

OREGON DEPARTMENT OF TRANSPORTATION

Public Transit Division

FEDERAL TRANSIT ADMINISTRATION

Triennial DBE GOAL

FFY 2012, 2013, and 2014

An Overall Annual Disadvantaged Business Enterprise Triennial Goal has been developed for Disadvantaged Business Enterprise (DBE) participation in ODOT's Federal Fiscal Years (FFY) 2012, 2013, 2014 federally assisted transit contracts. The goal was developed in compliance with federal regulations set forth in 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation (DOT) Programs. The goal identifies the relative availability of DBEs based on evidence of ready, willing and able DBEs in relationship to all comparable businesses which are known to be available to compete for ODOT's USDOT assisted contracts. The overall triennial goal reflects staff's determination of the level of DBE participation that would be expected absent the effects of discrimination.

STEP ONE – DETERMINING THE BASE FIGURE

Determination of Relative Availability

To initially calculate the overall DBE Triennial Goal, we determined the base figures for the relative availability of DBEs in specific areas of expertise utilizing DBE certification data (the DBE Directory) provided by the Office of Minority, Women and Emerging Small Business (OMWESB,) and US Census 2007 Economic Census.

It must be noted that ODOT previously used business data supplied by Oregon's Corporation Division because, as the data was updated nightly, it was felt that information was timelier than Census Bureau data. However, the Corporation Division has adopted its own category system and is no longer utilizing SIC or NAICS codes. Because of the difficulty of converting the Corporation Division system to NAICS codes with accuracy, we utilized the first recommended procedure referenced in 49 CFR 26.45(c) (1), and as outlined in ODOT's approved DBE Program Document.

ODOT determined that the following codes were disciplines most common with transit-related construction and professional services:

- 54310 Architectural Services
- 423430 Computer & Computer Peripheral Equipment
- 485999 Transit & Ground Passenger Transportation
- 541614 Consulting
- 811118 Other Automotive Mechanical and Electrical Repair and Maintenance

The numerator was determined by utilizing the above NAICS information. ODOT sorted certified DBE information published by the certification agency and determined that **23** DBE firms were ready, willing and able to bid on projects to be funded in 2012, 2013, and 2014. As certification information is maintained on an electronic database and updated nightly, this data was current as of June 10, 2011.

To find the denominator, 1930 (DBEs and non-DBEs) as listed by the US Census Bureau's 2007 Economic Census utilizing the same NAICS codes were selected.

ODOT divided the 23 DBE firms by the total 1930 firms found in the US Census Bureau's publication and determined that .01 of the total population were DBE:

$$\frac{\text{DBE Directory (June 10, 2011)}}{\text{2007 Economic Census}} \frac{23}{1930} = 1\%$$

Determination of Local Market

ODOT has determined that the State of Oregon is its relevant local market area. This was determined by an examination of the Department's pre-qualified bidders list and the state's DBE Directory, which show that a substantial majority of the contractors and subcontractors that the Department does business with reside in the state. ODOT also expends the majority of the contracting dollars within the state, based on contractor payment information.

STEP TWO – ADJUSTING THE BASE FIGURE

Projected Federal Aid Share Projects: FFY 2012, 2013 and 2014

To project the value of contracts to be let during FFY 2012 and 2013, we used information from ODOT's Public Transit Division. The amount of federal funds (FTA Section 5310, STP, New Freedom, and Statewide Planning and Research (5304)) granted for the State of Oregon 2011-2013 Biennium is **\$11,357,460**. The estimated grant funding for 2014 is **\$5,678,730**. The DBE triennial goal is based on **\$17,036,190**. This amount excludes vehicle purchases and funds awarded to urban areas as they will report DBE participation directly to the Federal Transit Administration.

Based on the information, the DBE availability for FTA funded contracts for FFY 2012-2014 is 1%. With respect to DBE subcontractors, suppliers and service providers, the capacity to participate is limited. DBE firms show that they have the capacity to perform some of the projected work. An informal survey of the prime contractor community indicates that there is little concern about capacity in the coming year.

DBE Certification Volume

During Federal Fiscal Year 2010, the Office of Minority, Women and Emerging Small Business (OMWESB) experienced a small decrease of certified DBE firms. Any adjustment to the goal will not be based on certification volume.

Financing

During the previous fiscal year, there were no formal complaints, claims, or lawsuits filed with ODOT's Office of Civil Rights alleging discrimination or disparity in bonding or financing.

