

**NEW JERSEY DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE GOAL SUBMISSION
FEDERAL FISCAL YEARS 2014 THROUGH 2016**

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.

NJDOT has determined its annual DBE goal for Federal Fiscal Years 2014 through 2016 as 12.49% of the total federal financial assistance the NJDOT will expend on Federal Highway Administration (FHWA) contracts. NJDOT projects that 8.71% 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 3.78% can be achieved through race and gender conscious means or methods.

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 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 annual overall DBE goal.

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

Market Area Analysis

The market area is a 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, 2009 and June 30, 2012, 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, 2009 and June 30, 2012. As depicted in Table 1, NJDOT awarded 295 prime contracts valued at \$1,735,772,667. Of these contracts, 285 or 96.61% were awarded to New Jersey based companies. The dollar value of those contracts was \$1,663,533,907 or 95.84% of the total expenditure. Based on this data, NJDOT's market area is the State of New Jersey.

Geographic Distribution of Participating Contractors (2010-2012)	Number of Contracts	Dollar Value	Percentage of Total Dollars
New Jersey Based Contractors	285	\$1,663,533,907	95.84%
New York Based Contractors	4	\$48,302,802	2.78%

Pennsylvania Based Contractors	6	\$23,935,958	1.38%
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Table 1

Defining the Variables

The Step One Base Figure is a measurement of the actual relative availability of 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 NJDOT would normally fund.

Pursuant to 49 CFR 26.45(c)(1), NJDOT determined the number of all ready, willing and able businesses available in its market that perform work in the same NAICS codes by using the 2010 Census Bureau's County Business Pattern (CBP) database. Then, NJDOT divided the number of DBEs in the NJUCP database by the number of all businesses to derive a base figure for the relative availability of DBEs in its market.

“Ready willing and able DBEs” are DBEs in the NJ Unified Certification Program (NJUCP) database with North American Industry Classification System (NAICS) codes in work categories where NJDOT would normally contract. This data was captured in April 2013 (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.

“All firms ready, willing and able” includes all firms in NJDOT’s market area, as identified in the 2010 Census Bureau County Business Pattern (CBP) database, with North American Industry Classification System (NAICS) codes in work categories where NJDOT would normally contract.

NAICS Descriptions	NAICS Code	NJUCP	2010 Census Data
Water and Sewer Line and Related Structures Construction	237110	34	261
Highway, Street, and Bridge Construction	237310	117	355
Other Heavy and Civil Engineering Construction	237990	76	138
Poured Concrete Foundation and Structure Contractors	238110	41	417
Structural Steel and Precast Concrete Contractors	238120	54	116
Other Foundation, Structure, and Building Exterior Contractors	238190	61	146

Electrical Contractors and Other Wiring Installation Contractors	238210	69	2,566
Other Building Equipment Contractors	238290	14	244
Painting and Wall Covering Contractors	238320	44	998
Other Building Finishing Contractors	238390	23	214
Site Preparation Contractors	238910	61	803
All Other Specialty Trade Contractors	238990	83	855
Cement Manufacturing	327310	1	1
Ready-Mix Concrete Manufacturing	327320	0	56
Fabricated Structural Metal Manufacturing	332312	20	66
Electrical Apparatus & Equipment & Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	46	409
Specialized Freight (except Used Goods) Trucking, Local	484220	72	531
Title Abstract and Settlement Offices	541191	0	393
Landscape Architectural Services	541320	32	228
Engineering Services	541330	195	1657
Geophysical Surveying and Mapping Services	541360	12	9
Surveying and Mapping (except Geophysical) Services	541370	39	214
Marketing Consulting Services	541613	30	1109
Environmental Consulting Services	541620	90	349
Public Relations Agencies	541820	28	216
Marketing Research and Public Opinion Polling	541910	22	278
Landscaping Services	561730	23	4082
Remediation Services	562910	39	192
Potential DBE firms (NJSAVI MBEs, WBEs, and MWBEs)		724	
		2050	16903

Table 2

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 = 2050 ÷ 16903

Step One Base Figure = 12.13%

Weighting

NJDOT chose not to use weighting in its 2014 through 2016 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 database 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 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 2008, 2009, 2010, 2011 and 2012.

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 past participation percentage 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 2008 through 2012 has been 16.46%, 10.22%, 15.93%, 12.83%, and 12.85%. Therefore, the Median Past Participation is 12.85%. (see, Table 3).

Year	DBE Attainment	Median Participation
2008	16.46%	
2009	10.22%	

2010	15.93%	
2011	12.83%	
2012	12.85%	
		12.85%

Table 3

The Step One analysis resulted in a Step One Base Figure of 12.13%. The average of 12.13% and 12.85% is 12.49%. Therefore, 12.49% is the Step One Base Figure adjusted for past participation.

