

**Ohio Department of Transportation  
Draft Overall DBE Goal Methodology  
Fiscal Years 2014 – 2016**

**Amount of Goal**

The Ohio Department of Transportation (ODOT) would like to propose a DBE goal for FY 2014-2016 of 8.9% of the Federal financial assistance expended on ODOT design and construction contracts. This proposed goal is based on the Department's review of the availability of DBE firms that are ready, willing, and able to participate on DOT-assisted contracts pursuant to 26 CFR 26.45(b). This proposed goal reflects the true level of expected DBE participation absent the effects of current and past discrimination.

**Method**

The goal setting methodology utilized for setting ODOT's Overall DBE Goal for Fiscal Years 2014-2016 follows the methodology that was proposed by FHWA in the Annual DBE Goal Setting Methodology training and in the USDOT's Tips for Goal-Setting in the DBE Program document. As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (base figure) of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. To calculate contract DBE availability, ODOT utilized a list of all prime contractors and subcontractors identified in subcontracting requests from January 2008 – March 2013 to determine the base figures. This allows the relevant geographic market area to expand beyond the boundaries of the State of Ohio and instead includes all ready, willing and able firms that are available to participate in ODOT DOT-assisted contracts whether they are located in Ohio, Michigan, Indiana, Pennsylvania, West Virginia or Kentucky.

In order to continue narrowly tailoring the goal methodology, ODOT has implemented the suggestion of FHWA to weight the participation of DBE firms by work type. The weighting used is in proportion to the dollars spent within each industry. ODOT determined that there are three work types that are both easily identifiable and represent a majority of the funding for DOT-assisted contracts. These three work types are Construction, Trucking and Consulting. ODOT then tallied the dollars spent in each work type as a percentage of total contract dollars spent. This data is narrowly tailored to the law and is defensible under this rule. The following is a summary of the statistical analysis:

### **Step 1: Base Figure**

#### **Base Figure for Relative Availability of DBEs:**

Construction: All prime and subcontractors that perform more than just the trucking work type. It is estimated that construction, other than trucking, will encompass 90% of the Federal funds for Fiscal Years 2014, 2015, and 2016.

$$0.9 \times \left( \frac{DBE: 134}{Total: 1,745} \right) = .068$$

Trucking: All prime and subcontractors that perform the trucking work type. It is estimated that trucking will encompass 7% of the Federal funds for Fiscal Years 2014, 2015, and 2016.

$$0.07 \times \left( \frac{DBE: 91}{Total: 353} \right) = .018$$

Consulting: All prime and subcontractors that perform the consulting work types. It is estimated that consultant services will encompass 3% of the Federal funds for Fiscal Years 2014, 2015, and 2016.

$$0.03 \times \left( \frac{DBE: 36}{Total: 297} \right) = .003$$

#### **Calculation of Construction, Trucking and Consulting**

$$.068 + .018 + .003 = .089$$

**8.9%**

#### **Additional Information**

In addition to the information provided above, the Department also reviewed the Census Bureau County Business Pattern database, the State of Ohio EDGE Certification List, the City of Dayton's 2008 Disparity Study, and the City of Cleveland's 2012 Disparity Study. However,

upon review, the Department determined that the information provided above was the most relevant and reliable data for the following reasons.

Even though the Census County Business Pattern database was recently compiled, the Department determined not to utilize this information in calculating the above goal methodology. In determining the most accurate goal methodology, the Department concluded it was essential to ensure that the percentage ratios reflect an “apples to apples” calculation as instructed by USDOT in the Tips for Goal-Setting in the DBE Program document. Due to the fact that the Census Bureau County Business Pattern database does not provide a mechanism to take into account firms that may be certified in more than one NAICS code, the Department determined that we may be counting a firm more than once when determining the total number of ready, willing and able firms to work on DOT-assisted contracts. This duplication of firms would distort the effects of past and current discrimination and thus not truly reflect the expected level of DBE participation.

The Department also reviewed the State of Ohio’s EDGE certification list in an attempt to identify additional ready, willing, and able DBE’s to participate on DOT-assisted contracts. However, in reviewing the EDGE program, it was determined that the qualifications for EDGE certification are to vastly different from the DBE certification qualifications. Therefore, it cannot be assumed that because a firm may be EDGE certified by the State of Ohio, they would also be eligible to be DBE certified. As a result, the Department did not include EDGE certified firms in the “apple to apple” calculations.

The State of Ohio has also had two different Disparity Studies that have been conducted in the past five years. The first study was A Second-Generation Disparity Study for the City of Dayton, Ohio submitted by MGT of America, Inc. on August 8, 2008. This study was performed to determine whether there was a compelling interest to justify a minority and female business enterprise (MBE/FBE) program for the City of Dayton. While this report found that there remains substantial disparity for prime contracting in the business categories of construction, engineering and professional services, it does not provide the necessary numerical data to calculate the DBE goal methodology for the Department’s relevant geographic market area.

The second study is The State of Minority- and Women-Owned Business Enterprise: Evidence from Cleveland, prepared for the City of Cleveland by NERA Economic Consulting on December 24, 2012. This study found evidence of business discrimination against Minority- and Women-Owned Business Enterprises in the City’s relevant market area. However, the Department determined not to incorporate this disparity study in the goal methodology because in addition to the fact that the concerns stated above for the Dayton Disparity Study also apply to the Cleveland Disparity Study, there has also been a public outcry regarding the validity of the

Cleveland Disparity Study. Some of the concern regarding this validity stems from the fact that large portions of NERA’s 708-page report are similar or nearly identical to studies the company performed for other governments. In addition, over 200 black and Hispanic contractors were polled regarding their participation in the Disparity Study and all of them have stated that they were never contacted to participate in the study. As a result, further investigation has been launched into the validity of this Cleveland Disparity Study.

