

**OREGON DEPARTMENT OF TRANSPORTATION**  
**Intermodal Civil Rights**  
**Proposed DBE Goal FFY 2021 -2023**  
**Federal Transit Administration - Funded Contracting**

**Summary**

The Oregon Department of Transportation (ODOT) prepared this document, which describes the methodology for establishing a proposed Disadvantaged Business Enterprise (DBE) overall goal for Federal Transit Administration (FTA) assisted contracts. The goal and methodology establishes an overall DBE goal for FTA-assisted contracts that ODOT anticipates awarding in Federal Fiscal Years (FFYs) 2021, 2022, and 2023. The majority of these funds are distributed to subrecipient transit providers throughout Oregon.

ODOT will submit 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. The proposed goal will remain in effect until the next review cycle. ODOT will make a good faith effort to meet the goal each year relying on race-neutral methods. To ensure overall quality of the information and data used in the goal setting methodology, ODOT will continue to review and refine data collection process and analysis and to continue engagement with stakeholders, transit providers, and the public.

ODOT's Public Transportation Division receives, distributes, and oversees the use of federal funds received from the FTA. Most FTA funds distributed by ODOT are granted to transit providers in rural and small city areas of Oregon, however some capital funds are awarded to small and large urban transit agencies. These subrecipients of FTA funds then contract for goods and services creating indirect FTA-assisted contracting opportunities. This proposed DBE Goal and methodology applies to all of these funds and ODOT collaborates with transit providers around the state on DBE participation.

**PROPOSED DBE GOAL FOR FFY 2021-2023**

For Federal Fiscal Years (FFYs) 2021-2023, ODOT proposes a DBE goal for FTA assisted projects is 4.25%. The 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.

## METHODOLOGY

To establish its overall DBE goal, ODOT followed federal regulations and FTA guidance, including the two- step goal-setting methodology set forth in 49 CFR Part 26.45. The methodology consists of two steps: the base figure for the relative availability of DBEs and any adjustments to the base figure based on available evidence.

In Step One, ODOT established the base figure 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. In Step Two, ODOT reviews and considers available and relevant information and new evidence when determining any adjustment to the base figure. The base figure and the adjustment to the base figure are then used to determine the overall goal. ODOT plans to meet the proposed goal through race-neutral means.

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 estimates awarding **\$33,556,000** in FTA financial assistance during the triennium. 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. The exact figure of total FTA funding is unknown due to the uncertainty of future federal funding levels. If actual funding substantially changes from the assumptions used to determine this goal, ODOT will reevaluate the DBE goal.

This projection included evaluating the projects awarded during the Oregon 2021- 2023 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 21-23 Funding x 1.5 = Triennium Funding Projection**

**\$22,370,827 x 1.5 = \$33,556,240**

The projection also includes a breakdown of funding into categories to indicate the likely share of contracting in categories that can be cross-referenced to NAICS codes. These categories are represented in the Table 1.

**Table 1 Projected Funding by Categories**

<b>Funding Categories</b>	<b>3FFY Estimate</b>
Construction	\$ 1,046,696
Equipment	\$ 699,578
Hardware	\$ 293,234
Planning	\$ 65,597
Preventive Maintenance	\$ 9,478,460
Purchased Service	\$ 20,826,855
Shelters/Signs	\$ 1,063,923
Software	\$ 81,900
<b>Total Estimated Funds</b>	<b>\$ 33,556,243</b>

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 does include projections of funds awarded to FTA direct recipients as these recipients are expected to report DBE participation on the FTA funds they receive through ODOT.

DBE firms must show that they have the capacity to perform some of the projected work. A survey of previous transit-related contracting indicates that there is little concern about capacity in the coming years 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 . . .” Projects and other contracting were evaluated and assigned North American Industry Classification System Codes (NAICS). 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 used the following NAICS codes to associate projected contracting opportunities with the

work types most like to bid on the transit- related projects and professional services likely to be funded during FFYs 2021-2023 triennium. The selected NAICS codes were cross referenced with the codes used in previous DBE goal-setting and the code used by DBEs that have contracted with ODOT and subrecipients in recent reporting cycles.

**Table 2. NAICS By Work Category**

<b>Work Categories</b>	<b>NAICS</b>
All Other Automotive Repair and Maintenance	811198
Environmental Consulting Services	541620
Other Miscellaneous Durable Goods Merchant Wholesalers	541620
Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers	423990
Special Needs Transportation	485991
Computer Systems Design Services	541512
Commercial and Institutional Building Construction	236220

Relying on these NAICS Codes, Table 3 illustrates the estimated funding by ODOT and its subrecipients during the triennium along with the related numbers of firms that could be willing, ready, and able to bid on these types of contracts. ODOT determined the State of Oregon is its market area for the purpose of calculating this overall goal. This was determined by review of previous contracting with certified and non-certified firms and from previous DBE goal setting.

