

## WHATCOM TRANSPORTATION AUTHORITY

### DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

#### **Objectives and Policy Statement**

WTA has established a Disadvantaged Business Enterprise (DBE) program to comply with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. As a condition of receiving Federal financial assistance from the DOT WTA assures compliance with 49 CFR Part 26.

WTA's objective is to promote the use of all types of DBEs, as defined in 49 CFR Part 26, and ensure they have an equal opportunity to receive and participate in DOT-assisted contracts. WTA hereby commits to the following and promotion of its DBE program and its policies which include:

1. Ensure nondiscrimination in the award and administration of DOT – assisted contracts.
2. Create a level playing field and remove barriers so DBEs can compete fairly for and participate in DOT-assisted contracts.
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law.
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.
6. Structure procurement and contracting opportunities in ways that foster competition among Small Business Enterprises and DBE's.
7. Monitor DBE performance and certifications during the term of all DOT-assisted contracts.

The Procurement & Grants Coordinator has been delegated as the DBE Liaison Officer (DBELO) reporting to the General Manager with regards to the DBE Program. In that capacity, the Purchasing and Contracts Coordinator is responsible for implementing all aspects of the DBE program Compliance with the DBE program so that it is given the same priority as all other legal obligations required of WTA in its financial assistance agreements with the DOT.

This program has been discussed and approved by the WTA Board of Directors. It has been distributed throughout our organization, posted on WTA's internal electronic bulletin board, and presented at procurement training sessions. It will be distributed to both DBE and non-DBE businesses through outreach forums, and posted on our website. WTA will incorporate DBE program language into our procurement processes.

  
General Manager

7/30/2015  
Date

## **PART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

WTA's objective is to promote the use of all types of DBEs, as defined in 49 CFR Part 26, and ensure they have an equal opportunity to receive and participate in DOT-assisted contracts.

### **Section 26.3 Applicability**

WTA receives federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178. Titles I, iii, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21<sup>st</sup> Century Act (MAP-21), Publ. L. 112-141, 126 Stat. 405.

WTA does not submit a DBE Program to the FTA for years without applicable federally funded programs, so long as all funds from any DOT financial assistance have been expended. For example, in years when the only federally funded programs are for rolling stock purchases, a DBE plan is not required. Years with federally funded construction projects will require a DBE plan, until such time as all funds from DOT financial assistance have been expended.<sup>1</sup>

### **Section 26.5 Definitions**

WTA adopts and incorporates by reference, the definitions contained in 49 C.F.R. Section 26.5 for this program.

### **Section 26.7 Non-discrimination Requirements**

WTA will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the WTA will not, directly or indirectly, use criteria or administration methods that defeat or substantially impair accomplishment of the objectives of this program with respect to individuals of a particular race, color, sex, or national origin.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11(a) and (b)

WTA will report DBE participation on a semi-annual basis using the Uniform Report of DBE Awards or Commitments. Additional information on WTA's DBE program will be made available upon request by DOT

#### Bidders List: 26.11(c)

WTA will create a bidders list, consisting of information about all DBE and non-DBE firms that may bid or quote on DOT-assisted contracts. This bidders list will be used to calculate and help set overall goals. The bidder list will include the firm name, address, DBE/non-DBE status, age of the firm, NAICS codes relating to the work the firm is certified to perform, and annual gross receipts of the DBE. WTA will maintain records documenting prime and

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<sup>1</sup> CFR 49 part 26.21

sub-contractor compliance. All records will be retained according to WTA's financial assistance agreement or a minimum of three (3) years, whichever is longer.

Information will be collected in the following ways:

- A contract clause requiring prime bidders to report the names/addresses, and other information of all firms who quote to them on subcontracts;
- A notice in all solicitations, and otherwise widely disseminated,
- Require firms interested in doing business either directly or indirectly through subcontracts to report information directly to WTA.

### **Section 26.13 Federal Financial Assistance Agreement**

WTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance: 26.13(a)

WTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the WTA of its failure to carry out its approved program, the Department may impose sanction as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

This language will appear verbatim in financial assistance agreements with sub-recipients.

#### Contract Assurance: 26.13 (b)

WTA will ensure that the following clause is placed verbatim in every contract and sub-contract that is funded in whole or in part by DOT:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. This may include, but is not limited to:

- Withholding monthly progress payments
- Assessing financial sanctions
- Invoking liquidated damages
- Disqualifying/Debaring the contractor or sub-contractor from future bidding on DOT-assisted contracts

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

WTA will provide the FTA with updates representing significant changes in the program. WTA agrees to carry out the DBE program until all DOT funds are expended.

### **Section 26.23 Policy Statement**

The Policy Statement is elaborated on the first page of this program.

