

FHWA DBE Goal Methodology Montana Department of Transportation Federal Fiscal Year 2020 – 2022

The Montana Department of Transportation (MDT), in accordance with United States Department of Transportation (USDOT) guidelines, determines MDT's Disadvantaged Business Enterprise (DBE) Goal for Federal Highway Administration (FHWA) funded contracts on a staggered three-year schedule.

MDT calculates the goal 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 FHWA-assisted contracts in the State of Montana in relationship to all comparable businesses which are known to be available to compete for FHWA-assisted contracts.

For Federal Fiscal Years 2020 – 2022, MDT has established an overall DBE goal of 6.5% to be accomplished through the use of race neutral means.

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: Determining the Base Figure

For the Step 1 Base Figure, MDT determined the relative DBE availability in accordance with 49 CFR Part 26.45 (c)(3), which is to use data from a disparity study. MDT utilized data from the 2016 Availability and Disparity Study Report compiled by Keen Independent Research LLC to set the base figure. According to the report, 89% of MDT contract dollars during the study period went to firms with Montana offices^a. Therefore, Montana was determined to be the market area.

The Step 1 Base Figure is based on current DBEs and not potential DBEs. MDT could have included potential DBEs (minority- and women-owned firms) in its base figure; however, chose not to for the following reasons: ^b

- Changes in DBE certification status of a number of firms makes it difficult to determine whether some former DBEs would be eligible to be counted as potential DBEs for the future;

^a 2016 MDT Availability and Disparity Study, Chapter 3, Page 7.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

^b 2016 MDT Availability and Disparity Study, Chapter 6, Page 2.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

- In MDT’s experience, some minority- and women-owned firms that initially appear eligible do not qualify for certification under the Federal DBE Program; and
- A number of Montana firms started DBE certification applications during the study period but never completed them, which also raises a question about inclusion of non-certified MBEs and WBEs in the base figure.

To avoid overstating the base figure by including minority- and women-owned firms that might not be eligible for DBE certification or would not take all the steps required to do so, Keen Independent calculated the base figure from firms that were DBE-certified.

Keen Independent’s analysis indicates that the availability of current DBEs for MDT’s FHWA-funded transportation contracts is 7.41% based on current availability information and analysis of FHWA-funded contracts awarded from October 2009 through September 2014.^c

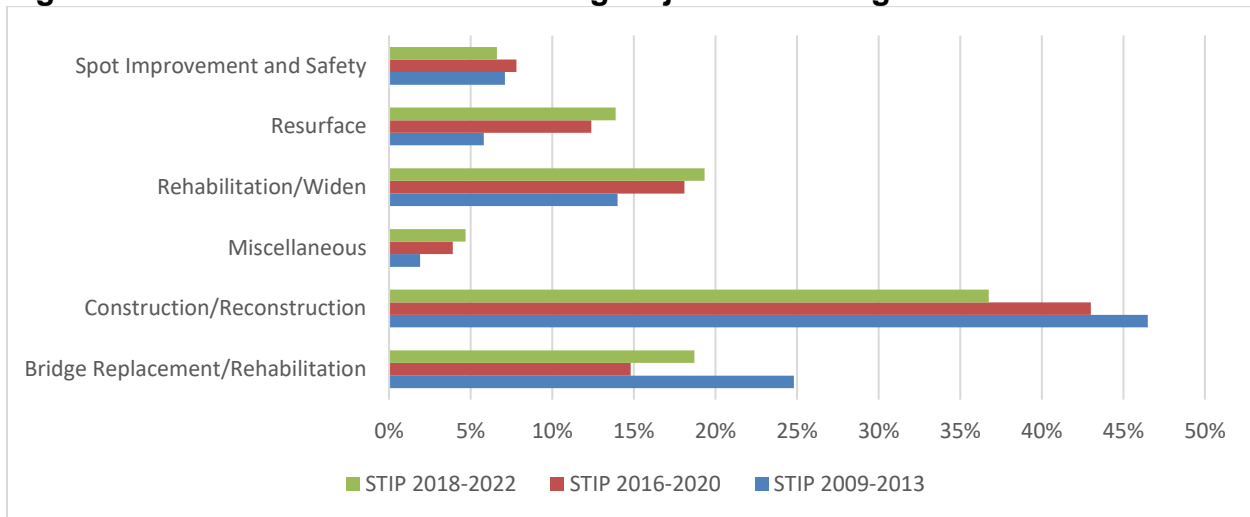
MDT’s focus is preserving and maintaining the current infrastructure, so the Department is making a gradual shift in funding priorities with fewer new construction and reconstruction projects and more rehabilitation and resurfacing projects. In the 2016 Disparity Study, Keen Independent performed a sensitivity analysis to determine if this change in distribution of funds among major work categories (12.4% increase in resurfacing from 2009-2013 compared to 2016-2020 and 14.8% decrease in bridge work) impacted the availability of DBEs calculated for the base figure.^d Based on the analysis, Keen determined that a change in the base figure was unwarranted. The Disparity Study evaluated through 2020, so in preparing the current Goal Methodology, MDT evaluated its proposed distribution of funds among major work categories through 2022 to determine if a change to the base figure for the 2020-2022 Goal Methodology is warranted. Figure 1 details the distribution of funds among major work categories for three time periods from MDT’s Statewide Transportation Improvement Programs (STIP):

