

INTERCITY TRANSIT

**DEPARTMENT OF TRANSPORTATION
Disadvantaged Business Enterprise (DBE) Program**

(Revised August 1, 2019)

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Date

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OBJECTIVES / POLICY STATEMENT

Required under 49 Code of Federal Regulations (CFR) Part 26.1 and 26.23

Intercity Transit has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Intercity Transit is a recipient of Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Intercity Transit has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Intercity Transit to ensure a level playing field and foster equal opportunity for firms owned and operated by disadvantaged individuals on DOT assisted procurements and contracts to include construction and consultant 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 as certified by Washington State Office of Minority and Women Owned Business Enterprises (OMWBE) are permitted to participate as Certified DBEs;
5. To identify and remove where possible barriers to the participation of DBEs in DOT assisted contracts;
6. To encourage Small Business Enterprise (SBE) participation (DBE and non-DBE) in DOT assisted contracts and procurements; and
7. To identify opportunities to encourage DBE and small businesses in general to take advantage of resources that can be of help in making them more capable of competing successfully in the market place from which Intercity Transit procures products, services and capital assets – most particularly the resources available through OMWBE.
8. To provide appropriate flexibility to recipients of Federal financial assistance in the establishing and providing opportunities for DBEs.

The Grants Manager is delegated as the DBE Liaison Officer (DBELO). In that capacity, the Grants Manager is responsible for implementing and/or monitoring all aspects of the DBE program. Implementation of Intercity Transit's DBE program and compliance with DOT DBE requirements is accorded the same priority as compliance with all other legal obligations incurred by Intercity Transit in its financial assistance agreements with the U.S. Department of Transportation.

Intercity Transit has disseminated this policy statement to the Intercity Transit Authority and all of the components of our organization. We have made available this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts through notice in business and minority focus media and through electronic means.

Ann Freeman-Manzanares, General Manager

Date

A. GENERAL REQUIREMENTS

1. Objective

Intercity Transit's DBE Program objective is to ensure a level playing field and foster equal opportunity for firms owned and operated by disadvantaged individuals on USDOT-assisted procurements and contracts to include construction and consultant contracts. This objective is found in the policy statement on page 1 of this Program.

2. Applicability

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

3. Definitions

Intercity Transit adopts the definitions contained in [49 CFR Section 26.5](#) for this Program as reflected below.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern--

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital

contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who is a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - i. "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - ii. "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - iii. "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - iv. "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - v. "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- vi. Women;
 - vii. (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

4. Non-Discrimination Requirements

Intercity Transit 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, Intercity Transit 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

Reporting to DOT

We will accurately report DBE participation electronically to DOT on a semi-annual basis (June 1 and December 1), using the Uniform Report of DBE Awards of Commitments and Payments as provided by FTA in TrAMS. These reports will reflect payments actually made and commitments made to DBEs on DOT-assisted projects and procurements.

Vendor Information

In the development of our DBE goals we will identify the applicable NAICS codes for the upcoming DOT-assisted projects and procurements and then using these codes:

- a. Run a report on the OMWBE Directory of Certified Firms webpage to identify all related federally certified DBE and Small Business Enterprise (SBE) suppliers. This report includes supplier contact information and other related business profile detail. (see <http://wsdot.wa.gov/Partners/OMWBE/DBEDirectory/>)
- b. Run a query on the U.S. Census website to identify the total number of established businesses are listed in our surrounding area (Thurston, Pierce, and King Counties).
(see <http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none>)

This information will provide reference data for establishing triennial DBE goals and assist Intercity Transit in our DBE and SBE outreach efforts.

6. Federal Financial Assistance Agreement

Intercity Transit agrees to the following FTA assurances, applicable to all DOT-assisted contracts and procurements and their administration:

General Assurance

Intercity Transit 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. Intercity Transit shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. Intercity Transit'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 Intercity Transit 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.*).

