



REVISED NHDOT FTA DBE GOAL & METHODOLOGY FOR FFY 2017-2019

January 14, 2019

New Hampshire Department of Transportation
Office of Federal Compliance
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NHDOT FTA Disadvantaged Business Enterprise (DBE) Goal & Methodology for FFY 2017-2019

Revised January 14, 2019

Introduction

The New Hampshire Department of Transportation (NHDOT), hereafter the Department, submitted the first three-year Disadvantaged Business Enterprise (DBE) goal and methodology plan to the Federal Transit Administration (FTA) on September 20, 2010. The plan was submitted at three-year intervals, by August 1, thereafter.

In 2017, the Department had determined the overall FTA DBE for FFY2017-2019 goal to be 1.65%. In 2018, FTA requested that the DBE goal and methodology be reevaluated to further refine the Department's DBE goal in hopes to increase participation of DBEs in FTA-assisted funding. This document is a product of that request.

The revised NHDOT FTA DBE Goal & Methodology plan for FFY 2017-2019 explains the Department's goal-setting process and methods, public outreach process and administration of the goal. In accordance with Section 26.45 of Part 26, the DBE goal-setting process requires the establishment of a base figure for the relative availability of DBEs in the market; describing the evidence with which it was calculated; making adjustments to adjusting 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.

The Department shall make every effort to maximize DBE utilization on all contracts with FTA funding. If future projects are approved which contain additional construction or consulting related services, the Department shall ensure measures are put in place for DBEs to obtain a level of utilization appropriate to the type of work absent discrimination.

The list of definitions and terminology used in this document can be found in Appendix A.

The Regulatory Mandate

Pursuant to the United State Department of Transportation (USDOT) § 26.45 amendment effective March 5, 2010, the Department, will submit to the Federal Transit Administration (FTA) the Disadvantaged Business Enterprise (DBE) goal and methodology at three-year intervals. This process is intended to address the following objectives of the DBE program as defined by 49 C.F.R. Part 26.1:

- 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.

The Department can make mid-cycle adjustments to its DBE goal if the Department experiences circumstances that have a significant impact on the current stated goal. Any mid-cycle adjustment does not take effect until approved by the FTA.

Overview Of The Goal-Setting Process

In order to produce accurate calculation and applicable methodology of the overall goal, the Department employed the 2-step process set forth in Section 26.45 of Part 26; the base figure for the relative availability of DBEs and any adjustments to the base figure based on available evidence.

To calculate Step-one, the Department **can choose one or more** of the following approaches:

- a. Use DBE Directories and Census Bureau Data.
- b. Use a bidders list.
- c. Use data from a disparity study.
- d. Use the goal of another DOT recipient.
- e. Alternative methods.

Method Selected: 49 CFR § 26.45 Use of DBE Directory, the United States Census Bureau Data and a Bidders List.

Methods of Attainment

Step 1: Baseline Goal

Baseline goal is determined by a base figure (percentage) for the relative availability of DBEs within the local market area. Relative availability of DBEs means “the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts” (49 CFR Part 26.45(c)).

Data Sources:

- a. Bidders List - The bidders list was compiled from reports of FTA sub-recipients which allowed the Department to identify the level of DBE participation, or the relative availability of bidders that are ready, willing and able to perform work on FTA assisted projects in the local market area. Local market area is defined within the geographical boundary of New Hampshire, where the Department distributes its federally-assisted contracting dollars, and where the majority of bidders within each North American Industrial Classification System (NAICS) code are located. Additionally, the bidders list is used to further include (or exclude, where appropriate) firms with potential procurement opportunities.
- b. DBE Directory and the United States Census Bureau Data – The DBE goal was determined by the number of businesses listed in the 2016 US Census Bureau: County Business Pattern which lists applicable contracting opportunities for Department’s FTA sub-recipients and on rail and transit projects. The DBE Directory is updated weekly and/or as changes with any one firm’s status takes place (i.e. adding new certifications, decertifications, for exceeding the Personal Net worth (PNW) cap, for going out of business, etc.). The Department also uses the most current census data organized by available NAICS codes.

