



***Disadvantaged  
Business Enterprise  
Program***

2019-2021 DBE GOAL

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## *Policy Statement*

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### Ben Franklin Transit Policy Statement

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

BFT's objective is to promote the use of all DBE's, as defined in 49CFR part 26, and ensure they have an equal opportunity to receive and participate in DOT-assisted contracts. It is our policy to:

- A. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
- B. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
- C. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- D. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- E. Help remove barriers to the participation of DBEs in DOT assisted contracts;
- F. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
- G. Support small business in order to facilitate free and open competition in BFT's FTA assisted contracting opportunities.

BFT's Director of Administrative Services has been delegated as its DBE Liaison Officer. In that capacity, the Liaison Officer 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 BFT in its financial assistance agreements with the Department of Transportation.

BFT has disseminated this policy statement to its Board of Directors and all of the components within the organization as well as to DBE and non-DBE business communities that perform work for us on DOT assisted contracts.

## General Requirements

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### Objectives (26.1)

BFT's objective is to promote the use of all DBE's, as defined in 49CFR part 26, and ensure they have an equal opportunity to receive and participate in DOT assisted contacts.

### Applicability (26.3)

BFT is the recipient of federal transit funds authorized by Federal transit laws in Title 49 U.S. Code Chapter 53, as amended by HR 4348 the "Moving Ahead for Progress in the 21<sup>st</sup> Century Act" or "MAP-21."

### Definitions (26.5)

BFT adopts and incorporates by reference, the definitions contained in 49 CFR Section 26.5 for this program.

### Non-discrimination Requirement (26.7)

Ben Franklin 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, BFT 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.

### Record Keeping Requirements (26.11)

#### Uniform Report of DBE Awards or Commitments & Payments (26.11a)

BFT will report DBE participation to the Federal Transit Administration (FTA) using the uniform Report of DBE Awards or Commitments and Payments, found in Attachment 1, Form D, by December 1st and June 1st. DBE participation reports due on December 1st will include April 1st through September 30th and reports due on June 1st will include October 1st through March 30th.

#### Bidders List (26.11c)

BFT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder's list will include the name, address, DBE non-DBE status, age and annual gross receipts of firms.

The certification identification number provided by Washington State is information that will be obtained through a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

### Assurances (26.13)

BFT has signed the following assurances, applicable to all DOT assisted contracts and their administration:

#### Federal Financial Assistance Agreement Assurance (26.13a)

BFT 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. BFT shall take all necessary and reasonable steps under 49 CFR part 26 to ensure non-discrimination in the award and administration of DOT assisted contracts. BFT'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 BFT 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 (26.13b)

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

The contractor, subrecipient, 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 BFT deems appropriate.

## Administrative Requirements

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### DBE Plan Updates (26.21)

BFT will continue to carry out this program until all funds from DOT financial assistance have been expended and will provide to DOT updates representing significant changes in the program.

### DBE Liaison Officers (26.25)

BFT has designated the following individual as its DBE Liaison Officer (DBELO):

Matthew Branson  
Interim Director of Administrative Services  
1000 Columbia Park Trail  
Richland, WA, 99352  
509-734-5168

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials and the following:

- Advise the General Manager and Board of Directors on DBE matters and achievement.

The DBELO has three staff to assist in the administration of the DBE program, the Procurement Manager and two Procurement Staff. Their duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Review third party contracts and purchase requisitions for compliance with this program.
- Work with departments to set overall annual goals.
- Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurement so that DBE goals are included in solicitations both race-neutral methods and contract specific goals attainment, and identifies ways to improve progress.
- Analyze BFT's progress toward goal attainment and identifies ways to improve progress.
- Participate in pre-bid meetings.
- Participate with the legal counsel and project director to determine contractor compliance with good faith efforts.
- Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Provide outreach to DBEs and community organizations to advise them of opportunities.
- Maintains BFT's updated directory on certified DBEs.

Washington State Office of Minority and Woman's Business Enterprises has the sole authority to perform certification to the criteria set by DOT.

### *DBE Financial Institutions (26.27)*

It is the policy of BFT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. BFT will re-evaluate the availability of DBE financial institutions every five years as previous contracts end and/or expire.

