



Alaska Department of Transportation & Public Facilities  
Disadvantaged Business Enterprise Program  
Triennial Goal Methodology for Alaska Airports:  
Federal Aviation Administration FFY2015-FFY2017  
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The purpose of this document is to explain how the Alaska Department of Transportation & Public Facilities (ADOT&PF / the Department) Civil Rights Office (CRO) has set the Disadvantaged Business Enterprise (DBE) Triennial Goals for its airports for FFY2015 – FFY2017, compliant with 49 CFR Part 26. ADOT&PF is required to submit overall DBE goals once every three years to FAA, and per 49 CFR Part 26.45 the overall DBE goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FAA-assisted contracts. Regulations have set forth several examples of acceptable methods for determining the relative availability of DBEs. Previously, in setting the triennial goal for FFY2012 – FFY2014 (the previous goal), the Department used its bidders list to establish the availability of DBEs in the relevant market area, and performed a step 2 adjustment based on comments received during the public consultation period. This process yielded an overall goal for FFY2012 – FFY2014 of 10.50%<sup>1</sup>.

To arrive at overall DBE goals for ADOT&PF airports that reflect the level of DBE participation that could be reasonably expected absent the effects of discrimination, the following process was followed in accordance with the requirements of 49 CFR Part 26.45:

1. **Step One Base Figures:** Determine base figures for the relative availability of DBEs within the relevant market areas.
2. **Step Two Overall Goals:** Analyze available evidence to determine what, if any, adjustments are needed to the step one base figures.
3. **Race-Conscious and Race-Neutral Splits:** Provide a projection of the portion of the overall goals that is expected to be met through race-neutral means, and the portion that is expected to be met through race-conscious means.

### **Step One Base Figure**

To estimate the relative availability of DBEs, ADOT&PF first determined the relevant market area. This determination was based on data derived from the 2014 ADOT&PF Disparity Study (the Disparity Study) conducted by MGT of America, Inc., which was collected using the following method:

Geographic units (such as states and boroughs) were found to be acceptable to use based on several considerations. First, courts have accepted the use of standard geographic units in conducting equal employment opportunity (EEO) and disparity studies. Second, because geographic units are externally determined, there are no subjective determinations being made, and lastly, U.S. Census and other federal agencies frequently collect data in this manner.

MGT performed a two-step analysis to determine the relevant market area for the study. First an analysis of the overall market area was conducted to determine the market area and to establish the extent to which ADOT&PF utilized firms. Geographic locations of firms utilized by ADOT&PF during the study period were reviewed using MGT's Zone Improvement Plan (ZIP) Code Database. Once the geographic locations of firms were identified, all boroughs and counties where dollars were awarded were analyzed and included in the overall market area. Once the overall market area was established,

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<sup>1</sup> The race-conscious portion of the FFY2012 – FFY2014 overall DBE goal is 4.95%, and the race-neutral portion is 5.55%.

the relevant market area was determined for each of the business categories analyzed (construction, Architecture/Engineering/Land Surveying (AELS), and Non-AELS). The firms' geographic location that received the most dollars, all of which totaled at least 75 percent<sup>2</sup> of the overall market area, were identified, and the resulting market area analysis for FAA-assisted contracts is shown below:

**Exhibit 1<sup>3</sup>**  
**Market Area Analysis: FAA**

Location of Firms	Construction		AELS		NON-AELS	
	\$	%	\$	%	\$	%
Inside Alaska	793,033,666	95.06%	24,858,277	89.41%	13,900,978	98.89%
Outside Alaska	41,216,546	4.94%	2,945,602	10.59%	155,498	1.11%
<b>Total</b>	<b>834,250,212</b>	<b>100.00%</b>	<b>27,803,879</b>	<b>100.00%</b>	<b>14,056,476</b>	<b>100.00%</b>

**The relevant market area was found to be the State of Alaska**, where firms were awarded 95.06% of funds on FAA-assisted construction projects, 89.41% of funds on FAA-assisted AELS contracts, and 98.89% of funds on FAA-assisted Non-AELS contracts.

