



Nevada Department of Transportation DBE Goal Methodology Federal Fiscal Years (FY) 2017-2019

Pursuant to the requirements of Title 49 Code of Federal Regulations, Part 26 of the United States Department of Transportation (U.S. DOT), Nevada Department of Transportation ("NDOT"), as a designated recipient of Federal funds from the Federal Highway Administration (FHWA), must comply with the Disadvantaged Business Enterprise (DBE) goal setting provisions for Federally-assisted contracts.

To comply with 49 CFR § 26.45, the Nevada Department of Transportation (NDOT) established an overall DBE goal based on the availability of ready, willing and able DBEs relative to the availability of all ready, willing and able firms within the Nevada highway construction industry. NDOT proposes to set an overall goal of 4.5% of which it expects to meet 0.59% through race neutral means and 3.91% through race conscious means.

A. Step One – Determination of a Base Figure – §26.45 (c)

According to 49 CFR Part 26.45, paragraph (b), "Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts (hereinafter, "relative availability of DBEs"). The goal must reflect the DOT's determination of the level of DBE participation it would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market."

Under the regulation, 49 CFR Section 26-45 (c), recipients must begin the goal-setting process by determining a base figure for relative availability of DBEs.

1. Method Selected

NDOT began the goal setting process by determining a base figure that represents the relative availability of ready, willing, and able DBEs in its market area. The base figure is the point from which NDOT must begin when examining all evidence available in its jurisdiction. For its FY 2017 - 2019 base figure, NDOT primarily relied on data from a disparity study (2013 Study), as provided by 49 CFR 26.45(c) (3), which recommended a DBE goal of 6.98%.

NDOT's 2013 study (the Study) was completed in October 2013 by Keen Independent Research, LLC. (Keen), covering the period from 2007 through June 2012. To determine the current relative availability of DBEs to perform work on NDOT projects, NDOT also examined additional information which includes the use of census data from the County Business Pattern database located at <http://factfinder.census.gov/faces/nav/jsf/pages/index.xhtml>, the Nevada UCP DBE

directory located at: <https://ndot.dbesystem.com/Frontend/VendorSearchPublic.asp>, and the State bidders list.

By using the Census Bureau's County Business Pattern (CBP) database, NDOT was able to determine the number of all ready, willing, and able businesses available in its market that perform work in the same North America Industrial Classification Systems (NAICS) code. We divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in NDOT's market area.

2. Market Area

NDOT first determined that the relevant geographic market area for its DBE Program is the entire state of Nevada. NDOT based its determination on data from the 2013 disparity study, which covered Federal-aid construction and engineering contracts from 2007 through June 2012, based upon NDOT's internal data for Federal-aid contracts during that period. The Study found that 94% of combined NDOT and LPA Program transportation contract dollars went to firms with locations in Nevada.

3. Description of Data Used

Data used in this calculation included prime and sub-contractors, consultants, and other service providers that sought work on FWHA-assisted construction projects in the local market area during the period of October 2014 – September 2015. Firms with NAICS codes that do not relate to highway construction have not been included in the calculations.

NDOT has identified the following NAICS Codes as areas that have been utilized in DBE performance in Nevada:

- 237110 – Construction Management
- 238110 – Concrete
- 237310 – Highway, Street, & Bridge Construction
- 238210 – Electrical
- 238910 – Equipment Supplier
- 238990 – All Other Specialty Trade Contractors
- 423390 – Suppliers
- 484110 – Trucking
- 541330 – Engineering/Design
- 541690 – Consulting
- 541990 – All Other Professional, Scientific, and Technical Services
- 561990 – All Other Support Services
- 561730 – Erosion Control

According to the most current census data, there are 3,260 firms across the state conducting business in the NAICS codes in which the NDOT seeks participation, of those firms 333 are certified DBE firms with, ¹16 of those firms conducting work on ²highway related projects. The data used to make this determination was the data available from FY 2014 - 2015 and it was consistent with data from previous years.

¹ This data was obtained through a study conducted by the NDOT DBE Supportive Service Contractor.

² As opposed to residential, commercial, or vertical construction contractors.

NDOT acknowledges that USDOT encourages recipients to consider supplementing the number of firms in its DBE directory for the purposes of goal-setting by considering potential DBEs. NDOT has determined that its current goal-setting process truly reflects the actual availability of ready, willing, and able DBEs in the local market area without the necessity to include potential DBEs.

NDOT further acknowledges that USDOT recommends weighting based on categories of contractors. The weighting was performed as part of the Step One calculations explained below.