BFT has made the following efforts to identify and use such institutions: A Request for Proposal (RFP) was submitted to banking institutions to provide banking services to BFT in 2014. The RFP contained the following statements:

- NON-DISCRIMINATION ASSURANCES

The CONTRACTOR or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The CONTRACTOR shall enforce all applicable requirements of 49 CFR part 26 in the award and administration of Department Of Transportation 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 other such remedy as BFT deems appropriate.

- DBE ENTERPRISE GOALS

- This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, and *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation is less than 4.4%. A separate contract goal of DBE participation has not been established for this procurement.
- The CONTRACTOR 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 this DOT assisted contract. 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 BFT deems appropriate. Each subcontract the CONTRACTOR signs with a subcontractor must include the assurance in this paragraph (*see* 49 CFR 26.13(b)).

To date BFT has identified the following such institutions:

U.S. Bank received the contract which started January 1<sup>st</sup>, 2015.

<b>CONTRACTOR</b>	<b>Evaluation Points</b>	<b>Evaluated Cost for Five Years</b>
<b>U.S. Bank</b>	<b>79/92</b>	<b>\$168,316</b>
Banner Bank	74/86	\$266,673
Bank of America	73/NA	\$251,489
Columbia Bank	57/NA	\$190,777

Respondents were:

*Banner Bank, Nikki Geiszler, VP Cash Management Sales, 509-521-3898*

*Bank of America, Vikiy Heider, 7600 W Quinault Ave, Kennewick WA 99336, 509-736-1740*

*Columbia Bank, 139 Gage Blvd, Richland, WA 99352, Brandi Hilmes, Branch Officer, 543-1211*

*US Bank, Rodolfo (Rudy) Mendoza Mendoza, Vice President, Relationship Manager, 1305 Fowler Street, Suite 201, Richland, WA 99352, (509) 735-2662*

All of the respondents were contacted, and none identified themselves as DBE qualified.

## Prompt Payment Mechanisms (26.29)

### Prompt Payment (26.29a)

BFT 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 contractor receives from BFT. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval from BFT. This clause applies to both DBE and non-DBE subcontracts.

### Retainage (26.29b)

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

### Monitoring & Enforcement (26.29c)

In order to ensure compliance with DBE requirements in its contracts, BFT staff and/or representatives at job sites will continually monitor that work committed to being performed by DBEs is actually performed by the DBEs named in the bid or proposal, as applicable. A clause will be included in all contracts requiring that the contractor cannot substitute DBE subcontractors without prior written consent from BFT. In addition, if a DBE subcontractor is unable to perform the work contracted for, the prime contractor must either replace such subcontractor with another DBE or show BFT that good faith efforts have been made to do so.

BFT staff and/or representative monitor projects to ensure that the DBE was paid in a timely fashion. BFT is required by the State of Washington to have the contractor provide a weekly prevailing wage form completed by the contractor and all subcontractors. BFT received copies of the weekly prevailing wage forms that show when the DBE worked and how many days and hours they were on the job.

BFT will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program so that DOT can take the steps (for example, 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.

Attachment 3 lists the regulations, provisions, and contract remedies available to BFT in the event of noncompliance with the DBE regulation by a participant in its procurement activities.

## Directory (26.25)

BFT uses the DBE directory maintained by the Washington State Office of Minority and Woman's Business Enterprises (MWBE), created by RCW 39.19.030 in 1983. The powers and duties accorded to the office include, but are not limited to, the development and maintenance of a central minority and women's business enterprise certifications list. On January 1, 1988, the office became the sole authority to perform certification of Minority Business Enterprises (MBE), Women's Business Enterprises (WBE) and DBE's through the State of Washington. Certification by the office allows these firms to participate in MWBE programs administered by the state and any city, town or county,

special purpose district, public corporation created by the state, Municipal Corporation, or Quasi-Municipal Corporation within the State of Washington.

The Directory of Certified Minority, Women and DBE's were developed to provide a central listing and description of business that have been certified by the Washington State Office of MWBE. Its format is based on the 1987 edition of the Standard Industrial Classification (SIC) Manual, published by the Executive Office of the President, Office of Management and Budget. The Directory is published in hard copy four times a year and is also available on formatted diskettes. The Internet address for this list is <http://www.omwbe.wa.gov>.

