

Disadvantaged Business Enterprise Program Management Through Project Goal Setting

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The Surface Transportation and Assistance Act of 1982 (STAA 1982) mandated that 10 percent of all FHWA funds be expended with disadvantaged business enterprises (DBEs). STAA 1982 also required state highway authorities to establish an annual state DBE goal and to design and develop a fair, workable program to achieve this goal. In order to ensure executive review, STAA 1982 further stated that any request for a state goal less than 10 percent had to be forwarded under the governor's signature. The task of developing and implementing this new federal program was delegated to the Indiana Department of Transportation (INDOT). The first challenge for INDOT's DBE program was to figure out a method of achieving the 10 percent DBE goal in a state that is primarily rural with a minority population of less than 10 percent. The method conceived and developed was to establish a central office committee to individually review all federal-aid contracts for possible DBE participation. This Project Goal Setting Committee would set goals on individual contracts, thereby managing projected DBE participation and ensuring attainment of the state's annual 10 percent DBE goal.

When Congress passed the Surface Transportation and Assistance Act of 1982 (STAA 1982), Indiana had a 3 percent federal minority business enterprise (MBE) goal in place. An additional 5 percent state voluntary MBE goal also existed. STAA 1982 mandated that 10 percent of all FHWA funds be awarded to disadvantaged business enterprises (DBE). This legislation also established more stringent criteria for the certification of DBEs, designation of funds to be counted, and application of funds toward achieving the 10 percent goal. New procedures would be required in the areas of certification, prequalification, and compliance. Undoubtedly, the most important of these new procedures would be developing a method to ensure that 10 percent of FHWA funds were awarded to DBEs using a method that would be reasonably fair to all involved. The Indiana Department of Transportation (INDOT) was charged with establishing a program to comply with this new regulation.

In the subsequent development of its DBE program, INDOT discovered a major problem—attaining a 10 percent DBE goal in a state that is primarily rural with a minority population of less than 10 percent. In addition, the majority of the minority population in Indiana is located in three major urban centers in the northern one-half of the state (Indianapolis, Fort Wayne, and the southeast Chicago corridor—Gary, East Chicago, Whiting, and Hammond). Further investigation also determined that the Indiana state constitution prohibited set-

ting aside contracts to create a protected environment for certain bidders. Faced with this dilemma, INDOT considered numerous scenarios that included everything from asking the governor to request a goal of less than 10 percent from FHWA to attempting to change the state constitution. A decision was made to attempt to achieve the mandated 10 percent DBE goal using a process called "DBE project goal setting."

WHAT IS PROJECT GOAL SETTING?

INDOT's version of DBE project goal setting is best described as individually reviewing every contract or project containing federal funds to determine if contracts have sufficient subcontractable items that can be used to set a DBE goal. These individual contract goals are the nucleus for the attainment of an annual state DBE goal.

HOW IS PROJECT GOAL SETTING USED TO ATTAIN ANNUAL STATE DBE GOALS?

This question can best be answered by providing the goal-setting methodology used by INDOT. In Indiana, project goal setting is accomplished by the use of a DBE goal-setting committee, which is composed of

- Chief, division of engineering services;
- Field engineer, division of operations support;
- Equal Employment Opportunity manager;
- DBE coordinator; and
- FHWA representative, who is a nonvoting member.

Additionally, the deputy commissioner of highway development periodically attends meetings to monitor the activities of the committee.

The goal-setting committee meets to set contract goals 2 months before the contract letting (selling) date. Additionally, contracts scheduled for the next letting are reviewed at this time to determine if any changes have been made in the contract that would affect the previously established goal.

A few days before the date of the goal-setting meeting, the EEO section is provided with a rough estimate (not the engineer's estimate) of each project that involves federal funds. The DBE coordinator completes an initial review and determines a recommended goal.

Before convening the goal-setting meeting, each member is provided with a map of the state indicating counties and highway districts. Each member is also provided with a DBE directory listing all certified DBE firms, the type of work these firms desire to do, and areas of the state that they desire to work in. INDOT's prequalification section furnishes the committee with an up-to-date listing of all prequalified DBEs, the amount they are prequalified for, and specialty and subspecialty work areas. This listing of prequalified DBE firms is required because Indiana requires prequalification of all subcontractors for subcontracts over \$100,000.

When the goal-setting meeting is convened, each contract or project for the applicable letting is reviewed to determine if a portion of the contract can possibly be subcontracted to DBEs. Typically, numerous contact line items are taken into consideration for DBE participation, including the following.

Bridge cleaning and painting	Pipes
Catch basins	Reinforcing steel
Common excavation	Removal items
Concrete structural members	Rip-rap
Construction engineering	Seed and sod
Fence	Signs and barricades
Guardrail	Structural steel
Hauling	Temporary and permanent pavement markings
Manholes	Underdrains
Material suppliers	
Miscellaneous concrete	

This list of items considered by the committee is definitely not all-inclusive and prime contractors themselves are continuously adding new items and methods of achieving the DBE goal.

