



**Alaska Department of Transportation & Public Facilities**

**Disadvantaged Business Enterprise Goal Methodology**

**Federal Fiscal Years 2023-2025**

**Federal Aviation Administration**

Prepared by the Alaska Department of Transportation and Public Facilities

Civil Rights Office

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The Alaska Department of Transportation and Public Facilities (Alaska DOT&PF or the Department), as a recipient of Federal Aviation Administration (FAA) funding, is required to submit a Disadvantaged Business Enterprise (DBE) goal methodology triennially. This goal methodology has been prepared according to the criteria set forth in 49 CFR Part 26.45, and it is based on demonstrable evidence of the availability of all DBE firms that are ready, willing, and able to perform work on FAA-assisted contracts relative to all businesses that are ready, willing and able to participate on FAA-assisted contracts.<sup>1</sup>

In September 2019, the Department contracted with MGT Consulting Group, LLC, (MGT) to conduct a DBE Availability and Disparity Study Update (2021 Disparity Study). The 2021 Disparity Study examined five years of data and includes construction and professional services procurement activities from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019).<sup>2</sup> This methodology is based substantially on the 2021 Disparity Study results, federal guidance, and relevant case law including *Western States Paving v. Washington State Dept. of Transportation* 907F.3<sup>rd</sup> (9<sup>th</sup> Cir. 2005).

For Federal Fiscal Years 2023-2025, Alaska DOT&PF has established an overall **DBE goal of 9.53%** to be accomplished through the use of race-neutral means.

To establish the race-conscious and race-neutral projections for FFY 2023-2025, Alaska DOT&PF relied primarily on statistical and anecdotal evidence, as well as legal analysis provided in the 2021 Disparity Study. Based on this evidence, the Department will maintain an entirely race-neutral DBE program for airports in the Central and Southcoast Regions and implement an entirely race-neutral DBE program in the Northern Region.

Beginning in FFY 2015, Alaska DOT&PF was directed by FAA to establish overall goals at each of its airports. This was accomplished by addressing each airport on a regional basis, where all airports in each operating region shared the same goal. Alaska DOT&PF has previously attempted to operate its DBE program for FAA on an airport-by-airport basis, and has identified several difficulties with this approach. First, many airports in Alaska have only one, if any, contracts awarded during any given year. In practice, this has the effect of hindering the Department's ability to monitor DBE utilization on an ongoing basis and adjust the measures it uses to meet overall goals. Additionally, as a single recipient of federal-aid airport funds, Alaska DOT&PF operates its rural airports as one statewide aviation system. Administering the DBE program separately for each airport is not feasible due to the number of rural airports Alaska has and varied level of services provided at each one.

To improve DBE program implementation and accommodate the unique aspects of the Alaska DOT&PF statewide aviation system, the Department proposed establishing a single overall DBE goal representative of the level of DBE participation that could be reasonably expected across all Alaska DOT&PF airports, absent the effects of discrimination.

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<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 2021, Pg. 1

Alaska DOT&PF has implemented a set of measures meant to facilitate DBE participation on its FAA-assisted contracts. The measures include providing business consulting services, technical education, as well as efforts to identify and certify new DBEs. While difficult to quantify, Alaska DOT&PF believes that these measures helped increase DBE utilization in the past, and the Department will continue to expand its race-neutral measures to achieve the overall goal in the upcoming triennial period.

## Method

To arrive at a step one base figure that is representative of the relative availability of DBEs ready, willing, and able to perform work on FAA-assisted contracts, Alaska DOT&PF reviewed acceptable methods identified in 49 CFR Part 26 to determine which would yield the most accurate results. Three methods were considered by Alaska DOT&PF, and the summary of findings regarding each method follow.

### Use DBE Directories and Census Bureau Data

49 CFR Part 26.45(c) (1) provides for the use of DBE directory and Census Bureau data to determine the base figure for the relative availability of DBEs. This method relies on using the Alaska Unified Certifications Program (AUCP) DBE Directory to determine the number of ready, willing, and able DBEs in the relevant market area. The number of DBEs is expressed as a percentage of the number of all ready, willing, and able businesses in the relevant market area that perform work in the same North American Industry Classifications System (NAICS) codes, as determined by the Census Bureau's County Business Patterns (CBP) database.

