

# DBE

## Goal-Setting

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**Federal Aviation  
Administration**

*Office Of Civil Rights*

*ACHIEVING SAFETY  
THROUGH DIVERSITY*



# Goal Setting and Implementation

- Purpose of Overall Goal and Project Goal

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- Approaches to Calculate Goal

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- Accountability Requirements

# Who Must Have a DBE Program/Set Goals?

- Program: FAA grant recipients for airport planning or development awarding prime contracts \$250,000 or more in FAA funds in a FFY
- Goals: FAA recipients who anticipate awarding \$250,000 or more in FAA funds in prime contracts in a FFY

# Purpose of Overall Goal

Establish **Anticipated Amount** of DBE Participation on DOT-Assisted Projects absent effects of discrimination

- FAA Recipients: annual goal reviewed **every 3 years**

# Overall Goal and Project Goals

Same Substantive and Procedural  
Requirements



Must Follow USDOT's "Tips for Goal-Setting in the DBE Program"

<http://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

FAA Reviews Goals Using Same Guidance

# Overall Goal and Project Goals

- FAA reviews Recipient's proposed overall goal and may adjust the goal or require the Recipient to adjust the goal if it believes the goal has not been correctly calculated or the methodology is inadequate
- Recipient may operate under proposed goal prior to FAA approval

# 5

## Approaches to Calculate the DBE Goal

# 5 Approaches to Calculate the DBE Goal

1. DBE Directory + Census Data
2. Bidders List
3. Disparity Study Data
4. Goal from another DOT Recipient
5. Alternative Methods

# 5 Approaches to Calculate the DBE Goal

## 1. DBE Directory + Census Data

- Determine ready, willing, and able DBEs in your market area from the DBE Directory
- Determine ready, willing, and able all firms in your market area from the Census Data
- Determine all ready, willing, and able firms performing work under the same NAICS codes
- $\text{Number of DBEs} \div \text{Number of all firms} = \text{Base figure for relative availability}$

# 5 Approaches to Calculate the DBE Goal

## 2. Bidders List

- 26.11(c) Requirement
- Bidders from the past 3 years
- Successful and unsuccessful bidders

# 5 Approaches to Calculate the DBE Goal

## 3. Disparity Study Data

- ❑ Percentage figure derived from data



# 5 Approaches to Calculate the DBE Goal

## 4. Goal from another DOT Recipient

- Same or substantially similar market
- Overall goal must be in compliance with 49 C.F.R. 26.45
- Goal can be used as base figure

# 5 Approaches to Calculate the DBE Goal

## 5. Alternative Methods—49 C.F.R. 26.45(c)(5)

- Demonstrable evidence of local market conditions
- Prequalification list or bidders list must meet regulatory requirements
- If list does not meet the regulatory requirements, you must supplement with additional sources

# Identify Method Selected

The **exclusive** use of a list of prequalified contractors or plan holders is **NOT** an acceptable alternative means of determining the availability of DBEs.



# Goal Setting and Implementation

- Purpose of Overall Goal and Project Goal
- Approaches to Calculate Goal
- **8 Minimum Requirements**
- Accountability Requirements



# Minimum Requirements Included in each Method

# 1. FAA-Assisted Contracting Opportunities

- ALL FAA-Assisted Activities that include Possible Contracting Opportunities
- Include Potential Contracting Opportunities
- Assign Appropriate NAICS Code for Contracting Opportunities

## 2. Geographic Market Area

Determine Relevant Geographic Market Area (GMA): Geographic distribution of contractors and subcontractors and area in which contracting dollars are spent.

**Note:** *Relevant Market Area may not be (i.e., doesn't have to be) the same as your State geographic boundaries*

# 3. Step One: Base Figure

DBEs

Potential DBEs



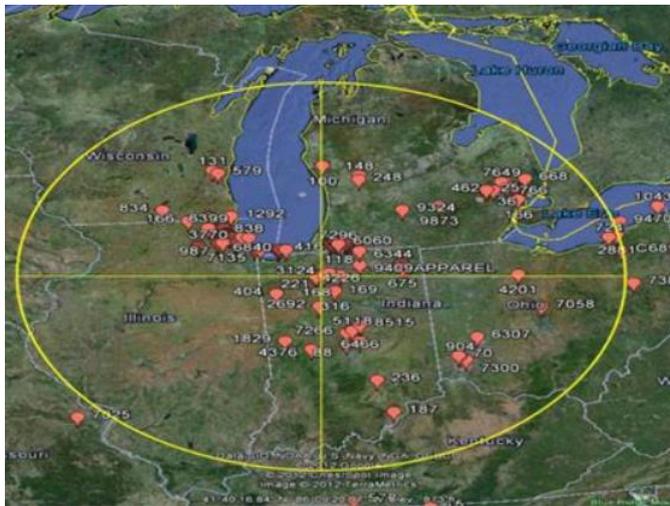
Ready!