4. Calculations Performed

A. Relative Base Figure

Consistent with the Federal guidance, the base figure is calculated by taking the number of all DBEs firms that are ready, willing and able to compete for FHWA-assisted contracts and dividing it by the numbers of all firms (DBEs and non-DBEs) that are ready, willing, and able to perform work under the same NAICS code. The outcome is a ratio that is expressed as follows:

$$\frac{\text{DBE Contractors and Subcontractors} + \text{DBE consultants}}{\text{All Contractors and Subcontractors} + \text{All Consultants}} = \text{Relative Base Figure}$$

The resulting calculation is as follows:

Table 1: Relative Base Figure

NAICS CODE	NUMBER OF AVAILABLE FIRMS		PERCENT OF AVAILABLE FIRMS		
	DBE Firms	All Firms	DBE %	Non DBE %	ALL
237110	13	77	0.40%	1.96%	2.36%
238110	14	119	0.43%	3.22%	3.65%
237310	45	52	1.38%	0.22%	1.60%
238210	27	552	0.83%	16.10%	16.93%
238910	29	235	0.89%	6.32%	7.21%
238990	30	233	0.92%	6.23%	7.15%
423390	22	31	0.67%	0.28%	0.95%
484110	17	123	0.52%	3.25%	3.77%
541330	57	532	1.75%	14.57%	16.32%
541690	28	286	0.86%	7.91%	8.77%
541990	34	176	1.04%	4.36%	5.40%
561990	7	200	0.21%	5.92%	6.13%
561730	10	644	0.31%	19.44%	19.75%
TOTAL	333	3260	10.2%	89.8%	100.0%

NDOT believes this relative base figure calculation over counts the number of available DBEs, as it assumes that every DBE has an equal opportunity and equal weight to perform on NDOT contracts. However, in the practical application, not all DBEs have equal opportunity for participation as opportunity is dependent on the amount of dollars spent in each NAICS code. Therefore, to more accurately reflect the relative availability of DBE firms, as recommended by U.S. DOT, the NDOT performed a weighted calculation of availability. This calculation, which is based on the NDOT's expenditures in each NAICS code, is shown below in Table 2.

Weight = % of total \$ spent in each NAICS Code

Weighted availability = % of total \$ weight % in each NAICS Code to DBE/Non DBE Firms

Table 2: Weighted Based Figure

NAICS	NUMBER OF AVAILABLE FIRMS		AWARDED CONTRACT AMOUNT FY 14/15	WEIGHT	WEIGHTED AVAILABILITY	
	CODE	DBE Firms	All Firms	Dollars	%	DBE %
237110	13	77	\$169,949,324.52	74.66%	3.090%	71.5700%
238110	14	119	\$7,880,040.00	3.46%	0.000%	3.4600%
237310	45	52	\$16,708,961.00	7.34%	0.000%	7.3400%
238210	27	552	\$5,207,664.00	2.29%	0.380%	1.9100%
238910	29	235	\$3,435,797.06	1.51%	0.160%	1.3500%
238990	30	233	\$7,450.00	0.0033%	0.000%	0.0033%
423390	22	31	\$14,427,162.00	6.34%	2.310%	4.0300%
484110	17	123	\$842,848.00	0.37%	0.039%	0.3310%
541330	57	532	\$736,780.00	0.32%	0.073%	0.2470%
541690	28	286	\$1,561,944.00	0.69%	0.040%	0.6500%
541990	34	176	\$1,460,565.00	0.64%	0.007%	0.6334%
561990	7	200	\$4,182,553.00	1.84%	1.630%	0.2100%
561730	10	644	\$1,219,695.00	0.54%	0.000%	0.5400%
TOTAL	333	3260	\$227,620,783.58	100.00%	7.73%	92.27%

As shown above, first a weight for each NAICS code was calculated, which is the percentage of the budget for NDOT contracts awarded from October 1, 2014 to September 30, 2015. The next step was to determine weight availability by dividing the number of DBEs by the total number of firms in each NAICS code. The results were then multiplied by the corresponding weight in each NAICS code. Lastly, the weighted percentages in each NAICS code are combined to determine the weighted base figure. Table 2 above, represents the calculation of weighted availability, which was determined to be 7.73% percent for DBEs.

B. Step Two – Adjustments – §26.45 (d)

DBE regulations at 49 CFR §26.45 (d), require that once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

- There are many factors that must be considered when adjusting the base figure which include:
 - (i) The current capacity of DBE's to perform work in your DOT-assisted contracting program as measured by the volume of work DBEs have performed in the past years;
 - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
 - (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.
- If available, you must consider evidence from related fields that affect opportunities for DBEs to form, grow and compete. These include, but are not limited to:
 - (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the program;
 - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to opportunities for DBEs to perform in your program.
- If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on a demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought."

