



Disadvantaged Business Enterprise Goal Setting Methodology for Federally Assisted Highway Projects

Federal Fiscal Year 2019-21

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In compliance with Title 49, Part 26 of the Code of Federal Regulations (49 CFR Part 26)

Introduction

MaineDOT's Annual DBE Goal for FFY 2019-21

Pursuant to 49 CFR 26, the Maine Department of Transportation (MaineDOT) has analyzed data and determined that, for federal fiscal years (FFY) 2019-21 the overall annual Disadvantaged Business Enterprise (DBE) attainment on Federal Highway Administration (FHWA) funded projects is **2.4%**.

MaineDOT Relevant Market Area

MaineDOT defines its geographic market area (“GMA”) as the State of Maine. To determine the GMA, we analyzed the ratio of federal program dollars awarded to in-state prime contractors to total federal program dollars awarded, and the amount of program dollars awarded to in-state subcontractors to the total amount of subcontract dollars awarded during FFY 2017.* We found that a substantial majority of prime contract dollars (**77.80%**) were awarded to in-state contractors and a substantial number of subcontracts (**76.12%**) were awarded to in-state firms, as shown in **Figure 1** below.

Data Description	Total Program Awards	Amount Represented by Maine Firms	Maine Market %
Geographic distribution of Prime Contract \$	\$256,772,942.00	\$199,774,429.00	77.80%
Geographic distribution of Participating Subcontract \$	\$53,939,924.00	\$41,061,762.00	76.12%
Total State Market %	\$310,712,866.00	\$240,836,191.00	76.96%

Figure 1

Goal Methodology

Step 1 - MaineDOT Base Goal Setting

DBE Directories and Census Data

Pursuant to 49 CFR 26.45(c)(1), to determine the **baseline figure** for our 2019-2021 DBE goal we used the current MaineDOT DBE Directory and the most recent US Census County Business Patterns (“CBP”) data available to determine the percentage of ready, willing and able Maine DBEs compared to the number of ready, willing and able

* For purposes of this document “contractors” and “subcontractors” include both construction contractors and consultants.

businesses available in the GMA that perform work in the same North American Industry Classification Systems (“NAICS”) codes.

First, we determined the number of ready, willing and able DBEs in the GMA from the MaineDOT DBE directory along with the NAICS codes that correspond to the types of transportation-related work performed by each DBE. (Although several DBEs have more than one NAICS code, we used only one such code per firm to avoid duplication.) Using US Census CBP data for Maine, we then determined the number of all ready, willing and able businesses available in the GMA that use the same NAICS codes.

To supplement our DBE Directory, the Civil Rights Office staff also searched for potential and real DBE businesses. The search included an estimate of women-owned firms provided by the Maine Women’s Business Center (2018) that do business in the applicable NAICS codes. We also obtained the Small Business Administration Business Development program’s Section 8(a) certification list (2017) and found businesses on that list that are minority-owned and transportation-related. We identified a total of **36** potential firms from the above-mentioned sources.

At the time of this calculation, MaineDOT found a total of 59 DBE firms in its directory determined to be ready willing and able to work on federally funded projects in the defined market area and in transportation-related NAICS codes. This number includes both construction and consultant firms. We then tallied the number of Maine firms in the corresponding NAICS codes from the CBP database. The NAICS codes for those firms yield a total of 3901 firms. By dividing by **95** (59+36) by 3901 we find that DBE firms and potential DBE firms make up **2.4%** of the total number in Maine.

