

RESOLUTION ADOPTING KITSAP TRANSIT'S DISADVANTAGED BUSINESS ENTERPRISES PROGRAM GOAL FOR FEDERAL FISCAL YEARS 2012 THROUGH 2014

**RESOLUTION 11-39**

WHEREAS, Kitsap Transit is a recipient of annual federal funds in excess of two hundred and fifty thousand dollars (\$250,000) and is therefore required by the U.S. Department of Transportation (DOT) to maintain a Disadvantaged Business Enterprise (DBE) program, and;

WHEREAS, the intent of the DBE program is to require recipients with federally funded activities in excess of two hundred and fifty thousand dollars (\$250,000) to establish overall DBE goals that will "level the playing field" when awarding contracts for federally assisted activities, and;

WHEREAS, based upon the availability of ready, willing and able certified DBE's in the region, Kitsap Transit is proposing a DBE goal of two and one-half percent (2.5%) of eligible firms in construction and that is attached and incorporated by reference herein as Exhibit A, and;

WHEREAS, the DBE Program, incorporated and referenced herein as Exhibit B, complies with the regulations of DOT, 49 CFR Part 26, and;

WHEREAS, a public hearing on the proposed goal for the federal fiscal years 2012 through 2014 will be held on July 19, 2011, at the regular meeting of the Board of Commissioners of Kitsap Transit, and;

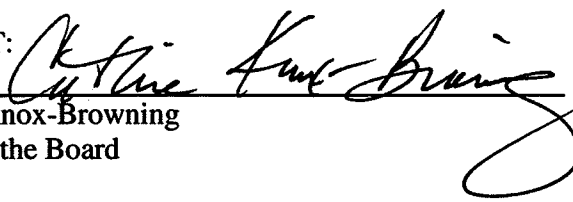
WHEREAS, the public had the opportunity to comment on the proposed program goal for the federal fiscal years 2012 through 2014 until July 19, 2011, and;


WHEREAS, the Board of Commissioners of Kitsap Transit now finds it in the best interest of Kitsap Transit to adopt the DBE program goal of two and one-half percent (2.5%) of eligible firms in construction for the federal fiscal years 2012 through 2014;

NOW, THEREFORE, BE IT RESOLVED by the Board of Commissioners of Kitsap Transit to adopt the DBE program goal for the federal fiscal years 2012 through 2014.

ADOPTED by the Board of Commissioners of Kitsap Transit at a regular meeting thereof, held on the 19th day of July, 2011.

ATTEST:

  
Cathie Knox-Browning  
Clerk of the Board

  
Will Maupin, Chairperson

**EXHIBIT A**

**Kitsap Transit**

**Proposed Disadvantaged Business Enterprise  
Overall Goal and Goal Setting Methodology  
Fiscal Years 2012 - 2014**

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a “level playing field” for ready, willing and able DBEs seeking to participate in DOT-assisted contracts. In an effort to reach this level playing field, Title 49 Code of Federal Regulations (CFR) Part 26.45 requires recipients of USDOT federal-aid to utilize a two-step process in the development of their overall DBE goal.

**STEP ONE: Develop a Base Figure for the Relative Availability of DBEs**

The base figure for the relative availability of DBE’s is the ratio of certified DBE’s relative to the total firms available in the relevant region. Kitsap Transit has adopted the State of Washington as its relevant region. Kitsap Transit has also narrowly tailored its ratio calculation to services and industries likely to benefit from federally funded projects. Those relevant services and industries are (1) construction, (2) professional, scientific & technical services and (3) finance and insurance.

Kitsap Transit applied the number of relevant certified DBEs listed in the Office of Minority and Women Business Enterprise Directory in the numerator of the calculation below. There are currently 1,175 certified DBEs in the specified industries noted above.

Kitsap Transit applied the total number of firms of the same relevant industries noted above according to the Census Bureau’s County Business Pattern (CBP) database in the denominator of the calculation below. There are 56,347 firms based on the most current reported CBP database in Washington State and a modest growth factor to adjust for growth since the most recent CBP data.