**Table 3: Triennium Goal Base Figures**

<b>Contracting Categories</b>	<b>2021 - 2023</b>	<b>NAICS</b>	<b>All Firms</b>	<b>DBEs</b>
Purchased Service	\$20,826,855.00	485991	483	7
Preventive Maintenance	\$6,436,032.00	811198	682	0
Hardware/Software	\$424,585.00	541512	1506	16
Facility Development	\$385,498.00	541620	1873	69
Shelters	\$238,569.00	236220	451	29
Transportation Equipment	\$209,101.00	423860	36	2
Signage	\$2,692.00	423990	311	8

The numerator was determined by relying on NAICS codes associated with categories of projected contracting opportunities. Certification information is maintained on an electronic database and updated nightly, the data used in this triennial DBE Goal was current as of August 1, 2020. ODOT used data managed by Certification Office for Business Inclusion and Diversity (COBID) and determined that there are 189 DBE firms certified within the NAICS codes. These 189 DBE firms were used for the numerator in the step one DBE calculation.

To find the denominator, ODOT relied on data from the US Census Bureau’s Economic Census, 2018 County Business Patterns. From these data sets, an estimate of all firms associated with

the selected NAICS was gathered to establish the Step One Denominator, 5342 firms.

ODOT divided the 189 DBE firms by the total 5342 firms found in the US Census Bureau’s publication and determined that 3.5% of the total population of potential contracting firms were certified DBE.

$$\begin{array}{rcl} \text{COBID Directory} & & \\ \text{2018 Economic Census} & \frac{189}{5,342} & = 3.5\% \end{array}$$

### Resulting Baseline Goal

Following FTA DBE Goal setting guidance and relying on the sources cited above, ODOT considers **3.5% DBE** participation as the base figure for its overall goal for FFYs 2020 - 2022.

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

ODOT determined an adjustment for past participation is appropriate. ODOT used the goal setting guidelines, “Tips for Goal-Setting in the DBE Program,” from the OSDDBU website which includes a method for determining an adjustment based on past participation for the year in which participation is similar to the types of contract for the goal methodology period. This adjustment considers past participate as a relative gauge of anticipated participation for FFY 2021-2023.

The adjustment to the base figure is determined with the average of past participation derived from the last 6 semi-annual DBE reports. The resulting calculation using the method yields an average DBE attainment of 5%. This calculation is represented in Table 4.

**Table 4. Past Participation**

	A. Total Dollars	C. Total to DBEs (Dollars)	E. Percent of Total to DBEs
Jun 1 2017	\$ 3,591,850.00	\$ 270,219.00	7.52%
Dec 1 2017	\$ 9,261,642.00	\$ 467,063.00	5.04%
Jun 1 2018	\$ 7,941,109.51	\$ 339,904.00	4.28%
Dec 1 2018	\$ 5,106,662.00	\$ 260,738.00	5.11%
Jun 1 2019	\$ 7,941,110.00	\$ 339,904.00	4.28%
Dec 1 2019	\$ 6,572,187.00	\$ 254,669.00	3.87%
<b>Average Past Participation</b>			<b>5.02%</b>

## **ADJUSTED GOAL**

All available evidence is taken into consideration to determine the adjustment to the base figure. An adjustment for past participation is appropriate, therefore the base figure and median past participation adjustment were averaged to arrive at the proposed adjustment to and overall DBE goal of 4.25%.

ODOT Office of Civil Rights staff is continues to working to improve the accuracy 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, and refinements in estimating have been made to account for these.

Using other states' programs as examples, ODOT intends to continue to monitor 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 and provide more targeted outreach to DBE firms that could participate is transit-related contracting.

## **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 9<sup>th</sup> 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. All DBE participation will be achieved through race- and gender-neutral means.

## **Public Engagement**

ODOT maintains ongoing engagement with the transit providers, and community, commerce, and professional organizations that are involved with public sector contracting. Throughout the year ODOT participates in meeting, marketplace events, tradeshow and conferences listed on the ODOT Office of Civil Rights Outreach Events calendar. The events are opportunities to share information and receive feedback on the DBE goal, on upcoming bidding opportunities, and to build relationships between contractors and transit providers.

This proposed goal and methodology was published for review and comment on the ODOT Office of Civil Rights website in August 2020. Request for input and review was sent to stakeholders, providers, and potentially interested firms. The goal and methodology was also presented to Public Transportation Advisory Committee for input and ongoing engagement.

## **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. ODOT evaluated information from upcoming projects as part of the process of setting its overall DBE goal in addition to the adjustments mention above.

## **SUMMARY AND GOAL DETERMINATION**

Based on the above supporting evidence, ODOT proposes a DBE Goal of **4.25%** on FTA funded contracts during FFYs 2021, 2022, and 2023. We believe this takes into consideration the availability of ready, willing, and able firms compared to market conditions. 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.