2018 NAICS Code	Description	Number of Maine DBE firms	Number of Maine firms per CBP database
212321	Construction Sand and Gravel Mining	1	8
237310	Highway/Street/Bridge Construction	6	85
237990	Heavy and Civil Engineering	1	38
238110	Poured Concrete Foundation and Structure Contractors	1	159

238140	Masonry Contractor	3	140
238910	Site Preparation	1	515
238990	Paving, Driveway/Parking Lots, Guardrail - All Other Specialty Trade Contractors	1	168
423840	Industrial Supplies Merchant	1	24
484110	General Freight Trucking	1	119
484210	Dump truck hauling, heavy hauling - Used Household & Office Goods Moving	1	34
484220	Specialized trucking, local	1	293
485111	Mixed mode transit	1	15
488490	Other support activities for road transportation	1	19
541320	Landscape Architecture	5	22
541330	Engineering Services	11	307
541340	Drafting Services	2	15
541360	Geophysical surveying and mapping	1	2
541370	Surveying and Mapping	1	101
541380	Testing Laboratories	1	32
541430	Graphic Design	4	63
	Administrative management/general management	1	239
541613	Marketing Consulting	3	120
541620	Environmental Consulting	1	70
541690	Other Scientific and Technical Consulting Services	1	72
541820	Public Relations Agencies	1	31
561320	Temporary Help Services	4	118
561720	Janitorial Services/Site Cleaning	2	350
561730	Landscaping	1	742
	TOTALS	59	3901

Figure 2

The **base figure** for the relative availability of DBEs in MaineDOT GMA was derived by dividing the number of DBEs by the number of all businesses in the corresponding NAICS codes as shown in **Figure 2**, above:

$$\frac{95(59 \text{ total DBE firms} + 36 \text{ potential DBE firms})}{3901 \text{ (CBP data all firms)}} = 2.40\%$$

Other Methods Considered

Weighting by Work Type

MaineDOT acknowledges that weighting by work type may help ensure that our goal calculation figure is accurate because it would reveal a base figure that reflects the proportion of dollars to be spent within each industry to the total contract dollars to be spent; however, we do not currently have data available to show the proportion of dollars anticipated to be expended on specific industries for our federally funded projects. Consequently, we do not use weighting. Prior to preparing MaineDOT's next DBE goal setting methodology in 2021, we hope to work with our information technology office to develop a program that will assist the CRO in compiling sufficient data to weight the proportion of dollars expected to be spent on our upcoming projects by specific work types.

Bidders List

In accordance with the requirements of 49 CFR Part 26, MaineDOT e-mailed all prime contractors asking them to identify DBE and non-DBE firms that submitted quotes as subcontractors from April 1, 2017 - March 31, 2018. However, MaineDOT opts not to use this information because it does not reflect the real availability of DBE contractors. Maine's short construction season requires that much of our highway work for the year must be performed within a 5-month time frame. This limits the capacity of smaller firms. Specialty work, like striping, guardrail and landscaping, often happens at the end of the season and must be done in a limited time for projects statewide. Some of our smaller firms are in high demand and may refuse multiple offers. Expanding a small business is often a great challenge to owners who do not wish to take on the added employee responsibility. Maine's large geographical area is also an issue, as smaller companies may find it difficult to mobilize long distances for projects, but may bid on the projects just to ensure that they are considered.

The difficulty in quantifying these concerns makes the Bidders List a poor measure of DBE attainment for MaineDOT. For all these reasons, we choose not to use the Bidders List.

Disparity Studies

MaineDOT has contacted major airports and Municipal Planning Organizations in the GMA and found that no disparity studies exist for this area.

Step 2 – Adjustments to Goal – Section 26.45(d):

Evidence Considered:

Pursuant to 49 CFR 26.45 (5)(d), MaineDOT staff has examined all evidence available to determine what adjustments may be necessary to the base figure above. Based on this examination MaineDOT has determined that the base figure is sufficient to both encourage DBE participation and to take into account recent and future changes that might impact our attainment in the coming years.

1. Median Past DBE Participation

MaineDOT has assessed participation in our DBE program for the past 5 FFY years. That assessment provides a median attainment of 2.95 % (**Figure 3**) We believe that the median past participation attainment is similar enough to the base figure to not make an adjustment for past participation.

