



**Alaska Department of Transportation & Public Facilities**

**Disadvantaged Business Enterprise Goal Methodology**

**Federal Fiscal Years 2021 – 2023**

**Federal Highway Administration**

Prepared by the Alaska Department of Transportation and Public Facilities

Civil Rights Office

December 15, 2020

The Alaska Department of Transportation and Public Facilities (DOT&PF or the Department), as a recipient of federal-aid highway funding, is required to submit a Disadvantaged Business Enterprise (DBE) goal methodology to the Federal Highway Administration (FHWA) triennially. This goal methodology has been prepared according to the criteria set forth in 49 CFR Part 26.45, and it is based on the availability of all DBE firms that are ready, willing, and able to perform work on FHWA-assisted contracts relative to all businesses that are ready, willing and able to participate on FHWA-assisted contracts.<sup>1</sup> The Department relied on data from the 2020 Disparity Study (the Disparity Study) conducted by MGT of America Consulting, LLC (MGT), DOT&PF Bidders Registration Lists, DOT&PF vendor data, and followed the process detailed in this document to calculate the proposed goal. This process resulted in a proposed overall DBE goal of 9.97%, which the Department expects to meet through race-neutral means.

**STEP ONE – BASE FIGURE**

**Relevant Market Area**

In identifying the relevant market area, the Department analyzed data from the Disparity Study, which found that 98.86% of FHWA-assisted contracts were awarded to firms located within the geographic boundary of the State of Alaska.<sup>2</sup> Therefore, Alaska was determined to be the relevant market area.

**Availability**

To arrive at the Step-One base figure, the Department used data from the Disparity Study in accordance with 49 CFR Part 26.4 (c)(3) to determine the availability of construction and professional service minority, women-owned, and Disadvantaged Businesses Enterprise (M/W/DBE) firms located within Alaska. For the purposes of this goal methodology, the definition of M/W/DBE was accepted to mean that these firms met the same criteria as those in the Disparity Study.<sup>3</sup> The Master Vendor Availability database from the Disparity Study was refined by cross-referencing Alaska business license records and the DOT&PF Bidders Registration lists, and includes certified DBE firms, as well as minority and women-owned firms that are not DBE certified.<sup>4</sup> This vendor list was separated by construction or professional service procurement type. The counts of M/W/DBE and non-M/W/DBE firms were then used to calculate the percentage of firms ready, willing, and able to perform on DOT&PF contracts during the study period.

<b>Work Type</b>	<b>M/W/DBE Count</b>	<b>All Firms Count</b>	<b>M/W/DBE Availability</b>
<b>Construction</b>	141	676	20.86%
<b>Professional Service</b>	79	337	23.44%

Table 1: M/W/DBE Availability by Work-Type

<sup>1</sup> *Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program*, U.S. Department of Transportation (Office of Civil Rights, December 22, 2014), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

<sup>2</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2020. Pg. 4-6.

<sup>3</sup> *Ibid.* pg. 4-1.

<sup>4</sup> *Ibid.* pg. 5-1.

To refine the procurement type availability estimates, DOT&PF cross-referenced the M/W/DBEs identified in the Disparity Study with Alaska Unified Certification Program (AUCP) certifications records to exclude non-certified firms from the numerator that had previously been removed from the DBE program.

It should be noted that the availability analysis in the Disparity Study is calculated according to the DOT&PF regions in which firms are most likely to work on FHWA contracts. This method does not change the overall, statewide number of available firms. However, this means that firms doing business in one or more regions were counted in the regional availability analysis. To account for this, DOT&PF based all of the availability calculations exclusively on the total number of firms available in the statewide count.

Work Type	M/W/DBE Count	All Firms Count	M/W/DBE Availability
Construction	92	676	$\frac{92}{676} = 13.61\%$
Professional Service	62	337	$\frac{62}{337} = 18.40\%$

Table 2: M/W/DBE Availability by Work-Type, Adjusted for Removed DBEs

### Imminent Certifications and Removals

DOT&PF reviewed data to address imminent DBE certification actions in Step-One. Utilizing the DOT&PF Civil Rights Office (CRO) Contract Compliance Database, and in consultation with AUCP staff, DOT&PF identified no imminent certifications actions that would impact DBE availability calculations.

