



OREGON DEPARTMENT OF TRANSPORTATION
Intermodal Civil Rights
Proposed Overall DBE Goal FFY 2018 -2020
Federal Transit Administration - Funded Contracting

INTRODUCTION

The Oregon Department of Transportation (ODOT) prepared this document, which details the methodology for establishing its Disadvantaged Business Enterprise (DBE) overall goal for Federal Transit Administration (FTA) assisted contracts. The goal and methodology establishes ODOT's estimated overall goal for FTA-assisted contracts that ODOT anticipates awarding in Federal Fiscal Years (FFYs) 2018, 2019, and 2020. ODOT submits this document to the US Department of Transportation's (USDOT) Federal Transit Administration (FTA) for review and approval pursuant to 49 Code of Federal Regulation (CFR) Part 26.45.

ODOT's Rail and Public Transit Division (RPTD) receives, distributes, and oversees the use of federal funds received from the FTA. Most FTA funds distributed by RPTD are granted to transit providers in rural and small city areas of the State of Oregon, however some capital funds are awarded to small and large urban transit agencies. These grantees (or subrecipients) then contract for goods and services creating indirect FTA-assisted contracting opportunities for DBE firms.

To establish its overall DBE goal, ODOT closely followed federal regulations, including the two-step goal-setting methodology set forth in 49 CFR Part 26.45. ODOT determined a "step-one" base figure for its overall DBE goal using information from the Oregon Business Development Department, Certification Office for Business Inclusion and Diversity (COBID) DBE Directory as well as from Census Bureau Data.

ODOT determined whether a "step two" adjustment was needed to adjust the base figure using information from the 2016 ODOT Disparity Study conducted by Keen Independent Research. Completed in February 2016 this disparity study did not include FTA funded projects; however, comparison of project types was conducted to ensure that disparity was not occurring in the implementation of FTA funded transit projects.

PROPOSED DBE GOAL FOR FFY 2018-20

For Federal Fiscal Years (FFYs) 2018-2020, the ODOT Triennial DBE proposed goal for FTA assisted projects is 6% without any Step Two adjustments. This overall goal is expected to be achieved through race-neutral methods. ODOT submits this goal and methodology to the FTA for review and approval pursuant to 49 Code of Federal Regulations (CFR) §26.45, for federally assisted transit contracts.

ODOT relied on the 49 CFR section 26 regulations issued on February 2, 1999, and subsequent guidance issued December 21, 2005, to ascertain this goal. ODOT acknowledges the February 3, 2010, final rule change that requires the department to submit the overall goal triennially rather than annually.

GOAL SETTING METHODOLOGY – §26.45

To derive the proposed DBE triennial goal, ODOT followed the two-step goal setting process specified in 49 CFR §26.45(c) of the DBE regulations:

- Step One describes the calculation of a base figure for the relative availability of DBEs.
- Step Two is the examination of all the evidence available to determine if an adjustment to the base figure is needed to arrive at the overall goal.

STEP 1: DETERMINING A BASE FIGURE –§26.45(c)

ODOT anticipates awarding \$26,748,978 in FTA financial assistance during the triennium. The exact figure of total FTA funding is unknown due to the uncertainty of future federal funding levels. For the purpose of the triennial DBE goal, ODOT made assumptions on future funds received and distributed based on previous funding levels and project type. If actual funding substantially changes from the assumptions used to determine this goal, ODOT will reevaluate the DBE goal.

This projection was determined by evaluating the projects awarded during the Oregon 2017-2019 biennium discretionary and formula grant processes to subrecipients (e.g. rural transit providers). ODOT then multiplied the sum of grants awarded by one point five (1.5) to determine an estimated award amount for the upcoming triennium. This estimate is illustrated as follows:

FY 17-19 Funding x 1.5 = T r i e n n i u m Funding Projection

\$17,832,652 x 1.5 = \$26,748,978

Pursuant to 49 CFR § 26.45(2) the calculations of the Triennial DBE Goal and projection of FTA financial assistance exclude transit vehicle purchases. The goal includes funds awarded to FTA direct recipients. They are required to report DBE participation on the FTA funds they receive through ODOT to ODOT. DBE firms show that they have the capacity to perform some of the projected work. An informal survey of the prime contractor community indicates that there is

little concern about capacity in the coming year to participate in FTA funded projects. During the previous fiscal year, regarding transit projects, there were no formal complaints, claims, or lawsuits filed with ODOT’s Office of Civil Rights alleging discrimination or disparity in bonding or financing.

