



**Washington State
Department of Transportation**

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Secretary of Transportation

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November 9, 2015

Mr. Dan Mathis
Division Administrator
Federal Highway Administration
771 South Capitol Way
Olympia, Washington 98504

RE: WSDOT Request for Program Waiver Pursuant to 49 CFR § 26.15

Dear Mr. Mathis:

As required in 49 Code of Federal Regulations (CFR) §26.15, a recipient requesting an exemption to any part of Subpart B or C must apply for a waiver. The purpose of this letter is to request your consideration and approval of a waiver that is consistent with federal law.

WSDOT is requesting a waiver under the criteria of 49 CFR § 26.15(b) that will allow the agency to limit its use of race- and gender- conscious measures (i.e., DBE contract goals) to those DBE groups for which compelling statistical evidence of discrimination exists in the relevant geographic market area. The waiver request is based on results of WSDOT's 2012 DBE Disparity Study (Final Report by BBC Research & Consulting published May 17, 2013 based on data from federal fiscal years 2009-2011).

I. REASONS FOR THE WAIVER REQUEST PURSUANT TO 49 CFR 26.15(B)

A. Summary of Reasons for Waiver

The WSDOT 2012 DBE Disparity Study (hereinafter referred to as the "2012 Disparity Study"), conducted by BBC Research & Consulting, concluded that substantial disparities exist between utilization and availability for Black American-, Asian Pacific American-, Subcontinent Asian American-, Hispanic American-, and Native American-owned businesses. In addition, the 2012 Disparity Study described statistical analysis of non-Hispanic WBE's that would suggest a lack of substantial disparity in certain types of contracts. This analysis by BBC Research & Consulting indicates:

- Considering all Federal Highway Administration (FHWA) and state-funded contracts together, non-Hispanic white women-owned businesses did not exhibit substantial disparities on transportation contracts that WSDOT awarded during any year of the study period (federal fiscal years 2009, 2010, and 2011; for details, see Figure ES-2 of the Executive Summary of the disparity study report).

- Non-Hispanic white women-owned businesses did not exhibit substantial disparities on state-funded transportation contracts that WSDOT awarded during any year of the study period, to which race- and gender-conscious measures did not apply (for details, see Figure -ES3 of the-Executive Summary of the disparity study report.)
- Non-Hispanic white women-owned businesses did not exhibit substantial disparities on transportation-related engineering contracts that WSDOT awarded during any year of the study period, to which race- and gender-conscious measures did not apply (for details, see Figure ES-4 of the Executive Summary of the disparity study report).
- Non-Hispanic white women-owned businesses did not exhibit substantial disparities on FHWA funded construction contracts that WSDOT awarded between May 9, 2005 and September 30, 2006, to which race- and gender-conscious measures did not apply (for details/see Figure ES-5 of the Executive Summary of the disparity study report).

In the United States Court of Appeals for the Ninth Circuit, opinions have indicated that in order to implement the Federal Disadvantaged Business Enterprise (DBE) Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious program measures to those groups "that have actually suffered discrimination" within its transportation contracting industry.¹

Based on the statistical analysis of the 2012 Disparity Study, and considering the opinions of the United States Court of Appeals for the Ninth Circuit, WSDOT is requesting a waiver for the 2015-2017 federal fiscal years to consider WBEs as not being presumed to be disadvantaged at this time; therefore such firms would not be allowed to participate in any race- and gender-conscious goals that WSDOT implements under the presumption of social and economic disadvantage on federally funded contracts. DBEs that are owned by minority women will still be eligible to participate in WSDOT's race-conscious measures if they are DBE-certified for their corresponding minority group(s) that are subject to the presumption of being disadvantaged.²

Non-Hispanic white women-owned businesses will still have the option to apply for DBE certification based on individual evidence of disadvantaged status (as opposed to having a presumption of disadvantage because of statistical disparity associated with a particular group) due to individualized evidence of social and economic disadvantage pursuant to 49 CFR §§ 26.61(d), 26.67(d) and Appendix E; such firms will also be eligible to participate in the race- and gender-neutral measures that are part of WSDOT's implementation of the Federal DBE Program, including the small business participation plan.

¹ *AGC v San Diego Chapter v. California DOT*, 713 F.3d 1187, 1191, 1199, 2013 WL 1607239 (9th Cir. April 16, 2013); *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006)

² For example, Black American women-owned businesses would be eligible for WSDOT's race- and gender-conscious measures if they are certified as Black American-owned DBEs.

