

September 30, 2009

Patrick Bauer
Interim Division Administrator
Federal Highway Administration
200 N. High Street, 3rd Floor
Columbus, Ohio 43215

Re: DBE Goal FFY 2010

Dear Mr. Bauer:

Attached please find the Ohio Department of Transportation's overall goal and goal setting process for Federal Fiscal Year 2010. Also included with this submission is the calculation and analysis used to project the portion of the DBE goal ODOT expects to meet through race-neutral and race-conscious measures. Please note that the goal setting information is substantially the same as provided in our currently approved DBE Plan.

Furthermore, please know that a public meeting has been scheduled for October 15, 2009 at ODOT Headquarters, Conference Room 1C from 9:00 am to 11:00 am.

If you have any questions, please call me at (614) 466-3664.

Respectfully,

Michaela J. Peterson
Acting Deputy Director
Division of Equal Opportunity

Attachment

Ohio Department of Transportation

DBE Goal Setting Methodology Federal Fiscal Year 2010

ODOT's goal for FFY '09 was established at 7.7% of the Federal financial assistance expended on DOT design and construction contracts. As of September 11, 2009, ODOT has achieved 7.8% participation in DOT assisted contracts for FFY '09. ODOT has let approximately \$1,300,231,638.43 in construction projects, which has resulted in ODOT expending \$101,874,124.78 with DBE transportation construction firms. ODOT has also let approximately \$28,613,848.08 in professional service contracts which has yielded an additional \$2,396,208.00 which was expended with DBE consultants.

Based on our review of the available ready, willing and able DBE firms, and the amount of available contracting opportunities that will be presented in FFY '10, the Department has set the overall DBE goal for FFY '10 at 7.0%. The Department believes that this goal reflects the true level of expected DBE participation absent the effects of discrimination.

METHODOLOGY

The following is a summary of the method we used to calculate this goal:

Step One -Determining a base figure for the relative availability of DBE firms

The goal setting process outlined in the 49 CFR §26.45, provided five (5) optional methods to consider when determining a base figure for the relative availability of DBEs. ODOT considered the first four options but determined that they were not feasible at this time for the following reasons:

Option 1 -Use DBE Directories & Census Bureau data

ODOT does not believe the census bureau data is adequately current and is not reflective of those DBEs who are prequalified according to ODOT requirements. Therefore, the data would not be reliable in determining the number of "ready, willing and able" DBEs to perform work with the ODOT.

Option 2 -Use a Bidders List

Simply stated, ODOT does not believe that a bidder's list inclusive of primes or subcontractors is adequate information to make a responsible determination concerning DBE availability.

Option 3 -Use data from a disparity study

ODOT has not conducted a disparity study. Therefore, we have no data that can be relied upon to set our DBE goal. At present, we do not plan to conduct a disparity study due to the tremendous cost of a study and its lack of probity.

Option 4 -Use the goal of another DOT recipient

ODOT is not aware of nor do we believe there is another DOT recipient with the same or

similar market. In our opinion, such reliance would be misplaced.

Based on the above assessment, ODOT elected to utilize Option 5 which allows for the use of an alternate method.

Alternate Method

ODOT's prequalification requirement provides us with the best empirical data available to utilize in determining the availability of ready, willing and able DBE firms compared to all heavy highway construction contractors and design consultants. Both contractors and subcontractors must be prequalified to perform construction work with ODOT in excess of \$500,000 per calendar year. This amount was raised in FFY 2007 from \$250,000 to provide increased opportunities for DBE firms. Additionally, only prequalified engineering consultants are eligible to be selected to perform professional services for ODOT. For projects that do not include such services, for example, construction inspection, prequalification is not required. Therefore, we believe this data is narrowly tailored to the law and would be defensible under the rule. The following is a summary of the prequalification statistical analysis:

Table 1 Heavy Highway Construction Prequalified (PQ) Construction Contractors		
Total PQ DBE Contractors (including suppliers)	44	
Relative DBE Availability		44/699 = 6.3%
Total Non-DBE Contractors (including suppliers)	655	
Relative Availability		655/699 = 93.7%
Total PQ Contractors	699	

