

# Washington State Department of Transportation's Federal Highway Administration Triennium Disadvantaged Business Enterprise Goal Federal Fiscal Years 2024-2026

Please note that the overall triennium goal set forth in this methodology is only the interim until the completion of our current disparity study estimated to be completed in the Fall of 2023. A new methodology will be drafted, vetted and WSDOT will revise the current triennium goal and once again allow opportunity for public comment.

The Washington State Department of Transportation (WSDOT) submits this Disadvantaged Business Enterprise (DBE) goal methodology to the U.S. Department of Transportation's Federal Highway Administration (FHWA) for review and approval pursuant to 49 CFR § 26.45 to establish the triennium overall DBE goal for its federally-assisted highway contracts for Federal Fiscal Years (FFYs) 2024 through 2026 (hereinafter the "triennium"). WSDOT has established a triennium DBE goal of 19.0% based on the results of the 2017 DBE Program Disparity Study. WSDOT's Disadvantaged Business Enterprise Goal methodology is comprised of four sections, which are as follows:

- Section I outlines WSDOT's two-step methodology for setting a DBE program goal.
- Section II discusses the amounts of race-neutral and race-conscious participation.
- Section III discusses WSDOT's current efforts to increase race-neutral participation.
- Section IV provides information on public participation.

The Study's availability results are summarized below:

Race, Ethnicity or Gender	Availability	Race-Conscious or Race-Neutral
African American	1.0%	Race-Conscious
Hispanic American	2.6%	Race-Conscious
Asian American	2.1%	Race-Conscious
Native American	3.0%	Race-Conscious
Non-Hispanic White Women <sup>1</sup>	10.3%	Race-Neutral

The regulations require that WSDOT must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation. Ongoing and new initiatives seek to reduce discriminatory barriers, increase capacity, and level the playing field for the participation of DBEs and other small contractors. These ongoing and new initiatives will be discussed further in section IV.

## Section I: Disadvantaged Business Enterprise Goal Methodology

To meet the requirements of 49 CFR § 26.45, WSDOT commissioned a Disparity Study from Colette Holt & Associates (CHA), a nationally recognized law and consulting firm. The Study provides a statistical analysis of baseline DBE availability which was used to establish the Step 1 base figure estimate of DBE availability in WSDOT's markets. The Study further analyzed Census Bureau statistics and other econometric and social science evidence to determine whether there are disparities

<sup>1</sup> At the time when the study was conducted, WSDOT was under a waiver granted by the Department of Transportation in December 2016 on the basis of a previous disparity study performed by BBC Research & Consulting in 2012. Under the waiver, all participation from non-minority women-owned DBEs was excluded from counting towards contract goals but was counted as race-neutral participation. Under its own terms, the waiver expires on October 1, 2020, which the methodology described in this report factors into projected participation from non-minority women-owned firms.

between DBEs and non-DBEs in factors affecting entrepreneurial success on WSDOT’s contracts and subcontracts. It 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 One Base Figure**

### ***Definition of WSDOT’s contracting market***

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

### ***Counting establishments in WSDOT’s relevant markets***

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

### ***Estimating baseline DBE availability***

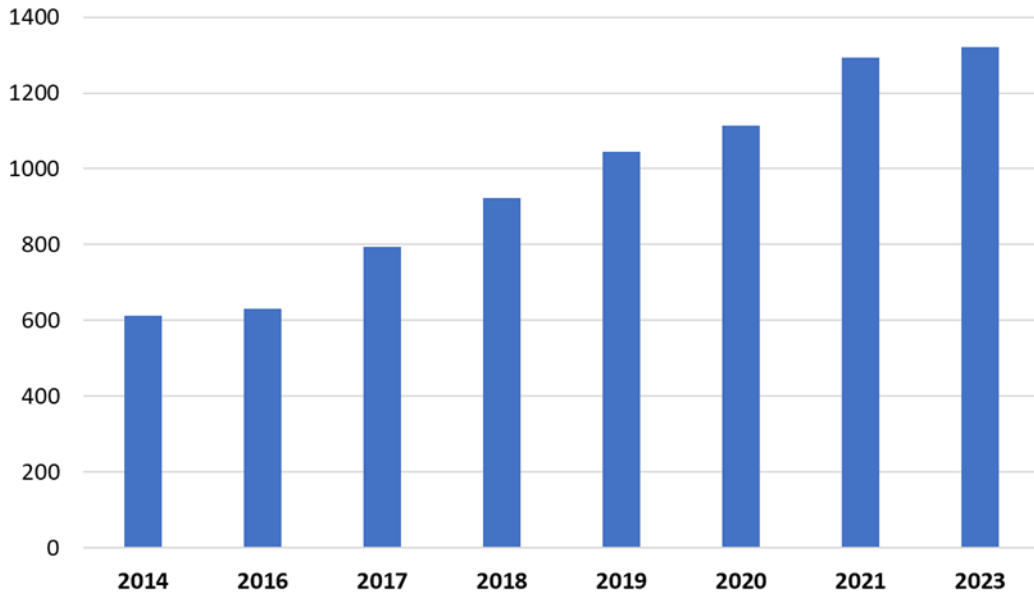
Applying the “custom census” approach that has been repeatedly accepted by USDOT and the courts, the Study estimated 19.0% as the base DBE availability figure for Step 1.