WSDOT will monitor availability and utilization of non-Hispanic white women-owned businesses and reassess the statistical evidence during the goal-setting process for period covered by the upcoming Disparity Study, which is currently out to bid, and will continue to review the appropriateness of the requested waiver as required by federal law. See Disadvantaged Business Enterprise (DBE) Program Proposed Amended Three-Year Overall Goal & Methodology for Federal Fiscal Years 2014 and 2015 through 2017 available at: www.wsdot.wa.gov/EqualOpportunity/DisparityStudy/default.htm.

B. Brief History of WSDOT's Implementation of the Federal DBE Program

WSDOT has been implementing variations of the Federal DBE Program and the regulations that preceded it since the 1980s. After enactment of the Transportation Equity Act for the 21st Century (TEA-21) in 1998, USDOT established a new Federal DBE Program to be implemented by state and local agencies receiving USDOT funds.

***Western States Paving* decision in 2005.** In May 2005, the Ninth Circuit Court of Appeals in *Western States Paving v. Washington State DOT* held that the Federal DBE Program enacted by Congress was facially constitutional, but ruled that WSDOT's implementation of the program was unconstitutional.³ The court held that in order to satisfy legal requirements, a public entity implementing race- and gender-conscious measures must have evidence of discrimination in its transportation contracting industry.

In response to the *Western States Paving* decision, WSDOT and other state and local agencies that were affected by the decision discontinued their use of race- and gender-conscious elements of the Federal DBE Program. USDOT recommended that agencies implementing the Federal DBE Program should consider conducting availability and disparity studies to satisfy the requirements of strict scrutiny.

2005 Availability Study. WSDOT completed its first availability study in October 2005. The study measured the availability of MBE/WBEs for WSDOT transportation contracts. The study did not examine WSDOT's utilization of MBE/WBEs nor did it examine any disparities between MBE/WBE utilization and availability. At the time that the 2005 availability study was released (October 2005), WSDOT had suspended using contract-specific DBE goals as part of its implementation of the federal DBE program, per the *Western States Paving* holding.

Implementation of contract-specific DBE goals. Beginning in October 2006, WSDOT resumed setting contract-specific DBE goals on certain FHWA-funded construction contracts. All groups identified in 49 CFR Part 26 were deemed eligible for participation in the goals program. WSDOT's implementation of the goals program was based in part on information from its 2005 availability study.

³ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983 (9th Cir. 2005), cert. denied, 546 U.S. 1170 (2006).

WSDOT did not set any contract-specific DBE goals on FHWA-funded engineering/professional consulting contracts until 2012. Prior to that time, the agency only used race- and gender-neutral measures to encourage MBE/WBE participation on engineering/professional consulting contracts.

Implementation of voluntary MBE/WBE goals: The State of Washington no longer has a Women or Minority Business Enterprise program that can establish race conscious goals for state funded projects. The BBC found that this was part of the Washington state contracting environment that had a detrimental impact with minority contracting.

C. Executive Summary of Analyses in the 2012 Disparity Study (BBC Research & Consulting)

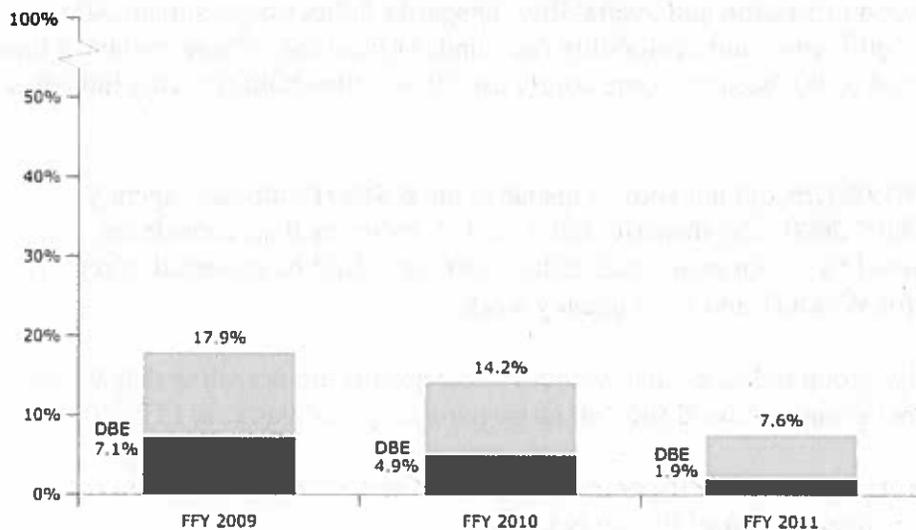
Along with measuring potential disparities between MBE/WBE utilization and availability on WSDOT transportation contracts, the disparity study also examined other quantitative and qualitative information related to the legal framework surrounding an agency's implementation of the Federal DBE Program; local marketplace conditions for MBE/WBEs and for other small businesses; and contracting practices and business assistance programs that the agency currently has in place.