WA certified DBE’s in relevant industries	1,175	2.09%
WA firms in relevant industries	56,347	

Based on the calculation above, the base figure for DBE availability is 2.09%.

**STEP TWO: Adjustment of the Base Figure for the Overall Goal**

The second step in this process is to adjust the base figure based upon evidence available in the region. Based upon the data available to calculate the base figure above and a greater concentration of DBE’s in the Puget Sound region, Kitsap Transit has moderately adjusted its overall goal for the federal fiscal years 2012 - 2014 to 2.5%.

## **EXHIBIT A**

### **Means to Meet Overall DBE Goal**

Kitsap Transit will use only race neutral means to encourage DBE participation in its federally assisted contracts.

### **Public Involvement in the Overall Goal Setting Process**

Kitsap Transit will make available through public notice and public hearing of the proposed overall goal and methodology. The goals and methodology will be available for inspection during normal business hours at Kitsap Transit's administrative office located at 60 Washington Ave., Suite 200, Bremerton WA for a period of 30 days following the date of the notice. Public comments will be accepted up to 45 days from the date of the notice.

**EXHIBIT B**

**KITSAP TRANSIT DBE PROGRAM**

**POLICY STATEMENT**

**Objectives/Policy Statement**

Kitsap 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. Kitsap Transit has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Kitsap Transit has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Kitsap Transit to ensure that DBEs 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 create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program complies with applicable laws;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate in the DBE Program;
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 Finance Director has been delegated as the DBE Liaison Officer. In that capacity, the Finance Director 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 Kitsap Transit in its financial assistance agreements with the Department of Transportation.

Kitsap Transit has disseminated this policy statement to the Board of Commissioners of Kitsap Transit and all of the department directors of our organization. This policy statement will be sent to DBE communities, agencies and minority development groups that that perform work for us on DOT-assisted contracts.

/s/ Richard M. Hayes  
Richard Hayes, *Chief Executive Officer*

12/20/05  
Date

## EXHIBIT B

### SUBPART A – GENERAL REQUIREMENTS

#### I. Objectives

The objective of the program is to achieve a “level playing field” for ready, willing and able Disadvantaged Business Enterprises (DBEs) seeking to participate in DOT-assisted contract activities.

#### II. Applicability

Kitsap Transit is 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.

#### III. Definitions

The following definitions are referenced in 49 CFR Part 26.5:

**A. Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.

1. Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
  - a. One concern controls or has the power to control the other, or
  - b. A third party or parties controls or has the power to control both, or
  - c. An identity of interest between or among parties exists such that affiliation may be found.
2. In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**B. Affirmative Action** means; positive activities undertaken to eliminate discrimination and effects of past discrimination and to ensure nondiscrimination practices in the future.

**C. Alaska Native** means; a citizen of the United States who is a person of one-fourth degree or more Alaska 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.

**D. 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 (43U.S.C. 1601, et seq.).

**E. Challenge** means; a formal filing by a third party to rebut the presumption that a particular individual is socially and economically disadvantaged.

**F. Compliance** means; that a recipient has correctly implemented the requirements of 49 CFR Part 26.

**G. Condition of Award** means; the condition(s) of the formal decision of the Contracting Agency to accept the lowest responsible and responsive bidder for

## EXHIBIT B

the work.

H. **Consultant** means; one who gives expert or professional advice.

I. **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 and agreement is considered to be a contract.

J. **Contracting Agency** means; any agency that administers contracts using USDOT funds.

K. **Contracting Opportunity** means; any decision by a recipient or contractor to institute a procurement action to obtain a produce or service commercially (as opposed to intergovernmental actions).

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

M. **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.

N. **Goal** means; a numerically expressed objective which recipients or contractors are required to make good faith efforts to achieve.

O. **Good Faith Efforts** means; efforts to achieve a DBE goal or other requirement of CFR 49 Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirements. Specific actions are delineated under Appendix A of 49 CFR Part 26.

