

NEVADA DEPARTMENT OF TRANSPORTATION
Office of Transit
Disadvantaged Business Enterprise Program

DBE Goal Setting Methodology

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 Transit Administration (FTA), must comply with the Disadvantaged Business Enterprise (DBE) goal setting provisions for its Federally-assisted transit contracts. The goal identifies the relative availability of DBEs based on evidence of ready, willing, and able DBEs in relationship to all comparable businesses which are known to be available to compete for NDOT’s USDOT-assisted contracts. USDOT regulations require a two-step process for establishing the transit DBE goal that reflects the level of DBE participation expected on NDOT’s contracts in the absence of discrimination. The first step is the calculation of a base figure for the relative availability of DBEs. The second step requires consideration of a possible adjustment of the base figure to reflect the effects of the DBE program and the level of participation that would be expected absent the effects of past and current discrimination against DBEs.

Pursuant to Federal regulations, should there be significant changes in contracting opportunities during the three-year period, NDOT will amend the goal to accurately reflect contracting opportunities for the period.

Step 1 Determining a Base Figure:

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.”

NDOT in calculating the overall goal will use the criteria set forth in 49 CFR Section 26.45 (c) “Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs.”

To determine the relative availability of DBEs to perform work on Nevada Department of Transportation (NDOT), Federal Transit Administration (FTA) projects in Nevada from 2023- 2025, NDOT applied the methodology described in Title 49- Code of Federal Regulations, Section 26.45, paragraph (c) Step 1, Clause (1)¹ Use DBE Directories and Census Bureau Data. In adopting this methodology, NDOT used the latest Nevada Unified Certification Program (“NUCP”) DBE directory² and the latest available U.S. Census Bureau County Business Pattern (CBP) Data (2012). Information about the CBP data base was obtained from the Census Bureau³. By using the Census Bureau’s County Business Pattern (CBP) data base NDOT was

¹ NDOT chose not to use method 2 “weighting” for various reasons as it was not required by regulation.

² Source – [State of Nevada UCP DBE Directory](#)

³ Source – US Census Bureau

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. NDOT utilized the NAICS codes and related disciplines in the determination of the numerator and denominator as illustrated in Table 1. Note that the same NAICS codes associated with the DBE establishments comprising the numerator were also used to determine the number of establishments for the denominator. We divide the number of DBEs by the numbers of all businesses to derive a base figure for the relative availability of DBEs in NDOT's market area.

Market Area

A substantial majority of the contractors and subcontractors doing business with NDOT are located throughout Nevada. Therefore, to calculate the DBE goal, the market area was determined to be statewide. Simply stated, the entire state of Nevada is where NDOT spends a substantial portion of its contracting dollar.

DBE Firms for Transit Support Services by NAICS Code

NAICS Codes	Description	Total * Firms	Total** DBE Firms
236220	Commercial and Institutional Building Construction	1455	29
238110	Poured Concrete foundation and Structure Contractors	1179	12
238220	Plumbing, Heating and Air-Conditioning Contractors	1154	8
323111	Commercial Printing	2164	7
337127	Institutional Furniture Manufacturing (Bus Stop Benches)	3	0
423120	Motor Vehicle Supplies and New Parts Merchant	1129	5
423130	Tire Dealers (Tire and Tube Merchant) Wholesalers	213	2
423830	Industrial Machinery and Equipment Merchant	138	6
453998	Service Establishment Equipment/Supplies Merchant	139	4
459410	Computer Equipment and Accessories	293	1
453210	Office Furniture and Supply	465	0
454310	Fleet Fuel and Fluids; Vehicle Fuel	234	0
485210	Interurban and Rural Bus Transportation	15	0
485991	ADA Contract/Special Needs Transportation	23	4
488410	Motor Vehicle Towing	640	1
524126	Direct Property and Casualty Insurance Carriers	142	0
524210	Insurance Agencies and Brokerages	3404	7
541199	All Other Legal Services	1854	4
541211	Audit/Accounting	1705	2
541310	Architectural Services	1335	18
541380	Drug Alcohol testing	117	1
541511	Data Processing/Computer Programming	1689	36
541611	Administrative Management Consulting	1534	126
541613	Marketing Management Consulting Services	428	43
541618	Other Management Consulting Services	611	41