### **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

*Magan Waltari, Procurement & Grants Coordinator  
4111 Bakerview Spur  
Bellingham, WA 98226  
360.788.9332  
maganw@ridewta.com*

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that the WTA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO does not have a staff to assist in the administration of the program with duties and responsibilities including:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual and tri-ennial goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations and monitors results.
6. Ensures that standard clauses in requests for proposals, advertisements, and bids are in compliance with RCW 39.19.050, including notice of the statutory penalties under RCW [39.19.080](#) and [39.19.090](#) for noncompliance.
7. Analyzes WTA's progress toward attainment and identifies ways to improve progress.
8. Participates in pre-bid meetings.
9. Advises the General Manager and Board of Directors on DBE matters and achievement.
10. Partners with project managers to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Participates in DBE training seminars.
13. Identifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Washington.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains WTA's updated directory of certified DBEs.
16. Remains current on all regulations, federal and state, affecting DBE Programs and informing all WTA personnel involved in contract execution.
17. Verifies DBE certifications before contract awards
18. Assists DBEs in overcoming any challenges to compete or participate in DOT-funded contracts.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the WTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

WTA has searched the Washington OMWBE directory to identify such institutions and will re-evaluate the availability of DBE financial institutions during its triennial goal setting. To date we have not identified any DBE financial institutions in Whatcom County or the State of Washington. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **Section 26.29 Prompt Payment Mechanisms**

WTA will include the following clause in each prime contract for work that is fully or partially funded by DOT:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from WTA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the WTA. This clause applies to both DBE and non-DBE subcontracts. WTA will not reimburse the prime contractor and may impose other appropriate penalties, for work performed by subcontractors unless and until the prime has ensured that the subcontractors are promptly paid for the work they have performed.*

WTA and the contractor will agree to hold retainage from prime contractors and provide milestone payments on portions of completed prime contract. WTA would pay retainage to the prime contractor based on acceptance of these milestones and require a contract clause obligating the prime to pay all subcontract retainage within 30 days of receipt of payment.

The following contract clause will be included in all prime and sub-contracts for work that is fully or partially funded by DOT:

*If the parties do not resolve a dispute through initial negotiations, then the matter should be resolved by a mutually agreed-to alternative dispute resolution process. This can include structured negotiations, mediation, or arbitration.*

### **Monitoring Payments to DBEs**

WTA will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the WTA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

WTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

### **Section 26.31 Directory**

WTA utilizes the State of Washington OMWBE directory which identifies all firms eligible to participate as DBEs. This directory satisfies all requirements of this section within 49 CFR. Washington State OMWBE is the approved Unified Certification Program for DBE Certification under 49 CFR Part 26.81.

Parties interested in becoming certified under the WA OMBWBE program can contact the agency at <http://www.omwbe.wa.gov/index.shtml> or call toll free (866) 208-1064. WTA also maintains a list of vendors,

including DBEs specifically interested in WTA opportunities. Parties interested in the WTA list may contact the DBELO.

### **Section 26.33 Overconcentration**

WTA has not identified that overconcentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs**

WTA has elected not to establish a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

WTA will take the following monitoring and enforcement mechanisms:

1. Bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. Consider similar action under its own legal authorities available under State, local and Federal law, if any, including responsibility determinations in future contracts. Attachment 3 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. Provide monitoring and enforcement to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished as described in the applicable contract.
4. Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Section 26.39 Small Business Participation**

WTA incorporates the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by (DBE and non-DBE) small business concerns:

- Structure contracting requirement to facilitate and encourage competition and participation among small business and DBE's.
- Removal of unnecessary and unjustified bundling of contract requirements.
- Require prime contractors to provide subcontracting opportunities of the type and size that small businesses, including DBEs can reasonably compete for and perform where possible.
- Identify alternative strategies and structuring purchases to allow consortia or joint ventures to compete for and perform prime contracts.
- Review available DBEs, per OMWBE, in WTA's market area for DOT-funded projects and procurements.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

WTA does not use quotas or set-asides in the administration of this DBE program.

### **Section 26.45 Overall Goals:**

A description of the methodology to calculate the overall goal and the goal calculations is in Attachment 4. This section of the program will be updated at least triennially. The overall goal will be based on the availability of ready, willing, and able DBE's that can participate in WTA's DOT-assisted contracts.

In accordance with 49 C.F.R. Section 26.45(f) the WTA will submit its overall goal to DOT by August 1 of the year required. Before establishing the overall goal each year, WTA will consult with DBE contractor associations, technical assistance agencies, community organizations, and other officials or organizations in the service area to obtain information concerning the availability of DBE and Small Businesses ready, willing, and able to participate in DOT-assisted projects. WTA will also examine the effects of discrimination on opportunities for DBEs, and WTA's efforts to establish a level playing field for the participation of DBEs. WTA will document any outreach efforts.

Following this consultation, WTA will publish a notice on its website [www.ridewta.com](http://www.ridewta.com) of the proposed overall goals, informing the public that the proposed goal and its rationale are available online for review and comment 30 days following the date of the notice. WTA will publish its proposed goal no later than July 1.. The notice will include contact information to which comments may be sent.