### *Overconcentration (26.33)*

BFT has not identified any overconcentration of DBE participants. When such projects are undertaken, BFT hires a primary contractor to fill the needs. The primary contractor will be asked to identify any overconcentration of DBE firms. If such a situation presented itself, BFT will work with the contractor and obtain DOT approval of determinations of overconcentration and measures for dealing with them.

### *Business Development Programs (26.35)*

This plan does not contain a Business Development Program.

### *Monitoring and Enforcement Mechanisms (26.37)*

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

- BFT 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.
- BFT will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 3 includes information regarding regulation, provisions, and contract remedies available to BFT in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
- BFT 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 written certification that BFT will review contracting records and monitor work sites if applicable on which DBEs are performing, and will occur for each contract/project on which DBEs are participating.
- BFT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### Small Business Participation (26.39)

BFT incorporates the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT assisted public works projects by (DBE and non-DBE) small business concerns:

- Structure contracting requirement to facilitate and encourage competition and participation among small business and DBE's.
- Removal of unnecessary and unjustified bundling of contract requirements.
- Require prime contractors to provide subcontracting opportunities of the type and size that small businesses, including DBEs can reasonably compete for and perform where possible.
- Identify alternative strategies and structuring purchases to allow consortia or joint ventures to compete for and perform prime contracts.
- Review available DBEs, per OMWBE, in BFT's market area for DOT-funded projects and procurements.
- BFT will maintain a webpage with its DBE Program Plan including contact information for inquiries and guidance.

### Goals, Good Faith Efforts, & Counting

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#### Quotas (26.43)

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

#### Overall Goals (26.45)

BFT will submit a recalculated DBE goal to FTA by August 1<sup>st</sup>, every three years.

BFT will establish project-specific DBE goals as appropriate for each DOT-assisted contract. The process generally used by BFT to establish overall DBE goals is as follows:

##### 1. Developing a Base Figure

- a. Determine the “Weight of Each Type of Work” by NAICS Code is projected.
- b. Determining all anticipated DOT-assisted contracts and their estimated cost that BFT will administer, and then identify the corresponding NAICS code for this project/purchase.
- c. Use the “Weighted Measures Goal Setting DBE Worksheet” to calculate each project’s percent of the total estimated DOT funding. (Table 1)

Table 1

NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
541512	Integrated Bus Technology Systems	\$1,376,250.00	0.1747
423690	Network Switches	\$41,752.00	0.0053
423690	Bus Equipment (Cradle Points for Buses)	\$153,600.00	0.0195
541330	Engineering - Automatic Fluid Dispensing System	\$65,000.00	0.0082
541330	Passenger Amenities Design	\$75,830.00	0.0096
541330	A & E Services - Three Rivers Transit Center	\$20,817.00	0.0026
541330	A & E Services - Operations Building Improvement	\$274,906.00	0.0349
541330	A & E Services - Knight Street Transit Center	\$227,098.00	0.0288
541330	A & E Services - Facility Maintenance Building	\$112,158.00	0.0142
541330	A & E Services - Security System	\$47,987.00	0.0061
236220	Automatic Fluid Dispensing System	\$275,800.00	0.0350
236220	Transit Center Renovation - Three Rivers	\$152,928.00	0.0194
236220	Transit Center Renovation - Knight Street	\$1,665,382.00	0.2113
236220	Facilities Maintenance Building	\$822,494.00	0.1044
236220	Operations Building Renovation	\$2,015,974.00	0.2558
561621	Security System	\$551,847.00	0.0700
			0.0000
<b>Total FTA-Assisted Contract Funds</b>		<b>\$7,879,823.00</b>	<b>1</b>

