



**Washington State
Department of Transportation**

Lynn Peterson
Secretary of Transportation

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November 27, 2013

Mr. Victor Mendez
Administrator
Federal Highway Administration
1200 New Jersey Ave SE
Washington, D.C. 20590

RE: Disadvantaged Business Enterprises (DBE) Complaint: DOT#2012-0257

Dear Administrator Mendez:

The Washington State Department of Transportation (WSDOT) formally requests the commencement of conciliation proceedings in connection with the above-referenced complaint, and FHWA's Report of Investigation dated November 1, 2013. In addition, WSDOT provides the attached response to the FHWA report. The response details the actions WSDOT is taking to improve disadvantaged business enterprises (DBE) participation at the project and programmatic levels. Included are measures to improve monitoring and oversight of all contracts with mandatory DBE participation goals.

Upon joining WSDOT in March 2013, I established the expectation that WSDOT's DBE program is a priority for all staff members, that necessary resources will be provided to improve DBE participation, and those involved with the program were directed to identify areas and processes where reform is necessary. We are continuing those early efforts, using the FHWA report as an opportunity to build a stronger program. The actions outlined in this response are focused on four primary areas:

- Identifying specific monitoring and oversight mechanisms to ensure that Seattle Tunnel Partners achieves the DBE participation goals specified in their contract with WSDOT;
- Clarifying roles and responsibilities for goal setting at the project and programmatic levels, and establishing clear lines of accountability for achieving those goals;
- Establishing consistent contract language for all WSDOT projects with DBE participation goals, including design-build projects; and
- Increased engagement with and support of the DBE community.

Mr. Victor Mendez
November 27, 2013
Page Two

WSDOT is committed to ensuring that the economic opportunities and capacity building activities generated by our agency are equally available to all who want to participate. I look forward to working with you in the weeks and months to come as we improve our DBE program.

Sincerely,

Lynn Peterson
Secretary of Transportation

LP:jaa
Enclosures

cc: Dan Mathis, FHWA

Response to FHWA Report

Title VI Investigative Findings

WSDOT Project and Program Goals and Action Plans

This plan has been drafted in response to the Federal Highway Administration's (FHWA) Report of Investigation concerning a Disadvantaged Business Enterprise (DBE) complaint # 2012-0257 regarding Seattle Tunnel Partners (STP). In that report, FHWA directed the Washington State Department of Transportation (WSDOT) to:

1. Take all appropriate actions against STP available under its contractual agreement;
2. Work with STP to identify specific actions that will be taken to achieve the 8 percent goal by the project's completion date in 2015; and
3. Revise the DBE Program Plan to include how the agency, going forward, will institute effective monitoring and oversight measures for all contracts, including the design-build model, to ensure contractors either meet contract goals or provide documentation of meaningful good faith efforts to do so.

The DBE Program is a legislatively-mandated USDOT program that applies to federal-aid highway dollars expended on federally-assisted contracts issued by USDOT recipients such as state transportation agencies. The U.S. Congress established the DBE program in 1982 to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts, and

- Assist the development of firms that can compete successfully in the marketplace outside of the DBE program.

Historically, WSDOT has consistently met project DBE goals but has not always achieved programmatic goals. That inconsistency results from a number of factors, including: complexity of the DBE certification process, which can slow or hinder efforts to introduce new firms into the pool; confusion about which specific tasks a DBE can perform which will be counted toward attainment; the unique nature of design-build contracting methods; and the need for improved communication and coordination between WSDOT's own Office of Equal Opportunity (OEO), the state's Office of Minority and Women-owned Business Enterprise (OMWBE), WSDOT construction and project offices and the external DBE community.

In addition, as staff members work to bring a particular project online for the traveling public, DBE attainment has sometimes not been emphasized as a priority within the agency. Upon joining WSDOT, Secretary Peterson made it clear that the agency's DBE program would be a priority for all staff members, that necessary resources will be provided to improve DBE participation and directed those involved with the program to identify areas and processes where reform is necessary.

Current data on DBE participation, apprenticeship utilization and training on the SR 99 Tunnel Replacement Project is listed below. This data is current as reported by STP through Sept. 30, 2013, but has not been verified.

Project/Program	DBE Participation	Apprenticeship	Training
SR 99 Tunnel Replacement Project	Total DBE Participation: \$19.7M* Total Contract Paid to Date: \$686M Current percentage: 1.73% Goal: 8%	Apprentice hours reported: 72,476 Journeyman hours reported: 587,241 Apprentice hours to date: 11% Goal: 15%	Approved trainee hours: 30,590 Achieved trainee hours: 34,460 Required trainee hours: 50,000

*Total amount to be verified by OEO

The items listed below represent the initial components of the agency's response to FHWA's report. More detailed information can be found in the attached action plans.



AWV PROJECT ACTIONS – ITEM 1:

WSDOT must take all appropriate actions against Seattle Tunnel Partners (STP) available under its contractual agreement.

ACTIONS COMPLETED OR UNDERWAY:

On behalf of WSDOT, the Washington State Attorney General's Office contracted with a third party to serve as a Special Assistant Attorney General (SAAG) who is currently reviewing FHWA's findings.

Phase 1 of this work will be to analyze the allegations and make recommendations on remedies based on the STP contract by the end of December. The SAAG will also provide recommendations on project oversight.

In Phase 2, the SAAG will assist the Secretary's Executive DBE Reform Committee (described in more detail later in this document), staff members in the AWV project office, and OEO and the state's OMWBE in implementing items identified in the AWV Program Action Plan and the WSDOT Programmatic Action Plan included with this report.



AWV PROJECT ACTIONS – ITEM 2:

WSDOT must work with STP to identify specific actions that will be taken to achieve the 8 percent goal by the project's completion date in 2015.

