Chapter 700  Disadvantaged Business Enterprise

700.01 Introduction

This chapter covers the legal requirements and the roles and responsibilities of recipients/subrecipients of federal (United States Department of Transportation [USDOT]) funds on WSDOT project work. It also provides instructions for meeting the specific requirements of participation by disadvantaged groups in federally funded consultant projects.

700.02 Roles and Responsibilities

700.02.01 WSDOT Office of Equal Opportunity (OEO)

The director of the OEO has been designated as WSDOT’s Disadvantaged Business Enterprises (DBE) Liaison Officer, in accordance with 49 CFR 26.25. The DBE Liaison Officer reports to the WSDOT Secretary and is responsible for developing, implementing, and monitoring all aspects of WSDOT’s DBE program. This includes coordinating with appropriate offices within WSDOT to ensure statewide compliance with 49 CFR 26.

The responsibilities of the OEO include, but are not limited to: gathering statistical data to report to respective USDOT Operating Administrations; establishing the department’s overall DBE goals and project DBE goals, as appropriate; analyzing progress toward attainment of goals and identifying mechanisms to improve progress; conducting internal and external assessments/reviews of DBE program activities and coordinating enforcement action, as necessary; and advising the Secretary and other office directors on DBE matters.

The OEO is responsible for review of DBE goals when established on WSDOT consultant contracts prior to solicitations, and for final review of DBE goals prior to the award of a consultant contract.

700.02.02 WSDOT HQ Consultant Services Office (CSO)

The CSO is responsible for ensuring its programs and activities are implemented consistent with the department’s DBE Program Plan and policies. The CSO, in coordination with the OEO, is responsible for seeing that goals are properly established by, and training is made available to, area consultant liaisons (ACLs) and project personnel responsible for DBE activities on architectural and engineering (A&E) contracts.

The CSO, working with the ACLs and project managers, will establish the methodology for statement of work (SOW) development for the project and thus the time frame for goal establishment.
The CSO manager will designate a DBE point of contact in the CSO to work with the OEO and the ACLs in matters related to DBE program development and implementation, assist the ACLs in goal establishment during negotiations, and conduct project reviews for compliance, as necessary.

The CSO manager will be responsible for developing and maintaining a set of subcontracting guidelines regarding DBE participation rules, regulations, and procedures. The guidelines will be for use by consultants, WSDOT project managers, ACLs, and subrecipients of federal-aid highway funds. The DBE guidelines will be in an electronic format and downloadable from the CSO’s public website: [www.wsdot.wa.gov/business/consulting](http://www.wsdot.wa.gov/business/consulting)

The DBE guidelines will cover issues such as actively soliciting interest from DBE firms for inclusion in solicitation packages on WSDOT requests for qualifications (RFQs); good faith efforts in goal attainment; commercially useful functions in DBE subcontracts; prompt payment provisions and payment certifications by subconsultants.

The WSDOT CSO will be responsible for maintaining and updating the DBE guidelines as needed.

The CSO manager will also assign other responsibilities as necessary to the CSO DBE point of contact, to meet the department’s DBE responsibilities. These duties may include, but are not limited to: gathering and reporting statistical data to the OEO; maintaining a running tally of amounts paid to DBE firms (in comparison to commitments made); assisting the ACLs in monitoring the performance of DBEs to ensure the DBEs are performing a commercially useful function; representing the CSO on WSDOT’s goal-monitoring committee; tracking complaints (in cooperation with the OEO) by DBE firms; and verifying current certifications.

### 700.02.03 Area Consultant Liaisons (ACLs)

ACLs are responsible for interactions between the CSO and project personnel in matters that pertain to DBE goal setting, oversight, and implementation in their respective areas, as requested by the CSO manager. ACLs are responsible for working with their respective projects to monitor the performance of DBEs to ensure the DBEs are performing a commercially useful function and obtaining monthly and semiannual reporting information. They will coordinate collecting the appropriate data and ensuring it gets to the CSO for proper reporting. Other DBE activities will be assigned to the ACL by the CSO manager as needed.

The WSDOT project manager (PM) will work with the ACL and the CSO DBE point of contact to establish goals during SOW development and negotiations when using the Managing Project Delivery method. The PM will be responsible for tracking DBE participation during the contract and ensuring a good faith effort is being made to meet the project goals.
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700.02.04  Office of Minority and Women’s Business Enterprises (OMWBE)

The OMWBE is currently the only agency in the state of Washington approved by USDOT to act as the Unified Certification Process (UCP) authority under the DBE Program Plan. The OMWBE is responsible for certifying DBE business entities in the state of Washington, in accordance with a Memorandum of Agreement with the WSDOT OEO.

700.03  Implementation

The WSDOT OEO will be involved in all matters related to DBE issues.

As a recipient of federal financial assistance, WSDOT is required to have a DBE Program Plan that meets the requirements of 49 CFR 26. The OEO works with all offices in WSDOT (including the CSO) to ensure the department is implementing its DBE Program Plan correctly and consistently.