WTA's overall goal submission to DOT will include a summary of information, any comments received during this public participation process, and WTA's responses.

WTA will begin using the overall goal once approved by DOT, unless given other instructions from DOT. If a project goal is established for a DOT-assisted project, the goal will be in use by the time of the project solicitation..

### **Section 26.49 Transit Vehicle Manufacturers Goals**

WTA will require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 C.F.R. Section 26.49, and will include such an obligation in any contract.

Only TVM's listed on FTA's certified list of Transit Vehicle Manufacturers or who have submitted a goal methodology that has been approved or not disapproved at the time of solicitation will be eligible to bid.

WTA will submit to DOT within 30 days of award, the name of the successful TVM bidder and the total dollar value of the contract.

### **Section 26.51 Meeting Overall Goals**

WTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation.

To develop DBE participation, WTA will:

1. Arrange solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses. This could include unbundling large contracts to make them more accessible to small businesses; requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform on their own; reducing bonding requirements and simplifying the bond process, or providing services to assist DBE's and other small businesses in gaining financing and bonding.

2. Carry out information and communications programs on contracting procedures and specific contract opportunities. This could include ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, and providing information in formats other than English, where appropriate.
3. Providing access to services to help DBEs and other small businesses to develop and improve long-term business management, record keeping, and financial and accounting capability,
4. Increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects and achieve eventual self-sufficiency.
5. Encouraging use of the online OMWBE and SCS directories and our website to the widest feasible universe of potential prime contractors.
6. Referring DBEs and other small businesses to programs that can assist them to develop their capacity to utilize emerging technology and conduct business through electronic media.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract.
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Based on the 9<sup>th</sup> Circuit ruling in 2005 (Western States Paving v. DOT, 407 F.3d 983 (9<sup>th</sup> Cir. 2005)), race conscious goals including contract goals are prohibited unless WTA can prove significant disparity of DBE participation. As WTA has not performed its own statistical disparity study, the agency reviewed the studies conducted by WSDOT<sup>2</sup> and Sound Transit in 2013. Both survey's did uncover significant disparities in the agencies DBE availability for contracts. However, both agencies will continue to use race-neutral measures in their contracting. Sound Transit intends to apply for waivers from FTA to allow it to use race-conscious goals specific to the groups identified in its disparity study.

WTA's market area includes the same market area as Sound Transit as well as Snohomish, Skagit, and Whatcom Counties. In evaluating the majority of WTA's past project utilizing Federal funds, there is not a significant enough pool of certified DBE's to make race-conscious/contracting goals feasible for the agency. Doing so would eliminate groups that do not experience a disparity and reduce the certified DBE pool even further.

### **Section 26.55 Counting DBE Participation**

WTA will count DBE participation as follows. Participation will not be counted until the amount being counted has been paid to the DBE:

- Actual work performed by a DBE's own forces when participating in a contract. This will include the cost of supplies, material, purchased and/or leased equipment obtained by the DBE, fees, commissions charged by the DBE.
- DBE Subcontracted work performed by another DBE.
- When participating in a joint venture, the DBE's portion of the total dollar value of the contract equal to the defined portion of the work they are performing with their own forces.
- Expenditures to a DBE contractor when they perform a commercially useful function<sup>3</sup> on the contract.
- Purchases for supplies, materials or equipment that are obtained from a DBE manufacturer or a regular dealer or transaction expediter. This will include any assistance provided in the procurement, fees or transportation charges provided WTA determines these fees are reasonable and not excessive.

<sup>2</sup> <http://www.wsdot.wa.gov/EqualOpportunity/DisparityStudy/>

<sup>3</sup> §26.55 (c)



Firms not certified as a DBE at the time of contract execution will not be counted towards participation. Firms that lose their DBE certification will not be counted either.

## **SUBPARTS D & E - CERTIFICATION**

### **Section 26.81 Unified Certification Programs**

WTA participates in the Unified Certification Program (UCP) through the Washington State Office of Minority and Women's Business Enterprises (OMWBE). The Washington State Department of Transportation (WSDOT) and OMWBE represent that WSDOT is ultimately accountable and responsible to USDOT for Disadvantaged Business Enterprise (DBE) Certification in the state of Washington. OMWBE is the sole and exclusive certification authority for USDOT DBE participation. Final certification determinations made by OMWBE are binding and have the full force and effect of law as provided by this part.

OMWBE maintains the DBE directory at [http://www.omwbe.wa.gov/certification/certification\\_directory.shtml](http://www.omwbe.wa.gov/certification/certification_directory.shtml).

### **Section 26.83-26.91 Procedures for Certification Decisions**

Firms will be directed to contact the Washington State Office of Minority and Women's Business Enterprises at <http://www.omwbe.wa.gov/index.shtml> for information or questions about the DBE certification process. WTA does not certify DBE's. WTA will rely upon the directory from the Washington Office of Minority and Women's Business Enterprises to ensure that only firms certified as eligible DBE's will participate as a DBE.

