

TRANSPORTATION RESEARCH BOARD

# Evaluating goals under the Disadvantaged Business Enterprise program

**May 27, 2020**  
**2:00-3:30 PM Eastern**

**@NASEMTRB**  
**#TRBwebinar**

# PDH Certification Information:

- 1.5 Professional Development Hours (PDH) – see follow-up email for instructions
- You must attend the entire webinar to be eligible to receive PDH credits
- Questions? Contact Reggie Gillum at [RGillum@nas.edu](mailto:RGillum@nas.edu)

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**REGISTERED CONTINUING EDUCATION PROGRAM**

**#TRBwebinar**


# Learning Objectives

1. Develop their triennial goal-setting submissions
2. Describe the role of disparity studies in the triennial goal-setting process
3. Set narrowly tailored contract goals that are reasonable and achievable
4. Identify good faith efforts and best practices

**#TRBwebinar**



# CLE credits

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  - TRB did not seek approval for this workshop from the state board
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# Evaluating Goals Under the Disadvantaged Business Enterprise Program

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# Session Topics

- DBE Program Goal Setting Requirements
- USDOT Goal Setting Tips
- Setting DBE Contract Goals
- Additional DBE Contract Goal Setting Considerations
- Good Faith Efforts to Meet Goals

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- All recipients must set an overall, triennial goal for DBE participation
  - Goal must be based on the availability of ready, willing and able DBEs relative to all such firms
  - Goal must reflect the level of DBE participation absent the effects of discrimination
  - Cannot simply rely on the national 10% goal
  - Timely submission and approval is a condition of eligibility for DOT assistance

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Step 1 ( § 26.45(c))
  - Determine the base figure for the relative availability of DBEs
    - Possible methodologies
      - Divide DBE directory over Census Bureau's County Business Pattern database
        - » Pros
          - Cheap
          - Easy
        - » Cons
          - Compares two disparate sources (statutorily defined groups over general economic data)
          - Restricts availability to firms that are certified



# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Use a bidders list
  - » Pros
    - Cheap
    - Easy
  - » Cons
    - Includes only those firms already doing work
    - Requires excellent data capture of ALL prime bidders and ALL subcontractors that quote to primes, both successful and unsuccessful primes and subs

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Use a [high quality] disparity study
  - » Pros
    - Most reliable
  - » Cons
    - Expensive
- Use the goal of another DOT recipient
  - » Pros
    - Cheap
    - Easy
  - » Cons
    - Difficult to establish that the markets are substantially the same between recipients
- Alternative methods

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Step 2 ( § 26.45(d))
  - Examine all available evidence to determine whether an adjustment to the base figure is needed
    - Recipients must consider
      - Current capacity of DBEs as measured by past participation in “recent years”
      - Evidence from local disparity studies if not already accounted for in Step 1
      - If the base figure is another recipient’s goal, adjust for difference in the local market and DBE program

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- If available, recipient must consider evidence from related fields that affect the ability of DBEs to form, grow and compete
  - Statistical disparities in the ability of DBEs to get required financing, bonding and insurance
  - Data on employment, self-employment, education, training and union apprenticeship programs, to the extent related to opportunities for DBEs to perform in agency's DBE program
- Any adjustment to account for the continuing effects of past discrimination (the "but for" factor) or the effects of an ongoing DBE program must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Overall goal must be expressed as either ( § 26.45(e)):
  - % of all FHWA funds expected to be expended in the next 3 fiscal years
  - % of all FTA or FAA funds expected to be expended in the next 3 fiscal years (except for transit vehicles)
  - In appropriate cases, the goal can be expressed for a project or group of projects
    - Covers the entire length of the project(s)
    - Must be calculated and separated from the overall goal
- Triennial goal is due August 1 ( § 26.45(f))

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Goal submission must include the methodology and evidence used
- If more time is needed, an interim goal is permissible
- Recipient must provide for consultation and publication ( § 26.45(g))
  - Must consult minority, woman and general contractor groups, community organizations and others with possible info about DBE and non-DBE availability, the effects of discrimination and the DBE program

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.45

- Consultation must include a scheduled, direct, interactive exchange with as many stakeholders as possible before submission to USDOT
- Process and outcomes must be documented
- Consultation must occur before implementation
- Publication on agency website must occur before submission
- Agency may inform the public that goal is available for inspection at principal office and for a 30-day comment period

