

**WHATCOM TRANSPORTATION AUTHORITY**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**2024-2027**

## Policy Statement

Whatcom Transportation Authority (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. WTA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, has signed an assurance that it will comply 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's policy is to:

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 DBEs.
7. Monitor DBE performance and certifications during the term of all DOT-assisted contracts.

The Procurement and Contracts Manager has been delegated as the DBE Liaison Officer (DBELO) reporting to the General Manager with regards to the DBE Program. In that capacity, the Procurement and Contracts Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program 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 the 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 the website. WTA will incorporate DBE program language into the agency's procurement processes.

  
\_\_\_\_\_  
General Manager

9/10/2024  
\_\_\_\_\_  
Date

## **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 under one or more programs authorized by the laws identified in 49 CFR 26.3(a)(2).

WTA is required to have a full DBE Program because WTA anticipates awarding prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year. In the event that WTA anticipates that the cumulative total value of its awarded prime contracts will not exceed \$670,000 in FTA funds in a Federal fiscal year, WTA will ensure that it complies with the provisions of this program that address: recordkeeping requirements (49 CFR 26.11), contract assurances (49 CFR 26.13); policy statement (49 CFR 26.23), fostering small business participation (49 CFR 26.39), and transit vehicle procurements (49 CFR 26.49). 49 CFR 26.21(a)(2)(i).

### **Section 26.5 Definitions**

WTA adopts and incorporates by reference, the definitions contained in 49 CFR 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 26.9 DOT Guidance and Interpretations**

This DBE Program is drafted to be compliant with 49 CFR Part 26 and any written interpretations or guidance issued by DOT or its operating administrations meeting the requirements of 49 CFR 26.9(b). In the event DOT guidance or interpretation contradicts this DBE program, the published DOT guidance or interpretation will take precedence.

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

WTA will report DBE participation on a semi-annual basis. These reports will contain all the information described in the Uniform Report to Part 26 (names of DBEs, NAICS codes (work categories/trades) performed on a contract, federally-assisted contract numbers, and the dollar value of each contract).

WTA will obtain bidders list information and enter it into the system designated by the Department of Transportation. WTA will collect the following information about all DBE and non-DBE firms who bid as prime contractors and subcontractors on DOT-assisted contracts:

1. Firm name
2. Firm address, including zip code
3. Firm's status (DBE or non-DBE)
4. Race and gender information for the firm's majority owner
5. NAICS code applicable to each scope of work the firm sought to perform in its bid
6. Age of the firm
7. Annual gross receipts of the firm by bracket (i.e., less than \$1 million, \$1-3 million, \$3-6 million, \$6-10 million)

WTA will collect bidders list information from all bidders by requiring bidders to submit the information with their bids or initial proposals.

WTA will enter the bidders list information into the online system designated by the Department of Transportation no later than December 1 following the fiscal year in which the relevant contract was awarded. In a design-build contracting situation where subcontracts will be solicited throughout the contract period, we will enter bidders list information no later than December 1 following the fiscal year in which the design-build contractor awarded the relevant subcontract(s).

We will keep a complete application package for each certified firm and all Declarations of Eligibility, change notices, and on-site visit reports and retain such documents in accordance with the applicable retention period requirements in WTA's financial assistance agreements.

### **Section 26.13      Assurances**

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. WTA 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 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 any sub-recipients.

Contract Assurance: 26.13(b)

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

The contractor, subrecipient, 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:

1. Withholding monthly progress payments
2. Assessing financial sanctions
3. Invoking liquidated damages, and/or
4. Disqualifying the contractor or sub-contractor from future bidding on DOT-assisted contracts.

