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Idaho Transportation Department (ITD)

Overall Disadvantaged Business Enterprise Triennial Goal for the Federal Highway Administration

Federal Fiscal Years 2020-2022

I. Introduction

The Idaho Transportation Department submits this report on its proposed Disadvantaged Business Enterprise (DBE) triennial goal, and methods used to calculate that goal, to the Federal Highway Administration (FHWA) for review in accordance with 49 CFR Part 26, section 26.45.

This submission covers Federal Fiscal Years (FFY) 2020-2022 and supports the overall goal of 10%. ITD will satisfy the overall goal by maintaining the race-neutral overall goal of 2.25% and race-conscious overall goal of 7.75%.

ITD's goal methodology consists of the following:

Step 1: Establishing the base figure for the relative availability of DBEs and

Step 2: Adjusting the base figure to reflect available data.

ITD contracted with BBC Research & Consulting (BBC) in 2016 to produce a disparity study. BBC and ITD released the completed study in April 2017. The FFY18-20 DBE Methodology used data from the study. In March 2020, ITD contracted with BBC to assist in developing the FFY20-22 DBE Methodology. The FFY20-22 base figure was determined based on the proposed ITD FHWA funded projects for FY20-22. BBC conducted the Step 1 analysis and worked with the Office of Civil Rights (OCR) to determine the Step 2 adjustment.

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 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.

II. Step One Base Figure

After considering the options provided under 49 CFR 26.45(c), ITD determined it would use option three, which allows a recipient to use a percentage figure derived from a valid, applicable disparity study to determine the base figure of DBE relative availability. The 2017 Disparity Study measured potential disparities between the participation and availability of minority- and women-owned businesses in ITD contracts. The study also looked at the following:

- Quantitative analysis of success of minorities, women, and minority- and woman-owned businesses throughout the state. As well as potential barriers, these businesses face in the local marketplace.
- Analyzed the percentage of relevant ITD contracting dollars that minority- and woman- owned businesses are available to perform.
- Analyzed the dollars that minority- and woman-owned businesses received on more than 3,700 construction and consulting prime contracts and subcontracts that ITD awarded between October 1, 2011 and September 30, 2015 (i.e., the study period).

For purposes of the FFY20-22 methodology, BBC assessed the proposed federal projects for FFY20-22 and considered DBE availability based on the availability database developed as part of the 2017 Disparity Study.

BBC's recent analysis for calculating the FFY20-22 DBE methodology included review of the following data:

- ITD FFY20-22 Proposed Federal Projects (see attached excel document)
- FFY17-19 DBE Uniform Reports
- April 2017 Disparity Study: Specifically availability of minority- and women-owned businesses identified in the study.

The contracting and DBE market has not seen significant changes since the April 2017 Disparity Study, hence BBC and ITD opted to use the availability data from the 2017 study. The DBE availability baseline percentage in the 2017 Disparity Study was based on actual federal contracts awarded from 2011 to 2015 and DBE availability based on the contracting opportunities. Whereas, the recent BBC analysis specifically looks at proposed federal projects between FFY20-22 and DBE availability based on contracting opportunities. The difference in DBE availability between the April 2017 Disparity Study and the most recent DBE analysis is due to the different size, type, and location of the proposed federal projects for FFY20-22.

Relevant Geographic Market Area and Relevant Types of Work: The relevant geographic market area and relevant types of work have remained the same as noted in the 2017 Disparity Study. BBC's 2017 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). With respect to the relevant types of work, BBC determined the prime and subcontractor's subindustry that best characterized the business's primary line of work consisted of heavy construction.

Base Figure Determination: In order to determine the base figure BBC looked at contract dollars by year and type for the study period of FFY20-22 (see Table 1). BBC then provided a breakdown of the relative availability and dollar-weighted percentage of current and potential DBEs within the prime contractor and subcontractor categories. A 10.0% base figure was derived from the relative availability of current and potential DBEs calculated on a dollar-weighted basis (see Table 2).

Table 1: Contract dollar by year and type

Year	Design Dollars	Contracting Dollars
2020	\$43,756,900	\$205,883,100
2021	\$38,646,300	\$166,970,700
2022	\$40,718,200	\$248,302,800
Total	\$123,121,400	\$621,156,600

Table 2: MWBE Availability

Contract Role	Dollars (in Thousands)	MWBE Avail (in Thousands)	Avail %
Prime	\$544,414	\$40,538	7%
Sub	\$199,864	\$34,017	17%
Total	\$744,278	\$74,555	10%

DBE Availability. BBC conducted availability analysis for the FFY20-22 study period (see Table 3) by reviewing the master availability database compiled for the 2017 Disparity Study (chapter 5). For comparison purposes, we have provided the current availability column from Figure 9.3 of the 2017 Disparity Study. The current availability column in both Figure 9.3 and Table 3 reflect the current and potential DBE firm availability based on the different size, type, and location of contracts assessed during each respective study period, 2011-2015 and 2020-2022.