P. **Immediate Family Member** means; father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Q. **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.

R. **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 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.

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

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**T. 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.

**U. Noncompliance** means; that a recipient or subrecipient has not correctly implemented the requirements of 49 CFR Part 26.

**V. Operating Administration (OA)** means; any of the following parts of the USDOT: 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.

**W. 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 and 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.

**X. Primary Industrial Classification** means; the four digit Standard Industrial Classification (SIC) code designation which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NACS manual and applicable codes.

**Y. Primary Recipient** means; a recipient which USDOT financial assistance and passes some or all of it on to another recipient.

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

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

**BB. Quotas** means; proportional share, as of goods, assigned to a group or to each member of a group.

**CC. Race-Conscious measure or program** means; one that is focused specifically on assisting only DBEs, including women-owned DBEs.

**DD. Race-Neutral measure or program** means; one that is, or can be, used to assist all small businesses. For the purpose of 49 CFR Part 26, race-neutral includes gender-neutrality.

**EE. Recipient** (to include subrecipient) means; any entity, public or private, to which USDOT 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.

**FF. Secretary** means; the Secretary of Transportation for WSDOT or his/her designee.

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**GG. Set-Aside** means; a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

**HH. Small Business Administration (SBA)** means; the United States Small Business Administration.

**II. Small Business Concern** means; with respect to firms seeking to participate as DBEs in USDOT-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65 (b).

**JJ. Socially and Economically Disadvantaged Individual** means; any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

1. Any individual who a recipient finds to be socially and economically disadvantaged on a case-by-case basis.
2. Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - a. "Black Americans" which includes having persons of origins in any of the Black racial groups of Africa;
  - b. "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture, regardless of race;
  - c. "Native Americans" which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
  - d. "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), the Commonwealth of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - e. "Subcontinent Asian American," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
  - f. Women;
  - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**KK. Transit Vehicle** is; a vehicle used by an FTA recipient, e.g., bus, railcar, or van, for the primary program purpose of public mass transportation (this definition does not include locomotives or ferry boats).

**LL. Transit Vehicle Manufacturer (TVM)** is; a manufacturer of vehicles used by FTA recipients for the primary program purpose of public mass transportation, e.g., buses, railcars, vans. The term does not apply to firms which rehabilitate old vehicles or to manufacturers of locomotives or ferry boats. The term also refers to distributors and/or dealers in transit vehicles with respect to requirements of 49 CFR Part 26.

**MM. Tribally-Owned concern** means; any concern at least 51 percent owned by an Indian tribe as defined in 49 CFR Part 26.

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**NN. Unified Planning Work Program (UPWP)** means; a listing of planning projects proposed for funding by FTA.

**OO. USDOT** means; the United States 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).

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

**QQ. WSDOT** means; the Washington State Department of Transportation.

### IV. Non-discrimination

Kitsap 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, Kitsap 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.

### V. Records and Reports

#### A. Reporting:

Kitsap Transit will report DBE participation to DOT as follows:

Kitsap Transit will report DBE participation on a bi-annual basis. These reports will reflect commitments and payments made to DBEs on DOT-assisted contracts.

We will collect this information in the following ways:

1. All records relating to the DBE program (including payments to DBEs) shall be maintained by Kitsap Transit or the contractor and each subcontractor during the course of the project and preserved for a period of three years following the performance of the contract;
2. The contractor or subcontractor shall make records pertaining to the DBE program (including subcontractor payment information) available for inspection, copying or transcription by authorized representatives of Kitsap Transit, subrecipients, and/or USDOT and shall permit such representatives to interview employees as necessary.

#### B. Bidders List:

Kitsap Transit will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidder list will include the name, address, DBE non-DBE status.

### VI. Assurances

Pursuant to 49 CFR Part 26.13, Kitsap Transit has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

## EXHIBIT B

Kitsap 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. 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 Kitsap 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.*).

