



Alaska Department of Transportation & Public Facilities

Disadvantaged Business Enterprise Goal Methodology

Federal Fiscal Years 2021 – 2023

Federal Transit Administration

Prepared by the Alaska Department of Transportation and Public Facilities

Civil Rights Office

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The Alaska Department of Transportation and Public Facilities (DOT&PF or the Department), as a recipient of Federal Transit Administration (FTA) funding, is required to submit a Disadvantaged Business Enterprise (DBE) goal methodology triennially. This goal methodology has been prepared according to the criteria set forth in 49 CFR Part 26.45, and it is based on demonstrable evidence of the availability of all DBE firms that are ready, willing, and able to perform work on FTA-assisted contracts relative to all businesses that are ready, willing and able to participate on FTA-assisted contracts.¹

For Federal Fiscal Years 2021-2023, DOT&PF has established an overall DBE goal of 5.25% to be accomplished through the use of race neutral means.

In September 2019, the Department contracted with MGT Consulting Group, LLC, (MGT) to conduct a DBE Availability and Disparity Study Update (2021 Disparity Study). The 2021 Disparity Study examined five years of data and includes construction and professional services procurement activities from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).² DOT&PF prepared this methodology while the 2021 Disparity Study was ongoing, the Draft Report of the 2021 Disparity Study was completed in December 2020 and the Final Report was completed in February 2021. This methodology is based substantially on the 2021 Disparity Study results, federal guidance, and relevant case law including *Western States Paving v. Washing State Dept. of Transportation* 907F.3rd (9th Cir. 2005).

STEP ONE – BASE FIGURE

Relevant Market Area

In identifying the relevant market area, the Department analyzed data from the 2021 Disparity Study, which found that 98.97% of USDOT assisted contracts were awarded to firms located within the geographic boundary of the State of Alaska.³ Therefore, Alaska was determined to be the relevant market area.

Availability

To arrive at the Step-One base figure, the Department used data from the 2021 Disparity Study in accordance with 49 CFR Part 26.4 (c)(3) to determine the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in FTA-assisted contracts. The Department has established the base figure by using data from the Master Vendor Availability Database from the 2021 Disparity Study.⁴

There were minority and women-owned business enterprises (M/WBEs) that were utilized on DOT&PF projects (hence, they were available) that were not certified as DBEs. These M/WBEs, if certified, would raise relative DBE availability. However, no comprehensive data was available on how many of

¹ *Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program*, U.S. Department of Transportation (Office of Civil Rights, December 22, 2014), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

² MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021, Pg. 1

³ *Ibid.* Appendix, A., Pg. A-1.

⁴ *Ibid.* pg. 5-1, 5-2.

these M/WBEs could be certified as DBEs. Additionally, several of these M/WBEs, particularly some successful prime contractors, were former DBEs that graduated from the DBE program. For these reasons, the Department has based the Step One Base Figure on its current DBEs and not potential DBEs.⁵

The Master Vendor Availability Database was separated by construction or professional service procurement type. The counts of DBEs and all firms were then used to calculate the percentage of firms ready, willing, and able to perform on DOT&PF contracts during the study period.⁶

| Work Type | DBE Count | All Firms Count | DBE Availability |
|----------------------|-----------|-----------------|------------------|
| Construction | 69 | 673 | 10.25% |
| Professional Service | 50 | 337 | 14.84% |

Table 1: DBE Availability by Work-Type

It should be noted that the availability analysis in the 2021 Disparity Study is calculated according to the DOT&PF regions in which firms are most likely to work on FTA contracts.⁷ This method does not change the overall statewide number of available firms. However, this means that firms doing business in one or more regions were counted in the regional availability analysis. To account for this, DOT&PF based all of the availability calculations exclusively on the total number of firms available in the statewide count.

Imminent Certifications and Removals

DOT&PF reviewed the data to address imminent DBE certification actions in Step-One. Utilizing the DOT&PF Civil Rights Office (CRO) Contract Compliance Database, and in consultation with AUCP staff, DOT&PF identified no imminent certifications actions that would impact DBE availability calculations.

Weighting

As prescribed by the USDOT Tips for Goal-Setting, the Department performed weighting calculations to the refined availability data from the 2021 Disparity Study by applying the FTA expenditure amount percentage to the type of procurement, construction or professional service.⁸ In considering the method of weighting, DOT&PF considered weighting by work category, NAICS Code, and procurement type. Reliable information for the types of work categories and NAICS Code in relation to firms ready, willing and able to perform work on FTA-assisted DOT&PF projects was not practical due to a lack of

⁵ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021, Pg. J-2

⁶ Ibid. Appendix J. Pg. J-3

⁷ Ibid. Pg. 5-4

⁸ Ibid. Appendix J. Pg. J-3

comprehensive data in both cases. Consequently, these methods of weighting were discarded from consideration.