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

Contract Assurance

Transit 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 Intercity Transit deems

appropriate, which may include, but is not limited to (1) Withholding monthly progress payments; Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

B. ADMINISTRATIVE REQUIREMENTS

1. DBE Program Updates

Since Intercity Transit receives capital grants, we will continue to carry out this Program until all such grants have been expended. We will update this Program and seek DOT approval should there be significant changes in the approved Program.

2. Policy Statement

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

3. DBE Liaison Officer (DBELO)

The individual identified below serves as the Grants Manager which includes the role of DBE Liaison Officer (DBELO) for Intercity Transit:

Jessica Gould
Grants Manager
526 Pattison SE
P O Box 659
Olympia WA 98507
360 705-5808
JGould@intercitytransit.com

The DBELO is responsible for implementing or ensuring implementation of all aspects of the DBE Program to include ensuring Intercity Transit 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 as an attachment to this Program.

The DBELO will also be responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathering and reporting statistical data and other information as required by DOT.
2. Reviewing third party contracts and purchase requisitions for compliance with this program.
3. Working with all departments to set overall agency wide, race-neutral DBE goals.
4. Ensuring that bid notices and requests for proposals are available to potentially interested DBEs in a timely manner.

5. Working with Procurement staff to match procurement opportunities with specific DBE and/or Small Business (DBE and non-DBE) participation encouragement efforts.
6. Analyzing Intercity Transit's progress toward attainment of the agency's overall DBE goal and identifies ways to improve progress.
7. Participating in pre-bid meetings and/or receives a copy of minutes and a list of attendees from Procurement staff.
8. Advising the General Manager\governing body on DBE matters including progress on DBE goal achievement.
9. Facilitating, upon request, the provision of DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Planning and participating in DBE training seminars as appropriate and available through FTA, OMWBE, etc.
11. Acting as liaison / referring agent for the Uniform Certification Process conducted by OMWBE in Washington State.
12. Providing outreach to DBEs and community organizations to advise them of business opportunities with Intercity Transit.
13. Acting as a liaison with OMWBE to include encouraging small business to take advantage of OWMBE resources.

4. DBE Financial Institutions

It is neither the policy nor the normal practice of Intercity Transit to identify financial institutions as business partners for our agency or for business that may seek to do business with us. However we are committed to making such businesses are aware of any financing opportunities and services that we may be able to identify as being offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, and to encouraging prime contractors on DOT-assisted contracts to make use of these institutions. We have solicited input from other DBE programs around the State of Washington and reviewed local financial institutions and have been unable to identify any such institutions at this time. In the event a later review reveals the existence of such financial institutions, their names will be listed in this document and information will be disseminated to contractors doing business with Intercity Transit on DOT-assisted contracts.

5. Prompt Payment Mechanisms

Intercity Transit will include the following clause in each DOT-assisted contracts and use the prime contractor's certified payroll reports for monitoring and enforcement:

This project is funded by the Federal Transit Administration (FTA). According to Washington State's RCW 60.28.011 and the Code of Federal Regulations 49 CFR Section 26.29, retainage may not be withheld from the prime contractor. In lieu of withholding retainage from the prime contractor, Intercity Transit shall rely on the prime contractor's Payment and Performance Bond. However, release of the Payment and Performance Bond shall not occur until Intercity Transit has received a certified copy of Affidavit of Wages Paid for the contractor and each subcontractor, final acceptance by Intercity Transit of work performed,

receipt of all necessary releases, and after any other requirements are met as per RCW 60.28.011.

Under RCW 60.28.011, the prime contractor may still withhold retainage from subcontractors. However, as this is a federally-funded project, the prime contractor is obligated to pay all retainage owed to the subcontractors for satisfactory completion of accepted work within thirty (30) days of that acceptance. The subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. In any case, if Intercity Transit has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

6. Directory of Certified DBE and SBE Firms

To identify certified DBEs and SBEs, Intercity Transit relies on the Office of Minority and Women's Business Enterprises (OMWBE) which is the sole certifying agency for minority, women, and disadvantaged small businesses in Washington State. OMWBE offers the following certifications relative to federal certification requirements:

"Federally certified firms are eligible to participate in transportation specific federal projects including construction work on rails, roads, bridges, airports, and seaports. This certification is only for those firms who do transportation related scopes of work. The federal projects are funded by the US Department of Transportation (USDOT), including the Federal Highway Administration, (FHWA), Federal Aviation Administration (FAA), and Federal Transit Administration (FTA).