GOAL: EFFECTIVE OVERSIGHT AND INCREASED MONITORING OF DBE PARTICIPATION ON SR 99 TUNNEL REPLACEMENT PROJECT

WSDOT has instituted several actions to improve oversight of STP practices with regard to DBE participation. The goal of this increased oversight is to ensure that all steps are taken to meet the 8 percent goal by project completion. A preliminary action plan, titled AWV DBE Program Action Plan, is attached with this response.

The Secretary's Executive DBE Reform Committee (described in more detail later in this document) will review each of the impediments to DBE participation identified in FHWA report and take action to remedy or resolve those impediments. The action plan will be expanded to address each area of concern identified by FHWA by Dec. 31, 2013.

ACTIONS COMPLETED:

- *Third-party review of STP efforts and AWV oversight.* Under WSDOT Secretary Lynn Peterson's direction, in June 2013 the AWV Replacement Program hired a consultant with extensive experience in DBE program implementation and project goal compliance to assess and report on STP efforts to date. The consultant has provided recommendations for maximizing DBE utilization through project completion. Many of those recommendations are incorporated in this document or in the attached action plan.
- *Assignment of a dedicated AWV staff member to support and monitor STP's efforts to increase DBE participation.* The assigned staff member is working in conjunction with STP, OEO and OMWBE to identify and address barriers to DBE participation, when found, and to implement concrete steps for increased DBE participation on the project, based on metrics to be defined by WSDOT. Metrics may include percentage of DBE participation; percentage of payment issued; start and anticipated end dates of performance; percentage of work toward DBE participation goal; and retainage held and released.

Position responsibilities will include: serve as primary point of contact and liaison between the AWV Replacement Program and DBE firms interested in or performing work on the project; create an RFP oversight committee for subcontracting opportunities; and establish and facilitate multiple, regularly-occurring meetings with OEO, OMWBE, STP and other stakeholders to actively monitor DBE participation progress.

ACTIONS UNDERWAY OR TO BE IMPLEMENTED:

- *Requested updated formal plan of action from STP for meeting the DBE participation goal.* Prior to and again upon receipt of FHWA findings, WSDOT requested a formal action plan from STP for meeting the DBE participation goal. This formal plan of action was first requested in May 2013 with a subsequent request issued in October 2013. A letter from STP containing components of their action plan is included with this response.
- *WSDOT OEO in consultation with the State Construction Engineer and Project Administrator or Engineer will designate a liaison to each mega and large project with federal funding and DBE participation requirements, including the AWV Replacement Program.* That person will be included in monthly project meetings reporting on monthly on-the-job training, apprenticeship, and DBE participation, and will cooperate with the SAAG in performance of these duties.
- *Ongoing third-party review.* WSDOT will retain and assign to the project an independent third party, who will work directly with the AWV project team members, OEO and OMWBE, to evaluate and make recommendations on administrative remedies required under the contract relating to prior and any subsequent DBE program complaints.

- *Reports to FHWA on DBE utilization.* Secretary Peterson will meet monthly with the FHWA Division Administrator to discuss monthly progress reports as well as ongoing outreach to the DBE community.
- *Assistance from WSDOT OEO and Construction Division on project-specific DBE utilization components.* As part of WSDOT's oversight and monitoring of STP's DBE participation efforts, the agency's OEO, Construction Division and AWV project staff will review STP bidding, award, and contracting processes, provide assistance and expertise on work that can be counted toward goal attainment, and review contractor good-faith efforts. Secretary Peterson may engage a neutral third-party to assist with review of good-faith efforts.
- *Continued assessment and promotion of on-the-job training opportunities on the project.* Two project staff members have been assigned responsibility to assess and promote apprenticeship and training opportunities. WSDOT will also require verifiable monthly reporting from the contractor to ensure that both apprenticeship and training goals are met.

GOAL: INCREASED OUTREACH TO DBE COMMUNITY REGARDING FUTURE STP CONTRACTING OPPORTUNITIES

WSDOT Secretary Peterson and AWV leadership will monitor and assist with STP's engagement with DBE firms, ensuring that changed STP contracting processes and contracting opportunities are communicated clearly, and that contracting opportunities are communicated with adequate advance notice, and that necessary assistance is provided.

ACTIONS UNDERWAY OR TO BE IMPLEMENTED:

- *WSDOT has directed STP to increase efforts to contact DBE firms, providing updated information about subcontracting opportunities.* Pre-bid meetings will be held when appropriate and WSDOT staff will be present as part of the agency's oversight and monitoring efforts.
- *Perform targeted outreach to DBE firms that have received subcontracted work on the SR 99 Tunnel Replacement Project for additional input and consideration of project improvements.* From this feedback, WSDOT will identify support services needed to improve their subcontracting experience for future work on this project. The dedicated staff member assigned to supporting and monitoring STP's efforts will be responsible for outreach and gathering feedback on these issues. This effort will also entail WSDOT and OMWBE working with STP to engage eligible firms that have not yet bid with STP.
- *Monitor post-subcontract utilization, payment and retainage issues.* WSDOT will monitor contractors, including STP, to ensure that any outstanding prompt post-subcontract utilization, payment and retainage issues are quickly and fully addressed.

- *Implement all tasks listed on the attached AWV Program Action Plan.* The AWV Program Administrator will be responsible for implementation of all tasks listed in the action plan currently and those to be added in the future, with direct oversight provided by Secretary Peterson.

WSDOT WSDOT DBE PROGRAM ACTIONS – ITEM 3:

WSDOT must revise the DBE Program Plan to include how the agency, going forward, will institute effective monitoring and oversight measures for all contracts, including the design-build model, to ensure contractors either meet contract goals or provide documentation of meaningful good faith efforts to do so.

WSDOT Secretary Peterson, through the agency's Executive DBE Reform Committee, has begun a systematic assessment of the agency's DBE program, identifying how the program can be strengthened to ensure that program intent is met and participation goals are achieved each year. A detailed action plan for that assessment is included with this response.

