Contractor of the reasons it objects to the termination of its subcontract.



1 When a COA DBE firm is "terminated" from a Contract (or fails to complete  
2 its Subcontract for any reason), the Prime Contractor shall make every good  
3 faith effort to substitute another DBE Firm (ref.to 49 CFR 26.53(g)).  
4

5 **Graduation**

6 When a DBE firm "graduates" from the DBE program (during the course of  
7 an executed subcontract), the DBE participation of that firm "may"  
8 continue to count towards the contract DBE goal.  
9

10 **Decertification**

11 When a COA DBE firm who has a signed subcontract in place with a Prime,  
12 later becomes "decertified" (during the course of that subcontract) – the  
13 DBE participation of that firm "may" continue to count towards the Contract  
14 DBE goal.  
15

16 **Counting payments**

17 Payments to a DBE firm will count toward DBE goals only if the participation  
18 is in accordance with these specifications.  
19

20 **Prompt Payment**

21 Prompt payment to all Subcontractors shall be in accordance with Section  
22 1-08.1(1) of these Contract special provisions.  
23

24 **Payment**

25 Compensation for all costs involved with complying with the conditions of  
26 this specification and any other associated DBE requirements is included in  
27 payment for the associated Contract items of Work.  
28

29 **Damages for Noncompliance**

30 The Prime Contractor shall not discriminate on the basis of race, color,  
31 national origin, or sex in the performance of this Contract. The Prime  
32 Contractor shall carry out applicable requirements of 49 CFR Part 26 in the  
33 award and administration of Contracts, which contain funding assistance  
34 from the United States Department of Transportation. Failure by the Prime  
35 Contractor to carry out these requirements is a material breach of this  
36 Contract, which may result in the Termination of this Contract or such other  
37 remedy as the Contracting Agency deems appropriate.  
38

39 If the Prime Contractor does not comply with any part of its Contract as  
40 required under 49 CFR part 26, and/or any other applicable law or  
41 regulation regarding DBE, the Contracting Agency may withhold payment,  
42 suspend the ability of the Prime Contractor to participate in future  
43 Contracting Agency contracts, impose sanctions or Terminate the Contract,  
44 and subject the Prime Contractor to civil penalties of up to ten percent of  
45 the amount of the Contract for each violation. In the case of WSDOT  
46 Contracts, prequalification may be suspended pursuant to WAC 468-16-  
47 180, and continuous violations (exceeding a single violation) may also  
48 disqualify the Prime Contractor from further participation in WSDOT  
49 Contracts for a period of up to three years.  
50

51 An apparent low Bidder must be in compliance with these Contract  
52 Provisions as a condition precedent to the granting of a notice of award by

the Contracting Agency. The Prime Contractor is entitled to request an adjudicative proceeding with respect to the Contracting Agency's determination of Contract violation and assessed penalties by filing a written application within thirty days of receipt of notification. The adjudicative proceeding, if requested, will be conducted by an administrative law judge pursuant to the procedures set forth in RCW 34.05 and Chapter 10.08 of the Washington Administrative Code.

## **Federal Agency Inspection**

Section 1-07.12 is supplemented with the following:

***(July 30, 2012)***

### ***Required Federal Aid Provisions***

The Required Contract Provisions Federal Aid Construction Contracts (FHWA 1273) Revised May 1, 2012 supersede any conflicting provisions of the Standard Specifications and are made a part of this Contract; provided, however, that if any of the provisions of FHWA 1273 are less restrictive than Washington State Law, then the Washington State Law shall prevail.

The provisions of FHWA 1273 included in this Contract require that the Contractor insert the FHWA 1273 in each Subcontract, together with the wage rates which are part of the FHWA 1273. Also, a clause shall be included in each Subcontract requiring the Subcontractors to insert the FHWA 1273 thereto in any lower tier Subcontracts, together with the wage rates. The Contractor shall also ensure that this section, REQUIRED FEDERAL AID PROVISIONS, is inserted in each Subcontract for Subcontractors and lower tier Subcontractors. For this purpose, upon request to the Project Engineer, the Contractor will be provided with extra copies of the FHWA 1273, the applicable wage rates, and this Special Provision.

