

## **Washington State Department of Transportation's Federal Transit Administration Triennium Disadvantaged Business Enterprise Goal Federal Fiscal Years 2024 through 2026**

The Washington State Department of Transportation (WSDOT) submits this Disadvantaged Business Enterprise (DBE) goal methodology to the U.S. Department of Transportation's Federal Transit Administration (FTA) for review and approval pursuant to 49 CFR § 26.45 to establish the overall triennium DBE goal for its federally-assisted transit contracts for Federal Fiscal Years (FFYs) 2024 through 2026 (hereinafter the "triennium") WSDOT has established a triennium DBE goal of 8.50%, comprised of 8.15% race/gender conscious participation and 0.35% race/gender neutral participation.

To meet the requirements of § 26.45, WSDOT commissioned a Disparity Study from Colette Holt & Associates (CHA) in 2017. The Study provided a statistical analysis of baseline DBE availability that was used to establish the step 1 base figure estimate of DBE availability in WSDOT's markets. The Study further analyzed Census Bureau and other econometric and social science evidence to determine whether there are disparities between DBEs and non-DBEs in factors affecting entrepreneurial success on WSDOT's contracts and subcontracts. In addition, the study also provided anecdotal data on the experiences of DBEs seeking WSDOT prime contracts and associated subcontracts, and whether firms owned by minorities or women have equal opportunities to compete.

### **Step 1 Base Figure**

Under the DBE program regulations' official Guidance, a defensible disparity study must determine empirically the industries that comprise the Department's product or industry market. The accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry, Classification System ("NAICS") codes, that make up at least 75 percent of the prime contract and subcontract payments for the study period.

Under court precedent and the DBE regulations,<sup>1</sup> local governments are required to limit the reach of their race- and gender-conscious contracting program to their geographic market area. To conform to the geographic market as established by the Study, which used the State of Washington and Multnomah County as the geographic market area.

Having determined the Department's product and geographic market areas for FTA- funded contracts, the Disparity Study determined the dollar value of WSDOT's utilization of DBEs as measured by payments to prime firms and subcontractors and disaggregated by race and gender. The Department and its subrecipients did not collect data for most non-DBE subcontractors, as well as other records critical for the Study. The Disparity Study had to obtain missing data from prime vendors, a lengthy process, as well as reconstruct other contract records, including researching the race and gender ownership of subcontractors and assigning NAICS codes to those firms.

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<sup>1</sup> <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>, see also 49 CFR § 26.45.

The Disparity Study next determined the availability of DBEs as a percentage of all firms in WSDOT's FTA-funded product and geographic markets. As discussed in depth in the Study, the Disparity Study applied the "custom census" approach with refinements to estimating availability. The courts and the National Model Disparity Study Guidelines consider this methodology generally superior to the other approaches.

To conduct the Custom Census for this study, the Disparity Study utilized three databases:

1. The Final Contract Data File.
2. The Disparity Study's Master D/M/WBE Directory.
3. Dun & Bradstreet/Hoovers Database.

The Master D/M/WBE Directory combined the results of an exhaustive search for directories and other lists containing information about minority and women-owned businesses. The resulting list of minority and women businesses is comprehensive.

To develop the Dun & Bradstreet/Hoovers Database, after compiling the Master D/M/WBE Directory, the Disparity Study limited the firms analyzed to those operating within WSDOT's constrained product market. We purchased the firm information from Hoovers for the firms in the NAICS codes located in the Department's market area to form the Dun & Bradstreet/Hoovers Database. Dun & Bradstreet Company, maintains a comprehensive, extensive, and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes. The Dun & Bradstreet/Hoovers Database is the broadest publicly available data source for firm information. In the initial download, the data from Hoovers simply identify a firm as being minority-owned. The Disparity Study purchased the additional detailed information on ethnicity (i.e., is the minority firm owner Black, Hispanic, Asian, or Native American).

The Disparity Study merged the three databases to form an accurate estimate of the step 1 base figure. The following tables present data on the unweighted availability by race and gender and by NAICS codes for FTA-funded contracts in WSDOT's constrained product markets for Construction and Construction and Construction-Related Services combined, Construction, and Construction-Related services. The table below shows the final availability estimates for FTA projects organized by demographic group and NAICS code.

