

MASON COUNTY PUBLIC TRANSPORTATION BENEFIT AREA (DBA – MASON TRANSIT AUTHORITY)

Disadvantaged Business Enterprise Program Policy Statement and Plan

Agency: Mason County Public Transportation Benefit Area
DBA Mason Transit Authority (MTA)

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POLICY STATEMENT

Mason Transit Authority (MTA) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. MTA has received federal financial assistance from the DOT, and as a condition of receiving this assistance, MTA has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of MTA to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. This policy applies to all MTA employees administering CFR 49 Part 26 contracts.

The MTA DBE program applies to all types of firms working on DOT-funded contracts:

- Contractors and consultants
- Professional Service Agreements (training, computer, etc.)
- Architectural/Engineering Contracts

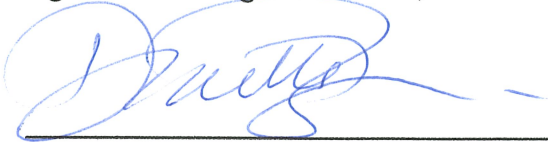
It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

MTA has delegated a DBE Liaison Officer to be responsible for implementation and overall responsibility of the DBE program. Implementation and execution of the DBE program is accorded the same priority and compliance with all other legal obligations incurred by MTA in its financial assistance agreements with the Washington State Department of Transportation (WSDOT).

MTA has disseminated this policy statement to the MTA Board of Directors, General Manager, DBE Liaison Officer, and all other individuals responsible for purchasing and initiating contracts as defined in Part 26. This statement has been distributed to DBE and non-DBE business communities that perform work on DOT-assisted contracts for MTA. The

statement will be distributed with payment methods to current vendors and thereafter this statement will be mailed, faxed or emailed to potential vendors and/or contractors. When significant changes are made, MTA will redistribute.



Danette Brannin
General Manager

July 18, 2017
Date

A. GENERAL REQUIREMENTS

1. Objectives as Required - Section 26.1, 26.23

It is MTA's intention to achieve objectives of the Washington State Department of Transportation (WSDOT) DBE Program, as stated in the Policy Statement. MTA will make good faith efforts through solicitation and notice to bid for any DBE Certified Contractors that would fit the scope of work that MTA may contract for.

The policy must be signed and dated by the General Manager, and circulated throughout the organization and to the DBE and non-DBE business communities that work on MTA's DOT assisted contracts. This process must occur each time MTA hires a new General Manager and/or any time there are changes to the DBE Plan or adopted Policy. Furthermore, MTA must provide to WSDOT updates representing significant changes in the program:

- To ensure nondiscrimination in the award and administration of contracts;
- To create a level playing field on which DBEs can compete fairly for contracts;
- To ensure that the MTA's DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in contracts;
- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The MTA DBE program applies to all types of firms working on DOT-funded contracts:

- Contractors and consultants
- Professional Service Agreements (training, computer, etc.)
- Architectural/Engineering Contracts

2. Applicability as Required - Section 26.3

MTA is the recipient of Federal Transit funds authorized Federal Transit laws in Title 49, U.S. Code and the Moving Ahead for Progress in the 21st Century Act (PAP-21, Public Law 112-141, 2012).

3. Definitions - Section 26.5

MTA will adopt the definitions contained in Section 26.5 of Part 26 for this program, as well as any defined terms herein.

4. Non-discrimination Requirements - Section 26.7

MTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, MTA will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin

5. Record Keeping Requirements - Section 26.11

Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

MTA will report DBE participation to the WSDOT using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation. See Attachment 1. Appendix B can also be found at <https://www.fta.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-forms>. A digital form of Appendix "B" be shall be made available to the DBE Liaison Officer.

Bidders List: 26.11(c)

MTA will utilize the Washington State Office of Minority and Women's Business Enterprises (OMWBE) Directory. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals.

MTA will collect this information in the following ways: 1) Implementing a contract clause requiring prime bidders to report names, addresses, and DBE certification status of all firms who provide quotes on subcontracts, 2) Notice in all solicitations requesting responding firms to report DBE participation.

6. Assurances

General Assurances: Section 26.13(a)

“MTA shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. MTA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. MTA’s DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to MTA of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)”

This language will appear in financial assistance agreements with sub-recipients should the sub-recipients be associated with federal financial assistance the agency receives.