2. Determine the relative availability of DBE's by NAICS Code by entering the "total number of DBE firms" and "Number of all firms available (including DBEs)" into the "Weighted Measures Goal Setting DBE Worksheet." Using the "Available Firms" worksheet BFT:
  - a. Determines the number of all firms ready willing and able to perform the types of contract we anticipate awarding. This is accomplished by searching on <http://censtats.census.gov/> under "County Business Patterns" select Washington State, Franklin and then Benton County. By separately selecting each county, BFT establishes the "Total Establishments" or number of businesses within each county.
  - b. Determines the number of DBE firms ready willing and able to perform the types of contract we anticipate awarding. This is accomplished by searching the Washington State Office of Minority and Women Owned Business Enterprises database directory using the NAICS codes corresponding with

each project, BFT then narrows the search by selecting Washington State, Franklin and then Benton County. This provides the total number of DBE firms certified to conduct work within BFT’s service area and bidding community.

- c. Under “Search Results” for each NAICS code is a list of DBE firms certified to conduct work within BFT’s service area and bidding community to establish the “Number of all firms available (including DBEs).” (Table 2)

Table 2

<b>NAICS Code</b>	<b>Project</b>	<b>Number of DBEs available to perform this work</b>	<b>Number of all firms available (including DBEs)</b>	<b>Relative Availability</b>
541512	Integrated Bus Technology Systems	1	26	0.0385
423690	Network Switches	1	5	0.2000
423690	Bus Equipment (Cradle Points For Buses)	1	5	0.2000
541330	Engineering - Automatic Fluid Dispensing System	1	98	0.0102
541330	Passenger Amenities Design	1	98	0.0102
541330	A & E Services - Three Rivers Transit Center	1	98	0.0102
541330	A & E Services - Operations Building Improvement	1	98	0.0102
541330	A & E Services - Knight Street Transit Center	1	98	0.0102
541330	A & E Services - Facility Maintenance Building	1	98	0.0102
541330	A & E Services - Security System	1	98	0.0102
236220	Automatic Fluid Dispensing System	3	44	0.0682
236220	Transit Center Renovation - Three Rivers	3	44	0.0682
236220	Transit Center Renovation - Knight Street	3	44	0.0682
236220	Facilities Maintenance Building	3	44	0.0682
236220	Operations Building Renovation	3	44	0.0682
561621	Security System	0	2	0.0000
<b>Combined Totals</b>		<b>25</b>	<b>944</b>	<b>0.0265</b>

- d. Finally the “Relative Availability” of DBE’s is multiplied by the “Weight of Each Type of Work” to identify “Weighted Base Figure” for each NAICS

area. The combined total of all “Weighted Base Figures” provides the total “Weighted Base DBE Goal” for the project(s). (Table 3)

Table 3

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
541512	Integrated Bus Technology Systems	0.17465	x	0.03846	0.0067
423690	Network Switches	0.00530	x	0.20000	0.0011
423690	Bus Equipment (Cradle Points For Buses)	0.01949	x	0.20000	0.0039
541330	Engineering - Automatic Fluid Dispensing System	0.00825	x	0.01020	0.0001
541330	Passenger Amenities Design	0.00962	x	0.01020	0.0001
541330	A & E Services - Three Rivers Transit Center	0.00264	x	0.01020	0.0000
541330	A & E Services - Operations Building Improvement	0.03489	x	0.01020	0.0004
541330	A & E Services - Knight Street Transit Center	0.02882	x	0.01020	0.0003
541330	A & E Services - Facility Maintenance Building	0.01423	x	0.01020	0.0001
541330	A & E Services - Security System	0.00609	x	0.01020	0.0001
236220	Automatic Fluid Dispensing System	0.03500	x	0.06818	0.0024
236220	Transit Center Renovation - Three Rivers	0.01941	x	0.06818	0.0013
236220	Transit Center Renovation - Knight Street	0.21135	x	0.06818	0.0144
236220	Facilities Maintenance Building	0.10438	x	0.06818	0.0071
236220	Operations Building Renovation	0.25584	x	0.06818	0.0174
561621	Security System	0.07003	x	0.00000	0.0000
<b>Total</b>					0.0554
<b>Expressed as a % (*100)</b>					5.54%
<b>Rounded, Weighted Base Figure:</b>					<b>6%</b>

