

- Contact the WSDOT Project Engineer's Office and ask for assistance if you are unable to resolve the issue with the Prime Contractor.
- WSDOT can withhold payment or sanction Prime Contractors. However, we would really like to resolve these issues at the lowest level possible. Please help us do so and let us know of any prompt payment issues as soon as possible.
- You have the right and it is appropriate to file a lien against the Prime Contractor's bond.
- Create good records. Document conversations in writing (email, letters, etc.).
- Your contract will generally include a dispute resolution process. That is your contractual remedy for resolving disputes.

Legal Disclaimer:

Please note: The above information is being provided for your general information only and is based on a WSDOT standard Contract. Review the requirements of your Contract in these general areas for the requirements that apply. Processes and documentation required of you may not conform with the information provided herein, based upon the particular State contract, subcontract, the work your business performs, or other factors. Therefore, the information provided herein by WSDOT should not be relied upon as legal advice; and WSDOT is not liable or responsible for the consequences of any action taken, or reliance upon, the information provided. WSDOT recommends that you seek independent legal advice to determine your rights and obligations under any written agreement.

If you continue to have issues that you feel are not being addressed, you should contact the WSDOT Office of Equal Opportunity at (360) 705-7090 or DBESS@wsdot.wa.gov.



Americans with Disabilities Act (ADA) Information: This material can be made available in an alternate format by emailing the WSDOT Diversity/ADA Affairs team at wsdotada@wsdot.wa.gov or by calling toll free, 855-362-4ADA(4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.

Title VI Statement to Public: It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equal Opportunity (OEO). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OEO's Title VI Coordinator, Jonté Robinson at (360) 705-7082.

Subcontracting on WSDOT Projects from Prior to Bid to Payment

Prior to Bid: Prime Contractor (Bidder)

- The prime contractor may contact you to determine if your firm is interested in bidding on a scope of work. If the Prime Contractor does not contact you, WSDOT encourages you to be proactive and contact the Prime Contractor to see if they are interested in your scope of work or bid.
- The Prime Contractor may send out a Request For Proposal (RFP):
 - o Related to subcontracting, the Prime's RFP should contain, at a minimum:
 - The specific work to be performed. (If trucking, include maximum trucks required for peak work efforts.)
 - The approximate schedule when work will be performed.
 - The approximate duration of subcontract work in terms of working days.
 - The method of payment (e.g. time and materials, lump sum).
 - o The RFP may also include requirements such as:
 - Prevailing wages;
 - Night work;
 - Apprenticeship requirements;
 - Union participation; and/or
 - Bonding requirements.

Subcontractor (DBE)

- Respond with a quote:
 - o Identify the work included in the proposal that you are certified to perform. If you intend to bid on work for which you are not certified, be sure to make that information clear. Please keep in mind that if you are not certified to perform the work you bid on, the Prime contractor cannot count the value of that work towards the Contract's DBE goal.
 - o Price the conditions (e.g. night work, scheduling, etc.) as required in the RFP, ensuring any quote provided meets the requirements of the WSDOT project plans and specifications.
 - o If conditions are not acceptable, discuss or negotiate them with the Prime Contractor.
 - o Condition your bid accordingly.
- Or don't provide a quote.

Prime Contractor (Bidder)

- Once the Prime Contractor accepts your quote along with conditions, if any, the Prime may indicate it intends to enter into a contract with your firm by listing your firm and the dollar amount in the DBE utilization certification. (Form #272-056)

Subcontractor (DBE)

- To work as a DBE on a WSDOT construction project, you must indicate you have reached agreement and intend to enter into a contract with the Prime Contractor by signing and submitting a written confirmation document. (Form #422-031). The Prime Contractor must submit this written confirmation document within forty eight (48) hours of the bid opening on WSDOT projects.

- The description of work and the subcontract amount to be applied to the Contract DBE goal indicated in the Written Confirmation document must be consistent with the information provided in the Prime Contractor's Utilization Certification form.

After Bid (Prime Contractor is awarded the contract): Subcontractor (DBE)

- A subcontract is negotiated based on the conditions in the Prime Contractor's RFP, if any, and the Prime's standard subcontract document, as conditioned by the subcontractor's quote.
 - o Be sure you read and understand all the provisions of your subcontract - once you sign it, you are legally bound to the document.
 - o Make sure your inclusions and exclusions are contained within the contract.
 - o Make sure how change orders or price agreements related to your work are executed by written agreement.
- It is important that you negotiate with the Prime Contractor regarding any disagreements in this phase. If you are not able to come to agreeable terms, be prepared to respond to a request for 'Termination' by the Prime Contractor within the required five (5) days.
 - o Document all communications that lead up this point, including the basis of your decision not to sign the contract.
 - o Document the impacts of not signing the contract, if any.

