

FLORIDA DEPARTMENT OF TRANSPORTATION

METHODOLOGY FOR DETERMINING DBE GOAL (49 CFR 26.45) FEDERAL FISCAL YEAR 2006-2007

OVERALL GOAL

The overall goal for the Florida Department of Transportation's (FDOT) Disadvantaged Business Enterprise (DBE) program for federal-funded highway contracts is established on an annual basis. The overall goal for fiscal year 2006-07 has been set at **8.1%** utilizing the methodologies described in 49 CFR Part 26.

METHODOLOGY

In setting the goal for the Department, 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 USDOT-assisted contracts. The goal must reflect the determination of the level of DBE participation expected absent the effect of discrimination.

The Department has reviewed the alternatives listed in 49 CFR Part 26 and selected the bidders list as the best approach for goal development. The information from the bidders list has been collected from prime contractors and consultants since October 2001. The Department also gathered bidders information from a survey of DBEs and non-DBEs conducted in 2004 and from information provided by our Contracts Administration Office and Procurement Office on those who submitted bids and were included as subcontractors. The Department has analyzed the bidders list in detail and identified the bidders that bid as either a prime contractor or solely as a subcontractor in calendar years 2004 thru 2006.

Step One

In the analysis of the relative availability of DBEs, the Department averaged the four previous years report to determine the percentage of dollars expected to be available for the two major work categories: contractors and consultants. Contractors received 82.84% of the awarded federal dollars and consultants received 17.16% of the awarded federal dollars. The Department also reviewed last year's information to determine the percent of dollars that would be available for prime contractors and subcontractors in both categories.

PRIME CONTRACTORS:

The Department's Trns*port System reported that prime contractors retained 82.54% of the dollars associated with a contract and subcontracted 17.46% of the remaining dollars during the previous federal fiscal year. Therefore, the Department expects prime contractors to receive 68.38% (.8254% x 82.84%) of the awarded federal dollars. To further narrowly tailor our analysis, construction contracts were further divided into the work types used to pre-qualify prime contractors. The Department's Trns*port System provided the percentage of dollars that were spent in each work type during the previous federal fiscal year.

The Department reviewed the bidders list to determine the percentage of DBEs in each work type compared to the total number of bidders in the same work type. In reviewing the bidders list, only pre-qualified contractors were counted as a prime contractor. The Department pre-qualifies all contractors pursuant to Chapter 337.14, Florida Statutes and Rule Chapter 14-22, Florida Administrative Code. Only those pre-qualified contractors can bid on contracts over \$250,000. Projects under \$250,000 accounted for less than 1% of the federal dollars and were insignificant to conduct a separate analysis. The review of the bidders list for prime contractors shows the following:

PREQUALIFICATION AREA	NUMBER PREQ.	NUMBER BIDDING	DBES BIDDING	PERCENT OF DBES BIDDING	PERCENT OF WORK FED AID	PERCENT FOR DBES
Major Bridges - Steel Truss	34	24	0	0.00%	0.00%	0.00%
Major Bridges - Over Water	48	36	0	0.00%	0.00%	0.00%
Major Bridges - Cable Stayed	9	6	0	0.00%	0.00%	0.00%
Major Bridges - Concrete	29	20	0	0.00%	0.00%	0.00%
Major Bridges - Bascule	29	22	0	0.00%	9.39%	0.00%
Major Bridges - Curved Steel	51	35	0	0.00%	7.09%	0.00%
Major Bridges - Multi Level	47	33	0	0.00%	0.00%	0.00%
Bascule Bridge Rehab	45	37	0	0.00%	0.00%	0.00%
Intermediate Bridges	116	84	2	2.38%	3.73%	0.09%
Minor Bridges	152	106	4	3.77%	5.77%	0.22%
Hot Plant Mix	122	78	3	3.85%	10.32%	0.40%
Portland Cement Concrete	53	38	0	0.00%	2.33%	0.00%
Grading	265	149	5	3.36%	8.72%	0.29%
Drainage	258	151	6	3.97%	9.90%	0.39%
Flexible Paving	211	119	5	4.20%	3.79%	0.16%
Fencing	76	48	4	8.33%	0.14%	0.01%
Electrical Work	38	30	3	10.00%	2.65%	0.27%
Bridge Painting	32	22	0	0.00%	0.00%	0.00%
Computerized Traffic Control	27	22	2	9.09%	0.32%	0.03%
Grassing, Seeding &	132	77	5	6.49%	0.79%	0.05%

