

**Washington State Department of Transportation's Federal Highway Administration
Triennium Disadvantaged Business Enterprise Goal
Federal Fiscal Years 2018-2020**

The Washington State Department of Transportation (WSDOT) submits this Disadvantaged Business Enterprise (DBE) goal methodology to the U.S. Department of Transportation's Federal Highway Administration (FHWA) for review and approval pursuant to 49 CFR § 26.45 to establish the triennium DBE goal for its federally-assisted highway contracts for Federal Fiscal Years (FFYs) 2018 through 2020 (hereinafter the "triennium"). WSDOT has established a triennium DBE goal of 19.0%.

To meet the requirements of § 26.45, WSDOT commissioned a Disparity Study from Colette Holt & Associates (CHA), a nationally recognized law and consulting firm (Attachment A). The Study provides a statistical analysis of baseline DBE availability that can be used to establish the step 1 base figure estimate of DBE availability in WSDOT's markets. The Study further analyzed Census Bureau and other econometric and social science evidence to determine whether there are disparities between DBEs and non-DBEs in factors impacting entrepreneurial success on WSDOT's contracts and subcontracts. It also provided anecdotal data on DBEs' experiences in seeking WSDOT prime contracts and associated subcontracts, and whether firms owned by minorities or women have equal opportunities to compete. The Study's results as relevant for goal setting are summarized below.

Step One Base Figure

Definition of WSDOT's contracting market

The first element in estimating DBE availability was to determine empirically the relevant product and geographic markets for WSDOT's FHWA-assisted contracts. Based upon 5 years of WSDOT's contract and subcontract expenditure data, the Study identified the 6-digit North American Industry Classification System (NAICS) codes that comprise WSDOT's product market for FHWA-funded contracts, and the State of Washington was identified as the geographic market. This approach incorporates USDOT's advice to use the most detailed data available and to weight that data by the recipient's expenditures. See <http://osdbuweb.dot.gov>. It also separates firms by detailed function, delineating, for example, general contractors from specialty trade firms that primarily act as subcontractors on WSDOT projects.

Counting establishments in WSDOT's relevant markets

The Study next examined the availability of DBEs in WSDOT's relevant markets to perform on FHWA-assisted projects. It used Hoovers/Dun & Bradstreet's Marketplace database, an independent and established data source routinely relied upon by courts, to identify the total number of Washington businesses in each 6-digit NAICS code, weighted by that code's share of WSDOT's product market. It next identified the number of firms in each NAICS code owned by minorities and women, based upon the information in Hoovers, the Washington Unified Certification Program Directory and other regional listings. As noted by USDOT's guidance, supplementing the DBE Directory with other information on minority- and women-owned firms may provide a more complete picture of the availability of firms to work on WSDOT's contracts than reliance solely upon the number of WSDOT certified DBEs.

Estimating baseline DBE availability

Applying the "custom census" approach that has been repeatedly accepted by USDOT and the

courts, the Study estimated 19.0% as the base DBE availability figure for Step 1.

Step Two Adjustment

Once the base figure has been calculated, WSDOT must examine all of the evidence available in its jurisdiction to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected absent the effects of discrimination. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on WSDOT's federally-assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies conducted anywhere within WSDOT's jurisdiction, to the extent not already accounted for in the base figure. If available, WSDOT must also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding and insurance required to participate in the Program, and data on employment, self-employment, education, training, and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought." §26.45(d)(3).

Past DBE utilization

WSDOT considered the current capacity of DBEs to perform work in Washington State, as measured by the amount of work performed by certified DBEs on federal-aid projects over the past three years. The median for WSDOT's participation for FFY 2012 through FFY 2016 was 15.1%.

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|----------------------------|-------|
| DBE Participation FFY 2012 | 15.2% |
| DBE Participation FFY 2013 | 16.4% |
| DBE Participation FFY 2014 | 14.1% |
| DBE Participation FFY 2015 | 11.7% |
| DBE Participation FFY 2016 | 15.1% |

The WSDOT median past DBE participation for FFY 2012 to 2016 is 15.1%.

Evidence from local disparity studies

No other local jurisdictions have conducted studies relevant to WSDOT's contracting activities.

Disparities affecting DBE opportunities

The Study explored the Census Bureau data and literature relevant to how discrimination in the Washington State highway industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in WSDOT's prime contract and subcontract opportunities. Data from the Census Bureau's Survey of Business Owners indicate very large disparities between Minority and Women's Business Enterprises (M/WBE) firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Data from the Census Bureau's American Community Survey (ACS) indicate that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The literature on barriers to access to commercial credit and the development of human capital further reports that

minorities continue to face constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, to grow, and to succeed.