NAICS	Black	Latino	Asian	Native American	Non-minority women	DBE	Non-DBE
<b>237990</b>	2.5%	5.8%	3.1%	3.7%	7.0%	22.1%	77.9%
<b>238210</b>	0.7%	1.8%	1.0%	1.1%	6.0%	10.5%	89.5%
<b>238320</b>	0.4%	0.7%	0.9%	0.6%	4.7%	7.3%	92.7%
<b>336611</b>	0.8%	1.2%	1.5%	1.2%	3.3%	7.9%	92.1%
<b>541330</b>	1.3%	2.2%	3.6%	2.1%	6.7%	16.0%	84.0%
<b>Total</b>	<b>0.9%</b>	<b>1.8%</b>	<b>1.9%</b>	<b>1.4%</b>	<b>5.9%</b>	<b>11.9%</b>	<b>88.1%</b>

Overall the Disparity Study determined the DBE availability to be at 11.9% for FTA contracts.

## Step Two Adjustment

Once the step 1 base figure has been calculated, WSDOT must examine all of the evidence available in its jurisdiction to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected absent the effects of discrimination. Among the types of evidence that must be considered are the current capacity of DBEs to perform work on WSDOT's federally-assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies

conducted anywhere within WSDOT's jurisdiction, to the extent not already accounted for in the base figure. If available, WSDOT must also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding and insurance required to participate in the Program, and data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought." 49 CFR § 26.45(d)(3).

**Past DBE utilization**

WSDOT considered the current capacity of DBEs to perform work on FTA-assisted contracts, as measured by the amount of work performed by certified DBEs on such projects over the past five years as reported to FTA. The median for WSDOT's DBE participation for FFY 2014 through FFY 2019 was 1.60%.

Federal Fiscal Year	DBE Participation
FFY 2017	1.90%
FFY 2018	12.45%
FFY 2019	4.22%
FFY 2020	16.18%
FFY 2021	0.25%
FFY 2022	12.14%
FFY 2023	5.13%

The WSDOT median past DBE participation for FFYs 2017-2023 is 5.13%. WSDOT considered utilizing the median past participation of 5.13% averaged with 11.9% for an overall DBE goal of 8.5%. WSDOT is proposing to utilize the 8.5% overall DBE goal due to the large variety of race-neutral and race-conscious measures available to the department that make a step 2 adjustment unnecessary. The race-conscious and race-neutral measures that WSDOT is planning to utilize are described further in the document.

**Evidence from local disparity studies**

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

**Disparities affecting DBE opportunities**

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

While relevant and probative to whether the Department needs to continue to employ race-conscious measures to meet its DBE goal, as well as the types of supportive services and other approaches to level the playing field WSDOT should consider, the Study recognized that these results are difficult to quantify within the rigors of the strict scrutiny standards. WSDOT has determined that no quantitative adjustment will be made using these data sets.

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

Under the federal DBE regulations, WSDOT must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation. New and ongoing initiatives must seek to

reduce discriminatory barriers, increase capacity, and level the playing field for the participation of DBEs and other small contractors. In addition, WSDOT must design initiatives to assist in meeting the goal for increased DBE participation as prime contractors and subcontractors.

To meet the requirements established under the Ninth Circuit's *Western States* case, a USDOT recipient must establish that discrimination is present in its market area such that race-conscious contract goals are supportable. To that end, CHA calculated disparity ratios for total DBE utilization compared to the total weighted availability of DBEs, measured in dollars paid.

Courts commonly define "large" or "substantively significant" disparity as utilization that is equal to or less than 80 percent of the availability measure. A substantively significant disparity supports the inference that the result may be caused by the disparate impacts of discrimination.<sup>2</sup> A statistically significant disparity means that an outcome is unlikely to have occurred as the result of random chance alone. The greater the statistical significance, the smaller the probability that it resulted from random chance alone.

The table below presents the results of the Disparity Study by demographic group for all combined data sets.