The 19.0% goal is supported by the increasing amounts of businesses being certified as a Disadvantaged Enterprise. According to data from the Office of Minority & Women’s Business Enterprise’s certified directory, the amount of certified DBEs has been consistently increasing since 2014. In 2014, the certified directory had 611 DBEs. Currently, the certified directory has 1322 DBEs. Overall, the average annual rate of growth has been 12%.

Year	No. of DBEs
2014	611
2016	630
2017	794
2018	923
2019	1045
2020	1115

2021	1294
2023	1322

**Number of Certified DBEs by year**



Moreover, the numbers of DBEs with NAICS codes that have been utilized on WSDOT FHWA projects has increased from 2014. (Numbers of DBEs per NAICS code can be viewed below). Overall, the average growth rate between 2023 and 2014 for all FHWA relevant NAICS codes was 136%.

FHWA NAICS	2023	2020 DBEs	2014 DBEs	Growth Percent
236210	27	23	7	286%
236220	102	78	24	325%
237310	152	135	75	103%
237990	82	72	34	141%
238110	39	39	26	50%
238140	16	17	9	78%
238210	56	58	19	195%
238320	31	26	15	107%
238910	101	80	57	77%
238990	80	82	41	95%
484110	23	13	9	156%
541330	159	164	81	96%
561730	56	45	33	70%
561990	53	48	23	130%

The steady increase of DBEs provides strong evidence that WSDOT will be able to meet its proposed step one goal of 19.0%.

### **Step Two Adjustment**

Once the base figure has been calculated, WSDOT must examine all of the evidence available in its jurisdiction to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected absent the effects of discrimination. Included among the types of evidence

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

***Past DBE utilization***

WSDOT considered the current capacity of DBEs to perform work in Washington State, as measured by the amount of work performed by certified DBEs on federal-aid projects over the past three years. The median for WSDOT’s participation for FFY 2015 through FFY 2019 was 12.1%.

<b>Federal Fiscal Year</b>	<b>DBE Participation</b>
FFY 2015	11.7%
FFY 2016	15.1%
FFY 2017	12.1%
FFY 2018	10.6%
FFY 2019	12.5%
FFY 2020	14.0%
FFY 2021	11.8%
FFY 2022	14.8%

WSDOT considered utilizing the median past participation of 12.3% averaged with 19.0% for an overall DBE goal of 15.65%. WSDOT is proposing to utilize the 19.0% overall DBE goal due to the large variety of race-neutral and race-conscious measures available to the department. The race-neutral measures will have the effect of increasing DBE capacity to a level where they are on par with non- DBEs, making a capacity adjustment unnecessary. The race-neutral and race-conscious measures the Department plans to utilize are described further in the document.

***Evidence from local disparity studies***

In 2019, the State of Washington conducted a statewide disparity study. The study found high amounts of availability for NAICS codes relevant to the types of work performed on WSDOT contracts. The results from the 2019 Statewide Disparity study support the baseline step one goal of 19.0%<sup>2</sup>.

***Disparities affecting DBE opportunities***

After conducting the custom census approach, 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

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<sup>2</sup> State of Washington Disparity Study, Colette Holt & Associates, 2019, pages 8-9, accessed at <https://omwbe.wa.gov/sites/default/files/State%20of%20Washington%20Disparity%20Study%202019.pdf> on June 18, 2020.

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

While relevant and probative to whether WSDOT 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.

## **Section II: Projection of Race-Neutral vs. Race-Conscious Goal Attainment**

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

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

WSDOT will operate under a 16.8% race/gender-conscious goal and a 2.2% race/gender-neutral goal as outlined below:

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

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, WSDOT evaluated past race-neutral DBE participation, as defined in 49 CFR § 26.51(b). WSDOT's median percentage on federal-aid contracts through race-neutral means for FFY 2012 through 2019 was 2.2%.

