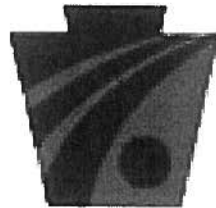


**2018-2020**

**FEDERAL HIGHWAY ADMINISTRATION DBE  
METHODOLOGY AND GOAL**

Developed by the



**pennsylvania**  
DEPARTMENT OF TRANSPORTATION

**August 1, 2017**

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**2018-2020 FHWA DBE METHODOLOGY AND GOAL  
DEVELOPED BY  
THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

The Pennsylvania Department of Transportation (PennDOT) has developed its DBE goal and goal-setting methodology in accordance with the federal regulatory mandate as set forth in Title 49 Code of Federal Regulations (Part 26), and the guidance set forth in the *Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program (TIPS)* published by the U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization. While PennDOT's DBE goal and methodology is established every three years, PennDOT conducts interim reviews or mid-course "inline adjustments" annually to assess market conditions and to ensure that its goal remains legally defensible.

This document is divided into three primary sections: an overview of the goal-setting process, a detailed discussion of the DBE goal-setting methods, and several appendices. The overview provides a brief background regarding the federal regulation governing the DBE program, a summary of the process used to establish the DBE goal, public consultation and outreach efforts, administration of the goal, and concludes with a statement of the proposed DBE goal for FFY-2018-20. The ensuing discussion provides a more detailed explanation of the goal setting process, including actual steps involved in the process. The appendices include a list of terminology and definitions, along with a technical addendum showing the calculations from which the goal was derived.

**OVERVIEW OF THE GOAL-SETTING PROCESS**

**The Regulatory Mandate**

All state departments of transportation (state DOTs) are required to submit triennial overall goals for DBE participation using the two-step goal-setting process set forth in Section 26.45 of Part 26. This process is intended to address the following objectives of the DBE program as defined by 49 C.F.R. Part 26.1:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in highway, transit, and airport financial assistance programs;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DOT's DBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

This methodology considers relevant data in determining the level of participation that PennDOT could expect in the absence of discrimination or other socio-economic barriers. In accordance with Section 26.45 of Part 26, the DBE goal-setting process involves establishing a base figure for the relative availability of DBEs in the market; describing the evidence with which it was calculated; making adjustments to that figure to make it as precise as possible, where appropriate; and, describing the evidence relied upon for such adjustments. As an extension of this process, Section 26.45 requires that state DOT's meet the "maximum feasible portion" of its overall DBE utilization goal through *race-neutral means of facilitating race-neutral DBE participation*.

Under Part 26, goals must be established and submitted to the Federal Highway Administration (FHWA) on a triennial basis. This methodology details PennDOT's approach for setting the overall DBE goal and maximizing race-neutral means for attainment of that goal for the federal fiscal years 2018 through 2020.

### **Summary of the Two-Step Goal-Setting Effort**

To comply with the goal setting provisions of the DBE regulation, PennDOT employed the two-step process set forth in Section 26.45 of Part 26. In addition, PennDOT projected percentages of the overall goal to be attributed to both *race-neutral* and *race-conscious* means required by Sections 26.45 and 26.51.

#### *STEP-1 – Baseline Goal*

Step-1 calls for the calculation of a base figure reflecting the relative availability of DBEs to perform the work intended to be let within the local marketplace. This analysis involves determining the percentage of DBEs, including potential DBEs, represented among all firms (DBEs and non-DBEs) or the enterprise universe (EU) that are ready willing and able to compete for federally-assisted contracting.

To determine this percentage, PennDOT first identified the number of ready, willing, and able firms (DBEs and non-DBEs) within PennDOT. Next, PennDOT defined the local market for all federally-assisted contracting based on where the majority of contractors were awarded or where federally-assisted funds were spent. PennDOT subsequently identified the number of potential DBE firms within that local market area using a measure of race-neutrality. The final baseline ratio of DBEs was calculated by dividing the total number of DBEs (current and potential) by the number of all ready, willing, and able firms (DBEs and non-DBEs) within the local market.

Once a baseline ratio was established, PennDOT used anticipated expenditures to yield a relative availability of DBEs within each sub-market. This was conducted by weighting the DBE ratio for each sub-market according to PennDOT's anticipated expenditures over the next three (3) years within that sub-market. Weighting by sub-market ensures that the Step-1 Base figure is as accurate as possible in relation to PennDOT contracting practices.