This method was disregarded for several reasons. Primarily, this method was found to be a less accurate measure of DBE availability than the 2021 Disparity Study, as this data is already accounted for in the 2021 Disparity Study's availability analysis. Additionally, this method fails to take into account the availability of firms that could potentially become certified, providing a less accurate estimate of DBE availability.

### Use a Bidders List

49 CFR Part 26.45(c) (2) provides for the use of bidders list data to determine the base figure for the relative availability of DBEs. This method relies on determining the number of DBEs that have bid or quoted on the Department's FAA-assisted prime and subcontracts during the previous three years, and expressing this figure relative to the number of all businesses that have bid or quoted on FAA-assisted prime and subcontracts during the same period. If using the bidders' list method, recipients are required to have in place a mechanism to directly capture data on DBE and non-DBE prime and subcontractors that submit bids or quotes on FAA-assisted contracts. In compliance with 49 CFR Part 26.11(c), Alaska DOT&PF maintains a bidders list containing data about the population of DBE and non-DBE contractors and subcontractors who seek to work on its FAA-assisted contracts. Alaska DOT&PF requires that all firms submit a copy of form 25D-6 (Bidder Registration Form) on an annual basis by January 1, before any contract can be awarded to a bidder.

Alaska DOT&PF reviewed the bidders list method and ultimately disregarded it because, similar to using the DBE directory and Census Bureau data method, this method fails to account for the availability of firms that could potentially become certified, providing a less accurate estimate of DBE availability.

## Use Data from a Disparity Study

49 CFR Part 26.45(c) (3) provides for the use of disparity study data to determine the base figure for the relative availability of DBEs. In September 2019, the Department contracted with MGT Consulting Group, LLC, (MGT) to conduct a DBE Availability and Disparity Study Update (2021 Disparity Study). The 2021 Disparity Study examined five years of data and includes construction and professional services procurement activities from October 1, 2014 to September 30, 2019 (FFY2015-FFY2019). MGT analyzed the availability of firms by business type (Construction and Professional Services) for prime contractors, prime consultants, and subcontractors by using the BizTrak vendor list, DBE list, Bidders list, Firm list, and Utilized vendors as the basis for availability database.<sup>3</sup>

There is case law where studies estimating availability based on vendor data have been upheld in federal court. 170 Vendor data was extracted from the Alaska DOT&PF's vendor data sets.<sup>4</sup>

It has been noted that many vendor lists are deficient on non-M/WBE participation. To remedy this, MGT supplemented the vendor lists collected using a custom census to ascertain additional vendors that are available to do work for the Alaska DOT&PF. Availability estimates were based on firms represented in the study's custom census. It should be noted that there are deficiencies to Dun & Bradstreet, which include:

- No racial, ethnic, and gender information.
- No indication of whether a firm has a professional license in the state of Alaska.

MGT staff addressed these deficiencies by first pulling the entire universe of firms within the Alaska DOT&PF market areas from Dun & Bradstreet. The sample was limited to firms located in the state of Alaska and identified as providing construction or professional services. Once the sample was pulled, MGT staff cross referenced these firms with a combined directory of firms compiled from the following sources: Alaska DOT&PF UCP list, Alaska DOT&PF Bidders list, Alaska DOT&PF AASHTOWare/BizTrak vendor list, Alaska DOT&PF firm data, Small Business Administration 8(a) list of firms, Afognak Native Corporation, Ahtna, Inc., Arctic Slope Regional Corporation, Bering Straits Native Corporation, Bristol Bay Native Corporation, Calista Corporation, The Aleut Corporation. Once this process was completed, the remaining deficiencies were addressed by conducting a short survey.

Firms were asked:

- Ethnicity, race, and gender information.
- Verify the NAICS code assigned in the Dun & Bradstreet data.

After compiling these sources into the Master Vendor Availability Database, MGT verified the business licenses of those firms surveyed by referencing them to the Alaska Department of Commerce,

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<sup>3</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021, Pg. 5-1

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

Community, and Economic Development’s Division of Corporations, Business, and Professional Licensing database. Those that did not have licenses were deemed not available.

