

2021-2023

FEDERAL HIGHWAY ADMINISTRATION DBE  
METHODOLOGY AND GOAL

Developed by the



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# **2021-2023 FHWA DBE Methodology & 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-2021-23. 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 2021 through 2023.

### 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. The table below provides an overview of this process.

PennDOT FY 2021-23 DBE Methodology		
<b>Step-1</b>	RWA DBEs	<ul style="list-style-type: none"> <li>• Prime and Subcontractors = raw count from PennDOT prequalification lists</li> <li>• Suppliers = Supplier bulletins</li> <li>• Technical Consulting = Raw counts of firms ECMS</li> <li>• Service Consulting = Bidders lists</li> <li>• Research = Bidders lists</li> </ul>
	Potential DBE Analysis	<ul style="list-style-type: none"> <li>• Tailored geographic market</li> <li>• Firms identified as women- or minority-owned in Dunn &amp; Bradstreet; weighted by NAICS code frequency; race-neutrality measure; highest of potential or actual</li> </ul>
<b>Step-2</b>	Capacity Adjustments	<ul style="list-style-type: none"> <li>• Construction Primes = Prime Capacities relative to contracts being let</li> <li>• Construction Subs = Interaction of Primes and Sub, averaged with median DBE Sub participation for last five years</li> <li>• Service consulting, Suppliers, Research = each is averaged with the median DBE sub-market participation for last five years</li> <li>• Technical Consulting = allocation of personnel &amp; measuring impact of personnel capacity on contract award</li> </ul>
	Disparity Adjustment	<ul style="list-style-type: none"> <li>• Adjust DBE dollars for business ownership disparity difference</li> </ul>
	Weighting	<ul style="list-style-type: none"> <li>• Weighted ratios by market distribution of dollars</li> </ul>
	RN/RC Projections	<ul style="list-style-type: none"> <li>• Percentages of overall goal attributed to both race-neutral and race-conscious means</li> </ul>

### *STEP-1 – Baseline Goal Calculation*

Calculating the Baseline Goal involves the following key steps:

1. Identify all ready, willing, & able firms (DBE firms and Non-DBE firms)
2. Define geographic local market
3. Identify Potential DBE firms
4. Calculate each sub-market's baseline ratio
5. Determine relative availability of DBE firms by sub-market based on Department expenditures

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 – Baseline Goal Adjustments*

Adjustments to the Baseline Goal involve the following key steps:

1. Adjusting for capacity by submarket
  - a. Technical Consulting
  - b. Service Consultants
  - c. Researchers
  - d. Construction
    - i. Primes
    - ii. Subs
    - iii. Suppliers
2. Adjusting for capacity and unique market interactions. Adjusting for disparity difference within each sub-market

3. Applying weighted ratios based on market distribution of dollars
4. Projecting race conscious and race neutral participation

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.

Capacity adjustments in step-2 are based on:

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

#### *Data Sources*

All data used is the most refined and transparent available. It is obtained from internal Department data or publicly available sources. Using the list of EUs (above) for each market category (Technical Consultants, Service Consultants, Research, and Construction Primes, Subs, and Suppliers) 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 each firms' NAICS code from Hoovers Database (a Dun & Bradstreet product, which is publicly 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).
- 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).

#### *Adjusting for Disparity*

In 2018 the Pennsylvania Department of Transportation (PennDOT) retained the services of BBC Research & Consulting (BBC) to conduct a disparity study. This study was intended to help inform PennDOT's implementation of the Federal Disadvantaged Business Enterprise (DBE) Program and the state's transportation-focused Diverse Business (DB) Program. This disparity study focuses on horizontal construction and construction-related engineering and professional services contracts.

The results of the study indicated that the number of DBEs would be greater absent discrimination. Therefore, PennDOT used data from this study to help refine its goal-setting methodology by adding a disparity adjustment.

#### *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**

Race- and gender-neutral measures are measures that are designed to encourage the participation of all small businesses in PennDOT contracting. In contrast, race- and gender-conscious measures are designed to specifically encourage the participation of DBEs in PennDOT contracting.

- 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. While PennDOT did exceed the goal for FFY19, it did not for FFY18. Therefore, 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, 2020. 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, ProRank Business Solutions Inc., 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 Minority Business Enterprise Center, Cheyney University Diverse Business Center, Temple University Small Business Center, PA Diversity Coalition, Riverside Center for Innovation, and the African American Chamber. 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 during March of 2020. These meetings were originally scheduled to be held in person in the Philadelphia, Pittsburgh, and Harrisburg areas. However, due to state directives in response to COVID-19, only the Philadelphia meeting was conducted. Two additional webinars were scheduled and conducted to allow stakeholders to participate virtually. These meetings/webinars 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. 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 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 of PA (ACEC/PA) to seek input and feedback from the contracting community. For the last several years, PennDOT has held Diversity Forums across the Commonwealth, which has allowed for more face-to-face engagement with stakeholders and encouraged feedback on the DBE program.

#### *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 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 will also appear at [www.PennDOT.gov/beo](http://www.PennDOT.gov/beo), and the document is available for translation upon request.

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

PennDOT will begin using its overall goal on October 1, 2020, unless it receives other instructions from FHWA.

### **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 the 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 elect to not establish a goal on every 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 and adjust individual project goals to allow PennDOT 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/offeror'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 7.60 percent. Of this, PennDOT proposes to meet 6.70 percent by means of race-conscious or traditional contract goals and an additional 0.91 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, 2023. 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.