GOAL: ESTABLISH CLEAR ROLES AND RESPONSIBILITIES FOR DEVELOPMENT OF AND ACCOUNTABILITY FOR DBE PARTICIPATION GOALS (INCLUDING VOLUNTARY GOALS) ON WSDOT PROJECTS AND ALL PROJECTS WITH FEDERAL FUNDING.

ACTIONS UNDERWAY OR TO BE IMPLEMENTED:

Roles and responsibilities:

- *Clarify roles and responsibilities across WSDOT for DBE goal-setting, attainment and necessary support services.* Clear lines of responsibility and accountability will be established for department and staff positions with involvement in the DBE goal-setting, attainment, or other services necessary to ensure the agency meets program goals.
- *Clarify agency supervision of and support services provided by WSDOT's Office of Equal Opportunity.* Actions will include clarification of how OEO expertise and skills will be used to support the agency in meeting DBE participation goals.
- *Develop mandatory internal training programs to reinforce the importance of the DBE program, how the program works and to provide skills to promote DBE goal attainment.* Implement mandatory training on goal-setting process, contract incentives, importance of tracking progress in real-time and problem-solving for issues that may arise in the field.

Accountability:

- *Program and project manager accountability.* All program and project managers will be held accountable for effectively implementing a robust monitoring and oversight program that seeks to achieve the DBE goals for their respective project, consistent with the DBE Program, as part of their annual evaluations.
- *Include support of equal opportunity programs in employee evaluations.* All employees will have support of equal opportunity programs as a mandatory component of employee evaluation.

Tracking and monitoring:

- *Delineate clear process for establishing and documenting progress toward DBE participation goals on WSDOT projects.* Process will outline responsibility for concurrence and resolution dispute processes.
- *Automate DBE data reporting to facilitate decision-making needed to ensure project DBE goals are achieved.* The automated system will increase the efficiency of the DBE Program implementation by providing real-time monitoring, allowing WSDOT to make more timely adjustments as needed to achieve its overall DBE program goal. To ensure transparency and accountability, this information will be included as part of the regular reporting in the agency's Gray Notebook.
- *Prioritize and implement actions identified in the External Civil Rights Risk Assessment.* Mitigate risks that inhibit DBE participation in all WSDOT activities.

GOAL: DEVELOP CLEAR EXPECTATIONS AND ACCOUNTABILITY MEASURES FOR CONTRACTORS WITH DBE PARTICIPATION REQUIREMENTS

ACTIONS UNDERWAY OR TO BE IMPLEMENTED:

Project goals setting:

- *Establish best practices for DBE goal-setting and participation.* Review all standard specifications, manuals and guidelines related to the External Civil Rights Program to ensure appropriate and consistent applications with state and federal requirements. Review best practices for inclusive goal-setting techniques.
- *Review and design a best practices manual for DBE goal-setting process specific to design-build contracts.* Review design-build contract language nationwide to ensure consistent language and expectations for accountability as well as incentives for meeting and exceeding goals. Review best practices from other states regarding establishment of advisory committees for civil rights, business, labor and tribal issues.

Contractor accountability:

- *Develop real-time reporting mechanisms that provide WSDOT program managers, regional administrators and leadership with accurate, timely progress reports.* WSDOT will determine, through study of best practices, mechanisms to monitor contractor efforts, payments to DBE firms and regional/statewide progress toward DBE participation goals. WSDOT will purchase civil rights and labor tracking software to enable early identification of goal attainment deficiencies.
- *Review and update contract language for best practices to be used on all WSDOT projects which utilize federal funds and have mandatory DBE participation goals.* Language will clarify goal-setting and reporting processes as well as measures to be taken in the event a contractor does not meet requirements.

Contract delivery:

- *Review how project work is divided to maximize opportunities for DBE firms.* WSDOT will evaluate the feasibility of "unbundling" work contained within larger projects to increase DBE participation. This separation could also result in making it easier for DBE firms to obtain the bonding necessary to compete for contracts.

GOAL: STRENGTHEN OVERALL WSDOT DBE PROGRAM PERFORMANCE IN ACHIEVING PARTICIPATION GOALS AND PROGRAM INTENT

ACTIONS UNDERWAY OR UNDER CONSIDERATION:

- *Convene the WSDOT Secretary's DBE Reform Committee for systematic assessment of the program.* The committee began meeting weekly in November and will continue meeting weekly into 2014 to assess effectiveness of WSDOT's programmatic DBE efforts, to identify steps necessary for improvement and resources needed to implement those efforts. The committee will prioritize issues identified as well as recommended actions. Members of the committee include Secretary Peterson, Deputy Secretary Cam Gilmour, FHWA Division Administrator Dan Mathis, representatives from Gov. Inslee's office, representatives from the state's OMWBE, a consultant assisting WSDOT with DBE program improvements and representatives from several agency departments including OEO and all WSDOT assistant secretaries.

Outreach and community engagement:

- *Increased executive-level outreach to stakeholder groups within the minority and tribal communities.* WSDOT Secretary Peterson has begun regular meetings with several civic and other stakeholder groups about maximizing DBE participation. These groups include the National Association of Minority Contractors (NAMC), NAACP, Tabor 100, tribal community liaisons and leaders in the prime contracting community (AGC) to discuss WSDOT's DBE Reform efforts. In addition, Secretary Peterson is consulting with the chairs of all relevant gubernatorial committees.

- *Create new outreach position tasked with increasing and improving the networking and relationships between primes and subcontractors, small businesses, and WSDOT project managers and sub-contractors.* A supplemental budget request for this position was submitted in September 2013. This position will coordinate with existing OEO and OMWBE outreach efforts.

