

NEVADA
DEPARTMENT OF
TRANSPORTATION

PROPOSED DBE GOAL

PUBLIC MEETING

2023-2025



DBE GOAL BACKGROUND

- § 26.45 How do recipients set overall goals?
 - "You must set an overall goal for DBE participation in your DOT-assisted contracts."
 - 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 your DOT-assisted contracts. The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination.



BASE FIGURE

- **Step 1.** You must begin your goal setting process by determining a base figure for the relative availability of DBEs.
- **Use data from a disparity study.** Use a percentage figure derived from data in a valid, applicable disparity study.
 - Use of a Disparity Study to set race/gender conscious goals is mandatory for states in the 9th Circuit Court of Appeals.

DISPARITY STUDY

- In May 2005, the **9th Circuit Court of Appeals** decided a case (Western States Paving Co. Inc. v. Washington State Department of Transportation) that impacted the goal-setting methodology of States in the 9th Circuit Court of Appeals (Nevada included).
- The court concluded that the U.S. DOT DBE program was constitutional as written because it was a “narrowly tailored” means of remedying the effects of race and sex-based discrimination within the transportation contracting industry. However, the Court held that in order to justify an annual DBE goal, States need to go beyond the requirements of the federal regulations and independently establish the existence of racial/gender discrimination in the state’s transportation contracting industry for each group included in its DBE program.

2021 DISPARITY STUDY OUTCOME

- Following the 9th Circuit Court decision, NDOT used the 2021 Disparity Study to set our "Base Figure".
 - The 2021 Disparity Study independently established the existence of racial/gender discrimination in Nevada's transportation contracting industry for each group included in its DBE program
 - The Study established **12.1%** as the base figure for NDOT's 2023-2025 Goal.

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
1.9%	2.2%	0.7%	0.4%	7.0%	12.1 %	87.9%	100.0%

ADJUSTMENT TO BASE FIGURE

- **Step Two.** Step Two of the goal setting calculation process is intended to adjust your Step One Base Figure to make it as precise as possible. Under the rule, you must consider all evidence available in your jurisdiction to determine whether such an adjustment is necessary.
 - Past participation (the volume of work DBEs have performed in recent years) or other measure of demonstrated capacity.
 - Evidence from disparity studies conducted in your market area.

PAST PARTICIPATION

- The first step in adjusting your Step One Base Figure for past participation is to determine your "median" past participation percentages.
 - Median past participation percentage for NDOT is **7.75%**.

Year	Total	RN	RC
2021	8.22%	2.61%	5.61%
2020	8.14%	3.70%	4.44%
2019	5.26%	2.01%	3.25%
2018	5.87%	2.63%	3.24%
2017	7.75%	2.77%	4.98%

CALCULATION OF THE GOAL

12.1 % Base Figure
+ 7.75 % Median Past Participation

19.85 % Total

19.85 % Total \div 2 (Average) =

9.9 % New DBE Goal

RACE CONSCIOUS/NEUTRAL SPLIT

Goal Portion	Allocation %
Race Neutral	2.6%
Race Conscious	7.3%
Overall DBE Goal	9.9%

- As stated in section 26.51, NDOT must meet the maximum feasible portion of the overall goal by using race/gender-neutral means of facilitating DBE participation.
 - NDOT used the median race neutral participation over the past 5 fiscal years – **2.63%**.

**PROPOSED
2023-2025
DBE GOAL**

Goal Portion	Allocation %
Race Neutral	2.6%
Race Conscious	7.3%
Overall DBE Goal	9.9%

WHAT DOES IT MEAN?

- Race Conscious = Portion of the goal that NDOT sets on projects.
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- Race Neutral = Portion of the goal that Prime Contractors would be expected (based on past performance) to use without goals being set on projects.



GOAL

NOUN *goal (noun) · goals (plural noun)*

"The object of a person's ambition or effort; an aim or desired result."

§ 26.43 Can recipients use set-asides or quotas as part of this program?

- 49 CFR 26.43(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts.

§ 26.47 CAN RECIPIENTS BE PENALIZED FOR FAILING TO MEET OVERALL GOALS?

- NDOT cannot be penalized or treated by USDOT as being in noncompliance with this rule, because our DBE participation falls short of our overall goal.
- If the awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, NDOT must do the following in order to be regarded by USDOT as implementing our DBE program in good faith:
 - Analyze the reasons for the difference between the overall goal and our awards and commitments in that fiscal year.
 - Establish specific steps and milestones to correct the problems identified in our analysis and to enable NDOT to meet fully our goal for the new fiscal year.

PROJECT GOAL SETTING

- **49 CFR 26.51.** You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

Goal Setting Worksheet: Work Scope & Availability Calculations

Work Category/Scope	6 Digit NAICS	# Certified Firms	# Total Firms	Work Scope Availability	Work Scope Amount	Certified Work Scope Amount
1 Trucking	484110	12	35	34.3%	\$	\$
2 Aggregate Base	212320	7	34	20.6%	\$	\$
3 Asphalt Paving Supply	212399	2	20	10.0%	\$	\$
4				%	\$	\$
Sum of Certified Work Scope Amounts:					\$	\$
Total Project Amount:					\$	\$
Project Goal:						%

Check here if 3 or fewer certified firms

Enter 0% if 3 or fewer certified firms

Add up all Certified Work Scope Amounts and enter total dollar amount.

Divide Sum of Certified Work Scope Amounts by Total Project Amount

INFORMATION NEEDED TO SET PROJECT SPECIFIC GOALS



- All **individual work scopes** of the project, *including prime work scope(s)*.
- Approximate **dollar value of each work scope** & its weight relevant to overall cost (% or \$).
- **Industry codes** for each work scope (e.g. NAICS).
- **Geographic market** for project work & firms.
- **Universe of certified firms**, with industry codes, in the geographic market.
- **Universe of all firms**, with industry codes, in the geographic market.
- In depth understanding of our agency, community, program, past utilization & any other factors that may impact the ability of firms to meet the goal.

PROJECT GOAL SETTING CALCULATION

$$\text{Project Goal} = \frac{\sum \left(\frac{\text{Certified Firms}}{\text{All firms}} \times \text{Amount} \right)_{\text{Work Scope}}}{\sum \left(\text{Amount} \right)_{\text{Work Scope}}}$$

ADJUSTMENTS TO PROJECT GOALS

- Adjustments are made to the calculation to conform with Race Conscious goal setting policies of USDOT, and take into account NDOT's in depth understanding of our agency, community, program, past utilization & any other factors that may impact the ability of firms to meet the goal.

QUESTIONS?

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THANK YOU!