Willing!  
All other Firms



Able!



- Geographic Market Area
- NAICS Codes

### 3. Step One: Base Figure, cont'd.

Determine number of ready, willing, and able DBEs from DBE Directory

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= Base Figure

Use Census Bureau County Business Pattern (CBP) database to determine number of all ready, willing, and able businesses available in your market performing work in same NAICS codes

<http://www.census.gov/epcd/cbp/view/cbpview.html>.

### 3. Step One: Base Figure, cont'd. *Example Using Bidders List*

$$\frac{10 \text{ DBEs bid or quoted on prime or subcontracts}}{100 \text{ Total Firms bid or quoted on prime or subcontracts}} = 10.00 \% \text{ Base Figure}$$

### 3. Step One: Base Figure, cont'd. *Example Using Bidders List*

49 CFR §26.45(c)(2): **Acceptable only** if you have a method of collecting data on:

- ALL businesses, successful OR unsuccessful, that have bid or quoted on prime or subcontracts during the previous three years
- ALL DBE and non-DBE subcontractors that submitted bids or quotes during that time period.

### 3. Step One: Base Figure, cont'd. Disparity Study Method

- A disparity study typically yields best data available.
- If you have conducted a disparity study in market area and choose another method, explain why.

# 4. Weighting

## Weighting by Work Type

- Provides a more narrowly-tailored model of availability
- Weights used are proportion of dollars spent within each industry/trade: resulting percentage is more heavily influenced by availability in industries/trades where more dollars are spent

## 4. Weighting, cont'd.

- Apply NAICS code to each type of work in your project
- Tally the dollars spent in each work type category as a percentage of the total contract dollars spent
- Assign work types to each DBE and non-DBE firm

## 4. Weighting, cont'd.

### *Example*

Your contracts are primarily in Trucking, Engineering/Design, and Construction:

Industry	Contract \$	% of Dollars (weight)	% of Dollars		Weighted %
			DBEs	Non-DBEs	
Trucking	\$100	5.00%	1	18	0.28%
Engineering/Design	\$100	5.00%	1	17	0.29%
Construction	\$1800	90.00%	8	65	11.08%
<b>Total</b>	<b>\$2000</b>	<b>100.00%</b>	<b>10</b>	<b>100</b>	<b>11.65%</b>

# 5. Identify Sources

## DBE Directory



## US Census Data



## FAA db-E Connect



## or Supplemental Sources

## 6. Step Two Adjustment

Recipient must examine all available evidence and determine what adjustments, if any, are necessary

**Step Two adjustment not required but if you don't, you must include an explanation.**

## 6. Step Two Adjustment, cont'd. *Median Past DBE Participation (MPP)*

- Use median DBE participation data from past 3 to 5 years to demonstrate capacity (percentages)
- If MPP figure is very similar to Step One base figure, you are not required to make adjustment for past participation

# 6. Step Two Adjustment, cont'd.

## *MPP Example*

1. Tally total DBE achievement percentages for 3 to 5 years.

	<b>Total DBE Achieved (RC+RN)</b>	<b>Total Contract Amt</b>	<b>Total DBE %</b>
<b>2010</b>	\$750.00	\$5,000.00	15.00%
<b>2011</b>	\$480.00	\$4,000.00	12.00%
<b>2012</b>	\$200.00	\$1,000.00	20.00%
<b>2013</b>	\$240.00	\$6,000.00	4.00%
<b>2014</b>	\$360.00	\$6,000.00	6.00%

## 6. Step Two Adjustment, cont'd.

### *MPP Example*

2. Choose median (**not average**) percentage:

<b>2013</b>	4.00%
<b>2014</b>	6.00%
<b>2011</b>	<b>12.00%</b>
<b>2010</b>	15.00%
<b>2012</b>	20.00%

3. MPP % with Base Figure %:

$$\frac{\text{BF (11.65\%)} + \text{MPP (12.00\%)}}{2} \text{ Adjusted BF} = \mathbf{11.83\%}$$

# 6. Step Two: Adjustment, cont'd.

## *Other Evidence*

- Information from disparity studies
  - Lack of access to financing/bonding
  - Statistical employment data
  - Other data affecting likely DBE participation, e.g., drastic changes in the economy

# 7. Race-Neutral/Race-Conscious Breakdown

- Projection of Race-Neutral and Race-Conscious Participation
- Maximum Feasible Portion of Overall Goal using Race-Neutral Measures
  - Specify which race-neutral measures will be used
- **Must** Establish Contract Goals to Meet Remaining Portion of Goal

