

## **FHWA DBE Goal Methodology Montana Department of Transportation Federal Fiscal Year 2023 – 2025**

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 relationship to all comparable businesses which are known to be available to compete for FHWA-assisted contracts in Montana.

For Federal Fiscal Years 2023 – 2025, MDT has established an overall DBE goal of 6.6% 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 (9<sup>th</sup> 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 2022 Disparity Study compiled by BBC Research & Consulting (BBC) to set the base figure. According to the report, 91% of MDT contract dollars during the study period went to firms located within Montana<sup>a</sup>. Therefore, Montana was determined to be the market area.

BBC's analysis indicates that the availability of current DBEs for MDT's FHWA-funded transportation contracts is 6.9%.<sup>b</sup>

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

49 C.F.R. § 26.45(d) requires MDT examine all of the evidence available in its jurisdiction, including analyses performed in the 2022 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;

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<sup>a</sup> 2022 MDT Disparity Study, Chapter 6.

<sup>b</sup> 2022 MDT Disparity Study, Chapter 10.

- 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**

The 2022 MDT Disparity Study calculated past DBE participation in MDT’s FHWA-funded work based on Uniform Reports of DBE Awards or Commitments and Payments for Federal Fiscal Years (FFY) 2015 through 2020. MDT included FFY 2021, the most recent data available. Table 1 indicates DBE utilization based on awards or commitments for the past seven years.

**Table 1 – DBE Utilization for FFY 2015 through 2021**

<b>FFY</b>	<b>% DBE Utilization</b>
2021	5.1%
2020	8.1%
2019	5.6%
2018	5.1%
2017	6.2%
2016	7.6%
2015	4.9%

DBE utilization ranged from a high of 8.1% of total dollars to a low of 4.9%. 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.<sup>c</sup> The median for the past seven years is 5.6%.

### **Employment, Education, Training, and Unions**

The 2022 MDT 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 human capital, financial capital, and business ownership in Montana. Specifically, Native Americans working in the Montana construction industry were less likely than non-minorities to own construction businesses and Hispanic Americans were less likely than non-minorities to own a professional services business. Based on information related to barriers in business ownership, BBC estimated the base figure could be adjusted upward to 7.3%.<sup>d</sup>

<sup>c</sup> 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>

<sup>d</sup> 2022 MDT Disparity Study, Chapter 10.

### ***Financing, Bonding, and Insurance***

The 2022 MDT Disparity Study found quantitative and anecdotal evidence that minorities, women, and minority- and women-owned firms in Montana do not have the same access to financing, bonding, and insurance as those owned by white American men. Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified.<sup>e</sup> As a result, MDT chose not to make this Step 2 adjustment.

### ***Other Factors***

The other factors examined in the 2022 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 and anecdotal evidence that minority- and women-owned firms are less successful than majority-owned firms and face greater barriers in the marketplace.<sup>f</sup> Although the analysis indicates an upward adjustment could be made to address these barriers, the impact of those factors could not be quantified. 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%) and the business ownership upward adjustment (7.3%) to the Step 1 Base Figure (6.9%) by calculating the average:

$$(6.9 + 5.6 + 7.3) / 3 = 6.6\%$$

MDT adjusts the Step 1 Base Figure to an overall DBE participation goal of 6.6%.

## **Race Conscious / Race Neutral Evaluation**

As shown previously, MDT's race neutral median DBE past participation from 2015 through 2021 was 5.6%. 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 6.6% 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 consider implementing race conscious measures (i.e. project specific goals) to meet the remainder of the goal.

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<sup>e</sup> 2022 MDT Disparity Study, Chapter 10.

<sup>f</sup> 2022 MDT Disparity Study, Chapter 10.

## 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:

- MDT has implemented a Business Development Program to assist DBEs in gaining the ability to compete in their business industry.
- 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. This allows MDT and contractors 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 September 16, 2022, MDT published its proposed DBE goal and methodology (2023-2025) for contracts using FHWA funds. MDT posted the information on MDT's website and sent the information to interested parties, including 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.

## Draft DBE Goal Methodology as of 9/16/2022

The proposed Goal Methodology was 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 September 28, 2022 concerning the proposed overall DBE goal. Public comments about its proposed overall three-year DBE goal will be accepted through October 16, 2022 and may be provided through verbal testimony at the hearing, email, or mail.

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