

**NEW JERSEY DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE GOAL SUBMISSION  
FEDERAL FISCAL YEARS 2017 THROUGH 2019**

The New Jersey Department of Transportation (NJDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the United States Department of Transportation (USDOT), 49 C.F.R. Part 26. As a requirement of the federal regulations, the NJDOT must submit a triennial DBE goal.

NJDOT has determined its annual DBE goal for Federal Fiscal Years 2017 through 2019 as 12.44% of the total federal financial assistance the NJDOT will expend on Federal Highway Administration (FHWA) contracts. NJDOT projects that 3.93% of the total funding that it will expend on federally-assisted highway projects for this period can be achieved through race and gender neutral means or methods, and the remaining 8.51% can be achieved through race and gender conscious means or methods. While NJDOT's Federal Fiscal Years 2014 through 2016 saw a drop in race-neutral attainment from prior fiscal years, the NJDOT's race neutral portion of the goal is 3.93% mathematically. However, NJDOT anticipates correcting this downturn by maximizing outreach potential for DBE and ESBE groups, re-analyzing the placement of ESBE goals, and finding appropriate contracts for ESBE or DBE prime set-asides where feasible.

The NJDOT will seek to attain a maximum portion of its DBE goal utilizing race and gender neutral means. Race and gender neutral DBE participation and race and gender conscious DBE participation is monitored by the NJDOT Division of Civil Rights on a monthly basis and adjustments are made accordingly to ensure that the NJDOT neither exceeds nor falls short of meeting its DBE goal on an annual and overall basis.

**1. The Step One Base Figure -- 49 CFR 26.45(c)**

**Market Area Analysis**

The market area is the geographical area that represents a particular market. There must be sufficient facts to support a market area determination. NJDOT has determined that there are sufficient facts to conclude that the State of New Jersey is its market area. Between July 1, 2012 and June 30, 2015, NJDOT awarded the majority of its contracts to New Jersey based firms. Therefore, State of New Jersey is NJDOT's market area.

The following table depicts the overall number and dollar value of construction and consulting contracts awarded, by NJDOT, between July 1, 2012 and June 30, 2015. As depicted in Table 1, NJDOT awarded 333 prime contracts or agreements valued at \$1,687,808,556. Of these contracts, 328 or 87.92% were awarded to New Jersey based companies. The dollar value of those contracts was \$1,483,871,111 or 87.92% of the total amount expended. Based on this data, NJDOT's market area is concluded to be the State of New Jersey.

<b>Geographic Distribution of Participating Contractors (2013-2015)</b>	<b>Number of Contracts</b>	<b>Dollar Value</b>	<b>Percentage of Total Dollars</b>
New Jersey Based Contractors	328	\$1,483,871,111	87.92%
New York Based Contractors	1	\$30,712,208	1.82%
Pennsylvania Based Contractors	3	\$165,999,486	9.83%
Ohio Based Contractors	1	\$7,225,750	.43%

Table 1

### Defining the Variables

The Step One Base Figure is a measurement of the actual relative availability of DBEs and potential DBEs to perform the types of work that NJDOT intends to contract. It is the percentage of DBEs among all firms that are ready, willing, and able to compete for DOT-assisted contracts. This percentage is calculated by dividing the number of DBEs ready, willing, and able to perform the types of work that NJDOT will fund during this triennial period, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to perform these same work types.

Pursuant to 49 CFR 26.45(c)(1), NJDOT determined the work type areas under the North America Industrial Classification System (“NAICS”) for the period of the triennial goal and the number of all ready, willing and able businesses available in its market that perform work in the same NAICS codes by using the 2014 Census Bureau's County Business Pattern (CBP) database. The 2014 CBP is the most current data available at the time of this proposed goal.

Then, NJDOT determined the number of ready, willing, and able DBEs. “Ready willing and able DBEs” are DBEs certified to work in the NJ Unified Certification Program (NJ UCP) Directory with NAICS codes in work categories where NJDOT would normally contract. This data was captured in May 2016 (see, Table 2). In order to ensure that potential DBE firms are counted among those “ready, willing and able” DBEs, NJDOT has also included construction and professional services firms that have been certified as Small, Minority and Women Owned Business Enterprises by the New Jersey Department of the Treasury, Division of Minority and Women Business Development who do not currently appear on the NJ UCP Directory. These firms are found in the NJSAVI Directory.