Increase diversity and capacity of DBE pool:

- *Work closely with OMWBE on business descriptions clarification with DBEs to increase ability of DBE to perform a broader range of work.* Some DBE firms are only certified to perform work in very specific business descriptions though they possess the ability to – and often do - perform a much broader array of tasks. WSDOT, OMWBE and FHWA will meet monthly as they continue to work together to resolve outstanding business description issues.
- *Develop DBE mentoring program for capacity building and long-term business development and expand existing mentoring program.* New mentoring program will provide DBE firms access to expertise on long-term business development planning, a stated FHWA priority for programs nationwide. The mentoring program will offer increased access to support services, such as business planning and training for developing accurate bidding estimates, and clear understanding of contracting procedures and mechanisms.
- *Expand quarterly WSDOT/Tribal Employment Rights Office (TERO) team meetings to include FHWA and OMWBE.* These meetings can serve as a forum to discuss issues pertaining to Native American-owned or affiliated firms.

Internal WSDOT process improvements:

- *Fund an agency-wide disparity study every three years.* WSDOT is required to have a disparity study in order to have a DBE program which includes race conscious goals. To ensure that WSDOT's program is consistent with changing market conditions, we will strive to conduct a disparity study every three years. WSDOT will pursue opportunities for partnering with other federally-funded agencies or jurisdictions in conducting disparity studies.
- *Develop four-year State Transportation Improvement Plan (STIP) or 10-12 year forecast (tied to revenue) that reflects statewide transportation needs, assesses funding available to agency and provides an accurate forecast of labor needs and DBE participation opportunities.* Accurate forecasting will ensure that individual project goals in aggregate match overall program goal, provide information to OMWBE on upcoming needs for business descriptions and address gaps in areas of certification. As part of this forecasting effort, WSDOT will pay particular attention to decreasing administrative burden on local agencies.
- *Review of contract language regarding eligible business descriptions and/or NAICS codes.* Ensure that contract language maximizes the business descriptions and/or NAICS codes eligible for DBE participation on a particular project.

- *Increase the scope and agency emphasis on the new voluntary goals for Small Business Enterprise (SBE).* WSDOT will work to provide additional training, outreach and emphasis on the new SBE program in an effort to create additional race-neutral DBE participation. Presently, prime contractors submit voluntary SBE plans outlining their efforts towards increasing small business utilization. Additional incentives, increased prime contractor outreach and other areas to increase small business utilization will be evaluated for implementation.
- *Continue to identify barriers to DBE participation and work with OMWBE and FHWA to address and mitigate impacts.* Identify and mitigate impacts including but not limited to such things as performance bonds, available training, size of projects/ size of sub-contracts, application of commercially useful functions and truck leasing.
- *Enhance individual DBE project goal setting procedures.* Improve goal setting procedures to include documentation of all elements and considerations involved in determining project goals.

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13-11-0002240

Title VI Statement to Public: It is the Washington State Department of Transportation's (WSDOT) policy to assure that no person shall, on the grounds of race, color, national origin or sex, as provided by Title VI of the Civil Rights Act of 1964, be excluded from participation in, be denied the benefits of, or be otherwise discriminated against under any of its federally funded programs and activities. Any person who believes his/her Title VI protection has been violated, may file a complaint with WSDOT's Office of Equal Opportunity (OEO). For additional information regarding Title VI complaint procedures and/or information regarding our non-discrimination obligations, please contact OEO's Title VI Coordinators, George Laue at (509) 324-6018 or Jonte' Sulton at (360) 705-7082.

AWVR PROGRAM DBE ACTION PLAN

Action Strategy	Assigned to	Expected Outcomes and Measures	Start Date	Finish Date
<i>Determination of actions available under contract</i>				
Hire Special Attorney General to review the FHWA Report		Special Assistant Attorney General (SAAG) hired (Richard Mitchell). SAAG will analyze the allegations and make a recommendations on remedies based on the STP contract by the end of December on remedies based on the STP contract. The SAAG will also provide recommendations on project oversight.	11/8/13	12/31/13
Effective oversight and increased monitoring of DBE participation on SR 99 Tunnel Replacement Project				
<i>Oversight and monitoring</i>				
Hire independent third-party to review of STP efforts and AWV oversight		Done- Bruce Watts and James Posey hired. Recommendations provided on AWV and STP DBE utilization efforts. The SAAG will also assist with this review where appropriate. Expected outcome is the information can be used to inform the strategy for reaching the STP contract goal.	7/1/13	6/30/14
Assign dedicated AWV Program Staff member to support and monitor STP efforts to increase DBE participation		Dawn McIntosh has been assigned this role. Responsible for coordination with WSDOT OEO, OMWBE, and FHWA to identify and address barriers to DBE participation and to implement concrete steps for increased DBE participation on project. Duties include serving as primary point of contact for DBE firms interested in or already performing work on project and other tasks as listed in this document.	10/14/13	Ongoing
Work with SAAG to provide necessary documents and information regarding FHWA investigation		Respond to questions and inquiries from SAAG assigned to review FHWA Report in a manner that allows for a complete understanding of the project background and issues.	11/1/13	11/30/13

Action Strategy	Assigned to	Expected Outcomes and Measures	Start Date	Finish Date
Establish a 1:1 bi-weekly meeting with FHWA		Dawn, Anthony Sarhan, Jodi Peterson to meet on a recurring basis, bi-weekly beginning Tuesday, November 19.	11/19/13	Ongoing
Establish a 1:1 bi-weekly meeting with Brenda Nnambi		Recurring meetings to ensure better communication and ability to troubleshoot issues in a timely manner.	11/19/13	Ongoing
Continue to hold and attend bi-weekly DBE meetings and monthly partnering meetings, quarterly meetings		Ensure the meetings occur and offer a regular forum for discussing issues related to DBE participation.	11/20/13	Ongoing
Work with OEO and Construction Division on project-specific DBE utilization components		In conjunction with OEO and Construction Division, review STP bidding, award, and contracting processes, and provide assistance and expertise on work that can be counted toward goal attainment.	11/1/13	Ongoing
Review STP Good Faith Effort (GFE) to date package		Request for GFE to date submitted to STP on 10/18/2013. GFE review will occur pending receipt of GFE. WSDOT OEO, Construction Division and AWV Program Staff will assist with review. The SAAG will also be involved with this review as appropriate. Secretary Peterson may engage a neutral third-party to assist with review of good-faith efforts.	11/4/13	TBD
Create an RFP Oversight Committee		Ensure transparency in the RFP development and outreach process and better, real-time communication with DBE firms as a bidding process is underway. The SAAG will participate in this committee as appropriate.	11/18/13	Ongoing
Request action plan from STP as to how they will reach DBE participation goal		Requests submitted 5/17/2013 and 10/18/2013. STP provided letter with components of action plan. The SAAG will be involved in review of this action plan as appropriate.	5/17/13	Ongoing
Review current trucking RFP bids and make an assessment of the RFP selection process; follow up with the DBEs that were not awarded work		Ensure a fair and competitive selection process was used to make the selection and that the DBE utilization is accomplished to the fullest extent possible. The SAAG will be involved with this review as appropriate.	10/25/13	11/22/13