Procurable Categories:

The Department evaluated all available FTA funding for FFY 2015-2017 with contracting and/or procurement opportunities and determined the following categories (Table 1) are appropriate for determination of this goal setting process:

Table 1: FTA Funding Categories with Procurable Opportunities FFY15-17

FTA Funding Sections	FFY15-FFY17
5310 RCC Distributed Formula Funding for Enhanced Mobility of Seniors and Individuals with Disabilities	\$74,583.07
5311 Rural (Non-urbanized) Transit	\$2,384,495.59
5311 (f) Intercity Bus	\$62,930.90
5307 Urbanized Area Formula	\$2,479,205
Total	\$5,001,214.56

The total funding for the above FTA funding categories was based on the Department’s monthly cost reimbursement to FTA sub-recipients for DBE related contracting or procurement opportunities.

Procurable funds are grouped into 35 procurable opportunity categories (Table 2) and compared against the North American Industry Classification System (NAICS) codes and Relative Availability of DBEs by each procurement category.

While the Department realizes that 6-digit NAICS codes should be used to develop a narrowly tailored goal, due to the lack of available information in 6-digit NAICS codes, the Department had to consider data available in 3-4 digit codes and use it to determine the relative availability of all firms by those NAICS code in the state of New Hampshire. The number of DBE firms was obtained from the NHDOT DBE Directory that was used at the time of collecting the information for determination of this DBE goal and methodology. The Directory includes all in-state and out-of-state DBE certified firms that do business in New Hampshire.

Table 2: Procurement Opportunities, NAICS Codes & Relative Availability of Ready, Willing & Able DBE Firms & All Firms (DBEs & Non-DBEs)

Procurement Opportunities	NAICS Codes	DBE Firms	All Firms
Residential Building Construction (i.e. Home Depot, Lowes, etc.)	2361	0	866
Commercial and Institutional Building Construction (i.e. bus shelter/terminal, parking garage and truck terminal construction)	236220	14	151
Highway, Street, and Bridge Construction (i.e. road and parking lot construction and paving, airport runway construction, resurfacing, striping, curbs, potholes, sidewalk construction, etc.)	237310	21	71
Foundation, Structure, and Building Exterior Contractors (i.e. masonry, glass, roofing, etc.)	2381	13	460
Building Equipment Contractors (i.e. electrical, plumbing, heating, A/C, etc.)	2382	16	1,138
Building Finishing Contractors (i.e. drywall, flooring, painting, carpentry, etc.)	2383	7	639
Other Specialty Trade Contractors (i.e. site preparation and specialize trades for new work, additions, alterations, maintenance and repairs)	2389	30	548

Printing and Related Support Activities	323	1	136
Motor Vehicle & Motor Vehicle Parts and Supplies Merchant Wholesalers	4231	0	108
Professional & Commercial Equipment & Supplies Merchant Wholesalers	4234	6	215
Paper and Paper Product Merchant Wholesalers	4241	2	34
Automobile Dealers	4411	0	333
Automotive Parts and Accessories Stores	441310	0	331
Building Material and Supplies Dealers (i.e. improvement centers, hardware stores, supply materials (doors, tiles, lighting, plumbing, etc.))	4441	1	421
Gasoline Stations	4471	0	538
Taxi and Limousine Service	4853	1	40
Support Activities for Road Transportation	4884	2	60
Couriers and Express Delivery Services	49211	0	54
Publishing Industries (except Internet)	511	0	188
Broadcasting (except Internet)	515	0	38
Data Processing, Hosting, and Related Services	518210	1	69
Depository Credit Intermediation (i.e. banks, credit unions, etc.)	5221	0	563
Non-depository Credit Intermediation (i.e. credit card issuing, etc.)	5222	0	135
Offices of Real Estate Agents and Brokers	531210	1	304
Activities Related to Real Estate	5313	1	437
Legal Services	5411	2	704
Accounting, Tax Preparation, Bookkeeping, & Payroll Services	5412	5	545
Management, Scientific, and Technical Consulting Services	5416	80	573
Advertising, Public Relations, and Related Services	5418	8	137