“All firms ready, willing and able” includes all firms in NJDOT’s market area, as identified in the 2014 Census Bureau County Business Pattern (CBP) database, with North American Industry Classification System (NAICS) codes in work categories where NJDOT would normally contract.

NJDOT then divided the number of ready, willing, and able DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in its market.

<b>NAICS Descriptions</b>	<b>NAICS Code</b>	<b>NJUCP &amp; NJ SAVI</b>	<b>2014 Census Data</b>
Water and Sewer Line and Related Structures Construction	237110	46	230
Highway, Street, and Bridge Construction	237310	156	317
Other Heavy and Civil Engineering Construction	237990	97	130
Poured Concrete Foundation and Structure Contractors	238110	50	353
Structural Steel and Precast Concrete Contractors	238120	48	101
Other Foundation, Structure, and Building Exterior Contractors	238190	34	132
Electrical Contractors and Other Wiring Installation Contractors	238210	82	2708
Other Building Equipment Contractors	238290	17	234
Painting and Wall Covering Contractors	238320	63	893
Other Building Finishing Contractors	238390	24	213
Site Preparation Contractors	238910	83	738
All Other Specialty Trade Contractors	238990	91	876
Cement Manufacturing	327310	1	3
Ready-Mix Concrete Manufacturing	327320	2	58
Fabricated Structural Metal Manufacturing	332312	21	52
Electrical Apparatus & Equipment & Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	55	459
Specialized Freight (except Used Goods) Trucking, Local	484220	75	542
Title Abstract and Settlement Offices	541191	1	282
Landscape Architectural Services	541320	34	176
Engineering Services	541330	246	1600
Geophysical Surveying and Mapping Services	541360	15	6
Surveying and Mapping (except Geophysical) Services	541370	51	208
Marketing Consulting Services	541613	46	1178
Environmental Consulting Services	541620	114	340
Public Relations Agencies	541820	38	199
Marketing Research and Public Opinion Polling	541910	33	230
Landscaping Services	561730	25	4348
Remediation Services	562910	64	217
Potential DBE firms (NJSAVI MBEs, WBEs, MWBEs and SBEs)		369	
		1981	16823

### **Calculating the Step One Base Figure**

*Step One Base Figure = Ready, willing and able DBEs ÷ All firms ready, willing and able*

*Step One Base Figure = 1981 ÷ 16823*

*Step One Base Figure = 11.77%*

### **Weighting**

NJDOT chose not to use weighting in its 2017 through 2019 DBE goal calculation. Weighting does not increase the accuracy of NJDOT's step one base figure. Based on past experience, weighting tends to diminish the projected participation of consulting and professional services firms. In the past, NJDOT weighted the base figure according to the projected, federally funded Statewide Transportation Improvement Program (STIP) expenditures for construction services and consulting services. While the STIP represents the best data available to determine NJDOT's future expenditures, it does not provide the best information as to how those expenditures will be divided between construction and professional services work. For example, the 2011 STIP indicated that 96% of NJDOT contract dollars would be spent on construction projects and 4% on consulting. However, many of the construction projects in the 2011 STIP contained engineering, consulting, and other professional services components that were not identified as separate expenditures in the STIP. Dividing the number of DBEs in the NJUCP Directory and potential DBEs in the NJSAVI Directory by the number of all businesses provides the most accurate measure of the relative availability of DBEs in NJDOT's market.

### **2. Adjusting the Step One Base Figure -- 49 CFR 26.45(d)**

In accordance with 49 CFR 26.45, the factors to be considered in determining whether or not adjustments are necessary are as follows: past participation; evidence from disparity studies; statistical disparities in the ability of DBEs to get financing, bonding and insurance; data on employment, self-employment, education and training, union programs and 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.

#### **Adjusting the Step One Base Figure based on the Median Past Participation**

An adjustment based on past participation is warranted, because past participation is an indicator as to the feasibility of the DBE goal. Therefore, to ensure the feasibility of the DBE goal NJDOT averaged the figure obtained in Step One with a figure which represented past DBE participation. In order to obtain a more precise outcome, NJDOT measured DBE participation in 2011, 2012, 2013, 2014 and 2015.

