

Small Business Enterprise Participation Plan

The Washington State Department of Transportation (WSDOT) is committed to ensuring small businesses are afforded equal and fair opportunities to participate on WSDOT contracting, consulting, and procurement opportunities. WSDOT is required by Section 49 of the Code of Federal Regulations (CFR) §26.39 to include an element to its DBE Program Plan to:

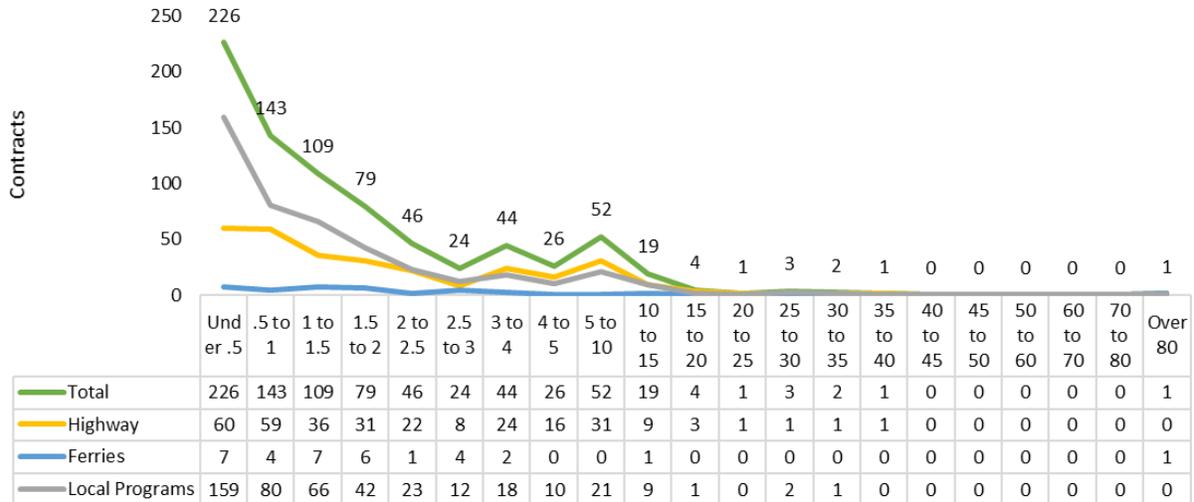
- Structure contracting requirements to facilitate competition by small business concerns;
- Take all reasonable steps to eliminate obstacles for small businesses to participate; and
- Eliminate unnecessary and unjustified bundling of contract requirements.

WSDOT is tasked with meeting the maximum feasible portion of our overall Disadvantaged Business Enterprise (DBE) goal using race and gender neutral (“race-neutral”) measures. During the last three federal fiscal years (FFY 2016 through FFY 2018), WSDOT has attained, on average, 2.9 percent race-neutral participation. This lack of race-neutral participation demonstrates that WSDOT needs to adopt additional measures in order to increase our race-neutral participation. Throughout this document, WSDOT will outline additional race-neutral measures to increase small business participation, and address small business concerns. These measures are as follows:

- Unbundling Contracts Analysis
- Small Business Set-Asides
- Developmental Goals - Consulting
- Small Business Goals
- Small Business Certification
- Alternative Acquisition Strategies Evaluation

Unbundling Contracts Analysis

**WSDOT Number of Contracts by Cost Group
FFY 2016-2018**



On April 1, 2019, WSDOT performed an analysis of the Federal Highway Administration funded contracts awarded by WSDOT, Washington State Ferries and Local Programs Division for FFY 2016 through 2018. This analysis also included Washington State Ferries Federal Transit Administration funded projects. It was determined that 47 percent of these projects let were under \$1 million and 29 percent of these contracts were under \$500,000. Given that 226 of the 780 contracts were under \$500,000, WSDOT has determined that these contracts are of a size allowing SBE firms to compete as prime contractors.

Small Business Set-Asides

WSDOT maintains a Small Works Roster that consists of contractors interested in bidding on contracts under \$300,000. Currently, contractors of any size are able to bid on these projects. Small contractors frequently note frustration regarding competing with larger contractors. During the current legislative session, WSDOT will seek legislation to have contracts under \$300,000 set-aside for prime contractors with gross receipts that average less than \$23.98 million, and who are certified by the Washington State Office of Minority & Women's Business Enterprises (OMWBE) as Small Business Enterprises. This effort is a part of the plan to increase opportunities available for small businesses. Currently, the legislation is forthcoming. Once the required legislation is passed, WSDOT will begin implementation immediately.

Prime contractors may form joint ventures with SBE firms on this work, if the SBE certified firm remains independent and performs a Commercially Useful Function (CUF), as defined in 49 CFR

§ 26.55(c). Joint Venture Agreements must be approved in advance by the WSDOT Office of Equal Opportunity.

Developmental Goals - Consulting

WSDOT will begin establishing business development and assistance requirements on the following projects:

- Federal-aid agreements with USDOT Federal Transit, Federal Aviation and Federal Highway Administration funding;
- Consulting contracts anticipated to last longer than two years; and
- Contracts anticipated to cost over \$5 million.