Due to the geographic size of the relevant market area (the State of Alaska is roughly 20.00% the size of the continental United States) economic and demographic characteristics can be widely varied across the State. Because of this, ADOT&PF elected to set overall DBE goals regionally to be applicable to airports located inside given operating regions. ADOT&PF has a statewide system of 252 rural airports and 2 hub airports in three separate regions within the relevant market area; the Central Region, the Northern Region, and the Southcoast Region.

To arrive at step one base figures for each region that are representative of the availability of DBEs ready, willing, and able to perform work on FAA-assisted contracts, ADOT&PF reviewed acceptable methods per 49 CFR Part 26 to determine which would yield the most accurate results. Three methods were considered by ADOT&PF, and the summary of findings regarding each method follows:

1. Use a Bidder's List

Per 49 CFR Par 26.45, ADOT&PF considered using its bidder's list to estimate DBE availability. This method consists of determining the number of DBEs that have bid on USDOT-assisted, ADOT&PF-let prime contracts and subcontracts. Then determining the number of all businesses that have bid on prime or subcontracts during the same time period, and dividing the number of DBE bidders by the number for all businesses to derive a base figure for the relative availability of DBEs in the relevant market area.

<sup>2</sup> MGT uses the "75 percent rule" to determine the relevant market area. This rule is generally accepted in antitrust cases. In another relevant case, *James C. Jones v. New York County Human Resources Administration*, 528 F.2d 696 (.2d Cir. 1976), the court accepted less than 100 percent of the data when it was reasonable to assume that the missing data would not significantly change the results of the analysis.

<sup>3</sup> 2014 ADOT&PF Disparity Study, Appendix A-4, Exhibit A-1

This method was ultimately disregarded by ADOT&PF for several reasons. First, this method was found to be a less accurate measure of DBE availability than the Disparity Study, as this data was already accounted for in the Disparity Study's availability analysis. Second, this method fails to take into account the availability of firms that could potentially become certified, and therefore provides a less accurate estimate of DBE availability.

2. Use DBE Directories and Census Bureau Data

Per 49 CFR Part 26.45, ADOT&PF considered using the Alaska Unified Certifications Program (AUCP) DBE Directory along with Census Bureau data to derive a base figure for DBE availability. This method consists of determining the number of ready, willing, and able DBEs in the relevant market area through the AUCP DBE directory, then using the Census Bureau's County Business Pattern database to determine the number of all ready, willing, and able businesses available in the relevant market area to perform work in the same NAICS codes. The number of ready, willing, and able DBEs is then divided by the number of all businesses ready, willing, and able, to derive a base figure for the relative availability of DBEs in the relevant market area.

This method was also disregarded by ADOT&PF for several reasons. As with using a bidder's list, this method fails to take into account the availability of firms that could potentially become certified DBEs. Also, this method was found to be less accurate than the 2014 ADOT&PF Disparity Study, which accounts for the availability of certified DBEs, as well as minority and women-owned firms that are not certified DBEs in its availability analysis.

3. Use Data from a Disparity Study

In July of 2012, the ADOT&PF CRO contracted with MGT to conduct a DBE Availability and Disparity Study Update (the Disparity Study). This five year study includes procurement activities from FFY2007 – FFY2011, and draws on multiple data sources to provide an analysis of the availability of M/W/DBEs. MGT analyzed the availability of firms using custom census, vendor data, and the ADOT&PF's Plan Holders List.

To estimate the availability of construction prime contractors, MGT used ADOT&PF's Plan Holders List. Availability was based on firms located in the State of Alaska that were identified as general contractors that had obtained plans/proposals on construction projects awarded during the study period.

To estimate the availability of construction subcontractors, MGT utilized custom census, in addition to the firms represented in the construction prime contractor availability, and construction subcontractors utilized on ADOT&PF-let projects during the study period. Some cases have allowed custom census to calculate the availability of firms using Dun & Bradstreet - a current data source containing individual firms, firm revenue, number of employees, and specific areas of work. There were several deficiencies to the Dun & Bradstreet data which included:

- No racial, ethnic, and gender information.
- No indication of whether a firm is interested or willing to work on ADOT&PF projects.
- No indication of whether a firm primarily works on projects as a prime contractor or subcontractor.
- No indication of whether a firm has a professional license in the State of Alaska.

