

DBE 101

Internal Training for WSDOT and Local Agencies

OFFICE OF EQUITY AND CIVIL RIGHTS
Rosa Covarrubias, External Civil Rights Lead

April 3, 2025

Terminations, Substitutions, & Change Orders



Terminations & Substitutions



Two applications of the termination process:

1. Remove/replacement of a DBE becomes a necessary action
2. Partial termination (shift/change in commitment)



The **contractor cannot reduce** the amount of work committed to a Condition of Award (COA) DBE without a **good cause**.

Examples of Good Cause

49 CFR 26.53(f) (3)

- (3) For purposes of this paragraph, good cause includes the following circumstances:
- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if 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;
- (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v) 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;
- (vi) You have determined that the listed DBE subcontractor is not a responsible contractor;
- (vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (viii) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Termination Process

1. The contractor shall **give notice in writing** to the DBE & Engineer of the contractor's intent to terminate DBE & the reasons for doing so.
2. The DBE has **five (5) days to respond**. The DBE's response shall either support the termination or advise the Engineer and the contractor of the reasons it objects to the termination.
3. Request for termination and DBE response **must be provided to the contracting agency for review and approval/disapproval prior to contractor termination of DBE**.
4. The Contractor **must receive prior written approval from the Engineer with the concurrence of OECR** to terminate.



Consequences of Improper Termination

1. If the termination and substitution process is not followed, the Contractor **will not be entitled to any payment for COA work not performed by the existing DBE**. Substitution of a COA DBE cannot occur without termination.
2. Each federal-aid contract containing a DBE goal includes the contract clause required by Part 26.13(b) stating that, “failure by the contractor to carry out the requirements of this part is a material breach of the contract and **may result in the termination of the contract or such other remedies that WSDOT deems appropriate** if the the Prime Contractor/Prime Consultant fails to comply with the requirements of this section.”
3. Federal scrutiny with potential loss of funding and additional oversight and review.



Substitution Process

1. All substitutions **must be approved** by the contracting agency with OECR having final approval
2. After receiving a termination with good cause approval, contractor may replace a DBE with another DBE or provide a GFE.
3. The contractor **must submit a plan** to the Engineer on how they intend to achieve the revised *DBE Utilization Plan* **within two (2) days**. Need before approval of the termination.
4. Complete packet **must include**:
 - a. Substitution DBE
 - b. Amounts
 - c. Bid items
 - d. A copy of the *Partial Termination* documentation

Change Orders



1. Need for a change order: Changes in specifications, materials, quantities, and change in condition of award (COA).
2. Changes to COA: OECR Compliance Officer should be involved and concur on any COA related change orders.
3. OECR should receive a copy of executed change order to upload into DMCS.
4. You cannot do a change order after project has reached physical completion, prime will need to do a good faith effort (GFE).

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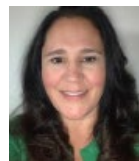
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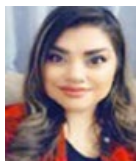
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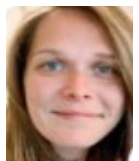


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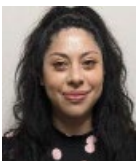


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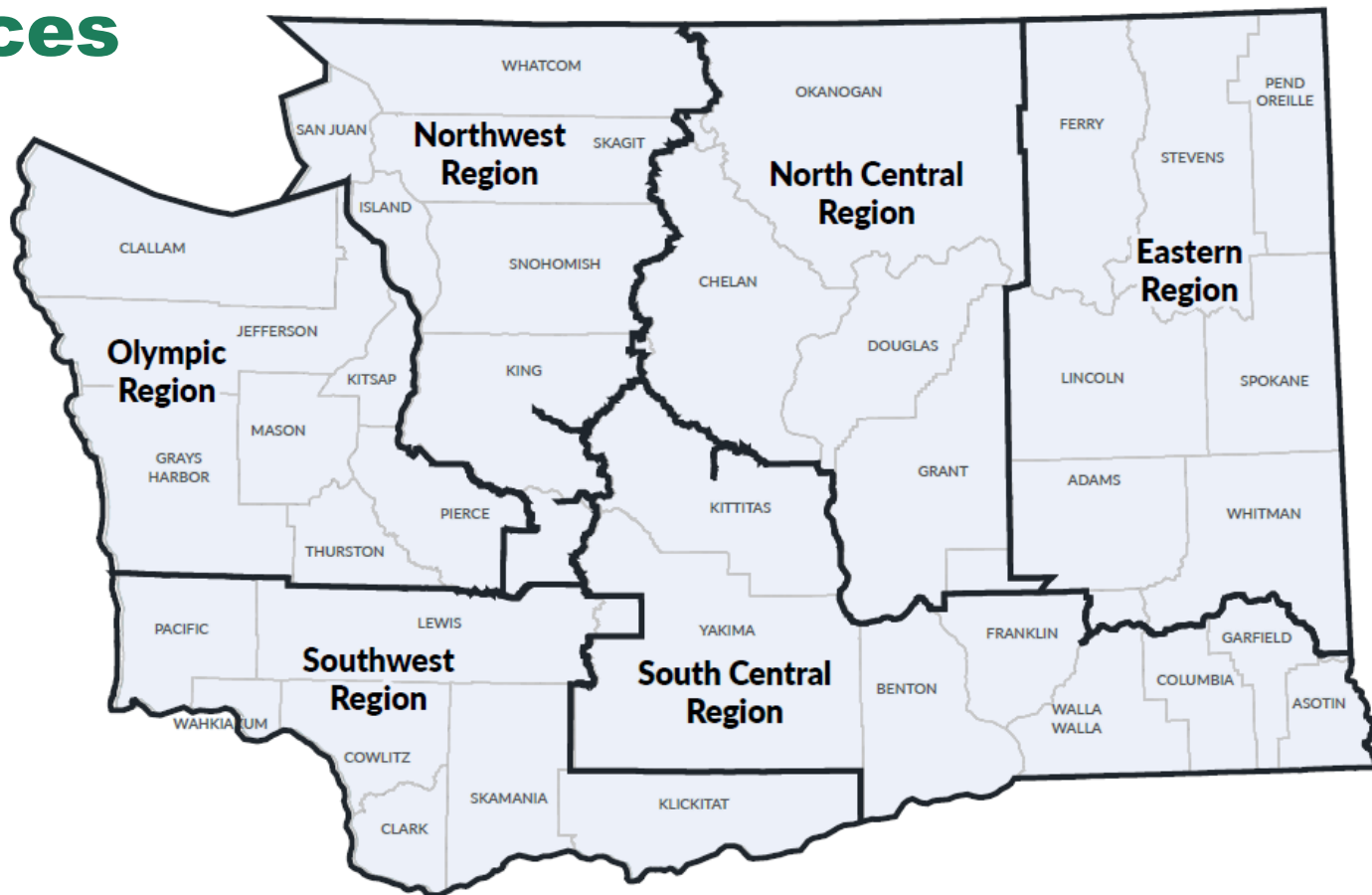


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Resources

Regional Map



Resources

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