Action Strategy	Assigned to	Expected Outcomes and Measures	Start Date	Finish Date
Create a joint DBE subcontract review committee to look at existing and future subcontracts and review bid matrices with STP, WSDOT AWW and OEO, OMWBE, FHWA		Ensure that all parties understand past subcontracting selection process and future subcontract opportunities. The SAAG will participate in this effort as appropriate.	11/12/13	Ongoing
Request STP leadership involvement in DBE reporting and problem solving activities and attendance at DBE meetings		WSDOT letter to STP dated 10/18/2013 requested increased involvement of STP leadership. STP leadership will attend and report at WSDOT/STP DBE meetings.	11/12/13	Ongoing
Reinstate the the requirement for the submittal of DBE Utilization Certification forms as required in the executed D-B contract		Improve documentation of the subcontracting selection process and DBE participation on the project.	11/18/13	11/29/13
Study WSDOT DBE contract specs for D-B-B and D-B contracts and Federal regulations		Better understanding of state and federal requirements so that liaison can provide accurate information to DBE community.	11/12/13	Ongoing
Review STP work operations and Progress Schedule		Determine what work is already being done by DBE firms and what is available near term	1/1/14	Ongoing
Review STP self-performing work for possible DBE opportunities.		Determine what work could be made available to the DBE community, if any, that STP is planning to self-perform where capacity exists within DBE community.	1/1/14	Ongoing
Identify areas where work can immediately be given to DBE firms		Identify work that is currently available or forthcoming on the project	10/25/13	Ongoing
Review other state and local DOT DBE programs for best practices		Identify best practices that can be incorporated into WSDOT DBE program.	1/1/14	1/31/14
Assign OEO liaison to project		Provide expertise on DBE, apprenticeship, and training programs	TBD	TBD
Ongoing third-party review of DBE participation efforts on project		Provide ongoing assistance to AWW project staff, OEO, and OMWBE, evaluating and making recommendations for administrative remedies required on the contract.	TBD	TBD
Reports to FHWA on DBE utilization		Monthly meetings with FHWA Division Administrator to discuss monthly progress reports and ongoing outreach	11/1/13	TBD

Action Strategy	Assigned to	Expected Outcomes and Measures	Start Date	Finish Date
Review and formulate actions regarding the apprenticeship (15%) and training (50,000 hours) goals		Apprenticeship utilization and training goals are tracked effectively and goals are met or exceeded.	11/18/13	Ongoing
Increased outreach to DBE community regarding future STP contracting opportunities				
<i>Increased outreach to DBE community</i>				
Communicate with the DBE community regarding the appointment of Dawn in her new role		Dawn's title and contact information added to the AWV website. Sent an email to all existing DBEs working on the project about contacting her with any questions or issues related to subcontracting for the project. Expected outcome is transparency and creation of trust building in the DBE community with WSDOT.	11/18/13	11/29/13
Request STP communicate with subcontracted DBE firms regarding existing commitments and their intent to utilize these firms, including start and end dates and weekly updates as schedules are adjusted		Restore relationship between STP and the DBE community and make professional connections for future opportunities.	11/12/13	Ongoing
Create opportunities and facilitate meetings between DBE community and STP		Rebuild STP reputation and improve their ability to bid on future WSDOT projects, while creating opportunities for DBE firms in the near term.	11/14/13	Ongoing
Perform targeted outreach to DBE firms which have received work on the project		Obtain feedback on DBE firm experiences, and from that feedback identify necessary support services.	11/18/13	Ongoing
Monitor post-subcontract utilization, payment and retainage issues		Ensure that any outstanding prompt post-subcontract utilization, payment and retainage payment and retainage issues are quickly and fully properly addressed.	11/18/13	TBD
Schedule a DBE community meeting in January 2014		Enhanced presence of WSDOT and STP in the DBE community.	1/1/14	Ongoing

WSDOT DBE PROGRAMMATIC REFORM ACTION PLAN

Action Strategy	Assigned to	Expected Outcomes and measures	Start Date	Finish Date
Establish clear roles/responsibilities for goal development and accountability				
<i>Roles and Responsibilities</i>				
Delineate clear process for establishing DBE participation goals on WSDOT projects.		Goal development is consistent across projects; clear delineation of how goal was established; concurrence and dispute resolution processes outlined.	12/5/13	4/1/14
Clarify roles and responsibilities across WSDOT for DBE goal-setting.		Clear lines of responsibility and accountability for departments and staff positions with involvement in DBE goal-setting.	12/5/13	4/1/14
Clarify roles and responsibilities across WSDOT for DBE goal attainment.		Clear lines of responsibility and accountability for attaining DBE participation goals.	12/5/13	4/1/14
Clarify roles and responsibilities across WSDOT for support services necessary for DBE goal attainment.		Clear lines of responsibility and accountability for support services which are necessary to DBE goal attainment.	12/5/13	4/1/14
Clarify reporting structure for OEO		Clear organizational chart which delineates formal supervision of OEO within WSDOT; understanding of informal lines of communication and reporting	Done	
Delineate support services provided by OEO		Develop clear suite of support services that support programmatic DBE goal attainment and are complementary to WSDOT's core mission	12/5/13	4/1/14
Develop mandatory internal training program to provide necessary skills on DBE goal-setting, contract issues, tracking of DBE participation progress, and problem-solving.		Staff members understand the importance of the agency's DBE program, and receive the training and resources necessary.	12/5/13	7/1/14
<i>Accountability</i>				
Incorporate DBE goal attainment as mandatory evaluation component for program and project managers in both the behavioral and technical annual evaluations.		Program and project managers have clear understanding of their responsibility for DBE goal attainment and have clear criteria by which they will be evaluated.	12/5/13	4/1/14
Action Strategy	Assigned to	Expected Outcomes and measures	Start Date	Finish Date
Incorporate mandatory competency for support of equal opportunity programs in employee annual evaluations.		Employees and supervisors are aware that support of equal opportunity programs is now a mandatory item on annual evaluations and have clear criteria for evaluation of that competency.	12/5/13	4/1/14
<i>Tracking and Monitoring</i>				

