

**FEDERAL FISCAL YEAR 2014 – 2016
MONTANA DEPARTMENT OF TRANSPORTATION
DBE GOAL METHODOLOGY**

The Montana Department of Transportation (MDT), in accordance with United States Department of Transportation (USDOT) guidelines, determines MDT's Disadvantaged Business Enterprise (DBE) Program Annual Participation Goal (APG) on a staggered three-year schedule.

MDT calculates the APG using the criteria set forth in 49 CFR Part 26.45. The determination of the level of DBE participation is based on the availability of all DBE businesses that are ready, willing, and able to participate in USDOT-assisted contracts in the State of Montana in relationship to all comparable businesses which are known to be available to compete for USDOT-assisted contracts.

For Federal Fiscal Year 2014 – 2016, MDT has established a proposed overall DBE goal of 3.55% utilizing a Step Two adjustment based on the requirements of 49 CFR Part 26.45. MDT is proposing to meet 100% of its overall DBE goal through the use of race-neutral means.

MDT utilized a two-step process to determine its overall DBE participation goal:

Step 1: Determine the base figure for the overall goal by calculating the actual relative availability of DBEs to perform the types of federally assisted contracts MDT intends to let.

MDT had previously commissioned a Disparity Study, completed in 2009, which evaluated information from Federal Fiscal Years 2000 through 2006. Because of the age of the data used in the Disparity Study, MDT decided to use more recent data from the Census Bureau County Business Patterns and highway-related DBE firms from the DBE Directory to determine the relative availability of DBEs. MDT believes this more recent data is more relevant than the older data for determining current availability. This figure was then weighted by the percentage of dollars awarded between construction and professional services contracts.

Step 2: Adjust the base figure using factors relevant to MDT's marketplace.

MDT examined all of the evidence available in its jurisdiction to determine if an adjustment was needed to the base figure to arrive at the overall goal. MDT used an analysis of median past DBE participation as evidence for an adjustment.

This methodology and the supporting evidence complies with the requirements of the federal regulations and federal guidance, as well as relevant court decisions, including *Western States Paving v. Washington State Dept. of Transportation*, 907 F.3d 963 (9th Cir. 2005).

STEP 1: SETTING THE APG BASE FIGURE

To determine the Step 1 Base Figure, MDT calculated the relative DBE availability in accordance with 49 CFR Part 26.45 (c)(1), which states:

- (1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.*

To perform the calculation, two figures need to be determined; the number of DBE firms and the number of total firms that are ready, willing, and able to compete for MDT federally assisted contracts.

DBE Firms

MDT's DBE Directory classifies firms as either highway related or non-highway related. The classification of firms and their continued eligibility for participation in MDT's DBE Program are confirmed through site visits and annual needs assessment surveys. MDT evaluated the DBE Directory based on firms certified as highway-related DBEs as of April 11, 2014. Many of the highway-related DBE firms have multiple NAICS codes; however, they were only included in one category that most reflected their type of work. The NAICS codes used are consistent with the type of work MDT has performed in the past and contracts MDT intends to let in the future. Table 1 provides a breakdown of the number of DBE firms by NAICS code, which is further separated by those performing Construction or Professional Services work.

Table 1 – Number of highway-related DBE firms by NAICS code

Number of highway-related DBE firms			
Construction	Professional Services	NAICS Code	Description
1		212321	Construction Sand and Gravel Mining
31		2373	Highway, Street, and Bridge Construction
5		2379	Other Heavy and Civil Engineering Construction
2		23811	Poured Concrete Foundation and Structure Contractors
5		23821	Electrical Contractors and Other Wiring Installation Contractors
1		23839	Other Building Finishing Contractors
7		23891	Site Preparation Contractors
10		23899	All Other Specialty Trade Contractors
1		3273	Cement and Concrete Product Manufacturing
2		332999	All Other Miscellaneous Fabricated Metal Product Manufacturing
4		42339	Other Construction Material Merchant Wholesaler
1		42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
1		484121	General Freight Trucking, Long-Distance, Truckload
1		484110	General Freight Trucking, Local
1		532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing
1		56173	Landscaping Services
	1	54132	Landscape Architectural Services
	11	54133	Engineering Services
	2	54137	Surveying and Mapping (except geophysical) Services
	5	54161	Management Consulting Services
	6	54162	Environmental Consulting Services
	1	54169	Other Scientific and Technical Consulting Services
	5	54199	All Other Professional, Scientific, and Technical Services
74	31	Total highway-related DBE firms	

Total Firms

Using the same NAICS codes as identified in Table 1, MDT reviewed the number of businesses published in the Census Bureau County Business Patterns^a. Table 2 provides a breakdown of total firms from the Census by their NAICS code.