The projects and the ACLs are responsible for the implementation processes covered in Appendix X, Exhibits X-1 and X-2a–X-2d. The CSO will work with the ACLs and the project managers from project inception to ensure all regulations are satisfied.

Prior to soliciting any federally funded contract, the subject of DBE goals needs to be discussed between the project team and the CSO. (The process for establishing a goal is covered in Appendix X.) In addition, there are significant reporting requirements that must be completed. (Monthly and semiannual reporting instructions and examples of forms are found in Appendix X.) All reporting will be managed by the CSO, which will compile the information it receives from all regions and ACLs for submission to the OEO.

700.03.01  Subconsultants Fixed in Negotiations

After negotiations are completed, the subconsultants are fixed to the contract, or to the work effort when task orders are negotiated as part of an indefinite-delivery (on-call) contract (IDC). If a subconsultant cannot complete the work, or is not available for any reason during the contract, the prime will notify the project and the ACL. Primes are responsible for seeking and finding a substitute DBE when the original subconsultant is a DBE.

If the work originally planned for a DBE subconsultant is cancelled or determined not to be needed, the prime will make a diligent effort to find suitable replacement work for the DBE firm or to reallocate work to a subsequent DBE proposed by the prime. All substitutions, cancellations of work, or changes that affect DBE participation will be submitted to the CSO for approval. The CSO will consult with the OEO prior to approval.

Subcontracting is an important topic because the determination of “best qualified firm” is based in part on the project team’s makeup, which includes subconsultants.
Because the ranking, short-listing, and contract award are based on the qualifications of the proposed teams, dropping or replacing subconsultants will not be done without reconvening the selection board and considering the impact on the ranking of the firms entering negotiations.

700.03.02 Disadvantaged Business Enterprise (DBE) Participation

The issue of DBE participation and goal setting must be addressed for federally funded projects. This is not possible if contracts are entered into prior to knowing what work is being contracted. Therefore, the consultant’s approach to the work solicited for, and the anticipated subcontracting, is part of the consultant’s second-tier proposal or negotiations process.

In addition to the federal DBE Program Plan requirements, the state also has certain legal requirements under RCW 39.80.040, which requires the state to have a plan that ensures minority- and women-owned firms are afforded the maximum practicable opportunity to compete for and obtain public contracts for services, not just as subcontractors, but as primes. The agency procedures and guidelines will include a plan that provides these assurances. The level of participation by minority- and women-owned firms must be consistent with their general availability within the professional communities involved.

700.03.03 Goal-Setting Process

Appendix X provides a detailed description of the steps involved in determining DBE goals on a consultant services contract. Examples of the DBE goal calculation worksheet are provided in Exhibit X-1.

The CSO utilizes two types of contracts: project-specific and indefinite-delivery contracts (IDCs) using task order documents. The IDCs have an on-call component and could have assigned work through task orders, each of which can relate to different projects. Each task order in which federal funds participate, that is anticipated to exceed the simplified acquisition threshold specified in 41 U.S.C. 403(11), will establish DBE goals through the goal-setting process covered in Exhibit X-1.

The methodology employed by WSDOT and the CSO in determining consultant project goals uses the “DBE Participation Calculation Worksheet for Consultant Services,” shown as Exhibit X-1.
700.03.04 Goal Monitoring and Reporting

In accordance with 49 CFR 26, WSDOT is required to report the participation of DBE-certified firms on all projects funded by the Federal Highway Administration, Federal Transit Administration, and Federal Aviation Administration. In order to stay compliant with this requirement, all regions/divisions must provide the CSO a semiannual report (see Exhibit X-2b) of their federally funded consultant contracts/supplements and/or task order documents on IDCs. This applies to both A&E contracts and personal services contracts.

All regions/divisions must also provide the CSO a monthly report (see Exhibit X-2a) of their federally funded consultant contracts/supplements and/or task orders/amendments for A&E contracts and personal services contracts.

Section X.4 provides a detailed description and examples of the steps involved in monitoring and reporting monthly and semiannual DBE establishment, awards, progress, and attainment. Examples of the DBE reporting workbook are provided in Exhibits X-2a–X-2d.

On both the semiannual report and the monthly utilization report, new contract wards, contract supplements, contract close-outs, and actual payments to DBE firms are to be reported.

Each area consultant liaison will be provided, in electronic format, the Excel workbook (DBE Utilization Reports) to be used for tracking and reporting the monthly and semiannual reports.

The workbook (see Appendix X) consists of the following four spreadsheets:

1. The first spreadsheet is the “Monthly” report, which is to be turned in at the end of every month (see Exhibit X-2a).

2. The second spreadsheet is the “Semiannual” report, which is to be turned in no later than two weeks after the end date of the reporting half, based on the federal fiscal year (see Exhibit X-2b). The federal fiscal year reporting periods are as follows:
   - October 1 through March 31 (first reporting half)
   - April 1 through September 30 (second reporting half)

3. The third spreadsheet is the “Allocation History” (see Exhibit X-2c).

4. The fourth spreadsheet is the “Payment History” (see Exhibit X-2d).