## *STEP-2 – Adjustments to the Goal*

Under Step-2 of the goal setting process, PennDOT examined all relevant evidence in its jurisdiction to determine what adjustments, up or down, needed to be made to the base figure to arrive at the overall goal. Step-2 takes into account variables affecting DBEs in the Commonwealth. Under the Pennsylvania Unified Certification Program ("PAUCP") PennDOT and four other entities in the Commonwealth that certify DBEs continue to recognize each other's certification (certification by one is certification by all). The PAUCP list of DBEs is used in conjunction with PennDOT's ready, willing and able (RWA) lists.

This approach makes all capacity adjustments in step-2 as per the TIPS:

- Using narrowly-tailored measures of capacity for construction primes, technical consulting (design & construction inspection)
- Using past participation for research, service consulting, subcontractors, and suppliers.

## *Data Sources*

All data used is the most refined and transparent available. It originates from documents accessible to the public and is obtained from internal Department or publicly available sources. Using the list of EUs (above) for each market category (Prime, Subcontractor, Technical Consultant, Service Consultant, Supplier, and Research) the Department generated a NAICS codes market profile. The NAICS codes used in generating the NAICS codes market profile have been obtained by looking up a firm's NAICS code from Hoovers Database (a Dun & Bradstreet product, which is publically available online) and from the UCP for DBE firms. The data used for calculations were obtained from the following data sources:

- Number of Enterprise Units from PennDOT RWA List (EUs)
- Number of Disadvantaged Business Enterprise Units from PennDOT RWA List (DBEs)
- Number of all firms located in Pennsylvania and other states that match the NAICS codes market profile were obtained from the publicly available Hoovers Database (a Dun & Bradstreet product, which is publically available online).
- Number of all Women and Minority firms located in Pennsylvania and other states that match the NAICS codes market profile were obtained from the publicly available Hoovers Database (a Dun & Bradstreet product).

No additional objective, refined, and verifiable data was available that required further adjustments in the goal setting process. Although one disparity study was completed in Pennsylvania, the study is the latest available annual disparity study mandated for the City of Philadelphia on an annual basis under City ordinance. The study deals exclusively with the southeastern region of Philadelphia. After reviewing this study, PennDOT concluded that it does not contain data relevant to this submission; therefore, the findings were not incorporated in this methodology. Additionally, data on statistical disparities or other evidence on employment, self-employment, education, training, union apprenticeship is not

available at this juncture and, therefore, could not be incorporated into this 2018-2020 DBE goal methodology. PennDOT intends to expand research efforts to acquire this and other objective and verifiable data that may be useful in its goal-setting methodology for future submissions.

#### *Final Goal Calculation*

- The ratio for each submarket is proportioned according to the funds spent in each submarket during the previous year. The final goal is the sum of these weighted ratios.

#### **Race-Neutral/Race-Conscious Allocation**

- PennDOT designated an amount equivalent to the median race-neutral attainment for the previous five (5) years as the race-neutral portion of the goal.
- Part 26 allows PennDOT to lower the race-conscious portion of the goal by the average percentage it exceeded the goal in each of the last two years if the Department exceeded the goal in each of those years. PennDOT did not exceed the goal for FFY-2016, so it will not reduce the race-conscious portion of the goal further at this time. PennDOT will continue to monitor our attainment levels and adjust the race-conscious portion as needed.

#### **Consultation and Outreach Efforts**

In accordance with Section 26.45(f), PennDOT will submit its overall goal and methodology to DOT on August 1 of 2017. Consistent with the Part 26 mandate, PennDOT employs outreach efforts to collect and utilize the most refined and best available data in its marketplace. To ensure thorough analysis of this data, PennDOT avails itself of highly qualified research professionals and statistical analysts from Indiana University of Pennsylvania and the Pennsylvania State University. These research professionals are equipped to analyze and organize local market sector data from an economic, statistical, and sociological perspective. Since establishment of the goal requires this thorough analysis of available and applicable data in the local marketplace, and these professionals work with such data on a regular basis, they are an essential part of our DBE team.

PennDOT's current DBE Supportive Services Program contractor, Cheyney University, a historically black college in the Commonwealth, assists PennDOT with the implementation of its race-neutral initiatives. This contractor retains a network of DBEs and other small businesses and provides a number of managerial, technical, and financial workshops and networking sessions throughout the Commonwealth.

