

## FLORIDA DEPARTMENT OF TRANSPORTATION

### METHODOLOGY FOR DETERMINING DBE GOAL (49 CFR 26.45) FEDERAL FISCAL YEAR 2015

#### OVERALL GOAL

The overall goal for the Florida Department of Transportation's (FDOT) Disadvantaged Business Enterprise (DBE) program for FHWA assisted contracts is established on a triennial basis. The overall goal for federal fiscal years 2015 - 2017 has been set at **9.91%** utilizing the methodologies described in 49 CFR Part 26.

#### METHODOLOGY

In setting the goal for FDOT, it is required that the goal setting process begin with a base figure for the relative availability of DBEs. The overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FHWA assisted contracts.

FDOT has reviewed the alternatives listed in 49 CFR Part 26 and selected the bidders list as the best approach for goal development. FDOT has gathered information for the bidders list from the sources below and has included those firms bidding during one or more of the 2011 thru 2013 calendar years. The bidders list includes both successful and unsuccessful bidders, primes and subs, and DBEs and non-DBEs. Three years was used for the bidders list because it would incorporate the largest number of likely participating bidders, especially small businesses who may only be able to work on one large contract that may last more than a year. Capturing three years of bidders also ensures that FDOT has the more complete information and would more likely include businesses that should have, but did not show up on a list that included only one year. The sources are:

- Subcontractors listed on the Bidders Opportunity List that is provided by primes in their bids submitted to the Contracts Administration Office for construction contracts and the Procurement Office for professional services contracts; this form is provided whether they were awarded the bid or not.
- Reports from Trns\*port that list all bidders, successful bidders, and their listed subcontractors.
- Reports from the Professional Services Information System that lists all bidders, successful bidders, and their listed subconsultants.

- Bidders entered into the new Equal Opportunity Compliance system that was operational since October 2012.

Most of this information was entered into our Equal Opportunity Reporting System (BizTrak) that generated the reports for the step one analysis.

### **Step One**

In the analysis of the relative availability of DBEs, FDOT reviewed the last three years to determine the median percentage of dollars expected to be available for the two major work categories: construction and consulting. Construction contractors received 91.08% of the awarded federal dollars and professional services consultants received 8.92% of the awarded federal dollars.

#### **CONSTRUCTION CONTRACTORS:**

FDOT's Trns\*port System has adequate information to identify how much dollars FDOT spends on different types of construction work. FDOT, however, does not prequalify and does not have enough data to report on the types of work performed by all subcontractors. Therefore, FDOT cannot weight the dollars for construction by the type of work. FDOT, however, has developed a new reporting system called the Equal Opportunity Compliance system that was operational in October 2012. The system should produce the necessary information for the next triennial period to weight the construction goal by type of work. The only reliable information related to weighting that can be used in construction at this time is in major and intermediate bridges where FDOT has no DBEs that can perform this work. FDOT estimates that 1.58% of our federal funds are used for major bridges. After subtracting these dollars from this analysis, FDOT estimates that 89.50% (91.08% - 1.58%) of our dollars are available for DBEs in construction work.

FDOT reviewed the bidders list and found that a total of approximately 3,512 firms were bidding as either a prime or a subcontractor on construction projects. Of this amount approximately 352 or 10.02% were DBEs. Each business was counted only once regardless if they were bidding as a prime or a subconsultant.

Given that 89.50% of FDOT's dollars are available for DBEs in construction work and that 10.02% of the construction bidders are DBEs, FDOT would expect that 8.97% of all dollars awarded would be awarded to DBEs in construction work. This is represented by the following calculation: **.1002 x 89.5% = 8.97%**

#### **PROFESSIONAL SERVICES CONSULTANTS:**

The median dollars received by the consultant industry over the last three years was 8.92% of the federal dollars. FDOT prequalifies all of our professional

services' firms by work category and also tracks the dollars spent in each of these work categories. Therefore, FDOT is able to weight our calculations by each work group. The following table provides the percentage of dollars that DBEs would be expected to receive by work category:

PREQUALIFICATION AREA	DBEs & TOTAL BIDDING	DBEs BIDDING	PERCENT OF DBES BIDDING	PERCENT FEDERAL DOLLARS	PERCENT FOR DBES
PD & E Studies	91	17	18.68%	18.47%	3.45%
Minor Highway Design	305	107	35.08%	12.13%	4.26%
Major Highway Design	179	55	30.73%	15.00%	4.61%
Controlled Access Hwy Design	119	35	29.41%	14.86%	4.37%
Major Bridge Design - Concrete	44	6	13.64%	0.02%	0.00%
Major Bridge Design - Steel	66	7	10.61%	0.03%	0.00%
Moveable Span Bridge Design	7	0	0.00%	0.10%	0.00%
Conventional Bridge Inspection	78	20	25.64%	2.76%	0.71%
Traffic Systems Analysis & Design	80	21	26.25%	0.04%	0.01%
Traffic Eng. Systems Implementation	67	15	22.39%	0.04%	0.01%
Signing, Marking & Channelization	240	86	35.83%	0.11%	0.04%
Roadway CEI	191	79	41.36%	31.91%	13.20%
Minor Bridge & Misc. Structures CEI	72	22	30.56%	0.28%	0.09%
Major Bridge CEI - Concrete	25	2	8.00%	2.22%	0.18%
Subarea/Corridor Planning	137	40	29.20%	0.55%	0.16%
Acquisition, Negotiation Closing	15	4	26.67%	1.49%	0.40%
Weighted Availability of DBEs				100.01%	31.48%

The weighted DBE consultant availability is 31.48%. Given that consultants would get 8.92% of the total federal dollars awarded, FDOT would expect that 2.81% of all dollars awarded would be awarded to DBE consultants. This is represented by the following calculation:  $.3148 \times 8.92 = 2.81\%$

**Step One Result:**

<b>Contractor Availability</b>	<b>8.97%</b>
<b>Professional Services Consultant Availability</b>	<b>2.81%</b>

## **Baseline Figure**

**11.78% relative  
DBE availability**

The results of step one indicate that 11.78% is a valid base figure under current rules and processes for the determination of availability. This has been determined based on the most accurate information available.

## **Step Two**

According to 49 CFR Part 26, step two of the calculation process should examine the evidence available to determine if adjustments are needed in the base figure to arrive at an overall goal. The last DBE Disparity Study conducted for FDOT was dated January 1999 and reviewed data from July 1991 through December 1997. This study conducted by MGT of America recommended “the suspension of current race and gender preference programs” and “the establishment of race and gender neutral programs which assist all small businesses.” The only other evidence that was available to be considered to determine if an adjustment was warranted was the capacity of DBEs measured by the past volume of work performed between 2002 and 2013.

### **PAST PARTICIPATION**

To analyze past performance, FDOT narrowly tailored our review by reviewing the performance of contractors and consultants separately over the past 12 years. In the past twelve federal fiscal years from 2002 thru 2013, DBE contractors performed 3.85%, 4.66%, 6.13%, 6.71%, 5.98%, 6.16%, 5.01%, 4.88%, 6.49%, 6.83%, 7.61% and 10.31% respectively of the Federal-aid work, in dollars. The median past participation over these twelve years is 6.145% and the relative availability of DBE contractors as determined in step one is 8.97%. To incorporate past performance, the appropriate adjustment is to average the median past participation (6.15%) and the relative availability (8.97%). This average is 7.56%, which results in an downward adjustment to the relative availability of 1.41% for contractors.

In the same fiscal years, DBE consultants performed 1.25%, 3.17%, 1.42%, 1.32%, 2.17%, 1.99%, 2.74%, 3.28%, 1.78%, 1.67%, 2.70% and 1.47% respectively, of the Federal-aid work, in dollars. The median past participation over these nine years is 1.89%. The relative availability of DBE consultants as determined in step one is 2.81%. To incorporate past performance, the appropriate adjustment is to average the median past participation (1.89%) and the relative availability (2.81%). This average is 2.35%, which results in a downward adjustment to the relative availability of .46% for consultants.