Any firm or complainant may appeal OMWBE's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7<sup>th</sup> Floor  
Washington, D.C. 20590

WTA will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

WTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts and Washington State Public Disclosure law. See RCW Chapter 42.56 "Public Records Act" for Washington requirements. Such protection may be in the form of providing an opportunity for the party claiming to have confidential business information an opportunity to obtain an injunction from a court under RCW 42.56.540.

To the extent not contrary to provisions of state or local law, WTA will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

WTA will cooperate and promptly provide information as required for compliance reviews, investigations and other requests for information from DOT.

WTA employees, agents, or contractors will not intimidate, threaten, coerce, or discriminate against any individual or firm who has made a complaint, testified, assisted or participated in any manner in an investigation, proceeding, or hearing.

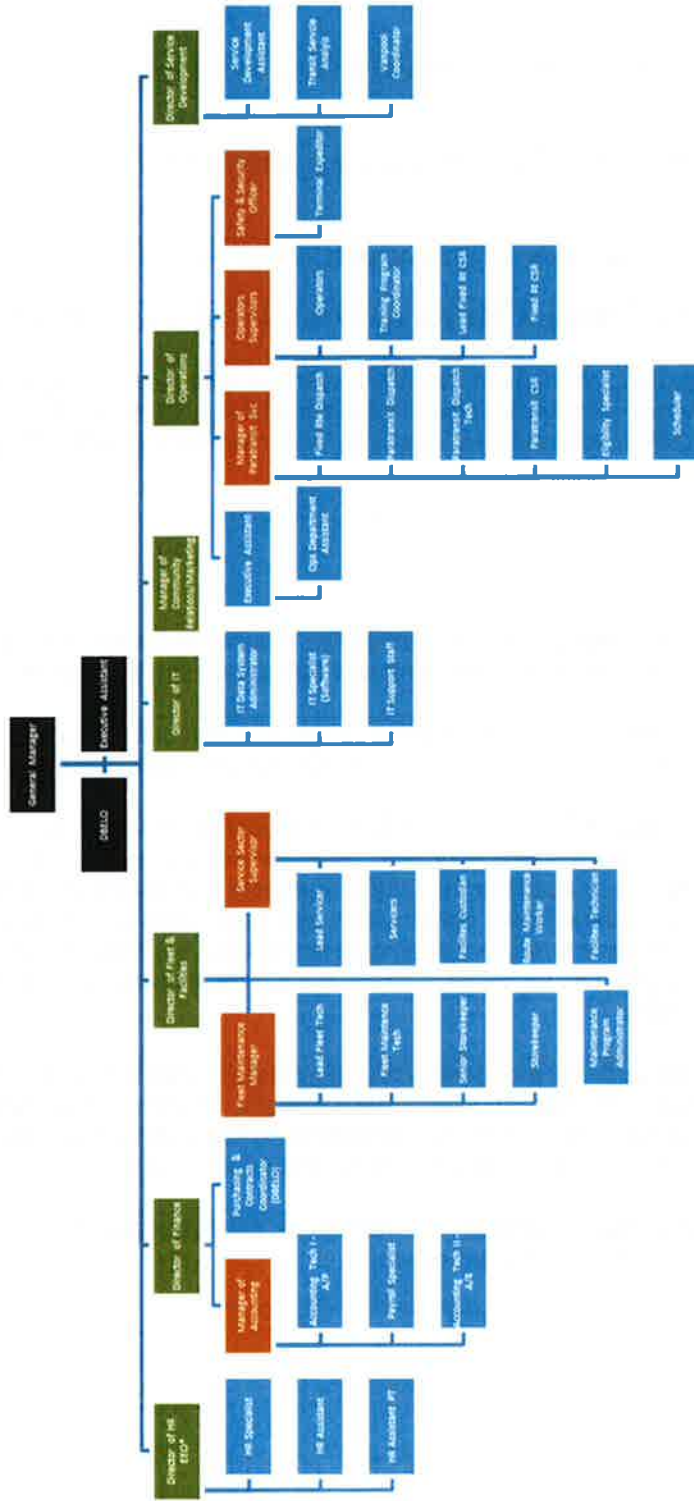
### **ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	DBE Goal Setting Checklist
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Goal Calculation Worksheet

# Attachment 1

## Organizational Chart

WTA's Board of Directors (BOD) Consists of Elected officials from Bellingham (3), Whatcom County (2), Lynden (1), Blaine (1), Ferndale (1), Everson/Nooksack/Sumas (1)