#### *Public Consultation*

Before establishing the overall goal, PennDOT continued to adhere to the public participation component of the goal-setting process required by Section 26.45 (f) by scheduling face-to-face, in-person consultations with minority, women's, general contractor groups. In addition, PennDOT seeks input from community organizations, and

other officials or organizations, such as the Asian Indian Americans of Central PA, Greater Philadelphia Hispanic Chamber of Commerce, and the African American Chamber through the DBE Advisory Committee. These organizations are among those that could be expected to have information relative to the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and, PennDOT's efforts to establish a level playing field for the participation of DBEs in federally-assisted, transportation-related contracting.

In preparation for this submission, PennDOT scheduled, publicized, and convened a series of meetings in the Allentown, Philadelphia, Pittsburgh, Erie, and Harrisburg areas during the first half of 2017. These meetings were conducted to obtain information relevant to the goal setting process through direct, interactive exchanges. They were widely publicized in order to reach as many interested stakeholders within the Commonwealth's contracting community as possible. To ensure DBEs had an opportunity to provide candid feedback, PennDOT made arrangements for two separate meetings in each location; one expressly for DBEs and one for all members for the contracting and consulting community, although none of the forums generated interest in a DBE-only session. Invitations for the DBE-only sessions were extended to all Pennsylvania Unified Certification Program (PA UCP) DBEs and to various minority and women organizations. During the meetings, Department program personnel as well as PennDOT's goal-setting consultants made every effort to solicit and to address questions about PennDOT's methodology and goal as well as about other issues that arise under the DBE program.

In addition to the regional public consultation meetings, PennDOT employs other strategies to solicit input from its customers. PennDOT meets annually with members of the Associated Pennsylvania Constructors (APC) and the American Council of Engineering Companies (ACEC) to seek input and feedback from the contracting community. PennDOT has also formed an Advisory Council made up of DBEs that meets on a regular basis. This DBE Advisory Council provided a forum to engage these DBEs and others as part of our public consultation effort.

#### *Public Notice and Public Comment*

Following these public consultation and outreach efforts, PennDOT published a notice of the proposed overall goal methodology in the *Pennsylvania Bulletin*, informing the public that the methodology used to calculate the goal was available for inspection during normal business hours at PennDOT's principal office for 30 (thirty) days following the date of the notice. As required, this notice informed the public that PennDOT and DOT would accept comments on the goals for 30 days from the date of the notice published in the *Pennsylvania Bulletin*, a publication recognized by the public as the location for public notices issued by executive agencies of the Commonwealth. The notice also appeared in general circulation media (newspapers) and available minority-focused media and trade association publications. PennDOT issued this notice in early June 2017, including addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

PennDOT's overall goal submission to DOT includes a summary of information and comments received during this public participation process and our responses in Appendix C.

PennDOT will begin using its overall goal on October 1, 2017, unless it receives other instructions from DOT.

### **Administration, Implementation, and Monitoring**

Contract monitoring and adjustment are required during the course of the goal period. Following the implementation of a new overall goal, PennDOT is charged with a monitoring function relative to DBE goal commitments, and DBE goal attainments. PennDOT fulfills this mandate by collecting and analyzing data collected and reported to its Bureau of Equal Opportunity (BEO). This data is reported to BEO by impacted DBE program areas within the sub-markets of PennDOT that set and implement project goals on a regular basis.

#### *Contract Goals and Adjustment of the Goal*

PennDOT will use contract goals to meet any portion of the overall goal PennDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

- Contract goals apply on those FHWA-assisted contracts that have subcontracting possibilities.
- PennDOT may not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)
- The DBE contract goal for a specific contract may be higher or lower than that percentage level of the overall goal; depending upon other factors such as the type of work for the project; the location of the project work; and the availability of DBEs for the particular contract.
- Over the period covered by the overall goal, PennDOT must set goals that will cumulatively result in meeting any portion of its overall goal that it does not project being able to meet through the use of race-neutral means.

As part of its goal monitoring efforts, PennDOT may make adjustments to the goal in accordance with Section 26.51(f)(2) of Part 26. This provision states that if, during the course of any three-year period in which PennDOT is using contract goals, it determines that it will exceed its overall goals, it must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. Similarly, if PennDOT determines that it will fall short of the overall goal, we will make appropriate modifications in its use of race-neutral or race-conscious (contract) measures to allow it to meet the overall goal.