### Weighting

As prescribed by the USDOT Tips for Goal-Setting, the Department performed weighting calculations to the refined availability data from the Disparity Study by applying the FHWA expenditure amount percentage to the type of procurement, construction or professional service.<sup>5</sup> In considering the method of weighting, DOT&PF considered weighting by work category, NAICS Code, and procurement type. Reliable information for the types of work categories and NAICS Code in relation to firms ready, willing and able to perform work on FHWA-assisted Alaska DOT&PF projects was not practical due to a lack of comprehensive data in both cases. Consequently, these methods of weighting were discarded from consideration.

In order to directly translate the information contained in the Disparity Study to this goal methodology, DOT&PF weighted the base figure by procurement type in order to provide the most accurate estimation of the level of DBE participation reasonably expected absent the effects of discrimination. This process

<sup>5</sup> DOT&PF 2020 Disparity Study, Ch. 4, Ex 4-3

ensures that the availability of M/W/DBEs in procurement types which receive larger percentages of federal funding are weighted more heavily.

Work Type	FHWA Expenditure	Weight	Weighted M/W/DBE Availability
Construction	\$1,815,366,478.15	$\frac{\$1,815,366,478.15}{\$1,913,896,558.35} = 94.85\%$	$13.61 * 94.85\% = 12.91\%$
Professional Service	\$98,530,080.20	$\frac{\$98,530,080.20}{\$1,913,896,558.35} = 5.15\%$	$18.41 * 5.15\% = 0.95\%$
<b>Total</b>	\$1,913,896,558.35	100%	13.86%

Table 3: Weighted M/W/DBE Availability by Work-Type, Adjusted for Previous and Imminent DBE Removals

**This process yielded the following Step-One base figure = 13.86%**

## STEP TWO – ADJUSTMENTS

The DOT&PF analyzed available evidence to determine what Step-Two adjustments, if any, were needed to arrive at an accurate estimation of the relative availability of DBEs. The following summarizes the evidence that was considered.

### Current Capacity of DBEs to Perform FHWA-Assisted Work

The Department explored adjusting the base figure to account for past participation and the current capacity of DBEs to perform work on its FHWA-assisted contracts. Some of the M/W/DBEs counted in the base figure are non-certified firms. Alaska DOT&PF, similar to other state DOTs, has historically experienced difficulty in encouraging firms to seek certification. It is also important to note that although non-certified M/W/DBEs are counted as potential DBEs in determining the base figure, only utilization from certified DBE firms may be counted toward achieving the overall DBE goal. In following the USDOT Tips for Goal Setting in the DBE Program guidance, the most recent five years of DBE utilization on the Department’s FHWA-assisted contracts is listed on the following page.<sup>6</sup>

<sup>6</sup> DOT&PF 2020 Disparity Study, Ch. 4, Ex 4-8

Federal Fiscal Year	All FHWA Expenditure	DBE FHWA Expenditure	DBE Expenditure Percent
2015	\$366,215,218.18	\$16,301,422.25	$\frac{\$16,301,422.25}{\$366,215,218.18} = 4.45\%$
2016	\$334,907,442.29	\$14,438,365.38	$\frac{\$14,438,365.38}{\$334,907,442.29} = 4.31\%$
2017	\$407,220,961.04	\$24,755,922.99	$\frac{\$24,755,922.99}{\$407,220,967.04} = 6.08\%$
2018	\$425,429,356.42	\$38,336,471.86	$\frac{\$38,336,471.86}{\$425,429,356.42} = 9.01\%$
2019	\$281,593,500.22	\$19,279,070.49	$\frac{\$19,279,070.49}{\$281,593,500.22} = 6.85\%$

Table 4: Median DBE Utilization based on MGT table 4-8 (FFY2015 – 2019)

Calculating the average of the base figure and the median annual DBE utilization yields a DBE availability estimate of 9.97%:

$$\frac{13.86\% + 6.08\%}{2} = 9.97\%$$

The USDOT Tips for Goal Setting guidance recommends that Step Two adjustments reflect consideration of the most relevant and reliable data. Federal Fiscal Year 2020 (FFY2020) is the most recent fiscal year for which the DOT&PF has data available, though not all contracts from FFY2020 are complete or reflect total DBE participation. Based on the recommended practice to consider all relevant data, the DOT&PF estimates that DBE participation for FFY2020 will remain consistent with the median past participation during the study period, at approximately 6.08%.