- Contracts included in the Disparity Study (STIP 2009-2013),
- Contracts for 2017-2019 Goal Methodology (STIP 2016-2020), and
- Contracts for 2020-2022 Goal Methodology (STIP 2018-2022).

^c 2016 MDT Availability and Disparity Study, Chapter 6, Page 14.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

^d 2016 MDT Availability and Disparity Study, Chapter 9, Page 1.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

Figure 1 – Distribution of Funds Among Major Work Categories



As shown in Figure 1, MDT projects a decrease in the percentage of funding on reconstruction projects and increase in the percentage of funding for rehabilitation and resurfacing projects. The projected funding on bridge projects is projected to increase above the level established in the 2016-2020 STIP, but it is less than the percentage projected in the 2009-2013 STIP. In analyzing the projected change in MDT’s distribution of funding through 2022 and the minimal impact from similar funding adjustments analyzed in the 2016 Disparity Study, MDT determines no change to the base figure is warranted. Therefore, MDT establishes the base figure as 7.41%.

Step 2: Adjustments to the Base Figure

49 C.F.R. § 26.45(d) requires MDT examined all of the evidence available in its jurisdiction, including analyses performed in the 2016 Disparity Study, to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall DBE participation goal. MDT considered the following Step 2 adjustments:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training and unions;
- Any disparities in the ability of DBEs to get financing, bonding and insurance; and
- Other relevant factors

Current Capacity

To determine the impacts of the current local market conditions and work performed by DBE firms in recent years, MDT reviewed the Uniform Report of DBE Awards or Commitments and Payments from Federal Fiscal Years 2011-2018. Table 1 indicates DBE utilization based on awards or commitments for the past eight years.

Table 1 – DBE Utilization for Federal Fiscal Years 2011 through 2018

Federal Fiscal Year	% DBE Utilization
2018	5.1%
2017	6.2%
2016	7.6%
2015	4.9%
2014	6.7%
2013	6.0%
2012	3.9%
2011	4.1%

DBE utilization ranged from a high of 7.6% of total dollars to a low of 3.9%. USDOT’s “Tips for Goal Setting” indicates that the goal setting process will be more accurate if using the median of your past participation to make an adjustment because the process of determining the median excludes all outliers (abnormally high or abnormally low) past participation percentages.^e The median for the past eight years is 5.5%.

MDT utilized race conscious measures between 2012 and 2014, so MDT also evaluated DBE participation for the most recent, solely race neutral years to determine if that would have an impact on the current capacity calculation. As shown in Table 1, DBE utilization for Federal Fiscal Years 2015 through 2018 ranged from a high of 7.6% of total dollars to a low of 4.9%. The median for the most recent four years is 5.6%. Since DBE participation is similar whether race neutral or race conscious measures were utilized, MDT used 5.6% as the adjustment for current capacity.

Employment, Education, Training, and Unions

The 2016 Disparity Study conducted analysis related to marketplace conditions in Montana and found that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Montana construction and engineering industries.^f Specifically Native Americans working in the Montana construction industry were less likely than non-minorities to own construction businesses and women working in the Montana engineering industry were less likely than men to own engineering companies.

Keen Independent estimated the availability of minority- and women-owned firms but for the effects of race- and gender-based discrimination and determined there could be a possible 4.33% upward adjustment to the base figure.^g

^e Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program, Part III A 5
<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

^f 2016 MDT Availability and Disparity Study, Chapter 9, Page 4.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

^g 2016 MDT Availability and Disparity Study, Chapter 9, Page 5, Figure 9-3.
https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

The upward adjustment for barriers related to entry and advancement and business ownership is based on potential DBEs (minority- and women-owned firms). MDT chose not to do this upward Step 2 adjustment to be consistent with the Step 1 Base Figure, which evaluates current DBEs and not potential DBEs. While not making an adjustment to the base figure, MDT will continue to assist these firms to reduce barriers with race neutral measures such as training.

Financing, Bonding, and Insurance

The 2016 Disparity Study found quantitative and qualitative evidence of disadvantages for minorities, women, and minority- and women-owned firms relating to access to financing and bonding.^h Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified.ⁱ As a result, MDT chose not to make this Step 2 adjustment.