- *SBE – Small Business Enterprise. SBE certified firms count towards USDOT small business (gender and race neutral) goals.*
- *DBE – Disadvantaged Business Enterprise. This certification counts towards USDOT gender and race conscious goals. "*
(see <http://www.omwbe.wa.gov/certification/>)

OMWBE maintains a Directory of DBE and SBE certified firms. The directory lists the owner's name, business name, contact information, certification status including certification number, UBI number, the type of work the business has been certified to perform as a DBE and/or SBE to include their NAICS codes and other business profile detail. The OMWBE revises the Directory monthly and is responsible for maintaining all related records. The Directory is available on the Internet at <http://www.omwbe.wa.gov/directory-of-certified-firms/> , or in hard copy by contacting the Office of Minority and Women's Business Enterprises at P O Box 41160, Olympia WA 98504-1160, (360) 753-9693, email - Receptionist@omwbe.wa.gov. OMWBE provides a process whereby certifications performed by other state certification programs may be recognized.

7. Overconcentration

Intercity Transit has not identified that overconcentration exists in the types of work that DBEs perform or would be anticipated to perform for our agency.

8. Business Development Programs

Intercity Transit has not established a business development program, but does regularly encourage small businesses to utilize the resources of OMWBE (see www.omwbe.wa.gov).

9. Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the federal Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Section F.2. lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We 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 requiring prime contractors to include in each payment request a certification from each DBE of payments received.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

C. GOALS, GOOD FAITH EFFORTS, AND COUNTING

1. Set-asides or Quotas

Intercity Transit does not use quotas in any way in the administration of this DBE Program.

2. Overall Goals

A description of the methodology to calculate the DBE overall goal and the goal calculations can be found in Section 'G' of this Program. This section of the program will be updated every three (3) years. In accordance with Section 26.45(f) Intercity Transit is committed to submitting its overall goal to DOT by August 1 every 3rd year starting in 2010. Before establishing the overall goal, Intercity Transit evaluates anticipated DOT-funded project activity and consults with the other regional transit programs; minority, women's and general contractor groups; community organizations; or other organizations as appropriate to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on

opportunities for DBEs, input from OWMBE regarding availability DBE and small business enterprises in general, and Intercity Transit's efforts to establish a level playing field for the participation of DBEs and SBES.

We will begin using our updated overall goal on October 1 at the start of the 3 year fiscal period, unless we have received other instructions from DOT. We anticipate having race-neutral, non-project specific DBE goals. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the specific project. For such projects, each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. Evidence of good faith efforts from the prime contractor if the DBE contract goal is not met.

3. Transit Vehicle Manufacturers (TVM) Goals

Intercity Transit 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 49 CFR Part 26. Alternatively, Intercity Transit 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.

4. Breakout of Estimated Race-Neutral & Race-Conscious Participation

Intercity Transit will not use DBE quotas or set-asides to achieve the overall annual goal for DBE participation. Participation will be achieved by race-neutral means. Contract goals and good faith efforts requirements will only be applied as warranted by the nature of specific projects and/or if a relevant disparity study identifies the need for contract goals. This is consistent with FTA Guidance in the current FTA DBE Program Template:

[Note: recipients located within the jurisdiction of the U.S. Court of Appeals for the Ninth Circuit are subject to Western States Paving, Inc. v. Washington State Department of Transportation, 407 F.3d 983, and should verify with DOT whether they may use DBE contract goals and/or race-conscious measures when implementing their DBE programs. Absent approval from DOT, Ninth Circuit recipients should be operating entirely race-neutral DBE programs.]

5. Contract Goals

Intercity Transit will not use race-conscious contract specific goals until such time as the use of contract goals is better understood in light of the 9th District decision on Western Paving vs. WSDOT.