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.47

- Recipient can't be penalized for failing to reach the goal unless it has failed to administer the program in good faith
- If the Uniform Report is less than the goal, recipient must:
  - Analyze in detail why there was a shortfall
  - Establish specific steps and milestones to correct the problem and the the goal
  - State DOTs, large transit agencies and airports must submit "shortfall" reports



# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.49

- Transit vehicle manufacturers
  - FTA recipients must require TVMs to certify compliance with § 26.49
  - Only TVMs on FTA's certified list or that have submitted an approved or not disapproved goal can bid
  - TVMs must establish and submit for FTA approval an annual overall goal
    - Must follow the principles of § 26.45
  - Recipient may establish project specific goals instead

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.51

- Overall DBE goal must be met through race-neutral measures to the maximum feasible extent
- Overall goal submission must project the portion of the goal expected to be met through race-neutral means and the basis for the projection

# DBE Program Goal Setting

## Requirements: 49 C.F.R. § 26.51

- Contract goals are set to reach the portion of the goal not met through race-neutral measures
  - Must have subcontracting opportunities
  - Contract goal not required
  - May be higher or lower than overall goal but cumulatively should meet overall goal
    - Reduce or eliminate contract goals if the overall goal will be exceeded or increase them if it won't be met
  - Maintain data on goals and no-goals contracts separately

# USDOT Goal Setting Tips

- Step 1 base figure
  - Past participation cannot be the sole basis for future goals
  - Use the most refined data available
  - Supplement the DBE Directory
  - Use weighting
  - Address decertifications in the base figure
  - Do not make adjustment based on the amount of federal assistance

# USDOT Goal Setting Tips

- Step 2 adjustment
  - Must have a “rational relationship between the data you are using to make the adjustment and the actual numerical adjustment made”
  - Past participation
    - No adjustment needed if base figure and past participation are very similar
    - No adjustment if the types of projects will differ substantially
    - If there is no more precise method, then average step 1 with median past participation (several years is best)

# USDOT Goal Setting Tips

- Step 2 adjustment
  - Additional information might be gained from various organizations
  - Must consider local disparity studies but the data must be directly relevant
  - Consider reliable information about firms' characteristics in local market area

# USDOT Goal Setting Tips

- Race-neutral/race-conscious split
  - Consider any past achievement over the goal
  - Consider past prime DBE participation
  - Consider DBE participation on no goals contracts
  - Consider participation in other agencies' race-neutral programs
  - Consider concrete plans to implement new race-neutral methods
  - Consider past failure to achieve goals
  - Monitor progress towards meeting the goal

# Setting DBE Contract Goals

- Setting a DBE contract goal involves two components:
  - A mathematical calculation using availability and work scopes
  - Assessment of market pressures and past performance and adjustment of the calculated goal, if appropriate
- [www.contractgoalsetting.com](http://www.contractgoalsetting.com)



# Information Needed to Set Contract Goals

- All **individual work scopes** of the contract, **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.* 6-digit NAICS codes)
- **Geographic market** for project work & firms
- **Universe of MWDBE firms**, with industry codes, in the geographic market
- **Universe of all firms**, with industry codes, in the geographic market
- In depth understanding of your agency, community, past utilization and any other factors that may impact the ability of firms to meet the goal

# Information Typically Used to Determine Availability for Goal Setting

- DBE Directory
- Bidders list
- Vendor list
- Industry database
  - Hoovers: <http://www.hoovers.com/>
  - Dun & Bradstreet: <http://www.dnb.com/>
- Census Bureau data
- Data from another government's disparity study
- Your own disparity study

# Can You Use Your Disparity Study to Set Contract Goals?

- Yes, if the Disparity Study:
  - Uses 6-digit NAICS codes for the **unweighted** availability analysis
  - Includes the collection of all missing subcontract data for non-certified firms
  - Analyzes all sizes of contracts (*e.g.*, does not limit analysis to contracts under \$500k)
  - Analyzes a large majority of contracts (*e.g.*, 80%+ of spend)

# Contract Goal Setting Formula

$$\text{Goal} = \frac{\text{S} \left( \frac{\text{DBEs}}{\text{All firms}} \cdot \text{Amount} \right)_{\text{Work Scope}}}{\text{S} \left( \text{Amount} \right)_{\text{Work Scope}}}$$