Public Participation

The ODOT Office of Civil Rights utilizes an annual Outreach Events Calendar which is comprised of key chambers of commerce, community, and professional organizations that are involved with small firms. ODOT attended the various meetings, marketplace events, trade shows and conferences listed on the Calendar throughout the past year and encouraged public comments on the DBE annual goal and the goal setting methodology. The major events for small businesses were the OAME Trade Show (5/7/09), the Hispanic Metro Chamber of Commerce Tradeshow (5/28/09) and the MED Week Trade Show and Luncheon (9/30/08). Other small business events were monthly Contractor and A & E meetings at OAME, the ACEC/ODOT Conference (4/21/09), and the Latino Business & Workforce Development Conference (11/1/08). ODOT/OCR staff is available for conversations and comments by phone and e-mail. No written comments regarding the DBE goal setting methodology were received; however goals were a topic of discussion at various meetings during the year. Additional meetings included:

- ODOT hosts quarterly workshops in Portland for the purposes of presenting valuable information on a variety of topics critical to small businesses, and to gather input and comments on the DBE Program.
- ODOT and consultant Mason Tillman & Associates held three public meetings in Region 1 as part of the Capacity Analysis study, one each in Multnomah, Clackamas and Washington Counties. The primary focus of the meetings was to inform the community about the Capacity Analysis and to discuss the survey that would be used to gather data, but there was an agenda item to talk about Small Business Programs, and an open forum for public comments. There were questions about how the DBE Annual Goal and the project-specific goals are calculated and how the Disparity Study and subsequent waiver from US DOT affect the DBE Program in Oregon.
- ODOT Civil Rights and Region 1 Area Manager presented before the Asian American Commission to inform the Commission on the importance of encouraging Asian Americans to maintain certifications and avail themselves of training opportunities offered by ODOT and the ongoing Capacity Analysis. The Commission is a direct link to the Legislature and expressed interest in being kept apprised of ODOT's progress in supporting Asian American small firms.

- Met with NAYA on March 25, 2009, to discuss continued cooperative efforts at providing business and workforce opportunities for the Native American community.
- On October 16, 2008, ODOT launched the Workforce and Small Business Leadership Team (WSBLT), a group of upper and middle managers and technical experts, whose purpose is to integrate Civil Rights Programs throughout the daily operations of the agency.
- A Public Meeting was held on July 23, 2009, from 10 am to 12 pm, in Salem, Oregon, at the ODOT Materials Lab. The purpose of the meeting was to give interested parties and stakeholders an opportunity to provide information and comments on the proposed FFY 2010 DBE Annual Goal. Four people from outside ODOT attended the meeting, but there were no specific comments or suggestions related to the 2010 DBE Goal.
- Similar meetings and outreach events have been continued through FFY 2010, and are a significant part of the work ODOT does for the DBE Program.

The ODOT Office of Civil Rights published legal notice of this proposed annual goal for FFY 2010, and this report, on its website. Legal notices soliciting comments for this three-year goal will be published prior to September 30, 2011 in the following general circulation media: The Bend Bulletin; The LaGrande Observer; The Medford Mail Tribune; The Portland Daily Journal of Commerce; The Portland Oregonian; The Salem Statesman Journal; The Asian Reporter; and, The Portland Observer. Comments will be accepted by ODOT for 45-days after the publishing date.

ODOT will continue to communicate with the construction and business communities through regular meetings and collaborations, to assure that the DBE Program meets the needs of the public.

Goal Determination

Based on the above supporting evidence, ODOT has established the base figure of 1% for FFY 2012, 2013 and 2014. We believe this takes into consideration the availability of ready, willing, and able firms compared to market conditions.

Breakout of Estimated Race/Gender-Neutral and Race/Gender-Conscious Participation

The USDOT regulations require that the maximum feasible portion of the DBE Overall Annual Goal be met by using race neutral methods. Included in the race/gender-neutral analysis is a consideration of: 1) The amount of dollars awarded to DBE firms as prime contracts; 2) Dollars awarded to DBE firms as non-committed DBEs on projects where goals were assigned, and; 3) Dollars awarded to DBE firms on projects where goals were not assigned.

Due to guidance issued by the USDOT, its Federal Highway Administration and Federal Transit Administration as a result of the decision of the 9th US Circuit Court in the Western States Paving Co., Inc. v. Washington State Department of Transportation, the State of Oregon continues its race-neutral policy of not setting DBE goals for specific transit projects. The Oregon Availability and Disparity Study conducted by MGT of America and completed on October 31, 2007, did not show that there are significant disparities in contracting which would affect ODOT Transit Grants. All DBE participation will be achieved through race- and gender-neutral means.

