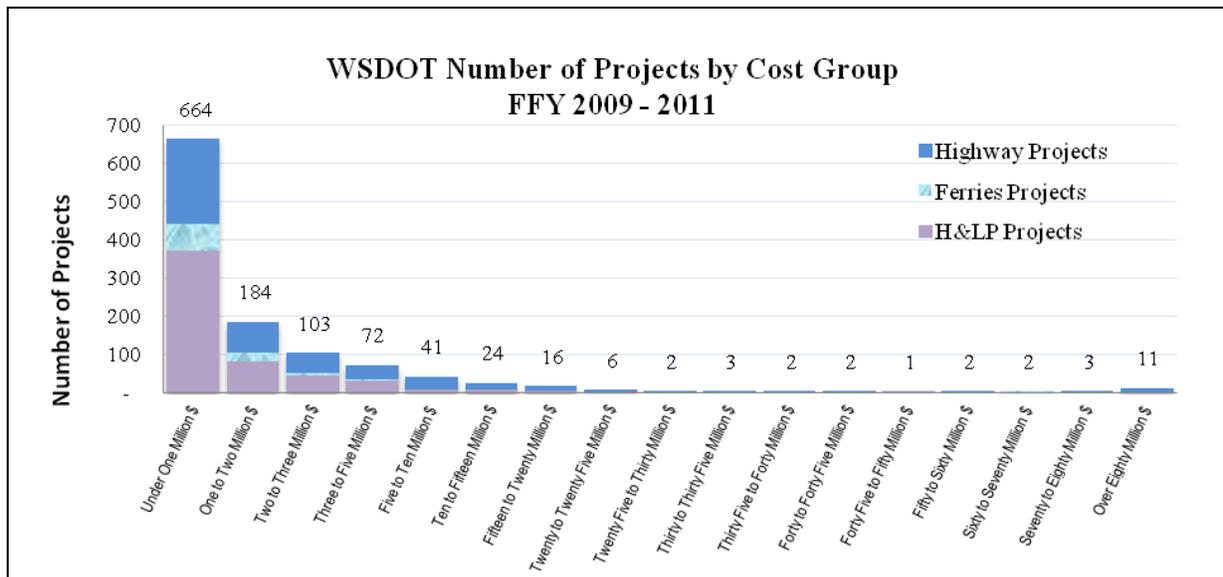


## Small Business Enterprise Program Participation Plan

The Washington State Department of Transportation (WSDOT) is committed to ensuring all businesses, specifically small businesses, receive adequate opportunities to participate in WSDOT contracting, consulting and procurement activities. WSDOT is required by 49 Code of Federal Regulation (CFR) Subsection 26.39 to implement a Small Business Enterprise (SBE) Program. The SBE Program is an element of the Disadvantaged Business Enterprise (DBE) Program; a requirement of receiving Federal Financial Assistance from the USDOT Federal Highway Administration, Federal Aviation Administration, and Federal Transit Administration. WSDOT has elected to utilize the following measures to implement the SBE Program within WSDOT:

### Section A – Unbundling & Ensuring Adequate Contracts are of a Reasonable Size for Small Businesses

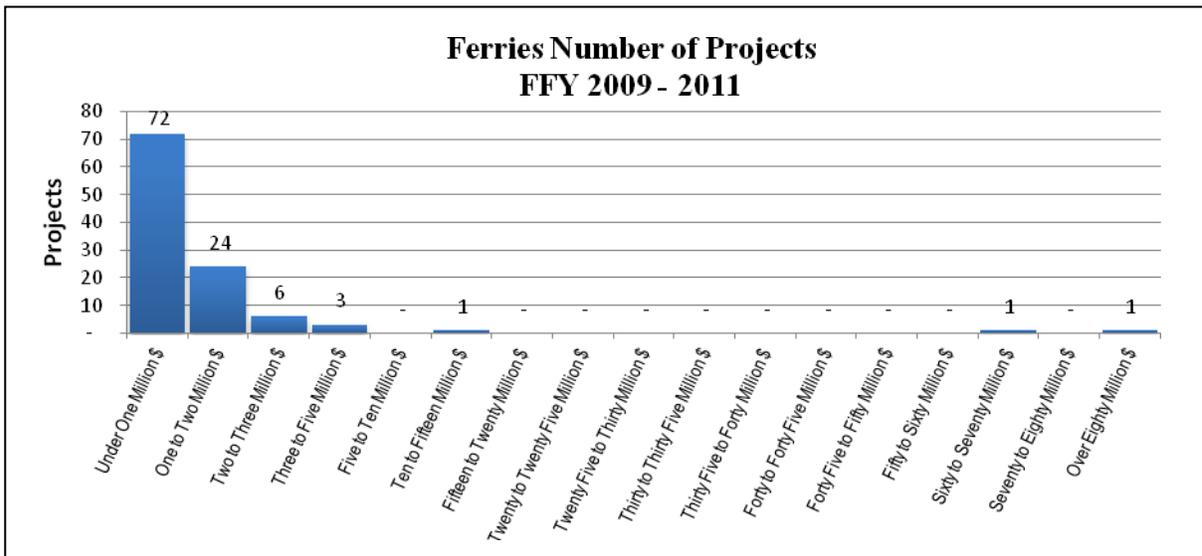
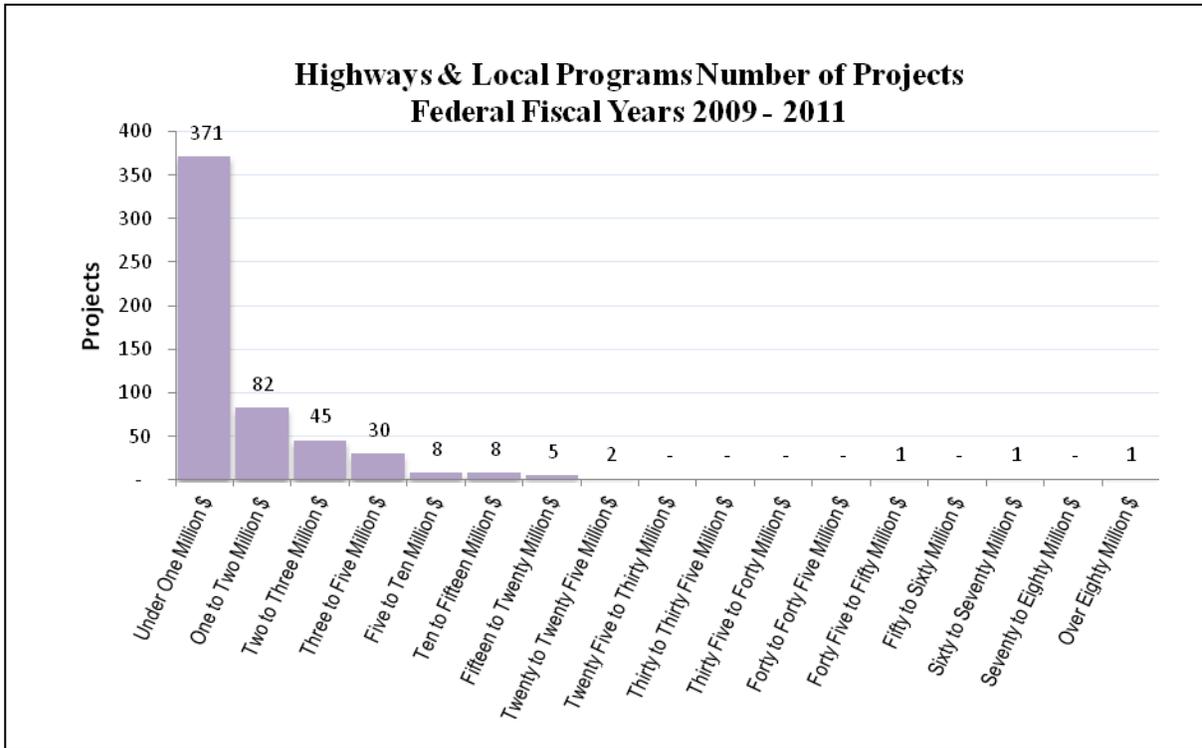
To determine if WSDOT needed to implement an unbundling measure, WSDOT evaluated the contracts let in previous Federal Fiscal Years (FFY). During Federal Fiscal Year 2009 through 2011, out of one thousand one hundred thirty eight (1,138) construction contracts let by WSDOT, Washington State Ferries<sup>1</sup> (WSF) and Local Agencies (through the Highways & Local Programs Division), six hundred sixty four (664) contracts or fifty eight percent (58%) were less than one million dollars (\$1,000,000). This is illustrated in further detail below<sup>2</sup>:



<sup>1</sup> WSF projects receive funding from the Federal Highway Administration and Federal Transit Administration.