Additionally, vendors that have done work in multiple regions of Alaska and those vendors that have indicated a desire to work in multiple regions are deemed available in those regions. As such a straight aggregation of the raw vendor numbers shown throughout the chapter is not possible as there are overlaps of vendors who are available in multiple regions. The statewide count is a unique or unduplicated count of firms

Finally, MGT only utilized those vendors that were part of the NAICS procurement codes utilized by the Alaska DOT&PF for construction and professional services.<sup>5</sup>

Alaska DOT&PF found the disparity study method to be the most appropriate and acceptable method for several reasons. First, the 2021 Disparity Study contains the most accurate data concerning the availability of M/W/DBEs in the relevant market area. Second, federal regulations allow for using data from disparity studies to calculate the step one base figure, and there is precedent for federal funds recipients using disparity study data for multiple goal cycles<sup>6</sup>. Lastly, the 2021 Disparity Study availability analysis accounts for both certified DBEs and firms that could potentially become certified, consistent with United States Department of Transportation (USDOT) Tips for Goal-Setting in the DBE Program guidance.

The following describes the process used by the Department to establish the proposed overall DBE goal for FFY 2023-2025, and follows the goal setting process outlined in 49 CFR Part 26.45. The process outlined in 49 CFR Part 26.45 can be categorized into three parts:

1. Step One Base Figure
2. Step Two Overall Goal
3. Race-Neutral and Race-Conscious Projections

## **STEP ONE – BASE FIGURE**

### **Relevant Market Area**

In identifying the relevant market area, the Department analyzed data from the 2021 Disparity Study, which found that 99.44% of FAA-assisted contracts were awarded to firms located within the geographic boundary of the State of Alaska.<sup>7</sup> Therefore, Alaska was determined to be the relevant market area.

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<sup>5</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021, Pg. 5-2

<sup>6</sup> California Department of Transportation FFY 2016 – FFY 2018 DBE Goal Methodology and FHWA approval letter dated 8/28/2015.

<sup>7</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021, Appendix A. Table A-1., Pg. A-1.

## Availability

To arrive at the Step-One base figure, the Department used data from the 2021 Disparity Study in accordance with 49 CFR Part 26.4 (c)(3) to determine the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in FAA-assisted contracts. The Department has established the base figure by using data from the Master Vendor Availability Database from the 2021 Disparity Study.<sup>8</sup>

There were minority and women-owned business enterprises (M/WBEs) that were utilized on Alaska DOT&PF projects (hence, they were available) that were not certified as DBEs. These M/WBEs, if certified, would raise relative DBE availability. However, no comprehensive data was available on how many of these M/WBEs could be certified as DBEs. Additionally, several of these M/WBEs, particularly some successful prime contractors, were former DBEs that graduated from the program. For these reasons, the Department has based the Step One Base Figure on its current DBEs and not potential DBEs.<sup>9</sup>

The Master Vendor Availability Database was separated by construction or professional service procurement type. The counts of DBEs and all firms were then used to calculate the percentage of firms ready, willing, and able to perform on Alaska DOT&PF contracts during the study period.<sup>10</sup>

<b>Work Type</b>	<b>DBE Count</b>	<b>All Firms Count</b>	<b>DBE Availability</b>
<b>Construction</b>	69	673	10.25%
<b>Professional Service</b>	50	337	14.84%

Table 1: DBE Availability by Work-Type

It should be noted that the availability analysis in the 2021 Disparity Study is calculated according to the Alaska DOT&PF regions in which firms are most likely to work on FAA contracts.<sup>11</sup> 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, Alaska DOT&PF based all of the availability calculations exclusively on the total number of firms available in the statewide count.

<sup>8</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. pg. 5-1, 5-2.