DBE Participation is measured in terms of federal contracting dollars that are awarded or committed to DBEs. This figure is expressed as a percentage of the total federal financial assistance the NJDOT will expend on FHWA contracts.

NJDOT calculated the median annual DBE Attainment percentage from 2011 to 2015, and used that figure to adjust the Step One Base Figure by taking the average of the median past participation figure and the Step One Base Figure. This method ensures that past participation is not given disproportionate weight.

NJDOT's past participation from years 2011 through 2015 has been 13.12%, 12.90%, 13.16%, 14.51%, and 13.01%. Therefore, the Median Past Participation is 13.12%. (see, Table 3).

Year	DBE Attainment	Median Participation
2011	13.12%	
2012	12.90%	
2013	13.16%	
2014	14.51%	
2015	13.01%	
		13.12%

Table 3

The Step One analysis resulted in a Step One Base Figure of 11.77%. The average of 11.77% and 13.12% is 12.44%. Therefore, 12.44% is the Step One Base Figure adjusted for past participation.

$$DBE\ Goal = (Step\ One\ Base\ Figure + Median\ Past\ Participation) \div 2$$

$$DBE\ Goal = (11.77\% + 13.12\%) \div 2$$

$$DBE\ Goal = (24.89\%) \div 2$$

$$DBE\ Goal = 12.44\%$$

**Adjusting the Step One Base Figure based on data on employment, self-employment, education and training, union programs or apprenticeship programs**

NJDOT is not aware of any data on employment, self-employment, education and training, union programs or apprenticeship programs that would be relevant to the goal setting process. Therefore, this data was not considered in adjusting the Step one Base Figure.

### **3. The DBE Goal for Federal Fiscal Years 2017 through 2019**

Based on the above methodology, NJDOT has determined its annual DBE goal for Federal Fiscal Years 2017 through 2019 as 12.44% of the total federal financial assistance the NJDOT will expend on Federal Highway Administration (FHWA) contracts.

### **4. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split -- 49 CFR 26.51**

The NJDOT has established an Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26.51. NJDOT has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, NJDOT has signed an assurance that it will comply with 49 CFR Part 26.

To ensure that the maximum feasible portion of the overall DBE goal is met by using race-neutral means towards facilitation of DBE participation, NJDOT will establish ESBE goals on its contracts. All DBEs are considered to be ESBEs for the purposes of goal setting. ESBE goals can be satisfied through the use of DBE and/or certified ESBE firms.

ESBE contracting goals for USDOT federally funded construction projects are determined by the NJDOT Contractor Compliance Unit with the help of the NJDOT Bureau of Construction Services. The NJDOT Bureau of Construction Services conducts a review the Engineer's Estimate for a specific project and identifies the items typically subcontracted by a prime contractor on similar projects. This review will determine the approximate percentage of the project that will be subcontracted to other firms.

The NJDOT Contractor Compliance Unit will also review the Engineer's Estimate and the Bureau of Construction Service's determination of the subcontracting opportunities and project a percentage to be subcontracted to DBE and ESBE firms. NJDOT only counts DBE participation on ESBE goal contracts when reporting progress toward meeting overall DBE goals. ESBE participation is not counted toward the overall DBE goal. ESBE certification exists to maximize the race neutral requirement of the DBE program. NJDOT will monitor the effect of ESBE certification on DBE utilization.

To be eligible for ESBE certification, the firm must be a for-profit business, meet the SBA size standards in its industry as defined in 13 CFR Part 121.201 and be 51% owned and controlled by one or more economically disadvantaged individuals who are citizens of the United States or lawfully admitted permanent residents whose personal net worth does not exceed \$ 1.32 million.

In order to calculate the portion of the goal that will be achieved through race neutral means, NJDOT calculated the median annual past percentage of the goal that was

achieved through race neutral means from 2011 through 2015. NJDOT’s past race neutral participation from 2011 through 2015 has been 7.38%, 10.26%, 3.93%, 3.88%, and 3.91% (see, Table 4). The median annual past race neutral participation is 3.93%. Therefore, NJDOT projects that 3.93% of the total federal financial assistance the NJDOT will expend on FHWA contracts can be achieved through race and gender neutral means or methods, and the remaining 8.51% can be achieved through race and gender conscious means or methods.