<sup>2</sup> Source: H&LP tracking spreadsheets “DBE Awards” and Construction Datamart.

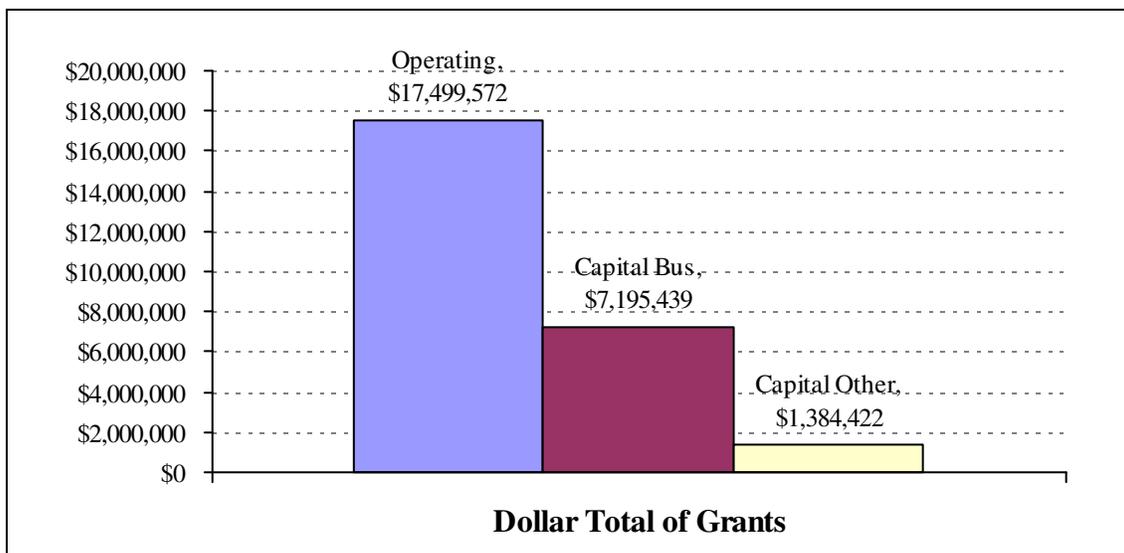
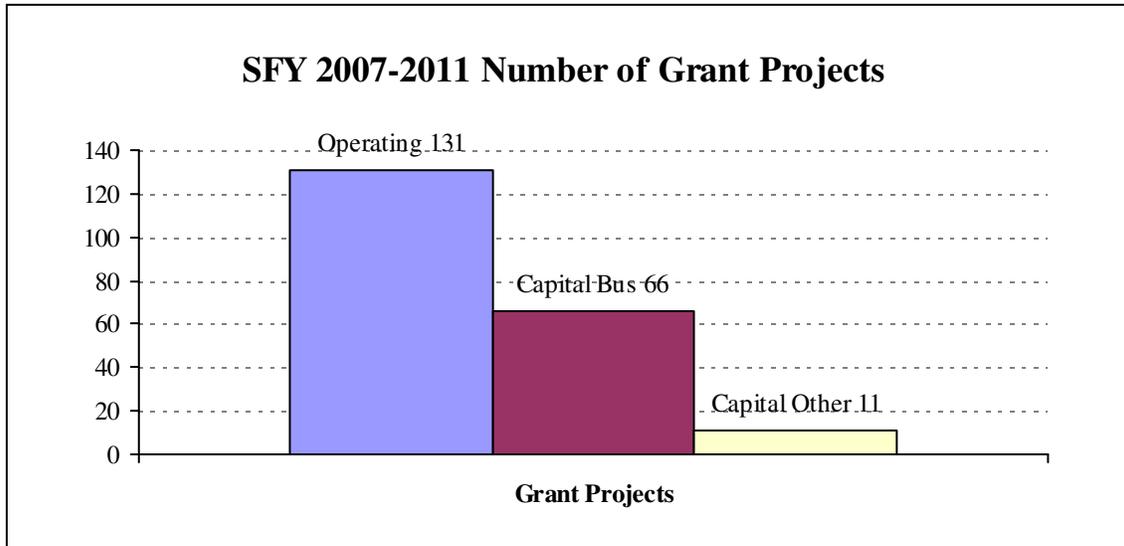
WSDOT has determined that the contracts administered by the Highways & Local Programs Division are adequately sized so that small businesses can participate. Fifty percent (50%) of the contracts let by Local Agencies are less than \$600,000.<sup>3</sup> Sixty seven percent (67%) of the Highways & Local Programs Division administered contracts are less than \$1,000,000. Further information regarding the size of these contracts is illustrated below<sup>4</sup>:



<sup>3</sup> The median project cost for Highway & Local Programs Division administered contracts for Federal Fiscal Year 2009-2011 was \$561,658.20; whereas the average was \$1,754,997.90. The median was utilized rather than the mean (simple average) due to the few large projects which artificially skewed the average compared to the median.

<sup>4</sup> Source: H&LP tracking spreadsheets "DBE Awards" and Construction Datamart.

To determine if the Public Transportation Division (PTD) needed to consider unbundling, grants awarded during State Fiscal Years (SFY) 2007 through 2011 were evaluated<sup>5</sup>. During this timeframe, one hundred fifty three (153) grants were awarded to subrecipients. The average grant award was \$270,976.74<sup>6</sup>. The grants were disseminated as follows<sup>7</sup>:



In summary, WSDOT will not be implementing any measure to unbundle contracting opportunities due to the large number of projects and grants that are of a reasonable size for small businesses inclusion.

<sup>5</sup> As PTD awards projects on a State Biennium basis, projects for the present State Biennium (2011-2013) were not evaluated as this information was not yet available during the DBE goal evaluation and this decision was made to stay consistent.

<sup>6</sup> For this State Fiscal Years 2007-2011 the average Operating Award was \$275,954, the average Capital Bus award was \$276,521 and the Average Capital Other award was \$196,436.

<sup>7</sup> Source: Public Transportation Division "Average Award Information".

## **Section B – Small Business Set Asides**

Per 49 CFR § 26.39, WSDOT can utilize Small Business Enterprise (SBE) Program set-asides due to race and gender neutrality of the SBE Program. The laws of Washington State, Revised Code of Washington (RCW) 39.04.155, allow for WSDOT to utilize a Limited Public Works (LPW) Roster. This statute allows WSDOT to award LPW under thirty five thousand dollars (\$35,000) to businesses with gross receipts less than \$1,000,000. WSDOT will begin using this process for firms of this size. To ensure that firms with gross receipts less than \$1,000,000 are legitimately of this size, they will be required to be certified by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE)<sup>8</sup>, pursuant to Section E – Small Business Certification of the SBE Program Participation Plan.

When utilizing the LPW Roster, WSDOT is required to solicit written quotes from three (3) firms. Due to the size and scope of the project, these firms may be within a limited geographic region. However all three (3) firms solicited must be Micro-Small Business Enterprises (i.e. firms with less than \$1,000,000 in average gross receipts). RCW 39.04.155 allows WSDOT to waive payment and performance bond required by RCW 39.08. WSDOT will evaluate the positive and negative impacts of waiving this requirement.<sup>9</sup>

These requirements will be effective within nine (9) months of approval from the Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). For more information on how these requirements will be implemented, please reference Section I – Implementation Timeline.

## **Section C – Design-Build Participation**

On WSDOT’s Mega Projects administered through the Design-Build process; WSDOT will require as part of the DBE Program Participation Plan submission, a Small Business Participation Plan. This plan will be required to include the following:

- I. What types/elements of work the company can subcontract to smaller firms;
- II. How the contractor will outreach and include firms of all sizes;
- III. How the company will restructure their bidding and procurement practices to better enable smaller companies to compete (i.e. decreased bonding requirements, multiple contracts for one scope of work, etc.); and
- IV. The title of the individual who will be responsible for administering the SBE Program on the contract.

These requirements will be effective within nine (9) months of approval from FHWA, FTA and FAA. For more information on how these requirements will be implemented, please reference Section I – Implementation Timeline.

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<sup>8</sup> OMWBE serves as the Unified Certification Program on behalf of WSDOT per 49 CFR § 26.81.

<sup>9</sup> Please Note: WSDOT presently waives the retainage requirement of RCW 60.28 on federal-aid highway-related projects. Additionally, the Washington State Legislature is presently evaluating this for federal-aid transit-related projects.

