

OREGON DEPARTMENT OF TRANSPORTATION
Proposed Overall DBE Goal FFY 2015 -2017
FTA 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 the 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) 2015, 2016, and 2017. 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 Public Transit Division (PTD) receives, distributes, and oversees the use of federal funds received from the FTA. Most FTA funds distributed by PTD 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, Office of Minority, Women, and Emerging Small Business (OMWESB) 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 Oregon Availability and Disparity Study conducted by MGT of America and completed on October 31, 2007, updated in 2011. 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 2015-17

For Federal Fiscal Years (FFYs) 2015-2017, the ODOT Triennial DBE proposed goal for FTA assisted projects is **0.77% rounded to 8%** without any Step Two adjustments. This overall goal is expected to be achieved through wholly race-neutral methods. ODOT submits this goal and methodology to the FTA for review and approval pursuant to 49 Code of Federal Regulations (CFR) section 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 – Section 26.45

To derive the proposed DBE triennial goal, ODOT followed the two-step goal setting process specified in 49 CFR Section 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 – Section 26.45(c)

ODOT anticipates receiving and awarding \$26,842,965 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. If actual funding changes substantially from the assumptions used to determine this goal, ODOT will reevaluate the triennium DBE goal.

This projection was determined by evaluating the projects awarded during the Oregon 2013-2015 biennium discretionary and formula grant processes to subrecipients (e.g. rural transit providers). ODOT then multiplied the sum of grants awarded by one and a half (1.5) to determine an estimated award amount for the upcoming triennium. This estimate is illustrated as follows:

FY13-14 Funding x 1.5 = Triennium Funding Projection

\$17,895,310 x 1.5 = \$26,842,965

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. 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 the 2015-2017 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

Contracting Opportunity	2015-2017	NAICS	DBE	Non DBE	ESB	MWB	WBE
Signage	75,000	423990	8	123	4	5	10
Prev. Maintenance	7,320,475.5	811198	0	16	3	1	0
Purchased Service	17,936,673	485991	7	75	3	3	2
Hardware/Software	12,336	541512	28	451	25	44	30
Shelters	33,858	236220	34	503	147	38	29
Planning	888,276	541618	53	64	104	47	106
Marketing	403,108.5	541810	5	490	15	8	28
Transp. Equipment	173,238	423860	2	36	1	3	1
TOTAL	\$26,842,965		137	1,758	172	149	86

The numerator was determined by utilizing NAICS information. ODOT sorted certified DBE information published by the certification agency and determined that **137** DBE firms were ready, willing and able to bid on projects to be funded in the triennium. Also, **172** Emerging Small Businesses (ESBs), **149** Minority Owned Businesses (MWBs) and **86** Women Business Enterprises (WBEs) were willing and able to bid on projects. Subrecipients will be alerted to this fact and encouraged to include ESBs, MWBs, and WBEs as well as DBEs in their procurement processes.

As certification information is maintained on an electronic database and updated nightly, the data used in this triennial DBE Goal was current as of June 9, 2014.

To find the denominator, **1,758** (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 137 DBE firms by the total 1,895 firms found in the US Census Bureau's publication and determined that .7 of the total population were DBE:

$$\begin{array}{rcl} \text{DBE Directory (June 09, 2014)} & \underline{137} & \\ \text{2007 Economic Census} & 1,758 & = .77 \text{ rounded to } 8\% \end{array}$$

Resulting Baseline Goal

ODOT considers 7 percent DBE participation as the base figure for its overall goal for FFYs 2015-2017.

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 4 years to determine the level of attainment during those years. Attainment averaged .88 percent rounded to an average overall goal of 9%. The last four year's attainment has been wholly race- neutral. We believe the achievement of 9% to be due to the ARRA funding which provided subrecipients with the ability to purchase more equipment and update facilities. ARRA is no longer a factor in determining DBE usage and 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 Oregon Availability and Disparity Study conducted by MGT of America and completed on October 31, 2007, updated in 2011, did not show that there are significant disparities in contracting which 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 annual 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:

- ODOT hosted quarterly workshops in Portland for the purposes of presenting valuable information on a variety of topics critical to small businesses, and to gather input and comments on the DBE Program.
- ODOT and consultant Mason Tillman & Associates held three public meetings in Region 1 as part of the Capacity Analysis study, one each in Multnomah, Clackamas and Washington Counties. The primary focus of the meetings was to inform the community about the Capacity Analysis and to discuss the survey that would be used to gather data. There were also agenda items to talk about Small Business Programs, and an open forum for public comments. There were questions about how the DBE Annual Goal and the project-specific goals are calculated and how the Disparity Study and subsequent waiver from US DOT affect the DBE Program in Oregon.
- ODOT Civil Rights and the Region 1 Area Managers presented before the Asian American Commission to inform the Commission on the importance of encouraging Asian Americans to maintain certifications and avail themselves of training opportunities offered by ODOT and the ongoing Capacity Analysis.

The Commission is a direct link to the Legislature and expressed interest in being kept apprised of ODOT's progress in supporting Asian American small business firms.

- Met with the Native American Youth and Family Center to discuss continued cooperative efforts at providing business and workforce opportunities for the Native American community.
- ODOT launched the Workforce and Small Business Leadership Team (WSBLT), a group of upper and middle managers and technical experts, whose purpose is to integrate Civil Rights Programs throughout the daily operations of the agency.
- Similar meetings and outreach events have been continued through FFYs 2012, 2013, 2014 and are a significant part of the continuing work ODOT does for the DBE Program.

Public notices soliciting comments for this three-year goal will be published prior to submission to FTA on August 1, 2014. Notice will be published in the following general circulation media: The Bend Bulletin; The La Grande Observer; The Medford Mail Tribune; The Portland Daily Journal of Commerce; The Portland Oregonian; The Salem Statesman Journal; The Asian Reporter; and The Portland Observer. A forty-five day comment period after publication, as required, will be given.

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 2015, 2016, and 2017. 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 **0.77% rounded to 8%** for FFYs 2015, 2016, and 2017. We believe this takes into consideration the

availability of ready, willing, and able firms compared to market conditions.