PAST PARTICIPATION

<u>Fed Fiscal Year</u>	<u>% work by DBE</u>	<u>% DBE Contractors</u>	<u>% DBE Consultants</u>
<u>2002</u>	<u>5.10</u>	<u>3.85</u>	<u>1.25</u>
<u>2003</u>	<u>7.83</u>	<u>4.66</u>	<u>3.17</u>
<u>2004</u>	<u>7.55</u>	<u>6.13</u>	<u>1.42</u>
<u>2005</u>	<u>8.03</u>	<u>6.71</u>	<u>1.32</u>
<u>2006</u>	<u>8.15</u>	<u>5.98</u>	<u>2.17</u>
<u>2007</u>	<u>8.15</u>	<u>6.16</u>	<u>1.99</u>
<u>2008</u>	<u>7.75</u>	<u>5.01</u>	<u>2.74</u>
<u>2009</u>	<u>8.16</u>	<u>4.88</u>	<u>3.28</u>
<u>2010</u>	<u>8.27</u>	<u>6.49</u>	<u>1.78</u>
<u>2011</u>	<u>8.50</u>	<u>6.83</u>	<u>1.67</u>
<u>2012</u>	<u>10.31</u>	<u>7.61</u>	<u>2.70</u>
<u>2013</u>	<u>11.78</u>	<u>10.31</u>	<u>1.47</u>
<u>Median</u>		<u>6.15</u>	<u>1.89</u>

Therefore, the proposed DBE goal is represented by the following calculation:

<b>Baseline Figure:</b>	<b>11.78%</b>
<b>Adjustment for Contractors:</b>	<b>- 1.41%</b>
<b>Adjustment for Professional Services Consultants:</b>	<b>- .46%</b>
 <b>Proposed DBE Goal:</b>	 <b>9.91%</b>

RACE CONSCIOUS PARTICIPATION

In federal fiscal year 2013, FDOT’s DBE participation goal was 8.60%. The actual DBE participation was 11.78% of federally funded contracts which was 2.18% higher than the established goal. On state funded contracts, DBE participation was 10.88%; DBE participation on federal and state funded contracts combined was 11.38%. The DBE participation goal for the current federal fiscal year is 8.60% and through June 30, 2014 DBE participation on federally funded contracts is 10.07%. On state funded contracts the DBE participation is 11.91% and federal and state funds combined is 10.97%.

Race Neutral Methods

FDOT has initiated many new strategies over the past nine years and is continuing to develop and implement others. Some of the strategies that have been implemented in these years have taken time to mature and show results, but the efforts are productive. One of the significant race neutral strategies has

been the implementation of the Business Development Initiative (BDI). This Initiative was implemented on state funded projects in July 2006. FDOT originally submitted a request to apply this Initiative on federally funded contracts as a race neutral method in our DBE goal calculation methodology in FDOT's submittal to the FHWA on July 26, 2006. After much delay, FDOT was asked to request this approval separately. On March 6, 2007 FDOT submitted a proposal to the FHWA Florida Division requesting to also apply the BDI to federally funded projects. On September 25, 2007, the FHWA Florida Division forwarded the request to FHWA headquarter for approval as an SEP 14. In March 2009, the FHWA approved the BDI on federal funded projects. This approval increased the number of BDI contracts because of the smaller contracts associated with the American Recovery and Reinvestment Act (ARRA). Since the most recent annual update to FHWA, there were an additional ten ARRA projects added to the program. The Department has also considered local agency (LAP) projects for the BDI as well.

The Department has fully supported the concept of the BDI, as shown by the following accomplishments during the last state fiscal year:

- 99 BDI contracts (36 Professional Services and 63 Construction/Maintenance) were executed totaling approximately \$29 million;
- 42 or 42% were executed to DBEs as a prime contractor/consultant;
- 24 or 24% were federally funded contracts;
- 78 different small business firms received work with the Department from the BDI; 32 or 41% were DBEs;
- 14 small businesses were first time primes with the Department.

The BDI has been successful in assisting small firms to become a prime and in growing their business to eventually compete on larger contracts. Also, the BDI has been instrumental in creating much needed jobs as stated by this unsolicited response:

*"This program has been of great importance to our firm. We were fortunate enough to win one project with FDOT and one other project with another governmental agency that have made a real difference. These projects provided us with the ability to expand our firm and hire several employees and create some much needed jobs in our community. We urge you to continue and hopefully grow this program in order to provide firms like ours a real opportunity for competing and creating the much needed jobs."*-**Fursan S. Munjed, P.E.**  
**Pegasus Engineering, LLC**

Other race neutral methods that are being used include:

1. The Construction Management Development Program (CMDP) is a voluntary program designed to improve and develop skills of owners and

