

Idaho Transportation Department (ITD)

**Annual Participation Goal (APG)
Methodology**

Federal Highway Administration

Federal Fiscal Years 2018-2020

June 27, 2017



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Summary

The Idaho Transportation Department hereby submits its proposed Annual Participation Goal (APG) for Disadvantaged Business Enterprise (DBE) participation on Federal Highway Administration (FHWA)-assisted projects for federal fiscal years 2018 through 2020. This goal was developed pursuant to 49 CFR Part 26, section 26.45 and the U.S. Department of Transportation (USDOT) “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program” (*Tips for Goal-Setting*).

The Idaho Transportation Department (ITD) proposes an overall Disadvantaged Business Enterprise (DBE) goal for its Federal Highway Administration (FHWA)-funded contracting of 8.3% for federal fiscal years (FFY) 2018 through 2020.

The overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses currently ready, willing, and able to participate on ITD’s U.S. Department of Transportation (USDOT)-assisted contracts.

Based on past performance, ITD estimates 2.4% of the overall goal can be achieved through race/gender-neutral (RN) participation on ITD projects and the remaining 5.9% of the overall goal will need to be met through the use of race/gender-conscious (RC) contract goals. ITD proposes all DBE groups will be eligible to participate in meeting race- and gender-conscious contract goals assigned in federal fiscal years 2018 through 2020.

DBE Annual Participation Goal FFY2018-2020	8.30%
RN Portion	2.40%
RC Portion	5.90%

Background

In setting the overall DBE goal, the USDOT requires that the goal setting process begin with a base figure for the relative availability of DBEs. The overall 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 USDOT-assisted contracts. In particular, recipients must follow the USDOT’s two-step methodology for goal setting to determine the level of DBE participation they expect absent the effects of discrimination:

Step 1 – Compute the base figure using data from one of the of the following options set out in 49 CFR 26.45(c) to determine relative availability:

1. DBE Directories and Census Bureau Data;

2. Bidders List;
3. Disparity Study Data;
4. Goal of another DOT; or
5. Other Alternatives based on demonstrable evidence of local market conditions

Step 2 – Adjust the base figure to make it as precise as possible utilizing the guidelines established in 49 CFR Part 26.45 and *Tips for Goal-Setting*.

In establishing this goal, ITD is also required to do the following:

1. Specify the relevant market area used for the calculation;
2. Project the portions of the overall goal it expects to be met through RN and RC measures, respectively (see 49 CFR Part 26.51); and
3. Provide for public participation in the establishment of the overall goal.

Goal Setting Methodology

After considering the options provided under 49 CFR 26.45(c), ITD determined it would use option three, which provides that a recipient may use a percentage figure derived from a valid, applicable disparity study to determine the base figure of DBE relative availability.

In 2016, ITD engaged BBC Research & Consulting (BBC) to conduct a disparity study. The final ITD 2017 Disparity Study report was completed in April 2017, and provided the data and base figures upon which ITD prepared its proposed APG methodology.

ITD will present this proposed APG at public meetings, consult with stakeholders, and solicit comments before submitting a final proposed overall DBE goal to FHWA. ITD may modify this proposed goal based on relevant public input received during its public meetings and comment period.

ITD took the following steps to calculate this proposed overall DBE goal for FHWA-funded contracts for federal fiscal years 2018 through 2020:

- I. Base Figure Determination.** First, ITD uses the base figure of 13.3% derived from the relative availability of current and potential DBEs calculated on a dollar-weighted basis by the BBC 2017 Disparity Study report. This determination is summarized in Chapter 9.

II. Consideration of Possible Step-2 Adjustments. ITD considered the possible adjustments identified in Chapter 9 of the disparity study report. First, an upward adjustment to 14.2% was proposed based on the study's "but for" analysis¹.

Taking the new adjusted base figure, a second downward adjustment to better reflect the current capacity of DBE firms was made to 8.3%, calculated by averaging the base figure (14.2%) with median past participation of certified DBEs over the last five years (2.4%).

III. Race/Gender-Neutral, Race/Gender-Conscious Projections. ITD used the average RN participation figure of 2.4% that BBC calculated in Chapter 9 of the disparity study report to project the portions of the overall goal expected to be met through RN means. The figure is based on median DBE participation on ITD's FHWA-funded contracts without goals from FFY2011-2015. The remaining 5.9% of the proposed 8.3% APG will be met through RC means.

IV. DBE Groups Eligible to Meet Contract Goals. Finally, ITD proposed that all DBE groups will be eligible to participate in meeting race- and gender-conscious contract goals assigned in federal fiscal years 2018 through 2020, which is based on the disparity analysis identified in Chapter 7, results summarized in Chapter 10 and other analyses in the report.

V. Public Participation. Stakeholder meetings and solicitation of public input.

I. Base Figure Determination

Consistent with USDOT regulations and guidance, ITD uses a base figure derived through BBC's DBE availability analysis described in Chapter 5 of the disparity study report.