<b>Race/Gender Neutral Participation</b>		
<b>Federal Fiscal Year</b>	<b>Actual Participation</b>	<b>Race/Gender Neutral Participation</b>
<b>2011</b>	13.12%	7.38%
<b>2012</b>	12.90%	10.26%
<b>2013</b>	13.16%	3.93%
<b>2014</b>	14.51%	3.88%
<b>2015</b>	13.01%	3.91%
<b>Race/Gender Neutral Participation</b>		<b>3.93%</b>

Table 4

## 5. Consultation and Public Participation

Before establishing the overall triennial goal, NJDOT consulted with the African American Chamber of Commerce of New Jersey, the Statewide Hispanic Chamber of Commerce of New Jersey, Construction Industry Advancement Program, Utility and Transportation Contractors Association, Associated Construction Contractors of New Jersey, Regional Alliance for Small Contractors, New Jersey Association of Woman Business Owners, New Jersey Small Business Development Center, and New Jersey Asphalt Pavement Association to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the NJDOT’s efforts to establish a level playing field for the participation of DBEs.

On July 8, 2016, NJDOT published a notice of the proposed overall goal. The notice informed the public that the proposed goal and its rationale were available for inspection during normal business hours at NJDOT Headquarters for 30 days (from July 12, 2016 – August 12, 2016), and that we and the USDOT Federal Highway Administration would accept comments on the goal until August 12, 2016, 30 days from the date of the notice.

The 30 day notice was published on the NJDOT’s website. In addition to publishing the notice of the NJDOT website, NJDOT e-mailed the notice to key members of the contracting community.

NJDOT held a public consultation meeting on July 28, 2016 from 1:00 PM to 3:00 PM at the New Jersey Department of Transportation, David J. Goldberg Transportation Complex, 1035 Parkway Avenue Trenton, NJ 08625.

During the meeting Mr. Tom Hardell from George Harms Construction Company indicated that union programs would be separate from apprenticeship programs if the NJDOT was adjusting the Step One Base Figure based on data on employment, self-employment, education and training, union apprenticeship programs. In response to this comment, the NJDOT did not consider union programs or apprenticeship programs when adjusting the Step One Base figure.

However, NJDOT recently enrolled twenty (20) DBE firms in the NJDOT DBE Supportive Services Program. These supportive services are designed to increase the total number of DBE firms that are active on federally funded highway, street, and bridge construction projects and contribute to the growth and eventual self-sufficiency of individual firms so that such businesses may achieve proficiency to compete, on an equal basis, for contracts and subcontracts. The program includes workshops and training on Business Skills Development, Marketing and Bonding. In addition, each DBE firm will receive one-on-one technical assistance based on the results of the firm's individual needs assessment. The NJDOT will also host prime and subcontracting venture forums to facilitate the building of relationships between prime contractors and DBE firms. The NJDOT anticipates having data on this program for the next triennial goal and will consider using this data to make adjustments to the Step One Base Figure.

On August 4, 2016, NJDOT received a written comment from George Harms Construction Company, Inc. The firm's comment reads "Among the Base Figure 2096 DBE's (and potential DBE's) that the NJDOT identified in their Step One calculations, over 680 DBE's were accounted for more than once, because they have been certified in the NJUCP database with multiple NAICS classifications codes. The NJDOT compares the 2096 figure to the number of DBE and non-DBE businesses from the 2014 Census Bureau County Business Patterns total of 16,823. However, the Census Bureau data only counts each business once, based on their primary NAICS classification code. In order to more accurately correlate the NJUCP data to the Census Bureau data, and better reflect the actual relative availability of DBE businesses, the NJDOT should account for the number of DBE's based on their primary NAICS classification code alone-accounting for each business only once." Mr. Chris Carter from George Harms Construction Company, Inc. and Mr. Paul Fader, Esq. from the law firm of Florio, Perrucci and Steinhardt and Fader also made a similar comment at the public meeting on July 28, 2016.