## ADMINISTRATIVE REQUIREMENTS

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

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

### **Section 26.23      Policy Statement**

The Policy Statement is set forth 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:

*Miranda Laratta, Procurement & Contracts Manager  
4011 Bakerview Spur  
Bellingham, WA 98226  
360.788.9339  
mirandal@ridewta.com*

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that 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. As necessary, the DBELO may have staff to assist in the administration of the program with duties and responsibilities including:

1. Gathering and reporting statistical data and other information as required by DOT.
2. Reviewing third party contracts and purchase requisitions for compliance with this program.
3. Working with all departments to set overall annual and triennial goals.
4. Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifying contracts and procurements so that DBE goals are included in solicitations and monitors results.
6. Ensuring 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, except where in conflict with federal requirements.
7. Analyzing WTA's progress toward attainment and identifies ways to improve progress.
8. Participating in pre-bid meetings.

9. Advising the General Manager and Board of Directors on DBE matters and achievement.
10. Partnering with project managers to determine contractor compliance with good faith efforts.
11. Providing DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
12. Participating in DBE training seminars.
13. Identifying DBEs according to the criteria set by DOT and acting as liaison to the Uniform Certification Process in Washington.
14. Providing outreach to DBEs and community organizations to advise them of opportunities.
15. Remaining current on all regulations, federal and state, affecting DBE programs and informing all WTA personnel involved in contract execution of pertinent changes.
16. Verifying DBE certifications before contract awards and extensions.
17. Assisting DBEs in overcoming any challenges to compete or participate in DOT-funded contracts.

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

It is the policy of 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. 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 DOT-assisted contracts and will require prime contractors on DOT-assisted contracts to include the following clause in all subcontracts:

*The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days<sup>1</sup> from the receipt of each payment the prime contract receives from WTA. Any delay or postponement of payment may occur only for good cause following written approval of 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.*

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<sup>1</sup> RCW 39.04.250

The following contract clause will be included in all DOT-assisted prime and subcontracts:

*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 proactively monitor and oversee prime contractors' compliance with subcontractor prompt payment by:

1. Requiring prime contractors to maintain records and documents of payments to DBEs for no less than three (3) years following the completion of the contract and make such records available for inspection upon request by any authorized representative of the WTA or DOT. (This reporting requirement also extends to any certified DBE subcontractor.)
2. Performing audits of contract payments to DBEs as part of its semi-annual Uniform Reporting. 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. WTA anticipates that this directory will satisfy all requirements of 49 CFR Part 26, as amended effective May 9, 2024, no later than November 5, 2024. The Washington State OMWBE is the approved Unified Certification Program (UCP) for DBE Certification under 49 CFR 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 overconcentration in the types of work that DBEs perform. Should WTA identify DBE overconcentration in a certain type of work, WTA will devise appropriate measures to address the overconcentration in conjunction with methods outlined in 49 CFR 26.33.

### **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 49 CFR 26.109.
2. Consider similar action under 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 event of non-compliance with the DBE regulation by a participant in our procurement activities.
3. Provide monitoring and enforcement to verify that work committed or subcontracted to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed or subcontracted to, and the work is counted according to the requirements of 49 CFR 26.55.. This will be accomplished as described in the applicable contract and include, but not be limited to interviews of contractor and subcontractor employees, site visits, and reviews of subcontracts.
4. Keep the following running tallies, as appropriate:
  - A. Overall goal: We will keep a running tally, at appropriate intervals, that provides for frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether the current implementation of contract goals is projected to be sufficient to meet the overall goal. The results will inform our decisions to implement goals on contracts to be advertised according to our established contract goal-setting process.
  - B. Each DBE commitment: We will keep a running tally, at appropriate intervals, that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal.

## **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 requirements to facilitate and encourage competition and participation by small business and DBEs.
- Removal of unnecessary and unjustified bundling of contract requirements.
- Ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- 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 consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Review available DBEs, per OMWBE, in WTA's market area for DOT-funded projects and procurements.

## **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. Overall goals will be established at least triennially. The overall goal will be based on the availability of ready, willing, and able DBEs that can participate in WTA's DOT-assisted contracts and reflect WTA's determination of anticipated DBE participation.

In accordance with 49 C.F.R. 26.45(f), WTA will submit its overall goal to DOT by August 1 at three-year intervals in accordance with the schedule established by FTA. This section of the program will be updated every three years.