Contract Assurance: 26.13(b)

MTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

“The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as MTA deems appropriate which may include, but is not limited to (1) withholding monthly progress payments; (2) assessing sanctions; (3) liquidated damages; and/or (4) disqualifying the contractor from future bidding as non-responsible.”

B. ADMINISTRATIVE REQUIREMENTS

1. DBE Program Updates - Section 26.21

Since MTA has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, MTA will continue to carry out this program until all funds from DOT financial assistance have been expended. MTA will provide to WSDOT updates representing significant changes in the program.

2. Policy Statement - Section 26.23

The Policy Statement is displayed on the first page of this program.

3. DBE Liaison Officer (DBELO) - Section 26.25

MTA has designated the following individual as the DBE Liaison Officer:

LeeAnn McNulty
790 E. Johns Prairie Road
Shelton, WA 98584
(360)432-5710
lmcnulty@masontransit.org

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MTA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the General Manager concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 of this program.

The DBELO is responsible for continued developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. Currently, the DBELO has access to all management staff responsible for various procurements conducted using state and federal assisted contracts thereby assisting in the administration of the DBE Program.

The duties and responsibilities include the following:

- a. Gather and report statistical data and other information as required by WSDOT.
- b. Review third party contracts and purchase requisitions for compliance with this program.
- c. Work with all departments to set overall agency-wide, race-neutral DBE goals.
- d. Ensures that bid notices and requests for proposals are available to potentially interested DBEs in a timely manner.
- e. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
- f. Analyze MTA's progress toward attainment and identifies ways to improve progress.
- g. Participate in pre-bid meetings and/or received a copy of minutes or a list of attendees from procurement staff.
- h. Advise the General Manager and/or governing body on DBE matters and achievement.
- i. Facilitate, upon request, the provision of DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
- j. Plan and participate in DBE training seminars.
- k. Provides outreach to DBEs and community organizations to advise them of opportunities with MTA.
- l. Seeks out WSDOT's updated directory on certified DBEs on a regular basis.

4. DBE Financial Institutions - Section 26.27

MTA uses the Mason County Treasurer as its treasurer for its main financial accounts; therefore, selection of services offered by financial institutions is dependent upon the treasurer's process and procedures. However, for all other financial services, it is the policy of MTA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community and make reasonable efforts to use these institutions. At this time, MTA has not identified any financial institutions that are owned and controlled by socially and economically disadvantaged individuals in the MTA service area.

5. Prompt Payment Mechanisms - Section 26.29

Prompt Payment: 26.29(a)

MTA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract (completion and acceptance) no later than 30 days from the receipt of each payment the prime contract receives from MTA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of MTA. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MTA. This clause applies to both DBE and non-DBE subcontracts.

Retainage is withholding a certain percentage of payment that the recipient owes the prime (or the prime owes the subcontractor), typically until all the work of the prime contractor (or subcontractor) has been satisfactorily completed.

Prime contractors are not permitted to hold retainage from subcontractors until the end of project when the recipient has made final payment to the prime.

Regulations provide three retainage models:

- a. Recipient may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

- b. Recipient may decline to hold retainage from prime contractors and have a contract clause that requires a prime to release retainage to subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
- c. Recipient may withhold retainage from prime and release a percentage of the retainage incrementally as portions of the contract are completed and accepted, e.g. monthly progress payments.

Recipient requires prime contractors to release all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after recipient pays prime (could be the portion that is included in the prime's payment).

Prime and subcontractors must submit required documentation to the recipient or prime contractor, respectively, to begin payment process.

6. Directory - Section - 26.31

MTA will utilize the OMWBE directory of certified DBE firms identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. OMWBE has made the Directory available at the following website: <https://OMWBE.diversitycompliance.com>. OMWBE's directory includes North American Industry Classifications codes (NAICS). The illustration below is an example of codes used in the repair of buses used in transportation.

336390	Air filters, automotive, truck, and bus, manufacturing
336320	Alternators and generators for internal combustion engines manufacturing
336350	Assembly line rebuilding of automotive, truck, and bus transmissions
336120	Assembly plants, heavy trucks, and buses on chassis of own manufacture
336350	Automatic transmissions, automotive, truck, and bus, manufacturing
336330	Automotive, truck and bus steering assemblies and parts manufacturing
336330	Automotive, truck and bus steering assembly and parts manufacturing
336330	Automotive, truck and bus suspension assemblies and parts (except springs) manufacturing
336330	Automotive, truck and bus suspension assembly and parts (except springs) manufacturing

7. Overconcentration - Section 26.33

MTA has not identified that overconcentration exists in the types of work that DBEs perform.