- i. The study team conducted an analysis of federal regulations, case law, and other information to guide the methodology for the disparity study. The analysis included a review of federal requirements related to the Federal DBE Program and an assessment of any state requirements concerning the implementation of the Federal DBE program.
- ii. BBC conducted quantitative analyses of the success of minorities, women, and MBE/WBEs throughout Washington's transportation contracting industry. In addition, the study team collected qualitative information about potential barriers that small businesses and MBE/WBEs face in the Washington transportation contracting industry through in-depth anecdotal interviews, public hearings, and public meetings.
- iii. BBC analyzed the percentage of MBE/WBEs that are "ready, willing, and able" to perform on WSDOT transportation prime contracts and subcontracts. That analysis was based on telephone interviews that the study team completed with more than 3,000 Washington businesses that work in industries related to the types of transportation contracts that WSDOT and local agencies award. (The study team attempted telephone interviews with every business establishment that it identified as doing work that is relevant to WSDOT transportation contracting.)
- iv. BBC analyzed the dollars that WSDOT and local agencies awarded to MBE/WBEs on more than 11,000 transportation prime contracts and subcontracts executed between October 1, 2008 and September 30, 2011 (i.e., FFYs 2009, 2010, and 2011). BBC analyzed contracts that were USDOT-funded and contracts that were solely state-funded.

- v. BBC examined whether there were any disparities between the utilization of MBE/WBEs on transportation contracts that WSDOT and local agencies awarded during the study period. The study team also assessed whether any observed disparities were statistically significant.
- vi. BBC reviewed WSDOT's current contracting practices and Federal DBE Program measures and provided guidance related to additional program options and refinements to those practices and measures.

Utilization results. The study team measured MBE/WBE participation in terms of “utilization”—the percentage of prime contract and subcontract dollars that WSDOT and local agencies awarded to MBE/WBEs during the study period. Figure ES-1 presents overall MBE/WBE utilization for each study period year (i.e., FFYs 2009, 2010, and 2011). The darker portion of each bar presents WSDOT's utilization of MBE/WBEs that were DBE-certified during the study period. As shown in Figure ES-1, MBE/WBE utilization on WSDOT transportation contracts declined dramatically between FFY 2009 (17.9%) and FFY 2011 (7.6%). Certified DBE utilization also fell sharply, declining from 7.1% in FFY 2009 to only 1.9% in FFY 2011.

Figure ES-1.
MBE/WBE utilization on WSDOT and local agency transportation contracts
(FHWA- and state-funded) by study period year



Note: Includes FHWA- and state-funded WSDOT and local agency contracts. Darker portion of bar presents certified DBE utilization. Number of prime contracts/subcontracts analyzed was 4,244 for FFY 2009, 3,883 for FFY 2010, and 3,258 for FFY 2011. For more detail and results by group, see Figures K-5, K-6, and K-7 in Appendix K.

Source: BBC Research & Consulting from WSDOT contracting data.

Disparity analysis results. Although information about MBE/WBE utilization is instructive on its own, it is even more instructive when it is compared with the utilization that might be expected based on the availability of MBE/WBEs for WSDOT work. As part of the disparity study, BBC compared the utilization of MBE/WBEs on WSDOT transportation prime contracts and subcontracts with the percentage of contract dollars that MBE/WBEs might be expected to receive based on their availability for that work.