# Step 1: Determining Availability

- Availability must be determined for each work scope, using industry codes
- In order to maintain the highest standards for your program, do not calculate a goal for any scope that has **3 or fewer** firms
- Best practice is to use the 6-digit unweighted availability estimates from a Disparity Study
- Otherwise, you will have to calculate availability

# Step 1: Determining Availability

$$\text{Work Scope Availability} = \frac{\text{DBEs in work scope}}{\text{All firms in work scope}}$$

# Step 1: Determining Availability

- Before we begin ... “Significant Figures”
  - Don’t get caught up in using a 25-digit number. For goal setting, 22% is just as good as 22.05978613516421%.
  - Be consistent in your approach, use similar levels of precision, and recognize the variation present in your source data.
  -

# Step 1: Determining Availability

- For each work category, identify DBEs and divide this number by the total number of all firms in the identified work category

$$\frac{12 \text{ DBE truckers}}{35 \text{ total truckers}} = 0.343$$

- Multiply the result by 100 and write the number as the *availability percent*

$$0.343 \times 100 = 34.3\% = \text{Trucking company availability}$$



# 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 <input type="text" value="Trucking"/>	<input type="text" value="484110"/>	<input type="text" value="12"/>	<input type="text" value="35"/>	$= 34.3\%$ <small>Enter 0% if 3 or fewer certified firms</small>	<input type="text" value="\$"/>	<input type="text" value="\$"/>
		<input type="checkbox"/> Check here if 3 or fewer certified firms				
2 <input type="text" value="Aggregate Base"/>	<input type="text" value="212320"/>	<input type="text" value="7"/>	<input type="text" value="34"/>	$= 20.6\%$ <small>Enter 0% if 3 or fewer certified firms</small>	<input type="text" value="\$"/>	<input type="text" value="\$"/>
		<input type="checkbox"/> Check here if 3 or fewer certified firms				
3 <input type="text" value="Asphalt Paving Supply"/>	<input type="text" value="212399"/>	<input type="text" value="2"/>	<input type="text" value="20"/>	<del><math>= 10\%</math></del> <sup>0.0</sup> <small>Enter 0% if 3 or fewer certified firms</small>	<input type="text" value="\$"/>	<input type="text" value="\$"/>
		<input checked="" type="checkbox"/> Check here if 3 or fewer certified firms				
4 <input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	$= \text{ } \%$ <small>Enter 0% if 3 or fewer certified firms</small>	<input type="text" value="\$"/>	<input type="text" value="\$"/>
		<input type="checkbox"/> Check here if 3 or fewer certified firms				

**Sum of Certified Work Scope Amounts:** \$  *Add up all Certified Work Scope Amounts and enter total dollar amount.*

**Total Project Amount:** \$

*Divide Sum of Certified Work Scope Amounts by Total Project Amount*

**Contract Goal:**  %

# Step 2: Calculating Work Scope Amount

Work scope is defined by unique description of work to be performed and industry code

$$\text{Work Scope Amount} = \frac{\text{Work Scope Availability}}{\text{Work Scope Amount}}$$

# Step 2: Calculating Work Scope Amount

1. Enter the work scope amount
2. Multiply the availability by the dollar value of each work scope

$$\text{Work Scope Amount} = \frac{34.3}{100} \times \$149,500$$

2. Write the calculated amount in the box for the work scope

# 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% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 149,500	\$ 51,257
2 Aggregate Base	212320	7	34	20.6% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 178,900	\$ 36,832
3 Asphalt Paving Supply	212399	2	20	<del>10%</del> 0.0% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 445,000	\$ 0
4				% <small>Enter 0% if 3 or fewer certified firms</small>	\$	\$

**Sum of Certified Work Scope Amounts:** \$ 
← Add up all Certified Work Scope Amounts and enter total dollar amount.

**Total Project Amount:** \$

↓ Divide Sum of Certified Work Scope Amounts by Total Project Amount

# Step 3: Calculate Sum of Work Scope Amounts

Simple addition of Work Scope Amounts

$$\begin{array}{r} \text{Sum of} \\ \text{Work Scope} \\ \text{Amounts} \end{array} = \begin{array}{r} \text{Work Scope} \\ \text{Amount 1} \\ + \\ \text{Work Scope} \\ \text{Amount 2} \\ + \\ \text{Work Scope} \\ \text{Amount 3} \end{array}$$