In order to directly translate the information contained in the 2021 Disparity Study to this goal methodology, DOT&PF weighted the base figure by procurement type in order to provide the most accurate estimation of the level of DBE participation reasonably expected absent the effects of discrimination. This process ensures that the availability of DBEs in procurement types which receive larger percentages of federal funding are weighted more heavily.

| Work Type | Weight | Weighted DBE Availability |
|----------------------|--------|---------------------------|
| Construction | 94.35% | 10.25 * 94.35% = 9.67% |
| Professional Service | 5.65% | 14.84 * 5.65% = .83% |
| Total | 100% | 10.51% |

Table 2: Weighted DBE Availability by Work-Type⁹

This process yielded the following Step-One base figure¹⁰ = 10.51%

STEP TWO – ADJUSTMENTS

The DOT&PF analyzed available evidence to determine what Step-Two adjustments, if any, were needed to arrive at an accurate estimation of the relative availability of DBEs. The following summarizes the evidence that was considered.

Current Capacity of DBEs to Perform FTA-Assisted Work

The Department explored adjusting the base figure to account for past participation and the current capacity of DBEs to perform work on its FTA-assisted contracts. The Master Vendor Availability Database from the 2021 Disparity Study which was used to calculate the Step-One base figures includes DBE firms as ready, willing, and able by analyzing the following data sources: custom census and DOT&PF vendor data sets. The custom census ascertained additional vendors that could be available to do work for the DOT&PF; however, not all of these firms have done work for DOT&PF.¹¹ Considering

⁹ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Table 4-3

¹⁰ Ibid. Appendix J, Table, J-3 & J-4. Pg. J-3

¹¹ Ibid. Pg. 5-1

an adjustment for past participation may achieve a more accurate DBE goal. In following the USDOT Tips for Goal Setting in the DBE Program guidance, the most recent five years of DBE utilization on the Department’s FTA-assisted contracts is listed below.¹²

| Funding Mode | Median DBE Utilization |
|--------------|------------------------|
| FTA | 0.00% |

Table 3: Median DBE Utilization¹³

Calculating the Step-One base figure and the median annual DBE utilization yields a DBE availability estimate of 5.25%:

$$\frac{10.51\% + 0.00\%}{2} = 5.25\%$$

Other Disparity Studies within the Jurisdiction

Since the last Disparity Study that was completed in 2014, there have been no other disparity studies conducted in the relevant market area. The original DOT&PF Disparity Study was completed in 2008.

Financing, Bonding, and Insurance

The 2021 Disparity Study conducted its analysis of financial barriers to minority and women-owned firms based on minority firms’ access to credit. This metric was determined with Public Use Micro data Samples (PUMS) and information from a 2018 Small Business Administration (SBA) study.¹⁴

Additionally, MGT conducted a survey of DOT&PF vendors, and found that 62.96% of firms indicated that access to credit presented a challenge to their business within the last twelve month period.¹⁵ MGT also noted that of the firms surveyed regarding access to credit, 68.42% were M/W/DBE firms, and indicated that the primary reason that their applications were denied was a lack of overall business history.¹⁶

The DOT&PF also noted that based on a 2019 Alaska Small Business Survey published by the Alaska Small Business Development Center (SBDC), respondents indicated that the number of successful bank loans declined from previous years by 13%.¹⁷ Additionally, the report observed that in previous years,

¹² MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Table 4-8. Pg. 4-13

¹³ Ibid. Table 4-8, Pg. 4-13

¹⁴ Ibid. Pg. 6-18

¹⁵ Ibid. Pg. 6-18

¹⁶ Ibid. Pg. 6-23

¹⁷ Unknown. *2019 Alaska Small Business Survey Report*, Alaska Small Business Development Center (UAA Business Enterprise Institute, March 11, 2020), <https://aksbdc.org/2020/03/2019-alaska-small-business-survey-report/>.

most businesses (37%) had been able to obtain bank loans. This difference indicates a significant decrease in the overall market's availability for small businesses to obtain bank financing.

The anecdotal analysis from Chapter 7 of the 2021 Disparity Study indicates that 6.47% of 201 vendors surveyed, which were both prime contractors and consultants, identified insurance requirements such as general and professional liability were barriers to bidding on DOT&PF contracts.¹⁸

The DOT&PF CRO has made efforts through the DBE program to address potential barriers to M/W/DBE firms in Alaska receiving financing, bonding, and insurance. The DOT&PF CRO has conducted trainings and workshops, and provided DBE firms with opportunities to learn from in-state insurance and bonding professionals. These efforts have likely provided some of the certified DBE firms assistance in obtaining these forms of support. However, no quantitative data on the number, and specific kinds of firms that had experienced difficulty obtaining financing, bonding and insurance has been captured. Since there is no reliable quantitative data available to base an adjustment on, no adjustment has been made.