## Attachment 2 DBE Goal Setting Checklist

	Evaluate the extent of the geographic boundaries of the WTA's service area and bidding community as a source of DBE's.
	Evaluate the number of DBE's likely to be available for contracting and subcontracting opportunities.
	Evaluate the percentage of minority and female population in WTA's service area or bidding community.
	Evaluate the historic participation of DBEs on past WTA projects with DBE goals.
	Evaluate the historic availability of DBEs in the WTA's service area and bidding community.
	Evaluate the demographic changes in the WTA's service area and bidding community, as well as the OMWBE Directory and knowledge of local conditions, which might indicate a reasonable likelihood that new DBE businesses are available and interested in performing work on WTA projects.
	Evaluate the probable capacity of the available DBE businesses in the WTA's service area and bidding community to perform the contracting and subcontracting opportunities.
	Evaluate the number, type, and dollar value of contracting and subcontracting opportunities related to a project for which the WTA will utilize DOT funding assistance.
	Before establishing a goal, WTA will consult with DBE contractor associations, technical assistance agencies, disadvantaged economic development groups and DBEs in the service area. The purpose will be to acquaint the DBE community with the nature, scope and requirements of WTA's procurement, construction and contracting activities and for the WTA to solicit information from these groups regarding potential DBE participation, the effects of discrimination on opportunities for DBEs, and WTA's efforts to establish a level playing field for the participation of DBEs.
	WTA will publish a notice of the proposed goal, informing the public that the proposed goal and its rationale are available for inspection on WTA's website 45 days following the date of the notice, and informing the public that public comments on the goals will be received for 45 days from the date of the notice. The notice will include addresses to which comments may be sent.
	Summarize information and comments received during the public participation process with WTA's responses, and any subsequent action.

## **Attachment 3**

### **Monitoring and Enforcement Mechanisms**

WTA has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Statutory penalties under RCW 39.19.080 and 39.19.090 for noncompliance.
3. Other applicable laws, statues, and regulations.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

## Attachment 4

### Overall Goal Calculation Worksheet

#### Amount of Goal

1. WTA's overall goal for 2015-2017 is the following: 0% of the Federal Financial assistance we will expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.
2. \$4,880,000 is the dollar amount of DOT-assisted contracts that WTA expects to award during FFY2015 - 2017. This means that WTA has set a goal of expending \$0 with DBEs during this fiscal year/project.

#### Methodology used to Calculate Overall Goal

##### **Step 1:**

Determine the base figure for the relative availability of DBEs. The base figure for the relative availability of DBE's is calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was: US Census County Business Patterns sorted by United States

The data source or demonstrable evidence used to derive the denominator was: DBE Registry found on Washington State's OWMBE website

The numerator divided by the denominator is base figure for our overall goal: 0.15%

##### **Step 2:**

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by 0.08%.

The data used to determine the adjustment to the base figure was: Prior triennial DBE participation of 0.002%

The reason we chose to adjust our figure using this data was because: Lack of DBE availability and participation

From this data, we have adjusted our base figure to: 0.07%

#### Public Participation

WTA published goal information in these publications: On its website 6/24/2015

WTA received comments from these individuals or organizations:

Summaries of these comments are as follows:

Our responses to these comments are:

# F2025-2027 DBE Goal - Whatcom Transportation Authority

## Step 1(A): Determine Base Figure as overall relative availability of DBEs by NAICS Code.

Relative Availability for each NAICS Code was calculated by dividing Number of DBEs available by Number of all Firms. Data for Number of DBEs Available came from the Office of Minority and Women's Business Enterprises. Counties included in the market area were Whatcom, Skagit, Snohomish, and Island.

NAICS Code	Project	Available DBE Firms by NAISC Code	All Firms (DBE and Non-DBE) by NAISC Code	Relative Availability of DBEs by NAISC Code
237990	Heavy Civil Contractor	1	20	5.00%
238110	Poured Concrete	0	194	0.00%
238120	Structural Steel & Precast Concrete	0	15	0.00%
238150	Glass & Glazing Contractor	0	46	0.00%
238160	Roofing Contractors	0	211	0.00%
238170	Siding Contractors	0	130	0.00%
238210	Electrical Contractor	3	452	0.66%
238220	Plumbing & Heating, Air Conditioners	1	450	0.22%
238310	Drywall & Insulation Contractor	0	181	0.00%
238320	Painting & Wall Coverings	0	389	0.00%
238330	Flooring Contractor	0	209	0.00%
238390	Finish Carpentry Contractor	0	37	0.00%
238910	Site Preparation	2	305	0.66%
423610	Electrical Equipment	1	55	1.82%
541310	Architectural	0	52	0.00%
541320	Land Use Design	0	10	0.00%
541620	Environmental Consulting	1	62	1.61%
		<b>9</b>	<b>2,818</b>	<b>0.32%</b>

<b>Base Figure:</b>	<b>0.32%</b>
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# F2025-2027 DBE Goal - Whatcom Transportation Authority

## Step 1(B): Determine Weighted Base Figure.

Multiply Relative Availability (calculated in Step 1(A)) by Weight using weight for each NAICS Code calculated on *FTA Dollars by NAISC Code* sheet.