Per 49 CFR § 26.45(b) the “triennium 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 contract . . .” ODOT began the triennium DBE goal setting process by determining a base figure for the relative availability of DBEs. This was done by examining projects with FTA financial assistance let in previous years, the current biennium and anticipated projects in the third year of the triennium. Each project was evaluated and assigned North American Industry Classification System (NAICS) Code(s). The DBE availability percentage was then calculated by determining the number of ready, willing and able DBEs divided by all firms which are ready, willing and able to perform the same work.

For example:

Ready, willing and able DBE firms

All firms, ready, willing and able = Step One Base Figure

ODOT determined that the following NAICS were disciplines most common with the transit-related projects and professional services likely to be funded during FFYs 2018-2020 triennium. The table below shows the estimated funding to be received and utilized by ODOT and its subrecipients during the triennium.

Table 1: Triennium Goal Base Figures

Contract Opportunities	2018-2020	NAICS	All Businesses	DBEs
Purchased Service	\$19,052,499.00	485991	483	7
Preventive Maintenance	\$6,436,032.00	811198	5258	0
Hardware/Software	\$424,585.00	541512	11663	16
Facility Development	\$385,498.00	541620	10,053	187
Shelters	\$238,569.00	236220	451	2
Transportation Equipment	\$209,101.00	423860	36	2
Signage	\$2,692.00	423990	311	8

The numerator was determined by utilizing NAICS information. ODOT sorted certified DBE information published by the certification agency and determined that **222** DBE firms were ready, willing and able to bid on projects to be funded in the triennium.

As certification information is maintained on an electronic database and updated nightly, the data used in this triennial DBE Goal was current as of July 25, 2017.

To find the denominator, **28,255** (non-DBEs) as listed by the US Census Bureau’s Economic Census, 2012 County Business Patterns, utilizing the same NAICS codes were selected.

ODOT divided the 222 DBE firms by the total 28,255 firms found in the US Census Bureau’s publication and determined that 6% of the total population were DBE:

$$\frac{\text{DBE Directory}}{\text{2012 Economic Census}} = \frac{\underline{222}}{28,255} = 6.1 \text{ rounded to } 6\%$$

Resulting Baseline Goal

ODOT considers 6 percent DBE participation as the base figure for its overall goal for FFYs 2018-2020.

Determination of Local Market

ODOT has determined that the State of Oregon is its relevant local market area. This was determined by an examination of the Department’s pre-qualified bidders list and the state’s DBE Directory, which show that a substantial majority of the contractors and subcontractors that the Department’s subrecipients does business with reside in the state.

STEP 2: DETERMINING IF AN ADJUSTMENT IS NEEDED – Section 26.45(d)

ODOT looked at the DBE goals and semiannual reports for the past 3 years to determine the level of attainment during those years. Attainment averaged percent rounded to an average overall goal of 6.9 %. No Step Two adjustment is proposed at this time.

ODOT Office of Civil Rights staff is currently working to improve the accuracy of future reporting and goal setting for the FTA DBE program. In this process, it is apparent that there are opportunities for increased accuracy in reporting the number and type of anticipated subcontracting of grant awarded funds. Many ODOT subrecipients deliver services themselves and do not sub-contract grant funds; as such these expenditures do not represent a viable contracting opportunity for DBEs.

Using other states’ programs as examples, ODOT intends to gather better information from future grant award and reporting processes and may request additional information from subrecipients via survey. Increased understanding of DBE opportunities will increase the accuracy of the triennial DBE Goal. As ODOT improves the accuracy of subcontracting opportunities during this triennium ODOT will reevaluate the triennium DBE goal, and adjust as appropriate.

