Disadvantaged Business Enterprise Program
For The
Puget Sound Regional Council

Updated May, 2013
POLICY STATEMENT

The Puget Sound Regional Council (Regional Council) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Puget Sound Regional Council has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the Regional Council has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Regional Council to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts.
2. To ensure 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.

The Deputy Executive Director, Mark Gulbranson, has been designated as the DBE Liaison Officer. In that capacity, Mark Gulbranson is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Puget Sound Regional Council in its financial assistance agreements with the DOT.

The Regional Council has made this policy statement available to all DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. We have published the policy on the Regional Council website at http://www.psrc.org; included reference to this policy in our solicitations; and made the written policy available through our information center.

Mark Gulbranson, Deputy Executive Director

Date 5/30/2013
SUBPART A – GENERAL REQUIREMENTS

Objectives

The objectives are found in the policy statement on the first page of this program.

Applicability

The Regional Council is the recipient of FAA funds authorized by 49 U.S.C. 47101, et seq.


The Regional Council is also the recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub L.105-178.

Definitions

The Regional Council will adopt the definitions contained in Section 26.5 for this program.

Non-discrimination Requirements

The Regional Council 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.

Record Keeping Requirements

The Regional Council will report DBE participation to the Federal Transit Administration (FTA) as follows:

The Regional Council will submit overall DBE participation goals every three years by August 1st, utilizing a FTA approved overall DBE goal setting methodology.

The Regional Council will report DBE participation on a semi-annual basis to FTA. These reports will reflect payments actually made to DBEs on federally-assisted contracts.
The Regional Council will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on federally-assisted contracts. The purpose of this requirement is to allow use of the bidders’ list approach in order to calculate overall goals. The bidders list will include the name, address, DBE/non-DBE status, age of firm and annual gross receipts of firms.

The information for the bidders list is collected through the solicitation process by means of a “Proposer Information Form” that is submitted by the vendor as part of the proposal process. This information is combined into one list on an annual basis for reporting purposes.

Assurances

The Regional Council has signed all required assurances, applicable to federally-assisted contracts and their administration. Such assurances are available upon request.

The Regional Council will ensure that the following clauses are placed in every federally-assisted contract and subcontract:

Federal Financial Assistance Agreement Assurance 49 CFR Part 26.13(a): The Puget Sound Regional Council 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. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient’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 the Regional Council 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.).

Contract Assurance 49 CFR Part 26.13(b): 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 the contract, which may result in the termination of this Contract or such other remedy as the Puget Sound Regional Council deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS
DBE Program Updates

The Regional Council will continue to carry out this program until all funds from FTA financial assistance have been expended. The Regional Council will provide to FTA updates representing significant changes in the program.

DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

Name: Mark Gulbranson, Deputy Executive Director
Address: 1011 Western Avenue, Suite 500, Seattle, WA 98104
Phone: (206) 464-7524
E-Mail: mgulbranson@psrc.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Regional Council complies with all provisions of 49 CFR part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organization chart displaying the DBELO’s position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has an adequate staff to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations.
6. Analyzes the Regional Council’s progress toward attainment and identifies ways to improve progress.
7. Advises the Executive Director\governing body on DBE matters and achievement.
8. Assigns staff to participate in DBE training seminars.
9. Assigns staff to acts as the liaison to the Uniform Certification Process in Washington State administered by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE).

DBE Financial Institutions
Under Washington State Law, the Regional Council is required to utilize the services of the King County Treasury for the final deposit of all funds. All prime contractors with the Regional Council are encouraged to use the services of banks owned and operated by disadvantaged individuals.

**Prompt Payment Mechanisms**

Prompt Payment CFR 49 Part 26.29(a)  The Regional Council 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 no later than thirty (30) days from the receipt of each payment the prime contractor receives from the Puget Sound Regional Council. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (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 Regional Council. This clause applies to both DBE and non-DBE subcontractors.

Retainage CFR 49 Part 26.29(b)  The prime contractor agrees to return retainage payments to each subcontractor within thirty (30) days after the subcontractors 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 Regional Council. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement CFR 49 Part 26.29(d)  The Puget Sound Regional Council oversees contractors and sub-contractors requiring written proof of compliance before final payment is issued.

**Directory**

The Regional Council will make available to interested persons a directory identifying all firms eligible to participate as DBE’s in its program as provided by the Washington State Office of Minority and Women’s Business Enterprises. This list may be found on the Internet at [http://www.omwbe.wa.gov/](http://www.omwbe.wa.gov/)

The directory lists the name, address, telephone number, name of contact person, NAICS codes, and activity descriptions of each business certified by OMWBE as eligible to participate as a DBE. The Internet directory is updated weekly by WSDOT.