BBC expressed both utilization and availability as percentages of the total dollars that a particular group received for a particular set of contracts (e.g., 5% utilization compared with 4% availability). BBC then calculated a “disparity index” by dividing utilization by availability and multiplying by 100.⁴ A disparity index of 100 indicates an exact match between utilization and availability for a particular group for a specific set of contracts (often referred to as “parity”). A disparity index of less than 100 may indicate a disparity between utilization and availability, and disparities of less than 80 are described in this report as “substantial.”⁵

Disparity analysis results for key contract sets are described below.

All transportation contracts. Figure ES-2 presents disparity analysis results for all WSDOT and local agency transportation contracts by study period year. Note that contract-specific DBE goals applied to many of the FHWA-funded contracts that WSDOT and local agencies awarded during the study period. The line down the center of the graph shows a disparity index level of 100, which indicates parity between utilization and availability. Disparity indices of less than 100 indicate disparities between utilization and availability (i.e., underutilization). For reference, a line is also drawn at an index level of 80, because some courts use 80 as a threshold for what indicates a substantial disparity.

As an example, overall, MBE/WBEs did not show a disparity on WSDOT and local agency transportation contracts in FFY 2009. The disparity index of 136 indicates that, considered together, MBE/WBEs received \$1.36 for every one dollar that they would be expected to receive based on their availability for WSDOT and local agency work.

An examination of results by group indicates that whereas some groups did not show disparities during the study period, other groups showed substantial disparities, particularly, in FFY 2011:

- i. Subcontinent Asian American- and Hispanic American-owned businesses showed substantial disparities in each year of the study period.

⁴ For example, if actual utilization of WBEs on a set of contracts was 2 percent and the availability of WBEs for those contracts was 10 percent, then the disparity index would be 2 percent divided by 10 percent, which would then be multiplied by 100 to equal 20.

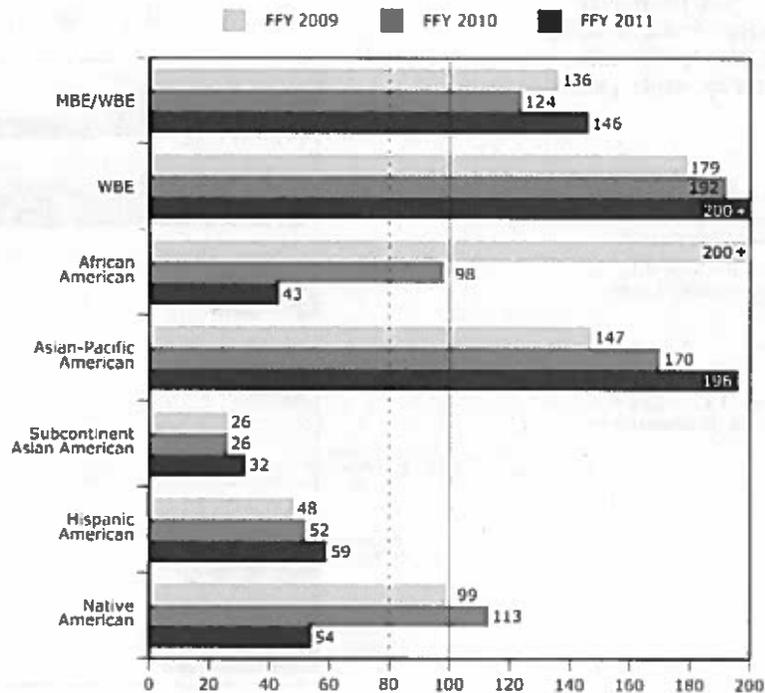
⁵ Some courts deem a disparity index below 80 as being “substantial” and have accepted it as evidence of adverse conditions for MBE/WBEs. For example, see *Rothe Development Corp v. U.S. Dept of Defense*, 545 F.3d 1023, 1041; *Eng’g Contractors Ass’n of South Florida, Inc. v. Metropolitan Dade County*, 122 F.3d at 914, 923 (11th Circuit 1997); *Concrete Works of Colo., Inc. v. City and County of Denver*, 36 F.3d 1513, 1524 (10th Cir. 1994). See Appendix B for additional discussion of those and other cases.

- ii. African American-owned businesses and Native American-owned businesses only showed substantial disparities in FFY 2011.⁶
- iii. Neither WBEs nor Asian-Pacific American-owned businesses showed disparities in FFYs 2009, 2010, or 2011.