Employment and Self-Employment Analysis

MGT's study conducted a multivariate regression analysis of Public Use Micro data Samples (PUMS) derived from the 2012 U.S. Census Bureau's Survey of Business Owners (SBO) data.¹⁹ This analysis attempts to determine if:

- Racial, ethnic, and gender minority groups are less likely than non-minority males to be self-employed
- Racial, ethnic, and gender status have an impact on individuals' earnings
- Racial, ethnic, and gender discrimination influence the probability of being self-employed

The 2021 Disparity Study analysis indicates that, based on the variables, minorities were less likely to be self-employed.^{20, 21}

The statistical evidence presented in the study demonstrates that a self-employment and self-employment earnings disparity exists between minority and women owned businesses in the market area.²² These indices of disparate opportunity are consistent with presumed levels of discrimination in the private sector. These indices were also observed in the previous Disparity Study from 2014. Based on data presented in the 2021 Disparity Study, DOT&PF concludes that an adjustment may be necessary, but the data does not present uniform statistical findings throughout all minority categories that will allow for an accurate calculation of the potential adjustment. For this reason, DOT&PF will not make an adjustment to the proposed DBE Goal based on this information.

¹⁸ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 7-8

¹⁹ Ibid. Pg. 6-3

²⁰ Ibid. Pg. 6-11

²¹ Ibid. Pg. 6-12

²² Ibid. Pg.6-11,6-12

Barriers to Doing Business with Alaska DOT&PF

In the 2021 Disparity Study, MGT conducted surveys and interviews with a random sample of 565 business owners and representatives of firms having done business with, or attempted to do business with, the DOT&PF. The combined results of the surveys, public meetings, focus groups, and in-depth interviews provides the anecdotal data addressed in this section. During the collection of the anecdotal data, 201 firms responded to survey questions about DOT&PF’s procurement process, and perspectives about working with, or attempting to obtain work with, firms on DOT&PF contracts.

The 2021 Disparity Study found that across both prime and subcontractors, the major areas of concern were being able to compete with large firms. Additionally, both 10.95% of prime, and 11.24% of subcontractors M/W/DBE respondents indicated that, “slow or non-payment for project work” was the most significant barrier to doing business with DOT&PF.²³ Prime contractors also indicated that “unnecessarily” restrictive contract specifications and narrow bidding windows to prepare bids or quotes presented barriers.

Subcontractors also identified that overall contracts were too large (11.24%), and that an informal network of primes and subcontractors excluded some individual companies from doing work on DOT&PF projects (11.24%).²⁴

Discrimination and Disparate Treatment

Anecdotal data collected by MGT through the survey, in-depth interviews, and public meetings indicated discriminatory practices as indicated below:

| | By DOT&PF | By Primes | Private Sector |
|-----------------------------------|-----------|-----------|----------------|
| M/W/DBE Primes | 3.48% | | |
| Non-M/W/DBE Primes | 3.17% | | |
| M/W/DBE Subcontractors | | 6.74% | |
| Non-M/W/DBE Subcontractors | | 5.26% | |
| M/W/DBE Firms | | | 12.20% |
| Non-M/W/DBE Firms | | | 9.94% |

Table 4: Discrimination by M/W/DBE Status²⁵

Further, the study indicated that 59.55% of M/W/DBE respondents reported that they were “seldom or never” solicited for work when contracts did not have a set DBE utilization goal.²⁶ Additionally, 6.5%

²³ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 7-8, 7-9

²⁴ Ibid. Pg. 7-9

²⁵ Ibid. Table 7-6. Pg. 7-11

²⁶ Ibid. Pg. 7-11

of M/W/DBE respondents said that there was unequal or unfair treatment within the private sector. Another 4.49% of respondents said that they had either experienced or been witness to situations where M/W/DBE firms were only consulted to satisfy DOT&PF contract requirements. The same percentage (4.49%) of respondents also stated that prime contractors had double standards for performance of M/W/DBEs.²⁷

ANC Firms

Since the last Disparity Study was completed in 2014, the Department has experienced an 80% increase in Alaska Native Corporation (ANC) owned firms that are DBE certified with Alaska addresses. In September of 2016, the USDOT issued guidance that clarified how ANC-owned firms can qualify for DBE certification under the special rules 49 CFR 26.73(i). The result of this guidance was a large increase of ANC-owned firms becoming DBE certified. All DBE certified ANC-owned firms are certified under these special rules, and most of these firms would not qualify for the program otherwise. Such a large increase in a short period of time indicates that while these firms may qualify for the program, they may not yet be ready, willing, and able to perform work on FTA-assisted projects. The DOT&PF expects participation in the DBE program by ANC-owned firms to continue to progressively increase as these firms continue to recognize business opportunities presented by FTA-assisted projects.