6. Good Faith Efforts Procedures

Demonstration of good faith efforts – As long as race conscious goals are NOT used, there is no requirement for demonstration of good faith efforts.

7. Counting DBE Participation

Intercity Transit will count DBE participation as follows:

- We will count DBE participation toward an overall, agency-wide race-neutral goal and contract goals (only in the case that contract goals become relevant) as provided in 49 CFR Part 26.55 (“How is DBE participation counted toward goals”).
- When a DBE participates in a contract, we will count toward DBE goals only the value of the work actually performed by the DBE.
- We will not count the participation of a DBE subcontract toward a contractor’s final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.
- If the firm is not certified as a DBE at the time of award or loses its certification, we will not count the firm’s participation toward any DBE goals.
- When a DBE performs as a participant in a joint venture, we will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

8. DBE Termination or Substitution

Intercity Transit will require prime contractors to make available all DBE subcontracts. We will include contract language requiring the prime contractor to promptly notify the Intercity Transit Project Lead of a DBE’s inability or unwillingness to perform and provide reasonable justification documentation prior to subcontractor termination. If terminated, we will require the contractor to make a good faith effort 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. In so doing, we will require the prime contractor to obtain prior written approval from Intercity Transit of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith effort. The Contractor will not be entitled to any payment for work or materials without Intercity Transit’s written consent.

D. CERTIFICATION STANDARDS & PROCEDURES

1. Certification Process

In Washington State a central “one-stop-shop” has been created to perform certification and recertification functions. The Washington State Office of

Minority and Women Business Enterprises (OMWBE) has legislative authority to perform all minority, women and disadvantaged business enterprise certifications for all public agencies in the State. For DBE and SBE certifications the OMWBE is required to utilize certification procedures that meet all federal requirements as defined in 49 CFR Part 26 and as amended to ensure eligibility of certified firms for Department of Transportation projects. Intercity Transit has access to the directory of certified DBEs and SBEs published by the OMWBE. The most recent directory is available in electronic form at <http://www.omwbe.wa.gov/directory-of-certified-firms/>.

2. Certification Procedures

The Washington State Office of Minority and Women's Business Enterprises performs all DBE and SBE federal certifications for public agencies in the state. They maintain a directory which lists the firm's name, address, telephone number, date of the most recent certification, and the type of work the firm has been certified to perform. The Directory is available on the Internet at <http://www.omwbe.wa.gov/directory-of-certified-firms/>, or in hard copy by contacting the Office of Minority and Women's Business Enterprises at P O Box 41160, Olympia WA 98504-1160, (360) 753-9693, email - Receptionist@omwbe.wa.gov. Currently application for federal certification for DBE is \$25 and for SBE is free.

OMWBE provides a process whereby they may recognize certifications performed by other state certification programs.

3. Confidentiality

Intercity Transit will safeguard from disclosure to third parties information that may reasonably be regarded confidential business information consistent with federal, state and local law. Notwithstanding any contrary provisions of state or local law, Intercity Transit will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

E. COMPLIANCE AND ENFORCEMENT

1. Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs a minimum of three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Intercity Transit or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform periodic 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.

2. Monitoring and Enforcement Mechanisms

Intercity Transit has available remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, 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.

F. SMALL BUSINESS PARTICIPATION

Intercity Transit includes this SBE element in our DBE Program consistent with 49 CFR Part 26.39 to support our intention to foster SBE participation in the marketplace from which Intercity Transit purchases products, services and capital assets (see Objective/Policy page 1). Intercity Transit is committed to providing equal and open access for SBEs to participate in the agency's contracting and other procurement opportunities whether the enterprise is certified or not. For identification of "SBE Certified" firms we rely on the Washington State Office of Minority and Women Business Enterprises (OMWBE) defined categories as defined in their Glossary of Terms, namely - Disadvantaged Business Enterprises (DBE), Minority Business Enterprises (MBE), Women-owned Business Enterprises (WBE), and the recently added category of Small Business Enterprise (SBE). (<http://www.omwbe.wa.gov/certification/>)

Intercity Transit supports fostering small business participation which includes taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. Intercity Transit also anticipates that our focus on race-neutral means of meeting our overall, agency-wide DBE goal will be a positive factor for encouraging small business participation.