Table 2 – Number of total firms from Census Data by NAICS code

Number of total firms from Census			
Construction	Professional Services	NAICS Code	Description
24		212321	Construction Sand and Gravel Mining
96		2373	Highway, Street, and Bridge Construction
46		2379	Other Heavy and Civil Engineering Construction
193		23811	Poured Concrete Foundation and Structure Contractors
444		23821	Electrical Contractors and Other Wiring Installation Contractors
24		23839	Other Building Finishing Contractors
372		23891	Site Preparation Contractors
240		23899	All Other Specialty Trade Contractors
52		3273	Cement and Concrete Product Manufacturing
12		332999	All Other Miscellaneous Fabricated Metal Product Manufacturing
14		42339	Other Construction Material Merchant Wholesaler
43		42361	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
201		484121	General Freight Trucking, Long-Distance, Truckload
110		484110	General Freight Trucking, Local
31		532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing
444		56173	Landscaping Services
	17	54132	Landscape Architectural Services
	339	54133	Engineering Services
	57	54137	Surveying and Mapping (except geophysical) Services
	334	54161	Management Consulting Services
	101	54162	Environmental Consulting Services
	150	54169	Other Scientific and Technical Consulting Services
	53	54199	All Other Professional, Scientific, and Technical Services
2346	1051	Total firms from Census	

By combining construction and professional services, the relative DBE availability is calculated as follows:

$$\frac{74 \text{ DBEs in construction} + 31 \text{ DBEs in professional services}}{2,346 \text{ firms in construction} + 1,051 \text{ firms in professional services}} = 3.09\% \text{ DBE availability}$$

^a Published in April 2013 using 2011 data. Census Bureau County Business Patterns data is published on a one year cycle.

Step 1 Base Figure Weighting

Weighting can help ensure that the Step 1 Base Figure is as accurate as possible. In order to weight the relative DBE availability, MDT reviewed federally assisted contracts to determine the dollar amounts awarded on Construction and Professional Services contracts. MDT did consider the use of weighting by contract dollars to further differentiate between NAICS Code businesses. However, sufficient accurate data was not available to perform that weighting analysis.

MDT's contracting market was evaluated on a statewide basis. Table 3 summarizes these contract amounts for Federal Fiscal Years 2011 through 2013 and the percentage awarded by Construction and Professional Services contracts.

Table 3 – Federal Fiscal Years 2011 through 2013 Construction and Professional Services Contracts

Business Category	Contract Amounts	% by Category
Construction	\$ 934,002,658.84	94%
Professional Services	\$ 55,668,010.49	6%
Total	\$ 989,670,669.33	100%

The calculation for weighting the Step 1 Base Figure is as follows:

$$\left[\begin{array}{l} \% \text{ of} \\ \text{Construction} \\ \text{contracts} \end{array} \left(\frac{\# \text{ of Construction DBE firms}}{\# \text{ of Construction firms}} \right) + \begin{array}{l} \% \text{ of} \\ \text{Professional} \\ \text{Services} \\ \text{contracts} \end{array} \left(\frac{\# \text{ of Professional Services DBE firms}}{\# \text{ of Professional Services firms}} \right) \right] \times 100 = \text{Step 1 Base Figure, weighted by type of work to be performed}$$

Using the information from Tables 1 through 3, the Step 1 Base Figure is calculated at 3.14% relative DBE availability.

$$\left[.94 \left(\frac{74}{2,346} \right) + .06 \left(\frac{31}{1,051} \right) \right] \times 100 = 3.14\% \text{ relative DBE availability}$$

STEP 2: ADJUSTMENTS TO THE APG BASE FIGURE

During Step 2, MDT examined all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall DBE participation goal. MDT conducted an analysis of information described in 49 CFR Part 26.45 (d)(1)(i):

- (1) *There are many types of evidence that must be considered when adjusting the base figure. These include:*

- (i) *The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;*

Analysis of Recent Years

To determine the impacts of the current local market conditions and work performed by DBE firms, MDT reviewed the Uniform Report of DBE Awards or Commitments and Payments for Federal Fiscal Years 2008 through 2013. Tables 4 and 5 indicates DBE utilization for the past six years:

Table 4 – DBE Utilization for Federal Fiscal Year 2008 through 2013

Federal Fiscal Year	Total Dollars of Prime Contracts Awarded	Total Dollars Awarded or Committed to DBEs	Percentage of Total Dollars to DBEs
2013	\$ 328,824,643	\$ 19,697,697	5.99%
2012	\$ 265,702,844	\$ 10,219,593	3.85%
2011	\$ 303,958,251	\$ 12,360,466	4.07%
2010	\$ 381,418,716	\$ 6,730,552	1.76%
2009	\$ 282,808,276	\$ 7,543,058	2.67%
2008	\$ 273,647,430	\$ 11,642,881	4.25%

DBE utilization ranged from a high of 5.99% of total dollars to a low of 1.76%. Table 5 indicates DBE utilization arranged from highest to lowest:

Table 5 – DBE Utilization (sorted)

Federal Fiscal Year	Percentage of Total Dollars to DBEs
2013	5.99%
2008	4.25%
2011	4.07%
2012	3.85%
2009	2.67%
2010	1.76%

The median of the range was calculated to determine the average DBE past participation and the resulting calculation is as follows:

$$(4.07\% + 3.85\%) / 2 = 3.96\% \text{ median past DBE participation}$$

MDT did consider whether to limit its analysis to only the most recent years in determining past DBE participation. If only the past three years were evaluated (FFY 2011, 2012 and 2013), the median past DBE participation would be 4.07%. Because there were significant fluctuations in past DBE participation (1.76% for FFY 2010 compared to 5.99% for FFY 2013), MDT decided to include more data to better account for the variations.

MDT determined that 3.96% was the best indicator of median past DBE participation.

Adjustments to Step 1 Base Figure

After examining all evidence available, MDT will apply the median past DBE participation (3.96%) to the Step 1 Base Figure (3.14%) by calculating the average:

$$(3.96 + 3.14) / 2 = 3.55\%$$

By factoring in the analysis from the two methods, MDT adjusts the Step 1 Base Figure to an overall DBE participation goal of 3.55%.

RACE CONSCIOUS / RACE NEUTRAL EVALUATION

MDT used both race conscious and race neutral measures in Federal Fiscal Year 2013 to achieve its overall goal. The Uniform Reports indicated 3.60% of the overall 5.99% DBE utilization was attained through race neutral means during this most recent Federal Fiscal Year.

MDT analyzed historic DBE participation for years in which it utilized solely race neutral measures to achieve its DBE goal. The historic participation rate for those years is shown in Table 6.

Table 6 – DBE Utilization Solely by Race Neutral Measures (Federal Fiscal Year 2008 through 2012)

Federal Fiscal Year	Total Dollars of Contracts Awarded	Total Dollars Awarded or Committed to DBEs	Percentage of Total Dollars to DBEs
2012	\$ 265,702,844	\$ 10,219,593	3.85%
2011	\$ 303,958,251	\$ 12,360,466	4.07%
2010	\$ 381,418,716	\$ 6,730,552	1.76%
2009	\$ 282,808,276	\$ 7,543,058	2.67%
2008	\$ 273,647,430	\$ 11,642,881	4.25%

DBE utilization ranged from a high of 4.25% of total dollars to a low of 1.76%. Table 7 indicates DBE utilization arranged from highest to lowest:

Table 7 – DBE Utilization (sorted)

Federal Fiscal Year	Percentage of Total Dollars to DBEs
2008	4.25%
2011	4.07%
2012	3.85%
2009	2.67%
2010	1.76%

The median past DBE participation for solely race neutral years was 3.85%.

The proposed overall DBE participation goal of 3.55% is less than the DBE participation achieved through race neutral means during the most recent Federal Fiscal Year (3.60%). In addition, the proposed overall DBE participation goal is less than the historic median DBE utilization when MDT utilized solely race neutral measures to achieve its overall DBE goal (3.85%). As a result, MDT proposes to meet the overall 3.55% goal solely through race neutral means.

MDT will continue to monitor participation of minority- and women-owned firms in its contracts and collect qualitative data concerning marketplace conditions.