While relevant and probative to whether the Department needs to continue to employ race-conscious measures to meet its DBE goal, as well as the types of supportive services and other approaches to level the playing field WSDOT should consider, the Study recognized that these results are difficult to quantify within the rigors of the strict scrutiny standards.

Step 2 Adjustment

WSDOT considered the current capacity of DBE firms to perform work in this market area as measured by the amount of work performed by DBEs on FHWA-assisted projects over the past five years. Following the USDOT’s Office of Small and Disadvantaged Business Utilization’s *Guidance on Tips for Goal-Setting in the Disadvantaged Business Enterprises (DBE) Program*, the Department combined the step 1 base figure with its median past DBE participation for an average of 17.1% (step 1 base figure of 19.0% + median past participation of 15.1% = 34.1% ÷ 2 = 17.1%).

Projection of Race-Neutral vs. Race-Conscious Goal Attainment

The regulations require that WSDOT must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation. Ongoing and new initiatives seek to reduce discriminatory barriers, increase capacity and level the playing field for the participation of DBEs and other small contractors. They are also designed to assist WSDOT in meeting the increased goal for DBE participation by prime contractors and subcontractors.

The Study found that DBEs face disparities in full and fair access to WSDOT’s FHWA-assisted contracts. While not all disparity ratios in every industry code for each racial and ethnic group and White females groups were statistically significant, large disparities remain overall. Further, DBE utilization on state-funded contracts, for which no goals were set, was extremely low. Coupled with the additional anecdotal and economy-wide evidence, the Study findings paint a clear picture of a mostly closed market. These results strongly suggest that narrowly tailored contract goals remain necessary to ensure nondiscrimination.

Past DBE race-neutral participation

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, WSDOT evaluated past race-neutral DBE participation, as defined in 49 CFR § 26.51(a). WSDOT’s median percentage on federal-aid contracts through race-neutral means for FFY 2012-2016 was 2.2%.

| Federal Fiscal Year | Total DBE Participation | Race-Neutral Participation | Race-Conscious Participation |
|---------------------|-------------------------|----------------------------|------------------------------|
| 2012 | 15.2% | 2.1% | 13.1% |
| 2013 | 16.4% | 2.3% | 14.1% |
| 2014 | 14.1% | 1.8% | 12.3% |
| 2015 | 11.7% | 2.2% | 9.6% |
| 2016 | 15.1% | 2.7% | 12.5% |

Therefore, WSDOT projects that it will meet 2.2% of its overall goal through race-neutral measures

and 16.8% of its overall goal through race-conscious contract goals. WSDOT will monitor DBE participation throughout the year to adjust its use of contract goals to ensure that their use does not exceed the overall goal.

Race-neutral measures to achieve DBE participation

WSDOT will meet the maximum feasible portion of its triennium goal through the race-neutral measures listed below. WSDOT will maximize outreach efforts to the DBE contracting community and the use of DBE Support Services to increase the utilization and support of DBEs that participate on upcoming WSDOT projects.

Support Services

WSDOT provides the following supportive services to DBEs:

- Immediate and long-term business management, record keeping, financial and accounting capabilities;
- Long-term development assistance to increase opportunities to participate in more varied and significant work, and to achieve eventual self-sufficiency;
- Programs on contracting procedures and specific contract opportunities;
- Assistance in obtaining bonding or financing;
- Assistance to start-up firms, particularly in fields with historically low DBE participation;
- Identification of potential highway-related DBEs and prequalification assistance; and
- In an effort to increase awareness of the DBE Supportive Services program, WSDOT has developed a DBE Supportive Services hotline (888) 259-9143, email address dbess@wsdot.wa.gov, and website: www.wsdot.wa.gov/EqualOpportunity/DBE.htm.

Outreach and Networking

WSDOT engages in a number of outreach efforts to minority and women's organizations to enhance DBE opportunities in Department projects. These efforts include but are not limited to:

- Sponsorship of the annual Regional Contracting Forum held in Seattle, Washington, in partnership with state, local and federal agencies. Last year's event attracted approximately 2,000 individuals.
- WSDOT works with organizations such as the Northwest Minority Supplier Diversity Council, Women in Construction, USDOT's Small Business Transportation Resource Center, the Women's Transportation Seminar, Tabor 100, the National Association of Minority Contractors, Association of General Contractors, American Council of Engineering Companies, the Office of Minority and Women's Business Enterprises and other groups to promote the DBE Program.
- WSDOT has established a Washington State DBE Work Group comprised of WSDOT divisions and local agencies, among others, that will advise WSDOT on DBE issues, including but not limited to, goal setting, outreach, training, etc.

Complaint Procedures

WSDOT has implemented procedures to process complaints of discrimination in the operation of the DBE Program and against contractors receiving WSDOT contracts. This will ensure prompt, uniform and fair responses to allegations of unlawful conduct so that DBEs, non-DBEs and interested persons can have confidence in the integrity of WSDOT's operations.