### *Good Faith Efforts*

The obligation of the bidder/offeror is to document good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

PennDOT will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before committing to the performance of the contract by the bidder/offeror. Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Challenges regarding Good Faith Efforts are addressed by an Interdisciplinary Review Team using PennDOT's two-tier good faith effort review process. In addition, PennDOT maintains a committee available to provide administrative reconsideration for good faith efforts matters that cannot be resolved by the first-tier reviewers.

## **Overall Goal for Participation by DBEs in PennDOT's Federally-Assisted Contracts**

PennDOT's goal-setting methodology described in this document has resulted in an overall goal for participation by DBEs in PennDOT's federally-assisted contracts of 9.38 percent. Of this, PennDOT proposes to meet 7.46 percent by means of race-conscious or traditional contract goals and an additional 1.92 percent by means of race-neutral measures. This goal will remain in effect until PennDOT is required to submit a new goal on August 1, 2020. Meanwhile, PennDOT will conduct Inline Correction analysis annually to assess changes in market conditions that may require adjustments to this goal and will submit these recommendations for FHWA review and approval as needed.

**Southwestern Pennsylvania Commission**

**FFY 2018, 2019, 2020**  
(October 1, 2018 through September 30, 2020)

**Three-Year Goal**  
**for**  
**Federal Transit Administration-Funded Projects**  
**Disadvantaged Business Enterprises (DBE)**

**Amount of goal**

SPC's overall goal for Federal Fiscal Years 2018, 2019 and 2020 (October 1, 2018 through September 30, 2020) is **2%** of the Federal financial assistance to be expended in directly-funded Federal Transit Administration (FTA)-assisted contracts. This goal is exclusive of FTA funds used for the purchase of transit vehicles.

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

SPC will meet 100% of its Three-Year Goal for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts by race/gender neutral means. The following race/gender neutral means will be used:

- Encouraging prime contractors to subcontract portions of the work where feasible
- Arranging solicitations, time to present bids/proposals, bid quantities, specifications, quantities and delivery schedules to facilitate DBE and small business participation where feasible
- Simplifying or reducing bonding requirements where feasible
- Providing information to bidders on potential subcontractors where feasible
- Offering instructions on bid specifications, procedures, and general bidding requirements

**Methodology for Determination of Goal**

SPC determined its three-year goal for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts according to the methodology described below. The goal will be exclusive of FTA funds used for the purchase of transit vehicles.

The number of registered DBE firms located in the SPC region was identified by downloading data for each of the ten counties from the Pennsylvania Unified Certification Program (PA UCP) website (<http://www.paucp.com>). There were a total of 1,741 registered DBE firms in the SPC region as of September 20, 2017. The record for each registered DBE firm included one or more North American Industry Classification System (NAICS) 6-digit code(s) that were reported to the PA UCP by the DBE firms themselves. Table 1 below summarizes the PA UCP information.

***Table 1 – DBE Firm Summary***

SPC County	All PA UCP Registered DBE Firms
Allegheny	450
Armstrong	5
Beaver	18
Butler	29

Fayette	4
Greene	1
Indiana	2
Lawrence	1
Washington	29
Westmoreland	34
<b>Region Total</b>	<b>573</b>

*Contracting Opportunities*

SPC utilizes direct FTA funding as a sub-recipient, through agreement with the Port Authority of Allegheny County, of FTA Urbanized Area Formula (Section 5307) funds.

Since 2003, SPC has utilized this funding to support a regional rideshare program called CommuteInfo. The program retains a single contractor for the provision of vanpool vehicles, fleet management and maintenance services, and other vehicle-related services for a regional vanpool program. In addition, the CommuteInfo program offers a wide range of free ridesharing services to employees and employers in the region such as a toll free phone number for information and referrals, vanpool/carpool rider matching, an emergency ride home service, and transit/biking/walking resources. It is anticipated that the CommuteInfo project will extend Federal contracting opportunities amounting to just over \$2,000,000 over Federal Fiscal Years 2018 through 2020.

After reviewing previous contracting opportunities and considering the types of projects SPC engages in that would offer opportunities for any type of contractor, SPC has determined that DBE contracting opportunities in the future will most likely be limited to certain types of activities. While DBE contracting and sub-contracting opportunities may be more robust in certain NAICS Subsectors, the likelihood that projects of such type will be funded with FTA funds seems – at this juncture – remote. An example would be the NAICS Subsector for “Specialty Trade Contractors.”