1. **Relevant Geographic Market Area** – BBC used ITD's contracting and vendor data to help determine the relevant geographic market area — the geographical area in which the agency spends the substantial majority of its contracting dollars and where the substantial majority of interested contractors and subcontractors that seek to do business with ITD are located. BBC's analysis showed that 90% of ITD's construction and consulting dollars during the study period went to businesses located in Idaho; Asotin County, Washington; and Spokane County, Washington; indicating that Idaho, Asotin County, and Spokane County should be considered the relevant geographic market area for the study (see Chapter 4).

¹ Components of the "but for" analysis include current availability, disparity indices for business ownership and ability to get financing, bonding and insurance.

2. **Relevant Types of Work** For each prime contract and subcontract, BBC determined the prime and subcontractor's subindustry that best characterized the business's primary line of work (e.g., heavy construction). BBC identified subindustries based on ITD contract data; telephone surveys that BBC conducted with prime contractors and subcontractors; business certification lists; Dun & Bradstreet (D&B) business listings; and other sources. BBC developed subindustries based in part on 8-digit D&B industry classification codes (see Chapter 4, Figure 4-3).
3. **DBE Availability.** As explained in detail in Chapter 5 of the disparity study report, BBC compiled a master availability database and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an overall availability figure of 13.3%.

Industry and group	Current Availability	Disparity Index for Business Ownership	Availability after Initial Adjustment*	Availability After scaling to 100%	Components of Base Figure**
Construction					
(1) Black American	0.2%	N/A	0.2%	0.2%	
(2) Asian Pacific American	0.0%	N/A	0.0%	0.0%	
(3) Subcontinent Asian American	0.0%	N/A	0.0%	0.0%	
(4) Hispanic American	0.4%	N/A	0.4%	0.4%	
(5) Native American	9.5%	N/A	9.5%	9.3%	
(6) White woman	4.2%	76	5.5%	5.4%	
(7) Potential DBEs	14.3%	N/A	15.6%	15.4%	13.0%
(8) All other businesses ***	85.7%	N/A	85.7%	84.6%	
(9) Total firms	100.0%	N/A	101.3%	100.0%	
Consulting					
(10) Black American	0.0%	N/A	0.0%	0.0%	
(11) Asian Pacific American	0.0%	N/A	0.0%	0.0%	
(12) Subcontinent Asian American	0.1%	N/A	0.1%	0.1%	
(13) Hispanic American	0.1%	N/A	0.1%	0.1%	
(14) Native American	0.2%	N/A	0.2%	0.2%	
(15) White woman	7.1%	N/A	7.1%	7.1%	
(16) Potential DBEs	7.5%	N/A	7.5%	7.5%	1.2%
(17) All other businesses ***	92.5%	N/A	92.5%	92.5%	
(18) Total Firms					
(19) Total firms	13.3%	N/A	N/A		14.2%

Note: Numbers rounded to nearest tenth of 1 percent and thus may not sum exactly to totals due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index.

** Components of the base figure were calculated as the value after adjustment and scaling to 100 percent, multiplied by the percentage of total FHWA-funded contract dollars in each industry (construction = 0.845 and consulting = 0.155).

*** All other businesses included majority-owned businesses and minority- and woman-owned businesses that were not potential DBEs.

II. Consideration of Possible Step-2 Adjustments

DBE Program regulations require that after the base figure is calculated, ITD must consider available evidence to determine whether or not the figure should be adjusted higher or lower than the base figure (a “step-2 adjustment”). The regulations indicate an agency must consider the following:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.
 - Information on employment, self-employment, education, training, and unions.
 - Any disparities in the ability of DBEs to get financing, bonding and insurance.
 - Other relevant factors.
1. Taking into account relevant information from the 2017 Disparity Study report, ITD considered each of these factors below in determining whether or not to adjust the base figure. This analysis produced an upwards adjusted to 14.2% for overall availability for ITD’s FHWA-funded transportation contracts, based on BBC’s “but for” scenario.
 2. The second adjustment reflects the current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts.

ITD feels that this second adjustment is in order. The initial base figure of 13.3% and the upwardly adjusted figure of 14.2% are both significantly greater than current certified DBE availability and capacity, which have diminished even since the completion of the disparity study. Either percentage would be very difficult to achieve under ITD’s transportation contracting market conditions.

Therefore, ITD will factor in a mean dollar-weighted DBE participation of 2.4%², a number which BBC arrived at through analysis of FFY2011-2016 FHWA-funded contracts.

Averaging 14.2% with 2.4%, ITD arrived at a final figure of 8.3%.

III. Race/Gender-Neutral, Race/Gender-Conscious Projections.

DBE Program regulations require that the maximum feasible portion of the DBE overall goal be met by using RN measures. Where the projected portion of the goal using RN measures

² This was higher than the 1.9% median participation taken from ITD’s Uniform Reports of DBE Awards/Commitments and Payments to FHWA during that period.

is less than the overall annual goal, the remaining portion is expected to be achieved by establishing contract goals on select projects that have subcontracting opportunities, i.e., RC measures.