NDOT examined all available evidence to determine what adjustments, if any, are needed to the base figure to determine a final overall goal. In compliance with this requirement, NDOT has considered when and where available the following factors:

- Past DBE participation;
- Evidence from the "Disparity Studies" conducted in the market area;
- Statistical disparities in the ability of DBEs to obtain financing, bonding and insurance;
- Data on employment, self-employment, education and training, union apprenticeship programs; and
- Any other data that would help to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination.

C. Past Participation

Consistent with 49 CFR 26.45(d)(1)(i) and FHWA guidance, NDOT considered a Median Past Participation adjustment based on the demonstrated capacity of DBEs to perform work on NDOT's federally assisted contracts, measured by the awards, commitments, and subcontract amounts for DBE firms over the past five (5) fiscal years: 2011 - 2015. For this, NDOT determined that the data from its Uniform Report of DBE Awards or Commitments and Payments was the most relevant and reliable data available.

From FY 2011 through FY 2015, DBEs performed 3.46%, 6.58%, 8.24%, *11.71%, and 8.73% respectively, of the FHWA aid amount. *The information available from 2014 shows DBE attainment of 11.71%, but NDOT cannot validate the data used in the calculation. NDOT is concerned that this number is a statistical error and has omitted it in the median

calculation. The median past participation for these years is ³7.41%. The difference between the Step One relative weighted base figure (7.73%) and the median past DBE participation indicates that the capacity of DBEs to perform highway project work does not match the availability of such firms and suggests that an adjustment of the Step One figure is warranted. By calculating the average of median past participation and the Step One base availability figure, NDOT determined an adjusted base figure of 7.57%.

Fiscal Year	Total Amount of Expenditures (Federal Assisted Contracts)	Actual Amount of Expenditures to DBE's	Actual Attainment of DBE Goal %
2011	\$287,011,034.00	\$9,918,519.00	3.46%
2012	\$122,965,637.00	\$8,096,136.00	6.58%
2013	\$178,830,409.00	\$14,742,259.00	8.24%
2014	\$235,545,987.00	\$27,587,363.00	*11.71%
2015	\$221,824,906.00	\$19,373,734.00	8.73%

$$\frac{7.41\% \text{ Median Past Participation} + 7.73\% \text{ Base Figure}}{2} = 7.57\% \text{ Adjusted Base Figure}$$

D. Other Evidence Considered

NDOT conducted a disparity and availability study in 2007, which found significant disparities for minorities and women in NDOT's market area. NDOT completed another disparity study in 2013, which added fresh support for a race-conscious DBE Program and was the basis for NDOT's FY 2014 - FY 2016 Overall DBE Goal and Methodology. Since the data included in the 2013 disparity study is still valid, we have relied upon the information contained in the 2013 disparity study in setting NDOT's FY 2017-2019 overall DBE goal. NDOT is currently in the process of conducting a new disparity study, which is being conducted by BBC Research & Consulting, and is anticipating completion of the study in late October 2016. NDOT will seek to revise the goal if the new study shows it is warranted.

The State of Nevada has several large projects ongoing, the largest being Project Neon (Mega Project), located in Southern Nevada which is a three (3) year project. Since NDOT currently has an active DBE population of sixteen (16) conducting work within our needed scope of NAICS codes (as determined by a study conducted by the NDOT DBE Supportive Service Contractor), the value of the DBE participation on Project Neon will have a significant impact on the availability of DBEs available to conduct work on other NDOT projects. There is also a very large two (2) year project located in the Northern part of the state, USA Parkway. With these projects, as well as the various other large projects under way we have determined that there has been an impact on the capacity of Nevada DBEs. Accordingly, NDOT has taken steps to increase the recruitment efforts for new DBEs.

Based upon outreach to DBEs that are listed in our database, NDOT has determined that the economic downturn in the past few years has had a substantial impact on the Nevada DBE

³ Calculated by the mean of the middle numbers.

population. We have determined that many of the listed DBEs have either closed or had their capacity greatly reduced. One very large DBE (rebar supplier) has recently graduated from the program, and another (underground) is currently in bankruptcy status. This DBE represents 60.07% of the NDOT DBE dollars over the past two (2) years. The Disparity Study that is currently underway will be a more accurate assessment of the total economic impact to DBEs. NDOT's DBE Supportive Service Contractor is also working with both, the impacted DBEs and newly certified DBEs in an attempt to determine if additional training and/or access to resources will assist in providing a foundation for the affected DBEs to recover and newly certified DBEs access to needed resources for future growth and success.