Sodding						
Guardrail	74	47	3	6.38%	0.59%	0.04%
Landscaping	15	11	1	9.09%	0.48%	0.04%
Pavement Marking	15	12	2	16.67%	0.49%	0.08%
Traffic Signal	28	23	3	13.04%	1.06%	0.14%
Roadway Signing	74	47	5	10.64%	0.96%	0.10%
Other	263	159	9	5.66%	31.48%	1.78%
Weighted Availability of DBEs					100.00%	4.09%

The weighted DBE prime contractor availability is 4.09%. Given that prime contractors would get 68.38% of the total federal dollars awarded, the Department would expect that 2.80% of all dollars awarded would be awarded to DBEs as prime contractors. This is represented by the following calculation: **.0409 x 68.38 = 2.80%**

SUBCONTRACTORS:

The Department's Trns*port System reported that prime contractors subcontracted 17.46% of the dollars associated with a contract. Therefore, the Department expects subcontractors to receive 14.46% (.1746% x 82.84%) of the awarded federal dollars. The total number of businesses from the bidders list that have been submitting quotes or bids to prime contractors is 1,687. Of this amount, 152 or 9.01% of these businesses are DBEs.

Given that 9.01% of businesses are DBEs that are providing quotes or bids as subcontractors and that 14.46% of the dollars are awarded to subcontractors, the Department would expect that 1.30% of all dollars awarded would be awarded to DBEs as subcontractors. This is represented by the following calculation:
.0901 x 14.46 = 1.30%

PRIME CONSULTANTS:

The consultant industry received 17.16% of the federal dollars averaged over the last four fiscal years. The Department's Professional Services Information System (PSIS) reported that prime consultants retain 77.20% of the dollars associated with a contract and subcontract 22.80% of the remaining dollars. Therefore, the Department expects prime consultants to receive 13.25% (.7720 x 17.16) of the awarded federal dollars.

For the major types of professional consultant work, the consultant must be pre-qualified with the Department. The consultants are pre-qualified as being able to bid on contracts over or under \$250,000. The Department had no federally funded contracts under \$250,000, so only the consultants who could bid on contracts over \$250,000 were included as a prime consultant. In comparing the bidders list with the pre-qualified list

of professional consultants, the Department has 330 consultants bidding on contracts as primes. Of this amount, 81 or 24.55% are DBEs.

Given that 24.55% of the professional consultants are DBEs that are bidding on contracts as a prime consultant and that 13.25% of the dollars are awarded to prime consultants, the Department would expect that 3.25% of all dollars awarded would be awarded to DBEs as prime consultants. This is represented by the following calculation:

$$.2455 \times 13.25 = 3.25\%$$

SUBCONSULTANTS:

The PSIS reports that consultants subcontract 22.80% of the dollars of a contract award. Since the consultant industry receives 17.16% of the total federal dollars, the Department expects subconsultants to receive 3.91% (.2280 x 17.16) of the awarded federal dollars. An analysis of the bidders list shows that 385 consultants are bidding as subconsultants. Of this amount, 108 or 28.05% are DBEs. Given that 28.05% of the DBE professional consultants are bidding or quoting as subconsultants and that 3.91% of the dollars are awarded to subconsultants, the Department would expect that 1.10% of all dollars awarded would be awarded to DBEs as subconsultants. This is represented by the following calculation: $.2805 \times 3.91 = 1.10\%$

Step One Results:

Prime Contractor Availability	2.80%
Subcontractor Availability	1.30%
Prime Consultant Availability	3.25%
Subconsultant Availability	1.10%

Baseline Goal

8.45% relative DBE availability

The results of step one indicate that 8.45% 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 only type of evidence available to make an adjustment is the current capacity of DBEs to perform work as measured by the past volume of work performed in recent years and their relative number of professional staff.