The most common past expenditures for sub-contracting have been for the provision of transportation services; ancillary administrative support services for such activities; and, professional and technical services in the areas of information technology and data collection/reporting. Therefore, it has been determined to limit the available DBE analysis to five appropriate NAICS code firm types. Table 2 below summarizes the available contract opportunities by amount and relative weight.

**Table 2 - FTA-Assisted Projects - Relevant NAICS Codes FFY 2015-2017**

	<b>NAICS Code</b>	<b>Project</b>	<b>Amount of DOT funds on project:</b>	<b>% of total DOT funds (weight)</b>
1)	323111	CommuteInfo Brochure Printing	\$6,000.00	0.00296
2)	485999	CommuteInfo Vanpool Services	\$1,200,000.00	0.59201
3)	541810	Advertising and Development of Ads	\$800,000.00	0.30467
4)	541890	Safety Kits	\$20,000.00	0.00987
5)	541930	Brochure Translation Services	\$1,000.00	0.00049
	<b>Total FTA-Assisted Contract Funds</b>		<b>\$2,027,000.00</b>	<b>1.0000</b>

*Relative Availability*

The number of registered DBE firms in the SPC region was compared to the overall number of business sites in the region for selected NAICS 6-digit codes. The 2016 Mergent Intellect Database was used to determine the overall number of business sites in the SPC region within each NAICS. The Mergent Intellect Database was used because it was determined to contain the most current information; is updated continuously; and, provides detailed nationwide employment figures by business site. SPC staff downloaded the Mergent Intellect Database in January 2017 (end-of-year 2016 data). The database includes records for all business sites located within the 10-county SPC region.

The record for each business site listed in the 2016 Mergent Intellect Database included up to five NAICS 6-digit code(s). The NAICS codes were used to tally the number of business sites in the SPC region for each applicable NAICS code.

Table 3 below summarizes the percentages of registered DBE firms in the SPC region according to a subset of selected NAICS codes that were deemed by SPC staff as being most likely to be used for SPC contracts utilizing direct recipient funds from the FTA.

The relative availability of registered DBE firms was then calculated for each selected NAICS, ranging from 0.0000 to 0.02381. The average relative availability for the selected NAICS is 0.01034.

***Table 3 – Relative Availability of Registered DBE Firms (Six-Digit NAICS Codes) Most Likely to be used for SPC Contracts Utilizing Direct Recipient Funds from the FTA***

<b>PAUCP DBE FIRMS COMPARED TO ALL MERGENT INTELLECT FIRMS</b>				
<b>NAICS</b>	<b>NAICS DESCRIPTION</b>	<b>DBE FIRMS</b>	<b>ALL FIRMS</b>	<b>RELATIVE DBE AVAILABILITY</b>
323111	Commercial Printing (except Screen and Books)	6	888	0.00676
485999	All Other Transit and Ground Passenger Transportation	2	84	0.02381
541810	Advertising Agencies	6	501	0.01198
541890	Other Services Related to Advertising	4	219	0.01826
541930	Translation and Interpretation Services	0	49	0.00000
<b>Total</b>		<b>18</b>	<b>1,741</b>	<b>0.01034</b>

*Weighting*

Based on SPC’s direct-funded project contracting history, Transit and Ground Passenger Transportation activities account for the majority – about 80% – of potential sub-contracting opportunities. All other potential activity categories account for about 20% of contracting opportunities. This is a direct result of the types of projects funded with SPC’s Urban Area Formula funds (capital cost of contracting for vanpool services). Utilizing the FTA-recommended weighting analysis yields an availability factor of 0.01902 expressed as percentage availability of 1.90% and rounded to 2%. Table 4 below summarizes the weighting analysis.

**Table 4 - Weighted Base Figure**

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
323111	CommuteInfo Brochure Printing	0.00296	x	0.00676	0.0002
485999	CommuteInfo Vanpool Services	0.59201	x	0.02381	0.01410
541810	Advertising and Development of Ads	0.39467	x	0.01198	0.00473
541890	Safety Kits	0.00570	x	0.00987	0.00018
541930	Brochure Translation Services	0.00049	x	0.00000	0.00000
				<b>Total</b>	0.01902
				Expressed as a %	1.90%
				<b>Rounded, Weighted Base Figure:</b>	<b>2%</b>

**Base Figure**

The foregoing analyses and weighting yields a **Base Figure Three-Year Goal of 2%** for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts - exclusive of FTA funds used for the purchase of transit vehicles.