RACE-NEUTRAL INITIATIVES

MDT has taken affirmative steps, utilizing the following measures:

Face-to-Face Consultation with Stakeholders and Focus Groups and Other Outreach

- MDT issued an Annual Needs Assessment to solicit input from minority, women, contractor groups, and MDT employees to gauge the availability of disadvantaged and non-disadvantaged businesses. The results of this survey show that the highway-related firms on the DBE Directory are either actively bidding on MDT related contracts or have participated on MDT-related highway project over the last year.
- MDT contacts each DBE annually to retrieve information on the current state of business in Montana, and to determine the DBEs workforce obstacles in order to define the most effective strategies needed to increase the DBEs capacity and availability. This information provides valuable input as MDT implements the Business Development Plan outlined in the MDT DBE Supportive Services Statement of Work.
- MDT continues to develop its relationship with the Montana Contractor's Association (MCA), by training and educating the MCA regarding the DBE program. Information is provided on the availability of DBEs, the capacity of DBEs, and the newest certified DBEs within the state. These meetings allow disadvantaged and non-disadvantaged businesses opportunities to provide feedback about the program. This relationship is strengthened with the intent of creating greater opportunity to conduct business with DBEs.

MDT provides the following Supportive Services for DBEs:

- Long-term development assistance to increase opportunities

- Trainings in contracting procedures
- Assistance to start-up firms; and
- Identification of potential highway-related DBEs

SUBMISSION AND PUBLICATION OF APG

A Public Notice was published on August 25, 2013 for a prior FY 2014-2016 Goal Methodology. The document was available for review through September 25, 2013 and comments were accepted through October 9, 2013. MDT received comments from four commenters during the 45-day comment period and provided those comments to FHWA. The comments and MDT's responses are as follows:

1. A number of commenters questioned the accuracy of the number of ready, willing and able DBEs.

Response: MDT re-evaluated the number of ready, willing and able DBEs and adjusted the number of available firms.

2. One commenter suggested using weighting.

Response: MDT concurs with the suggestion to use weighting, and has decided to weight by construction and professional services.

3. One commenter questioned the accuracy of statements in the Proposed DBE Goal Methodology concerning the utilization of minorities in the disparity study.

Response: The statements concerning the utilization of Asian Pacific Americans, Hispanic Americans, and Non-Minority Women were accurate and were taken directly from the disparity study. MDT concurs that Table ES-3 relates only to DBEs providing Professional Services. Table ES-3 does show that all minority groups and non-minority women were significantly underutilized.

4. One commenter relied on a 6 month reporting period in which MDT exceeded its goal to question whether race-conscious goals were necessary.

Response: The DBE participation from a single 6 month reporting period is not sufficient information.

5. One commenter questioned the ability of some DBEs to perform work.

Response: Persons who question the eligibility of a particular firm to be a certified DBE may file a complaint with MDT. See 49 CFR 26.87. MDT has

taken steps in the past year to address complaints concerning eligibility of DBE firms.

Adjustments were made from the first round of comments and MDT published a second public notice on May 11, 2014. The Public Notice was published on MDT's website and in all daily newspapers throughout Montana and sent to DBE firms and the Montana Contractors Association. The document was available for review through June 10, 2014 and MDT accepted comments through June 25, 2014. MDT received comments from three commenters during the 45-day period and provided them to FHWA. The comments and MDT's responses are as follows:

1. One commenter questioned the accuracy of the number of ready, willing and able DBEs.

Response: MDT re-evaluated the number of ready, willing and able DBEs and determined the number of available firms was accurate.

2. One commenter questioned the use of the past participation adjustment in Step 2.

Response: MDT did the adjustment in accordance with 49 CFR 26.45 (d)(1)(i) and determined past participation did provide an accurate measure for a Step 2 adjustment.

3. One commenter questioned the decrease in the overall goal below the federal government goal and was concerned about loss of federal funding for Montana.

Response: Per 49 CFR 26.41(c), the national 10% goal does not require MDT to set overall goals at the 10% level.

4. Several commenters questioned the weighting method chosen by MDT.

Response: As per the Goal Methodology, MDT did consider the use of weighting by contract dollars to further differentiate between NAICS Code businesses. However, sufficient accurate data was not available to perform that weighting analysis. MDT is in the initial stages of issuing a Request for Proposal for an Availability / Disparity Study, which will provide a more in-depth review of DBE availability. Once the Study has been completed, MDT will re-evaluate the Goal Methodology and adjust accordingly.

5. Several commenters noted that the median value for the past three years was 4.07% as opposed to the 3.85% asserted in the Goal Methodology.

Response: MDT adjusted the median figure in the Goal Methodology for the past three years to 4.07%. This does not change the overall goal calculation as per the Goal Methodology, MDT decided to include more data (six years) to better account for the variations in DBE Utilization.

6. Several commenters expressed concern over DBE utilization based on race conscious measures reported under payments on contracts completed in the Uniform Reports.

Response: MDT utilizes percentage of total dollars awarded or committed to DBEs on the Uniform Reports to provide a more accurate depiction of current DBE utilization.