<sup>9</sup> Ibid, Appendix J., 'Table J-2.' Pg. J-3

<sup>10</sup> Ibid. 'Table J-2.' Pg. J-3

<sup>11</sup> Ibid. Pg. 5-4

## Imminent Certifications and Removals

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

Alaska DOT&PF also reviewed the AUCP DBE Directory and compared it with the Master Vendor Availability Database and determined that several DBEs that were included as firms that are ready, willing, and able to perform on Alaska DOT&PF contracts have since been decertified. In order to use a more accurate count of the current availability, the DBE Directory listing from March 14, 2023 has been used to adjust the DBE Availability by Work Type.

Work Type	DBE Count	All Firms Count	DBE Availability
Construction	62	673	9.21%
Professional Service	43	337	12.76%

Table 1: DBE Availability by Work-Type adjusted for removals

## Weighting

As prescribed by the USDOT Tips for Goal-Setting, the Department performed weighting calculations to the refined availability data from the 2021 Disparity Study by applying the FAA expenditure amount percentage to the type of procurement, construction or professional service.<sup>12</sup> In considering the method of weighting, Alaska 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 FAA-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 2021 Disparity Study to this goal methodology, Alaska 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. The figures below are based on projected FAA expenditure amounts for FFY 2023 – 2025 in each Region and by Work Type. This process ensures that the availability of DBEs in procurement types which receive larger percentages of federal funding are weighted more heavily.

<sup>12</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Appendix J., 'Table J-3.' Pg. J-3

## Weighting Calculations

Work Type	FAA Central Region	FAA Northern Region	FAA Southcoast Region	Statewide Total
<b>Construction</b>	\$461,032,177.23	\$237,243,399.52	\$121,143,553.20	\$819,419,129.95
<b>Professional Service</b>	\$40,410,313.05	\$25,837,138.45	\$15,984,218.83	\$82,231,670.33
<b>Total</b>	\$501,442,490.28	\$263,080,537.97	\$137,127,772.03	\$901,650,800.27
<b>Weight Construction</b>	$\frac{\$461,032,177.23}{\$501,442,490.28}$ =91.94%	$\frac{\$183,144,843.22}{\$263,080,537.97}$ =90.18%	$\frac{\$121,143,553.20}{\$137,127,772.03}$ =88.34%	$\frac{\$819,419,129.95}{\$901,650,800.27}$ =90.88%
<b>Weight Professional Service</b>	$\frac{\$40,410,313.05}{\$501,442,490.28}$ =8.06%	$\frac{\$25,837,138.45}{\$263,080,537.97}$ =9.82%	$\frac{\$15,984,218.83}{\$137,127,772.03}$ =11.66%	$\frac{\$82,231,670.33}{\$901,650,800.27}$ =9.12%
<b>Weighted DBE Availability Construction</b>	9.21 * 91.94% =8.47%	9.21 * 90.18% =8.31%	9.21 * 88.34% =8.14%	9.21 * 90.88% =8.37%
<b>Weighted DBE Availability Professional Service</b>	12.76 * 9.58% =1.03%	12.76 * 9.82% =1.25%	12.76 * 11.66% =1.49%	12.76 * 9.12% =1.16%
<b>Step One by Region</b>	<b>9.50%</b>	<b>9.56%</b>	<b>9.62%</b>	<b>9.53%</b>

Table 2: Weighted DBE Availability by Work-Type based on FFY 2023-2025 projected expenditures

While the Alaska DOT&PF has evaluated the Step-One Base figure on a regional basis the regional calculations are all within a very small margin from the calculated statewide base figure; therefore, the Alaska DOT&PF proposes using the statewide Step-One base figure for each region.

**This process yielded the following Step-One base figure for all regions = 9.53%**



## STEP TWO – ADJUSTMENTS

The Alaska 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 FAA-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 FAA-assisted contracts. The Master Vendor Availability Database from the 2021 Disparity Study which was used to calculate the Step-One base figures includes DBE firms as ready, willing, and able by analyzing the following data sources: custom census and Alaska DOT&PF vendor data sets. The custom census ascertained additional vendors that could be available to do work for the Alaska DOT&PF; however, not all of these firms have done work for Alaska DOT&PF.<sup>13</sup>

### Past Participation

The 2021 Disparity Study analyzed available evidence to determine what, if any, step two adjustments should be made. The median DBE utilization on FAA-assisted projects during the study period is 11.81%. As this figure is very similar to the Step One base figure of 9.53%, the Disparity Study determined that no adjustment for median DBE utilization should be made.<sup>14</sup>