Adjusting Base Figure

BFT calculates the adjusted goal by taking the total of the “new weighted base DBE goal” and the 3.30% historic median percentage, then dividing by 2 resulting in an adjusted “DBE goal” of 4.42% or \$315,193 of estimated DOT funded projects. (Table 4)

Table 4

<b>Year</b>	<b>Overall DBE Achieved</b>
2015	3.30%
2016	4.00%
2017	.50%
Median	3.3%
Weighted Base Figure	5.54%
Historical Median	3.30%
Sum	8.84%
Divided by Two	4.42%
<b>2019-2021 DBE Goal Rounded</b>	<b>4.00%</b>
<b>DBE Goal Monetarily Listed</b>	<b>\$315,193</b>

DBE Goal Setting Timeline & Checklist

**90 – 120 days prior to the due date of the three-year annual review of BFT’s DBE Program:**

- Procurement Manager shall notify and provide DBE liaison (Director of Administrative Services) a schedule for the listed tasks listed below 120 days prior to the due date of the DBE Program to FTA.
- Evaluate the extent of the geographic boundaries of Ben Franklin Transit’s (BFT) service area and bidding community as a source of DBE’s.
- Evaluate the number of DBE’s likely to be available for contracting and subcontracting opportunities.
- Evaluate the percentage of minority and female population in BFT’s service area or bidding community.
- Evaluate the historic participation of DBEs on past BFT projects with DBE goals.
- Evaluate the historic availability of DBEs in BFT’s service area and bidding community.
- Evaluate the demographic changes in BFT’s service area and bidding community.
- Evaluate the WA State OMWBE Directory and knowledge of local conditions, which might indicate a reasonable likelihood that new DBE businesses are available and interested in performing work on BFT projects.
- Evaluate the probable capacity of the available DBE businesses in BFT’s service area and bidding community to perform the contracting and subcontracting opportunities.

- Evaluate the number, type, and dollar value of contracting and subcontracting opportunities related to a project for which BFT will utilize DOT funding assistance.

**60 - 90 days prior to BFT's DBE program due date:**

- Prepare draft DBE program.
- Submit draft to DBE liaison for review.

**30 - 60 days prior to BFT's DBE program due date:**

- BFT will publish a notice of the proposed goal on its website, informing the public that the proposed goal and its rationale are available for inspection on BFT's website 30 days following the date of the notice, and informing the public that comments on the goals will be received for 30 days from the date of the notice. The notice will include addresses to which comments may be sent.
- Contact local minority groups for feedback on proposed DBE goal.
- Inform DBE liaison of feedback and report status of the report.

**15 - 30 days prior to BFT's DBE program due date:**

- Analyze information and comments received during the public participation process and make changes if needed to the final DBE report.
- Submit final DBE program report to DBE liaison.
- Submit approved DBE program report to FTA Region X.

*Goal Setting and Accountability (26.47)*

If the awards and commitments shown on BFT'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 problems identified in the analysis; and
3. Keep the analysis and milestones on file to monitor ongoing progress.

*Bi-Annual Uniform Report of DBE Commitments/Awards and Payments (26.48a)*

BFT will conduct analysis for bi-annual and DBE participation from awarded contracts in the 12 months prior to September 30th, of each year.

- Procurement Manager will analyze contract awards between October 1<sup>st</sup> & March 31<sup>st</sup> and April 1<sup>st</sup> & September 30<sup>th</sup> of each year to meet FTA's bi-annual uniform reports of DBE commitments/Awards and payments.
- Procurement Manager will provide a draft DBE report to the DBE liaison officer and Budget/Grants Analyst for review within 30 days of March 31st and September 30<sup>th</sup> of each year.

- DBE liaison officer and Budget/Grants Analyst will review and make modifications within 15 days of receipt of draft.
- Procurement Manager will submit bi-annual uniform report of DBE commitments/awards prior to June 1<sup>st</sup> and December 1<sup>st</sup> of each year.
- In-order to ensure the submittal dates are met during each fiscal year, procurement departments will include the dates on the monthly task list.

### DBE Goal Annual Shortfall Analysis (26.48b)

BFT will complete a shortfall analysis if the annual uniform report of DBE Awards does not meet the annual BFT DBE goal.