**Overconcentration**

The Regional Council has not identified that overconcentration exists in the types of work DBEs perform. Over concentration is re-evaluated periodically.
Business Development Program

The Regional Council has not established a business development program. The need for a business development plan is re-evaluated every three years.

Monitoring and Enforcement Mechanisms

The Regional Council will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR 26.

1. The Regional Council will provide a monitoring mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This monitoring mechanism is accomplished by requiring copies of the signed subcontract agreements between the contractor and subcontractors. The amount of work committed to DBEs is also identified in the proposal and subsequent contractual documents. The Project Manager monitors the actual work performed by DBEs through detailed supplemental records.

2. The Regional Council will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

3. The Regional Council will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so the 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.

4. The Regional Council will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 2 lists the regulation, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

Small Business Participation

The Regional Council has incorporated the following nondiscriminatory element to the DBE program in order to facilitate competition on DOT-assisted public works projects by small businesses.

PSRC will identify opportunities to break up large contracting projects into smaller pieces of work that are better performed by small businesses and will encourage other small businesses to work together to perform the contracting work involved. Since PSRC is race neutral, the Agency will not use race, or gender considerations when choosing a contractor. When soliciting for bids, PSRC will collect the gross receipts, number of employees from potential bidders and compare it to the applicable small business limits related to the NACIS codes.

PSRC is constantly seeking better ways to advertise contracting opportunities. The Agency is advertising on the OMWBE website (www.omwbe.wa.gov), Washington.
Electronic Business Solutions website (https://fortress.wa.gov/ga/webs/home.html), The Daily Journal of Commerce (http://www.djc.com/), The Seattle Times Newspaper (occasionally), and a rotating minority publication, currently the Seattle Chinese Post. PSRC is also working to support the Washington State Department of Transportation’s (WSDOT) Quarterly Supplier Diversity Summit. This summit sees participation from dozens of organizations throughout the region and state, including educational institutions, state and local government, private industry across numerous sectors, the military, and supplier diversity professionals.

Participants share challenges that their organizations face in increasing the share of small business, and women- and minority-owned businesses in their procurement processes as well as organizational best practices. Kimberly Williams, the Purchasing Manager at WSDOT, will be coming to the EDD board meeting in May to discuss the work of this group.

We recently connected King County to this group. The county is leading the way for how local governments can navigate the regulatory environment to improve participation of small businesses in public contracting opportunities. We will look for opportunities to help the county share these practices with other local governments in the region.

The Agency will also post contracting opportunities on the PSRC blog, found: http://blog.psrc.org/

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Set-asides or Quotas**

The Regional Council does not use quotas in any way in the administration of this DBE program.

**Overall Goals**

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 3 to this program. This section of the program will be updated every three years unless otherwise instructed by the FTA.

In accordance with Section 26.45(f) the Regional Council will submit its overall goal to FTA on August 1st every three years.

The Regional Council will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rational are available for inspection during normal business hours at our principal office for 30 days following the date of this notice, and informing the public that the Regional Council will accept comments on the goals for 45 days from the date of the notice. The Regional Council will publish this notice on the OMWBE website, in the Daily Journal of Commerce, and minority based newspapers. Normally we will issue this notice by July 1st of each year a new goal is required. The
notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

The Regional Council will begin using our overall goal on October 1st, unless we have received other instructions from DOT. 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 project.

**Goal Setting and Accountability**

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

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problem(s) identified in the analysis; and
3. Have the report available for review upon request.

**Transit Vehicle Manufacturers Goals**

The Puget Sound Regional Council does not purchase or manufacture vehicles.

**Meeting Overall Goals/Contract Goals**

The Regional Council will use 100% race-neutral means of obtaining DBE participation. The following race-neutral mechanisms to broaden the pool of minority and women businesses may be used:

1. The Regional Council will continue to identify appropriate advertising places for RFPs

Although we have not met our overall goal in the past few years, this is due to a lack of contracting opportunities; we continue to believe we can reach our goal using race-neutral means.

**Good Faith Efforts Procedures**

Good Faith Efforts Procedures are not applicable when there are no contract goals. However, if the Regional Council decides to begin using contract goals in the future, we will outline “Good Faith Efforts Procedures”.

**Counting DBE Participation**
The Regional Council will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

**SUBPART D & E – CERTIFICATION STANDARDS AND PROCEDURES**

The Regional Council is a member of a Unified Certification Program (UCP) administered by The Washington State Office of Minority and Women’s’ Business Enterprises (OMWBE). The OMWBE is the sole certifying entity for M/W/DBEs in the State of Washington, consistent with 49 CFR Section 26.81. As such, the OMWBE determines the eligibility of firms to participate as DBEs in DOT-assisted contracts. They manage the certification process and maintain the DBE directory. Information about certification as well as the updated directory can be found on the Internet at http://www.omwbe.wa.gov/

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Information, Confidentiality, Cooperation**

The Regional Council will safeguard from disclosure to third parties information that may be regarded as confidential business information, consistent with Federal, state, and local law. (45 CFR Part 303.21 Safeguarding and disclosure of confidential information)

Notwithstanding any contrary provisions of state or local law, we 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.