Figure ES-2. Disparity indices for WSDOT and local agency transportation contracts (FHWA- and state-funded) by study period year

Note:
 Number of prime contracts/subcontracts analyzed was 4,244 for FFY 2009, 3,883 for FFY 2010, and 3,258 for FFY 2011.
 For more detail and results by group, see Figures K-5, K-6, and K-7 in Appendix K.

Source:
 BBC Research & Consulting availability and utilization analyses.



Contracts without DBE goals. One way to assess whether a lack of race- and gender-conscious programs affected the participation of MBE/WBEs on WSDOT transportation contracts is to examine any disparities on contracts to which contract-specific DBE goals did not apply. BBC presents disparity analysis results for three types of contracts to which DBE goals did not apply:

- i. State-funded transportation contracts that WSDOT awarded in FFYs 2009, 2010, and 2011;
- ii. Transportation-related engineering contracts that WSDOT and local agencies awarded in FFYs 2009, 2010, and 2011; and
- iii. FHWA-funded construction contracts that WSDOT awarded between May 9, 2005 and September 30, 2006.

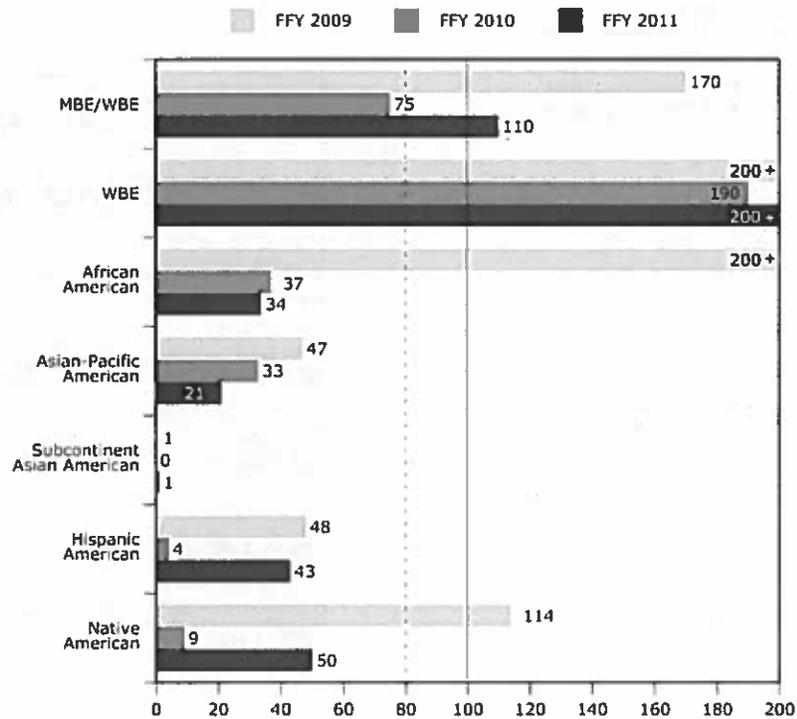
⁶ Although African American-owned businesses did not show substantial disparities in FFYs 2009 or 2010, most of the dollars that went to African American-owned businesses in FFYs 2009 (approximately \$53 million of \$57 million) and 2010 (approximately \$15 million of \$18 million) went to a single African American-owned electrical contracting firm that was not DBE certified. In some cases, other individual MBE/WBEs also accounted for relatively large proportions of their respective groups' utilization but not nearly to the same extent.

State-funded transportation contracts. In FFYs 2009, 2010, and 2011, WSDOT did not apply contract-specific DBE goals to any state-funded contracts.⁷ Instead, WSDOT applied voluntary MBE/WBE goals to many of those contracts but did not require contractors to meet those goals or show good faith efforts to do so. Figure ES-3 presents disparity analysis results for state-funded WSDOT transportation contracts by study period year.

Figure ES-3. Disparity indices for WSDOT state-funded transportation contracts by study period year

Note:
 Number of prime contracts/subcontracts analyzed was 759 for FFY 2009, 798 for FFY 2010, and 507 for FFY 2011.
 See Figures K-17, K-18, and K-19 for corresponding disparity results tables.

Source:
 BBC Research & Consulting availability and utilization analyses.



All MBE groups showed substantial disparities on state-funded contracts after FFY 2009.

African American-owned businesses and Native American-owned businesses were the only two MBE groups that did not show substantial disparities on state-funded contracts in FFY 2009.⁸

WBEs did not show substantial disparities in any year of the study period on state-funded contracts.

