

2008 DBE GOAL

An Overall Annual Disadvantaged Business Enterprise Goal has been developed for Disadvantaged Business Enterprise (DBE) participation in ODOT's Federal Fiscal Year (FFY) 2008 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 annual 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 Goal for FFY 2008, 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 2002 Economic Census. The US Census 2002 Economic Census was utilized because it is the latest edition of this information.

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, (Enclosure A).

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

- 236220 Commercial and Institutional Building Construction (Bus Shelter Construction)
- 423430 Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
- 423690 Other Electronic Parts and Equipment Merchant Wholesalers
- 485310 Taxi Service (Purchased Services)
- 541330 Engineering Services
- 541613 Marketing Consulting Services
- 541614 Process, Physical Distribution and Logistics Consulting Services

The numerator was determined by utilizing the above NAICS information. ODOT sorted certified DBE information published by the certification agency and determined that 65 DBE firms were ready, willing and able to bid on projects to be funded in 2007 (Enclosures B and C). As certification information is maintained on an electronic database and updated nightly, this data was current as of June 13, 2007.

To find the denominator, 1,879 firms (DBEs and non-DBEs) as listed by the US Census Bureau's 2002 Economic Census utilizing the same NAICS codes were selected.

ODOT divided the 65 DBE firms by the total 1,879 firms found in the US Census Bureau's publication and determined that 3.46% of the total population were DBE:

$$\begin{array}{rcl} \text{DBE Directory (June 13, 2007)} & - & 65 \\ \text{2002 Economic Census} & - & 1,879 \\ & & = 3.46\% \end{array}$$

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 2007

To project the value of contracts to be let during FFY 2008, we used information from ODOT's Transit office. They forecast \$6.7 million in grants and funds.

Based on the information, the DBE availability for FTA funded contracts for FFY 2008 is 3.46%. With respect to subcontractors, suppliers and service providers, the capacity is clearly there for them to participate in a meaningful manner. Gross receipt information supplied by most commonly utilized DBE firms' shows that they have the capacity to perform the majority 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 2006 and the first half of FFY 2007, the Office of Minority, Women and Emerging Small Business (OMWESB) experienced a significant loss of certified DBE firms.

We anticipate that current certification levels will continue to decrease for the remainder

of FFY 2007. 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

This report was published on the ODOT Office of Civil Rights website on June 15, 2007, and a notice was announced in the DBE Supportive Services newsletter and various daily or weekly newspapers throughout the state. The ODOT allowed a 45-day period for review and comment regarding the proposed goal, but no comments were received and no information was presented to cause the Department to modify the projected goal.

Goal Determination

Based on the above supporting evidence, ODOT has established the base figure of 3.46% for FFY 2008. 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, it's 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 will no longer set DBE goals for specific projects. All DBE participation will be achieved through race- and gender-neutral means until ODOT has conducted a Disparity Study which provides sufficient data to support narrowly-tailored, contract-specific, race- and gender-conscious goals.

ODOT has hired a consultant firm which is currently conducting a statewide disparity study. The final report is expected by October 31, 2007, at which time ODOT may resume contract-specific race- and gender-conscious goals. Until then, DBE utilization will continue to be tracked as race-neutral participation.