The most compelling, and best supported evidence for a downward adjustment of the Step Two goal is the trend of past participation of DBE firms on DOT&PF contracts. The DOT&PF has seen consistent upward participation of DBE and M/W/DBE firms as the implementation of an entirely race-neutral program has progressed. DOT&PF also considered that there were a significant number of DBE firms who exited the program during the study period.

### Additional Adjustments Considered

#### Other Disparity Studies within the Jurisdiction

Since the last Disparity Study that was completed in 2014, there have been no other disparity studies conducted in the relevant market area. The original DOT&PF Disparity Study was completed in 2008.

## Public Participation

Pursuant to 49 CFR Part 26.45(g), the Alaska DOT&PF conducted outreach to obtain public comment. Outreach efforts included participation in DOT&PF sponsored Transportation Fairs on November 19, 2020 and a public comment period on the proposed goal methodology during the period from December 15, 2020 to January 15, 2020. Public comment was solicited via mail, e-mail, live video, and teleconference held on December 28, 2020. On December 19, 2020, the CRO published a public notice advisory with a link to the proposed goal methodology, and a notice of the online public comment period to the State of Alaska Online Public Notices web portal. On December 16, 2020, emailed notification of the public comment period for the Goal Methodology was also sent to DBE, non-DBE, and key stakeholder organizations such as the Associated General Contractors of Alaska (AGC), Minority Business Development Agency (MBDA), Procurement Technical Assistance Center (PTAC), the National Association of the Advancement of Colored People (NAACP) the Municipality of Anchorage (MOA), and the Alaska Small Business Development Center (SBDC). The collection of public comments and feedback is ongoing as of the submission of this document to FHWA on December 31, 2020. Following the conclusion of the public comment period, any comments received will be included and updated as necessary.

## Financing, Bonding, and Insurance

The 2020 Disparity Study conducted its analysis of financial barriers to minority and women-owned firms based on minority firms' access to credit. This metric was determined with Public Use Micro data Samples (PUMS) and information from a 2018 Small Business Administration (SBA) study.<sup>7</sup> Additionally, MGT conducted a survey of DOT&PF vendors, and found that 62.96% of firms indicated that access to credit presented a challenge to their business within the last twelve month period.<sup>8</sup> MGT also noted that of the firms surveyed regarding access to credit, 68.42% were M/W/DBE firms, and indicated that the primary reason that their applications were denied was a lack of overall business history.<sup>9</sup>

The DOT&PF also noted that based on a 2019 Alaska Small Business Survey published by the Alaska Small Business Development Center (SBDC), respondents indicated that the number of successful bank loans declined from previous years by 13%.<sup>10</sup> Additionally, the report observed that in previous years, most businesses (37%) had been able to obtain bank loans. This difference indicates a significant decrease in the overall market's availability for small businesses to obtain bank financing.

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<sup>7</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2020. Pg. 6-19

<sup>8</sup> Ibid. Pg. 6-23

<sup>9</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2020. Pg. 6-24

<sup>10</sup> Unknown., *2019 Alaska Small Business Survey Report*, Alaska Small Business Development Center (UAA Business Enterprise Institute, March 11, 2020), <https://aksbdc.org/2020/03/2019-alaska-small-business-survey-report/>.

In the Disparity Study chapter of anecdotal findings, MGT's report indicates that 6.47% of 201 vendors surveyed, prime contractors and consultants identified insurance requirements/general liability, professional liability, etc. were barriers to bidding on DOT&PF contracts.<sup>11</sup>

The DOT&PF CRO has made efforts through the DBE program to address potential barriers to M/W/DBE firms in Alaska receiving financing, bonding, and insurance. The DOT&PF CRO has conducted trainings and workshops, and provided DBE firms with opportunities to learn from in-state insurance and bonding professionals. These efforts have likely provided some of the certified DBE firms assistance in obtaining these forms of support. However, no quantitative data on the number, and specific kinds of firms that had experienced difficulty obtaining financing, bonding and insurance has been captured. Since there is no reliable quantitative data available to base an adjustment on, no adjustment has been made.