As part of this SBE Participation element, Intercity Transit will utilize OMWBE resources and promote the use of OMWBE resources by small businesses where we have the opportunity to do so. This includes raising the awareness of such resources among businesses actually or potentially interested in doing business with Intercity Transit. OMWBE resources include information on and links to the federal Small Business Administration (SBA) and the state's Department of Enterprise Services which can facilitate SBE participation in the marketplace. Intercity Transit will continue to list business / project opportunities with OMWBE for inclusion in their "Bids and Contracting Opportunities" utility (<http://omwbe.wa.gov/upcoming-bids/>).

The magnitude of Intercity Transit's direct effort is limited by the fact that Intercity Transit is a small agency based in the Olympia-Lacey USA. Federal funds are used for vehicle acquisitions routinely and those purchases are neither reportable for DBE

purposes nor relevant for small business encouragement efforts. Intercity Transit normally has a limited number of non-vehicle federally funded project bid opportunities.

Business opportunities for DBEs and SBEs are limited by the size and nature of our business which is factored into our DBE goal setting methodology which evaluates our anticipated purchasing needs in association with the marketplace defined in terms of geography County Business Pattern (CBP) data and relevant NAICS industry codes. The goal analysis has given us a good estimate of the probability of not only DBE but also SBE participation. Our next goal setting analysis in 2019 for the 2019-2021 period can target an increased emphasis on business size as an analytical element even though targets or goal are not yet applicable for SBEs.

Despite limitations inherent in our size and mix of projects and procurement opportunities, Intercity Transit will use the following means of SBE identification, outreach to SBEs and strategic commitments to facilitate SBE awareness of business opportunities with Intercity Transit and to encourage increased SBE participation in our federally funded projects and other procurement opportunities. All identified activities will be effective following FTA review of this revised DBE Program or by January 1, 2020 whichever is earliest.

Strategic Activities

1. The DBELO will make available to purchasing staff a list of potential vendors/contractors identified from OMWBE and other resources as potential providers of goods, services and capital asset creation. The DBELO will, at procurement events and otherwise periodically advise staff of potential DBE and/or SBE business partners.
2. Intercity Transit Procurement Coordinators will utilize the resources of the the Washington Electronic Business Solution (<https://fortress.wa.gov/ga/webs/>) and/or the Builders Exchange of Washington (www.bxwa.com) to make plan holder lists available to potential subcontractors and thereby facilitating contact between prime and subcontractors.
3. The DBELO, or other staff will partner with the Thurston County Economic Development Council (EDC), the Thurston County Chamber of Commerce, and other agencies championing business development in Thurston County and beyond as opportunities are available. This would include but not be limited to participation “Business Showcase” events, contributing to relevant newsletters, and taking advantage of as well as creating opportunities for encouragement and outreach to the community of SBEs as well as DBEs and making businesses aware of current and potential future business opportunities and Intercity Transit’s policy of encouraging SBEs and DBEs.
4. Intercity Transit will participate in local advertising and marketing opportunities as, for example, placement of advertisements and notices in Thurston County Chamber of Commerce and EDC publications to make local businesses aware of workshops and business opportunities.
5. Intercity Transit will post all formal solicitations on our Procurement website so that suppliers can easily and without advance registration learn about our contracting opportunities.