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 DBEs 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.

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 on October 1 of the calendar year following the January 1 submission to FTA, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.47 Goal Shortfall Analysis and Corrective Action Plan**

If the awards and commitments shown on WTA's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, WTA will conduct a shortfall analysis. The shortfall analysis will:

- Analyze in detail the reasons for the difference between the overall goal and WTA's awards and commitments in that fiscal year; and
- Establish specific steps and milestones to correct the identified problems in the analysis and enable WTA to fully meet the goal for the new fiscal year.

WTA will retain the analysis and corrective actions in its records for three (3) years and make it available for review.

## **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. 26.49(b) and (c).

Prior to awarding any FTA-assisted transit vehicle contract, WTA will verify that the TVM awardee has fulfilled its requirement to submit a DBE goal methodology and complied with the TVM's DBE Program in accordance with the requirements of 49 CFR 26.49(a).

WTA will report to FTA the name of the TVM that was the successful bidder and the federal share of the contractual commitment, within 30 days of becoming contractually required to procure a transit vehicle.

## **Section 26.51 Meeting Overall Goals**

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

To develop race-neutral DBE participation, WTA will:

1. Arrange solicitations, times for the presentation of solicitation responses, 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, but not be limited to, 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 WTA's 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.

WTA will attempt to meet its overall goal through race-neutral measures only. WTA's market area includes market area similar to Community Transit including Snohomish, Skagit, and Whatcom Counties. In evaluating the majority of WTA's past projects utilizing federal funds, there is not a significant enough pool of certified DBEs to make race-conscious/contracting goals feasible for WTA. Doing so would eliminate groups that do not experience a disparity and reduce the certified DBE pool even further.

### **Section 26.53      Good Faith Efforts for Contract Goals**

WTA does not use contract goals to meet any portion of its overall goal.

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

WTA will count DBE participation as follows:

1. WTA will count only the value of the work performed by the DBE.
  - WTA will count the entire amount of the portion of a construction contract (or other contract that is not a contract for professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract) that is performed by the DBE's own forces. WTA will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - WTA will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

- When a DBE subcontracts part of the work of its contract to another firm, WTA will count the value of the subcontracted work toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not be counted toward DBE goals.
- When a DBE performs as a participant in a joint venture, WTA will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- Firms not certified as a DBE at the time of contract execution will not be counted towards participation. Firms that lose their DBE certification during contract performance will not be counted either.

2. WTA will count expenditures with DBEs for materials and supplies as follows:

- If the materials or supplies are obtained from a DBE manufacturer, WTA will count 100 percent of the cost of the materials or supplies. A manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
- If the materials or supplies are purchased from a DBE regular dealer, WTA will count 60 percent of the cost of the materials or supplies (including transportation costs). A regular dealer is a firm that owns (or leases) and operates, a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business. WTA will establish a system to determine that a DBE regular dealer, over a reasonable period of time, keeps sufficient quantities and regularly sells the items in question, consistent with 49 CFR 26.55.
- If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, WTA will count 40 percent of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance.

- With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, WTA will count the entire amount of fees or commissions charged that WTA deems to be reasonable, including transportation charges for the delivery of materials or supplies. WTA will not count any portion of the cost of the materials and supplies themselves.
  - WTA will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.
3. WTA will count expenditures to a DBE contractor only if the DBE is performing a commercially useful function on the contract.
- A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, WTA will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, WTA will examine similar transactions, particularly those in which DBEs do not participate.
  - If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected within normal industry practice for the type of work involved, WTA will presume that it is not performing a commercially useful function. When a DBE is presumed not to be performing a commercially useful function, WTA will permit the DBE to present evidence to rebut this presumption. WTA may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - WTA will use the factors set forth in 49 CFR 26.55(d) to determine whether a DBE trucking company is performing a commercially useful function.
  - A DBE distributor performs a commercially useful function when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL)

from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

- WTA's decisions on commercially useful functions are retained for three (3) years and are available for review.