In the previous four fiscal years, DBEs performed 7.83% of the Federal-funded work in 2002-2003, 7.55% in 2003-2004, 8.03% in 2004-05, and projected 8.30% in 2005-2006. The average achievement of DBEs over these four years is 7.93%. To further analyze

past performance and capacity, the Department narrowly tailored our review by reviewing the performance of contractors and consultants separately.

In fiscal years 2002-2003, 2003-2004, 2004-2005, and projected for 2005-2006 DBE contractors performed 4.66%, 6.13%, 6.71%, and 6.20% (projected) respectively, of the Federal-aid work, in dollars, with an average of 5.93%. The relative availability of DBE contractors as determined in step one is 4.10% (2.80%+1.30%). To incorporate past performance, the Department believes the appropriate adjustment is to average the average past participation (5.93%) and the relative availability (4.10%). This average is 5.01%, which results in an upward adjustment to the relative availability of .91% for contractors.

In fiscal years 2002-2003, 2003-2004, 2004-2005, and projected for 2005-2006 consultants achieved 3.17%, 1.42%, 1.32%, and 2.10% (projected) respectively, of Federal-aid work, with an average of 2.00%. The relative availability for consultants as determined in step one is 4.35% (3.25%+1.10%). The difference in the past participation and relatively availability is due to the relative small average capacity of DBE consultants.

Input received from various constituents in the transportation industry acknowledges vast differences between the construction and consultant businesses. The two differ in business operations, culture and the manner in which products are produced. The Florida Transportation Builders Association, the Florida Institute of Consulting Engineers, the DBE Supportive Services Providers, attendees in DBE conferences, and experts within the Department indicate that capacity of consultant firms is directly related to the number of professional staff a consultant employs in Florida. The graphs in Exhibit 1 support the correlation between the capacity of consultants as measured by dollars awarded and the number of professional staff. The more staff a consultant employs, the greater the capacity it has to perform work.

The capacity of DBEs to perform work is indicated by the number of professional staff working for DBE consultants that are on the bidders list compared to the total number of professional staff working for all consultants on the bidders list. The number of professional staff from the Department's PSIS shows that 6,324 professional staff are located in Florida that work for consultants who bid on DOT work as a prime consultant. Of this amount, 637 or 10.07% work for DBE firms. Based on this measure of capacity based on the average firm size, the Department would expect the DBE consultants to receive 1.73% ($.1007 \times 17.16$) of the dollars.

The Department believes that the best measure of DBE capacity would be between 1.73% and 2.00% as measured by past performance. The average of these two measures is 1.87%, which is the best measure of DBE capacity. Using this number to adjust the base figure of 4.35% by averaging per USDOT guidelines, results in an adjustment downward of 1.24% ($(4.35+1.87)/2=3.11$; $4.35-3.11=1.24$) for consultants.

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

Baseline Goal:	8.45%
Adjustment for Contractors:	+ .91%
Adjustment for Consultants:	- <u>1.24%</u>
Proposed DBE Goal:	8.12% (rounded to 8.1%)

RACE NEUTRAL PARTICIPATION

Based upon the achievements for the last four federal fiscal years, the achievements over the last six years in the state-funded DBE Program, new initiatives from the Department, and a continued emphasis from both the Florida Transportation Builders Association and the Florida Institute of Consulting Engineers, the Department projects that the 8.1% overall goal can be 100% achieved through race-neutral means. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract which a DBE obtains through the normal competitive procurement process and DBE participation through a subcontract on a prime contract that does not have a DBE goal. The Department forecasts that the DBE goal will be achieved this federal fiscal year. The achievement will be monitored on a month-to-month basis and if it appears that the goal will not be achieved then race conscious methods may be applied.