### "But For" Discrimination

The 2021 Disparity Study provides some evidence of lower rates of entry into and earnings from self-employment for women and minorities. These disparities could be quantified to raise women and minority business availability by the difference between the self-employment rates of nonminority males and other groups. No adjustment to the DBE goal was made for this analysis of "but for" discrimination.<sup>15</sup>

### Non-Certified Firms

There were minority and women-owned business enterprises (M/WBEs) that were utilized on Alaska DOT&PF projects (hence, they were available) that were not certified as DBEs. These M/WBEs, if certified, would raise relative DBE availability. However, no comprehensive data was available on how many of these M/WBEs could be certified as DBEs. Alaska DOT&PF does know that several of these M/WBEs, particularly some successful prime contractors, were former DBEs that graduated from the DBE program.<sup>16</sup>

### Other Disparity Studies within the Jurisdiction

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

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<sup>13</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Pg. 5-1

<sup>14</sup> Ibid. Pg. J-4

<sup>15</sup> Ibid. Pg. J-4

<sup>16</sup> Ibid. Pg. J-4

## Financing, Bonding, and Insurance

The 2021 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>17</sup>

Additionally, MGT conducted a survey of Alaska 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>18</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>19</sup>

The Alaska 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>20</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.

The anecdotal analysis from Chapter 7 of the 2021 Disparity Study indicates that 6.47% of 201 vendors surveyed, which were both prime contractors and consultants, identified insurance requirements such as general and professional liability were barriers to bidding on Alaska DOT&PF contracts.<sup>21</sup>

The Alaska 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 Alaska 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>22</sup> This analysis attempts to determine if:

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<sup>17</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Pg. 6-18

<sup>18</sup> Ibid. Pg. 6-18

<sup>19</sup> Ibid. Pg. 6-23

<sup>20</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/>.

<sup>21</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Pg. 7-8

<sup>22</sup> Ibid. Pg. 6-2

- 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 2021 Disparity Study analysis also indicates that, based on the variables, minorities were less likely to be self-employed.<sup>23, 24</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>25</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 2021 Disparity Study, Alaska DOT&PF concludes that an 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 adjustment. For this reason, Alaska 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 2021 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 with, the Alaska 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 Alaska DOT&PF's procurement process, and perspectives about working with, or attempting to obtain work with, firms on Alaska DOT&PF contracts.

The 2021 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 Alaska DOT&PF.<sup>26</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 Alaska DOT&PF projects (11.24%).<sup>27</sup>

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<sup>23</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Pg. 6-11

<sup>24</sup> Ibid. Pg. 6-12

<sup>25</sup> Ibid. Pg. 6-11,6-12

<sup>26</sup> Ibid. Pg. 7-8, 7-9

<sup>27</sup> Ibid. Pg. 7-9

## 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 Alaska 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 4: Discrimination by M/W/DBE Status<sup>28</sup>

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.<sup>29</sup> 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 Alaska DOT&PF contract requirements. The same percentage (4.49%) of respondents also stated that prime contractors had double standards for performance of M/W/DBEs.<sup>30</sup>

### Summary of Step-Two Considerations

Alaska DOT&PF considered the previously discussed evidence in its entirety to determine what, if any, Step-Two adjustments were necessary to arrive at an overall DBE goal that accurately reflects the relative availability of DBEs ready, willing, and able to perform work on FAA-assisted contracts. Challenges related to encouraging non-certified firms to become certified, and geographic barriers impacting DBE availability are factors indicating a downward adjustment to the base figure is necessary. Additionally the Step-One base figure of 9.53% is similar to the median past participation of 11.81% from the 2021 Disparity Study. Further, the 2021 Disparity Study recommends that no Step-Two adjustments to the DBE goal should be made. Alaska DOT&PF considered all available evidence and determined that no Step-Two adjustments are warranted.<sup>31</sup>

<sup>28</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. ‘Table 7-6.’ Pg. 7-11

<sup>29</sup> Ibid. Pg. 7-11

<sup>30</sup> Ibid. Pg. 7-12

<sup>31</sup> Ibid. Pg.J-4

## Race-Neutral / Race-Conscious Goals

Alaska DOT&PF proposes an overall DBE goal of **9.53%** for FFY 2023-2025. The following evidence was considered in establishing the Department’s projections for the portions of the goal to be met through race-conscious and race-neutral means.