Identification & Outreach Activities

1. Intercity Transit's DBELO will use the SBE certification category in OMWBE's Business Directory to identify applicable certified SBE's as potential contractors, subcontractors or vendors with potential for supplying product, goods or services to Intercity Transit. The DBELO will update this list semi-annually.
2. Every three years, the DBELO will email a copy of our DBE Program to the most current list of DBEs/SBEs and invite these firms to provide information about how they may be able to assist Intercity Transit meeting DBE/SBE goals. For eligible small dollar purchases, Intercity Transit may purchase directly with these firms or at a minimum, solicit quotations from these firms.
3. Intercity Transit's Procurement staff will continue to alert OMWBE of upcoming projects and procurement opportunities and seek to encourage small business to take advantage of OMWBE resources (see attached references and resources).
4. Whenever interacting with the vendor community, the DBELO and Procurement staff will, when applicable, continue to encourage vendor's to pursue DBE/SBE certification through OMWBE.
5. For DOT-assisted contracts, Procurement staff will identify potential DBEs/SBEs and proactively invite their participation in the upcoming contracting opportunity, promote attendance at pre-bid and pre-proposal conferences and encourage them to advertise their interest in subcontractor opportunities to potential prime contractors.
6. Intercity Transit will include language on our website that is consistent with our DBE Program and promotes business diversity.

<http://www.intercitytransit.com/businesscenter/procurement/Pages/default.aspx>

And

<http://www.intercitytransit.com/businesscenter/procurement/Pages/Frequentlyaskedquestions.aspx>

.... which includes contact information for our DBELO and for OMWBE.

Information for Minority Owned, Disadvantaged Business Enterprises, or Small Businesses (<http://www.intercitytransit.com/businesscenter/procurement/pages/frequentlyaskedquestions.aspx#Information> for Minority Owned or Disadvantaged Business Enterprises)

Intercity Transit maintains strong commitment to maximum utilization of minority, women, and disadvantaged businesses (DBE), and small businesses whether DBEs or non-DBEs. All such businesses are encouraged to participate in the competitive contracting opportunities Intercity Transit offers. We also encourage such businesses to contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE <http://omwbe.wa.gov/>) to explore business development resources and potential certification opportunities.

We remind interested firms to afford all potential business partners an equal, non-discriminatory opportunity to compete for business as joint venture partners or subcontractors. Intercity Transit is interested in firms that demonstrate a commitment to equal employment opportunity and encourages firms to employ a workforce that reflects the region's diversity and to adhere to non-discrimination requirements of federal and state law. Contact: Jessica Gould (JGould@intercitytransit.com) for more information detailed information or see the [Intercity Transit DBE Program](#).

7. Intercity Transit will include in formal solicitations language that promotes DBE/SBE participation such as:

Intercity Transit maintains a strong commitment to maximum utilization of minority and women owned businesses and all small businesses. We encourage such businesses to contact the Washington State Office of Minority and Women's Business Enterprises (OMWBE <http://omwbe.wa.gov/>) to explore business development resources they have available and the potential for federal Disadvantaged Business Enterprises (DBE) and Small Business Enterprise (SBE) Certification through OMWBE. There may be general business advantages for such certification but keep in mind that Intercity Transit does not set contract specific DBE goals nor does it set any SBE participation goals.

All interested firms are reminded to afford all potential business partners an equal, non-discriminatory opportunity to compete for business as joint venture partners or subcontractors. Intercity Transit is interested in firms that demonstrate a commitment to equal employment opportunity and encourages firms to employ a workforce that reflects the region's diversity and to adhere to nondiscrimination requirements of federal and state laws.

G. GOAL CALCULATION METHODOLOGY FOR FFY 2019-21

1. Amount of Goal

Intercity Transit's overall DBE goal for FFY 2019-2021 is **0.77%** percent of the federal dollar amount Intercity Transit expends for DOT-assisted contracts exclusive of DOT funds used for the purchase of transit revenue vehicles and Intercity Transit staff time.

2. Applicable Anticipated Projects and DOT Support Level

Intercity Transit has programmed the following project with the indicated DOT funding for FFY 2019-2021:

- Pattison Base Maintenance Operations Administrative (MOA) Expansion Rehabilitation Project (Phases 3-5) = **\$34,968,968** in construction.

Total federal DOT funding Intercity Transit anticipates for this programmed project is **\$18,349,670**. With the FFY 2019-2021 DBE Goal of **0.77%** percent (as calculated below), Intercity Transit can reasonable expect to expend **0.77%** percent of the total federal funds or **\$141,292** with DBEs.

