



Disadvantaged Business Enterprise Goal Setting Methodology

FFY 2016-18

**For Federal Highway Administration (FHWA) Contracts
Only**

Theresa M. Savoy, Director Civil Rights Office
Department of Transportation
State of Maine

Integrity ~ Competency ~ Service

Introduction

MaineDOT's Annual DBE Goal for FFY 2016-18

Pursuant to 49 CFR 26, MaineDOT has analyzed data and has determined that, for federal fiscal year (FFY) 2016-18 the overall annual Disadvantaged Business Enterprise (DBE) attainment on Federal Highway Administration (FHWA) funded projects is **2%**.

MaineDOT Defined Market Area

MaineDOT defines its market area as the State of Maine. MaineDOT has analyzed the in-state to out-of-state ratio of contractors awarded MaineDOT contracts as well as the ratio of in-state to out-of-state subcontractors for the FFY 2013-14 to gauge its market area and has found that a substantial majority of prime contracts (71%) were let to in-state contractors and a substantial number of subcontracts (84%) were let to in-state firms, as shown in the graph below. MaineDOT has also found that 96 % of all contract dollars went to in-state contractors while 91% of all subcontract dollars went to in-state subs.

Data Description	Total Program Awards	Amount Represented by Maine Firms	Maine Market %
Geographic distribution of Contract \$	\$252,047,037.00	\$242,499,064.91	96.20%
Geographic distribution of Subcontract \$	\$66,318,272.00	60,586,402.52	91.30%
Geographic distribution of Participating Prime Contractor Awards	484	345	71%
Geographic distribution of all Participating Subcontractors	931	783	84%

Goal Methodology

Step 1 - MDOT Base Goal Setting

Census Data

Pursuant to 49CFR 26.45, to determine the **baseline figure** for its 2016-2018 DBE goal. MaineDOT used the most recent (2013) US Census data available and the MaineDOT DBE Directory to determine the percentage of ready, willing and able DBEs in the Maine market area.

Using the 2013 Census Bureau's County Business Pattern (CBP) database and DBE directory information for firms in the defined market area, MaineDOT has carefully reviewed the area of work performed by DBEs and using those NAICS codes, created an analysis of firms in those codes in comparison to the Maine DBE directory.

The Civil Rights Office staff also did an extensive search of potential and real DBE businesses. The search included the most recent Directory of the Maine Women's Business Center (2012) and researched lists of minority owned businesses in Maine. They found none listed which specified NAICS Codes. They did access the SBA 8(a) certification list and found businesses on that list that were minority owned and are also construction and transportation related. We currently have received serious inquiries from two construction firms that are known entities and can work in the highway program. They targeted **23** potential firms from the above mentioned sources.

At the time of this calculation, MaineDOT found a total of 63 DBE firms in its directory determined to be ready willing and able to work on FHWA funded projects in the defined market area. This number includes both construction and consultant firms. The NAICS codes for those firms yield a total of **4356** firms. By dividing 84 by 4356 we find that DBE firms and potential DBE firms makes up 1.9% of these firms.

MaineDOT Baseline goal is 1.9%.

2013 NAICS Code	Description (Consultant)	DBEs from Directory	Census
541310	Architecture Services	1	115
541320	Landscape Architecture	4	26
541330	Engineering Services	15	293
541340	Drafting Services	1	19
541512	Mgmt. and Information Technology Consulting	1	131
541600	Environmental and Geotechnical Consulting	4	562
541611	Administrative Management/General Management	3	239
541620	Environmental Consulting	2	73
541800	Advertising and Public Relations	3	134
541370	Surveying and Mapping	2	102
541380	Testing Laboratories	1	38
541430	Graphic Design	1	54

2013 NAICS Code	(Construction) Description		
236200	Building Construction	1	140
237310	Highway/Street/Bridge Construction	4	79
237990	Heavy and Civil Engineering	1	39
238140	Masonry Contractor	3	145
238910	Site Preparation	2	492
238990	Paving, Driveway/Parking Lots, Guardrail	2	166
423840	Industrial Supplies Merchant	1	26
483000	Water Transportation/Tug	1	12
484210	Dump truck hauling, heavy hauling	2	398
488999	General Construction, Construction Mgmt.	1	1
561320	Temporary Help Services	2	102
561720	Janitorial Services/Site Cleaning	2	303
561730	Landscaping	3	667
TOTAL		63	4356

$(63+23)/4365 = 1.97\%$ (rounded up to 2%)

Bidders List

In accordance with requirements of the 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, 2014 - April 1, 2015. However, MaineDOT opts not to use this information because it does not reflect the real availability of DBE contractors. The DBE attainment if taken solely on the Bidders list would be above 12%, a percentage that the State has never attained.