- Procurement Manager will notify DBE liaison officer (Director of Administration Services) by December 1<sup>st</sup> of each year if BFT is required to complete a shortfall analysis.
- If a shortfall analysis is required, Procurement Manager will provide a DBE liaison officer with a draft shortfall analysis plan within twenty (20) days.
- The DBE liaison officer will review shortfall analysis plan and make modifications if necessary.
- Procurement Manager shall complete shortfall analysis by December 31.
- In-order to ensure the bi-annual Uniform Report of DBE Commitments/Awards is completed and the determination if the annual Shortfall Analysis Report is required and completed; both tasks will be added to the procurement departments monthly task list.

### Transit Vehicle Manufacturers Goals (26.49)

BFT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA assisted transit vehicle procurement, to certify that it has complied with the requirements of this section. Alternatively, BFT 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 Transit Vehicle Manufacturer (TVM) complying with this element of the program.

BFT will notify FTA Region X within 30 days from contract award for FTA transit funded vehicles. BFT procurement staff will report the award of vehicles on the following website: <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/civil-rightsada>.

### Meeting Overall Goals / Contract Goals (26.51)

BFT will use contract goals to meet any portion of the overall goal BFT does not foresee meeting 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.

BFT will establish contract goals only on DOT assisted contracts that have subcontracting possibilities. BFT 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.)

BFT will express contract goals as a percentage of the total amount of the Federal share of DOT assisted contracts.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of BFT 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 1.5% percent has been established for this contract. The bidder/offeror shall fill out bidder's form (Attachment 1), to document if the bidder is able 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 is participating in the project.

Counting DBE Participation (26.55)

Work credited: When a DBE is participating in a FTA-assisted contract, only the work performed by the DBE will be counted toward BFT's annual goals. DBE credit shall be applied as follows in accordance with 49 CFR part 26.55:

- The entire amount of the work performed by a DBE under a service related (such as professional, technical, consultant, or managerial) or construction contract shall be counted including costs of materials and supplies necessary to perform the work, fees normally charged, cost of bonding and insurance.
- If the DBE contractor supplies materials only, 100% of the cost of such materials will be counted if the DBE is a manufacturer of the materials or if the contractor substantially alters materials before resale.
- If the DBE is a regular dealer and is not a manufacturer, only 60% of the cost of materials will be counted.
- DBEs must perform a commercially useful function to be eligible for credit toward the contract goals. This means that a DBE must be responsible for a distinct element of work by actually performing, managing, and supervising the work involved. A DBE may, of course, enter into subcontracts, whose value may be counted toward its DBE goal only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal

industry practice for the type of work involved, it is presumed not to be performing a commercially useful function and neither the value of the DBE contract nor the subcontracts may be counted.

Credit counting: DBE participation credit will not be counted toward BFT's annual goal until DBE has received payment.

## *Certification*

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### *Certification (26.61 - 26.73)*

BFT uses the certification standards followed by the State of Washington in its implementation of a statewide certification program as described in RCW 39.19.

The Washington State Office of Minority and Women Business Enterprises (OWMBE) has legislative authority to perform all minority, women and disadvantaged business enterprise certifications for all public agencies in the state. For DBE certifications, the OWMBE 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.

### Process

The OWMBE has a unified certification program and also conducts re-certifications and de-certifications.

### Certification Appeals

BFT does not certify firms (the State of Washington does this). However, any complainant may appeal a certification matter to DOT. Such appeals may be sent to:

Department of Transportation  
Office of Civil Rights  
Certification Appeals Branch  
400 7th St., SW, Room 2104  
Washington, DC 20590

BFT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for its DOT assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

### "No Change" Affidavits and Notices of Change

BFT requires all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR part 26 or of any material changes in the information provided with its application for certification.

## *Compliance & Enforcement*

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### *Information, Confidentiality, Cooperation (26.109)*

BFT requires prime contractors to maintain records and documents of payments to DBEs for three years following the end of performance of the contract. These records will be made available for inspection, upon request of any authorized representative of BFT or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

BFT reports DBE participation as required to the DOT, WA State DOT auditors and FTA triennial auditors.

BFT 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, 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.