# Race-Neutral Projection

## *Example*

1. Tally total R/N DBE achievement percentages for 5 years

	Race-Neutral DBE Amt	Total Contract Amt	RN DBE %
<b>2010</b>	\$100.00	\$5,000.00	2.00%
<b>2011</b>	\$200.00	\$4,000.00	5.00%
<b>2012</b>	\$30.00	\$1,000.00	3.00%
<b>2013</b>	\$420.00	\$6,000.00	7.00%
<b>2014</b>	\$300.00	\$6,000.00	5.00%

# Race-Neutral Projection, cont'd.

2. Choose median RN percentage:

2010	2.00%
2012	3.00%
<b>2011</b>	<b>5.00%</b>
2014	5.00%
2013	7.00%

3. Apply to adjusted base figure for final goal:

$$\begin{aligned} & 6.65\% \text{ Race-Conscious} \\ + & \underline{5.00\% \text{ Race-Neutral}} \\ = & 11.65\% \text{ (your adjusted base figure)} \end{aligned}$$

# Race-Neutral Measures

- May Benefit DBEs **and** other Small Businesses
- Determine the Small Business Needs within your Geographic Area
- Incorporate Race-Neutral Measures that meet the Needs of **your Small Business Community**

# Race-Conscious Measures

9<sup>th</sup> Circuit Recipients

*AK, AZ, CA, HI, ID, MT, NV, OR WA*

## **Must Examine All Available Evidence of Discrimination**

- Conduct a disparity/availability study
- Evaluate the study of a similarly situated recipient
- Narrowly tailored use of contract goals

## **Include Evidence with Goal Methodology**



*Western States Paving Co. v. Washington Dept. of Transportation, 407 F. 3d 983 (9th Cir. 2005)*

# 7. Consultation

## Small Business Community and Stakeholder Engagement

- Minority organizations, women's groups, **and** general contractor groups
  - Scheduled, direct, **and** interactive exchanges
    - DBE and non-DBE availability
    - Effects of discrimination
    - Efforts to establish level playing field

# 7. Consultation, cont'd.

**Must** submit evidence of public participation

- Comments/feedback received
- Persons/organizations contacted
- Meetings held



## 7. Consultation, cont'd.

Stakeholder meetings **must occur before** you are required to submit your methodology to the OA

Recipient **may not implement** the proposed goal until it has **complied with this requirement**



# 8. Proof of Publication

**Must Post on Official Internet Webpage**

**May Post on other Media Outlets**

- Must allow 30 day public comment period**



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- **Accountability Requirements**

# Accountability Report (Shortfall Requirements)

A recipient that does not meet its overall DBE goal **in any given year** must submit a written analysis to the FAA of **why the goal was not met** and **corrective measures** to be taken.

# Accountability Report (Shortfall Requirements)

- Analyze reasons for difference between overall goal and awards/commitments in that year
- Establish specific steps to correct problems in order to fully meet goal for new fiscal year

Timeframe: By **December 29** of respective year  
(90 days after the end of the fiscal year)



# Accountability Report (Shortfall Requirements)

- **Core 30 Airports** must submit analysis and corrective actions within 90 days of end of fiscal year
- FAA Approval = In Compliance
- **All Other Airports** must analyze and prepare corrective action plan but do not have to submit to FAA. Maintain records for three years and make available to FAA, upon request
- FAA may require modifications to overall goal methodology: Changes to RC/RN projections or additional RC/RN measures

# DBE Shortfall Submission Dates: What If...

Your FY 2014-2016 is 10% Goal

**FY 2014**: Achieved 15% DBE Participation = No Shortfall Submission Required

**FY 2015**: Achieved 8.7% DBE Participation = **Shortfall Submission Required** and due on December 29, 2015

**FY 2016**: Achieved 5.9% DBE Participation = **Shortfall Submission Required** and due on December 29, 2016

# Drafting a Shortfall Analysis:

*First, review Uniform Report for accuracy!*

## ❑ Shortfall Percentage



# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown**



# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures**

**Race Neutral  
Measures**



# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures
- Projects undertaken during the FY**



# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures
- Projects undertaken during the FY
- DBE participation on these projects**



# Drafting a Shortfall Analysis:

- Shortfall Percentage
- Race-Conscious/Race-Neutral Breakdown
- Race-Neutral Measures
- Projects undertaken during the FY
- DBE participation on these projects
- Reasons for the Shortfall**



# Drafting a Corrective Action Plan: Elements

- ❑ **Specific Steps to Achieve Goal in Upcoming Fiscal Year**
- ❑ **Milestones for Implementing these Steps**

# Accountability Report (Shortfall Requirements)

Recipient is in non-compliance if **ANY** of the following occur:

- Does not submit analysis and corrective actions to FAA timely
- FAA disapproves of analysis or corrective actions
- Does not fully implement corrective actions or FAA's imposed conditions for acceptance

# Q & A

# Federal Aviation Administration-Office of Civil Rights

[http://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/](http://www.faa.gov/about/office_org/headquarters_offices/acr/)

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