Pursuant to 49 CFR Part 26.13, Kitsap Transit will ensure that the following clause is placed in every DOT-assisted contracts and subcontracts:

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 the recipient deems appropriate.

Since Kitsap Transit's US-DOT assisted activities typically exceed \$250,000 in a federal fiscal year, Kitsap Transit will continue to carry out this program. Kitsap Transit will provide to DOT updates representing significant changes in the program.

### **VII. DBE Liaison Officer**

Kitsap Transit has designated the Finance Director as our DBE Liaison Officer (DBELO):

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

The DBELO is responsible for developing, implementing and monitoring the DBE program in coordination with Capital Development department. The DBELO has a staff of between five and ten 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 the Capital Development department to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements whereby contract goals are applied and administered and ensuring that those contract goals are included in solicitations
6. Is available to participate in pre-bid meetings.
7. Advises the Executive Director, Capital Planning Director and the Kitsap Transit Board of Commissioners on DBE matters and goal achievement.
8. Upon request, the DBELO will assist DBEs with the necessary information in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.
11. Ensures that a updated directory on certified DBEs which is maintained and published by the Washington State Office of Minority and Women's Business Enterprises is available for

## **EXHIBIT B**

reference at the administrative offices of Kitsap Transit. Refer to Section X. below for additional information.

### **VIII. DBE Financial Institutions**

Pursuant to 49 CFR Part 26.27, Kitsap Transit shall make reasonable efforts to engage banks and lending institutions owned and controlled by minorities and women. Kitsap Transit will also encourage prime contractors to make use of such DBE financial institutions. Currently, the state of Washington has no minority or women-owned banks.

### **IX. Prompt Payment Mechanisms**

Kitsap Transit 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 30 days from the receipt of each payment the prime contract receives from Kitsap Transit. The prime contractor agrees further to return retainage payments to each subcontractor within 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 Kitsap Transit. This clause applies to both DBE and non-DBE subcontracts.

### **X. Directory**

In order to assist contractors in the selection of eligible DBE firms, a DBE Directory is maintained and published by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). The directory is published in hard bound copy quarterly and made available on its website to contractors, proposal holders, and bidders to facilitate the identification of DBEs with capabilities relevant to highway construction, and other construction and development projects. The directory lists the name, address, telephone number, name of contact person, standard industrial classifications (SIC codes\*), and activity descriptions of each business certified by OMWBE as eligible to participate as a DBE. The DBE Directory is referenced in this program as Attachment II and is available upon request from Kitsap Transit's administrative office or by directly contacting the OMWBE.

### **XI. Over concentration of DBE's**

Pursuant to 49 CFR Part 26.33, if Kitsap Transit (and/or its subrecipients) determine that DBE firms are so over-concentrated in one or more types of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, it will devise appropriate measures to address this over-concentration. These measures may include:

1. Technical assistance;
2. Business development; and
3. Any other measures to assist DBEs in performing in other types of work.

To date, Kitsap Transit has not concluded that the condition exists or is a result of the implementation of the DBE Program.

### **XII. Business Development Programs**

Pursuant to 49 CFR Part 26.35, Kitsap Transit may establish a DBE Business Development program to assist firms in gaining the ability to compete successfully in the market place outside the DBE Program.

Kitsap Transit, upon request by the DBE, will assist DBEs with the necessary information to prepare bids, obtain bonding and insurance and other essential information in order to achieve a "level playing field" for DBEs. Kitsap Transit currently has not established a dedicated business development program.

## **EXHIBIT B**

### **XIII. Monitoring and Enforcement Mechanisms**

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

1. Kitsap Transit will bring to the attention of the 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. Kitsap Transit will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. When contract goals are applicable, Kitsap Transit 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 may include one or more of the following mechanisms (refer to Section XVII and XVIII below for additional information regarding when contract goals are applicable):
  - (a) direct observation by Kitsap Transit staff,
  - (b) indirect observation with a professional engineering consultant,
  - (c) Kitsap Transit staff confirmation with the DBE,
  - (d) Kitsap Transit will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Kitsap Transit 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 Kitsap Transit or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

### **XIV. Set-asides or Quotas**

Pursuant to 49 CFR Part 26.43, Kitsap Transit does not use quotas in any way in the administration of this DBE program.