Table 2 Professional Services Prequalified (PQ) Engineering Consultants		
Total PQ DBE Consultants	30	
Relative DBE Availability		30/599 = 5.0%
Total Non-DBE Consultants	569	
Relative Availability		569/599 = 94.9 %
Total PQ Consultants	599	

It is also necessary to weight the participation based on the expenditures of federal funds in each category. Over the last three years, ODOT has expended an average of 96.7% of its federal allocation in transportation construction. In FFY 2009, ODOT has expended 97.8% of its federal allocation in transportation construction. As such, it is necessary to multiply the percentage of relative DBE availability in heavy highway construction

(6.3%) by the FFY 2009 percentage of federal funds expended in heavy highway construction (97.8%). This yields a FFY 2009 participation rate of 6.2% in heavy highway construction.

FFY 2007	FFY 2008	FFY 2009	Average
Construction			
95.5%	96.7%	97.8%	96.7%
Consultant			
4.5%	3.3%	2.2%	3.3%

Using the same method for prequalified engineering consultants yields a FFY 2009 participation rate of 0.11%. This number was derived by multiplying the relative DBE availability percentage in the professional service category (5.0%) by the FFY 2009 expenditures in the professional service category (2.2%). The sum of the relative DBE availability is 6.2% (6.2% in heavy highway + 0.11% in professional services). The aforementioned calculations yield a FFY 2009 relative availability base figure of 6.3%.

Step Two -Examining evidence to adjust the base figure

The base figure derived in Step 1 was reviewed and adjustments considered after evaluating factors relevant to ODOT’s contracting market, including:

- Past DBE participation;
- Size of ODOT’s Construction Program for FY 2010;
- American Recovery and Reinvestment Act (ARRA);
- Project location;
- Availability of DBE firms in Specific Work Types; and
- Estimated race-neutral and race-conscious participation.

Other factors such as disparity studies were not considered since such data is not available for ODOT’s market place.

Adjustment 1-Past DBE participation

A three (3) year historical analysis of ODOT’s DBE achievement based on dollar volume was examined and is summarized in Table 3:

<i>Table 3</i>	FFY 2007	FFY 2008 (10/1/2007 to 9/30/2008)	FFY 2009 (10-1-08 to 9-31-09)
Total DBE Eligible Expenditures	\$1,259,456,850	\$1,013,409,541.79	\$1,300,231,638.43
DBE Race Neutral	\$17,524,144 (1.4%)	\$16,109,075.48 (1.6%)	\$16,054,670.30 (1.2%)
DBE Race Conscious	\$75,331,620 (6.0%)	\$60,307,643.51 (6.0%)	\$85,819,454.48 (6.6%)
Total DBE Awarded Expenditures	\$92,855,764	\$76,416,718.99	\$101,874,124.78
DBE Utilization	7.4%	7.6%	7.8%

ODOT evaluated the initial step one adjustment to the base figure using median past DBE participation as suggested by federal guidance at the USDOT's, OSDBU's website at www.osdbu.dot.gov. Median past participation was calculated using ODOT's median DBE participation percentage of 7.6% over the last 3 years.

Averaging the base figure for the relative availability obtained in Step One (6.3%) and the median past participation (7.6%) in Step Two yields a figure of 7.0%.

Adjustment 2 - Size of ODOT's Construction Program for FY 2010 and ARRA, Location and Availability of DBE firms in Specific Work Types

ODOT's Construction Program Increase for FFY 2010- In addition to the regular FFY 2010 construction program dollars, the Federal Highway Administration has provided ODOT with \$774,000,000 in additional construction contracting funds. This increase in funds will bring ODOT's total contracting opportunities to an estimated \$1.8 billion in FY'10. Because of these increased opportunities, the average project size is expected to decrease from \$3,605,635.00 in FFY 2009 to \$2,316,486.00 in FFY 2010 due to the increased dollars provided to ODOT through the American Recovery and Reinvestment Act of 2009 ("ARRA"). This decrease in project size may be a benefit to our DBE contracting community by providing contracting opportunities that are smaller and can be managed successfully by small business owners as prime contracting and additional opportunities for subcontracting. The addition of ARRA funds has created a natural unbundling affect that is expected to assist in providing opportunities to our DBE constituents. However, a number of the ARRA projects involve micro-surfacing, which is not a work type that lends itself to significant DBE participation. At this point in time, it is not possible to quantify the end result of ARRA on the DBE program.