Employment Services	5613	7	279
Waste Management and Remediation Services	562	9	185
Other Ambulatory Health Care Services	6219	0	53
Business Schools and Computer & Management Training	6114	12	43
Automotive Repair and Maintenance	8111	3	1,029
Electronic and Precision Equipment Repair and Maintenance	8112	3	76
Total		246	11,501

The Department identified 11,501 ready, willing and able firms in the above listed categories. In the formula below this number is used as the denominator. The numerator was found by determining the number of ready, willing and able DBE certified firms within the same NAICS sub-sectors. For the purposes of this goal setting methodology, 246 firms currently DBE certified in New Hampshire were identified and considered ready, willing and able to perform work in the areas identified.

The 246 ready, willing, and able DBE certified firms, divided by the 11,501 total of all ready, willing, and able firms (DBEs and non-DBEs), yields an unweighted base figure of 2.13%.

$$\text{Formula} \quad \frac{\text{DBE (246)}}{\text{CBP (11,501)}} = 0.0213 \times 100 = 2.13\%$$

Weighting:

While weighing is not required by the rule, it is encouraged by FTA as it helps ensure that Step 1 Base Figure is as accurate as possible. The Department evaluated the total amount of all procurable funds against the total number of ready, willing and able DBEs and the total number of all available firms (DBEs and non-DBEs) to determine the proportion of the funds or the “weight” each category carries and yielded the following results (Table 3):

Table 3: Weighing

Amount of NHDOT funds on contract	Number of DBEs available to perform work	Number of all firms available (including DBEs)	Relative (& Overall) Availability of DBEs	Weighted Base Figure	Total Expressed as %	Rounded Weighted Base Figure
\$5,001,214.56	246	11,501	0.02139	0.0214	2.14%	2.1%

The weighted total is 2.1% and it is the Step 1 base figure.

Other Considerations:

- a. Ensuring DBE goal percentage reflects “apples to apples” calculations: The DBE goal calculation was derived using the same NAICS code categories in both the numerator and denominator, therefore, is considered an accurate comparison of both DBE and non DBE firms capable of those opportunities currently available in FTA contracting work.
- b. Disparity Study: The NHDOT is not aware of any disparity study performed in New Hampshire for any public agency or private sector company.
- c. Comparable MBE/WBE Program: The State of New Hampshire does not have a comparable MBE/WBE program for State contracting opportunities, therefore, no similar data source exists that would yield ready, willing and able minority or women owned businesses for comparison.

Step 2: Adjustment to Base Figure

Step 2 requires the Department to incorporate any available evidence that will improve the accuracy of the Step 1 base line goal calculations, in order to determine the level of DBE participation that would occur absent the effects of discrimination. The Department assessed the impact of specific factors requiring narrow tailoring of the DBE Program. The following factors were considered in making the decision to adjust the overall DBE goal:

Past Participation: FTA requires that previous three years be used to determine the historical median for past participation. This would require the Department to evaluate DBE participation on FTA assisted contracts during FFY 2014-2016. DBE participation during those FFYs was: 3.4% for FFY14, 4.4% for FFY15 and 11.6% for FFY16. However, the Department replaced FFY16 past participation data with FFY13 participation, which was 1.76% and used median annual attainment for projects to establish the amount of race-neutral attainment for the past three federal fiscal years. The reason for this decision was because the Department does not consider FFY16 participation data to be appropriate for the purpose of this goal setting process as the increase in the FFY16 participation data was due to unanticipated construction project (Merrimack-Nashua #40771, Central Corridor Resurfacing) with FTA-assisted funds. Construction projects with FTA-assisted funds are typically very sporadic and the Department has not had any such projects in FFY17-19. Therefore, the following adjustment has been made to the base figure:

<u>Past participation</u>	
FFY 2013	1.76 %
FFY 2014	3.4 %
FFY 2015	4.4 %
Historical median	3.19%

Table 4: Race-Neutral Attainment Over Previous Three Federal Fiscal Years

Base figure	2.14%
Median	<u>3.19 %</u>
Sum	5.33 % (divided by 2) = 2.67% or 2.7% Rounded DBE Goal

Adjusted FTA DBE Goal

The Department, through its Bureau of Rail and Transit (BRT), intends to expend **2.7%** of the amount received from Federal financial assistance that is conducive to contracting on DOT-assisted contracts with small business concerns owned and controlled by socially and economically disadvantaged individuals. It is the intent that this expenditure be obtained to the extent practicable, through a race and gender-neutral program.

Should contracting opportunities unexpectedly increase, decrease, or significantly change during the three year period such that the submitted goal is rendered obsolete, the Department will appropriately amend both the goal and DBE contracting practices in order to ensure the goal and program as a whole is narrowly tailored and accurately reflects the actual contracting opportunities available during the specified time period.

Public Participation

The proposed DBE goal and methodology is posted on the official Department's website www.nh.gov/dot and shared on the Department's social media accounts. The goal is made available for public inspection during normal business hours, 8:00am to 4:00pm at the NHDOT main office located at 7 Hazen Drive, Concord, NH, 03302.

Additionally, an email invitation was sent to the following largest stakeholders so they can have an opportunity to participate, review and comment on the revised NHDOT DBE Goal for FFY 2017-2019:

- Currently certified DBE firms listed in the NHDOT DBE Directory
- All currently ready, willing and able prime and subcontractors contained in the Department's Office of Federal Compliance (OFC) database.
- Associated General Contractors of New Hampshire
- NH Association of Regional Planning Commissions
- NH Transit Association
- Community Action Program Agencies
- NH Vocational Rehabilitation Centers
- NH Employment Security Offices

- New England Farm Workers Council
- NH Works
- NH Small Business Administration
- NH Procurement Technical Assistance Center
- NH Chapter of NAACP in Portsmouth, Manchester and Nashua
- NH Chapter of the National Association of Women in Construction
- New Hampshire RTAP Program

Comments will be accepted for forty five (45) days following the date of the notice by:

E-mail at Larisa.Djuvelek-Ruggiero@dot.nh.gov,

Mail or in person at NHDOT External EEO Coordinator,

7 Hazen Drive, P.O Box 483, Concord, NH 03302 **OR** phone at (603) 271-6612

After the final submission of the recommended goal, a hard copy of the NHDOT's FFY2017-2019

DBE Goal will be available for viewing on the NHDOT website:

<https://www.nh.gov/dot/org/administration/ofc/index.htm>

and at the following address during normal business working hours,

8:00 AM to 4:00 PM, Monday - Friday: NHDOT, 7 Hazen Drive, Concord, NH 03302

A copy of the public notice is provided in the Appendix B of this document.

Appendices

Appendix A – Terminology

The following program terms tailored to the local conditions of the Department consistent with 49 C.F.R. Part 26 are provided for reference:

DEPARTMENT – As used in this document, “Department” refers to the New Hampshire Department of Transportation.

DBE – A small, for-profit Disadvantaged Business Enterprises that meets the size, ownership, control, and definitional requirements of 49 C.F.R. Part 26.5 and has been certified by the UCP under the federal regulation set forth in 49 C.F.R. Part 26.

LOCAL MARKET – Local market area is defined within the geographical boundary of New Hampshire, where the Department distributes its federally-assisted contracting dollars. The Department has calculated custom marketplaces for each NAICIS code based on the locations listed on the available 2016 US Census Bureau: County Business Pattern information and the Department’s bidders list.

