



*Signature on file*

**Lynn Peterson**  
Secretary of Transportation

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Date

## **Disadvantaged Business Enterprise Program**

### **I. Introduction**

#### **A. Purpose**

This Secretary's Executive Order is issued to affirm the Washington State Department of Transportation's (WSDOT's) commitment to promoting equity in contracting. It is a priority for WSDOT to affirmatively expand our efforts to include Disadvantaged Business Enterprise (DBE) participation in federal aid contracts and to afford DBEs fair and equal opportunity to compete for WSDOT contracts.

As a condition of receiving federal financial assistance from the United States Department of Transportation (USDOT), WSDOT has given assurance to USDOT, specifically Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA), that it will comply with [Title 49 Code of Federal Regulations \(CFR\) Part 26](#).

This Secretary's Executive Order directs WSDOT divisions and offices to increase contracting opportunities for DBE businesses and to provide a welcome and responsive environment for contractors and consultants that support such efforts.

This Secretary's Executive Order also directs WSDOT divisions and offices to identify and change internal processes so that the programmatic goal for DBE participation in WSDOT contracting can be achieved. Additionally, this Secretary's Executive Order assists WSDOT and its sub-recipients with implementing and monitoring the DBE Program in a manner to achieve the intent of the DBE Program and DBE goal at both the project and program level.

WSDOT benefits from the experience, perspective, knowledge, and innovation from groups, individuals, private companies, associations, and other public agencies and will re-organize current management of the DBE and Civil Rights programs to work collaboratively on recommendations on how best to develop, deliver, monitor, and measure directives within this Secretary's Executive Order to deliver a more successful DBE Program.

WSDOT will gather data and measure results with a more structured system of accountability to track and report WSDOT expenditures for DBE firms on WSDOT, local program, purchasing, and consulting contracts using year to year trends to utilize the best monitoring, compliance, and enforcement practices.

## **B. Supersession**

This Secretary's Executive Order supersedes and replaces the prior version with the same title dated March 20, 2013. All references to the superseded E 1009.01 now reference E 1009.02.

## **C. What Has Changed**

- This revision modifies the Purpose statement to affirm the commitment of the Secretary of Transportation to proactively support and promote achievement of the DBE participation goal.
- Section II adds the statement, "free of barriers."
- Additions have been made to Sections II and III to be consistent with new roles and responsibilities.
- Additions have been made to Sections IV and VI to revise the "Chief of Staff" to "Deputy Secretary" and to clarify contact information for questions.
- The formatting has been updated.

## **II. Secretary's Executive Order**

It is the policy of WSDOT to comply with [49 CFR Part 26](#) and to provide DBEs with an equal opportunity, free of barriers, to receive and participate in USDOT-assisted contracts. It is also our policy as follows:

### **A. Accountability – Office of Equal Opportunity (OEO) and Division Directors Shall:**

1. Create a culture/environment in which DBE firms can compete fairly for USDOT-assisted contracts.
2. WSDOT's Office of Equal Opportunity (OEO), in collaboration with division directors, shall tailor WSDOT's DBE Program in accordance with applicable laws and regulations.
3. Work with the contracting community and FHWA, FTA, and FAA to create opportunities within the DBE Program to increase DBE participation, provide opportunities for prime contractors to mentor DBE firms, and improve the contractual relationship and opportunities between prime and sub-contractors.
4. In coordination with FHWA, FTA, and FAA, develop and conduct annual agency-wide training to reinforce the importance of the DBE Program and clarify roles and responsibilities of personnel.
5. OEO, in collaboration with division directors, shall set goals for DBE utilization on all federal aid contracting and purchasing in a manner that maximizes contracting opportunities pursuant to attainment of the programmatic goal.
6. OEO, in collaboration with division directors, shall develop and implement the design-build DBE Participation Plan review process.
7. OEO, in collaboration with division directors, shall prepare specific goals in annual plans that encourage utilization of DBEs in public works contracts, purchasing, and consultant services.