### **XV. Overall Goals**

A description of the methodology to calculate the overall goal can be found in Attachment III to this program.

The purpose of the overall goal is to achieve a "level playing field" for ready, willing, and able Disadvantaged Business Enterprises (DBEs) seeking to participate in Kitsap Transit federally-assisted contracts. In an effort to reach this level playing field, Kitsap Transit examined its relevant local markets, then determined the amount of participation DBEs would be expected to achieve in the absence of present and past effects of discrimination.

49 Code of Federal Regulations (CFR) Part 26.45 requires recipients of USDOT federal aid to utilize a two step process in the development of their Overall DBE Goals:

Step One: Calculate relative availability of certified firms ready, willing, and able to work on USDOT-assisted contract and/or agreements.

## **EXHIBIT B**

Step Two: Examine evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure calculated in Step one. Evidence may include, but is not limited to, the current capacity of DBE's to perform the work or evidence provided from disparity studies.

In establishing an overall goal, Kitsap Transit will publish a notice of the proposed overall goals, encouraging public participation and informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that Kitsap Transit and the DOT will accept comments on the goals for 45 days from the date of the notice, thereby allowing sufficient time for DBEs to consult with Kitsap Transit and address potential questions or concerns regarding the proposed DBE goals and program. The 45 day comment period must be followed by a public hearing.

Kitsap Transit's overall goal and program documents must be submitted to its Board of Commissioners for approval after sufficient time has passed for public comment and a public hearing has been held to address comments.

Provided that there is sufficient time for public comment and consultation and the Board of Commissioners have approved the overall DBE goal, Kitsap Transit will submit its overall goal to DOT on August 1 of each year. The overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

Kitsap Transit will begin using our overall goal on October 1 of each year, unless there are other instructions received from DOT.

### **XVI. Transit Vehicle Manufacturers Goals**

Pursuant to 49 CFR Part 26.49, Kitsap 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 this section. Alternatively, Kitsap 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.

### **XVII. Breakout of Estimated Race-Neutral & Race-Conscious Participation**

#### **A. Race-Neutral**

Pursuant to 49 CFR Part 26.51, Kitsap Transit will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Kitsap Transit has determined that race-neutral means will include:

1. Whenever a DBE receives a prime contract because it is the lowest responsible bidder, the resulting DBE participation was achieved through race-neutral means;
2. Whenever a DBE receives a subcontract on a project that does not have a contract goal, its participation was also achieved through race-neutral means; and
3. Whenever a prime awards a particular subcontract to a DBE, on projects that do not carry a contract goal, because the DBE has proved in the past that it does the best or quickest work, or because it submitted the lowest quote, the resulting DBE participation has, in fact, been achieved through race-neutral means.

#### **B. Race-Conscious**

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

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Kitsap Transit will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Kitsap Transit need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

Kitsap Transit will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

### **XVIII. Good Faith Efforts Procedures**

#### **A. Solicitation of Bidder/Offeror**

Each solicitation for which a contract goal has been established will require good faith effort procedures pursuant to 49 CFR Part 26.53. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Evidence of good faith efforts may include the following:

1. Evidence the bidders attended any presolicitation or prebid meetings that were scheduled by Kitsap Transit to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
2. Evidence the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
3. Evidence the bidder advertised in general circulation, trade association minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
4. Evidence the bidder provided written notice to a reasonable number of specific DBEs, identified from the OMWBE Directory of Certified Firms for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
5. Evidence the bidder followed up initial solicitations of interest by contacting the DBEs to determine with certainty whether they were interested. This may include the information outlined below:
  - (a) The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact, and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - (b) A description of the information provided to the DBEs regarding the plans, specifications, and estimated quantities for portions of the work to be performed;
  - (c) Documentation of each DBE contacted but rejected and the reason(s) for that rejection;
6. Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications, and requirements for the selected subcontracting or material supply work;
7. Evidence the bidder negotiated in good faith with the DBE firms, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
8. Evidence the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Kitsap Transit or the contractor;
9. Evidence the bidders efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of Kitsap Transit;
10. Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state, and federal minority business assistance offices and other organizations and advocates for disadvantaged, minority, and women businesses that provide assistance in the recruitment and placement of disadvantaged, minority, and women business enterprises.

