

**FY 2011  
MONTANA DEPARTMENT OF TRANSPORTATION (MDT)  
DBE GOAL METHODOLOGY**

MDT, in accordance with USDOT guidelines, determines MDT's Disadvantaged Business Enterprise (DBE) Program Annual Participation Goal (APG) for the upcoming federal fiscal year.

MDT calculates the APG using the criteria set forth in 49 CFT 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 on USDOT-assisted contracts in the State of Montana. The determination will reflect a level of participation that MDT would expect have in the absence of discrimination or other socio-economic barriers.

**Step 1: Setting the APG Base Figure**

In determining Step 1, the base figure for the relative availability of DBEs, MDT will use the method identified in 49 CFR Part 26.45 (c)(3).

*(c) Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.*

*(3) Use data from a Disparity Study. Use a percentage figure derived from data in a valid applicable Disparity Study.*

The use of the MDT Disparity Study as the first step in the goal-setting process is a change from prior years when the MDT Bidders List was used. This change was made because the MDT Disparity Study was completed in August 2009.

**The result of Step 1 in the goal-setting process is a 5.83% base figure for the APG.** This percentage was established based on the availability of DBE and non-DBE subcontractors that were identified within the state of Montana through the disparity study that was completed in August 2009 (See table 4-6 on page 4-8, page 1-2 and page ES-4) on MDT's website:

[http://www.mdt.mt.gov/research/docs/research\\_proj/disparity/final\\_report.pdf](http://www.mdt.mt.gov/research/docs/research_proj/disparity/final_report.pdf).

Through a business survey, demographic and capability data were collected and analyzed. Several methods were utilized to collect anecdotal data from individuals representing both DBE and non-DBE businesses. The data was collected were a

result of: personal interviews, public hearings and telephone surveys. After the information was obtained, a statistical derivative was created that determined the percentage of firms that would be considered DBE and non-DBE based on the firms contacted in the course of the disparity study. The data parameters were then applied to the firms to determine if they were ready, willing and able. D. Wilson Consulting Group, LLC determined that there were 5,714 firms that indicated an interest in performing construction and/or professional services work in Montana by registering their firm with one or more of the data sources listed here.

Dun and Bradstreet Montana Firm Database (2007)

Montana Secretary of State

Montana Department of Labor and Industry

Montana Contractor's Association Vendors

State of Montana Electrical Permits

National Minority Suppliers List

National Center for American Indians Vendors

DBE Bidders' List by NAICS

MDT Civil Rights DBE Suite

PES/LAS Vendor List

MDT Departmental Vendor Lists

Of that number, D. Wilson Consulting Group, LLC determined that DBE firms represent approximately 5.83 percent (or approximately 333 firms) of the construction and professional services firms available to work on MDT contracts.

## **Step 2: Adjustments to the APG Base Figure**

In past years, the APG base figure was adjusted in a second step as identified in 49 CFR Part 26.45 (d)(1)(i) by factoring in past DBE participation on highway construction and design state-funded and federally-funded contracts for a final, modified percentage.

*(d) Step 2. Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.*

- (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,:*

MDT considers participation of DBEs in transportation contracts. DBEs were awarded 3.72 percent from May 1, 2007 – April 30, 2008, 2.56 percent from May 1, 2008- April 30, 2009, and 1.44 percent from May 1, 2009 – April 30, 2010. The median figure is 2.56 percent.

Using the availability of 5.83% and subtracting the average usage of 2.56% yields 3.27%. Based on the current trend that the participation is almost non-existent, MDT will need to utilize race conscious goals to achieve the proposed FY2011 Annual DBE Goal.

According to the disparity that was conducted, “if the utilization rates decrease below availability, the MDT should consider implementing race-conscious measures for the DBE groups affected.” At this point, all DBE groups have been affected. With the current availability and capacity of DBEs in Montana, MDT feels that the only way to achieve any sort of goal is to have a race conscious component to the annual goal.