⁷ WSDOT used to apply race- and gender-conscious contract goals to certain state-funded contracts. However, Initiative 200, passed by Washington voters in 1998, prohibited state agencies from applying race- and gender-conscious measures to those contracts.

⁸ Virtually all of the dollars that went to African American-owned businesses on state-funded contracts in FFY 2009 (\$19.3 million of \$19.6 million) went to a single African American-owned electrical contracting firm that was not DBE certified.

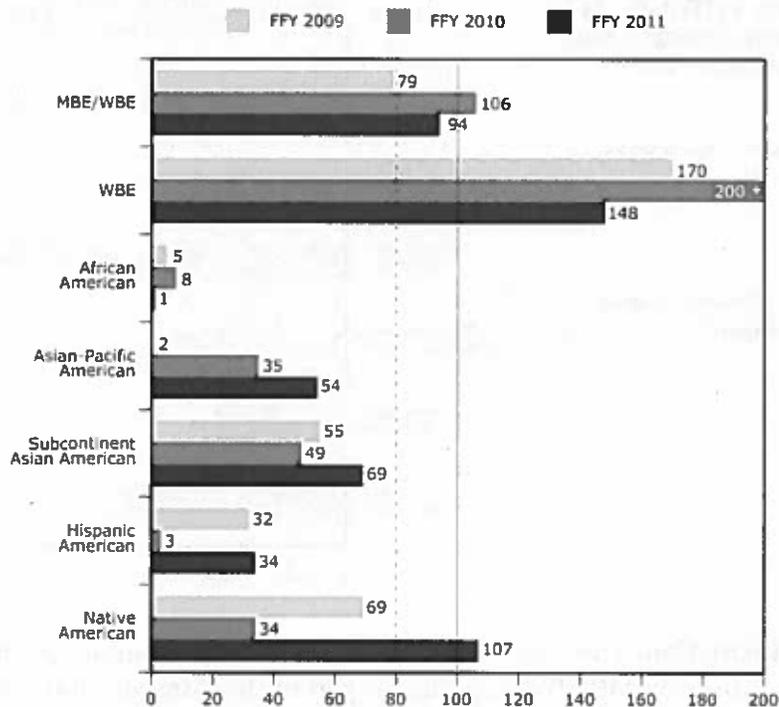
Transportation-related engineering contracts. During the study period, WSDOT and local agencies only used race- and gender-neutral measures to encourage MBE/WBE/ DBE participation on engineering contracts. They did not apply contract-specific DBE goals or voluntary MBE/WBE goals to and engineering contracts, regardless of funding source.

WBEs did not show substantial disparities on transportation-related engineering contracts in any year of the study period.

Figure ES-4. Disparity indices for WSDOT and local agency transportation-related engineering contracts (FHWA- and state-funded) by study period year

Note:
 Number of prime contracts/subcontracts analyzed was 690 for FFY 2009, 948 for FFY 2010, and 659 for FFY 2011.
 See Figures K-34, K-35, and K-36 for corresponding disparity results tables.

Source:
 BBC Research & Consulting availability and utilization analyses.



FHWA-funded construction contracts from 2005-2006. BBC also analyzed FHWA-funded construction contracts that WSDOT and local agencies awarded between May 9, 2005 and September 30, 2006. WSDOT did not set DBE contract goals on its FHWA-funded contracts during that time period in response to the May 2005 *Western States Paving Company vs. Washington State DOT* court decision.

Figure ES-5 presents overall disparity analysis results for FHWA-funded construction contracts that WSDOT and local agencies awarded between May 9, 2005 and September 30, 2006. Overall, MBE/WBEs did not exhibit a substantial disparity on those contracts (disparity index of 96). However, results varied for individual MBE/WBE groups:

Three MBE groups exhibited substantial disparities on FHWA-funded construction contracts in 2005-2006 — African American-owned businesses (disparity index of 40), Subcontinent

American-owned businesses (disparity index of 0), and Hispanic American-owned businesses (disparity index of 41).