These deficiencies were addressed in the Disparity Study by first pulling a random sample of firms from Dun & Bradstreet, limiting the results to firms located in the State of Alaska, and identified as providing construction services based on their six-digit North American Industry Classification System (NAICS) codes<sup>4 5</sup>. Once the sample was pulled, MGT cross referenced firms with the State of Alaska’s Department of Commerce, Community, and Economic Development’s Division of Corporations, Business, and Professional Licensing database. The remaining deficiencies were addressed through conducting a short survey in which firms were asked:

- Ethnicity, race, and gender information.
- If they had bid, or considered bidding on ADOT&PF projects (indicating the firm’s interest/willingness)
- When bidding on projects (not limited to ADOT&PF projects), if they bid primarily as a prime contractor, subcontractor, or both.

The custom census, construction prime contractor availability, and M/W/DBE subcontractor utilization during the study period were then compiled, and cross referenced to avoid double-counting firms, to arrive at an estimate of construction subcontractor availability.

To estimate the availability of M/W/DBE AELS and Non-AELS prime consultants to perform work on ADOT&PF-let professional services agreements (PSAs), MGT used vendor data. This was determined to be an acceptable method because there is case law where studies estimating availability based on vendor data have been upheld in federal court<sup>6</sup>. In estimating prime consultant availability, vendor data was extracted from ADOT&PF’s BizTrak data management

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<sup>4</sup> 20 unique NAICS codes were identified among the Dun & Bradstreet data as relating to construction services. These codes were comprised of Timber Operations (113310), Commercial & Heavy Construction Contractors (237110), Highway, Street, & Bridge Construction Contractors (237310), Concrete & Masonry Contractors (238110, 238140), Electrical Contractors (238210), Plumbing & HVAC Contractors (238220), Drywall, Plaster, Acoustic & Insulation Contractors (238310), Painting & Wall Covering Contractors (238320), Specialty Contractors (238330, 238350, 238990), Roofing, Siding, & Sheet Metal Contractors (238390), Site Preparation Contractors (238910), Architectural & Structural Metals Manufacturing (332322), Wholesale Sector (423320), Electrical Products Wholesalers (423610), Wholesale Sector (423990), Building Materials Dealers (444190), Transportation Services Sector (488490).

<sup>5</sup> It is important to note that the list of NAICS codes in footnote 3 is not exhaustive of all NAICS codes represented in the subcontractor availability, but only the custom census portion of subcontractor availability. These do not necessarily include the NAICS codes from the construction prime contractor availability, and construction subcontractor utilization during the study period, which were also included in the calculations for construction subcontractor availability.

<sup>6</sup> *H.B. Rowe v. North Carolina DOT*, 589 F.Supp.2d 587 (ED NC 2008)

system. Data is continuously tracked on all USDOT-assisted professional services agreements in the BizTrak data management system, and is updated on a continual basis by the ADOT&PF CRO.

**ADOT&PF found the 2014 ADOT&PF Disparity study to be the most accurate and refined data available, and found this to be an appropriate and acceptable method for several reasons:**

- Federal regulations allow for using data from a disparity study to calculate a base figure for the overall availability of DBEs.
- The availability analysis from the 2014 ADOT&PF Disparity Study accounts for both certified DBEs, and firms that could potentially become certified DBEs.
- The 2014 ADOT&PF Disparity Study is a current data source, relevant to the market in which ADOT&PF operates.
- The 2014 ADOT&PF Disparity Study availability analysis yields the most accurate data available as it is composed of data from multiple sources, including those that are utilized in other methods considered (such as the ADOT&PF Plan Holders List), in order to provide a consolidated picture of current market conditions within the State of Alaska.

**Method**

To arrive at step one base figures for airports in each region, ADOT&PF utilized data from the Disparity Study which provides an analysis of the number of M/W/DBEs in the relevant market area and by region ready, willing, and able to perform work on FAA-assisted contracts let by ADOT&PF. The analysis explores the availability of firms operating as construction prime contractors, construction subcontractors, and PSA prime consultants because these procurement types constitute the majority of federal expenditures on projects let by ADOT&PF<sup>7</sup>.