In response to these comments, NJDOT includes firms that are ready, willing and able to perform work in New Jersey in the NJUCP Directory by each type of work the firm is able to perform under the most specific NAICS code(s) (49 CFR Part 26.31). Firms are listed in the NJSAVI Directory by commodity codes. NJDOT included firms with commodity codes with the potential to perform work on NJDOT contracts as potential DBE firms. These firms were not listed in the NJUCP Directory. NJDOT compares each NAICS code within the NJUCP Directory or commodity code within the NJSAVI Directory to each



NAICS code in the 2014 CBP database. DBE firms within the NJUCP Directory may be assigned multiple NAICS codes where appropriate in accordance with 49 CFR Part 26. Relative availability is also based on those able to perform and thus if a DBE is certified in multiple areas that it needs to be counted in all of the areas that it is able to perform.

George Harms Construction Company, Inc.'s written comment dated August 4, 2016 states "Some businesses identified in the NJUCP database are listed as DBE's under NAICS classification codes that do not correspond to the actual work the business performs. For instance, a review of NAICS classification code 237310 – Highway, Street, and Bridge Construction reveals many businesses that only perform consulting work for general contractors and project owners – they do not perform the actual construction work themselves. In fact, the DBE certification received by some of these businesses specifically states "Management Services Only". Mr. Chris Carter made a similar comment at the public meeting.

During the public meeting Mr. Anthony Attanasio from the Utility and Transportation Contractors Association stated "The only comment we would have about how the rules are being set is the discussion we brought up in previous meetings would be the need to have a better quality control of the list, how firms are listed as to whether capabilities are currently concerning the industry has, is that the DBE specifically ask to check off, I can do A,B,C or D, when the reality is, when many general contractors reach out to these firms, they're not capable of doing the actual work, therefore they are improperly listed."

In response to these comments when either of the NJ UCP agency partners (NJDOT, NJ Transit, or the Port Authority of New York/New Jersey) issue a firm an NAICS code they ensure the DBE owner(s) have the ability to control the type of work requested in accordance with 49 CFR Part 26.71. The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. The NAICS codes have a broad heading but possess multiple corresponding index entries (<http://www.census.gov/cgi-bin/sssd/naics/naicsrch>). Example, a firm with the NAICS code of 237310 Highway, Street and Bridge Construction could have the ability perform one or all of the 38 tasks listed as a corresponding index. One of the tasks includes Construction management, highway, road, street and bridge. A firm that performs the service "Management Services Only", may have prime or sub-contracting opportunities. The NJ UCP directory also includes a brief business description of the type of work a firm performs.

During the public meeting, Mr. Fader made the comment "It's probably unusual to expect that a project that's occurring in Jersey City is going to have a contract with DBEs in the entire state based upon distance, and therefore, the market area you discuss is the entire state. It may not be reasonable for people at different ends of the state to be able to make those contracts and make the appropriate work to the extent that you want it."

In response to this comment, when NJDOT sets the Department's overall goal it evaluates upcoming construction and professional (consulting) services projects. Firms may be utilized on construction or professional services projects throughout the entire state (north, central or southern New Jersey).

George Harms Construction Company, Inc.'s written comment dated August 4, 2016 states "NJDOT has identified New Jersey as their "market area", however 460 of the DBE businesses identified in the Base Figure from the NJUCP are based outside of the market area (NJ). Therefore, the actual number of available DBE's within the market area is not accurately reflected when compared to the 2014 Census Bureau data- which only includes New Jersey businesses." Mr. Carter made a similar comment during the public meeting.

In response to these comments, NJDOT compares the NJ UCP Directory to the 2014 Census Bureau County Business Pattern (CBP) database. Firms are listed within the NJUCP Directory in accordance with 49 CFR Part 26. USDOT encourages states to certify firms in accordance with the Interstate Certification Program (49 CFR Part 26.85) that are ready, willing and able to work in each state. From October 2012 to September 2015 eighty (80) different DBE firms have been utilized on subcontracts or agreements on federally funded highway projects. Seventeen (17) out of the eighty (80) firms were from surrounding states. All of the firms were certified in the NJUCP Directory.