3. Methodology

To calculate the DBE goal for FFY 2019 – 2021, Intercity Transit used a methodology consistent with the guidance DOT's Office of Small and Disadvantaged Business (OSDBU) provides at their website (<http://osdbu.dot.gov/DBEProgram/tips.cfm> - OSDBU-Tips); and consistent with relevant federal regulations contained in 49 CFR Part 26 found at:

<http://www.ecfr.gov/cgi-bin/text-idx?region=DIV1;type=boolean;c=ecfr;cc=ecfr;sid=14e071f96d5d61cb9d2410ed56c59d3d;q1=dbe;rgn1=Section%20Heading;op2=and;rgn2=Section;op3=and;rgn3=Section;view=text;idno=49;no de=49%3A1.0.1.1.20;rgn=div5> ;

and also consistent with other OSDBU DBE Program guidance found at <http://www.osdbu.dot.gov/dbeprogram/index.cfm> . Intercity Transit used the following specific two step DBE total, agency-wide goal setting methodology plus an additional third step to evaluate the need/or not for the total goal to have or not have both a Race/Gender Neutral and a Race/Gender Conscience component.

Step 1 - Determine a base figure for the overall goal – the relative availability of DBEs to perform the types of contracts that Intercity Transit intends to award. This is the percentage of DBE firms as a proportion of all firms for specific industries that are ready, willing, and able to compete for contracts funded with DOT funds.

Intercity Transit used the U.S. Census Bureau’s most recent (2016) County Business Pattern (CBP) database as the data source to establish the total number of businesses in **King, Pierce and Thurston Counties** for various North American Industry Classification System (NAICS) codes, as noted below, which apply to Intercity Transit’s purchasing activities. CBP data is located at:

<http://factfinder.census.gov/faces/nav/jsf/pages/searchresults.xhtml?refresh=t#none> ;

and NAICS code information is located at:

<http://www.naics.com/> .

The data source for the number of DBEs within NAICS classifications for the three relevant Washington counties was the current State of Washington Office of Minority and Women’s Business Enterprises Directory of Disadvantaged Business Enterprises (OMWBE Directory) that is available at

http://www.omwbe.wa.gov/certification/certification_directory.shtml .

Intercity Transit programmed only the Pattison Base MOA Expansion and Rehabilitation Project for DOT grant funded procurement activity for FFY 2019 – 2021. The following applicable NAICS codes related to the Pattison MOA Project:

<u>NAICS CODE</u>	<u>DESCRIPTION</u>
238110	Poured Concrete Foundation and Structure Contractors
238150	Glass and Glazing Contractors
238160	Roofing contractors
238120	Structural Steel and Precast Concrete Contractors
332321	Metal Window and Door Manufacturing
238310	Drywall and Insulation Contractors
238350	Finish Carpentry Contractors
238290	Elevator installation
238220	HVAC Contractors & Plumbing
238210	Electrical Contractors and Other Wiring Installation Contractors
238910	Excavating, earthmoving or land clearing
237310	Sidewalk, public, construction

The CBP database for these services is **King, Pierce and Thurston Counties** which represents Intercity Transit's typical market area for construction contractors. The data indicates a **total number of 3,365 firms** in these thirteen NAICS codes for this geographical area.

The OMWBE Directory revealed a **total number of 16 DBE firms** for the same geographic area for these thirteen NAICS codes. Accordingly, the DBE participation potential for these counties is .475% ($16 \div 3,365 = .475\%$)

The total estimated construction cost to complete the Pattison MOA project based on the June 2019 cost estimate is \$34,968,968 and is targeted to begin in September of 2020. The table below identifies the total DBE potential % participation and \$ participation for each of these NAICS code.