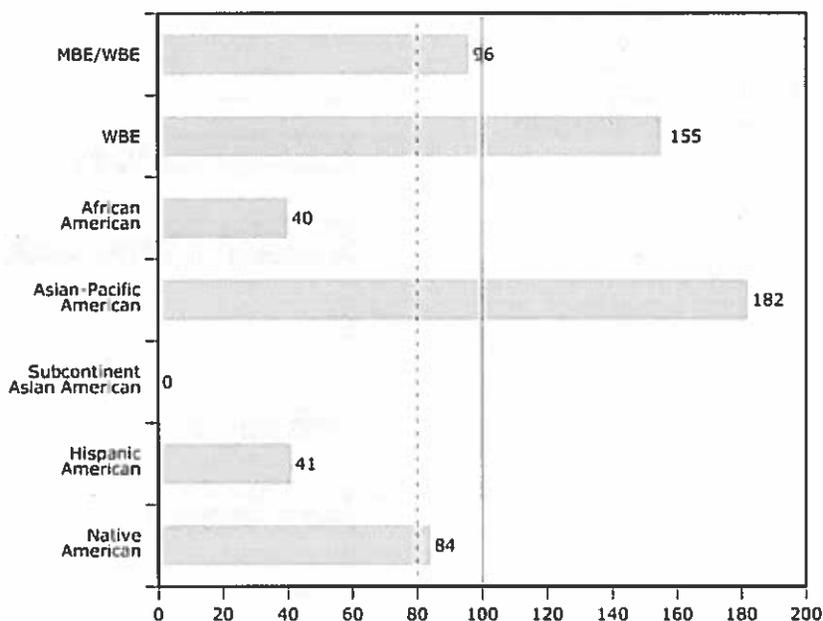
Native American-owned businesses exhibited a disparity index of 84 on those contracts, somewhat higher than the threshold of 80 that some courts use as an indicator of a substantial disparity.

Neither WBEs (disparity index of 155) nor Asian-Pacific American-owned businesses (disparity index of 182) exhibited disparities on those contracts.

Figure ES-5. Disparity indices for WSDOT FHWA-funded construction contracts, May 2005 – September 2006

Note:
Number of prime contracts/subcontracts analyzed was 1,005.

Source:
BBC Research & Consulting availability and utilization analyses.



Other information. The study team also examined information concerning the local marketplace, including results by MBE/WBE group, as part of the disparity study. WSDOT should review the full disparity study report, as well as other information it may have, in determining whether it needs to use any race- or gender-conscious measures, and if so, in determining which racial/ethnic and gender groups should be considered eligible for those measures.

In addition to the statistical evidence discussed above, the Study also gathered and analyzed anecdotal evidence of discriminatory barriers to the full and fair participation of M/W/DBEs in WSDOT's contracts and subcontracts. It looked at quantitative evidence through the use of a large-scale survey of DBEs and non-DBEs about their experiences and challenges in obtaining contracts. The survey quantified and compared anecdotal evidence on the experiences of DBEs and non-DBEs as a method to examine whether any differences might be due to discrimination.

The Study found that DBEs that have been hired in the past by non-DBE prime contractors to work on public sector contracts with DBE goals are rarely hired-or even solicited-by these prime contractors to work on projects without DBE goals. The relative lack of DBE hiring and, moreover, the relative lack of solicitation of DBEs in the absence of affirmative efforts by

WSDOT and other public entities in the Washington state market area shows that business discrimination continues to fetter DBE business opportunities in Washington's relevant markets.

Moreover, DBEs in WSDOT's market area report suffering business-related discrimination in large numbers and with statistically significantly greater frequency than non-DBEs. These differences frequently remain statistically significant when firm size and other "capacity-related" owner characteristics are held constant. DBEs are often more likely than similarly situated non-DBEs to report that specific aspects of the regular business environment make it harder for them to conduct their businesses and often less likely than similarly situated non-DBEs to report that specific aspects of the regular business environment make it easier for them to conduct their businesses.

The Study also presents the results from a series of in-depth personal interviews conducted with DBE and non-DBE business owners in the WSDOT market area. The interviews suggest that Black American-, Asian Pacific American-, Subcontinent Asian American-, Hispanic American-, and Native American-owned DBE businesses continue to suffer discriminatory barriers to full and fair access to WSDOT, other public sector, and private sector contracts. Participants reported experiences with discriminatory barriers, attitudes and performance standards, exclusion from industry networks; difficulties obtaining public sector contracts; and obtaining work on private sector or WSDOT "non-goals" contracts.