8. OEO, in collaboration with division directors, shall establish monitoring processes and procedures for determining the value of DBE participation specifically applicable to trucking and broker operations.
9. Prevent discrimination in the award and administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program.
10. Verify that only firms that fully meet [49 CFR Part 26](#) eligibility standards will count towards DBE goal participation.
11. OEO, in collaboration with the Office of Minority and Women's Business Enterprises (OMWBE), shall target geographic areas in the state in which DBEs are underrepresented to recruit and promote local DBE firms so that local communities may participate in federal aid projects.

**B. Accountability - WSDOT Divisions, Regions, and Offices Shall:**

1. Create a culture/environment in which DBE firms are valued for their delivery of work on USDOT-assisted contracts.
2. Administer WSDOT's DBE Program in accordance with applicable laws and regulations.
3. In collaboration with OEO, review the implementation of design-build DBE participation plans.
4. Work with industry, OEO, and OMWBE to create opportunities within the program to increase DBE participation by improving program communication and providing opportunities between prime and sub-contractors.
5. Provide reports and information to OEO as required to meet DBE Program requirements.
6. Prevent discrimination in the administration of USDOT-assisted contracts in WSDOT's highway, transit, and airport financial assistance program.
7. Work with OEO and Headquarters to enforce contractual remedies for contractor violations.
8. Provide written certification to FHWA, FTA, and FAA regarding review of contract records, monitoring of work sites to oversee performance by condition of award DBEs, and monthly reporting at a project level regarding commitments to DBEs and payments.
9. Include mandatory competencies in all employee annual evaluations. Program awareness and attainment of DBE goals will be part of each performance evaluation for each division, region, and office.

**C. External Inclusion and Outreach - OEO Shall:**

1. Report to FHWA, FTA, and FAA on performance and attainment of the utilization goals in the automated monthly reports, annual plan, and other directives set forth within this Secretary's Executive Order.
2. Provide training and assistance to DBEs so they successfully bid and perform on USDOT-assisted contracts.

3. Work with private companies, associations, and community members to assist in the development and mentoring of DBEs so they can compete successfully in the marketplace outside the DBE Program.
4. Attend outreach events for existing and potential DBE firms and pursue outreach strategies to sustain and improve DBE participation in USDOT-assisted contracts.
5. Identify and remove barriers to the participation of DBEs in USDOT-assisted contracts.
6. Improve and expand technical assistance, business development, training, and mentoring programs for DBEs by greater coordination with organizations, prime contractors/consultants, and individuals, as well as WSDOT divisions, regions, and offices.
7. Encourage DBEs to use technical assistance and business development services.
8. Coordinate with FHWA, FTA, and FAA to provide training for OMWBE on DBE certification and the assigning of appropriate North American Industry Classification System (NAICS) Codes.

**D. DBE Program Administration – Divisions and Regions Shall:**

1. In collaboration with OEO, develop and implement policies, practices, and processes that establish and sustain a culture of WSDOT contracting that is supportive and responsive to DBEs, businesses, and contractors of all tiers working on USDOT-assisted contracts.
2. Work closely with other departments and offices so that policies, practices, and processes are consistent and helpful for DBEs pursuing WSDOT work.
3. Confirm that prompt payment policies and practices provide timely payments for all work performed.
4. Require expeditious change order approvals by WSDOT and contractors, while maintaining the integrity of the payments being made.
5. Monitor and enforce contract provisions that require contractors of any tier to pay and release retainage per current state and federal law.
6. Identify and implement methods to regularly monitor and measure the DBE Program, including compliance by contractors, subcontractors, consultants, and vendors.
7. Perform timely investigations of issues, concerns, or complaints by either the regions or the DBE community.
8. Provide for appropriate management of goal attainment.
9. Provide for performance of on-site reviews and reporting of results to OEO.
10. Provide required monthly, quarterly, and annual reporting of information to OEO.
11. Develop, provide, and confirm engagement by employees in required training.
12. Work with the Construction Division to review current design-build specifications, incorporate national best practices, collaborate with USDOT modes, and revise as

appropriate to be consistent with the DBE Program requirements and provisions set forth within the March 2014 Conciliation Agreement.