Due to the above factors, NDOT is proposing a downward adjustment for FFY 2017-2019. We believe that this adjustment more accurately reflects the current and projected availability of ready, willing, and able DBEs, and the capacity of Nevada certified DBEs.

The downward adjustment accounts for a combination of the 60.07% of the large DBE in bankruptcy status, as well as, new DBEs and current DBEs increase in ⁴ability that will be added through increased outreach and DBE Supportive Services training and resources.

Accordingly, NDOT will set an overall DBE goal of 4.5 % for FY 2017-2019.

E. Public Participation - §26.45 (g)

NDOT, as a matter of course and in compliance with the applicable Regulations, will, as soon as possible, announced its Proposed Triennial DBE Goal and provide for a "Public Comment Period." The announcement and publication will be through different mediums including the following:

- Nevada Press Association (Consortium of 22 different Newspapers)

And also through the following organizations:

- Association of General Contractors
- Asian American Chamber of Commerce
- American Indian Chamber of Commerce
- Latin Chamber of Commerce
- National Association of Minority Contractors-Nevada Chapter
- National Association of Women Business Owners-Nevada Chapter
- Nevada Minority Supplier Development Council
- Urban Chamber of Commerce

A Sample of the Proposed Announcement is attached: See attached "NOTICE".

Opportunities will be provided for "Written Public Comments." Written comments will be submitted through the electronic media at: sbraih@dot.state.nv.us or by regular mail to:

DBE Program Manager
Nevada Department of Transportation

⁴ That will be increased through training and resources.

Race/Gender Neutral and Conscious Measures -\$26.51

NDOT projects that it will meet its overall goal with 0.59% race neutral participation and 3.91% race conscious participation. NDOT reviewed its DBE participation on projects (federally assisted contracts) closed out in the past five federal fiscal years (FY11-FY15), specifically examining the breakdown between race-neutral and race-conscious participation. NDOT measures race conscious participation by counting payments made to DBEs to fulfill contract goals. NDOT measures race-neutral participation by counting payments made to DBEs in excess of contract goals or payments made to DBEs on contracts where no DBE goal has been set.

**Expenditures to DBEs with Race Neutral/Race Conscious Breakdown
(Completed Projects Only)**

Fiscal Year	Total Amount of Expenditures (Federal Assisted Contracts)	Actual Amount of Expenditures to DBE's	R/N (% of DBE Expenditures)	R/C (% of DBE Expenditures)
2011	\$287,011,034.00	\$9,918,519.00	13.09%	86.91%
2012	\$247,777,241.00	\$1,793,517.00	25.96%	74.04%
2013	\$639,595,897.00	\$6,346,030.00	0%	100%
2014	\$131,133,533.00	\$1,669,332.00	21%	79%
2015	\$484,352,734.00	\$16,832,161.00	9.77%	90.23%

Based on the above table, NDOT achieved a median of 13.09% of the DBE goal by race-neutral means.

In order to foster race-neutral participation, NDOT has developed a Small Business Enterprise Program which sets small business goals on select projects to encourage increased race neutral participation.

Also, NDOT is seeking to provide DBEs supportive services specific to their needs, to help them grow and develop. This will include classroom and on-site technical, contracting procedures and requirements, management assistance and educational training opportunities to certified DBE firms in order to increase contracting potential. These services will target DBEs to improve their long-term development, increase opportunities to participate, and achieve eventual self-sufficiency. Nevada's Business Development Program will also aid in this regard.

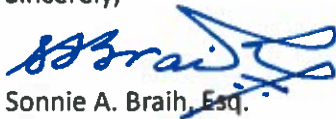
F. Conclusion

NDOT's goal methodology is consistent with the requirements of 49 CFR § 26.45 and reflects the availability of ready, willing and able DBEs relative to the availability of all ready, willing and able businesses within the Nevada highway construction industry. NDOT has used all available evidence to set an overall goal of 4.5%, of which it expects to meet 0.59% through race neutral means and 3.91% through race conscious means. NDOT will monitor progress in meeting its goal over the next three years and will adjust the race conscious and race neutral split if necessary.

If you have any questions or need clarification regarding any information used in calculating this proposed DBE goal for the triennium (2017-2019), please feel free to contact me at (702) 730-3301. Please accept the assurance of our usual cooperation.

Thank you.

Sincerely,



Sonnie A. Braih, Esq.
Civil Rights Officer
Nevada Department of Transportation

cc:

Rudy Malfabon, P.E., Director
Nevada Department of Transportation

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