The DBE Liaison officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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Kitsap Transit will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before Kitsap Transit commits to the performance of the contract by the bidder/offeror.

### B. Information of Successful Bidder

Kitsap Transit treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

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

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 proposed DBE that it has been approached by the bidders/offerors to participate in the contract as provided in the prime contractors commitment and
6. If the contract goal is will not be met, evidence of good faith efforts.

The following language will appear in each solicitation for which a contract goal has been established:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Kitsap Transit to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required 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 firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it has been approached to participate in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

### C. Administrative Reconsideration

Within 10 business days of being informed by Kitsap Transit that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: the Capital Planning Director. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Kitsap Transit will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding

## **EXHIBIT B**

that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

### **D. Good Faith Efforts when a DBE is replaced on a contract**

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

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

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

### **XIX. Counting DBE Participation**

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

### **XX. Certification Standards and Procedures**

DBE certification standards are defined in 49 CFR Part 26.

The Office of Minority and Women's Business Enterprises (OMWBE) is the sole authority in the state of Washington to perform certification and verification of all minority business enterprises, women business enterprises, and socially and economically disadvantaged business enterprise programs administered by any state, local, or federal agency throughout the state of Washington. This statutory authorization extends to and binds all U.S. Department of Transportation DBE program recipients in the state of Washington.

For information about the certification procedures or to apply for certification, firms should contact the Office of Minority and Women's Business Enterprises.

### **XXI. Information, Confidentiality, Cooperation**

Kitsap Transit will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

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### **ATTACHMENTS**

Attachment I	Kitsap Transit Organizational Chart (Available upon request)
Attachment II	Office of Minority and Women Business Enterprise DBE Directory (Available upon request)
Attachment III	Overall goal-setting methodology
Attachment IV.	Regulations: 49 CRR part 26 (May be downloaded from the following link <a href="http://osdbu.dot.gov/business/dbe/dbeview.cfm">http://osdbu.dot.gov/business/dbe/dbeview.cfm</a> )

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**ATTACHMENT III**

**Kitsap Transit**

**Disadvantaged Business Enterprise  
Overall Goal and Goal Setting Methodology**

The purpose of the Disadvantaged Business Enterprise (DBE) overall goal is to achieve a "level playing field" for ready, willing and able DBEs seeking to participate in DOT-assisted contracts. In an effort to reach this level playing field, Title 49 Code of Federal Regulations (CFR) Part 26.45 requires recipients of USDOT federal-aid to utilize a two-step process in the development of their overall DBE goal.

**STEP ONE: Develop a Base Figure for the Relative Availability of DBEs**

The base figure for the relative availability of DBE's is the ratio of certified DBE's relative to the total firms available in the region. Kitsap Transit has adopted the State of Washington as its relevant region.

The numerator reflects the number of certified DBEs listed in the Office of Minority and Women Business Enterprise Directory. The denominator reflects the total number of construction firms according to the Census Bureau's CBP database.

WA certified DBE's	XXX	X.XX%
WA construction firms	XX,XXX	

**STEP TWO: Adjustment of the Base Figure for the Overall Goal**

The second step in this process is to adjust the base figure based upon evidence available in the region. Evidence that may be considered for adjustment of the base figure include the following:

1. The current capacity of DBEs to perform the work in the agencies applicable region
2. Disparity studies
3. Statistical data on the ability of DBEs to get financing, bonding, insurance, etc.
4. Input from interest parties
5. Past participation