Achievements

The State implemented a race-neutral DBE Program for state-funded projects in March 1999 and for federal – funded projects in January 2000. For the first two years of a 100% race neutral DBE Program for federal – funded projects, the DBE goal was 8%. In the first year (2000-2001), 8.62% DBE participation was achieved for federal-funded projects and 11.55% DBE participation was achieved for state-funded projects. In the second year (2001-2002), 5.1% DBE participation was achieved for federal-funded projects and 8.35% was achieved for state-funded projects. In the third year (2002-2003), the DBE goal was 7.5% and 7.83% was achieved for federal projects and 8.61% was achieved for state projects. In the fourth year (2003-2004), the DBE goal was 7.5% and 7.55% was achieved for federal projects and 7.92% was achieved for state projects. In the fifth year (2004-2005), the DBE goal was 7.5% and 8.03% was achieved for federal projects and 7.5% was achieved for state projects. During the current year, the DBE goal is 7.9% and at the end of June 2006, 8.71% (8.30% is projected by the end of September) DBE participation was achieved for federal-funded projects and 8.24% was achieved for state projects. Based upon the historical achievements of the DBE Program for federal- and state-funded projects and the current achievements, the Department projects that the DBE goal of 8.1% will be achieved through a 100% race-neutral Program this fiscal year.

Race Neutral Methods

Implementing a race-neutral DBE Program has been a learning experience and a realization that new methods and strategies must be initiated to achieve success. The Department has initiated new strategies over the past six years and is continuing to develop and implement other new strategies. Some of the strategies that have been implemented in these years have taken time to mature and show results, but the efforts are beginning to be productive. Some of the significant strategies that have been implemented include:

- Presenting a DBE Report in the monthly Executive Board meetings. The Board is comprised of the Secretary, Assistant Secretaries and District Secretaries. Other attendees include those who report to the Secretary and the Assistant Secretaries and the Division Administrator for the FHWA. Board members are frequently enlisted to continue encouraging contractors and consultants to utilize DBEs.
- Publishing DBE Reports on the Internet that further breakdown DBE achievement by work category (construction and professional services) and by district. This information is shown for federal-funded projects, state-funded projects, and for all projects combined.
- Publishing the DBE achievements for each contractor and consultant. For each contractor and consultant, this report shows the number of contracts awarded, the total dollars awarded, and the percent of DBE participation.
- Presenting and discussing the DBE reports at the annual Construction Conference, quarterly committee meetings that include members of the Florida Institute of Consulting Engineers and Department staff, and other Department meetings.
- Incorporating into the Department's Contract Grading System bonus points for contractors who achieve the estimated DBE availability percentage on a contract.
- Creating a new position in the Equal Opportunity Office entitled "DBE Program Specialist". This position is responsible for marketing the DBE Program to prime contractors and consultants.
- Revising the job duties of an existing position so that 50% of the position's time involves contacting businesses that have let their DBE certification expire and recruiting new businesses into the DBE Program.
- Modifying the contracts with two DBE Supportive Services Providers to require them to assist prime contractors and consultants in locating ready, willing and able DBEs to participate on contracts and to recruit new businesses into the DBE Program.
- Requiring submittal of the Anticipated DBE Participation Statement at the pre-construction conference. When the race-neutral Program was initially implemented, this Statement was optional.
- Providing a letter grade (A-F) for all of our prime consultants and contractors.
- Mailing thank you letters, from the Department's Secretary, to contractors and consultants who received an A+ or A for their DBE utilization during the previous fiscal year.