Summary of Step-Two Considerations

DOT&PF considered the previously discussed evidence in its entirety to determine what, if any, Step-Two adjustments were necessary to arrive at an overall DBE goal that accurately reflects the relative availability of DBEs ready, willing, and able to perform work on FTA-assisted contracts. Not all minority and women-owned firms are certified DBEs or may become certified, and not all DBE firms have the capacity to perform work on the largest contracts let by the DOT&PF. Additionally, while the Department has experienced overall growth in DBE utilization this growth has been relatively slow as shown by our median past participation being 10.51 percentage points less than the Step-One base figure. The 2021 Disparity Study determined that the past median participation of 0.00% was overall not far from the proposed DBE goal of 10.51% so a Step-Two Adjustment was not warranted.²⁸ However, the Department believes that the difference of 10.51 percentage points between the median past participation and the Step-One base figure is large enough of a difference to warrant a Step-Two adjustment to the Step-One base figure.

DOT&PF considered all available evidence and determined that a Step-Two adjustment to account for the current capacity of DBEs to perform work on FTA-assisted contracts was necessary to arrive at an accurate estimation of the availability of DBEs ready, willing, and able to perform work on FTA-assisted contracts, and proposes a Step-Two goal of 5.25%.

Race-Neutral/ Race Conscious Goals

As study results demonstrate, there are both quantitative and anecdotal reasons to address the issue of disparate or discriminatory conditions in the marketplace. In creating this Goal Methodology, DOT&PF considered all of the relevant evidence presented, and applied the standards of strict scrutiny and narrow

²⁷ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 7-12

²⁸ *Ibid.*, Appendix J. Pg. J-4.

tailoring in its DBE goal setting process. The 2021 Disparity Study concluded that based on the level of non-goal M/W/DBE subcontractor participation, the statistical analysis in the study did not provide a strong factual predicate for across-the-board race- and gender-conscious DBE subcontractor goals or setting a race-conscious component of the annual DBE goal.²⁹

Under 49 CFR 26.51, recipients are directed to meet the maximum feasible portion of the overall goal by using race/gender-neutral means. Additionally, the 9th Circuit Court's decision in *Western States Paving v. Washington State* held that application of a race-conscious component of a program must be narrowly tailored, and be limited to an area that race-based corrective measures are instituted to account for clear discrimination (strict scrutiny).³⁰ Further, the Court recognized that even in jurisdictions absent discrimination, the overall proportionality of work DBE firms could be expected to participate in would be less than in an area where race and gender requirements are established, because the implementation of those requirements effectively create a competitive advantage for DBE firms.

In the 2021 Disparity Study, a significant percentage of anecdotal survey respondents indicated that M/W/DBE firms would not be utilized in the absence of DBE goals. Statistical data from the 2021 Disparity Study indicates that even in the absence of DBE goals, there was still utilization of M/W/DBE subcontractors on construction and PSA contracts. In fact M/W/DBEs received 16.03 percent of the dollars awarded on projects with DBE goals compared to 18.11 percent of the dollars awarded on projects with no DBE goals.³¹

The 2021 Disparity Study found that while a large percentage of M/W/DBE survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data indicated that there generally was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals. For this reason the 2021 Disparity Study recommended that DOT&PF should continue to consider the use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. These project goals are called aspirational because DOT&PF sets the aspirational DBE project goals on projects in a similar fashion as race-conscious DBE goals, with one difference: bids are not rejected for failure to meet the DBE project goal, or for failure to submit good faith efforts documentation.³² The DOT&PF currently sets aspirational goals on most projects, and will continue to do so through the DBE goal period of FFY2021-2023.

Based on the evidence available and the data presented in the 2021 Disparity Study, DOT&PF proposes to continue implementing its race-neutral program to achieve the proposed DBE goal of 5.25% through entirely race-neutral means.

²⁹ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 8-4

³⁰ *Western States Paving v. Washington State Department of Transportation et al.*, United States Court of Appeals, Ninth Circuit, 2005. 407 F 3d, Pg. 1000.

³¹ MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 6-13.

³² Ibid. Pg. 8-4, and 8-5.

Public Participation

Pursuant to 49 CFR Part 26.45(g), the DOT&PF may conduct public outreach to obtain comment on the FTA Goal Methodology. At its discretion, Alaska DOT&PF may post the proposed FTA DBE Goal Methodology to the Civil Rights Office webpage, and solicit comments through appropriate means.