Federal Fiscal Year	Total DBE Participation	Race/gender-Neutral Participation	Race/gender-Conscious Participation
2012	15.2%	2.1%	13.1%
2013	16.4%	2.3%	14.1%
2014	14.1%	1.8%	12.3%
2015	11.7%	2.2%	9.6%
2016	15.1%	2.7%	12.5%
2017	12.1%	2.7%	9.4%
2018	10.6%	3.4%	7.2%
2019	12.5%	5.4%	7.0%
2020	14.0%	0.8%	13.2%
2021	11.8%	0.5%	11.3%
2022	14.8%	1.3%	13.5%

Therefore, WSDOT projects that it will meet 2.2% of its overall goal through race-neutral measures and 16.8% of its overall goal through race-conscious measures. WSDOT will monitor DBE participation throughout the triennium to adjust its use of contract goals to ensure that their use does not exceed the overall goal.

### **Section III: Race-neutral measures to achieve DBE participation**

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

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

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

#### ***Support Services***

WSDOT provides the following supportive services to DBEs:

- Immediate and long-term business management, record keeping, financial and accounting capabilities;
- Long-term development assistance to increase opportunities to participate in more varied and significant work, and to achieve eventual self-sufficiency;

- Programs on contracting procedures and specific contract opportunities;
- Assistance in obtaining bonding or financing;
- Assistance to start-up firms, particularly in fields with historically low DBE participation;
- Identification of potential highway-related DBEs and prequalification assistance; and
- In an effort to increase awareness of the DBE Supportive Services program, WSDOT has developed a DBE Supportive Services hotline (888) 259-9143, email address [dbess@wsdot.wa.gov](mailto:dbess@wsdot.wa.gov), and website: [www.wsdot.wa.gov/EqualOpportunity/DBE.htm](http://www.wsdot.wa.gov/EqualOpportunity/DBE.htm).

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

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

- Sponsorship of the annual Regional Contracting Forum held in Seattle, Washington, in partnership with state, local and federal agencies. Last year's event attracted approximately 2,000 individuals.
- Works with organizations such as the Northwest Minority Supplier Diversity Council, Women in Construction, USDOT's Small Business Transportation Resource Center, the Women's Transportation Seminar, Tabor 100, the National Association of Minority Contractors, Association of General Contractors, American Council of Engineering Companies, the Office of Minority and Women's Business Enterprises and other groups to promote the DBE Program.
- Establishing another Washington State DBE Advisory 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.

### ***Prompt Payment***

WSDOT continues to enforce its prompt payment provisions and processes through the B2GNow software system. Through its investment in B2GNow, WSDOT has been able to increase its effectiveness in enforcing the prompt payment regulations. B2GNow requires prime contractors and consultants to report subcontractor and subconsultant payment information. The subcontractors and subconsultants can then confirm or dispute the payment. If the payment is disputed and not quickly resolved, WSDOT staff then becomes involved. More information is available at: [www.wsdot.wa.gov/EqualOpportunity/DMWSBE.htm](http://www.wsdot.wa.gov/EqualOpportunity/DMWSBE.htm).

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

WSDOT recognizes the necessity of developing new and innovative race-neutral contractor support services and has begun implementing new programs and resources (e.g., Capacity Building Mentorship Program; Minority, Small, Veteran and Women's Business Enterprise Program; remodeled DBE Support Services Program, etc.). This process involved examining other states' strategies, as well as working with the DBE Advisory Group, construction, consulting, minority and women business organizations to improve our programs and services.

## **Section IV: 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:

- June 28, 2023:
  - DBE advisory group written notification of proposed overall goal sent.
  - WSDOT publishes notice announcing Proposed FAA, FTA, FHWA overall Goal and

seeking public comment.

- July 7, 2023 through August 7, 2023: Period for public comment on overall FHWA goal opens.
- July 17, 2023: First public hybrid online/in-person meeting about proposed overall FHWA goal<sup>3</sup>
- July 25, 2023: Second public hybrid online/in-person meeting about proposed overall FHWA goal.
- August 7, 2023: Opportunity for public comment closes.
- By August 10, 2023: Submit overall goal for FHWA (with public comment).
- October 1, 2023: Pending FHWA approval, overall goal goes into effect.

### **Published Notice**

To satisfy the public consultation requirements of 49 CFR § 26.45(g)(1)(ii), WSDOT provided a press release to all media outlets in Washington State and published the proposed overall annual DBE goal for the triennium in the Seattle Daily Journal of Commerce on June 22. Included in the press release and publication was WSDOT's request for public comment and inspection of the goal methodology. The period for accepting public comment was open from June 22 to July 24.

Press releases TBD

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<sup>3</sup> The public meetings will jointly cover the goal methodologies for FTA, FHWA, and FAA.