**Based on the best information and analysis described herein, MDT has set the FY2011 Annual Goal to 2.56% race neutral, 3.27% race conscious.**

**Means MDT will use to Meet the Overall Annual DBE Goal (49 CFR 26.51)**

49 CFR Part 26.45 (f)(3) direct MDT, “*You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively.*”

As outlined in CFR 26.51(a), MDT must meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

**Disparities in the utilization of minority- and women- owned firms.** In general, the D. Wilson Disparity Study indicated that Asian Pacific Americans and Hispanic Americans were significantly underutilized as subcontractors with disparity indices of 70.72 and 65.59 respectively. Nonminority women were underutilized with a disparity index of 86.16. All other DBE groups were overutilized. Particularly, when you review Table ES-2 and Table ES-3 from the Disparity Study, Table ES-2 shows that all DBE Groups were overutilized as subcontractors on construction contracts and Table ES-3 shows that all DBE groups were significantly underutilized as subcontractors.

**Appropriate measures to respond to the identified disparities.** Chapter 8 of the Disparity Study includes recommendations for implementation of neutral measures

addressing the above disparities. In particular, MDT assistance is needed to build capabilities and reduce barriers for minority- and women-owned firms seeking MDT contracts. MDT can implement compliance procedures, review the procurements for Professional Services, establish better methods for data collection and continue to set goals to ensure that the DBE program is increasing DBE capacity and finding more work for the DBEs.

**Summary.** An overall recommendation from the Disparity Study was for MDT to further invest in technical assistance and other neutral measures and evaluate their success before considering whether any race-or gender-conscious measures are needed. From Disparity Study Chapter 8:

MDT should implement a race-neutral program, as described in Section 8.4, to include a small business program. In the area of construction, the availability of DBEs is so low that MDT should focus on assisting DBE businesses to increase capacity; and, identify new DBE businesses to participate in its program. The construction program should be monitored carefully to ensure that the DBE firms continue to participate at their levels of availability. If the utilization rates decrease below availability, the MDT should consider implementing race-conscious measures for the DBE groups affected.

Chapter 8 of the Disparity Study provides detailed recommendations for continued and new neutral program elements. MDT is in the process of evaluating these recommendations and developing new neutral program elements. It will require time to establish the new program and strengthen the program. While evaluating recommendations, the participation of all DBEs continues to fall to almost no participation at all, couple that with the fact that DBE availability has increased by over 14 percent, MDT feels that a solely race neutral goal will not fulfill the expectations of the program.

As a result, MDT proposes to meet the FFY 2011 annual DBE goal solely through both race neutral and race conscious measures. MDT will continue to monitor participation of minority- and women-owned firms in its contracts and collect qualitative information concerning marketplace conditions to gauge whether the neutral and conscious efforts are addressing the disadvantages identified for DBEs in the Disparity Study.

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

First, MDT issued a Needs Assessment to solicit input from minority, women's and general contractor groups, and MDT employees which could have information concerning the availability of disadvantaged and non-disadvantaged businesses. The Needs Assessment addressed the effects of discrimination on opportunities for DBEs and MDT's efforts to establish a level playing field for the participation of

DBEs. The Needs Assessment takes place each year in January when contractors and staff are more available to take the time to complete the information requested.

MDT meets every fiscal year with each DBE personally to retrieve information on the current state of business in Montana, what DBEs are struggling with and how can the supportive services program increase the DBEs capacity and availability.

MDT meets every month with the Montana Contractor's Association to discuss and educate the Montana Contractor's Association regarding the DBE program and the availability of DBEs, the capacity of DBEs and the newest certified DBEs so they can communicate that with their membership and the membership will then have the opportunity to conduct business with DBEs.

MDT has determined that these meetings were invaluable in accessing information that affects the DBE firms on a daily basis and will continue with one-on-one meetings as well as the monthly MCA meetings to ensure MDT can gather as much information as possible to assist in the goal setting methods.

MDT also recently formed the DBE focus group which includes DBEs, both highway and non-highway related to discuss, on a quarterly basis, what is going on in the industry, how to improve availability and improve capacity. This has been a very exciting group as all DBEs, because they are small business owners, want to learn from each other and want to help each other to succeed.

MDT is constantly revising the DBE Program and Supportive Services based on the Disparity Study and the recent outreach to all DBEs. This includes continued efforts to build the capabilities of DBEs through targeted assistance. In addition to these actions, MDT will continue to monitor and analyze DBE participation on current and future MDT projects and make adjustments as necessary.