# Attachment 1: Bidders Information Form

## BIDDERS INFORMATION

Dear Bidder:

As required by 49 CFR Part 26.11, BFT is required to create and maintain a bidders list of all firms bidding on prime contracts and bidding or quoting subcontracts on Department of Transportation-assisted contracts.

To comply with this provision of the regulations, BFT requests the following information required by the Federal Transit Administration. **This information is not used in determining award of contract or in evaluating your proposal in any way. Providing this information is voluntary.**

Company Name: \_\_\_\_\_

Company Address: \_\_\_\_\_

North American Industry Classification System (NAICS) Code: \_\_\_\_\_

Type of Business: \_\_\_\_\_

Telephone No: \_\_\_\_\_ Fax No. \_\_\_\_\_

Email Address: \_\_\_\_\_

Authorized Signature: \_\_\_\_\_

Printed Name and Title: \_\_\_\_\_

Date Signed: \_\_\_\_\_

Is your firm a Disadvantaged Business Enterprise (DBE) registered with the State of Washington Office of Minority and Women's Business Enterprises?

Yes       No

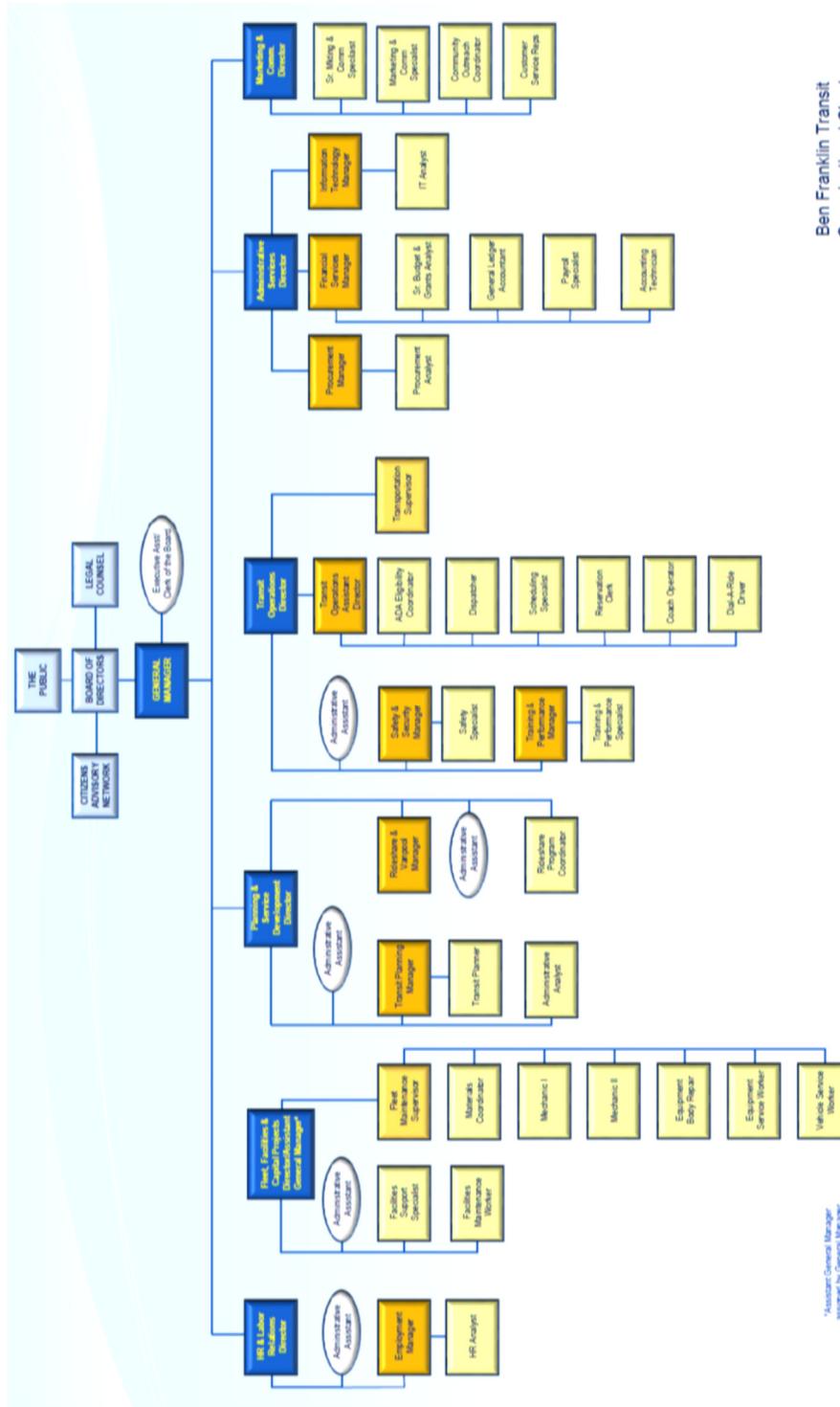
How long has your firm been in business? \_\_\_\_\_