## **Protection and Restoration of Property**

### ***Vegetation Protection and Restoration***

### ***Private/Public Property***

Section 1-07.16(1) is supplemented with the following:

***(\*\*\*\*\*)***

The Contractor shall not use any motorized equipment on the beach at any time.

## **Utilities and Similar Facilities**

Section 1-07.17 is supplemented with the following:

***(April 2, 2007)***

Locations and dimensions shown in the Plans for existing facilities are in accordance with available information obtained without uncovering, measuring, or other verification.

The following addresses and telephone numbers of utility companies known or suspected of having facilities within the project limits are supplied for the Contractor's convenience:

Past Projects - 10 years to present	
Project Name:	Bid Amount:
CBWTP Wet Weather Weir	\$ 118,158
Sullivan Sewer Rehabilitation	\$ 785,164
Columbia Blvd. Digesters	\$ 15,703,918
Swan Island CSO Pump Station	\$ 6,889,945
Col. Blvd Baffle Walls	\$ 228,153
CBWTP Chemically Enhanced Primary Treatment	\$ 2,450,358
Portsmouth FM North Shaft Portal	\$ 650,000
Ankeny Pumpstation	\$ 6,283,657
Secondary Process Improvements	\$ 7,200,600
CBWTP - Digester Mixing Improvement	\$ 5,831,600
CBWWTP Weir Replacement	\$ 118,258
Secondary Diversion Modifications	\$ 312,500
Effluent Discharge Structure Joint Sealant Repair	\$ 33,500
CBWTP Secondary Clarifier Isolation Gates	\$ 110,000
Tryron Creek WWTP	\$ 125,000
CBWTP Guardrail Project	\$ 410,990
Col. Blvd WWTP Aeration Diffusers	\$ 71,020
Columbia Blvd. Stormwater PS2	\$ 615,000
Completed Work	\$ 47,937,821

Ongoing Projects	Bid Price	Spread to 2nd	2nd Bid Price	D/M/W/ESB \$ Dollars	D/M/W/ESB % Participation
Portland Lagoon	\$ 9,923,740	\$ 1,101,470	\$ 11,025,210	\$ 1,200,000	12.092%
FABA Pressure Line	\$ 996,669	\$ 214,819	\$ 1,211,488	\$ 39,700	3.983%

Projects Starting	Bid Price	Spread to 2nd	2nd Bid Price			What if? 20% DMWESB were a COA at bid - Resulting Price	Based on Bid Time Responses Adding \$ _____ to the project = ____ % D/M/W/ESB Participation	Total Certified Participation \$
CBWWTP Scum Skimmer	\$ 272,900	\$ 19,100	\$ 292,000	\$ 4,800	1.759%			
Safeway PS Upgrade	\$ 1,148,683	\$ 91,317	\$ 1,240,000	\$ 53,132	4.625%	\$ 1,272,134	\$ 123,451 36.067%	\$ 458,817

Pending Contract	Bid Price	Spread to 2nd	2nd Bid Price					
Airport Way PS	\$ 1,630,000	\$ 179,245	\$ 1,809,245	\$ 62,660	3.844%	\$ 1,725,537	\$ 95,537 26.675%	\$ 460,284

Pending Award	Bid Price	Spread to 2nd	2nd Bid Price					
Alder Pump Station - Option 1	\$ 3,169,500	\$ 434,400	\$ 3,603,900	\$ 313,443	9.889%	\$ 3,387,913	\$ 218,413 26.039%	\$ 882,191
Alder Pump Station - Option 2	\$ 3,169,500	\$ 434,400	\$ 3,603,900	\$ 313,443	9.889%	\$ 3,363,415	\$ 193,915 16.608%	\$ 558,587
Southeast Interceptor	\$ 3,731,377	\$ 752,333	\$ 4,483,710	\$ 18,000	0.482%	\$ 4,102,840	\$ 371,463 20.812%	\$ 853,872