## 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). A copy of the Memorandum of Understanding for the State of Washington Unified Certification Program is included in this program as Attachment 5. The Washington State Department of Transportation (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.

OMWBE maintains the DBE directory at <https://omwbe.wa.gov>.

Firms will be directed to contact the Washington State Office of Minority and Women's Business Enterprises at <https://omwbe.wa.gov> for information or questions about the DBE certification process. WTA does not certify DBEs. 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 DBEs 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 respect any DOT certification appeal decisions affecting the eligibility of DBEs for DOT-assisted contracting.

## **COMPLIANCE AND ENFORCEMENT**

### **Section 26.103 Recipient Enforcement**

WTA will refer any person believing that it failed to comply with its program obligations to:

Region 10 Office of Civil Rights  
Federal Transit Administration  
915 Second Avenue  
Suite 3192  
Seattle, WA 98174-1002  
United States

### **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 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.

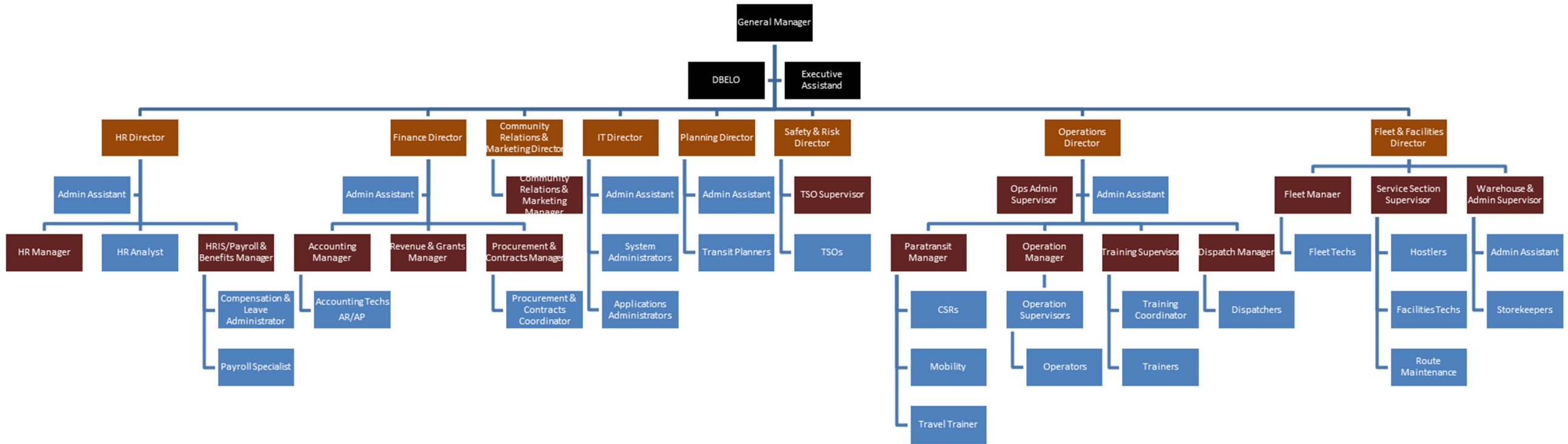
WTA will cooperate and promptly provide information as required for compliance reviews, investigations and other requests for information from DOT.

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 5	Memorandum of Understanding for the State of Washington Unified Certification Program

# 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

This checklist serves as a top level guide for DBE Goal Setting. For more detailed process, WTA staff are directed to the procedure "[Setting Triennial DBE Goals.](#)"

	Review upcoming projects with intended Federal funding
	Evaluate the extent of the geographic boundaries of the WTA's service area and bidding community as a source of DBEs.
	Evaluate the number of DBEs 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 of the proposed goal and its rationale.
	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. Remedies provided by other applicable laws, statutes, and regulations.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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

Staff is instructed to use [DBE Goals Workbook - MASTER.xlsx](#) for actual calculation, documentation and final submission of WTA's overall goal. The below is to serve as a summary of the calculation exercise.