Figure 9.3: 2017 Disparity Study Current Availability

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%	<i>Industry Dollar weight of 84.5%:</i>
(2) Asian Pacific American	0.0%	N/A	0.0%	0.0%	
(3) Subcontinent Asian American	0.0%	N/A	0.0%	0.0%	15.4% X 84.5% = 13.0%
(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%	<i>Industry Dollar weight of 15.5%</i>
(11) Asian Pacific American	0.0%	N/A	0.0%	0.0%	
(12) Subcontinent Asian American	0.1%	N/A	0.1%	0.1%	7.5% X 15.5% = 1.2%
(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.

Table 3: Potential step-2 adjustment considering disparities in the rates of business ownership

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%	<i>Industry Dollar weight of 83.46%:</i> 14.1% X 83.46% = 11.7%
(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	0.3%	N/A	0.4%	0.4%	
(5) Native American	6.7%	N/A	9.5%	9.1%	
(6) White woman	3.4%	76	4.5%	4.3%	
(7) Potential DBEs	10.6%	N/A	14.6%	14.1%	11.7%
(8) All other businesses ***	89.4%	N/A	89.4%	85.9%	
(9) Total firms	100.0%	N/A	104.0%	100.0%	
Consulting					
(10) Black American	0.1%	N/A	0.0%	0.0%	<i>Industry Dollar weight of 16.54%</i> 7.5% X 16.54% = 1.2%
(11) Asian Pacific American	0.0%	N/A	0.0%	0.0%	
(12) Subcontinent Asian American	0.0%	N/A	0.1%	0.1%	
(13) Hispanic American	0.3%	N/A	0.1%	0.1%	
(14) Native American	2.0%	N/A	0.2%	0.2%	
(15) White woman	4.5%	N/A	7.1%	7.1%	
(16) Potential DBEs	6.9%	N/A	7.5%	7.5%	1.2%
(17) All other businesses ***	93.1%	N/A	93.1%	92.5%	
(18) Total Firms	100.0%	N/A	100.6%	100.0%	
(19) Total firms	10.0%	N/A	N/A		13.0%

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 = 0.834 and consulting= 0.165).

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

Analysis of the projected 2020 to 2022 federal highway consulting and construction projects resulted in fewer DBE subcontracting opportunities as we did not have sufficient certified DBE firms to perform all types and size of work on the proposed projects during the 3 year timeframe. As a result, ITD considered a Step 2 adjustment.

Step 2 Adjustment

Consideration of Possible Step-2 Adjustments. The DBE Program regulations require that after the base figure is calculated, ITD must consider available evidence to determine whether the figure should be adjusted higher or lower than the base figure (step 2 adjustment).

The initial base figure of 10% and the dollar-weighted upwardly adjusted figure of 13.0% both would be difficult to meet when evaluating current evidence, the previous 3-year DBE APG achievement rates (Table 4) and ITD's transportation contracting market conditions. ITD proposed a downward adjustment, which would have resulted in a 7.25% DBE APG. FHWA provided input on the draft DBE APG resulting in ITD revising the proposed APG to 10% to reflect the 10% base figure, with no step 2 adjustments.

Table 4: Participation by year

Year	Achieved DBE %
2017	3.47%
2018	4.5%
2019	7.0%
Median Percentage:	4.5%

Race/Gender-Neutral, Race/Gender-Conscious Projections. ITD calculated the Race Neutral (RN) goal based on the median past participation of 2.25% (Table 5), the remaining 7.75% of the 10% APG will be met through Race Conscious (RC) means. The RC portion of the proposed APG is only a projection. DBE awards, commitments, and ongoing payments to DBEs are monitored on an ongoing basis to determine if RC means should be increased or decreased, in relation to RN attainment. Project-specific RC goals will be set according to DBE availability, location, and work scope of each federal-aid contract. If it is determined that no DBE subcontracting possibilities are present in the federal project, no RC goal will be set.

Table 5: RN Participation by year

Year	Achieved RN DBE %
2017	2.31%
2018	1.9%
2019	2.25%
Median Percentage:	2.25%

ITD's RN program uses the following types of race-and gender-neutral measures as part of its effort to meet the RN goal and to increase participation of small businesses – including minority- and woman-owned, in its contracting.

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal.
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.
- Collaboration with primes to subcontract work, when possible.
- Advocacy and outreach efforts: ITD conducts several advocacy and outreach efforts across the state of Idaho to encourage the utilization and growth of small business and minority- and woman-owned businesses. ITD provides specifics on how to bid on ITD projects.
- Technical assistance and business development programs: ITD provides technical assistance to DBEs and other small businesses throughout the state as they seek to grow.
- Finance and bonding programs: ITD collaborates with the USDOT Small Business Technical Resource Center (SBTRC) to provide annual Bonding Education information to DBEs and other interested small businesses. ITD also refers interested DBE's and small business to the Boise State University, regional Small Business Development Centers, which offer one-on-one business counseling.
- Directing potential primes to the online DBE Directory for a comprehensive list of potential DBE firms available to do work in Idaho.
- Other agencies' race- and gender-neutral measures: Other Idaho agencies use a number of race- and gender-neutral program measures to encourage the participation of minority and woman-owned businesses. ITD actively promotes those programs sponsored by other agencies to minority- and woman-owned businesses. For example, ITD posts contracting opportunities available with other agencies on the ITD Invitation to Bid webpage.