13. Work with the OEO to review current design-build DBE project goal setting methodology and revise as appropriate so that a contract's goals will cumulatively result in meeting any portion of its overall goal that is not anticipated to be met through race-neutral means.
14. Establish a process for reviewing design-build DBE participation plans. The DBE Liaison Officer (DBELO) shall participate in the creation and implementation of the DBE participation plans review process.

#### **E. Stakeholder Engagement:**

The Director of OEO is designated as the DBE Liaison Officer (DBELO). The DBELO, in conjunction with division directors and regions, oversees and implements the DBE Program. A primary responsibility of this position is to lead efforts to increase opportunities for members of the contracting community by increasing the effectiveness of all divisions and regions. This collaboration will help WSDOT to use the directives in this Secretary's Executive Order to develop, deliver, monitor, and ultimately achieve a more successful DBE Program. The DBELO shall network and engage with divisions, regions, OMWBE, FHWA, FTA, FAA, contractors, associations, and the women and minority-owned business community to gather feedback on:

1. Auditing the program's effectiveness and division activities along with suggestions to the Secretary for modifying internal processes and procedures to align with federal requirements and to achieve continuous improvement of the DBE Program.
2. Increasing networking opportunities with prime and DBE firms and to inform prime contractors and DBE and non-DBE subcontractors about future contracting opportunities.
3. Providing guidance regarding DBE Program implementation, compliance monitoring, issue resolution, and processes to improve effectiveness of the DBE Program.
4. Working collaboratively on strategies to increase the base of DBE subcontractors and the capacity of DBE subcontractors to improve delivery of the DBE Program requirements.
5. Evaluating the performance of the DBE Supportive Services and external Civil Rights Program.

The DBELO will also work closely with the OMWBE, which serves as the Unified Certification Program for Washington state, and with other stakeholders to strengthen, implement, and deliver a successful DBE certification program.

### **III. Information to Carry Out This Secretary's Executive Order**

The Director of OEO/DBELO will report directly to the Washington state Secretary of Transportation and will have direct, independent access to the Secretary concerning DBE Program matters and shall be responsible for oversight of all aspects of WSDOT's DBE Program. In addition to the responsibilities described in Section II, the Director of OEO will evaluate, monitor, and support the implementation of the DBE Program and be the Liaison

with FHWA, FTA, and FAA. The Director of OEO will have direct responsibility for establishing the overall DBE Program goals, working with OMWBE, identifying program-wide training needs, and assisting with required program training. The Director of OEO will oversee the performance of timely, commercially useful function reviews and investigations by establishing management, monitoring, and reporting of these activities. The Director of OEO oversees and will use monthly, quarterly, and annual achievement reports and certifications in reporting to FHWA, FTA, and FAA, and in reporting on the implementation of the overall program to the Deputy Secretary of Transportation, including information and results to successfully support program administrative activities. Roles and responsibilities in support of this Secretary's Executive Order and successful DBE Program and project delivery will be further developed and incorporated in agency policies, plans, and procedures.

WSDOT will disseminate this Secretary's Executive Order to internal and external stakeholders, including DBE and non-DBE communities that perform work on USDOT-assisted contracts.

#### **IV. Contact for Additional Information**

For additional information to carry out this Secretary's Executive Order, contact the Deputy Secretary by phone at 360-705-7027, contact the Office of Equal Opportunity by phone at 360-705-7090, or visit the [Office of Equal Opportunity](#) web page.

#### **V. References**

- [49 CFR Part 26 et seq.](#) *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*
- WSDOT [Office of Equal Opportunity](#) web page

#### **VI. Review and Update Requirements**

When changes are necessary to update this document, inform the Deputy Secretary. The Deputy Secretary reviews this document periodically and proposes updates to the Secretary of Transportation for approval.

#### **Americans with Disabilities Act (ADA) Information**

This material can be made available in an alternate format by emailing the WSDOT Diversity/ADA Compliance Team at [wsdotada@wsdot.wa.gov](mailto:wsdotada@wsdot.wa.gov) or by calling toll free, 855-362-4ADA (4232). Persons who are deaf or hard of hearing may make a request by calling the Washington State Relay at 711.