541810	Advertising Agency Consulting Services	1195	16
541910	Marketing Research and Public Opinion Polling (Surveys)	1434	15
541930	Language Translation	335	3
561612	Security Guards and Patrol Services	195	3
561621	Security Systems	675	3
561720	Janitorial Services	6721	28
561730	Landscaping Services	12290	8
561990	All Other Support Services (Traffic Control)	152	18
811111	General Automotive Repair	483	3
811122	Automotive Glass Replacement Shops	258	0
811191	Automotive Oil Change and Lubrication Shops	159	0
811213	Communication Equipment Repair and Maintenance	107	0
315990	Uniforms	260	2
	Total	46,327	456

*US Census Bureau

**<https://ndot.dbesystem.com/FrontEnd/VendorSearchPublic.asp>

Consistent with the Federal guidance⁵, the base figure is calculated by taking the number of all DBEs firms that are ready, willing and able to compete for FTA-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:

$$\frac{456 \text{ DBEs}}{46,327 \text{ DBEs and Non-DBEs}} = \mathbf{0.984 \text{ percent}}$$

This resulted in a base figure estimate of the relative availability of DBEs to be 0.984 percent.

As stated earlier, the entire State of Nevada is the area where NDOT and its subrecipients spend most of its FTA grants. The majority of the grantees are located in suburban and rural areas within Nevada.

STEP 2 ADJUSTING THE BASE FIGURE:

Excerpts from Section 26.45

"(d) Step 2. 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.

(1) There are many types of evidence that must be considered when adjusting the base figure. These includes;

- 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;

⁵ Source – FTA Disadvantaged Business Enterprise: Goal Setting Methodology and Consultation, March 2017

- 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.

(2) 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 demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought."

As required in Step 2 above, NDOT must examine all evidence in its jurisdiction 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.

PAST DBE PARTICIPATION

NDOT Transit Office and its subrecipients evidence of past DBE participation in FTA funded goods or services are as follows:

FFY	Total Awards	Total DBE Awards	DBE Percent
FFY 2018:	3,879,867.00	190,718.00	4.9%
FFY 2019:	2,498,974.00	0.00	0.00%
FFY 2020:	1,367,930.00	0.00	0.00%
FFY 2021:	2,146,519.00	0.00	0.00%
FFY 2022:	3,314,149.00	0.00	0.00%
Total	9,327,572.00	190,718.00	Median 0.00%

Past DBE participation was measured by determining the median participation percentage for FFYs 2018 - 2022, DBEs received NDOT 's and subrecipient contracting opportunities at a median level of 0.00 percent. Therefore, the estimated current capacity of certified DBE firms to perform work for NDOT and its subrecipients is 0.00 percent.

Adjustment of the base figure based on past DBE participation was determined by calculating the average of the base figure (0.984 percent) and the median past participation level (0.00 percent).

$$0.984\% \text{ base} + 0.00 \text{ median} = .0984\%$$

$$0.984\% \div 2 = 0.49\% \text{ is the base figure adjustment}$$

EVIDENCE FROM DISPARITY STUDIES CONDUCTED IN THE MARKET AREA

NDOT attempted to include the FTA funding in our Disparity Study. However, because of how the vast majority of funding is spent (salaries for employees), it was determined by the Disparity Study Consultant (Colette Holt & Associates) that there was insufficient information to conduct the study on FTA funding.

Statistical Disparities in The Ability of DBE's To Obtain Financing, Bonding and Insurance.

NDOT has not conducted any studies specifically to capture this information as it relates to the Transit component of its overall funding. The availability and disparity study formerly conducted by NDOT looked at the availability of minority and women-owned firms in the transportation construction and engineering industries in the State of Nevada and the disparity in FHWA contracts awarded by NDOT. The Study focuses on FHWA and state-funded contracts and does not include FAA and FTA-assisted contracts.