## **Section D – Small Business Goals**

On federal-aid projects without an established DBE goal, the WSDOT Ad & Award Office, Highways & Local Program Division, Washington State Ferries, Consultant Services Office<sup>10</sup>, Public Transportation Division and Aviation Division will be required to implement aspirational (or voluntary) SBE goals. These SBE goals will be a standard ten percent (10%) of the project or contract total.

While WSDOT cannot require the prime contractor, consultant or recipient to provide documentation illustrating that they will be meeting the standard ten percent (10%) SBE project goal, we will require that the contractor submit a plan on how they will meet the aspirational goal. These plans will contain:

- I. What types/elements of work the company can subcontract to smaller firms;
- II. How the contractor will outreach and include firms of all sizes;
- III. How the company will restructure their bidding and procurement practices to better enable smaller companies to compete (i.e. decreased bonding requirements, multiple contracts for one scope of work, etc.); and
- IV. The title of the individual who will be responsible for administering the SBE Program on the contract.

These goals will be effective within nine (9) months of approval from FHWA, FTA and FAA. For more information on how these goals will be implemented, please reference Section I – Implementation Timeline.

## **Section E – Small Business Certification**

The SBE Certification Program<sup>11</sup> will be administered by the OMWBE in a manner similar to the administration of the DBE Certification Program<sup>12</sup>. The certification criteria (49 CFR Part 26) will remain similar to that of the DBE Program, without the consideration of gender/ethnicity<sup>13</sup>. For example, the firm will be required to be:

- Fifty one percent (51%) or more owned and controlled by an economically disadvantaged individual. All owners claiming to be economically disadvantaged shall be required to submit a Personal Net Worth Form.
- The firm will have to be considered a small business concern; with the overall size standard of \$22.41 million in average (three year) gross receipts.
- Regardless of gender and ethnicity of the firm's owner, the company and OMWBE will follow the certification procedures and application process outlined in 49 CFR Part 26.

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<sup>10</sup>The Consultant Services Office will require Small Business Participation Plans on Project Specific Agreements.

<sup>11</sup> The Interagency Agreement between WSDOT and OMWBE will set forth the certification criteria, procedures and fee schedule.

<sup>12</sup> In addition to performing DBE Certification, per RCW 39.19.120, OMWBE also administers the State Minority and Women's Business Enterprise Certification.

<sup>13</sup> Upon approval of this plan by the applicable USDOT operating administrations, all firms who are certified as DBEs will automatically be certified as SBEs, unless the firm opts to not participate in this program.

However, the certification determination will not be appealable to the U.S. Department of Transportation. After initial appeal to OMWBE, all certification determinations will be binding.

When certifying a firm as a “Micro-Business”; OMWBE shall utilize all of the certification criteria outlined above with the exception that the firm’s average gross receipts for three (3) years must be less than one million dollars. This additional designation will be deemed Micro-Small Business Enterprise “MSBE” and available to participation on the LPW Rosters. Firms will have to request this additional classification when applying for DBE or SBE certification.

OMWBE will begin offering SBE and MSBE certification within nine (9) months of approval from FHWA, FTA and FAA. For more information regarding the implementation of the SBE and MSBE certification, please reference Section I – Implementation Timeline.

### **Section F - Identify & Evaluate Alternative Acquisition Strategies**

To effectively administer the Small Business Enterprise Program, WSDOT evaluated all strategies identified within 49 CFR § 26.39, including the alternative acquisition strategies. Presently, WSDOT is only legislatively approved to implement Design-Build projects. However Washington State has other alternative project delivery methods available, including General Contractor – Construction Manager and Job Order Contracting. These methods of delivery have been evaluated for their effectiveness in enhancing DBE and SBE participation.

WSDOT has evaluated these methods and determined the Job Order Contracting process is conducive to creating equitable opportunities for all businesses<sup>14</sup>. The Job Order Contracting process is a delivery method by which the prime contractor performs a small portion of the contract (less than ten percent) and the rest of the work must be subcontracted to other firms. This delivery method is utilized mostly for vertical construction and could be very beneficial to the Small Business Program; specifically for the WSDOT Facilities Division. Presently, the Washington State Ferries Division is the only WSDOT Division legislatively authorized (RCW 39.10.420) to utilize Job Order Contracting. Therefore, WSDOT will attempt to utilize the agency request legislation process to authorize other divisions within WSDOT to use Job Order Contracting<sup>15</sup>.