ENCLOSURE A: DBE Program Document Section 3.0

3.0 DBE Goal Development

3.1 Overall Annual DBE Goal

As a recipient of U.S. DOT financial assistance, ODOT is required to set an overall goal for DBE participation in U.S. DOT assisted contracts. The overall goal will not be subdivided into group specific goals, or be established as a quota system.

The Director of the Oregon Department of Transportation shall establish an overall goal on a fiscal basis for the participation of DBEs in all budgeted contracts utilizing Federal-aid funds. The overall annual goals will be expressed as a percentage of the total amount of Federal-aid funds the Department anticipates expending in the fiscal year.

ODOT's overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs available to participate on U.S. DOT assisted contracts.

The Department intends to meet those goals to the maximum extent feasible through the race neutral measures described in section 4.4 of this document. Where Race-neutral measures are inadequate to meet the overall goals, ODOT will establish specific contract goals for particular projects with subcontracting opportunities.

3.1.1 Establishing Base Figure - Determining Relative DBE Availability

A. Contractor Data:

(1) Using contractor data available through OCRs DBE database, determine the number of ready, willing and able businesses available in the highway contracting area that perform work with the same SIC codes.

(2) Compare the above with contractor data provided by Census Bureau's County Business Pattern (CBP) database. Utilize the average of the two figures. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.)

(3) Divide the number of DBEs by the number of all businesses to arrive at base figure A for the relative availability of DBEs in this market area.

B. Contracting Data:

(1) Using contracting data available through OCRs DBE database (BizTrack), determine the number of DBEs that have bid or quoted on U.S. DOT assisted prime or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quotes by the number of all businesses to arrive at base figure B for the relative availability of DBEs in this market area.

(2) Determine the average percentage of availability by adding base figures A and B then divide by 2.

3.1.2 Adjustment to Base Figure

ODOT will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs

for U.S. DOT assisted contracts for the fiscal year may be higher or lower than the base figure indicates. At a minimum, the OCR will analyze the results of ODOT's efforts to contract with DBEs for the current and past two years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar DOT's efforts to contract with DBEs.

3.1.3 Race Neutral Analysis

Once the overall annual goal is proposed, the OCR will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

This analysis is a review of past contracting history with information including, but not limited to:

- A. DBE participation as prime contractors on U.S. DOT assisted contracts;
- B. DBE participation on projects where no DBE goals have been established;
- C. DBE Participation on prime contracts exceeding contract goals;
- D. DBE participation on projects as non-committed DBE subcontractors.

The OCR shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR Part 26.51 (f). When projecting the percentage of the overall annual goal to be achieved through establishing contract-specific goals, the OCR shall analyze the actual achievement of the overall annual goal through race-neutral methods in the current and previous two years. When establishing contract-specific goals during the current fiscal year, the OCR shall analyze the progress towards achieving the overall annual goal and increase or reduce the use of contract-specific goals accordingly.

3.1.4 Public Participation and Outreach Efforts

ODOT's activities managing public participation and outreach efforts are directed at assisting ODOT to solicit public input to set overall annual DBE participation goals and meet overall annual DBE goals.

In establishing overall annual DBE goals, ODOT will provide for public participation. This will include:

Prior to finalizing the Overall Annual Goals Analysis Report, ODOT will consult with U.S. DOT agencies, and other U.S. DOT grantees, minority, women; and general contractors groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ODOT's efforts to establish a level playing field for the participation of DBEs.

ODOT will publish an annual notice announcing its proposed overall annual goals, informing the public that ODOT's Overall Annual Goals Analysis Report is available for inspection during normal business hours at the Office of Contracts and Materials Management for a period of thirty (30) days, and that ODOT and the U.S. DOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

In conjunction with ODOT's activities to meet its overall annual DBE goals, ODOT conducts various public participation and outreach activities designed to broaden awareness of ODOT's Office of Civil

Rights Program for Contracts. The measures described in 49 CFR 26.51, focusing on race-neutral means will be actively pursued, and ODOT will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with the RCRC, ODOT will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with Authority procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in ODOT's contracting activities.

3.1.5 Goal Submission

- A. The overall goal will be submitted to FTA for review every three years on August 1.
- B. A description of the methodology used to establish the goal, including the base figure (3.1.1 A through E above), and the evidence with which it was calculated, with any adjustment will be included.
- C. A projection, if applicable, of the portions of the overall goal which will be met by race-neutral means and basis for that projection.