NAICS Code	NAICS Description	Weight (FTA Dollars by NAISC Code)	x	Relative Availability (from Step 1)	=	Weighted Base
237990	Heavy Civil Contractor	0.02		0.05		0.0010
238110	Poured Concrete	0.02		0.00		0.0000
238120	Structural Steel & Precast Concrete	0.09		0.00		0.0000
238150	Glass & Glazing Contractor	0.03		0.00		0.0000
238160	Roofing Contractors	0.04		0.00		0.0000
238170	Siding Contractors	0.04		0.00		0.0000
238210	Electrical Contractor	0.14		0.01		0.0009
238220	Plumbing & Heating and Air Conditioners	0.43		0.00		0.0009
238310	Drywall & Insulation Contractor	0.01		0.00		0.0000
238320	Painting & Wall Coverings Contractor	0.02		0.00		0.0000
238330	Flooring Contractor	0.00		0.00		0.0000
238390	Finish Carpentry Contractor	0.01		0.00		0.0000
238910	Site Preparation Contractor	0.00		0.01		0.0000
423610	Electrical Apparatus	0.04		0.02		0.0008
541310	Architectural	0.09		0.00		0.0000
541320	Land Use Design	0.01		0.00		0.0000
541620	Environmental Consulting	0.01		0.02		0.0002

<b>Weighted Base Figure</b>	0.0039
<b>Weighted Base Figure Expressed as Percentage</b>	0.39%



# F2025-2027 DBE Goal - Whatcom Transportation Authority

## Calculate FTA Dollars by NAISC Code.

Calculate percentage of total federal dollars by NAICS Code. "Amount of FTA Funds in NAISC Code" based on federal funding by NAISC Code by project amounts calculated on *FTA Projects by NAICS Code* sheet. If multiple projects involve same NAICS Code, federal dollars for that NAICS Code are combined. Percentage of total federal dollars = "Amount of FTA Funds in NAISC Code" divided by "Total Federal Dollars."

NAICS Code	NAICS Description	Amount of FTA Funds in NAISC Code
237990	Heavy Civil Contractor	\$3,000.00
237990	Heavy Civil Contractor	\$120,612.00
238110	Poured Concrete	\$65,765.60
238110	Poured Concrete Contractor	\$32,527.20
238120	Steel & Precast Concrete	\$557,837.60
238150	Glass & Glazing	\$194,511.20
238160	Roofing Contractors	\$244,066.40
238170	Siding Contractors	\$218,624.80
238210	Electrical Contractor	\$142,986.00
238210	Electrical Contractor	\$5,924.80
238210	Electrical Contractor	\$669,743.20
238220	Plumbing & Heating, Air	\$2,567,096.80
238310	Drywall & Insulation Contractor	\$71,275.20
238320	Painting & Wall Coverings	\$112,381.60
238330	Flooring Contractor	\$8,887.20
238390	Finish Carpentry Contractor	\$53,145.60
238910	Site Preparation	\$28,172.80
423610	Electrical Equipment	\$253,156.00
541310	Architectural	\$520,000.00
541320	Land Use Design	\$80,000.00
541620	Environmental Consulting	\$80,000.00
		<b>\$6,029,714.00</b>

NAICS Code	NAICS Description	Amount of FTA Funds in NAISC Code	% of Total Federal Dollars in NAISC Code
237990	Heavy Civil Contractor	\$123,612.00	2.05%
238110	Poured Concrete	\$98,292.80	1.63%
238120	Steel & Precast Concrete	\$557,837.60	9.25%
238150	Glass & Glazing	\$194,511.20	3.23%
238160	Roofing Contractors	\$244,066.40	4.05%
238170	Siding Contractors	\$218,624.80	3.63%
238210	Electrical Contractor	\$818,654.00	13.58%
238220	Plumbing & Heating, Air	\$2,567,096.80	42.57%
238310	Drywall & Insulation	\$71,275.20	1.18%
238320	Painting & Wall	\$112,381.60	1.86%
238330	Flooring Contractor	\$8,887.20	0.15%
238390	Finish Carpentry	\$53,145.60	0.88%
238910	Site Preparation	\$28,172.80	0.47%
423610	Electrical Equipment	\$253,156.00	4.20%
541310	Architectural	\$520,000.00	8.62%
541320	Land Use Design	\$80,000.00	1.33%
541620	Environmental Consulting	\$80,000.00	1.33%
	<b>Total Federal Dollars</b>	<b>\$6,029,714.00</b>	<b>100.00%</b>

## F2025-2027 DBE Goal - Whatcom Transportation Authority

Calculate Percentage of Federal Dollars in NAISC Code on a Project Basis.

Calculate percentage of federal dollars by NAISC Code by Project. Percentage of FTA Funds in NAISC Code = "Amount of FTA Funds in NAISC Code" divided by "Total WTA Budgeted Amount."