Develop process for documenting progress toward goal achievement		Consistent process for documenting DBE participation across agency projects; clearer understanding of programmatic goal progress	12/5/13	4/1/14
Develop system for automating DBE reporting		Accurate data on progress is available to project and agency leaders; issues are identified in a timely manner; system supports responsive decision-making	12/5/13	4/1/14
Incorporate data generated by automated DBE reporting into Gray Notebook		Data is shared in an open and timely manner so that progress can be tracked and agency values of transparency and accountability are demonstrated.	12/5/13	ongoing
Implement actions identified in External Civil Rights Risk Assessment.		Prioritize and implement actions identified.	12/5/13	4/1/14
Develop clear expectations and accountability measures for contractors with DBE participation requirements				
<i>Project Goal Setting</i>				
Establish best practices for DBE goal-setting and participation		Appropriate and consistent application of federal and state requirements		
Review all standard specifications, manuals, and guidelines related to FHWA Civil Rights Program		Appropriate and consistent application of federal and state requirements	12/5/13	1/31/14
Design DBE goal-setting process specific to design-build contracts		Goal-setting and reporting mechanisms are suited to design-build contracts with consistent reporting and accountability measures and incentives	12/5/13	4/1/14
Review design-build contract language across projects in other parts of US		Determination of best practices for D-B projects	12/5/13	1/31/14

Action Strategy	Assigned to	Expected Outcomes and measures	Start Date	Finish Date
<i>Contractor Accountability</i>				
Develop real-time reporting mechanisms with accurate, timely progress reports		Accurate reporting of contractor efforts and payments to DBE firms; clear demonstration of regional and state-wide progress toward programmatic goals	12/5/13	7/1/14
Study best practices in DBE participation reporting		Develop set of criteria for evaluating needs of tracking and reporting structure		
Research tracking software		Determine best software available that meets particular needs of WSDOT	12/5/13	4/1/14
Purchase and implement tracking software		Software is available for use across agency and staff members are trained		
Review and update contract language for best practices to be used on WSDOT projects which utilize federal funds and have mandatory DBE participation goals.		Goal-setting, reporting, and accountability measures are in line with industry best practices, consistent across agency, and understood by all involved	12/5/13	4/1/14
<i>Contract Delivery</i>				
Review how project work is divided to maximize opportunities for DBE firms.		When possible, work is "unbundled" so that opportunities for DBE firms are increased and bonding and other requirements are easier to obtain.	12/5/13	4/1/14
Strengthen overall WSDOT DBE program performance in achieving participation goals and program intent				
Convene Executive DBE Reform Committee		Regular meetings of committee; systematic review and assessment of agency DBE goal-setting and achievement	12/5/13	ongoing
<i>Outreach and Community Engagement</i>				
Develop and implement executive-level outreach to DBE stakeholders and leaders in minority business and tribal communities.		Better communication with and understanding of priorities of stakeholders within these communities. Groups to include TABOR 100; NAME; NAACP; tribal community liaisons; and representatives from the prime contracting community.	12/5/13	7/1/14

Action Strategy	Assigned to	Expected Outcomes and measures	Start Date	Finish Date
Establish new DBE outreach position for agency <i>Increase Diversity and Capacity of DBE Pool</i>		Increased communication and stronger relationships between all parties involved in contracting and DBE participation	12/5/13	4/1/14
Develop mechanism for regular assessment of business descriptions to increase ability of DBE firms to perform a broader range of tasks.		NAICS code/business description issues can be addressed in a timely and efficient manner so that DBE firms are qualified to do a broader range of tasks	12/5/13	4/1/14
Develop DBE mentoring program for capacity building and long-term business development		DBE firms have access to expertise on long-term business development planning	12/5/13	7/1/14
Expand existing DBE mentoring program which provides support services		DBE firms have increased access to support services such as business planning, training for developing accurate bidding estimates; and clear understanding of contracting procedures and mechanisms	12/5/13	7/1/14
Expand quarterly WSDOT/TERO team meetings to include OMWBE and FHWA.		Meetings are used as a forum to discuss issues pertaining to Native American-owned or affiliated firms.	12/5/13	7/1/14
<i>Internal WSDOT Process Improvements</i>				
Fund an agency-wide disparity study every 3 years		Better understanding of DBE program progress; DBE firms available for specific skills and work requirements; more effective use of agency resources; WSDOT program is consistent with changing market conditions.	10/1/16	10/1/17
Develop four-year STIP or 10-12 year forecast that reflects statewide transportation needs, assesses funding available to agency, and provides an accurate forecast of labor needs and DBE participation opportunities.		Clear forecasting of DBE participation opportunities; individual project goals match overall program goals (in aggregate); program can address gaps in areas of certification.	12/5/13	7/1/14