RACE-NEUTRAL INITIATIVES

Following guidance issued by the USDOT, its Federal Highway Administration and Federal Transit Administration as a result of the decision of the 9th US Circuit Court in the Western States Paving Co., Inc. v. Washington State Department of Transportation; the State of Oregon continues its race-neutral policy of not setting DBE goals for specific transit projects. The O D O T 2 0 1 6 Availability and Disparity Study conducted by Keen Independent Research LLC did not show that there are significant disparities in contracting that would affect ODOT Transit Grants. All DBE participation will be achieved through race- and gender-neutral means.

PUBLIC PARTICIPATION

The ODOT Office of Civil Rights utilizes an annual Outreach Events Calendar which is comprised of key chambers of commerce, community, and professional organizations that are involved with small firms. ODOT attended the various meetings, marketplace events, trade shows and conferences listed on the Calendar throughout the past year and encouraged public comments on the DBE triennial goal and the goal setting methodology. The major events for small businesses were the Oregon Association of Minority Entrepreneurs (OAME) Annual Conference & Trade Show, the Hispanic Metro Chamber of Commerce Tradeshow and the MED Week Trade Show and Luncheon. Other small business events were monthly Contractor and A & E meetings at OAME, the ACEC/ODOT Conference, and the Latino Business & Workforce Development Conference. ODOT/OCR staff is available for conversations and comments by phone and e-mail. No written comments regarding the DBE goal setting methodology were received; however, goals were a topic of discussion at various meetings during the year. Additional meetings:

- In years 2014, 2015 and 2016, Intermodal Civil Rights hosted “Doing Business with Transit” events in several areas of the state. Transit service providers were asked to provide upcoming projects to the many small businesses in attendance. Certification information was provided by COBID.
- **“Connect to Oregon” (C2O)** events were conducted in Eastern Oregon to help small businesses become aware of contracting opportunities.
- A Transit DBE Consortium was developed in 2015. The membership included urban transit systems, i.e. TriMet, Salem-Kaiser Transit, Lane Transit District, and Rogue Valley Transit District. Through Intermodal Civil Rights, the group will share lessons learned and provide assistance to the non-urban systems.
- ODOT Civil Rights staff attended the DBE Academy, held in Portland, Oregon on July 26 – 28, 2016.
- Similar meetings and outreach events have been continued through FFYs 2015, 2016, 2017 and are a significant part of the continuing work ODOT does for the DBE Program.

Starting August 1, 2017 and ending August 31, 2017, the FTA Triennial Goal will be posted on the Office of Civil Rights webpage http://www.oregon.gov/ODOT/Business/OCR/Documents/FTA_Triennial_Goal_18_20.pdf for review and comment. Comments may be received at OCRINFOREQUEST@odot.state.or.us. Please reference Intermodal Civil Rights.

The proposed, overall goal document and its rationale are available for inspection during normal business hours at the ODOT Office of Civil Rights –MS 23, 3930 Fairview Industrial Dr. SE, Salem, Oregon 97302.

Also, the proposed goal document will be sent to all groups representing small businesses.

ODOT will continue to communicate with the A & E, construction and business communities through regular meetings and collaborations, to assure that the DBE Program, as well as other small businesses programs, meets the needs of the public.

Upcoming Projects

The USDOT Office of Small and Disadvantaged Business Utilization (OSDBU) guidance states: “Do not make adjustments based solely on changes in the amount of federal assistance you expect to receive.” ODOT did not base its goal-setting solely on changes in the amount of federal assistance that it expects to receive in FFYs 2018, 2019, and 2020. However, ODOT evaluated information from upcoming projects as part of the process of setting its overall DBE goal.

Reevaluation

If, at any time within the triennium, additional FTA financially-assisted projects in which DBEs can participate are funded, ODOT will reevaluate the triennium DBE goal.

SUMMARY AND GOAL DETERMINATION

Based on the above supporting evidence, ODOT has established the base figure of 6.1% **rounded to 6%** for FFYs 2018, 2019, and 2020. We believe this takes into consideration the availability of ready, willing, and able firms compared to market conditions.