### Employment and Self-Employment Analysis

MGT's study conducted a multivariate regression analysis of Public Use Micro data Samples (PUMS) derived from the 2012 U.S. Census Bureau's Survey of Business Owners (SBO) data.<sup>12</sup> This analysis attempts to determine if:

- Racial, ethnic, and gender minority groups are less likely than non-minority males to be self-employed
- Racial, ethnic, and gender status have an impact on individuals' earnings
- Racial, ethnic, and gender discrimination influence the probability of being self-employed

The Disparity Study analysis indicates that, based on the variables, minorities were less likely to be self-employed.<sup>13, 14</sup>

The statistical evidence presented in the study demonstrates that a self-employment and self-employment earnings disparity exists between minority and women owned businesses in the market area.<sup>15</sup> These indices of disparate opportunity are consistent with presumed levels of discrimination in the private sector. These indices were also observed in the previous Disparity Study from 2014. Based on data presented in the Disparity Study, DOT&PF concludes that an upward adjustment may be necessary, but the data does not present uniform statistical findings throughout all minority categories that will allow for an accurate calculation of the potential upward adjustment. For this reason, DOT&PF will not make an adjustment to the proposed DBE Goal based on this information.

### Barriers to Doing Business with Alaska DOT&PF

In the 2020 Disparity Study, MGT conducted surveys and interviews with a random sample of 565 business owners and representatives of firms having done business with, or attempted to do business

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<sup>11</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2020. Pg. 7-8

<sup>12</sup> Ibid. Pg. 6-3

<sup>13</sup> Ibid. Pg. 6-10

<sup>14</sup> Ibid. Pg. 6-11

<sup>15</sup> Ibid. Pg.6-11,6-12

with, the DOT&PF. The combined results of the surveys, public meetings, focus groups, and in-depth interviews provides the anecdotal data addressed in this section. During the collection of the anecdotal data, 201 firms responded to survey questions about DOT&PF’s procurement process, and perspectives about working with, or attempting to obtain work with, firms on DOT&PF contracts.

The Disparity Study found that across both prime and subcontractors, the major areas of concern were being able to compete with large firms. Additionally, both 10.95% of prime, and 11.24% of subcontractors M/W/DBE respondents indicated that, “slow or non-payment for project work” was the most significant barrier to doing business with DOT&PF.<sup>16</sup> Prime contractors also indicated that “unnecessarily” restrictive contract specifications and narrow bidding windows to prepare bids or quotes presented barriers.

Subcontractors also identified that overall contracts were too large (11.24%), and that an informal network of primes and subcontractors excluded some individual companies from doing work on DOT&PF projects (11.24%).<sup>17</sup>

### Discrimination and Disparate Treatment

Anecdotal data collected by MGT through the survey, in-depth interviews, and public meetings indicated discriminatory practices as indicated below:

	By DOT&PF	By Primes	Private Sector
<b>M/W/DBE Primes</b>	3.48%		
<b>Non-M/W/DBE Primes</b>	3.17%		
<b>M/W/DBE Subcontractors</b>		6.74%	
<b>Non-M/W/DBE Subcontractors</b>		5.26%	
<b>M/W/DBE Firms</b>			12.20%
<b>Non-M/W/DBE Firms</b>			9.94%

Table 5: Discrimination by M/W/DBE Status from MGT Table 7-6 DOT & PF Survey of Vendors

Further, the study indicated that 59.55% of M/W/DBE respondents reported that they were “seldom or never” solicited for work when contracts did not have a set DBE utilization goal. Additionally, 6.5% of M/W/DBE respondents said that there was unequal or unfair treatment within the private sector. Another 4.49% of respondents said that they had either experienced or been witness to situations where M/W/DBE firms were only consulted to satisfy DOT&PF contract requirements. The same percentage

<sup>16</sup> Ibid. Pg. 7-8, 7-9

<sup>17</sup> Ibid. Pg. 7-9



(4.49%) of respondents also stated that prime contractors had double standards for performance of M/W/DBEs.