	Black	Hispanic	Asian	Native American	Non-Women	DBE	Non-DBE
<b>Disparity Ratio</b>	0.00%	62.00%	0.00%	0.00%	4.40%	13.40%	110.70%

DBEs face large and substantive disparities in full and fair access to WSDOT's FTA-assisted contracts. The study's findings show that these firms continue to experience discriminatory barriers based on their race, ethnicity, and gender. Further, as established by the Study, DBE utilization on state-funded contracts, for which no goals were set, was extremely low. Coupled with the additional anecdotal and economy-wide evidence, the Study findings paint a clear picture of a market mostly closed to DBEs. These results strongly suggest that narrowly tailored contract goals on FTA-funded contracts remain necessary to ensure nondiscrimination.

<sup>2</sup> See U.S. Equal Opportunity Employment Commission regulation, 29 CFR § 1607.4(0) ("A selection rate for any race, sex, or ethnic group which is less than four fifths (4/5) (or eighty percent) of the rate for the group with the highest rate will generally be regarded by the Federal enforcement agencies as evidence of adverse impact, while a greater than four-fifths rate will generally not be regarded by Federal enforcement agencies as evidence of adverse impact.").

## **Past DBE race-neutral participation**

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, WSDOT evaluated past race-neutral DBE participation, as defined in §26.51(a), and reported to FTA. WSDOT's median percentage on federal-aid contracts through race-neutral means for FFY 2015-2019 was 0.35%.

<b>Federal Fiscal Year</b>	<b>Total DBE Participation</b>	<b>Race-Neutral Participation</b>	<b>Race-Conscious Participation</b>
<b>2020</b>	<b>6.2%</b>	<b>10.0%</b>	<b>16.2%</b>
<b>2021</b>	<b>4.5%</b>	<b>0.4%</b>	<b>4.8%</b>
<b>2022</b>	<b>11.5%</b>	<b>0.0%</b>	<b>11.0%</b>
<b>2023</b>	<b>4.5%</b>	<b>0.4%</b>	<b>4.8%</b>

WSDOT projects that it will meet 0.35% of its overall goal of 8.5% through race-neutral measures and 8.15% of its overall goal through race-conscious contract goals. WSDOT will monitor DBE participation throughout the year to adjust its use of contract goals to ensure that their use does not exceed the overall goal.

## **Race-neutral measures to achieve DBE participation**

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

### ***Supportive Services***

WSDOT provides the following supportive services to DBEs:

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

### ***Outreach and Networking***

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

- Sponsorship of and attendance at numerous outreach events, including Alliance NW, an annual event in the Puget Sound, Washington, in partnership with state, local and federal agencies. Last year's event attracted approximately 1,000 individuals.
- WSDOT works with organizations such as the Northwest Mountain Minority Supplier Diversity Council, Women in Construction, USDOT's Small Business Transportation Resource Center, the Women's Transportation Seminar, Tabor 100, the National Association of Minority Contractors,

Association of General Contractors, American Council of Engineering Companies, the Office of Minority and Women's Business Enterprises and other groups to promote the DBE Program.

- WSDOT has established a Washington State DBE Work Group comprised of WSDOT divisions and local agencies, among others, that will advise WSDOT on DBE issues, including but not limited to, goal setting, outreach, training, etc.

### ***Complaint Procedures***

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

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

### ***Prompt Payment***

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

### ***Emerging Contractor Support Initiatives***

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

### **Public Participation**

To satisfy the public consultation requirements of 49 CFR § 26.45(g)(1), below is a timeline of our efforts for the public outreach conducted by WSDOT:

- November 27, 2023: WSDOT posts Proposed FTA overall goal seeking public comment.
- November 30, 2023: DBE advisory group consultation of proposed overall goal.
- December 7, 2023: First public online meeting about proposed overall FTA goal.
- December 19, 2023: Second public online meeting about proposed overall FTA goal.
- December 21, 2023: Opportunity for public comment closes.
- December 22, 2023: Submit overall goal for FTA (with public comment).
- January 1, 2024: Pending FTA approval, overall goal goes into effect.