### MIDWAY LOT ELECTRIFICATION

Electrical improvements to WTA's Midway lot, located at the Southwest corner of Midway Lane and Bakerview Spur intersection in Bellingham, Washington. These improvements are necessary to the electrification of our fleet. Please note that the actual purchase of the chargers, expected to be \$680,000.00, will be done in 2024 and is therefore not accounted for below.

NAICS Code	NAICS Description	Project Scope	WTA Budgeted Amount	WSDOT Funds in NAISC Code	FTA Funds in NAISC Code	% of FTA Funds in NAISC Code	Notes
<b>MIDWAY LOT ELECTRIFICATION</b>							
423610	Electrical Equipment	Puget Sound Energy - Direct Contract for Transformer	\$150,000.00	\$150,000.00			2025 - PSE will own and maintain transformer
423610	Electrical Equipment	Switch Gear, ATS, Disribution Section, Generators, Wiring	\$833,340.00	\$833,340.00			2025 - ITB 2024-023
423610	Electrical Equipment	Wiring	\$253,156.00		\$253,156.00	14.10%	2025 - ITB 2024-023; will spend \$11K in 2024
237990	Heavy Civil Contractor	Replace the 8x8 Vault Lid for Transformer Installation	\$3,000.00		\$3,000.00	0.17%	2025 - WTA to pay PSE Directly
237990	Heavy Civil Contractor	Site Prep, Trenching, Backfill Required	\$18,150.00	\$18,150.00			2025 - ITB 2024-023
238210	Electrical Contractor	Electrical improvements to existing switchgear	\$360,195.00	\$360,195.00			2025 - ITB 2024-023
238210	Electrical Contractor	Installation of chargers	\$142,986.00		\$142,986.00	7.96%	2025 - ITB 2024-023, will spend \$67K in 2024
238110	Poured Concrete	Concrete pad for new automatic transfer switch	\$21,000.00	\$21,000.00			2025 - ITB
238290	Generator Rigger & Install	Crane for placement of Generators	\$14,000.00	\$14,000.00			2025 - ITB
<b>Project Totals</b>			<b>\$1,795,827.00</b>	<b>\$1,396,685.00</b>	<b>\$399,142.00</b>	<b>22.23%</b>	

### PAINT BOOTH AND BODY BAY

Construction of a free standing building adjacent to our head office. This building will serve as our detailing center for our rolling stock. While WTA is confident that this project will happen in this Goal's FFYs, we are not sure of the source of funding. We will revise our goal if necessary to remove. We have estimated federal funding at 80% of WTA Budgeted Amount for all involved NAISC Codes.

NAICS Code	NAICS Description	Project Scope	WTA Budgeted Amount	WSDOT Funds in NAISC Code	FTA Funds in NAISC Code	Percentage of FTA Funds in NAISC Code	Notes
238910	Site Preparation	Labor - Prepare Existing Conditions	\$35,216.00	\$7,043.20	\$28,172.80	0.40%	2026
238110	Poured Concrete	Labor	\$82,207.00	\$16,441.40	\$65,765.60	0.93%	2026
238120	Steel & Precast Concrete	Materials - Metals	\$697,297.00	\$139,459.40	\$557,837.60	7.93%	2026
238310	Drywall & Insulation Contractor	Labor - Thermal & Moisture Protection	\$89,094.00	\$17,818.80	\$71,275.20	1.01%	2026
238170	Siding Contractors	Labor - Thermal & Moisture Protection	\$273,281.00	\$54,656.20	\$218,624.80	3.11%	2026
238220	Plumbing & Heating, Air	Labor - HVAC, Fire Suppression, Plumbing	\$3,208,871.00	\$641,774.20	\$2,567,096.80	36.47%	2026
238210	Electrical Contractor	Materials - Equipment	\$7,406.00	\$1,481.20	\$5,924.80	0.08%	2026
238210	Electrical Contractor	Labor - Install Materials	\$837,179.00	\$167,435.80	\$669,743.20	9.52%	2026
237990	Heavy Civil Contractor	Labor - Earthworks, Utilities	\$150,765.00	\$30,153.00	\$120,612.00	1.71%	2026
238110	Poured Concrete Contractor	Labor - Exterior Improvements	\$40,659.00	\$8,131.80	\$32,527.20	0.46%	2026
541620	Environmental Consulting	A&E & Planning	\$100,000.00	\$20,000.00	\$80,000.00	1.14%	2026
541310	Architectural	A&E & Planning	\$650,000.00	\$130,000.00	\$520,000.00	7.39%	2026
541320	Land Use Design	A&E & Planning	\$100,000.00	\$20,000.00	\$80,000.00	1.14%	2026
238160	Roofing Contractors	Labor - Thermal & Moisture Protection	\$305,083.00	\$61,016.60	\$244,066.40	3.47%	2027
238150	Glass & Glazing Contractor	Labor - Openings	\$243,139.00	\$48,627.80	\$194,511.20	2.76%	2027
238390	Finish Carpentry Contractor	Labor - Openings	\$66,432.00	\$13,286.40	\$53,145.60	0.76%	2027
238330	Flooring Contractor	Labor Finishes	\$11,109.00	\$2,221.80	\$8,887.20	0.13%	2027
238320	Painting & Wall Coverings	Labor - Finishes	\$140,477.00	\$28,095.40	\$112,381.60	1.60%	2027
<b>Project Totals</b>			<b>\$7,038,215.00</b>	<b>\$1,407,643.00</b>	<b>\$5,630,572.00</b>	<b>80.00%</b>	
<b>Funding Totals</b>			<b>\$8,834,042.00</b>	<b>\$2,804,328.00</b>	<b>\$6,029,714.00</b>		