- Mailing neutral letters, from the Department's Secretary, to contractors and consultants who received a B or C letter for their DBE utilization during the previous fiscal year.
- Mailing encouragement letters, from the Department's Secretary, to contractors and consultants who received a D or F for their DBE utilization during the previous fiscal year. This letter states, "Your company will be contacted by the Department's DBE Program Specialist to discuss your current strategies and determine if there are additional efforts we can suggest to increase your DBE utilization."
- Conducting Title VI assessments on companies that achieved less than 2% utilization.
- Attending all quarterly contractors meetings throughout the state to discuss the DBE Program and encourage the use of DBEs.
- Contracting with a firm to recruit minority and female owned businesses into the DBE Program. This contract covers Dade and Broward Counties.
- Implementing the new Internet-based Equal Opportunity Reporting System that will allow the Department to ensure accurate and prompt reporting and will also allow the Department to better analyze the details and trends in the DBE Program.
- Working with FTBA to present awards to prime contractors with a high DBE utilization and successful DBEs.
- Amended our current DBE Supportive Services contract to incorporate additional funding from the FHWA to assist DBEs in developing Strategic or Business Plans.
- Creating a DBE Advisory Committee within the Florida Transportation Builders Association (FTBA) comprised of DBEs, prime contractors, and Department staff to discuss the DBE Program and improvement opportunities.
- Creating a DBE Advisory Committee with the Florida Institute of Consulting Engineers comprised of DBEs, prime consultants, and Department staff to discuss the DBE Program and improvement opportunities.
- Incorporating a monetary incentive clause in our DBE Supportive Services Contract for helping the underutilized DBEs get contracts on FDOT projects.
- Sponsoring MatchMaker meetings throughout the State designed to bring together Department staff, DBEs and prime contractors/consultants to facilitate communications.

Additional strategies that are being implemented or planned for the 2006-2007 fiscal year include:

- Reviewing the possibility of establishing a mentor-protégé program for DBEs.
- Conducting Title VI assessments on consultants who achieved less than 2% DBE utilization on all their dollars awarded during the previous fiscal year.
- Monitoring DBE participation of those contractors who received a Title VI Assessment over the last two years to determine if good faith efforts are made.
- Developing a DBE Marketing Plan.
- Creating a plan for "One on One" sessions with DBEs and primes.

- Reviewing the \$250,000 threshold that requires all contractors to be pre-qualified before bidding as a prime.
- Waiving performance bonds on contracts less than \$250,000.

Other race-neutral methods that will continue to be utilized include:

- Arranging solicitations, times for the presentation of bids, quantities, specification, and delivery schedules in a way that facilitates DBE participation.
- Providing technical assistance and other services with special emphasis on marketing.
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing.
- Providing the name, phone number and email address for additional information concerning a contract.
- Continuing DBE supportive services program to develop and improve business management, record keeping, and financial and accounting capability for DBEs.
- Working very closely with new start-up firms, particularly in fields in which DBE participation has been historically low.
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media.
- Working with prime contractors, consultants, the Florida Transportation Builders Association, and the Florida Institute of Consulting Engineers to encourage the use of DBEs.

Through this document the Department is also seeking approval from the Federal Highway Administration to implement a new race neutral strategy to help all small businesses, including DBEs, to move from being a subcontractor/subconsultant to a prime contractor. The main strategy we are seeking approval for is the authority to set aside certain federally funded contracts for small businesses as defined in CFR. s. 26.65. The purpose of this strategy is to increase competition, lower prices and provide increased support to meet the Department’s future work program. The Department believes that this strategy is consistent with the definition of a race neutral program. The definition in CFR s. 26.5 states that a “Race-neutral measure or program is one that is, or can be, used to assist all small businesses.” The official questions and answers about 49 CFR Part 26 from the USDOT also provides support for set asides for small businesses. In part of the answer for Section 26.43, the USDOT states: “If it will help achieve the objective of the DBE program, a recipient may use a small business set-aside as one of its race-neutral measures. The Department believes that the use of set asides for all small businesses will assist all small businesses, including DBEs, by creating a level playing field on which small businesses can compete fairly for DOT-assisted contracts and by removing barriers to the participation of all small businesses.