- managers enabling them to perform successfully on FDOT projects. Courses offered are Business Management, Construction Accounting, Construction Math and Estimating, Contracts, Specifications and Law, Scheduling for FDOT and Plan Reading for FDOT. Once the owner(s) or manager(s) of a DBE firm completes the prescribed course(s), the firm will receive a Certificate of Proficiency and will graduate into the Bond Guarantee Program.
2. Reserving contracts for small businesses under the Department's Business Development Initiative. The Department's goal is to reserve 10% of the construction/maintenance contracts and 15% of the professional services contracts to small businesses.
  3. To address concerns about overconcentration in certain areas of professional services, the Department has taken measures to address the underutilization of small businesses. The Department is encouraging primes to use small businesses in areas where they are underutilized. Underutilization is defined by the Department as 30% or less DBE and small business utilization level for advertised Work Groups. Underutilization levels vary by district.
  4. Providing technical assistance and other services to DBEs and other small businesses with special emphasis on marketing.
  5. Providing assistance in overcoming limitations such as inability to obtain bonding or financing.
  6. Working with prime contractors, consultants, the Florida Transportation Builders Association, and the Florida Institute of Consulting Engineers to encourage the use of DBEs.

## **PUBLIC PARTICIPATION**

### CONSULTATION PROCESS

On June 6, 2014, the Florida Department of Transportation (FDOT) published its first notice to the public regarding the posting of the 2015 Federal Highway & Federal Transit DBE goals and methodology and the ability for the public to view both draft documents and to make comments on line directly to the Equal Opportunity Office. This notice, which was posted on the FDOT Infonet public announcement site, also detailed other public meetings to be held for the same purpose. On June 9<sup>th</sup>, the same notice was published in the Florida Administrative Register.

On June 16, 2014, FDOT held an open outreach meeting in Tallahassee, Florida at 12:00 noon in the FDOT Haydon Burns building. The purpose of the meeting was to kick – off public discussion of the 2015 Federal Highway & Federal Transit DBE goals and methodology. Along with the kick – off meeting, three other public meetings were noticed as well. The other meetings were: June 23<sup>rd</sup> in Orlando; June 25<sup>th</sup> in Miami; June 27<sup>th</sup> in Tallahassee. The time for the three other meetings was 6:00pm. The Tallahassee meeting on June 27<sup>th</sup> was also

broadcast as a webinar. In addition to noticing these meetings in the two methods above, the three evening meetings were also noticed by the placement of public notice advertisements in the following minority and majority newspapers: La Gaceta (minority – Tampa); Florida Sentinel Bulletin (minority – Tampa); The Weekly Challenger (minority – St. Petersburg); Pensacola News Journal (majority – Pensacola); Sun Sentinel (majority – Miami, Broward, South Palm Bch. Counties); Miami Herald (majority – Miami, Ft. Lauderdale); Tallahassee Democrat (majority – Tallahassee). Meetings were also posted on FDOT's Facebook page.

All meetings and actual draft goal documents were advertised on the websites of the Florida Institute of Consulting Engineers (FICE) and the Florida Transportation Builders Association (FTBA) which are the two major industry associations where both prime and subcontractors and consultants doing work on FDOT projects are members. Along with posting on their websites, both FTBA and FICE emailed the meeting announcement to their respective members. Also, the three Supportive Service Providers, BRG, CEI and the Council who are contracted by FDOT to assist DBE's and SBE's, posted the meetings draft goals on their websites and sent emails to their respective database lists. Between the five groups listed above, approximately 2,500 firms were notified about the public meetings. Combined there were 21 participants in attendance with firms representing 3 non DBE Primes, 1 African American male DBE, 1 Hispanic male DBE, with the remaining persons belonging to FDOT, FHWA, and USDOT. An additional 7 persons participated through the webinar broadcast. At the live meetings, the DBE goal methodology was distributed and fully explained. Questions and answers were provided during and after the presentations.

Another outreach mechanism used to ensure access for stakeholders to make comments on the proposed DBE goals was the use of Survey Monkey to collect individual comments to the draft goals posted on the EOO website. Thirty-nine individuals posted comments.

## COMMENTS

The comments received in the public meetings and the survey tool were mostly questions that required a clarification of the DBE methodology and general questions about how to do business with FDOT. During the consultation process, there were no issues dealing specifically with the DBE goal methodology that required any changes.