8. Business Development Programs - Section 26.35

As a sub-recipient, MTA will rely heavily on WSDOT guidance and direction when involved in Long Term Business Program Planning.

9. Monitoring and Enforcement Mechanisms - Section 26.37

MTA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

- a. MTA will bring to the attention of WSDOT any false, fraudulent, or dishonest conduct in connection with the program, so that WSDOT can take the steps provided in 26.109.
- b. MTA will consider similar action under its own legal authorities, including responsibility determinations in future contracts. See Attachment 4.
- c. MTA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by payroll submissions, site visits on the job-sites, and will occur for each contract/project on which DBEs are participating.
- d. MTA will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
- e. MTA will keep a log of these activities for documentation purposes.

10. Small Business Participation - Section 26.39

MTA has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

MTA will make every attempt to remove unnecessary and unjustified bundling of contract requirements; race-neutral small business set-asides for prime contracts below a certain value; requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation; development of acquisition strategies and structuring procurements to facilitate bids by and awards to small business consortia or joint ventures; letting prime contracts of a size that small businesses can reasonably compete for and perform.

C. GOALS, GOOD FAITH EFFORTS AND COUNTING

1. Set-asides or Quotas - Section 26.43

MTA does not use quotas in any way in the administration of this DBE program.

2. Overall Goals - Section 26.45

In accordance with Section 26.45, MTA will cooperate with WSDOT and their needs related to their triennial overall DBE goals.

The process used by MTA to establish overall DBE goals follows “The FTA’s Tips for DBE Goal Setting”. These tips can be found in Attachment 5b and at website listed below:

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

Note: MTA will conform with the options described in Section 26.45 of the DBE regulation, and will be based on the demonstrable evidence of DBE firms ready, able, and willing to participate/perform contracting opportunities derived from WSDOT assisted projects/contracts. As a general matter, goals are most often set based on the Department's "Step 1, Step 2" process established in Section 26.45(c)-(d), whereby MTA and/or WSDOT will establish a base figure of the relative availability of DBEs to perform work on MTA's DOT-assisted contracts, then adjust the goal as necessary based on additional market information in its service area. Please note that disparity studies, while acceptable, must be reasonably current and reflective of MTA's specific market conditions in order to be used as a full replacement for the "Two-Step" goal setting process established by the regulation. Before establishing the overall goal every third year, MTA will consult with WSDOT to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MTA's efforts to establish a level playing field for the participation of DBEs.

Note: The consultation should include, but not necessarily be limited to, minority, women's and general contractor groups, community organizations, and other officials or organizations.

Following this consultation, MTA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that MTA and WSDOT will accept comments on the goals for 45 days from the date of the notice.

MTA will use its standard forms of media to issue the notice. MTA will attempt to ensure that the notice is made available to minority focus media, when available. MTA may also display the notice on the website, www.masontransit.org. MTA will issue this notice by June 1 of each year that necessitates a public notice (every third year). The notice must include addresses to which comments may be sent and addresses (including offices and/or websites) where the proposal may be reviewed. A sample public notice can be found in Attachment 4.

MTA's overall goal submission to WSDOT will include:

- a. The goal (including the breakout of estimated race neutral and race-conscious participation, as appropriate); and
- b. A copy of the methodology, worksheets, etc., used to develop the goal; and
- c. A summary of information and comments received during this public participation process with MTA's responses; and
- d. Proof of publication of the goal in media outlets listed above.

MTA will begin using its overall goal on October 1 of the specified year, unless MTA received other instructions from WSDOT. If MTA establishes a goal on a project basis, MTA will begin using its goal by the time of the first solicitation for a DOT-assisted contract for the project. MTA's goal will remain effective for the duration of the three-year period established and approved by WSDOT.

3. Shortfall Analysis - Section 26.47

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

- a. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
- b. Establish specific steps and milestones to correct the problems identified in the analysis;
- c. Create and retain a corrective action plan, and maintain information/records regarding the analysis and efforts made; and
- d. Submit the plan to WSDOT within 90 days of the end of the affected fiscal year.