DBE Groups Eligible to Meet Contract Goals. ITD proposed that all DBE groups would be eligible to participate in meeting race- and gender-conscious contract goals assigned in federal fiscal years 2020 through 2022.

III. Final Adjusted Goal

The recommended DBE goal for FY20-22 is 10%. ITD projects it will meet 7.75% of this goal through race-conscious measures and 2.25% through race-neutral measures. The proposed DBE goal is the sum of the race-conscious participation and the race-neutral participation.

As required by FHWA, sub-recipients of highway design and construction federal pass-through funds are required to adopt to ITD's federally approved DBE program. As part of the requirement, sub-recipients must adopt ITD's methods to establish the DBE goal and are required to report DBE awards, commitments, and payments.

ITD's overall DBE goal provides for the participation of all certified DBEs.

IV. Tracking, Compliance and Enforcement

In tracking both RC and RN participation, the ITD **Standard Specifications for Highway Construction** (<https://apps.itd.idaho.gov/apps/manuals/SpecBook/SpecBook18.pdf>) includes a Civil Rights Section 110 and the Partial Payments section 109.05. The use of ITD's Diversity Tracking System throughout the life of the contract is required to verify prompt payment and to provide a running tally of the contract's DBE participation. ITD's Office of Civil Rights carries out overall administration of this system; ITD District offices conduct project monitoring.

110.03 Disadvantaged Business Enterprise (DBE) A. Disadvantaged Business Enterprise for Race/Gender – Neutral Projects and B. Disadvantaged Business Enterprise for Race/Gender – Conscious Projects describe the commitment, crediting, monitoring and enforcement of DBE participation on federal-aid projects. Failure to comply with the DBE requirements is considered a breach of contract and dealt with in the same manner as other material breaches.

V. Public Participation: Review and Comment

ITD posted the initial proposed APG of 7.25% on the agency's home page, the OCR webpage, and Facebook. ITD's Communication Program posted information on agency social media sources. Stakeholders received an email with a link to the proposed DBE methodology and information on the virtual meetings.

ITD held two live, statewide stakeholder meetings on Wednesday, July 29, 2020, from 4:00pm (MST) – 5:30pm (MST) and Thursday, August 6, 2020 from 5:00pm (MST) to 6:30pm (MST). One consultant, HDR Engineering, attended the July 29 meeting. Two prime contractors, Idaho Materials & Construction and Scarsella, attended the August 6 meeting. Interested individuals were encouraged to provide comment and ask questions during the web-based stakeholder meetings. Stakeholders were encouraged to submit comments via email to civilrights@itd.idaho.gov or through regular mail to ITD Office of Civil Rights, PO Box 7129, Boise, ID 83707-1129.

ITD did not receive comments during the public comment period, July 22, 2020 to August 24, 2020.

Since the 2020 public participation activities, ITD revised the FFY20-22 DBE Methodology to reflect a 10% DBE APG. ITD posted the public comment opportunity on the ITD home page, the OCR webpage, and the agency's social media. The public comment for the revised proposed DBE Methodology took place July 6 to August 9, 2021. ITD held a virtual meeting from 4-5:30pm (MST) on Wednesday, July 21, 2021. All Rail Construction an Idaho based DBE firm and two prime contractors Geneva Rock and Western Construction attended the virtual meeting. Stakeholders were encouraged to submit comments via email to civilrights@itd.idaho.gov or through regular mail to ITD Office of Civil Rights, PO Box 7129, Boise, ID

83707-1129. ITD received one comment from Cole Frost with Ralph L. Wadsworth Engineers on July 22, 2021 via the civilrights@itd.idaho.gov inbox. ITD received no additional comments during the public comment period. ITD has provided the comment and the agency's response below.

Comment: "Within the calendar year of 2021 we have had bidding and contract opportunities where some of the typical participating DBE's have stated that cannot bid a project. The reason has been stated that their current workload is large enough that they may not be able to staff the contract. How have you made participation goal adjustments for the skilled labor diminishing within the contracting community?"

OCR Response: We encourage prime contractors to expand their networking abilities to DBE firms outside of those typically used on projects. ITD does not adjust DBE project goals. However, if a prime is unable to meet the DBE goal on a project they can submit a good faith effort identifying how they were unable to meet the goal. The agency will accept a lower DBE project commitment upon the review and approval of good faith effort submittal. Of the fifteen federal projects that bid in the calendar year 2021, thirteen had DBE goals and all primes who submitted their DBE paperwork met or exceeded the DBE goal.