Prime Contractor

Request to Sublet:

- Submits a Request to Sublet to the WSDOT Project Engineer's Office for your company prior to you starting work on the project. (Form #421-012)
- If it is a Federal Aid Project, the Subcontract Agreement and Certification (Form# 420-004) must also be completed and submitted prior to starting work.

Subcontractor (DBE)

Statement of Intent:

- File a [Statement of Intent](#) to Pay Prevailing Wages (SOI) with the Department of Labor & Industries (L&I). This form is provided by L&I and it certifies that your firm is working on a public works project and you intend to pay employees a prevailing wage. An owner may not pay for work performed by a contractor until their SOI is approved by L&I (RCW 39.12.040 and L&I Form #F700-029-000). See Section 1-7.9(5) of the Standard Specifications.
- Failure to do so will **delay payment** to the Prime Contractor and/or Subcontractor.

Materials documentation:

- Request a copy of the Record of Materials (ROM) from the Prime Contractor. The ROM will explain what materials acceptance documentation will be required associated with your items of work.
- Submit the correct materials approval documentation; ([Request for Approval of Materials](#) (RAM), check the [Qualified Products List](#), etc.) prior to the work. (See Section 1-06 of the Standard Specifications).
- If you fail to provide materials approvals, samples, tests and/or other required steps it will **delay payment** to the Prime Contractor and/or Subcontractor.
- FHWA has approved joint checks for DBEs only when they are used for purchasing materials and supplies specific to the contract you are working on. Follow the Joint Checking language contained within the DBE General Special Provision.

During Work:

Subcontractor (DBE)

Subletting to a Lower Tier Contractor:

- If you need additional resources and intend to sublet a portion of your work, provide that information to the Prime Contractor before work begins. It is essential that the Prime Contractor has the ability to validate that the lower tier subcontractor is also a DBE firm certified

to perform the work, so that your work, including any work you subcontract, can be counted towards the Contract's DBE goal.

Material on Hand (MOH):

- You may be eligible to request payment for materials purchased before their use given certain conditions. See Section 1-09.8 of the Standard Specifications.

Certified Payrolls:

- Submit weekly [Certified Payrolls](#). See RCW 39.12.050 and/or the Federal regulations (29 CFR 5.12) as well as Section 1-7.9(5) of the Standard Specifications.
- The WSDOT Project Engineer's Office will verify that that you are using the proper materials and have submitted certified payrolls.
- If you fail to submit certified payrolls it will **delay payment** to the Prime Contractor and/or Subcontractor.

Schedules:

- Request schedule updates from the Prime or require them as a condition of your subcontract so you can coordinate your work. Keep records of timing commitments and delivery.
- Impacting the Prime's schedule may cause disputes that **delay payment**.

Contract Changes:

- If actual work to be performed is less than the amount in your contract, the Prime Contractor may need to request a 'partial termination'. As above, be prepared to respond to the request within the required five (5) days.
- If conditions of your contract change (added work, deleted work, changes in the nature of the work, etc.), you may be entitled to a written Change Order prior to performing the work. If you are directed to proceed, you should follow the protest procedures to preserve your right to compensation. See Section 1-04.4 through 1-04.6 of the Standard Specifications.

Invoicing:

- Review your subcontract for the precise payment procedures.
- The Prime Contractor will likely not pay you until WSDOT approves your work and pays it for your work. This means the WSDOT staff will inspect your work and ensure it is accurate and complete, including your paperwork (RAM, Certified Payrolls, Manufacturer's Certification of Compliance, Certification of Materials Origin, Bill of Lading, etc.).
- WSDOT estimate cutoff dates are on the 5th of each month for odd numbered Contracts or the 20th of each month for even numbered contracts. WSDOT typically pays the Prime Contractors within ten (10) working days of the estimate cutoff. The Prime Contractor then has ten (10) days after it receives payment from WSDOT to pay you. ([RCW 39.04.250](#))
- You may request a copy of the monthly estimates from the WSDOT Project Engineer's Office to see what has been paid to the Prime Contractor.

Liens:

- If you have not posted a bond, a subcontract may allow the Prime to clear liens prior to paying a subcontractor.
- Liens typically come from suppliers, unions, and L&I.
- Establish procedures as part of your subcontract and maintain communication with your Prime on when and how liens get cleared.

Lower Tier Subcontractor:

- When you subcontract to another firm, the value of the subcontracted work may only be counted toward the DBE Contract goal if the lower tier subcontractor is also a DBE firm certified to perform the work.

What can you do if you are not paid?

- Contact the Prime Contractor to discuss what needs to be done to get paid. The Prime has an obligation to advise you of the remedy if it is deferring payment.