4. Transit Vehicle Manufacturers (TVM) Goals - Section 26.49

MTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, MTA may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

5. Meeting Overall Goals/Contract Goals - Section 26.51

MTA will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. MTA's specified efforts regarding race-neutral measures must not be passive; rather, the race-neutral measures taken will be an active component of MTA's DBE program.

MTA will use contract goals to meet any portion of the overall goal MTA does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

MTA will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.) MTA will express contract goals as a percentage of the total amount of a DOT-assisted contract or the Federal share of a DOT-assisted contract.

6. Good Faith Efforts Procedures - Section 26.53

Award of Contracts with a DBE Contract Goal: 26.53(a)

If MTA and WSDOT enter into an agreement where a contract-specific DBE goal is included in a procurement/solicitation, WSDOT will not award the contract to MTA if MTA does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the MTA to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts: 26.53(a) & (c)

MTA will be held accountable to document sufficient good faith efforts that demonstrate efforts are responsive and/or responsible. MTA must ensure that all information is complete and accurate and that it adequately documents good faith efforts so that WSDOT will commit to the performance of the contract.

Information to be Submitted: 26.53(b)

MTA treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work that each DBE will perform;
- c. The estimated dollar amount of the participation of each DBE firm participating;
- d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- e. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
- f. If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration: 26.53(d)

If WSDOT should ever find that MTA is not responsive or responsible due to lack of documented sufficient good faith efforts, MTA may request administrative reconsideration. MTA must make this request in writing to the proper WSDOT Liaison. WSDOT will not have played any role in the original determination that MTA did not document sufficient good faith efforts. As part of this reconsideration, MTA must provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. MTA should have the opportunity to meet in person with WSDOT to discuss the issue of whether MTA met the goal or made adequate good faith efforts to do. WSDOT will ultimately send MTA a written decision on reconsideration, explaining the

basis for finding. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

7. Good Faith Efforts when a DBE is replaced on a Contract – Section 26.53(f)

MTA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. MTA will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, MTA will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, DBELO will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the DBELO may issue a termination for default proceeding.

8. Counting DBE Participation - Section 26.55

MTA will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

D. SUBPARTS D & E- CERTIFICATION

1. Certification Process - Section 26.61 – 26.73

MTA is not a certifying entity. Please see the next section for Washington State's Certification Process and Authority.

2. Certification - Section 26.81

MTA recognizes the Washington State Office of Minority and Women's Business Enterprises (OMWBE) as the state's certification authority for small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons.

Vendors and offerors can apply for state certification, federal certification, or both. DBE applicants will need federal certification to do business on a project funded by the U.S. Department of Transportation or the Federal Transit Administration. For further information regarding certification visit the OMWBE website at <http://omwbe.wa.gov/certification/>.

The following contact information is available for information regarding DBE certification requirements, support and assistance:

- Washington State Department of Transportation Office of Equal Opportunity (OEO) <https://www.wsdot.wa.gov/EqualOpportunity/contacts.htm>
- For more information on targeting technical assistance on a range of business, accessing construction plans, specifications and manuals and receiving announcements of outreach and training use the following link: [https://www.wsdot.wa.gov/sites/default/files/2016/05/09/OEO DBE SupportServicesProgramFlyer.pdf](https://www.wsdot.wa.gov/sites/default/files/2016/05/09/OEO%20DBE%20SupportServicesProgramFlyer.pdf)

The above listed contact information will be shared with firms and individuals interested in becoming WSDOT certified DBE.

3. Procedures for Certification Decisions - Section 26.83-26.91

MTA does not participate in Washington's DBE certification process and therefore is not required to include the procedures of the certification process.

The state of Washington encourages firms to submit their certification application online. New applications and the required documents can be submitted at: <http://omwbe.wa.gov/applications/mwbe/>

If interested firms or individuals are unable to complete an online application, MTA should direct them to contact: Washington State Office of Minority and Women's Business Enterprise,

OMWBE
P.O. Box 41160
Olympia, WA 98504-1160

Main: (360) 664-9750
Toll Free: (866) 208-1064
Fax: (360) 586-7079

Please be advised that any firm or complainant may appeal a WSDOT decision in a certification matter to DOT. Such appeals may be sent to: U.S. Department of Transportation Office of Civil Rights Certification Appeals Branch 1200 New Jersey Ave. SE West Building, 7th Floor Washington, D.C. 20590.