George Harms Construction Company, Inc.'s written comment dated August 4, 2016 states "NJDOT has included 484 potential DBE firms among their Base Figure total of DBE businesses. This figure should not be included in NJDOT's goal methodology for the following reasons. First, 175 of the 484 potential DBE firms are not within NJDOT's market area, so there isn't a valid comparison to the 2014 Census Bureau. Second, NJDOT does not include a figure in the denominator with which to compare the 484 potential firms in the numerator." "Also, the businesses identified as potential DBE's were collected from a small business database, and based on businesses certified as WBE and /or MBE. WBE and MBE certification is significantly different than DBE certification and does not take into account several factors that must be met in order to obtain DBE certification."

In responding to this commit, the Department re-evaluated the 484 firms originally listed as potential DBEs. The original calculation was a combination of MBE, WBE, M/WBE firms from the NJ SAVI Directory and firms certified as MBE, WBE and or M/WBE from counties immediately surrounding New Jersey from New York, Pennsylvania and Delaware. The New Jersey Selective Assistance Vendor Information (NJ SAVI) is a database that identifies businesses that are registered as a SBE and/or certified as an M/WBE with the State of New Jersey, through the Division of Revenue. The NJSAVI marketplace identifies businesses eligible for mandated State programs such as the NJ Small Business Set-Aside program, and aids in matching buyers and vendors for private contracting opportunities. The Department removed 175 firms from the original calculation of potential DBEs that were from surrounding states. The Department added an additional 60 firms from the NJ SAVI directory that are certified as SBEs and are at least

51% owned by women. USDOT encourages states to look to relevant data sources to supplement the DBE directory when setting the triennial goal. Once a firm applies they would be evaluated based upon the eligibility for the DBE program criteria outlined in 49 CFR Part 26. This reduced the total number of potential DBEs from 484 to 369 which also reduced the original Step One Base Figure from 12.46 to 11.77%.

In addition, NJDOT is beginning a new mandatory reporting system by all contractors at the time of bid. Currently, NJDOT does not obtain information on all bidders. By the next federal fiscal year DBE triennial submission, NJDOT will use form CR-261 to accurately track all DBE and non-DBEs who provided a bid or quote to the bidder for work on the project(s) for which bidders submitted a bid. This bidders list can be used in many ways including identifying select cities or counties within Pennsylvania, New York or Delaware where NJDOT draws bids. If bidders list demonstrates out-of-state bidders, NJDOT will then also add into its market area both DBEs and non-DBEs from this out-of-state area.

## **6. Conclusion**

The DBE goal is a measurement of the actual relative availability of DBEs and potential DBEs to perform the types of work that NJDOT intends to contract. It is the percentage of DBEs among all firms that are ready, willing, and able to compete for DOT-assisted contracts. This percentage is calculated by dividing the number of DBEs ready, willing, and able to perform the types of work that NJDOT will fund this year, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to perform the types of work that the Department will fund this year.

Individual DBE and ESBE contracting goals for USDOT federally funded construction projects are determined by the Contractor Compliance Unit with the help of the Bureau of Construction Services. The Bureau of Construction Services conducts a review of a construction firm's Engineer's Estimate for a specific project to identify the items typically subcontracted by a prime contractor on similar projects. This review determines the approximate percentage of the project to be subcontracted to other firms.

The Contractor Compliance Unit also reviews the construction firm's Engineer's Estimate along with the Bureau of Construction Service's determination of the subcontracting opportunities in order to project a contracting goal percentage to be subcontracted to DBE and/or ESBE firms.

To ensure that the above goal is proper, reasonable, and realistic, the Contractor Compliance Unit carefully analyzes the firm's Engineer's Estimate, the Bureau of Construction Services sub-contracting determination, and the current list of certified DBE and ESBE firms who perform work typically sub-contracted on these types of projects. When determining availability of DBE and ESBE firms, the Contractor Compliance Unit also considers other projects that those firms might be participating in. The Contractor Compliance Unit representative also meets with a Bureau of Construction Services Representative before establishing a contracting goal for a specific construction project. In addition to the above considerations, the NJDOT provides the prime contractor with an

opportunity to determine the work items that they will perform and those that will be subcontracted to other firms.

Under 49 CFR 26 Appendix A, when NJDOT establishes a DBE or ESBE goal on a contract, “a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.”

NJDOT will begin using its overall goal of 12.44% on October 1, 2016.