### Amount of Goal

WTA's overall goal for [insert triennial period] is: \_\_\_% of the Federal Financial assistance WTA expects to expend in DOT-assisted contracts exclusive of FTA funds to be used for the purchase of transit vehicles.

\$\_\_\_\_\_ is the dollar amount of DOT-assisted contracts that WTA expects to award during FFY [insert triennial period]. This means that WTA has set a goal of expending \$\_\_\_\_\_ with DBEs during FFY [insert triennial period].

### Methodology used to Calculate Overall Goal

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

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

1. Calculate relative availability of DBEs for each NAISC Code anticipated to be used on federally-funded projects for the upcoming triennial cycle.

$$\text{Relative availability (\%)} = \frac{\text{Ready, willing, and able DBEs in NAISC Code}}{\text{All firms ready, willing and able in NAISC Code}}$$

Data source for "Ready, willing, and able DBEs" is DBE Registry of the Office of Minority and Women's Business Enterprises, filtered for WTA's market area (Whatcom, Skagit, Snohomish, and Island counties).

Data source for "All firms ready, willing, and able" is U.S. Census data.

2. Calculate overall relative availability of DBEs.

$$\text{Overall relative availability (\%)} = \frac{\text{Ready, willing, and able DBEs in all NAISC Codes}}{\text{All firms ready, willing and able in all NAISC Codes}}$$

The overall relative availability provides the base figure for our overall goal.

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

After calculating a base figure of the relative availability of DBEs, determine the weighted base figure.

1. Calculate the Weight for each NAISC Code, which is expressed as a percentage of total federal dollars by NAISC Code. First, determine the amount of federal funds anticipated to be spent in each NAISC Code using each anticipated project's NAISC Code breakdown of local v. federal funds. If multiple projects involve same NAISC Code, combine the federal dollars for that NAISC Code. Then divide by the total federal dollars that WTA expects to expend in the triennial period.

$$\text{Weight (\%)} = \frac{\text{Amount of fed funds in NAISC Code}}{\text{Total fed funds}}$$

2. Multiply the relative availability (calculated in Step 1A) by the Weight for each NAISC Code.

$$\text{Weighted base (\%)} = \text{Relative availability} \times \text{Weight}$$

#### **Step 2:**

After calculating weighted base figure, examine available evidence and determine whether adjustment is needed to the weighted base figure in order to arrive at the overall goal.

WTA will 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, and then calculate Overall DBE Goal by adding weighted base figure and historical median, then dividing by 2.

**Public Participation**

WTA published goal information in these publications: On its website \_\_\_\_\_

WTA received comments from these individuals or organizations:

Summaries of these comments are as follows:

Our responses to these comments are:



## Attachment 5 – Memorandum Of Understanding

# *Memorandum of Understanding*

*Between*

**THE WASHINGTON STATE  
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES  
*and*  
WHATCOM TRANSPORTATION AUTHORITY  
*and*  
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION  
*for the*  
STATE OF WASHINGTON  
UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Understanding for participation in the State of Washington Unified Certification Program (UCP) is between the **Whatcom Transportation Authority (WTA)** and the State of Washington, through its Office of Minority and Women's Business Enterprises (OMWBE) and ITS Department of Transportation (WSDOT) and is effective as of the date of the last signatory hereto.

### WITNESSETH:

**WHEREAS**, the Undersigned are recipients of funding and assistance programs administered by the U.S. Department of Transportation (USDOT) and its operational modal, the Federal Transit Administration (FTA), in the state of Washington;

**WHEREAS**, Washington State Office of Minority and Women's Business Enterprises (OMWBE) performs certification following the regulations in 49 Code of Federal Regulations (CFR) Part 26;

**WHEREAS**, 49 CFR 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program (UCP);

**WHEREAS**, Chapter 39.19.120 Revised Code of Washington (RCW) designates OMWBE as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington; and

In Consideration of the foregoing recitals, the Undersigned agree as follows:

#### 1. Representation of Accountability

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 and is therefore a necessary signatory to this agreement.