**Step 2: Adjustments**

A five (5) year historical analysis of ODOT’s DBE achievement based on dollar volume was examined and is summarized below:

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011<sup>1</sup></b>	<b>FY 2012</b>
<b>Total Expenditures</b>	\$1,013,409,541.79	\$1,321,554,486.97	\$1,389,140,131.59	\$1,206,844,329.61	\$1,243,287,432.90
<b>Total DBE Expenditures</b>	\$81,662,788.96	\$107,168,105.19	\$100,365,996.95	\$119,918,086.89	\$118,568,882.82
<b>DBE Utilization</b>	8.06%	8.11%	7.23%	9.94%	9.54%
<b>DBE Goal</b>	7.10%	7.70%	7.00%	9.10%	9.10%

ODOT average DBE participation is 8.6% over the evaluation period of Fiscal Year 2008 through Fiscal Year 2012. Based on the calculations presented above, the relative availability of DBEs for Fiscals Years 2014 – 2016 is 8.9%. Due to the similarity of these numbers, ODOT has determined it is not appropriate to make an adjustment based on past participation.

**Race Neutral Participation**

ODOT will meet the maximum feasible portion of its overall goal by using race-neutral means. ODOT has determined that race-conscious measures will be necessary to meet the overall goal of 8.9%. The breakout of race-neutral and race-conscious DBE participation for the last five (5) Fiscal Years is shown in below:

	<b>FY 2008</b>	<b>FY 2009</b>	<b>FY 2010</b>	<b>FY 2011</b>	<b>FY 2012</b>
<b>Race Conscious</b>	6.47%	6.86%	6.05%	8.18%	7.71%
<b>Race Neutral</b>	1.59%	1.25%	1.17%	1.76%	1.82%
<b>Total</b>	8.06%	8.11%	7.23%	9.94%	9.54%

<sup>1</sup> For the interim period of October 19, 2010 through March 31, 2011, ODOT was operating under a 10% goal. An extension of this interim goal was not approved due to the lack of approval for the DBE goal methodology. As a result, ODOT was operating under a 7% goal for the time period of April 1, 2011 through March 19, 2012. On March 19, 2012, FHWA approved a 9.1% goal for Fiscal Years 2011-2013.

The average race-neutral participation for this period is 1.50%. 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.

### **Race Neutral Measures for Increased Utilization**

ODOT, as part of its regular business, has developed a number of program strategies that will ensure the fullest possible participation of DBE contractors in all ODOT programs and projects utilizing race neutral measures to provide increased utilization. These program strategies include, but are not limited to: providing timely information, outreach, technical assistance, education and mentoring which are provided through the ODOT Supportive Services Program. The Supportive Services Program offers professional services such as technical training and tuition reimbursement for ODOT-sponsored seminars and non-ODOT sponsored seminars. Technical reimbursement can be obtained if attending relevant trade shows, association sponsored programs, workshops and professional conferences. Tuition reimbursement can be obtained for formal education courses such as relevant technical training from a university, community college or technical trade school. The DBE Supportive Services Program is also working with a consultant to develop a DBE Capacity Building Program, an E-Newsletter, and a How to do Business with ODOT website. The Capacity Building Program will focus on identified DBEs to improve their ability to successfully complete projects at a quality level that opens the possibility for repeat business. The E-Newsletter will be an electronic newsletter publication that will offer up to date information relevant to the highway construction industry, alert DBE firms to any policy or rule changes proposed or made by the ODOT or the US Department of Transportation, explain issues in the construction industry and describe assistance that is available to DBE's. The How to do Business with ODOT website will be developed with the intended audience of small and disadvantaged businesses. The goal of the website will be to easily guide small businesses through the process of how to identify, bid, and successfully administer a prime or sub construction contract with the ODOT.

The Mentor-Protégé Program has been developed as a permanent aspect of the ODOT's DBE Program. It involves a comprehensive developmental program of hands-on training and assistance in all phases of the construction business. It is intended to help DBE firms become more competitive and increase their business acumen. ODOT contractors and consultants are encouraged to participate as mentors to assist DBEs as protégés in developing their technical and business capabilities.

**Public Participation**

The overall goal was published in the newspapers listed below. The proposed goal and its rationale were made available for inspection during normal business hours at the Ohio Department of Transportation, Division of Construction Management, 1<sup>st</sup> Floor, 1980 West Broad Street, Columbus, Ohio 43223 for 30 days, with comments being accepted for 45 days. The document was also available online for 45 days. The link to the online document was emailed to all DBE firms, ODOT’s list of registered consultants and included in the Ohio Contractor Association’s newsletter.

Newspapers		
Advertiser Tribune	Columbus Dispatch	The Mt. Vernon News
Akron Beacon Journal	Daily Sentinel	The Repository
Athens Messenger	Dayton Newspapers Inc.	The Sandusky Register
Bellefontaine Examiner	Delaware Gazette	The Times Recorder
Call and Post	Lima News	Toledo Blade
Chillicothe Gazette	Marietta Times	Vindicator Printing Co.
Chronicle Telegram	Plain Dealer	Wooster Daily Record Inc.
Cincinnati Post	The Courier	

The Ohio Department of Transportation consulted with and received feedback from the ODOT DBE Stakeholders Committee at the May 10, 2013 meeting. In addition, ODOT consulted with and also received public feedback regarding the DBE Goal Methodology for Fiscal Years 2014-2016 at the Ohio Contractor’s Association’s DBE Committee Meeting on May 21, 2013. Both of these committees are groups comprised of minority, women and general contractors.