**Adjustment to Base Figure**

SPC is not adjusting the Base Figure for the Three-Year Goal for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts for the following reasons:

**Previous Base Figure Weighting Analysis**

SPC is currently utilizing FTA recommended methodology for weighting relative DBE firm eligibility for FTA-direct funded contract opportunities. SPC's previous weighting procedure utilized alternative weighting methodology to determine its FFY 2015 - 2017 DBE Goal for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts. Using current FTA-recommended guidance for weighting yields an appropriate base figure goal.

**Experience on past participation**

SPC has consistently improved its monitoring of contract opportunities related to its own projects funded with FTA Urbanized Area Formula funding. Current monitoring and reporting indicates that a slightly higher than base figure goal is being achieved. A 2% annual goal for DBE participation in the Federal financial assistance to be expended in FTA-directly funded contracts based on the percentages of available DBE firms across the business activity categories most likely to be used for SPC's FTA directly-funded projects is justified.

**No evidence from disparity studies** – SPC has not conducted any recent studies designed to investigate the existence of discrimination in contracting, nor is staff aware of any such studies being conducted by other agencies in the Pittsburgh metropolitan area in the last several years.

*All worksheets for the forgoing analyses are attached to this document.*

Description of Efforts for Community Engagement of Consultation Regarding Overall Goal

On an ongoing basis, SPC reviews its current contract status; conducts research on current conditions; and, communicates with regional minority, women's and general contractor groups, and 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 efforts to establish a level playing field for the participation of DBEs. Information received from these consultations is kept on file and utilized in development of goals.

SPC Transportation Planning staff is greatly aided in these specific outreach efforts by its close association with staff from SPC Economic Development planning staff supported by SPC's status as the Federally-assigned Local Development District. SPC staff participates in periodic information to solicit input from small businesses and minority firms.

SPC has incorporated the following non-discriminatory and race-neutral element to its DBE program in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses).

SPC's existing competitive procurement processes for large procurements (in excess of \$100,000) offers various opportunities to encourage and promote small business participation. SPC averages about 15 of these large contract offerings in a normal business year.

- Large procurements require detailed scope of work analysis prior to bid/qualification solicitation. As a matter of course, such analysis will include the general specification of project scope elements that may represent opportunities for small business participation.
- All competitive proposals require the completion of a Cost and Price Analysis review prior to release of the request for proposal or bid. These analyses offer an opportunity to identify elements of the total project that could be "called out" in a request for proposal of bid document as small business opportunities.
- All competitive proposals and bids received in response to large contract procurement requests are evaluated according to evaluation factors and their relative importance. These are specified in the solicitation, although numerical or percentage ratings or weights are not necessarily disclosed for all procurements. When establishing rating factors and their weights, SPC includes small business participation as a factor for large contracts. This process will be similar to the process currently in place that seeks to identify DBE participation opportunities in some procurements. For procurements with no DBE participation specified, this process will be particularly emphasized.
- Final contract awards for large contracts take into account factors that are most advantageous to the project. Evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to the project. SPC accounts for the advantages of small business participation in various contract elements part of its DBE programs.

SPC provides appropriate assistance to potential prime contractors in the identification of small business participation opportunities. Such assistance consists of sharing information on related firms from SPC's bidders list and/or directing potential bidders to public information concerning small business development within the region.

Currently, SPC has established relationships with two important regional entities that specialize in small business development activities. These relationships are a product of both proximity and partnership in ongoing regional economic development activities. These partnerships are part of SPC's regional planning efforts resulting from the long range land-use and economic development

strategies developed as part of SPC's regulatory responsibilities as the region's Metropolitan Planning Organization.

SPC will continue to enhance existing relationships with the Small Business Development Centers at the University of Pittsburgh;

University of Pittsburgh – Pittsburgh Small Business development Center  
Wesley W. Posvar Hall, First Floor  
230 South Bouquet Street  
Pittsburgh, PA 15260  
[www.business.pitt.edu/entrepreneur/sbdc](http://www.business.pitt.edu/entrepreneur/sbdc)

and, the Duquesne Small Business Development Center;

Duquesne Small Business Development Center  
Rockwell Hall, Room 108  
600 Forbes Avenue  
Pittsburgh, PA 15282  
[www.sbdc.duq.edu/](http://www.sbdc.duq.edu/)

to identify and support the development of small business opportunities to participate in SPC's DOT-assisted contracts.