Throughout the term of the above agreements, the prime contractor or consultant shall pick one SBE firm they will commit to assisting with the SBE firm's development throughout the term of the contract. With each of these projects, at the time of submission, the prime consultant shall submit a plan outlining how they plan to grow and develop their chosen SBE throughout the project. The plan must consist of a detailed development plan for review and approval by the Office of Equal Opportunity. Both the SBE and the prime contractor must work to ensure the SBE firm maintains independence and control, and performs a CUF during the life of the contract.

Small Business Goals

WSDOT previously implemented 10 percent SBE voluntary goals on USDOT, FHWA, FTA and FAA funded projects with minimal success. Because voluntary goals did not result in additional race-neutral participation, WSDOT will set Small Business Enterprise enforceable project goals on federal-aid projects determined to have sufficient opportunities. WSDOT will use the individual project DBE goal setting methodology for SBE goals. This program will be implemented in the same fashion as the DBE program¹ with the following characteristics:

- Prime contractors will either have to meet the established SBE goal or demonstrate Good Faith Efforts to do so;
- Prime contractors will be required to submit SBE Utilization Certification Forms and Written Certification Forms for the SBE firms they will be using; and
- SBE firms will be required to perform a Commercially Useful Function; this will be monitored through comprehensive Commercially Useful Function Onsite Reviews.

¹ Consistent with 49 CFR Part 26

WSDOT may set both DBE/UDBE and SBE goals on federal-aid projects. WSDOT recognizes that administering more than one goal on a project may be complex. In light of this, WSDOT will work collaboratively with FHWA to develop updated contract language and forms to ensure UDBE/DBE and SBE goals and participation remains separate. This will include requiring prime contractors to specify which goal a firm's participation will count toward on the Certification Utilization Form. Additionally, DMCS allows WSDOT to monitor more than one goal on a project simultaneously.

WSDOT will strive to ensure that UDBE/DBE participation remains the priority and the SBE program will be used to enhance small business and race-neutral DBE participation.

Small Business Enterprise Certification

The Small Business Enterprise Certification Program will continue to be administered by OMWBE. Any firms self-certified as a small business enterprise will not be accepted. The certification criteria will remain the same as the DBE Program, but race, ethnicity, and gender will not be evaluated. Following is a summary of the certification criteria utilized by OMWBE:

- The applicable firm must be 51 percent or more owned and controlled by an economically disadvantaged individual meeting the Personal Net Worth requirements of 49 CFR §26.67(2);
- The applicant firm shall meet the criteria to be considered a small business as outlined in 49 CFR § 26.65;
- All firms certified as DBEs will automatically be considered SBE certified for the purposes of this program, with no additional application necessary. All other relevant certification regulations apply, except:
 - The certification decision rendered by OMWBE is final and non-appealable.
 - Failure to perform a Commercially Useful Function three or more times within two years, will result in removal from the SBE program.

Alternative Acquisition Strategies Evaluation

As part of the 2012 SBE Participation Plan and based on the USDOT Questions and Answers of 49 CFR § 26, WSDOT sought agency requested legislation for Job Order Contracting. This alternative acquisition strategy is a delivery method by which the prime contractor performs a small portion of the contract (less than 10 percent) with the remaining work being subcontracted to other firms. This delivery method is primarily used in the vertical construction industry. Upon implementing the Job Order Contracting delivery model WSDOT anticipated additional race-neutral participation. Unfortunately, WSDOT has had limited opportunity to use

the Job Order Contracting Model and therefore, had little to no impact on the race-neutral DBE participation.

WSDOT researched all other alternative design and acquisition strategies and determined the agency has legislative authority to perform the following delivery methods:

- Small Works Roster;
- Limited Public Works Roster²;
- General Contractor/Construction Manager; and
- Design Build.

When developing WSDOT's processes and procedures for alternative design and acquisition strategies, WSDOT relied upon FHWA's guidance from the development process of the *DBE – Administration and Oversight on Projects with Alternative Contracting & Procurement Methods* handbook. This handbook contains useful tools for DBE Program implementation, including lessons learned, creative programmatic enhancement, and helpful resources. WSDOT will continue to use the aforementioned handbook as its guide for enhancing our DBE Program implementation on alternative contracting methods.

From recent research, it appears that most states, including Washington, have been developing strategies to enhance the implementation of the DBE Program on these alternative acquisition strategies. As the DBE Program was initially developed for Design-Bid-Build, it has been modified to implement on alternative acquisition strategy delivery methods. WSDOT is currently focusing efforts to ensure DBE Program compliance with these new delivery methods. These enhancements include DBE contract goals on both the Design and Construction phase of the contract, updated Instruction to Proposers, new Request for Proposal requirements, new DBE Participation Plan requirements and other programmatic enhancement (e.g. Diversity Management & Compliance System). WSDOT sets aggressive, yet obtainable DBE goals on mega-projects, and will continue to focus on the enhanced implementation of the DBE Program and the proper oversight of same. WSDOT will continue to ensure DBE Program requirements are the priority, when implementing the SBE Program.

² WSDOT also has the authority for a limited public works roster. With the limited public works roster, projects less than \$35,000 are set-aside for firms with gross receipts under \$1 million. This delivery method has not been used by WSDOT as we have conflicting state law which, requires WSDOT employees to perform work in this range. WSDOT is hopeful that utilizing the Small Works Roster for SBE firms will increase our race-neutral DBE participation.