E. SUBPART F – COMPLIANCE AND ENFORCEMENT

1. Information, Confidentiality, Cooperation - Section 26.109

MTA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local authority. Please refer to Washington's Freedom of Information Act laws at www.nfoic.org/washington-foia-laws, and refer to Washington's public records laws at <http://apps.leg.wa.gov/rcw/default.aspx?cite=42.56> for information regarding disclosure of information to third parties. Federal laws regarding confidentiality can be found at <https://foia.state.gov/>.

2. Monitoring Payments to DBEs:

MTA is required as a prime contractor to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MTA, WSDOT, or DOT. This reporting requirement also extends to any certified DBE subcontractor.

MTA will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

F. OTHER HELPFUL INFORMATION

What is a contracting opportunity? It is a contract with a vendor or contractor including procurement by purchase order or purchase by credit card or any other contract entered into with WSDOT or a sub-recipient which is financed with FTA assistance.

MTA's goals and methodology should be based on where the substantial amounts of contracting dollars are spent.

Separate goals are mandated for construction projects.

Records must be retained for 3 years after the close of applicable grant periods.

<https://www.wsdot.wa.gov/EqualOpportunity/DBE.htm>

https://www.transit.dot.gov/sites/fta.dot.gov/files/docs/DBE_Final_Rule_2014.pdf

Attachments

Attachment 1

Appendix B to Part 26

Uniform Report of DBE Awards or Commitments and Payments Form INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

Instructions:

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet
3. Specify the Federal fiscal year (i.e., October 1 - September 30) in which the covered reporting period falls.
4. State the date of submission of this report
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1 - March 31. If this report is due December 1, data should cover April 1 - September 30. If the report is due to the FAA, data should cover the entire year.
6. Provide the name and address of the recipient
7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A) - 10(1) should include all types of prime contracts awarded and all

types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the total number of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in Item 8(B), specify the number of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR Part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentages to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A) - 9(I) are derived in the same way as items 8(A) - 8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed

9(A). If filling out the form for general reporting, provide the total dollar number of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar number of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(6). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A),

provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentages to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)- 10(B). These fields are unavailable for data entry.

10(C - H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentages to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DSEs in 10(C). Likewise, the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The "Non-Minority" category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either "women" OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A - E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period,

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A) - 20(E). Items 21(A) - 21(E) are derived in the same manner as items 19(A) - 19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A) - 21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to WSDOT.

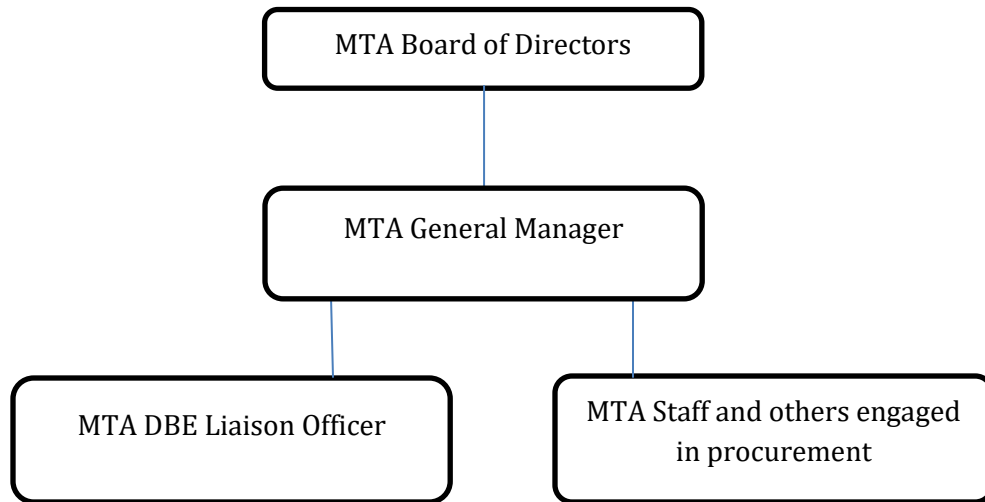
UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS										
Please refer to the instruction sheet for directions on filling out this form										
1	Submitted to (check only one) <input checked="" type="checkbox"/> FHWA <input type="checkbox"/> FAA <input type="checkbox"/> FTA - Recipient ID Number									
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):									
3	Federal Fiscal year in which reporting period falls				4. Date This Report Submitted:					
5	Reporting Period			<input checked="" type="checkbox"/> Report due June 2 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)		<input type="checkbox"/> FAA annual report due Dec 1	
6	Name and address of Recipient:									
7	Annual DBE Goal(s):			Race Conscious Projection:			Race Neutral Projection:		OVERALL Goal:	
Awards/Commitments this Reporting Period										
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts committed during this reporting period)	A	B	C	D	E	F	G	H	I
		Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8	Prime contracts awarded this period	\$ -	0	\$ -	0			\$ -	0	#DIV/0!
9	Subcontracts awarded/committed this period	\$ -	0	\$ -	0	\$ -		\$ -	0	#DIV/0!
10	TOTAL			\$ -	0	\$ -		\$ -	0	#DIV/0!
B	BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F			
		Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total			
11	Black American	\$ -	\$ -	\$ -	0	0	0			
12	Hispanic American	\$ -	\$ -	\$ -	0	0	0			
13	Native American	\$ -	\$ -	\$ -	0	0	0			
14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0			
16	Non-Minority	\$ -	\$ -	\$ -	0	0	0			
17	TOTAL	\$ -	\$ -	\$ -	0	0	0			
Payments Made this Period										