***Information on outreach efforts are attached to this document.***



## ATTACHMENT C: GOOD FAITH EFFORTS REVIEW PROCESS

### Background and Reference Documents:

The SPC has entered into a contractual relationship with the Pennsylvania Department of Transportation (PennDOT) which mandates a percentage DBE participation in all its procurement activities relating to work as a recipient and sub-recipient of Federal Aid Highway funds and Federal Transit Administration funds authorized under Titles I, III, V and VI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005.

In cooperation with PennDOT and in accordance with the Federal DBE regulation set forth in 49 Code of Federal Regulations Part 26 (Part 26), and as a sub-recipient of Federal funds received from PennDOT, SPC is required to establish a good faith efforts review process to evaluate the efforts of prospective successful bidders on all projects with DBE goals when the goal is NOT met. Section 26.53 of Part 26 requires that contracts carrying a DBE goal requirement be awarded to a bidder who makes a good faith effort to meet the contract goal. Section 26.53(a) states that a good faith effort is established by documentation that a bidder has obtained sufficient DBE participation to meet the prescribed contract goal or documentation that the bidder made an adequate good faith effort to meet the goal even though it did not succeed in this endeavor.

Each case ultimately turns on its own facts, and there is no one-size-fits-all checklist or formula for making good faith efforts determinations. Institutional guidance on good faith efforts determinations issued by USDOT's Office of General Counsel is set forth in Section 26.53 and Appendix A of 49 C.F.R. Part 26 (Part 26). Appendix A, in particular, outlines factors to be used in a good faith effort analysis and is the best reference document available. Additional USDOT guidance is also included in the questions and answers that appear on the official DBE program website.

### The Genesis of Good Faith Effort Review and Reconsideration

The good faith effort review process is triggered when a question arises as to whether or not the apparent successful bidder has documented a good faith effort. Where this occurs, a two-tiered good faith effort review process is in force and is used to resolve good faith effort issues that cannot be resolved by SPC officials tasked with reviewing documentation of the DBE participation.

Questions to be asked to determine if a good faith efforts review is needed:

- In any bidder response to an SPC RFP/RFQ, did the bidder meet all the requirements of the RFP/RFQ including DBE participation? If the apparent successful bidder has met or exceeded the stated goal amount then NO review is needed and successful bidder can be recommended for approval.
- If the apparent successful bidder has NOT met the stated goal amount but has submitted documentation supporting its good faith efforts, then a formal internal SPC good faith

efforts review is needed before the apparent successful bidder can be recommended for approval. In this case, the following review procedures must be followed.

Good Faith Efforts Review Procedures:

*Tier I: The Interdisciplinary Review Team (IRT) Recommendation*

When an issue arises relative to the adequacy of a good faith effort submission and there is a request for a good faith effort review, the SPC's Interdisciplinary Review Team (IRT), comprised of SPC senior management personnel (Transportation Planning Director; Planning and Development Director; and the Information Systems Director), will be tasked with reviewing the submitted documentation. The IRT is assigned the task of evaluating a bidder's good faith effort in accordance with the regulatory references delineated in these procedural guidelines as well as the SPC's Competitive Procurement Guidelines. In the event that the IRT requires clarification of a document submitted by the bidder on the required submission date, it will be authorized to contact the bidder in writing via letter, or by e-mail, or by fax to obtain the requisite explanation. However, it is anticipated that communications between the bidder and the IRT will be infrequent.

Because good faith effort issues are time-sensitive, the IRT will be required to complete its review of the submitted documentation within seven (7) business days. Upon completion, the IRT will forward its findings to the SPC Executive Director for acceptance. If accepted, a memo indicating that the "good faith effort" put forth by the apparent successful bidder has been approved and a copy will be forwarded to the SPC DBE Officer to be included in the files.

In the event that the good faith effort review findings are NOT accepted, the second tier of the SPC's Good Faith Efforts Review process will be initiated. Section 26.53(d) requires that the SPC provide the apparent successful bidder with an opportunity for administrative reconsideration. As part of this reconsideration, bidder/offeror (bidder) can elect to provide written documentation or request a meeting before the SPC's Good Faith Efforts Review Committee (Committee). Section 26.53 (d)(1) refers to this procedure as "reconsideration" and states that the SPC's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or failed to make adequate good faith efforts to do so. Consistent with this provision, any member of IRT will not participate in the second tier determination.