It should also be noted that there is a significant project in the northeast portion of the state that

is likely to have some impact on the DBE community. This project is estimated to cost in excess of \$500,000,000 and contains design-build contracting. Because the Department is currently still in the process of drafting the design build selection criteria for this project, it is not possible at this time to quantify the effect this project may have on DBE participation in the coming year.

Project Location – A number of projects are not conducive to DBE participation due to the location of the contract – particularly those projects located in rural counties. A review of the historical data involving approved partial waiver requests further indicates decreased relative availability in rural areas of the state. However, the Department took special care in apportioning ARRA funds evenly across the state. Therefore, there are FFY 2010 projects in all 12 of the Department’s districts. This apportioning should ensure that there is not a disproportionate amount of work happening in any one area of the state.

Availability of DBE Firms in Specific Work Types – A number of DBE firms do not pursue contracting opportunities in work types such as micro-surfacing, specialty construction work, and guardrail due to a lack of resources, experience and expertise.

Estimated Race-Neutral and Race-Conscious Participation

In FFY 2009, the Department achieved 1.2% of the Department’s DBE goal for race-neutral efforts. In FFY 2008, 1.6%, and 2007, 1.4% of the DBE goal was realized from race-neutral participation (See Table 3). ODOT will meet the maximum feasible portion of its overall goal by using race-neutral means. Accordingly, ODOT has determined that race-conscious measures (subcontract goals) will be necessary to meet our overall goal. The estimate breakout of race-neutral and race-conscious DBE participation is based on the three (3) years historical analysis identified in Table 3. The race neutral efforts are derived by tracking DBE prime contracts awarded, DBE subcontracts awarded on contracts without goals and DBE participation in excess of contract goals. The race neutral efforts median participation for the past three fiscal years is 1.4%. Therefore, ODOT estimates that approximately 1.4% of the goal will be provided from race neutral participation and 5.6% of its overall goal will be met using subcontract goals.

Based upon the forgoing information, Adjustment one data indicates DBE participation at 7.0%. The Department believes that this goal reflects the true level of expected DBE participation absent the effects of discrimination. Therefore, the Department has set the overall DBE goal for FFY’10 at 7.0%

Appendix A *(Media)*

ODOT's announcement of its proposed overall goal and the rationale behind the proposed goal was published in the following media:

Adviser Tribune (Tiffin)	Daily Sentinel (Pomeroy)
Akron Beacon Journal	Dayton Newspapers Inc
Athens Messenger	Delaware Gazette
Bellefontaine Examiner	Lima News
Call and Post (Cleveland)	Marietta Times
Call and Post (Columbus)	The Courier (Findlay)
-Call and Post (Cincinnati)	The Mt. Vernon News
Call and Post (Akron)	The Repository (Canton)
Chillicothe Gazette	The Sandusky Register
Cincinnati Post	The Times Recorder (Zanesville)
Chronicle Telegram (Elyria)	Toledo Blade
Cleveland Plain Dealer	Vindicator Printing Co (Youngstown)
Columbus Dispatch	Wooster Daily Record

The overall goal will be published in the newspapers listed above. The posting will run once a week for two consecutive weeks. The DBE Goal Setting Methodology document for the Office of Civil Rights and the Office of Transit will be available for inspection during normal business hours at the ODOT Central Office, Office of Civil Rights or on line at http://www.dot.state.oh.us/Divisions/ContractAdmin/Contracts/Construction/2008_DBEProgram.pdf for 30 days following the date of notice. A Notice to the Industry will be sent to all prequalified contractors, DBE firms and the Ohio Contractors Association. ODOT will hold a public meeting where comments may be given on October 15, 2009 at the ODOT Central Office, Conference Room 1C from 9 am to 11 am. ODOT will accept written comments on the goal for 45 days from the date of the notice. The comments should be sent to Ohio Department of Transportation, Division of Equal Opportunity, DBE Section, 1980 West Broad Street, Columbus, Ohio 43223 or via e-mail to stephon.ash@dot.state.oh.us.

ODOT will submit relevant summarized comments, any resulting changes and take any

appropriate action to FHWA.