Please check the box that describes your total gross annual receipts:

- |  |  |
|--|--|
| <input type="checkbox"/> less than \$500,000       | <input type="checkbox"/> \$3,000,001 - \$3,500,000 |
| <input type="checkbox"/> \$500,000 - \$1,000,000   | <input type="checkbox"/> \$3,500,001 - \$4,000,000 |
| <input type="checkbox"/> \$1,000,001 - \$1,500,000 | <input type="checkbox"/> \$4,000,001 - \$4,500,000 |
| <input type="checkbox"/> \$1,500,001 - \$2,000,000 | <input type="checkbox"/> \$4,500,001 - \$5,000,000 |
| <input type="checkbox"/> \$2,000,001 - \$2,500,000 | <input type="checkbox"/> \$5,000,001 - \$5,500,000 |
| <input type="checkbox"/> \$2,500,001 - \$3,000,000 | <input type="checkbox"/> greater than \$5,500,000  |

Thank you very much! Please return this form to BFT's procurement Manager, 1000 Columbia Park Trail, Richland , WA 99352, or include it with your bid or proposal (phone (509) 734.5125).

# Attachment 2: Organizational Chart



Ben Franklin Transit  
Organizational Chart  
September 2018

\*Assistant General Manager assigned by General Manager

## *Attachment 3: Monitoring and Enforcement Mechanisms*

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BFT will utilize several methodologies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract.
2. Statutory penalties under RCW 39.19.080 and 39.19.090 for noncompliance.
3. Other applicable laws, statues, and regulations.

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.

## Attachment 4: Goal Setting Methodology

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### Amount of Goal

BFT's overall goal for 2019-2021 is 4.0% of the 80% Federal Financial assistance it expends in DOT assisted contracts.

### Methodology used to Calculate Overall Goal

#### Step 1:

Determine the base figure for the relative availability of DBEs. The base figure for the relative availability of DBE's is calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, Willing, and Able DBEs}}{\text{All firms Ready, Willing and Able}}$$

The data source or demonstrable evidence used to derive the numerator: US Census County Business Patterns sorted by United States.

The data source or demonstrable evidence used to derive the denominator: Washington State's OWMBE DBE Registry.

The numerator divided by the denominator is the base figure for BFT's final unadjusted goal: 5.54%

#### Step 2:

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

From this data, BFT's final adjusted goal: 4.0%

### Washington State Disparity Study

Ben Franklin Transit (BFT) examined Washington State Department of Transportation (WSDOT) "2017 Disparity Study" that was completed in 2017 to determine whether to adjust BFT's race neutral goal and include a race conscious goal. BFT acknowledges there are quantifiable barriers for minority businesses. After reviewing the WSDOT list of contracts found in WSDOT's 2017 disparity study, BFT has determined it will not be adjusting the goal, for now, to include a race conscious goal.

WSDOT awards contracts on a larger scope, scale and geographic area than BFT. The majority of WSDOT's contracts are for construction and engineering, whereas BFT's FTA funded projects are more diverse. BFT's contracts include construction and engineering, but also include passenger amenities studies, technology (bus I.T. equipment, cameras, security, etc.), etc. This makes race-conscious goal setting on contracts difficult as the number of able and willing firms that are available in Benton & Franklin Counties or even in the State are limited or do not exist.