# F2025-2027 DBE Goal - Whatcom Transportation Authority

## Step 2: Adjust Weighted Base Figure.

Adjust weighted base figure from Step 1(B). Consider past participation (the volume of work DBEs have performed in recent years). Calculate historical median based on achieved DBE participation for prior three FYs. Calculate Overall DBE Goal by adding weighted base figure and historical median, then dividing by 2.

	FY2022	FY2023	FY2024
<b>Overall DBE Goal</b>	1.00%	1.00%	1.00%
<b>Actual Participation</b>	0.00%	0.00%	0.00%

**Historical Median (sum of Actual Participation/3)** 0.00%

<b>Overall DBE Goal</b>	<b>0.19%</b>
<i>Race Neutral</i>	0.19%
<i>Race Conscious</i>	0%

**Overall DBE Goal in Dollars**     **\$11,698.35**

\*Relevant and reliable data not available for the following factors: evidence from disparity studies conducted in market area (including relevant studies commissioned by other contracting agencies in market area); statistical disparities in the ability of DBEs to get financing, bonding and insurance; data on employment, self-employment, education and training, union apprenticeship programs; and any other data that would help to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination.

I began our DBE goal setting for FFYs 2024-2027 by identifying projects that will/could use federal funds. WTA is certain that our Midway Lot Electrification will go forward and will use federal funds. It is likely that the paint and body booth project will move forward and could possibly use federal funds if it does.

The following steps were taken to establish our agency goal:

1. I worked with WTA's construction project manager to break both projects down into applicable NAICS codes.
2. As some NAICS codes are applicable to each project, I combined their values so that I could establish an overall relative availability
3. I searched the OMWBE website for certified DBEs that perform each NAICS code in my market area. My market area is Whatcom County, Skagit County, Snohomish County, and Island County.
4. I then searched Census Data to determine how many contractors perform that NAICS code in the same market area.
5. To determine relative availability, I divided the number of DBEs by the number of total contractors (including DBEs) that perform each NAICS code.
6. The relative availability for each NAICS Code was then multiplied by the weight of that NAICS Code in terms of FTA Dollars we predict we will spend on that code.
7. These weighted bases were added for a total Weighted Base Figure.
8. I then reviewed the Historical Median of DBE participation from FY2022-2024. I calculated the Historical Median of DBE participation for 2022, 2023, and 2024 and added that number to our Total Weight Base . This sum was divided into two to get the average of the two numbers.
9. This average is our Overall DBE Goal.

As stated above, our market area was determined to be Whatcom, Skagit, Snohomish, and Island counties. These were selected as they are the most realistic to expect contractors to travel from to perform work for WTA. Whatcom County is bordered to the north by Canada, to the west by the Puget Sound, and to the east by mountains. We are limited to the counties south of Whatcom, but north of Seattle (King County). Our market research indicated that there is enough work for DBEs in Seattle to justify them travelling 100 miles north to Bellingham.

Once our goal was established, I contacted the Northwest Small Business Transportation Resource Center for input into our methodology. Program Manager Robbin Calloway and I discussed how WTA calculated our DBE goal and the geographical limitations of Whatcom. She concurred with our process and suggested that WTA do more research into why contractors are not engaging in DBE Process. We made plans to connect in person at the American Public Works Association's fall conference in Kennewick, WA in October 2024 to further discuss meaningful outreach.

I also contacted Dr. Damani Johnson of the Whatcom Racial Equity Commission. We discussed WTA's goal, and he expressed concern over the lack of DBEs in our market area. He encouraged me to reach out directly to DBEs before solicitations are released to let them know of any bidding opportunities. While he agreed with my methodology in setting the goal, he expressed that the low number meant that DBE outreach must be more powerful and effective than what WTA has been doing in the past.

A third discussion was had with Timolin Abrom. I presented our goal and methodology, and she agreed with my approach. She encouraged me to approach my goal as a fluid number that can change as projects and funding changes. A complete list of all NAICS codes is rarely known at the start of a project, or in our case, before the project is even fully defined. I committed to updating the agency goal as more information becomes available on these projects.

Our goal and DBE Goal for FFYs 2025-2027 was released publicly on July 31, 2024, through WTA's website.