Past Participation

Year	Attainment
2017	2.25%
2013	2.60%
2016	2.95 % (median)
2014	3.50 %
2015	5.19 %

(Figure 3)

We also assessed actual subcontracting attainment and found that Maine prime contractors are making a good faith effort to hire DBE firms on our projects. In the past five fiscal years, Maine primes have hired DBE firms, on average, for approximately 29% or more of their subcontracting (**Figure 4**). The issues around attainment relate more to the dollar value of subcontracts versus the DBE community working on our contracts. These firms are crucial to our project work; however, they are limited in their ability to produce large contract amounts.

Percentage of Subcontracts

Year	Number of Subcontracts	Number of DBE Subs	% of DBE
2013	602	250	33%
2014	577	218	23%
2015	534	175	33%
2016	605	138	23%
2017	582	182	31%

(Figure 4)

In 2014, 2015 and 2016, MaineDOT secured DBE prime contracts in amounts over \$1 Million dollars (**Figure 5**).

DBE Contracts over \$1 Million

Year	Number of Contracts over \$1M	Total Amount(s)
2013	0	0
2014	1	\$1,116,432.00
2015	2	\$2,678,000.00
2016	2	\$4,000,000.00
2017	0	\$0

(Figure 5)

With most DBE firms being contracted as subcontractors, if we look at the DBE commitments for subcontracts in dollar value we find that prime contractors are securing DBE firms at an average rate of 15.4%. The following shows the total race neutral DBE percentages for the last 5 fiscal years (**Figure 6**).

Percentage of Subcontract dollars

Year	Total Subcontract dollars	Total DBE Dollars	% of DBE \$
2013	\$38,013,839.00	\$5,362,943.00	14%
2014	\$31,315,688.00	\$5,067,780.00	16%
2015	\$41,199,669.00	\$8,951,149.00	22%
2016	\$35,075,882.00	\$5,173,401.00	15%
2017	\$50,448,659.00	\$5,219,802.00	10%

(Figure 6)

This analysis demonstrates a good faith effort on the part of Maine’s contracting community to commit to hire DBE firms.

2. Disparity Studies

As discussed previously, MaineDOT has not conducted any disparity studies in the past three federal fiscal years. We contacted the State’s Metropolitan Planning Organizations and its major airports, and none of them conducted disparity studies or comparable study that may have provided information relative to the GMA. Therefore, no disparity studies were considered.

3. Other Related Evidence

No other evidence of the kind described in the regulations at 49 CFR 26.45(d)(2) was available to consider in determining whether an adjustment to the base figure is warranted.

Other Elements - Race and Gender-Neutral and Conscious Measures - Section 26.51

The Department's DBE Program goal of **2.4%** for FFYs 2019-21 will be achieved entirely through race and gender-neutral means. Contract goals will not be necessary for additional attainment. If we determine that we will not achieve the stated goal, we will take measures to do so, which may include targeted project goals.

Use of Supportive Services Program in Race-neutral Efforts

For the MaineDOT to meet its goal through race neutral means, it has contracted an agency to provide Disadvantaged Business Enterprises Supportive Services (DBE SS) Program in accordance with 23 CFR 230.204. This business development program aims to assist minority, women and disadvantaged owned firms to build strong businesses able to successfully compete when bidding for federally funded transportation projects and consultant contracts, thus increasing equal opportunity, competition and diversity in Maine's bridge and highway construction industry.

The following services are offered through MaineDOT's DBE SS Consultant with specific programs targeted for instruction. Tuition reimbursement for successfully completed classes taken by small business owners to grow and/or improve their business in the Federal-aid bridge and highway construction industry will also be allowed. This program:

- Provides technical and resource assistance with financial and business planning including accounting, invoicing and auditing practices, business planning, marketing/networking, and setting and achieving goals. Assists with bonding, financial assistance, lease agreements, taxes, fringe benefits, and payroll. Assures capability to comply with all FHWA requirements and paperwork regarding personnel, EEO, Title VI, DBE, AA, training and Davis Bacon and related Acts.
- Provides technical and general assistance with locating, processing, estimating, and submitting quotes for MaineDOT federal aid contracts. Surveys and reports the bid items DBEs can complete and shares this information on the web and with prime contractors. Offers guidance to DBEs regarding MaineDOT project plans and website to keep DBEs up to date with contract opportunities in their business areas.
- Provides technical support for computer systems, particularly CADD translation to Micro-station to be compatible with MaineDOT files and electronic bidding assistance (using the web and using BIDEX). Also, provides hardware/software technical support and webpage development as related to bridge and highway construction.
- Provides technical support and education regarding partnering with other consultants/contractors/agencies and how to create and deliver products or

services under a joint venture. Gives participating small businesses new tools to improve or expand their business capabilities.

- Provides technical assistance and education regarding reading, writing and understanding construction contracts and subcontracts; assistance in ensuring that contracts and subcontracts protect the interest of the DBE, including all phases of the work, and contain all needed language for compliance when working on a FHWA funded projects.
- Distributes a brochure regarding the DBE program and continues to educate contractors and consultants, as well as MaineDOT personnel, about the purpose of the program and their obligations under federally funded contracts. Develop ongoing opportunities for workshops, briefings and training sessions statewide. Educates the SBA's Small Business Development counselors and other entities about the DBE program.
- Holds networking/conferences in conjunction with the Maine SBA Office and other partners and offers matchmaking session between DBEs and prime consultants and contractors. Creates networking opportunities and other activities to promote DBE growth and quality including educational seminars.

In addition, the MaineDOT DBE SS Consultant uses a variety of methods to provide business development services and assess a firm's current qualifications. These include, but are not limited to:

- Documentation of a DBE's skills, experience and needs through development of a Business Needs Assessment, along with a practiced interview technique to successfully glean necessary information from clients;
- Individual Business Management Assistance to DBEs in the form of technical and resource assistance for financial and business planning, as well as public procurement specifically related to MaineDOT opportunities. Includes both in-house and external specialist resources to provide a wide range of advice and education.
- A rigorous two-year Business Development Program for those DBEs that have the potential and desire to participate.
- Computer and technical assistance to educate DBEs on electronic bidding and how to utilize technology, including providing website development for interested firms.
- Tuition reimbursement providing educational opportunities for DBEs.
- Feedback from primes and from MaineDOT staff providing assistance to firms.

The MaineDOT DBE SS Consultant uses industry business standards and MaineDOT prequalification standards as well as feedback from the primes and others to determine

the comparable skills and qualifications that each DBE should attain. This is done on a case by case basis as each company delivers a unique set of products and services.

Public Process

Pursuant to 49 CFR 26.45 (g)(i), MaineDOT: *“must consult with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.”*

MaineDOT works closely with our DBE SS Consultant and regularly discusses concerns and successes with DBE firms in Maine. The DBE SS consultant works directly with DBEs and assists firms addressing their concerns and challenges. The DBE SS Consultant is a conduit to MaineDOT for DBEs.

On June 18, 2018, MaineDOT held a public meeting in the main conference (Room 216) at its headquarters on Capitol Street, Augusta, Maine for attendance in person or via conference call. We invited general contractor associations, DBEs, the DBE Supportive Services consultant, Associated General Contractors of Maine, Inc. (AGC), National Association of Women in Construction (NAWIC), the Maine Better Transportation Association (MBTA), the Women’s Business Center the National Association for the Advancement of Colored People (NAACP) Maine Chapter, the American Council of Engineering Companies in Maine (ACEC) to participate in a discussion of our Goal Methodology, to obtain information relevant to our goal setting process and to express any concerns about MaineDOT’s DBE program. Advance copies of the draft Goal Methodology were provided to invitees prior to the meeting. The draft was available at the Civil Rights Office website: <http://www.maine.gov/mdot/civilrights/dbe>

At the meeting, the draft Goal Methodology was presented and representatives of MaineDOT’s Civil Rights Office listened to concerns, received comments and answered questions. Other than some minor corrections to the document, there were no comments on the draft methodology.