WSDOT has implemented the Fraud Hotline to report fraud and abuse in the DBE Program. The Fraud Hotline is available at (877) 856-3770 or fraudhotline@wsdot.wa.gov.

Prompt Payment

WSDOT continues to enforce its prompt payment provisions and processes. It impresses upon its personnel and prime contractors the necessity and importance of meeting these requirements. This is accomplished via WSDOT sponsored training for internal staff as well as external contractors, which includes a portion on prompt payment.

Emerging Contractor Support Initiatives

WSDOT recognizes the necessity of developing new and innovative race-neutral contractor support services and has begun implementing new programs and resources (e.g., Mentor Protégé Program; Minority, Small, Veteran and Women's Business Enterprise Program; remodeled DBE Support Services Program, etc.). This process involved examining other states' supportive services strategies, as well as working with construction and minority and women business organizations. It also includes soliciting input from the DBE Work Group and from construction and DBE organizations in this and other states.

Counting race-neutral and race-conscious participation

Based on a 2012 Disparity Study, WSDOT sought and received a waiver of the regulation that White females as a group are presumptively disadvantaged. Under the terms of the waiver, dollars paid to DBEs owned by such persons are not eligible for credit towards meeting DBE contract goals, and WSDOT will count and report FHWA dollars to these firms as race-neutral participation.

The 2017 Disparity Study found that White females do not enjoy a level playing field for USDOT-assisted contracts and recommended that firms owned by such persons should be returned to the status of goal credit eligibility. WSDOT has sought a rescission of the waiver and awaits USDOT's response. Until such time as the waiver is rescinded, WSDOT will count all participation by certified DBEs owned by White females as race-neutral participation.

Public Participation

Consultation

Per 49 CFR § 26.45, WSDOT employs a consultative process requesting input from organizations serving or representing DBEs, minority-owned or women-owned businesses, state or local offices of procurement, federal, state or local offices responsible for enforcing civil rights laws, local labor offices and organizations, etc. WSDOT developed the proposed overall annual DBE goal and presents it to the DBE Work Group (individuals from various WSDOT divisions and offices, and other state agencies), including:

- WSDOT Highways and Local Programs Division
- WSDOT Construction Office
- Washington State Attorney General's Office
- WSDOT Ad & Award Office
- WSDOT Public Transportation Division
- WSDOT Secretary of Transportation
- WSDOT Consulting Services Office
- WSDOT Aviation Division

- Washington State Ferries
- Washington State Office of Minority & Women's Business Enterprises

Once the DBE Work Group reviewed and provided comments, the overall DBE goal was revised accordingly.

Upon DBE Work Group review, the goal was then reviewed by the DBE Advisory Group, comprised of minority, women and trade organizations, including but not limited to:

- Tabor 100
- National Association of Minority Contractors
- Latino Civil Alliance
- American Council of Engineering Companies of Washington
- Laborer's Local 440, Street Pavers, Sewer, Watermain, and Tunnel Workers
- Washington Association of General Contractors
- Washington Asphalt Pavement Association Northwest Mountain Minority Supplier Diversity Council
- Tribal Employment Rights Office
- Women's Transportation Seminar
- Washington Asphalt Pavement Association
- Women in Highway Construction

WSDOT followed the public participation requirements, outlined in 49 CFR Part 26. This public participation process also included the publication of a press release on October 30, 2017 requesting public comment for 45 days. This publication also notified interested parties of public meetings to gain and understanding of the overall DBE goal at the following locations:

- Spokane, November 28
- Vancouver, November 29
- Webinar, December 5
- North Seattle, December 7
- Pasco, December 13¹

The comments provided by these groups were taken into consideration and no quantitative evidence relevant to the determination of availability or utilization was submitted to revise the overall DBE goal.

Published Notice

To satisfy the public consultation requirements of 49 CFR § 26.45(d)(2), WSDOT will provided a press release to all media outlets in Washington State and publish the proposed overall annual DBE goal for the triennium in the Seattle Daily Journal of Commerce. Included in its press release and publication is WSDOT's request for public comment and inspection of the goal methodology for 45 days from the date of publication.

¹ The December 13 Public Meeting was added with a separate press release to ensure sufficient statewide notice regarding the Proposed Overall DBE Goal.

Summary

Pursuant to the requirements of 49 CFR § 26.45(a)(2), WSDOT submits this proposed triennium DBE Goal to FHWA for review and approval. WSDOT followed the requirements of 49 CFR §26.45 in completing this FHWA DBE goal along with the OSDBU Guidance. This proposed DBE Goal of 19.0% is based upon the availability of ready, willing and able DBEs, as established by the Disparity Study. WSDOT anticipates race-neutral participation of 2.2% and race-conscious participation of 16.8%.