C	PAYMENTS ON ONGOING CONTRACTS	A	B	C	D	E	F
		Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
18	Prime and subcontracts currently in pro	0	\$ -	0	\$ -	0	#DIV/0!
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E	
		Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs	
19	Race Conscious	0	\$ -	\$ -	\$ -	#DIV/0!	
20	Race Neutral	0	\$ -	\$ -	\$ -	#DIV/0!	
21	Totals	0	\$ -	\$ -	\$ -	#DIV/0!	
22	Submitted by:			23. Signature:	24. Phone Number:		

Attachment 2

Organizational Chart

(Relation of DBE Liaison Officer's Access to the Executive Director)



Attachment 3

WSDOT's DBE Directory

The Washington State Office of Minority and Women's Enterprises directory can be accessed at <https://omwbe.diversitycompliance.com/> to generate directories from the Washington State vendor database via the provided OMWBE search form.

Attachment 4

DBE Monitoring & Enforcement Mechanisms

MTA has several remedies available to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

Attachment 5

Goal Methodology

Methodology used to Calculate Amount of Goal

1. MTA's overall goal for the following time period 2017 - 2019 is ____% of the federal financial assistance MTA will expend in DOT-assisted contracts, exclusive of FTA funds to be used for Transit Operations.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

Ready, willing, and able DBEs

Base figure = _____

All firms ready, willing and able

The data source or demonstrable evidence used to derive the numerator was: _____

The data source or demonstrable evidence used to derive the denominator was: _____

The numerator is divided by the denominator to arrive at the base figure for the overall goal and that number was: _____

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible, the DBE participation expected in the absence of discrimination adjusted the base figure by ____%.

The data used to determine the adjustment to the base figure was: _____

The reason for choosing to adjust the figure using this data was because: _____

From this data, the adjusted base figure is: _____

Public Participation

MTA published its goal information in these publications: _____

Comments were received from these individuals or organizations: _____

Summaries of these comments are as follows: _____

MTA's responses to these comments are: _____

Attachment 6

US DOT Certification Forms

US DOT DBE Program Overview

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-overview>

US DOT DBE Final Rule and Program Activities

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-final-rule-and-program-activities>

US DOT DBE Program Points of Contact

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/dbe-program-points-contact>

New US DOT DBE Net Worth Statement

<https://www.transportation.gov/osdbu/financial-assistance/small-business-administration-personal-financial-statement-form-413>

US DOT FORMS

<https://www.fta.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-forms>

Attachment 7

DBE Regulation, 49 CFR Part 26

49 CFR Part 26 Sample Disadvantaged Business Enterprise Program

https://www.transportation.gov/sites/dot.gov/files/docs/Sample_Disadvantaged_Business_Enterprise_Program_20140801_508.pdf