Total DBE potential % participation and \$ participation by NAICS code					
NAICS	Estimated Spend	# of Established Businesses	# of Potential DBEs	% DBE Participation	DBE Potential \$
238110	\$3,038,564	200	0	0.00%	\$0
238150	\$5,115,269	69	0	0.00%	\$0
238160	\$2,087,465	273	3	1.10%	\$22,939
238120	\$4,318,266	30	1	3.33%	\$143,942
332321	\$1,612,293	6	0	0.00%	\$0
238310	\$971,338	248	2	0.81%	\$7,833
238350	\$2,971,656	431	4	0.93%	\$27,579
238290	\$484,000	60	0	0.00%	\$0
238220	\$5,482,705	742	1	0.13%	\$7,389
238210	\$3,502,798	761	1	0.13%	\$4,603
238910	\$2,860,698	360	0	0.00%	\$0
237310	\$1,952,466	89	2	2.25%	\$43,876
237110	\$571,450	96	2	2.08%	\$11,905
Total	\$34,968,968	3,365	16		\$270,067

Total Potential DBE \$ \div Construction Cost \$ = **Weighted Average DBE Goal:**

$$\$270,067 \div \$34,968,968 = 0.77\%$$

DOT \$ Assistance \times 0.77% = Total DOT DBE \$ Participation

$$\$18,349,670 \times 0.77\% = \$141,292$$

As 49 CFR Part 26 Section 51 states, recipients of DOT funds must meet the maximum feasible portion of the overall DBE goal by using race / gender-neutral means of facilitating DBE participation. The DBE goal Intercity Transit has calculated using the methodology and data sources is a Race/Gender Neutral Goal which means that the Intercity Transit DBE goal does not presume nor rely for achievement on individual federally funded contracts that specify a Race/Gender Conscious DBE goal.

The market for the Pattison Base MOA Expansion and Rehabilitation Project is considered to be regional, as it is typical for this category of project to receive interest from the central Puget Sound (Seattle) area. However, a review of DBEs availability in this broader area reveals a much less percentage of available DBE firms are available in the Thurston County only area. Moreover, Intercity Transit recently discovered there were very few construction firms from outside of Thurston County to bid on the Olympia Transit Center in the summer of 2018. Nonetheless, Intercity Transit anticipates meeting the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Intercity Transit uses the following race-neutral means to increase DBE participation:

1. Advertising contracting opportunities in minority focus media.
2. Encouraging MBEs and WBEs to seek Federal DBE certification.
3. Making plan holder lists available to subcontractors and facilitating contact between prime and subcontractors.
4. Encouraging DBEs to attend pre-bid and pre-proposal conferences to advertise their interest in projects to potential prime contractors.
5. Publishing contracting opportunities via Washington State's Office of Minority and Women's Business Enterprises (OMWBE).

Intercity Transit estimates that, in meeting our overall goal for FFY 2019-2021 of 0.77 percent, we will obtain 0.77 percent from race-neutral participation and 0.0 percent through race-conscious measures. This overall goal will be effective October 1, 2019 and remain in effect until September 30, 2021 unless we have received other instructions from DOT or until the goal is revised as circumstances may warrant and as the application of this goal setting methodology may indicate.

H. DBE SMALL BUSINESS RELATED RESOURCES, REFERENCES, AND ATTACHMENTS

1. ATTACHMENT 1 Intercity Transit Organizational Chart.
2. Link to FTA DBE Resources <http://fta.dot.gov/civilrights/12326.html>
3. Regulation 49 CFR Part 26 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS
http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl
4. Intercity Transit Website – Procurement Page
<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/49-cfr-part-26-sample-disadvantaged-business>
5. Washington State Office of Minority, Women, and Disadvantaged Enterprises (OMWBE)
<http://www.omwbe.wa.gov/> and specifically for:
 - a. workshops that often feature small business development workshops
<http://www.omwbe.wa.gov/upcoming-events>
 - b. Small Business Resources
<http://www.omwbe.wa.gov/resources-for-small-businesses/>
 - c. OMWBE Directory
<http://omwbe.wa.gov/directory-of-certified-firms/>
6. US DOT Office of Small and Disadvantaged Business Utilization
<http://www.osdbu.dot.gov/>