The BBC 2017 Disparity Study analyzed factors related to ITD's RN DBE program component based on 49 CFR Part 26, including analyzing the following:

- Whether there is evidence of discrimination within the local transportation-contracting marketplace for any racial, ethnic or gender groups. (See Chapter 3, as well as in Appendices D and E of the disparity study report.)
- The agency's past experience in meeting its overall DBE goal. (See Chapter 10, Section B.)
- What has DBE participation been when the agency did not use race- or gender-conscious measures. (See Chapter 10, Section C.)
- What the extent and effectiveness of RN measures the agency has and could have in place for the next fiscal year. (See Chapter 10, Section D.)

The 2017 Disparity Study report provides detailed analyses of these issues, finding the following: (1) there is quantitative and qualitative evidence suggesting there is not a level playing field for minority- and women-owned businesses in the Idaho transportation contracting industry; (2) the agency has not met its overall goal for the last several years; and (3) that despite the agency implementing a significant number of neutral measures, ITD is very unlikely to be able to meet the overall goal with neutral measures alone.

Chapter 9 of the disparity study report identified a median of 2.4% DBE participation on a completely RN basis over a six-year study period. ITD considers this 2.4% figure as its projection of the portion of the overall goal it can expect to be met through RN measures in federal fiscal years 2018 through 2020. ITD projects the balance of the overall goal (5.9%) will need to be met through RC means, accomplished through setting individual contract goals.

In accordance with federal regulations and USDOT guidance, ITD proposes to meet its proposed 8.3% overall DBE goal by using a combination of both RN and RC measures. This is calculated as follows: Overall Goal of 8.3% - Projected RN Participation of 2.4% = Projected RC Portion of 5.9%.

DBE Annual Participation Goal FFY2018-2020	8.30%
RN Portion	2.40%
RC Portion	5.90%

IV. DBE Groups Eligible to Meet Contract Goals.

The federal Ninth Circuit indicated in its 2005 *Western States Paving Co., Inc. v. Washington State DOT* decision that to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious measures to those minority groups “that have actually suffered discrimination” within its transportation contracting industry.

BBC found evidence of disparities in ITD transportation contracting for firms owned by African American-, Asian-Pacific American-, Subcontinent Asian American-, Native American- and white women-owned firms³. The only group showing evidence of parity in the performance of federal-aid transportation projects was Hispanic-American. However, since the completion of this study, the Hispanic-American DBE primarily responsible for this parity has self-graduated from the DBE Program. In addition, the study found that Idaho Hispanic-Americans continue to face substantial disadvantage in other areas including education and employment.

Therefore, ITD proposes that all DBE groups will be eligible to participate in meeting any goals assigned on FHWA-funded contracts in federal fiscal years 2018 through 2020.

V. Public Participation

ITD will publish its proposed APG on its Civil Rights webpage and DBE Disparity Study webpage on June 27, 2017 as well as on ITD’s social media accounts.

A live, statewide stakeholder meeting will be held on July 18, 2017, from 4:30pm MDT – 6:00pm MDT. This is an “open mic” format where participants can come into either ITD headquarters in Boise, or in any of ITD’s District Offices to talk via video conference to Civil Rights staff about the proposed DBE APG and methodology. A concurrent WebEx meeting will also be set up for participants to listen in or submit comments or questions. The invitation to the stakeholder meeting can be viewed at http://apps.itd.idaho.gov/apps/ocr/documents/FTA_APG_FFY17-19.pdf.

Public comments concerning information in the report as well as ITD’s proposed overall DBE goal will be accepted through July 28, 2017. The public will be able to give feedback and provide written comments:

- in person at the live statewide stakeholder meeting;
- through a WebEx meeting online concurrent with the stakeholder meeting;
- via email at civilrights@itd.idaho.gov; and

³ Figure ES-3 in the Executive Summary, and Figure 7-3 in Chapter 7.

- through regular mail to ITD Office of Civil Rights, PO Box 7129, Boise, ID 83707-1129.

ITD will review information from the public meetings and the written comments and make any necessary adjustments before submitting a final APG to FTA prior to August 1, 2017. The final document will describe the outreach and consultation ITD conducted after publishing the proposed goal.

Attachments

ITD 2017 Disparity Study Report: <http://apps.itd.idaho.gov/apps/ocr/disparity.aspx>

Executive Summary

Chapter 1: Introduction

Chapter 2: Legal Framework

Chapter 3: Marketplace Conditions

Chapter 4: Collection and Analysis of Contract Data

Chapter 5: Availability Analysis

Chapter 6: Utilization Analysis

Chapter 7: Disparity Analysis

Chapter 8: Further Exploration of Disparities

Chapter 9: Overall DBE Goal

Chapter 10: Program Measures

Chapter 11: Federal DBE Program Implementation

Appendices

A. Definition of Terms

B. Legal Analysis and Framework

C. General Approach to Availability

D. Marketplace Analysis

E. Qualitative Information

F. Disparity Results Tables