Other Factors

The other factors examined in the 2016 Disparity Study were related to success of minority- and women-owned firms relative to majority-owned businesses in the Montana marketplace. The Study noted quantitative evidence that minority- and women-owned firms are less successful than majority-owned firms and face greater barriers in the marketplace.^j There was also qualitative information that suggests discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Montana transportation contracting industry.^j Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified.ⁱ As a result, MDT chose not to make this Step 2 adjustment.

Final Step 2 Adjustments to Step 1 Base Figure

After examining all evidence available and evaluating all Step 2 adjustment criteria, MDT will apply the median past DBE participation (5.6%) to the Step 1 Base Figure (7.41%) by calculating the average:

$$(7.41 + 5.6) / 2 = 6.5\%$$

MDT adjusts the Step 1 Base Figure to an overall DBE participation goal of 6.5%.

Race Conscious / Race Neutral Evaluation

MDT used both race conscious and race neutral measures in Federal Fiscal Year 2013 and a portion of 2014 to achieve its overall goal. Table 2 indicates the race neutral

^h 2016 MDT Availability and Disparity Study, Chapter 9, Page 7.

https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

ⁱ 2016 MDT Availability and Disparity Study, Chapter 9, Page 9.

https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

^j 2016 MDT Availability and Disparity Study, Chapter 9, Page 8.

https://www.mdt.mt.gov/other/webdata/external/research/docs/research_proj/disparity_2016/final_report.pdf

achievements based on awards and commitments from the Uniform Reports for Fiscal Years 2011 through 2018.

Table 2 – Race Neutral Participation for Federal Fiscal Years 2011 through 2018

Federal Fiscal Year	Overall DBE Goal	% Total DBE Utilization	% of Race Neutral DBE Participation
2018	6.14%	5.1%	5.1%
2017	6.14%	6.2%	6.2%
2016	3.55%	7.6%	7.6%
2015	3.55%	4.9%	4.9%
2014	5.83%	6.7%	5.9%
2013	5.83%	6.0%	3.6%
2012	5.83%	3.9%	3.9%
2011	5.83%	4.1%	4.1%

The median race neutral DBE past participation from 2011 through 2018 was 5.0%. When evaluating the most recent years with solely race neutral measures (2015-2018), the median race neutral DBE participation increased to 5.7%. While the median race neutral participation is less than the overall goal, the data also shows that contractors and consultants can meet the overall goal solely through race neutral measures and have done so in recent years. As a result, MDT proposes to meet the 6.5% overall DBE goal solely through race neutral means.

MDT evaluates DBE participation for awards and commitments on a monthly basis and reports DBE utilization to FHWA on a semi-annual basis. If the Uniform Report indicates that MDT fell short or will fall short of meeting the overall goal, MDT will re-evaluate how much of the overall goal can be met through race neutral means and implement race conscious measures (i.e. project specific goals) to meet the remainder of the goal.

Race Neutral Initiatives

MDT has implemented several race neutral measures to ensure the maximum feasible portion of the overall goal is achieved through race neutral means, in accordance with 49 CFR 26.51. These include:

- 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.
- A Business Development Program where MDT works with DBEs 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.

- MDT continues to develop its relationship with trade organizations including, Montana Contractor's Association (MCA) and American Council of Engineering Companies (ACEC), by training and educating contractors and consultants about the DBE program and the overall goal. 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 implemented aspirational DBE goals on construction contracts and plans to implement on engineering contracts. This allows MDT, contractors, and consultants to know what may be expected for DBE utilization on certain projects in order to achieve the overall goal but does not impose penalties or require information for good faith efforts if the aspirational goal was not met on a specific project.

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

On June 20, 2019, MDT published its proposed DBE goal and methodology (2020-2022) for contracts using FHWA funds. MDT posted the information on MDT's website and sent the information to interested parties, such as Montana Contractor's Association, American Council of Engineering Companies- Montana Chapter, MDT's certified DBE firms, and partnering agencies including the Native American Development Corporation, Montana Indian Business Alliance, and Small Business Development Centers.

The proposed Goal Methodology is available for review on MDT's website and at MDT's Headquarters Building, Office of Civil Rights, 2701 Prospect Avenue, Room 201, Helena, Montana.

MDT will hold a virtual public hearing on June 26, 2019 concerning the proposed overall DBE goal. MDT is seeking public comments about its proposed overall three-year DBE goal, which will be accepted from June 20 through July 20, 2019. Comments can be provided in the following ways:

- Verbal testimony: at virtual public hearing
- Email: mdtcrform@mt.gov
- Mail: MDT Office of Civil Rights, PO Box 201001, Helena, MT 59620

MDT will review all comments and make any necessary adjustments to the goal and submit to FHWA by August 1, 2019.