Additionally, WSDOT will work with other state Departments of Transportation to identify additional alternative acquisition strategies to foster DBE and SBE participation.

WSDOT will evaluate current alternative design methodologies and attempt to issue agency request legislation within nine (9) months of approval from FHWA, FTA and FAA. For more information on how this will be evaluated and implemented, please reference Section I – Implementation Timeline.

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<sup>14</sup> Per RCW 39.10.440 “ the job order contractor must distribute as equitably as possible among qualified and available subcontractors including minority and woman-owned subcontractors to the extent permitted by law”

<sup>15</sup> Please Note: There is no guarantee that the Washington State Legislature will approve the Agency Request Legislation.

**Section G – Minority and Women’s Business Enterprises Existing Measures**

The USDOT Office of Small and Disadvantaged Business Utilization stated in its Small Business Program guidance that a local Minority and Women’s Business Enterprise (M/WBE) Program<sup>16</sup> may not be used to comply with 49 CFR § 26.39. However, WSDOT would like to note that Washington State has an M/WBE Program that is entirely race-neutral. WSDOT is presently achieving 3.86% M/WBE participation overall; with 4.11% M/WBE participation in construction and 24.53% M/WBE participation in professional services. Further information outlining the M/WBE accomplishments for State Fiscal Year 2011 (June 30, 2010 through July 1, 2011) is illustrated below:

<b>4050 Department of Transportation</b>					
<b>Class of Contract</b>	<b>Pbase Dollars</b>	<b>MBE Dollars</b>	<b>MBE %</b>	<b>WBE Dollars</b>	<b>WBE %</b>
Construction	854,063,065.00	13,569,586.00	1.59%	21,640,063.00	2.53%
Engineering & Architectural	133,813,568.00	450,085.00	0.34%	1,322,379.00	0.99%
Professional Services	9,616,084.00	1,840,054.00	19.14%	518,129.00	5.39%
Purchased Goods	15,082,558.00	200,429.00	1.33%	250,560.00	1.66%
Purchased Services	39,067,940.00	607,571.00	1.56%	124,739.00	0.32%
Travel	0.00	3,778.00	0.00%	0.00	0.00%
<b>Total</b>	<b>1,051,643,215.00</b>	<b>16,671,503.00</b>	<b>1.59%</b>	<b>23,855,870.00</b>	<b>2.27%</b>

**Section H – Outreach and Networking**

WSDOT has been proactive in developing race and gender neutral initiatives to support small businesses owned and controlled by all individuals. In 2009, WSDOT developed a Small Business Portal, available at: [www.wsdot.wa.gov/Business/opportunities/](http://www.wsdot.wa.gov/Business/opportunities/) which illustrates WSDOT’s commitment to Small Business and opportunities available (i.e. small works roster, on-call rosters, notice to contractors, contracting, procurements, etc). This website is available directly on WSDOT’s Business Website. WSDOT has also published a Commitment to Small Business Folio, which contains a listing of the programs, services, contacts, and resources available. This folio also provides information on how organizations can participate in WSDOT’s contracting, consulting and procurement activities. As the other activities outlined within this plan are developed, the Small Business Portal and Folio will be updated. This activity will be accomplished in conjunction with the other activities.

WSDOT also outreaches to all businesses; participating and hosting events statewide. These outreach events are targeted primarily to small, veteran, minority and women owned businesses. Some of the larger events include the Regional Contracting Forum, Business after Hours, Alliance Northwest, and the Washington State General Administration Statewide Vendor Fair. WSDOT will continue to outreach to all businesses and will work with community and trade based organizations and other entities to identify additional partnerships to increase the participation of Small Business Enterprises.

<sup>16</sup> WSDOT realizes this measure may not be directly considered part of the SBE Program but would like to recognize the accomplishments made under this program.