*Tier II: Administrative Reconsideration - Good Faith Effort Review Committee (Committee)*

Purpose: In the event that the good faith effort documentation submitted by a bidder is not accepted as to meeting the requirements of Part 26.53 (a), the bidder will be afforded an opportunity for administrative reconsideration before the SPC's Good Faith Effort Review Committee (Committee). The Committee will meet on an as-needed basis. As noted above, this body is independent of the IRT. The Committee will conduct inquiries of the following types of matters: (1) Review of the apparent successful bidder's DBE data and good faith effort to meet the DBE contract goal to determine whether to approve or disapprove the submission; (2) Review of the bidder's good faith effort when a DBE firm fails to perform and the bidder's

effort to replace the DBE results in a shortfall in the DBE goal: and, (3) Review of the bidder's DBE effort during the performance of the contract or at the completion of the contract and necessary sanctions for unwarranted shortfalls in the DBE contract goal.

Committee Composition: The Committee will be comprised of three (3) members. The SPC Executive Director will serve as Chairperson along with the SPC DBE Liaison Officer and the SPC HR Coordinator. Designated alternates will be available should a need arise.

The Committee meetings are not subject to the Sunshine Law and are not open to the public. Attendance is limited to the impacted bidder, the Committee members, and legal counsel if needed. The SPC DBE official will prepare the background information that generated the appeal and will attend the hearing to clarify material contained in the source documentation provided to Committee members.

Good Faith Effort Review Documentation Package: A complete good faith effort review package will be provided to the Committee prior to the scheduled review meeting. The information will include the IRT information and findings. Each Committee member will evaluate the good faith effort submission in accordance with the established SPC guidelines, as well as the applicable regulatory guidelines for DBE good faith effort submissions. The evaluation will consider the record evidence as well as Part 26, Appendix A, Section 26.53.

Bidder Notification: Whenever a Committee meeting is intended to be convened, the impacted bidder will be notified, in writing, and invited to attend a meeting on a date certain. The bidder will be advised that the purpose of the meeting is to clarify documentation previously submitted to the SPC within the time limits set forth in the bid documents and DBE Special Provisions. The bidder will not be required nor authorized to submit new good faith effort written documentation not in existence at the time of the DBE participation submissions consistent with Part 26 regulatory guidelines. The bidder will be expected to address questions posed by Committee members and will have the opportunity to clarify points resulting from questions asked or from review of its good faith effort submissions. The bidder will then be excused and the Committee will deliberate in an executive session. The legal adviser will participate in the executive session to address regulatory questions.

At the conclusion of the Committee executive session and deliberation, the Committee will vote to accept or NOT accept the good faith effort submission. The decision will be determined by a simple majority vote. The majority must reach a consensus as to the reason for accepting or rejecting the bidder's good faith effort. The Committee's decision will be outlined in a letter sent to the bidder by first-class mail. The decision letter will be prepared by the legal adviser and will be signed by the Committee's Chairperson. Consistent with Section 26.53, the Committee's decision is not administratively appealable to USDOT and no further Department appeal will be available. All decisions of the Committee are final and binding.

Within 15 days of being informed by SPC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/Offerors should make this request in writing to the following reconsideration official: Southwestern Pennsylvania Corporation, DBE Official, 425 Sixth Ave, Suite 2500, Pittsburgh, Pa 15219. The reconsideration official will not have played any role in the original determination that the bidder/Offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. SPC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

SPC will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

## **ATTACHMENT D: MONITORING AND ENFORCEMENT MECHANISMS**

SPC will take the following monitoring and enforcement steps to ensure compliance:

- SPC will bring to the attention of the Pennsylvania Department of Transportation (PennDOT) any false, fraudulent, or dishonest conduct in connection with the program, so that PennDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- SPC will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
- SPC will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. Specifically, the DBE must demonstrate that it is responsible for the materials and supplies used on the contract, for negotiating pricing, determining quality and quantity, ordering material, and installing (where applicable) and paying for the material itself. Determinations relative to whether the DBE has actually met its burden, so to speak, require the recipient to evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work the firm is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Moreover, a DBE does not perform a commercially useful function if it appears to be an extra participant in a transaction; and is presumed not to be doing so if it is responsible for less than 30% of the total cost of the contract. (See 49 CFR 26.55 (c)).
- SPC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.
- SPC will perform on-site visits as needed to ensure that work committed to DBEs at contract award is actually performed by the DBEs.