Therefore, the study did not provide any information on financing, bonding and insurance as it relates to DBEs certified in professions/trades related to transit contracting opportunities.

ADDITIONAL DATA FOR CONSIDERATION

Research⁶ resulted in no relevant data regarding employment, self-employment, education and training, union apprenticeship programs, etc. that would provide a better measurement of work that DBEs may obtain in the absence of discrimination.

The adjusted goal is 0.49 percent. Based on a review of the requirements of Section 26.45, Subpart (d) above, and in keeping with the Ninth Circuit Court of Appeals decision in the Western States Paving v. Washington State Department of Transportation, since there is no additional relevant evidence to use to adjust the base figure, NDOT Transit proposes to set an overall Race-Neutral DBE goal for the Triennium. The overall goal for the three-year period has been set at 0.49 percent of the Federal financial assistance to be expended in contracts during the time period covered.

⁶ In researching this, NDOT looked at the US Census website and garnered no information that would be useful in inclusion of this element as a factor.

RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION

For the period of FFYs 2018-2022, NDOT and its subrecipients achieved a median race-neutral DBE participation level of 0.00 percent. NDOT has historically not met or exceeded its DBE goal through race-neutral means. As addressed above, there are no disparity studies that would provide adequate data to determine specific need for race-conscious goals. Therefore, it is anticipated that NDOT will meet its FFYs 2024-2026 DBE participation goal of 0.49 percent through race-neutral measures, and was calculated using the following formula:

1. Relative RN Attainment =

$$\frac{\text{RN Attainment by \%} = 0.00}{\text{Overall DBE Achievement by \%} = 0.00} = 1$$



2. Absolute RN Attainment =

Relative RN Attainment by % = 1 X Proposed Overall Goal by % = 0.49 = 0.49



3. RC Split =

Proposed Overall Goal by % = 0.49 - Absolute RN Attainment by % = 0.49 = 0

In an effort to achieve this goal, NDOT will undertake activities to enhance participation that include, but are not limited to:

- Assist subrecipients in the identification of potential contracting opportunities in their budgets and goal setting;
- Assist subrecipients in locating suitable and certified DBEs in their contracting areas and statewide;
- Provide technical assistance to potential DBEs during the certification process;
- Ensure the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders, ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors, and provision of information in languages other than English, where appropriate;
- Maintain and update a directory of NDOT certified DBEs and disseminate the directory, through print or electronic means, to the widest feasible universe of potential prime contractors and NDOT subrecipients;
- Utilize an electronic quote-submitting procedure for subcontractors, which will generate more contracting opportunities for DBEs and non-DBEs;
- Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part;
- Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- Providing technical assistance and other services;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Public Comment Period

NDOT as a matter of course and in compliance with the applicable Regulations announced its Proposed DBE Goal

and provided for a "Public Comment Period." The posting was placed on the NDOT DBE Website located at: <https://www.nevadadot.com/doing-business/civil-rights/dbe-program>, and will remain on the website for 30 days.

A sample of the Announcement is attached: See attached "NOTICE".

Opportunities were provided for "Written Public Comments." Written comments may be submitted through email at: sbraih@dot.state.nv.us or by regular mail to:

DBE Program Manager
Nevada Department of Transportation 123 E.
Washington Ave
Las Vegas, NV 89101

Consultation with Stakeholders

An open public meeting will be held June 14, 2023 to allow contractors, minority, and women's groups input into the goal. No comments were received. NDOT has announced its Proposed DBE Goal to stakeholders. The announcement was distributed through the following organizations:

Nevada Contractors Association Latin Chamber of Commerce National
Association of Minority Contractors-Nevada Chapter Nevada Chambers
of Commerce

An open public comment period for all interested stakeholders to provide comment on the FTA Triennial Goal was posted to the NDOT website on 5/31/2023. The comment period remained open for 30 days.

If you have any questions or need any clarification regarding any information used in calculating this proposed DBE goal for the triennium (2024-2026), 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

cc: Tracy Larkin Thomason, P.E., Director, NDOT
Darin Tedford, P.E., Deputy Director, NDOT
Wendy Sharp, Transit Manager, NDOT