**Section I – Implementation Timeline**

Per the USDOT Office of Small and Disadvantaged Business Utilization, WSDOT is encouraged to include an implementation schedule as part of our submission process to ensure the Small Business Program is fully operational within the established nine (9) month. Therefore, following are the applicable accomplishments, corresponding activities, and due dates:

<b>Accomplishment</b>	<b>Activity</b>	<b>Due Date</b>
Unbundling & Ensuring Adequate Contracts are of a Reasonable Size for Small Businesses	Evaluate Contracts let for the Previous Three (3) Federal Fiscal Years to Ensure Contracts are of a Reasonable Size for Small Business Participation	Performed
Small Business Set-Asides	Evaluate Contracting Documents and Determine which Documents Need Revisions	Month 1
	Revise Documents	Month 3
	DBE Advisory Group Input on Revision	Month 5
	Submit Revised Documents to FHWA, FTA and FAA for Review, Comment and Approval	Month 9
Design-Build Participation	Evaluate Contracting Documents and Determine which Documents Need Revisions	Month 1
	Revise Documents	Month 3
	DBE Advisory Group Input on Revision	Month 5
	Submit Revised Documents to FHWA, FTA and FAA for Review, Comment and Approval	Month 9
Small Business Enterprise Goals	Evaluate Contracting Documents and Determine which Documents Need Revisions	Month 1
	Revise Documents	Month 3
	DBE Advisory Group Input on Revision	Month 5
	Submit Revised Documents to FHWA, FTA and FAA for Review, Comment and Approval	Month 9
Small Business Certification	Evaluate Present Processes and Procedures for DBE Certification Application & Revise for MSBE and SBE	Month 3
	Develop MSBE and SBE Certification Application, Processes and Procedures	Month 5
	Public Input and Participation Process	Month 7
	Evaluate Public Comments and Incorporate as necessary	Month 8
	Submit Applications and Process to FHWA, FTA and FAA for Review, Comment and Approval	Month 9

Identify Alternative Acquisition Strategies	Work with the Attorney General’s Office and Other Divisions to Identify State Statutes Which Need to be Modified to Allow for Job Order Contracting	Month 3
	Collaborate with WSDOT’s Facilities Division and Government Relations to Develop Agency Request Legislation	Month 5
	Submit the Agency Request Legislation	Month 9
	Survey Other State Department of Transportations’ Regarding Alternative Public Work Delivery Methods	Month 1
	Review Survey Responses and Determine Applicability to WSDOT	Month 3
	If Alternative Strategies Identified are Conducive to Small Business Participation, WSDOT Will Work with Assistant Attorney General and FHWA, FTA and FAA to Develop Agency Request Legislation	Month 5
Networking, Outreach and Materials	Update the Small Business Portal, Small Business Folio and Continue Outreaching	Ongoing
	Increase Partnerships with Small Business Related Organizations and Related Outreach Events	Ongoing

**Section J – Definitions**

*Limited Public Works Roster* is an alternative contracting methodology outlined in RCW [39.04.155](#), which allows Washington State agencies to award contracts less than thirty five thousand dollars (\$35,000) to Micro-Small Business Enterprises.

*Micro-Small Business Enterprise* is a firm which has been certified by OMWBE as a small business, owned and controlled 51% or more by an economically disadvantaged individual(s) whose gross receipts for three (3) years average less than one million dollars (\$1,000,000).

*Small Business Enterprise* is a firm which has been certified by OMWBE as a small business, owned and controlled 51% or more by an economically disadvantaged individual(s).

*Disadvantaged Business Enterprise* is a firm which has been certified by OMWBE as a small business, owned and controlled 51% or more by a socially and economically disadvantaged individual(s).

## **Section K – References**

*WSDOT's Small Business Portal:* [www.wsdot.wa.gov/Business/opportunities/](http://www.wsdot.wa.gov/Business/opportunities/)

*Small Business Folio:* [www.wsdot.wa.gov/NR/rdonlyres/256443BC-CB46-4F79-89A2-3EDFDBC632A0/0/WSDOTCommitmentSmallBusiness.pdf](http://www.wsdot.wa.gov/NR/rdonlyres/256443BC-CB46-4F79-89A2-3EDFDBC632A0/0/WSDOTCommitmentSmallBusiness.pdf)

*WSDOT's Office of Equal Opportunity:* [www.wsdot.wa.gov/equalopportunity/](http://www.wsdot.wa.gov/equalopportunity/)

*Office of Minority and Women's Business Enterprises:* [www.omwbe.wa.gov](http://www.omwbe.wa.gov)

*Washington State Legislature:* [www.leg.wa.gov/pages/home.aspx](http://www.leg.wa.gov/pages/home.aspx)