Action Strategy	Assigned to	Expected Outcomes and measures	Start Date	Finish Date
Review of contract language regarding eligible business descriptions and/or NAICS codes.		Contract language maximizes the business descriptions or NAICS codes eligible for DBE participation on a particular project.	12/5/13	4/1/14
Increase scope and emphasis of agency Small Business Enterprise program		Additional training and outreach is provided to increase race-neutral DBE participation.	12/5/13	7/1/14
Identify and address barriers to DBE participation		In partnership with OMWBE and FHWA, identify and mitigate impacts such as performance bonds, available training, size of projects/sub-contracts, application of commercially useful functions, and truck leasing.	12/5/13	4/1/14



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WSDOT Contract No. 007999
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SR 99 Tunnel Project
Phone: 206-971-8701 Fax: 206-971-8702

November 22, 2013

Serial Letter WSD-0511
S-G-GEN-GEN-CR08-00558-01

Washington State Department of Transportation
310 Maple Park Avenue SE
P.O. Box 47300
Olympia, WA 98504-7300
Attn: Ms. Lynn Peterson

Re: Disadvantaged Business Enterprise (DBE) Complaint No. 2012-0257

Dear Ms. Peterson:

Thank you for providing Seattle Tunnel Partners ("STP") with a copy of the Federal Highway Administration's ("FHWA") letter to you dated November 1, 2013 concerning the Disadvantaged Business Enterprise ("DBE") program in connection with the Alaskan Way Viaduct Bored Tunnel Project (the "Project") and a request for WSDOT's participation in conciliation proceedings. We are providing this response to you well in advance of the FHWA's deadline for requesting conciliation as STP wants to ensure that WSDOT's response is both informed by and reflective of a transparent relationship with STP. As discussed in further detail below, STP wants to ensure that both WSDOT and FHWA are aware of both the current status of DBE participation and efforts regarding the same on the Project as well as heightened measures STP is willing to commit to on a going-forward basis to enhance DBE participation and coordination with WSDOT.

For a design-build construction effort of the magnitude and complexity of the Project, STP feels it is important to discuss this method of project delivery and some of the innovative steps STP has taken to maximize DBE participation. In traditional design-build procurement, the contractor works under a contract with the project owner to provide both design and construction services with the DBE goal typically set based on the estimated value of construction opportunities. The first year of the project is typically consumed by the design phase. Traditionally, professional services have not been subject to DBE participation. However, in order to incorporate DBE participation at a broader range of contract



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performance, STP committed to meeting the 8% DBE goal, and required, its designer, HNTB, to commit also to 8% DBE participation.¹

A "flow-down" of the DBE commitment does not relieve STP of further responsibility. In fact, STP worked diligently and persistently with HNTB to ensure that HNTB provided opportunities for DBEs to participate in the design of the Project. During the design phase, we coordinated and participated in outreach events, pre-bid meetings, and workshops with HNTB to encourage DBE firms to participate on the Project. In as much, WSDOT recognized STP with the first ever Champion of Inclusion Award for our outstanding efforts in outreach and inclusion of small and disadvantaged businesses, specifically, for our "innovative efforts to team up with small, women-owned and minority businesses". To date, HNTB has already paid more than \$4.5 million to 17 DBEs firms towards their \$5 million DBE goal imposed by STP.

In a design-build procurement, the proposal is submitted based on preliminary design drawings and specifications and or alternate design concepts which are not finalized until the project is well underway. The details of needed supplies and services (and, therefore, corresponding DBE opportunities) are not known at the proposal phase and can only be estimated generally. As the design solidifies post-award, procurement efforts finally commence. As such, DBE participation in the construction phase of the project operates on a delayed start from contract award and accelerates as performance progresses.

The concerns raised by WSDOT and FHWA focus on DBE participation levels as of October 2012 – less than one year after the completion of Project design, and at the point that DBE participation on the construction efforts were just getting underway. The very nature of this type of project mandates that DBE participation must be viewed over the life of the project and what might be expected in a Design-Bid-Build should not be expected in a Design Build project. In a Design-Bid-Build project, the DBE commitments and attainments are represented at the time of award. That is not the case in a Design-Build project.

WSDOT recognizes this critical difference and has separate requirements in its DBE procedures tailored to design-build procurements, noting up front that "WSDOT and the Design-Builder recognize that the actual quantities of work may vary substantially from what is now anticipated because the design has not been completed." In fact, on WSDOT's website providing information to the public on the Project, the impact of the design-build nature of the Project on the DBE requirements has been clearly conveyed:

Design-build projects differ from design-bid-build projects in the way they award work to DBE firms. Rather than requiring contractors to identify the DBE firms that will be utilized to meet

¹ Currently, HNTB has paid DBE firms \$4,519,019 which reflects the attainment (already) of 7% achievement toward its 8% commitment. STP anticipates that HNTB will increase this number by Project completion, resulting in DBE participation at or near the 8% goal.



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the goal prior to signing the contract, design-builders can make contracting opportunities available throughout design and construction of the project. As a result, STP has until the end of their design-build contract in 2016 to achieve the DBE contract goal.

Available at: <http://www.wsdot.wa.gov/projects/viaduct/DBEOpportunities>. To this end, the DBE commitments and attainments in October 2012 are very different than today as a result of the natural progress of construction efforts as well as STP's renewed emphasis on DBE participation. As of September 30, 2013² DBE participation has been reported as follows:

STP DBE participation progress as of September 30, 2013

Seattle Tunnel Partners' current contract value:	\$1,361,181,901
DBE Goal (8%):	\$91,176,000
Value of DBE commitments (as Amended):	\$55,306,907.15
% of DBE participation (based on commitments):	4.853%
Value of DBE payments (as Amended):	\$19,717,270.40
% of DBE participation (based on payments):	1.730%
% Contract complete:	50%

STP anticipated values as of September 30, 2013

Value of DBE commitments (as Amended):	\$55,306,907.15
Max value amounts of NTE/T&M/Hourly subcontracts (STP cautions that not all of this amount may be claimed for attainment, and the value is only being claimed as work is performed in accordance with the contract and regulations and amounts are invoiced):	<u>\$8,879,646.48</u>
Adjusted anticipated value of DBE participation:	\$64,186,553.63
Value of anticipated DBE participation:	<u>\$14,908,665.69</u>

² Because of the time and effort needed to compile STP's monthly data on DBE participation, STP generally issues reports on current DBE information at the conclusion of the following month. Accordingly, the "current" information as of October 31, 2013 will be issued on or before November 30, 2013. Consistent with the progress in DBE participation since 2012, we anticipate that subsequent reports will continue to reflect an upward trend in DBE participation.