NAICS CODE - The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

POTENTIAL DBE – Minority- or woman-owned DBE firms that are not yet identified as ready, willing and able by the Department, but meet the requirements for DBE certification and are currently operating within the NAICS code profiles identified as part of the Department’s local market.

RACE NEUTRAL – A measure of participation in federally-funded projects among DBE and non-DBE firms expected in the absence of discrimination. This measure is calculated as a ratio of DBE firms to all non-women and non-minority firms within a defined set of NAICS codes available in the local market area.

RACE-NEUTRAL MEASURES – Consistent with Section 26.5, the definitional section of the federal regulation set forth in 49 C.F.R. Part 26, the Department’s race-neutral measures are those designed to assist all small businesses as opposed to measures designed to benefit DBEs alone.

RACE-CONSCIOUS MEASURES – Consistent with the definitional section of the federal regulation set forth in 49 C.F.R. Part 26, the Department’s race-conscious measures are those that are focused exclusively on DBEs. These include traditional contract goals.

READY, WILLING, AND ABLE BUSINESSES– Businesses interested, capable, and authorized to perform work on the Department’s federally-assisted, transportation-related contracts:

- *Ready* refers to those businesses that perform a trade, function or service that may be utilized on the Department’s federally-assisted contracts.
- *Willing* refers to ready businesses that have either performed or expressed a bona fide interest in performing a function on the Department’s federally-assisted contracts.
- *Able* refers to ready and willing businesses that have fulfilled the Department’s requirements to participate in the performance of its federally-assisted contracts including becoming a registered vender.

READY, WILLING, AND ABLE DBEs – Those businesses that meet the definition of “ready, willing, and able businesses” and that have been certified by the Department as a DBE consistent with the provisions of 49 C.F.R. Part 26.

RELATIVE AVAILABILITY OF DBEs – Consistent with 49 C.F.R. Part 26.45, “relative availability” of DBEs refers to demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on the Department’s federally-assisted transportation-related contracts.

Date of Notice: 1/16/19



PUBLIC NOTICE

**Revised New Hampshire Department of Transportation (NHDOT)
Disadvantaged Business Enterprise (DBE) Goal for Federal Transit Administration (FTA)
Federal Fiscal Years 2017-2019**

In accordance with the United States Department of Transportation (USDOT) regulations, at the beginning of Federal Fiscal Years (FFY) 2017, NHDOT established 1.65% DBE goal for FFY 2017-2019 for participation by certified DBE firms on NHDOT's federally-assisted transit projects and procurements anticipated for FFY 2017-2019. Upon review of the NHDOT DBE Goal for FFY 2017-2019, FTA requested that the goal be revised to narrowly tailor DBE participation on federally assisted transit projects and procurements. Therefore, upon further examination of the DBE goals and methodology, NHDOT recommends that an overall goal for FFY 2017-2019 FTA assisted projects and procurements be changed from 1.65 % to **2.7%**.

NHDOT invites all interested parties to participate, review and comment on the revised NHDOT DBE Goal for FFY 2017-2019.

Comments will be accepted until March 1, 2019 at 4:00 pm by:

E-mail at Larisa.Djuvelek-Ruggiero@dot.nh.gov,

Mail or in person at NHDOT External EEO Coordinator, 7 Hazen Drive, P.O Box 483,
Concord, NH 03302

OR phone at (603) 271-6612

After the final submission of the recommended goal, a hard copy of the NHDOT's FFY2017-2019 DBE Goal will be available for viewing on the NHDOT website:

<https://www.nh.gov/dot/org/administration/ofc/index.htm>

and at the following address during normal business working hours,
8:00 AM to 4:00 PM, Monday - Friday:

NHDOT
7 Hazen Drive,
Concord, NH 03302

NHDOT is an Equal Opportunity Employer. If you need this information in an alternative format, please contact the External EEO Coordinator at (603) 271-6612 or Larisa.Djuvelek-Ruggiero@dot.nh.gov