The MDT has taken affirmative steps, utilizing guidance under 49 CFR § 26.51(b), to increase DBE participation. MDT must use innovative means to increase participation and demonstrate the program is being administered in good faith. MDT performs these functions through the DBE Supportive Services Program and other means as allowed under the DBE Program Guidelines and 23 CFR § 230.204, rather than waiting passively for DBEs to participate:

**i. Supportive Services**

- Immediate and long-term business management, record keeping, financial and accounting capabilities;
- Long-term development assistance to increase opportunities to participate in more varied and significant work, and to achieve eventual self-sufficiency;
- Programs on contracting procedures and specific contract opportunities;
- Assistance in obtaining bonding or financing;
- Assistance to start-up firms, particularly in fields with historically low DBE participation; and

- Identification of potential highway-related DBEs and prequalification assistance
- ii. Outreach and Networking**
  - MDT is reestablishing the MCA (Montana Contractor's Association)/DBE group comprised of DBE contractors to advise on DBE issues, included but not limited to, goal setting, outreach, training, etc.
  - Provide outreach to firms through MDT's partnership with the DBE Business Resource Centers to increase capability of DBE firms to successfully participate on highway contracts
- iii. Complaint Procedures**
  - MDT has implemented procedures within the DBE program to effectively process and react to complaints of discrimination in the operation of the DBE program. These procedures ensure prompt, uniform and fair responses to allegations of unlawful conduct so DBEs, non-DBES and other interested parties can have confidence in the integrity of MDT's operations.

### **Submission and Publication of APG**

MDT will submit the overall fiscal year APG to the FHWA Division Administrator by August 1 of each third year. A Public Notice regarding the proposed APG will be published at the same time. The Public Notice will inform the public that the APG and a description of how it was selected are available for inspection during normal business hours at the MDT Headquarters Building, Civil Rights Office, or online for 30 days from the date of the publication. MDT will accept comments on the APG for 45 days from the date of publication. The Notice will be published in the general-circulation media throughout Montana in twenty three counties, the DBE Newsletter, e-mails to TERO officers and DBEs, Economic Development Centers and the Montana Contractor's Association. MDT will summarize any comments received during the 45-day comments periods and will transmit a copy of this summary to FHWA.

### **Outreach Summary 2011 DBE Goal**

The following is the summarized input received from the outreach conducted as part of the Montana Department of Transportation (MDT) 2011 DBE goal setting process.

Participants were identified through general knowledge of organizations and past networking by MDT employees.

Meetings were conducted across Montana with Economic Development agencies, Procurement agencies, Small Business Administration and the Montana Contractor's Association on the following dates:

October 2, 2009 – Economic Development Agency, Bozeman, MT  
 October 13, 2009 – Economic Development Agency, Great Falls, MT

November 2, 2009 – Small Business Agency, Helena, MT  
November 10, 2009 – Economic Development Agency, Helena, MT  
November 12, 2009 – Economic Development Agency, Great Falls, MT  
December 15, 2009 – Economic Development Agency, Helena, MT  
December 16, 2009 – Economic Development Agencies, Procurement Agencies, SBA, Helena, MT  
December 16, 2009 – Montana Contractor’s Association, Helena, MT  
January 19, 2010 – Economic Development Agency, Helena, MT  
January 20, 2010 – Montana Contractor’s Association, Helena, MT  
January 28, 2010 – Procurement Agency, Helena, MT  
February 17, 2010 – Montana Contractor’s Association, Helena, MT  
February 19, 2010 – Economic Development Agency, Missoula, MT  
March 16, 2010 – Economic Development Agency, Helena, MT  
April 20, 2010 – Economic Development Agency, Helena, MT  
April 21, 2010 – Montana Contractor’s Association, Helena, MT  
April 27, 2010 – Economic Development Agencies, Procurement Agencies, Small Business Administration, Glasgow, MT  
April 28, 2010 - Economic Development Agencies, Procurement Agencies, Small Business Administration, Sidney, MT  
May 6, 2010 – Economic Development Agency, Great Falls, MT  
May 11, 2010 - Economic Development Agencies, Procurement Agencies, Small Business Administration, St. Regis, MT  
May 13, 2010 - Economic Development Agencies, Procurement Agencies, Small Business Administration, Ronan, MT  
May 19, 2010 – Montana Contractor’s Association, Helena, MT  
May 20, 2010 – Economic Development Agency, Ronan, MT  
June 9, 2010 – Economic Development Agencies, Procurement Agencies, Small Business Administration, Miles City, MT  
June 15, 2010 - Economic Development Agencies, Procurement Agencies, Small Business Administration, Butte, MT  
June 16, 2010 – Montana Contractor’s Association, Helena, MT

DBE Supportive Services listened to the concerns of DBEs and the public at the above mentioned events to get more information on supporting DBES and what our agency can do to support DBEs, what our agency can do to make the DBE business stronger and to help to determine what methods should be used to establish the future goals for the program.