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Further adjusted anticipated value of DBE participation:	\$79,095,219.32
Additional dollars paid to DBEs but not claimed to date (pending verification):	<u>\$6,259,530.62</u>
	<u>\$85,354,749.94³</u>

To address the concerns raised by the investigation, STP has taken a more critical look at its current policies and procedures as well as how they are communicated to its personnel and adhered to and is working to modify them to further increase DBE participation as it moves forward.

STP has also reported the following increases to its DBE participation attainment (as of September 30, 2013): \$19,717,270 in DBE participation to date and an additional \$6,259,531 paid to DBEs to date that is currently being verified to claim towards the goal⁴. This is an upward trend that we are working to continue. At this moment in time, STP can reasonably foresee \$85 million in commitments to DBEs (with a lower value in DBE attainment) on the Project. STP is still working to identify and solicit proposals for work anticipated to be subcontracted on the Project through year-five, and it expects to report increases to both DBE commitments and DBE participation as it works to achieve the Project goal.

In addition, STP wants to ensure that both WSDOT and FHWA are aware of the following measures and improvements that have been implemented and are already contributing to increased levels of DBE participation and transparency with WSDOT:

1. Since October 2012, STP began making changes to procedure and our commercial process to increase DBE participation at the Project; for example with all major RFPs: STP has increased the involvement of the DBE compliance manager in preparing the RFP to facilitate increased DBE participation. The DBE compliance manager is involved throughout the bid process and

³ This amount does not reflect actual DBE attainment, as STP does not, and will not, claim credit for DBE participation until it has fully vetted for compliance with the requisite regulatory requirements. For example, the amount may be lower based on deductions for regular dealer participation (valued at 60%), actual performance of CUFs, and external factors (WSDOT OEO determinations and contract provisions).

⁴ STP defines "commitment" as the value of executed agreements it has with currently certified DBE firms. STP defines "attainment" as payments made by STP to currently certified firms performing a commercially useful function. The amount of \$6,259,531 represents payments already made by STP to DBE certified firms. STP is currently in the process of verifying that the DBE firms performed in accordance with the regulations and requirements of the contract. Currently, STP believes that only approximately half of the amount could be counted toward participation because it is subject to CUF verification prior to any attempt by STP to claim credit for DBE participation.



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- may request bid extensions, revisions to the bid, or other methods to increase DBE participation. The DBE compliance manager is also the first to review the bid selection.
2. STP has made organizational changes to enhance the DBE program; STP has employed a new Commercial Manager with a strong background in the DBE program
 3. STP has taken steps to increase DBE participation on the remaining opportunities by exploring different ways of packaging the work in smaller increments to make the opportunities more attainable by DBEs; For example, STP broke up the work in the operation buildings to over 20 smaller bid packages. Where DBE firms were unsuccessful, STP has worked with the Non-DBE to maximize lower-tier DBE participation
 4. Changes to our means and methods have created additional opportunities for DBEs to participate in non-traditional work opportunities to provide services on the Project; STP has identified DBE specialty firms and negotiated directly with firms that have the skills and resources needed to assist on the project in non-traditional roles such as tunnel quality assurance and quality control.
 5. STP committed to meet monthly with WSDOT, OMWBE and OEO to identify DBE firms able to perform work on the project and assisting them in obtaining DBE Certification and additional NAICS Codes that are applicable to the Project in order to ensure only appropriate DBE participation is claimed on the Project;
 6. Use of a Short Form Subcontract for DBEs where possible to simplify terms and conditions;
 7. Eliminate bonding requirements for DBEs, STP has waived bonding requirement for DBE 11 out of the 12 direct subcontracts with DBE firms.
 8. Discuss with DBEs to review procurement processes; STP follows up with the DBE firms after the bid closing.
 9. Discussed with DBEs to review and understand all applicable Owner Required Contract Clauses and other required documentation requirements;
 10. Current DBE trucking award efforts established in direct coordination with WSDOT.

Finally, STP offers the following additional measures that it stands prepared to implement independently, or, preferably, with the support and assistance of WSDOT:

1. Development of a transparent written bid process which includes:
 - a. alternate methods of bid delivery;
 - b. establishment of a point of contact for all bids/solicitation;
2. Establishment of a RFP Committee with WSDOT and OEO staff to make recommendations to STP's Executive Committee on the RFP's for new work opportunities to increase bids submitted by DBEs;
3. Establishment of a written process for a review of any issues or concerns related to DBE performance;
4. Scheduling regular meeting with community organizations to advise of DBE progress;



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5. Review of the Project Contract to propose modifications to WSDOT to eliminate any ambiguities or inconsistencies with Federal DBE requirements.

In closing, we offer our full support to WSDOT and FHWA, including providing any detailed information to address, clarify, or steps to correct any specific concerns. Although, as stated above, STP believes the most productive focus should be on current Project status and efforts going forward, we are nonetheless in the process of reviewing the facts and circumstances surrounding the trucking solicitations that appear to be central to FHWA's stated concerns, and we offer our full cooperation to the extent requested by WSDOT or FHWA. Going forward, by working directly with WSDOT in planning and identifying future enhancements to the DBE efforts on this Project, STP remains committed to meeting the DBE goal established for this project. We look forward to hearing from you on how we can work together on this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Chris Dixon".

Chris Dixon
Project Manager
Seattle Tunnel Partners

Aconex: Trepanier, Preedy, McIntosh, Dixon, Alonso, Hauser, Streadbeck