**Monitoring Payments to DBEs**

The Regional Council will require prime contractors 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 the Regional Council or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We reserve the right to 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 amount stated in the schedule of DBE participation.
## ATTACHMENTS

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Attachment 1

Organization Chart

Executive Office

Bob Drewel
Executive Director

Sheila Rogers
Executive Administrator

Charlie Howard
Director of Integrated Planning

Mark Gulbranson
Deputy Executive Director (DBE Liaison Officer)

Rick Olson
Director of Government Relations & Communications

Diana Lauderbach
Chief Financial Officer
Attachment 2

Monitoring and Enforcement Mechanisms

The Regional Council 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 or any applicable state law.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, 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.
In setting our fiscal year 2013 DBE goal, the Puget Sound Regional Council (Regional Council) used a methodology that strives to achieve a “level playing field”. This level playing field is defined as the amount of DBE participation we could realistically expect in the absence of discrimination.

We found our estimated FTA funds for contracting for fiscal year 2013 to be $80,000 (please see attachment 1 for calculation).

Our goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs to participate on our DOT-assisted contracts. To set our overall goal we followed the steps outlined in 49 Code of Federal Regulations (CFR) Part 26, Section 26.45.

**STEP 1: 26.45 (c)**

**Determine the Base Figure for the Relative Availability of DBEs**

The first step was to determine a base figure for the relative availability of DBEs in our market. Due to the fact that we use very specific types of consultants, primarily transportation planning consultants, we chose not to use the DBE Directory and Census Bureau Data to determine our base figure. That approach relied on North American Industry Classification System (NAICS) Codes that identified an overly broad category of consultants, most of which were not ready, willing and able to do the type of consulting we require. In order to get a more accurate base figure we decided to use a bidders list to determine the relative availability of DBEs in our market. This is also one of the suggested methodologies in 49 Code of Federal Regulations (CFR) Part 26, Section 26.45.

To derive the Fiscal Year 2013 DBE goal base figure we divided the number of interested DBE businesses for all Regional Council FY2012 contracts by the total number of all interested parties in our DOT-assisted prime contracts or subcontracts in that same time period.

\[
\text{Base Figure} = \frac{\text{(DBE bidders FY2012)}}{\text{(All bidders FY2012)}} = \frac{17}{189} = 8.99\%
\]

**STEP 2: 26.45 (d)**
Adjustment of the Base Figure for the Overall Goal

In Step 2 we examined all available evidence in our jurisdiction to determine what adjustments to the base figure were necessary to arrive at our overall goal. We looked at the volume of work DBEs have performed for PSRC in recent years. We found that in the past four years the volume of DBE involvement in the Regional Council’s DOT-assisted contracts has been as follows:

**DBE Dollar Value of Contracts Awarded**

<table>
<thead>
<tr>
<th>FY</th>
<th>DBE Dollar Value of Contracts Awarded</th>
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</thead>
<tbody>
<tr>
<td>2011</td>
<td>0.00%</td>
</tr>
<tr>
<td>2010</td>
<td>0.00%</td>
</tr>
<tr>
<td>2009</td>
<td>66.98%</td>
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<tr>
<td>2008</td>
<td>4.13%</td>
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</tbody>
</table>

Our median participation rate over the past four years is 2.07%

We also looked for any pertinent disparity studies, but found no known disparity studies that would specifically relate to transportation planning consultants.

We adjusted the base figure to reflect the actual DBE participation over the past four years by taking the average of the Base Figure derived in Step One and the median past participation rate.

Our adjusted overall DBE goal for fiscal year 2013-2015 is 5.53%

Public Participation

The Regional Council will publish a notice announcing our overall goal. We will inform the public that the proposed goal and its rationale are available for inspection between the hours of 8:00 a.m., and 4:30 p.m., Monday through Friday at the Regional Council’s offices, located at 1011 Western Avenue, Suite 500, Seattle, Washington 98104, for a period of 30 days following the date of the notice. Public comments will be accepted for a period of 45 days from the date of the notice.

Breakout of Estimated Race-Neutral & Race Conscious Participation

The Regional Council will use only race-neutral means to meet our DBE participation goals. For a complete description of the means the Regional Council will use to meet our DBE goals please refer to our DBE Program.
Attachment 4

For additional information on becoming a Certified Disadvantaged Business Enterprise with the state of Washington, please visit the Washington State Office of Minority and Women’s Business Enterprises at: http://www.omwbe.wa.gov/certification/
Attachment 5

To access the Regulations: 49 CFR Part 26, (please see the website below)