In summary, the Study concluded that there is strong anecdotal evidence of large, adverse, and frequently statistically significant disparities with Black American-, Asian Pacific American-, Subcontinent Asian American-, Hispanic American-, and Native American-owned DBE businesses' participation in business enterprise activity in WSDOT's relevant market area and the actual current availability of those businesses. It further concluded that these disparities cannot be explained solely, or even mostly, by differences between DBE and non-DBE business populations in factors untainted by discrimination, and that these differences therefore give rise to a strong inference of the presence of discrimination.

Based on these findings, the Study recommended that WSDOT augment its race-neutral initiatives, including reviewing surety bonding and insurance requirements; increasing outreach to DBEs and other small firms; create a WSDOT business development program; adopt a small business target market program; improve data collection and retention procedures; and increase DBE Program administration resources and commitment.

D. Public Notice of Disparity Study Report, Public Notice of Reasons for Requesting Waiver, and Initial Request for Waiver Submitted in 2014

In June 2013 WSDOT held public meetings throughout the state to discuss the Disparity Study Results, including the waiver request. These occurred at the following locations:

- June 18, 2013 – North Seattle
- June 19, 2013 – Yakima
- June 20, 2013 – Spokane
- June 24, 2013 – Webinar
- June 25, 2013 – Vancouver
- June 26, 2013 – South Seattle
- June 27, 2013 – Tacoma
- January 7, 2014 – Spokane
- January 9, 2014 – North Seattle
- January 13, 2014 – Tacoma

During and after the study process WSDOT met on numerous occasions with groups such as Tabor 100, the National Association of Minority Contractors, Women's Transportation Seminar and other members of the DBE Advisory Group. On January 23, 2014 WSDOT met with stakeholder organizations such as the Women in Highway Construction to discuss the proposed waiver. See Disadvantaged Business Enterprise (DBE) Program Proposed Amended Three-Year Overall Goal & Methodology for Federal Fiscal Years 2014 and 2015 through 2017 available at: www.wsdot.wa.gov/EqualOpportunity/DisparityStudy/default.htm.

WSDOT requested a waiver by letter dated March 28, 2014, available at: www.wsdot.wa.gov/EqualOpportunity/DisparityStudy/default.htm. attached. On October 20, 2015, FHWA requested that WSDOT amend and re-submit its request for a waiver; this document is WSDOT's submission of the amended request.

II. CONCLUSION: WSDOT'S REQUEST FOR A WAIVER IS CONSISTENT WITH THE PURPOSE AND CRITERIA OF 42 CFR § 26.15.

Therefore, WSDOT hereby requests pursuant to 49 CFR §26.15(b) a waiver of the prohibition on sub-dividing goals into a group-by-group set of percentages. See 49 CFR § 26.51(e)(4) ("Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.")

Based on the 2012 Disparity Study analyses and recommendations, WSDOT requests to limit its use of DBE contract goals to the following groups: Black American-, Asian Pacific American-, Subcontinent Asian American-, Hispanic American-, and Native American-owned DBE businesses, including women-owned businesses that also fall within one of the above categories.

As a result of the waiver, WSDOT would not consider non-Hispanic white WBE businesses as being eligible on a statistical basis for the presumption of disadvantaged status concerning DBE contract goals at this time. If a specific non-Hispanic white woman-owned firm has evidence on an individualized basis that it has been socially and economically disadvantaged for purposes of attempting to conduct business in industries and markets in which WSDOT participates with

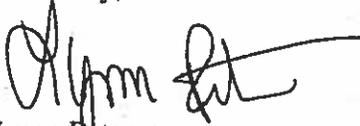
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respect to public contracting, then such a firm would still have the option of applying for certification under 49 CFR § 26.61(d), 26.67(d) and Appendix E. WSDOT's waiver request complies with all applicable laws and program requirements. Approval of the waiver will also be consistent with WSDOT's implementation of the Federal DBE Program in a narrowly tailored manner.

WSDOT asserts that this approach will achieve the objectives of 49 CFR Part 26. In addition, this request for a waiver conforms to the guidance from the USDOT's General Counsel on responding to the opinion of the United States Court of Appeals for the Ninth Circuit in *Western States Paving*.

If you have any questions regarding this submission, please contact Mike North at 360.705.7095 or NorthM@wsdot.wa.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "Lynn Peterson", with a long horizontal flourish extending to the right.

Lynn Peterson
Secretary of Transportation

LP:jd

cc: Roger Millar, WSDOT
Mike North, WSDOT