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OMWBE/ WTA/WSDOT  
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**2. Acknowledgement and Acceptance of Unified Certification Program**

WTA agrees to participate in a UCP, as required by 49 CFR Part 26.

**3. Designation of Exclusive Certifying Authority; Binding Effect**

WTA agrees as follows:

**3.1** OMWBE is now, and shall continue to be the sole and exclusive certification authority for participation in the USDOT DBE Program in the state of Washington in accordance with 49 CFR Part 26 and Chapter 39.19 RCW.

**3.2** Final certification determinations made by OMWBE shall be binding and have the full force and effect of law as may be provided by 49 CFR Part 26.

**3.3** Only final certification determinations issued by OMWBE prior to the due date for bids or offers on a contract which a firm seeks to participate as a DBE shall be recognized for purposes of award.

**4. Notification Responsibilities of the Parties**

Each party to this agreement agrees to notify the other parties of all regulatory changes, interpretations and other communications affecting the operation, duties, and/or responsibilities of each party under this agreement.

**5. Duties and Responsibilities of OMWBE**

In its capacity as the sole and exclusive certification authority in the state of Washington, it is acknowledged that OMWBE shall perform the following duties and have the following responsibilities:

**5.1** Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance concerning certification matters.

**5.2** Only process applications for certification from firms with principal places of business outside the state of Washington if such firms have received certification determinations from the designated UCPs of the states in which the firms maintain principal places of business.

**5.3** Issue administratively final determinations to certify, recertify or remove a firm based upon applications submitted to it for certification and recertification, appeals, third party challenges, ineligibility complaints, recipient-initiated proceedings, and USDOT directives.

5.4 Share information and documents concerning firms certified in the state of Washington with other state UCPs that are considering applications of certification from such firms.

5.5 Maintain a unified *DBE Directory* of firms certified by OMWBE pursuant to this UCP that shall contain all of the information required by 49 CFR 26.31 and be available to the public electronically, on the Internet, and in print.

5.6 Cooperate fully with all oversight, review and monitoring activities of USDOT and the other parties, as it relates to the implementation and ongoing activities of the UCP.

5.7 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to the UCP by USDOT and/or the Federal Transit Administration and/or WTA.

## 6. Duties and Responsibilities of WTA

WTA shall perform the following duties and have the following responsibilities:

6.1 Pay a reasonable fee or other appropriate charge that has been established by rule in accordance with RCW 39.19.210 and WAC 326-02-030(3)(a).

6.2 Provide OMWBE and WSDOT with a copy of the WTA Disadvantaged Business Enterprise Program Plan, and a copy of the WTA Annual DBE Agency Goal Submittal as provided to the Federal Transit Administration.

6.3 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance to grantees and recipients concerning certification matters.

6.4 Cooperate fully with all oversight, review and monitoring activities of USDOT and/or the Federal Transit Administration, as it relates to the implementation and ongoing activities of the UCP.

6.5 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to WTA by USDOT and/or the Federal Transit Administration and/or OMWBE.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the last date of all the signatories appearing here below.

**ACCEPTED:**

**Washington State Office of Minority and Women's Business Enterprises**

BY: Cathy V. Canorro  
Cathy V. Canorro  
Acting Director

Date: 8-25-2011

Approved as to Form:

Cathy V. Canorro  
Assistant Attorney General  
State of Washington

**WHATCOM TRANSPORTATION AUTHORITY**

BY: Richard A. Valer  
Authorized Signature  
Title

Date: 8-25-11

Approved as to Form (if required):

N/A  
Legal Counsel

**Washington State Department of Transportation**

BY: Paula J. Hammond  
Paula J. Hammond  
Secretary

Date: 9/19/11

Approved as to Form:

Paula J. Hammond  
Assistant Attorney General  
State of Washington

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