

## **FHWA DBE Goal Methodology Montana Department of Transportation Federal Fiscal Year 2017 – 2019**

The Montana Department of Transportation (MDT), in accordance with United States Department of Transportation (USDOT) guidelines, determines MDT's Disadvantaged Business Enterprise (DBE) Goal for Federal Highway Administration (FHWA) funded contracts on a staggered three-year schedule.

MDT calculates the goal using the criteria set forth in 49 CFR Part 26.45. The determination of the level of DBE participation is based on the availability of all DBE businesses that are ready, willing, and able to participate in FHWA-assisted contracts in the State of Montana in relationship to all comparable businesses which are known to be available to compete for FHWA-assisted contracts.

For Federal Fiscal Year 2017 – 2019, MDT has established a proposed overall DBE goal of 6.14% to be accomplished through the use of race neutral means.

This methodology and the supporting evidence complies with the requirements of the federal regulations and federal guidance, as well as relevant court decisions, including *Western States Paving v. Washington State Dept. of Transportation*, 907 F.3d 963 (9<sup>th</sup> Cir. 2005).

### **Step 1: Determining the Base Figure**

For the Step 1 Base Figure, MDT determined the relative DBE availability in accordance with 49 CFR Part 26.45 (c)(3), which is to use data from a disparity study. MDT utilized data from the 2016 Availability and Disparity Study Report compiled by Keen Independent Research LLC to set the base figure. According to the report, 89% of MDT contract dollars during the study period went to firms with Montana offices. Therefore, Montana was determined to be the market area. Keen Independent's availability analysis indicates that the availability of current DBEs for MDT's FHWA-funded transportation contracts is 7.41% based on current availability information and analysis of FHWA-funded contracts awarded from October 2009 through September 2014. The contracts MDT intends to let during this Federal Fiscal Year 2017 – 2019 Goal Methodology are reasonably similar to projects reviewed in the Disparity Study. Therefore, MDT established the base figure as 7.41%.

### **Step 2: Adjustments to the Base Figure**

During Step 2, MDT examined all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall DBE participation goal. MDT conducted an analysis of information described in 49 CFR Part 26.45 (d)(1)(i):

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(1) *There are many types of evidence that must be considered when adjusting the base figure. These include:*

- (i) *The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;*

**Analysis of Recent Years**

To determine the impacts of the current local market conditions and work performed by DBE firms, MDT reviewed the Uniform Report of DBE Awards or Commitments and Payments for Federal Fiscal Years 2011 through 2015. Table 1 indicates DBE utilization based on awards or commitments for the past five years:

**Table 1 – DBE Utilization for Federal Fiscal Years 2011 through 2015**

<b>Federal Fiscal Year</b>	<b>% DBE Utilization</b>
2015	4.86%
2014	6.66%
2013	5.99%
2012	3.85%
2011	4.07%

DBE utilization ranged from a high of 6.66% of total dollars to a low of 3.85%. USDOT’s “Tips for Goal Setting” indicates that the goal setting process will be more accurate if using the median of your past participation to make an adjustment because the process of determining the median excludes all outliers (abnormally high or abnormally low) past participation percentages. The median for the past five years is 4.86%.

**Adjustments to Step 1 Base Figure**

After examining all evidence available, MDT will apply the median past DBE participation (4.86%) to the Step 1 Base Figure (7.41%) by calculating the average:

$$(7.41 + 4.86) / 2 = 6.14\%$$

MDT adjusts the Step 1 Base Figure to an overall DBE participation goal of 6.14%.

**Race Conscious / Race Neutral Evaluation**

MDT used both race conscious and race neutral measures in Federal Fiscal Year 2013 and a portion of 2014 to achieve its overall goal. Table 2 indicates the race neutral achievements based on awards and commitments from the Uniform Reports for Fiscal Years 2011 through 2015.

**Table 2 – Race Neutral Participation for Federal Fiscal Years 2011 through 2015**

<b>Federal Fiscal Year</b>	<b>Overall DBE Goal</b>	<b>% Total DBE Utilization</b>	<b>% of Race Neutral DBE Participation</b>
2015	3.55%	4.86%	4.86%
2014	5.83%	6.66%	5.85%
2013	5.83%	5.99%	3.60%
2012	5.83%	3.85%	3.85%
2011	5.83%	4.07%	4.07%

The median race neutral DBE past participation from 2011 through 2015 was 4.07%. However, data from the two most recent fiscal years indicates that contractors and consultants for MDT’s FHWA-funded transportation contracts know what the overall DBE goal is and are able to achieve it through race neutral means. As a result, MDT proposes to meet the 6.14% overall DBE goal solely through race neutral means.

MDT evaluates DBE participation for awards and commitments on a monthly basis and reports DBE utilization to FHWA on a semi-annual basis. If the Uniform Report indicates that MDT fell short or will fall short of meeting the overall goal, MDT will re-evaluate how much of the overall goal can be met through race neutral means and implement race conscious measures (i.e. project specific goals) to meet the remainder of the goal.

### **Race Neutral Initiatives**

MDT has implemented several race neutral measures to ensure the maximum feasible portion of the overall goal is achieved through race neutral means, in accordance with 49 CFR 26.51. These include:

- An Annual Needs Assessment to solicit input from minority, women, contractor groups, and MDT employees to gauge the availability of disadvantaged and non-disadvantaged businesses. The results of this survey show that the highway-related firms on the DBE Directory are either actively bidding on MDT related contracts or have participated on MDT-related highway project over the last year.
- A Business Development Program where MDT works with DBEs to retrieve information on the current state of business in Montana and to determine the DBEs workforce obstacles in order to define the most effective strategies needed to increase the DBEs capacity and availability.
- MDT continues to develop its relationship with trade organizations including, Montana Contractor’s Association (MCA) and American Council of Engineering Companies (ACEC), by training and educating contractors and consultants about the DBE program and the overall goal. Information is provided on the availability of DBEs, the capacity of DBEs, and the newest certified DBEs within the state. These meetings allow

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disadvantaged and non-disadvantaged businesses opportunities to provide feedback about the program. This relationship is strengthened with the intent of creating greater opportunity to conduct business with DBEs.

MDT provides the following Supportive Services for DBEs:

- Long-term development assistance to increase opportunities
- Trainings in contracting procedures
- Assistance to start-up firms; and
- Identification of potential highway-related DBEs

### **SUBMISSION AND PUBLICATION OF APG**

A Public Notice regarding the proposed overall DBE goal will be published in conjunction with the draft 2016 Disparity Study. The Public Notice will inform at the public that the overall DBE goal and a description of how it was determined are available for inspection during normal business hours at the MDT Headquarters Building, Office of Civil Rights, or online for 30 days from the date of the publication. MDT will accept comments on the overall DBE goal for 45 days from the date of publication. MDT will summarize any comments received during the 45-day comments periods and will transmit a copy of this summary to the Montana Division of FHWA.