DBEs were personally contacted throughout the year to get information on what they need to succeed in the construction industry. Supportive Services personnel met with the some of the DBEs every month. Information gathered during those meetings was used to establish where greater need for supportive services is and what the DBEs see as opportunities to accurately set the goal for the future.

**Category 1: Positive and negative impacts of the DBE program on DBE and non-DBE companies and/or the highway construction industry. (Project goals, compliance, etc.)**

### Positive Impact

Most DBEs feel that the program has helped them get jobs.

### Negative Impact

They do feel that no project goal has hurt them because not all contractor's use Good Faith Efforts to actually solicit bids from DBEs. It is clear that no project goals has decreased the use of DBE companies.

Some non-DBE companies stated that it was not difficult to use DBEs on projects, but they were either not aware or didn't think it was important to send in the contractor payments so the DBE office could record actual participation on projects. (All contract language was changed in May 2009 requiring prime contractors to submit payments to the DBE office. A letter is also sent to the prime outlining that once a payment has been made to the subcontractor, the payment information must be sent to the DBE office.)

### No Impact

According to the non-DBE firms, having no goals has NOT made an impact on Primes using DBEs as subs. If the primes find a sub they like, they use that sub, DBE or not.

## **Category 2: Positive and negative impacts of the MDT DBE Supportive Services Program on DBE and Non-DBE companies and/or the highway construction industry. (Trainings, support advocacy, reimbursements, etc.)**

### Positive Impact

Many companies (both DBE and non-DBE) stated that the training opportunities that DBE Supportive Services provided were very positive and informative. Some of the training opportunities have assisted DBEs with getting the help they need to be more confident when bidding for MDT contracts. Some training that was conducted last year was bidding, marketing, networking, doing business with the State and grant writing.

Feedback also indicated that the DBE reimbursement program is a big help to the DBEs. DBEs use the reimbursement program to attend annual trainings and to learn new things. Having that funding available to DBEs has proved invaluable to small businesses who must keep up, but do not have the funds to do so.

DBE companies stated that free plans they received from the Contract Plans bureau are helpful.

DBE companies also stated that they appreciate the DBE Supportive Services program because the training they can get is useful, current and very informative. The DBE Supportive Services program continues to establish what is needed by DBE firms to expand their capabilities and grow their business. The DBE Supportive Services staff is very knowledgeable about the program and providing assistance to the DBE firms. SS staff has developed great relationships with the Native Americans on various reservations and the Small Business Development Centers consequently increasing networking and information gathering.

### Negative Impact

Some DBEs stated that it was frustrating when the SS reimbursements ran out. It was explained to them that the funding is limited and it is on a first-come, first-serve basis.

### **Category 3: Whether or not discrimination has affected the opportunities of DBE and/or Non-DBE companies competing for work on federal-aid projects. (Specific situations)**

DBEs are concerned when there are no project-specific goals. Some feel that without project specific goals, they will not be looked at by the primes. The primes state that if the DBE does good work, they will continue to be used with or without a goal. DBEs also stated that if you didn't know the prime, it was difficult to break into the industry. DBE Supportive Services is planning a "Meet & Greet" networking session with primes and DBEs to help with this situation.

Some DBEs feel that they are being "shopped" when a prime calls them about information on their bids. Sometimes the DBE bid is lower but when it all falls out, someone else gets the bid. This affects the DBEs because they are afraid to bid when they will just get beaten out by another firm.

A new DBE, who is also 8a certified by the SBA demonstrated that because her business is primarily involved in a "mans" field of work, she is discriminated against and at times, has to send her partner, a man, to bid on projects because some firms will not even speak to her because she is a woman.