PUBLIC PARTICIPATION

FDOT published the notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at FDOT's Equal Opportunity Office for 30 days following the date of notice, and informing the public that FDOT will accept comments on the goals for 45 days from the date of the notice.

The notice of the proposed DBE goal and the complete document showing the methodology was published June 5, 2006 on the Internet. The notice included addresses to which comments may be sent and the address where the documents may be reviewed. The department informed the public of the proposed goal through advertisements in the following newspapers: the Tallahassee Democrat (6/10-11/2006), the Tampa Tribune (6/9 & 19/2006), Orlando Sentinel (6/11-12/2006) the Ft. Lauderdale Sun Sentinel (6/16-17/2006) and the Capital Outlook – a minority newspaper (6/15-21/2006). The DBE supportive services provider also published the announcement of the proposed DBE goal in their newsletter that is mailed to all DBEs, Prime contractors and Consultants. The notice will also be sent to appropriate local minority and women professional organizations and/or Chamber of Commerce. The notices included addresses to which comments may be sent and the addresses where the documents may be reviewed.

During this past year, the Department hosted three statewide DBE MatchMaker meetings. These meetings were located in Tampa, Jacksonville, and West Palm Beach and were designed for DBEs to meet with Prime contractors and consultants. During these meetings, the Department's DBE goal was discussed and input was received. The Department also met with representatives from the Small Business Development Center, the National Association of Minority Contractors, surety industry, and professors who teach courses to assist DBEs to discuss the DBE Program and proposed goal.

The comments received this year are consistent with those previously received and were primarily from DBEs. Those contractors and consultants who were being awarded contracts or subcontracts were satisfied with the DBE Program, while those who were not awarded contracts were dissatisfied with the Program. Many of the complaints centered on prime contractors who use the same subcontractors over and over again without trying different businesses. DBEs also complained about the size of the contracts and would like to see the contracts broken down into more manageable projects. The cost of the audited financial statement that is required for prime contractors was also mentioned as being an obstacle for DBEs to become prime contractors on contracts over \$250,000. DBEs also complained about getting paid promptly from prime contractors. Even though the Department's process requires the prime contractor to certify that all subcontractors have been paid, many DBEs and non-DBEs are not satisfied with the time it takes for them to get paid. None of these comments required an adjustment to our DBE goal, but the Department will continue to discuss these issues with the DBE community and FDOT staff to determine what solutions can be implemented.

The Department also continues a dialogue with the general transportation industry about the regulations associated with the DBE Program. Regarding the certification requirements, complaints were received about the Personal Net Worth statement. Many felt this requirement was preventing many minority and female owners from becoming a Certified DBE because the information is too intrusive into their personal life. It was suggested that the Personal Net Worth statement be eliminated. The affidavit of continuing eligibility has been confusing. Many DBEs did not understand why this was required when their certification was still active and recommended that the annual affidavit be eliminated. Many representatives in the transportation industry complained about the limits on the average gross receipts requirements. They stated that it is not logical to have the same limits in large states like Florida as you do in smaller states and felt the definition of a small business should be relative to the amount of funds available in a state. It is much easier for a DBE to graduate in Florida compared to a smaller state such as Delaware where fewer funds are available for DBEs. Another complaint about the DBE Program is that the reported dollars are misleading to the public. The DBE reported dollars are perceived as the total dollars being awarded to minority- and female-owned businesses. Over the last few years, the Department knows of 136 non-certified minority- and female-owned businesses (does not include subcontractors) that were actively working on DOT projects. If the dollars awarded to these 136 businesses were included in the DBE reports, the dollars would double the amount reported.

If you have any questions or need additional information, please contact Art Wright at (850) 414-4749 or by e-mail at arthur.wright@dot.state.fl.us.

EXHIBIT 1