# 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% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 149,500	\$ 51,257
2 Aggregate Base	212320	7	34	20.6% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 178,900	\$ 36,832
3 Asphalt Paving Supply	212399	2	20	<del>10%</del> 0.0% <small>Enter 0% if 3 or fewer certified firms</small>	\$ 445,000	\$ 0
4				% <small>Enter 0% if 3 or fewer certified firms</small>	\$	\$
<b>Sum of Certified Work Scope Amounts:</b>					\$ 88,089	
<b>Total Project Amount:</b>					\$	
<b>Contract Goal:</b>						%

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

Divide Sum of Certified Work Scope Amounts by Total Project Amount

# Step 4: Determine the Goal

The goal is the sum of Work Scope Amounts divided by the Total Amount

$$\text{Goal} = \frac{\text{Sum of Work Scope Amounts}}{\text{Total Amount}} = \frac{\$88,089}{\$773,400}$$

# 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 %	\$ 149,500	\$ 51,257
		<input type="checkbox"/> Check here if 3 or fewer certified firms		Enter 0% if 3 or fewer certified firms		
2 Aggregate Base	212320	7	34	20.6 %	\$ 178,900	\$ 36,832
		<input type="checkbox"/> Check here if 3 or fewer certified firms		Enter 0% if 3 or fewer certified firms		
3 Asphalt Paving Supply	212399	2	20	<del>10.0</del> 0.0 %	\$ 445,000	\$ 0
		<input checked="" type="checkbox"/> Check here if 3 or fewer certified firms		Enter 0% if 3 or fewer certified firms		
4						
		<input type="checkbox"/> Check here if 3 or fewer certified firms		Enter 0% if 3 or fewer certified firms		
<b>Sum of Certified Work Scope Amounts:</b>					\$ 88,089	
					÷	
<b>Total Project Amount:</b>					\$ 773,400	
					↓	
					Divide Sum of Certified Work Scope Amounts by Total Project Amount	
<b>Contract Goal:</b>					11.4 %	

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



# Full Goal Setting Formula

1 > 2 > 3 > 4

$$\text{Goal} = \frac{S \left( \frac{\text{DBEs}}{\text{All firms}} \cdot \text{Amount} \right)_{\text{Work Scope}}}{S \left( \text{Amount} \right)_{\text{Work Scope}}}$$

# Application of DBE Contract Goal Setting Methodology

- Overall DBE goal
  - Same process for using the DBE Directory/County Business Patterns and bidders list approaches to set the overall goal
- All contract goal setting scenarios
  - Construction contracts
  - Professional services contracts
  - Engineering and architecture contracts
  - Services contracts
  - Goods and supply contracts

# Additional DBE Contract Goal Setting Considerations

- Project delivery type
  - Does the nature of your project impact your ability to set a goal?
  - Does the type and/or scope create hidden limitations?
- Anticipated marketplace changes
  - Have similar projects in the recent past met, substantially exceeded, or substantially missed the goal?

# Additional DBE Contract Goal Setting Considerations

- Current projects and impact on availability
  - What is the availability of certified and non-certified firms?
  - What is the available bonding capacity?
- Past Performance
  - Have similar projects in the recent past (up to five years) met, substantially exceeded, or substantially missed the goal?
  - Other measures of demonstrated capacity

# Additional DBE Contract Goal Setting Considerations

- Directory and market impacts
  - It is not a requirement to have a real-time directory assessment (what is *today* may not be *tomorrow* and certainly not over the *project term*)
  - But take into account entry or exit of firms from your marketplace – new certifications from outreach efforts, decertifications, graduations, withdrawals, general business impacts for both certified and non-certified firms

# Good Faith Efforts to Meet Goals: 49 C.F.R. § 26.53 and Appendix A

- Bidders must either meet the DBE contract goal or make good faith efforts to do so
  - Tips for bidders to seek reductions or waivers
    - Be sure when GFE documentation is due
    - Ask questions about how the goal was calculated
    - Seek help from the DBE office
    - Host outreach events for larger projects
    - Price is not dispositive; no set %
    - The desire to self-perform is not sufficient standing alone
    - Each recipient has specific forms and procedures

# In Conclusion

- Document, document, document
  - The process is as important as the number
- Publish your methodology, numbers, and results on your website
- Continuously monitor participation on your projects to confirm your process; update as needed

# Thank You!

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Moderator:  
Joanne Lubart



# Today's Presenters



Colette Holt,  
Colette Holt &  
Associates

Justin Talbot-  
Stern,  
B2GNow



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