### **Category 4: Barriers encountered by DBE and/or non-DBE firms. (Bidding projects, performance of work, getting bonding, cash flow, etc.)**

With the advent of the recession and the recovery assistance and some states experiencing less construction projects, staff has seen more out of state companies coming to Montana to be certified as a DBE, but also to bid as a Prime. There have been several projects this year that have been first time projects for those primes. Bigger companies are bidding on smaller projects to keep their staff employed and smaller companies are bidding more often.

Other barriers include paperwork needed to work on MDT projects including the pay process and the start up process. The varying federal and state regulations can make it difficult to understand and be compliant. Add to that, the continued reporting requirements for the Recovery money and it can be challenging for a small DBE company to keep up.

The current economy has had a negative impact on most businesses and has companies looking for other contracting opportunities. Residential builders are looking for niches in the industry that they can market and use their current resources to continue on with the business. This means that newer, less experienced contractors are submitting for federal and state contracts. The concern at this point is just trying to stay in business, trying to keep their core employees working. A lot of companies are not hiring back their seasonal workers because the work just isn't there. There have also been two DBEs that recently folded their businesses because they could no longer keep the business viable.

DBE companies who are trying to bid as a prime run into bonding, cash flow, and start-up capital problems. Some of these companies can bond for a small job but cannot compete on the bigger jobs due to bonding issues. It is also extremely difficult, if not impossible to obtain bonding on a reservation. Bonding companies are just not willing to work with Indian owned businesses that are located on the reservation because if the bond is defaulted on, they have no recourse but tribal court and most times tribal court will rule in favor of the tribal member.

Becoming a certified DBE can also be a barrier because the paperwork is long and involved and taking time out of bidding and working to fill out paperwork is just not a priority for some. The paperwork requires administrative and language skills which some company owners see as barriers.

Marketing, insurance, bonding, estimating, availability, and understanding a contract and knowing what paperwork is needed can be major barriers for those companies that can do the work, but have difficulties managing the administration of a contract. Lack of assertiveness, aggressiveness in marketing, financing and interacting with other companies can also be a barrier for small companies.

Some barriers that were discussed with the tribes and other DBEs include lack of cash flow, travel costs for training, bonding, administrative abilities to fill out the paperwork. Most tribal members know that they have to be better than the other guy to get the work.

**Category 5: Recommendations and/or areas MDT should consider in the determination of the MDT DBE annual goal and/or improvement to the MDT DBE program.**

Some potential DBEs asked what they get from the program if there are no project goals, what will the program do for them? For FY2011, MDT is proposing race

neutral and race conscious goals in order to get closer to achieving the goals. It is clear that without goals, contractors in Montana will not use DBE firms. MDT also need to be more proactive on assisting DBEs on succeeding in all areas of their business and that includes getting them to more training and convincing them that training is necessary to expand and grow their businesses.

Some companies have stated that they need specialized training to conduct their business. The specialized training is very specific and very expensive, so MDT will be working towards figuring out a way to provide the training and get it to the largest audience.

Another area that needs improvement is graduating DBEs, which is the ultimate goal of the program. Some DBEs want to stay small, but the goal of the program is to graduate out. When DBEs do not graduate, it can create an unfair advantage for those DBEs that have not reached their full potential in the program. There were a few that graduated out this year due to Personal Net Worth limitations.

Good Faith Effort needs to be monitored to a greater extent. To start the process on this, MDT has implemented a requirement on DBE Quote request to be submitted at least 5 business days before the quote is due. Good Faith Effort continues to be a big issue and MDT is constantly working on other ways to determine Good Faith Effort and to establish what a Good Faith Effort is including looking at including a Good Faith Effort form in the contracts for future projects.

#### **Category 6: Additional Misc. Information**

During these difficult economic times, most companies are finding other ways to keep working. The difficulty is that these companies are taking on more jobs with more regulations to make ends meet which can cause hardships on companies as far as administration goes. On the up side, these companies are learning to diversify and look to other projects to keep themselves busy. It is very encouraging that they have been forced to look at what else they can do instead of relying on what they always do.

Networking with others and learning to collaborate on projects is definitely key to maintaining or expanding a business. The DBE program is looking for other ways to teach and facilitate networking. Learning what other companies do can only help DBEs in expanding or collaborating with others.

Several firms that were contacted believe that the DBE program is vital to the success of small businesses and hope for continued focus on the program and additional support that the program provides.