The fact that any of these contract line items that INDOT considers subcontractable appear in a contract is insufficient, by itself, to set a goal for the project. Other factors of equal importance must also be taken into consideration before setting a DBE goal for any contract. (Any item considered must be a typically subcontractable item, e.g., concrete ramps would not be considered subcontractable in a concrete paving contract nor would removal items in a demolition contract.)

1. The location of the contract. Is it urban or rural? Is it in an area that has a concentration of DBEs or relatively few DBEs?
2. The approximate size of the contract or possible subcontract. Would it be profitable enough for DBEs to travel to where the contract is located?
3. Are there any DBEs qualified for the specific job or specialty?
4. Are there any DBEs qualified for the job who have expressed a desire to work in the area of the contract?
5. If this item were subcontracted, would it constitute a commercially useful function?
6. If the job is over \$100,000, are there any DBEs prequalified in that specialty or subspecialty area?

In addition, INDOT takes into consideration what is referred to as the two-by-two rule. In this respect,

1. At least two ways must exist to make the contract goal or no goal will be set,
2. At least two DBEs must be working in the area where the contract or project is located in order for any item to be considered,

3. At least two DBEs must have expressed a desire to work in the area where the contract or project is located, and
4. At least two of these DBEs must be prequalified if the subcontractable item is estimated over \$100,000.

The main reasons for using this two-by-two rule is to ensure availability of competitive bidding for these contract items and to prevent any person (or the committee) from having the authority or ability to set aside any contract or subcontract for any specific firm.

While the DBE goal-setting committee reviews each contract or project, any objections or comments concerning a goal are discussed until a unanimous decision is made on establishing the contract goal. The committee normally sets goals between zero and 15 percent. Since 1984, INDOT has set DBE contract goals in excess of 15 percent on only two occasions (one 18 and one 20 percent).

IS PROJECT GOAL SETTING A FAIR METHOD FOR OBTAINING ANNUAL DBE GOALS?

Questions of fairness in the DBE program receive many comments, regardless of how the annual DBE goal is set or attained. Prime contractors invariably comment on the size of the goal and majority specialty subcontractors comment on which contract line items are considered. However, INDOT does feel that project goal setting is a reasonably fair method for setting and attaining DBE goals both for majority and DBE contractors and subcontractors because

1. All goal setting meetings are open to the public,
2. Each contract or project is reviewed separately on its own merit,
3. All subcontractable items are considered,
4. INDOT uses the two-by-two rule, and
5. Contract goals in excess of 15 percent are seldom set.

DOES PROJECT GOAL SETTING WORK?

Since beginning in 1982, INDOT's DBE program has undergone many changes. However, the methodology for setting DBE contract goals has been virtually unchanged since its inception, but INDOT has exceeded its annual goals each year (Table 1). INDOT has averaged between 110 and 135 certified DBEs since 1982. A few of these firms are small prime contractors who bid on and periodically receive contracts. Also, INDOT requires that good-faith efforts to use DBEs be taken on any item sublet on consultant contracts.

TABLE 1 INDOT FEDERAL FISCAL YEAR DBE GOAL ATTAINMENT (DOLLARS IN THOUSANDS)

YEAR	FEDERAL FUNDS	FEDERAL DOLLARS AWARDED TO DBES	PERCENT
1983	\$270,484	\$17,041	8.0% (Partial Program Year)
1984	220,768	26,394	12.00%
1985	248,126	25,253	10.20%
1986	251,531	27,370	10.91%
1987	187,143	21,297	11.40%
1988	214,280	24,027	11.20%
1989	240,483	26,840	11.80%

These two factors have helped INDOT achieve the annual state goal of 10 percent DBE participation. However, the only enforceable vehicle for goal attainment during this period has been project goal setting, which has been the largest contributing factor to goal attainment.

COMMITMENT, SUPPORT, AND COOPERATION

Project goal setting, by itself, is not a method to achieve annual DBE goals. No program of this nature can possibly work without the commitment, support, and cooperation of all involved. In this respect, DBEs, majority contractors, and contractor associations have periodically monitored INDOT goal setting meetings. Further, the Indiana General Assembly passed a law that knowingly misrepresenting a firm as a DBE is a Class D felony and INDOT enacted a rule allowing the

suspension of a contractor from working on highway contracts for up to 2 years for DBE program violations. Although these enforcement and regulatory actions are required, the real commitment, support, and cooperation emanates from the positive side. Indiana's governor and INDOT's commissioner publicly support and affirm their commitment to the program and to the increased participation of minorities and females in highway contracts. In addition, prime contractors support the program by achieving the goals set by the DBE goal-setting committee. Contractors also support the program by active participation in DBE training during the off-construction season. Last, DBEs themselves are the biggest supporters of project goal setting because without competent DBE firms to accomplish the contract items used in setting the goals, no goal program could work.

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