

# Oklahoma Department of Transportation

## Disadvantaged Business Enterprise (DBE) Monitoring Requirements Construction Control Directive No. 20000105

October 1, 2019

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Scope: To establish and identify the procedures required for monitoring and reporting on federally funded projects.

The purpose of this Directive is to summarize the reporting, tracking, monitoring, and prompt return of retainage requirements of the DBE program and their effect on the Contractor's and Department's responsibilities. The following apply to all Federal projects, without regard to the existence of a project specific DBE goal.

### 1. Reporting by the Contractor

Once a project begins, the Contractor is required to submit Monthly DBE Payment Logs (Forms 2) to the Residency. The form must be submitted to the Residency prior to the 15<sup>th</sup> of the month following the month being reported. The Final DBE Payment Report (Form 3A) is to be completed by the Contractor and submitted to the Residency before the final estimate may be generated. The forms with detailed instructions for their completion can be found in the DBE Program Manual located on the Department's Civil Rights Division website ([https://www.ok.gov/odot/DoingBusiness/Civil\\_Rights/index.html](https://www.ok.gov/odot/DoingBusiness/Civil_Rights/index.html)) and the "Contractor Compliance Information" page ([https://www.ok.gov/odot/Doing\\_Business/Civil\\_Rights/Contractor\\_Compliance\\_Information.html](https://www.ok.gov/odot/Doing_Business/Civil_Rights/Contractor_Compliance_Information.html)).

Failure by a Contractor to comply with the monthly reporting deadlines will result in the following actions:

- a) delay in the approval of the project's progressive estimates,
- b) delay in the approval of the Contractor's progressive estimates across the state,
- c) removal of the Contractor from the approved bidders list, and/or D.B.E. Provisions and Tracking, and/or
- d) assessing of liquidated damages to the affected project.

The Residency must notify Construction Division when step (a) has not been effective for a particular project within 30 days and feels that one of the alternative actions is justified. Construction Division will then take action

progressively through the next steps until Contractor is in compliance.

## 2. Tracking by the Residency

Residency individuals are required to continuously track payments on projects to ensure DBE goals are being achieved. The overall DBE project goal, when one is established, along with commitments for each DBE firm on the project must be tracked and monitored. The Residency must immediately notify the Civil Rights Division if the DBE project goal and/or commitments for each DBE firm is not being met. Information from the Form 2 is required to be input into SiteManager by the Residency, by the end of the month, following the month being reported. (Refer to SiteManager Procedure Section IV, Chapter A). This information, when compiled and reported, will be the measure of the Department's goal attainment.

## 3. Prompt Return of Retainage by the Contractor

To comply with CFR 49 Part 26.29, the Prompt Payment portion of the new DBE regulation, the Department must have a process to expedite the determination and processing of the Final Quantities for any satisfactorily completed subcontracted portions of the Contract. This process will ensure that the release of any retainage from the Prime Contractors to any of their Subcontractors (not just DBE's) be done promptly. The Code of Federal Regulations requires that Contractors pay subcontractors, suppliers, and vendors promptly for work performed or materials provided, and release retainage promptly after the subcontractor, supplier, or vendor completes the work or provides materials certifications. The Department has established that, when criteria for payments are met, 15 calendar days is a reasonable time to make payment or release retainage, and requires that payment be made within that time. The 15 calendar day period for subcontracted work or materials and services provided will commence on the date the Contractor receives payment from the Department for the work. If the Contractor holds retainage for subcontracted work or materials/services provided, the 15 calendar day period shall commence on the date that the Resident Engineer determines that the subcontracted unit or portion of the Contract has been completed in accordance with Subsection 105.17, "Project Completion and Acceptance," or the project is deemed complete by the Department. Services provided to a Contractor for support of construction operations or as deemed necessary by the Contractor for upkeep of machinery or facilities used directly or indirectly for construction operations shall be paid within 15 calendar days of the last service provided. The process will include:

- a) Subcontractor's request in writing to the Residency that their portion

of the Contract be considered "Completed" in accordance with Section 105.17 of the Specifications and that the Final Quantities be determined. The Subcontractor must be able to state that their portion of the work has been completed in accordance with the plans and specifications. Also, that any required paperwork, including material certifications, payrolls, etc., for their portion of the work, has been submitted to the Residency.

- b) The Residency's response within 14 days to the Subcontractor, with a copy to the Prime for their notification, that they have received the request and are:
  - i) working on the request including the Residency, Division and D.B.E. Provisions and Tracking material certification audits and scheduling the semi-final (note that for portions of the contract addressed by a semi-final, any damage to the subcontractor's portion of the work caused by the completion of the remainder of the contract would need to be corrected), or
  - ii) working on the project as a whole, but will notify them when the Final Quantities have been determined (this is allowable only when the entire project has already been completed and is in the finalization process), or
  - iii) needing to delay action on their request and state the cause for the delay; such as, a concern with the subcontracted work has been identified and the final acceptance is pending resolution of the matter.
  
- c) A copy of the Final Quantities for a Subcontractor's portion of the project should be disbursed by the Residency to the Prime and Subcontractor upon completion of the semi-final, all levels of audits and when assured that all paperwork has been received. For instances where Subcontractors have not submitted a written request for their portion of the work to be considered "completed", once Final Quantities are determined, they should be disbursed by the Residency to all approved Subcontractors when they are sent to the Prime Contractor. The Prime Contractor must then make prompt return of retainage within 15 days in accordance with the Contract provisions.

#### 4. Commercially Useful Function (CUF)

In order to credit DBE participation towards a project goal and the Department's annual goal, the DBE must perform a CUF on the project. To comply with the DBE regulation, the Department must perform a CUF review

for each DBE performing work on a federally funded project. A CUF Project Site Review Form (CUF Form) has been developed to document that a CUF determination has been made for each DBE that works on a federally funded project. The CUF Form must be completed by the Residency for each DBE and should be conducted when the DBE first begins work. However, a DBE's compliance for performing a CUF needs to be monitored by the Residency throughout the course of the DBE's work on the project. If a DBE is not performing a CUF, the Residency should contact the Department's Civil Rights Division. The CUF Form shall be retained in the project file and sent, along with the Form 3A, to the Construction Division for approval. The CUF form with detailed instructions for completion can be found in the DBE Program Manual located on the Department's Civil Rights Division website ([https://www.ok.gov/odot/Doing\\_Business/Civil\\_Rights/index.html](https://www.ok.gov/odot/Doing_Business/Civil_Rights/index.html)) and the "Contractor Compliance Information" page ([https://www.ok.gov/odot/Doing\\_Business/Civil\\_Rights/Contractor\\_Compliance\\_Information.html](https://www.ok.gov/odot/Doing_Business/Civil_Rights/Contractor_Compliance_Information.html)).

A handwritten signature in black ink that reads "John Leonard". The signature is written in a cursive, flowing style.

John Leonard, P.E.  
Construction Engineer