### ANC Firms

Since the last Disparity Study was completed in 2014, the Department has experienced an 80% increase in Alaska Native Corporation (ANC) owned firms that are DBE certified with Alaska addresses. In September of 2016, the USDOT issued guidance that clarified how ANC-owned firms can qualify for DBE certification under the special rules 49 CFR 26.73(i). The result of this guidance was a large increase of ANC-owned firms becoming DBE certified. All DBE certified ANC-owned firms are certified under these special rules, and most of these firms would not qualify for the program otherwise. Such a large increase in a short period of time indicates that while these firms may qualify for the program, they may not yet be ready, willing, and able to perform work on FHWA-assisted projects. The DOT&PF expects participation in the DBE program by ANC-owned firms to continue to progressively increase as these firms continue to recognize business opportunities presented by FHWA-assisted projects.

### Summary of Step Two Considerations

Alaska DOT&PF considered the previously discussed evidence in its entirety to determine what, if any, Step Two adjustment would be appropriate. Not all minority and women-owned firms are certified as DBE firms or may become certified, and not all DBE firms have the capacity to perform work on the largest contracts let by the DOT&PF. These factors suggest that a downward adjustment to the base figure is appropriate. However, the data and analysis of self-employment, earnings, and financing found that minorities are substantially less likely than non-minority males to receive financing. This indicates that barriers and disparities exist for M/W/DBEs and supports an upward adjustment.

DOT&PF considered all available evidence and determined that a Step Two adjustment to account for the current capacity of DBEs to perform work on FHWA-assisted contracts was necessary to arrive at an accurate estimation of the availability of DBEs ready, willing, and able to perform work on FHWA-assisted contracts, and proposes a Step Two goal of 9.97%.

### Race-Neutral/ Race Conscious Goals

As study results demonstrate, there are both quantitative and anecdotal reasons to address the issue of disparate or discriminatory conditions in the marketplace. In creating this Goal Methodology, DOT&PF considered all of the relevant evidence presented, and applied the standards of strict scrutiny and narrow tailoring in its DBE goal setting process.

Under 49 CFR 26.51, recipients are directed to meet the maximum feasible portion of the overall goal by using race/gender-neutral means. Additionally, the 9<sup>th</sup> Circuit Court's decision in *Western States Paving v. Washington State* held that application of a race-conscious component of a program must be narrowly tailored, and be limited to an area that race-based corrective measures are instituted to account for clear discrimination (strict scrutiny).<sup>18</sup> Further, the Court recognized that even in jurisdictions absent

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<sup>18</sup> *Western States Paving v. Washington State Department of Transportation et al.*, United States Court of Appeals, Ninth Circuit, 2005. 407 F 3d, Pg. 1000.

discrimination, the overall proportionality of work DBE firms could be expected to participate in would be less than in an area where race and gender requirements are established, because the implementation of those requirements effectively create a competitive advantage for DBE firms.

Based on the 2020 Disparity Study and the past participation by M/W/DBE firms on Alaska DOT&PF contracts, the DOT&PF proposes meeting the FFY2021-2023 DBE Goal through race-neutral means. In the Disparity Study, MGT proposed that DOT&PF adopt a 4.24% DBE goal for FFY2021-2023. Further, the overall statistical analysis, “did not provide a strong factual predicate for across-the-board race-and gender-conscious DBE subcontractor goals or setting a race-conscious component of the annual DBE goal.”<sup>19</sup>

During the study period, a minority of FHWA-assisted projects included race-conscious goals, and all contracts advertised after July 1, 2015 were race-neutral. The 2020 Disparity Study indicated that there were disparities in the utilization of firms owned by several M/W/DBE groups in Alaska. Utilization was substantially higher in certain areas and based on previous data from the SBA and other sources, the number of firms in those categories did not significantly increase relative to their utilization on Alaska DOT&PF contracts.

Based on the evidence available and the data presented in the 2020 Disparity Study, DOT&PF proposes to continue implementing its race-neutral program to achieve the proposed DBE goal of 9.97%.

The Department recognizes that if this proposed Goal Methodology is approved, subsequent data collection and analysis may indicate that changes to the proposed goal or race-neutral program are required, and will work with FHWA on future adjustments as needed.

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<sup>19</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, “Executive Summary”, Tallahassee, Florida 2020. Pg. 3