Our short construction season requires that much of our highway work for the year must get done in the same 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.

Step 2 - Impact to Goal:

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 will certainly impact our attainment in the coming years.

Examination of Evidence of Impact

Past Participation

MaineDOT has assessed participation in our program for the past 3 FFY years. That assessment provides a median attainment of 3.5 % (Figure 1)

Past Participation

Year	Attainment
2012	4.05 %
2013	2.6 %
2014	3.5 % (Median)

(Figure 1)

MaineDOT has currently removed one of our largest DBE firms from participation in the DBE Program. In looking at the contribution of this firm towards last year’s attainment, we find that the removal of the firm will impact attainment of the goal considerably. It is important to note that this firm is the *only* Maine firm that currently works under the NAICS, and, therefore the loss of contracting under this NAICS could not be readily made up by another DBE. If we substitute the 2014 attainment less this firm’s commitment, the attainment would have been 1.9%. Because of the loss of this firm, which has been active in our program since 2009, we cannot accurately determine future DBE participation based on past DBE participation.

We have also assessed actual subcontracting attainment and find that Maine prime contractors are clearly making a good faith effort to hire DBE firms on our projects. In the past two fiscal years, Maine primes have hired DBE firms for 40% or more of their subcontracting. (Figure2). The issues around attainment relate more to the dollar value of subcontracts vs. 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	41%
2014	577	218	40%

(Figure 2)

In 2014 and 2012 Maine was able to secure DBE prime contracts in amounts over \$1 Million dollars (Figure 3).

DBE Contracts over \$1 Million

Year	Number of Contracts over \$1M	Total Amount(s)
2012	2	\$2,500,000.00
2013	0	
2014	1	\$1,116,432.00

(Figure 3)

With the majority of DBE firms being contracted as subs, if we look at the DBE commitments for sub-recipients in dollar value we find that Prime contractors are securing DBE firms at a rate of an average rate of 17% (Figure 4).

Percentage of Subcontract dollars

Year	Total Subcontract dollars	Total DBE Dollars	% of DBE \$
2012	\$32,986,629.00	\$7,026,564.00	21%
2013	\$38,013,839.00	\$5,362,943.00	14%
2014	\$31,315,688.00	\$5,067,780.00	16%

(Figure 4)

This analysis demonstrates a good faith effort on the part of Maine’s contracting community to commit to hire DBE firms. Again, these numbers will be impacted by the loss of the firm mentioned above.

Disparity Studies

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

Race and Gender-Neutral and Conscious Measures

The Department’s DBE Program goal of **2%** for FFYs 2016-18 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 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 implemented a strong Disadvantaged Business Enterprise 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 consulting contracts, thus increasing equal opportunity, competition and diversity in Maine’s bridge and highway construction industry.

The following services are offered through MaineDOT's supportive services program 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 are capable of completing 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.
- Widely 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.

Additionally The MaineDOT DBE SS consultant uses a variety of methods to provide business development service and assess a firm’s current qualifications. These include, but are not limited to:

- One-on-one business review at the DBE’s home office;
- Feedback from primes and from MaineDOT staff providing assistance to firms; and
- Requests from the DBEs themselves for assistance

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.”*

In the spring of 2014 MaineDOT met with Contractor association groups to discuss the importance of DBE participation on projects and give and receive input on goal attainment. The CRO Director and DBE Administrator met with Maine Asphalt Pavers Association on March 26 and with the Associated General Contractors (AGC) of Maine on April 8.

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.

On June 16, 2015, MaineDOT held a conference call inviting general contractors, DBEs, association groups, The Women’s Business Center and the National Association for the Advancement of Colored People (NAACP) Maine Chapter to participate in a discussion of our goal methodology and to present any concerns within the DBE Program. Attendees consisted of 4 general contractors, 5 DBE firms, the DBE Supportive Services administrator and a representative from the FHWA. At the meeting, the goal

methodology was presented and questions were asked about DBE oversight and about how our Supportive Service program assists firms in accessing contract information.

There were no direct comments by the participants regarding the goal methodology, although advanced drafts of the methodology were provided prior to the meeting.

Since that time, due to the loss of our largest DBE firm on July 2, we have since reassessed the DBE goal to better reflect actual DBEs ready and able to work as such on our federal projects.