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, Alaska 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. The 2021 Disparity Study concluded that based on the level of non-goal M/W/DBE subcontractor participation, the statistical analysis in the study 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>32</sup>

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>33</sup> Further, the Court recognized that even in jurisdictions absent 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.

In the 2021 Disparity Study, a significant percentage of anecdotal survey respondents indicated that M/W/DBE firms would not be utilized in the absence of DBE goals. Statistical data from the 2021 Disparity Study indicates that even in the absence of DBE goals, there was still utilization of M/W/DBE subcontractors on construction and PSA contracts. In fact M/W/DBEs received 16.03 percent of the dollars awarded on projects with DBE goals compared to 18.11 percent of the dollars awarded on projects with no DBE goals.<sup>34</sup>

The 2021 Disparity Study found that while a large percentage of M/W/DBE survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data indicated that there generally was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals. For this reason the 2021 Disparity Study recommended that Alaska DOT&PF should continue to consider the use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. These project goals are called aspirational because Alaska DOT&PF sets the aspirational DBE project goals on projects in a similar fashion as race-conscious DBE goals, with one difference: bids are not rejected for failure to meet the DBE project goal, or for failure to submit

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<sup>32</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021. Pg. 8-4.

<sup>33</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.

<sup>34</sup> MGT Consulting Group, *Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study*, Tallahassee, Florida 2021.Pg. 6-13.

good faith efforts documentation.<sup>35</sup> The Alaska DOT&PF currently sets aspirational goals on most projects, and will continue to do so through the DBE goal period of FFY 2023-2025.

Based on the evidence available and the data presented in the 2021 Disparity Study, Alaska DOT&PF proposes to continue implementing its race-neutral program to achieve the proposed **DBE goal of 9.53% through entirely race-neutral means.**

### Public Participation & Consultation

During the course of the disparity study, pursuant to 49 CFR Part 26.45(g), the Alaska DOT&PF conducted outreach to obtain public comment.

49 CFR Part 26.45(g) also requires the Alaska DOT&PF to perform public outreach to emphasize the importance of comment on this draft of the Goal Methodology. Public comment for the FAA DBE Goal Methodology includes the publication of the Goal Methodology to the Alaska DOT&PF Civil Rights Office website, notification of partners and stakeholders. Notice of public comment will be solicited through the Alaska Online Public Notices website, and online legal notices in major Alaska publications.

The public comment period is from March 17, 2023 to April 17, 2023, at 5:00pm, AKDT. Stakeholders will include but are not limited to, minority and women's business groups, community organizations, trade associations, existing certified DBE firms in the Alaska UCP, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Alaska DOT&PF's efforts to increase participation of DBEs.

On April 7, 2023 the Alaska DOT&PF will host a virtual public meeting to provide the public with the opportunity to ask specific and direct questions. A virtual meeting will meet the requirement of a "scheduled, direct, interactive exchange," with the public and interested stakeholders focused on obtaining information relevant to the goal setting process. The Alaska DOT&PF will provide direct notification to the contracting, small business, and community organizations to the Associated General Contractors of Alaska (AGC), Procurement Technical Assistance Center (PTAC), Alaska Small Business Development Center (SBDC), and the Alaska Federation of Community Councils, for review and comment.

Comments received will be received and addressed by the Alaska DOT&PF staff as they are received. When submitting our final overall goals, we will identify the stakeholders that were consulted and provide a summary of any relevant comments which would substantively change the calculation of the overall Goal.<sup>36</sup>

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<sup>35</sup> MGT Consulting Group, Alaska DOT&PF Disadvantaged Business Enterprise Disparity Study, Tallahassee, Florida 2021. Pg. 8-4, and 8-5.

<sup>36</sup> Documentation will be included as attachments.