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

$$DBE\ Goal = (12.13\% + 12.85\%) \div 2$$

$$DBE\ Goal = (24.98\%) \div 2$$

$$DBE\ Goal = 12.49\%$$

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

NJDOT is not aware of any data on employment, self-employment, education and training, or union 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 2014 through 2016

Based on the above methodology, NJDOT has determined its annual DBE goal for Federal Fiscal Years 2014 through 2016 as 12.49% 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 New Jersey Department of Transportation (NJDOT) has established an Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its Disadvantaged Business Enterprise (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 Department of Transportation, 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 of facilitating 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 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 of a construction firm's 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 construction firm's 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 when reporting progress toward meeting DBE goals. ESBE participation is not counted. ESBE certification exists solely for the benefit 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 past percentage of the goal that was achieved through race neutral means from 2008 through 2012. NJDOT's past race neutral participation from 2008 through 2012 has been 16.46%, 8.45%, 4.73%, 8.71%, and 10.20% (see, Table 4). The median past race neutral participation is 8.71%. Therefore, NJDOT projects that 8.71% 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 3.78% can be achieved through race and gender conscious means or methods.

Race/Gender Neutral Participation		
Federal Fiscal Year	Actual Participation	Race/Gender Neutral Participation
2008	16.46%	16.46%
2009	10.22%	8.45%
2010	15.93%	4.73%
2011	12.83%	8.71%

2012	12.85%	10.20%
Race/Gender Neutral Participation		8.71%

Table 4

5. Consultation and Public Participation

Before establishing the overall, NJDOT consulted with the African American Chamber of Commerce of New Jersey, the Statewide Hispanic Chamber of Commerce of New Jersey, National Association of Minority Contractors, Construction Industry Advancement Program, Utility and Transportation Contractors Association, Associated General Contractors of New Jersey, Regional Alliance for Small Contractors, New Jersey Association of Woman Business Owners, New Jersey Small Business Development Center, National Association of Minority Contractors, and the National Association of Women in Construction 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 22, 2013, 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 following the date of the notice, and that we and the USDOT will accept comments on the goal until September 24, 2013, 45 days from the date of the notice.

The 45 day notice was published in the following newspapers:

The Times of Trenton
Newark Star Ledger
Courier Post
Al Dia
Asbury Park Press

In addition to publishing the notice of the proposed goal in the above newspapers, NJDOT e-mailed the notice to all of its contractors and consultants.

NJDOT held a public consultation meeting on July 30, 2013 from 10:00 AM to 12:00 PM at the New Jersey Department of Transportation, David J. Goldberg Transportation Complex, 1035 Parkway Avenue Trenton, NJ 08625. During that meeting, a DBE subcontractor expressed a concern that the failure of prime contractors to make prompt payments to their subcontractors may serve to discourage DBE participation. The Division of Civil Rights and Affirmative Action recognizes the potential harm that can result from failing to enforce prompt payment requirements. Aside from discouraging participation, failing to enforce prompt payment requirements can reduce a firm's ability to grow beyond the DBE Program. To remedy this situation, the Division of Civil Rights

and Affirmative Action will propose new prompt payment language for inclusion in NJDOT's Standard Specifications and Contract Special Provisions.

On September 24, 2013, NJDOT received a written comment from the Associated Construction Contractors of New Jersey (ACCNJ). ACCNJ's comments read in pertinent part as follows: "Our members are finding it difficult to adhere to DBE requirements because the increased participation goals cannot be met by the current pool of eligible qualified DBEs. Many DBEs have skills unrelated to the needs of the construction industry. Furthermore, capable DBEs for heavy highway work are limited as to how much work they can perform because of bonding capacity and active project backlogs. Finally, rules for maintaining compliance within the requirements remain unclear."

In responding to this comment it is important to note that the DBE goal for Federal Fiscal Years 2014 through 2016 is 12.49%, while the goal for 2011 through 2013 was 15.61%. The DBE goal for 2014 through 2016 is more than three percentage points lower than the previous goal.

The DBE goal is a measurement of the actual relative availability of 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."

ACCNJ has requested that NJDOT delay the implementation of its 2014-2016 DBE goal pending the outcome of USDOT's September 6, 2012 notice of proposed rulemaking. The proposed rule making concerns various modifications to the DBE program. The proposed DBE program modifications are unrelated to DBE goal setting. Therefore, there is no need to delay implementation of the DBE goal.

NJDOT will begin using its overall goal of 12.49% immediately.