In determining the base figures, ADOT&PF first analyzed M/W/DBE availability data from the Disparity Study, which was derived according to the methods previously mentioned, is inclusive of certified DBEs, as well as minority and women-owned firms that are not certified DBEs, and is broken out by construction prime contractor, construction subcontractor, AELS prime consultant, and Non-AELS prime consultant procurement types. ADOT&PF then established the availability of construction contractors (prime contractors and subcontractors) and PSA prime consultants (AELS and Non-AELS) by region by combining the related data sets from the availability analysis by construction-type and PSA-type. ADOT&PF reviewed the recompiled data sets to avoid the double counting of firms (e.g. construction prime contractors that are also considered available construction subcontractors), and used the resulting M/W/DBE and non-M/W/DBE firm counts to determine availability. To be sure, some firms operate across regional boundaries, and the argument could be made that this could increase or decrease the relative availability of M/W/DBE firms in a given region. However, due to the lack of comprehensive data to determine what, if any, adjustments are necessary to account for firms that

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<sup>7</sup> The analysis does not estimate PSA subcontractor availability because of the very small expenditure on PSA subcontracting (less than 1 million dollars over the study period).

operate in multiple regions, the Department was unable to do so. Pertaining to the availability of PSA prime consultants, because many of the barriers that prevent construction firms from conducting business in geographically remote locations in many cases do not exist for professional services (e.g. mobilization and demobilization), the availability calculation for PSA prime contractors was calculated on a statewide basis and is applicable to airports in all regions. The availability figures are as follows:

**Exhibit 2**  
**Regional M/W/DBE Availability**  
**By Procurement Type**

Category	Count of M/W/DBE Firms			Count of All Available Firms			M/W/DBE Availability		
	Central	Northern	Southcoast	Central	Northern	Southcoast	Central	Northern	Southcoast
<b>Construction (Prime Contractors and Subcontractors)</b>	103	28	12	510	150	95	$\frac{103}{510} = 20.20\%$	$\frac{28}{150} = 18.67\%$	$\frac{12}{95} = 12.64\%$
<b>PSA Prime Consultants</b>	51			337			$\frac{51}{337} = 15.14\%$		

To refine the procurement type availability estimates, ADOT&PF cross referenced the available M/W/DBEs derived from the Disparity Study with all decertification records maintained by the ADOT&PF CRO to exclude non-certified firms from the numerator that had previously been decertified. This step was taken to obtain a more accurate availability estimate for non-certified firms that could potentially become certified, under the premise that decertified firms are not likely to seek recertification beyond the appeals process. There are many causes behind changes in a firm’s certification status, among the most frequently observed are denied applications<sup>8</sup>, and voluntarily withdrawing from the DBE program. Excluding non-certified firms from the numerator that had previously been decertified yielded the following adjusted M/W/DBE availability figures:

**Exhibit 3**  
**Regional Availability by Procurement Type**  
**Adjusted for Previous Decertifications**

Category	Count of M/W/DBE Firms			Count of All Available Firms			M/W/DBE Availability		
	Central	Northern	Southcoast	Central	Northern	Southcoast	Central	Northern	Southcoast
<b>Construction (Prime Contractors and Subcontractors)</b>	71	19	8	510	150	95	$\frac{71}{510} = 13.93\%$	$\frac{19}{150} = 12.67\%$	$\frac{8}{95} = 8.43\%$
<b>PSA Prime Consultants</b>	26			337			$\frac{26}{337} = 7.72\%$		

In following guidance from the USDOT Tips for Goal-Setting in the DBE Program, ADOT&PF refined the data further by addressing imminent decertifications in step one. Utilizing the ADOT&PF CRO BizTrak data management system, and in consultation with AUCP Certifications staff, ADOT&PF identified among currently certified DBEs, those that will be imminently decertified because they no

<sup>8</sup> Applications are denied when a firm does not meet the requirements set forth in 49 CFR Part 26 for reasons such as exceeding business size standards, exceeding personal net worth requirements, and other reasons including management and operational control of firms, and independence.

longer meet the requirements of 49 CFR Part 26<sup>9</sup>. These firms were then cross referenced with the M/W/DBE availability data and excluded from the numerator to arrive at a more accurate estimate of M/W/DBE availability. The following table reflects the availability of M/W/DBEs, adjusted for previously decertified firms and firms that will be imminently decertified:

**Exhibit 4**  
**Regional Availability by Procurement Type**  
**Adjusted for Previous and Imminent Decertifications**

Category	Count of M/W/DBE Firms			Count of All Available Firms			M/W/DBE Availability		
	Central	Northern	Southcoast	Central	Northern	Southcoast	Central	Northern	Southcoast
<b>Construction (Prime Contractors and Subcontractors)</b>	68	18	8	510	150	95	$\frac{68}{510} = 13.34\%$	$\frac{18}{150} = 12.00\%$	$\frac{8}{95} = 8.43\%$
<b>PSA Prime Consultants</b>	26			337			$\frac{26}{337} = 7.72\%$		

**Weighting the Base Figure**

The USDOT Tips for Goal-Setting in the DBE Program guidance states that “while weighting is not required by the rule, it will make your goal calculation more accurate.” Following this guidance, ADOT&PF explored ways to weight the M/W/DBE availability figures derived from the Disparity Study. The following summarizes the methods that were reviewed by ADOT&PF to weight the base figures:

- **Weight by Work Categories:** ADOT&PF CRO tracks which types of work are performed on its projects based on ADOT&PF Work Categories (numeric descriptors of the primary work being done on FAA-funded projects, similar to NAICS Codes). An analysis of FAA expenditures from FFY2007-FFY2011 by ADOT&PF Work Category was performed to determine the percent of payments within each Work Category. However, due to the lack of comprehensive data regarding the availability of DBEs relative to all firms ready, willing, and able to perform work on FAA-funded projects broken out by ADOT&PF Work Category<sup>10</sup>, this method was disregarded by ADOT&PF as not being viable for weighting the base figures.
- **Weight by NAICS Code:** As previously mentioned, ADOT&PF CRO tracks the type of work being performed on its FAA-funded projects by Work Category, and not by NAICS code. As these two descriptors would need to be meticulously translated from one to the other in an objective, consistent, and accurate manner before an analysis could be conducted, this method was disregarded by ADOT&PF as not being viable for weighting the base figures<sup>11</sup>.

<sup>9</sup> The most significant factor that influenced imminent decertifications stemmed from changes presented in the Federal Register (64 FR 5126, Feb. 2 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014). Specifically, changes in the interpretation of 49 CFR Part 26.73 had a material impact on the eligibility of some Alaska Native Corporation-owned firms to participate in the DBE Program.

<sup>10</sup> Specifically, comprehensive ADOT&PF Work Category data for non-DBEs is insufficient to perform a weighting by work category.

<sup>11</sup> ADOT&PF is currently working to establish a conversion tool to match DOT&PF Work Categories with their corresponding NAICS codes.



- Weight by Procurement Type: To arrive at step one base figures that reflect the actual availability of DBEs in the State of Alaska by region, and in line with the recommendations from the Disparity Study, the DBE availability figures from Exhibit 4 were weighted by regional FAA expenditures during the study period by procurement type. Weighting the base figures by procurement type provides a more accurate estimation of the level of DBE participation that could reasonably be expected, absent the effects of discrimination. This is so because it places more weight on the availability of M/W/DBEs in procurement types that will receive a larger percentage of federal funds, and vice versa. The calculations in Exhibits 5 and 6 demonstrate this process and the resulting weighted availabilities by procurement type.

**Exhibit 5**  
**FAA Expenditure Weighting**  
**By Region and Procurement Type**

Category	FAA Expenditure			Weight		
	Central	Northern	Southcoast	Central	Northern	Southcoast
Construction (Prime Contractors and Subcontractors)	\$463,060,956	\$214,565,155	\$115,407,555	$\frac{\$463,060,956}{\$491,016,575} = 94.31\%$	$\frac{\$214,565,155}{\$222,559,221} = 96.41\%$	$\frac{\$115,407,555}{\$118,217,125} = 97.63\%$
PSA Prime Consultants	\$27,955,619	\$7,994,066	\$2,809,570	$\frac{\$27,955,619}{\$491,016,575} = 5.69\%$	$\frac{\$7,994,066}{\$222,559,221} = 3.59\%$	$\frac{\$2,809,570}{\$118,217,125} = 2.37\%$
<b>Total</b>	\$491,016,575	\$222,559,221	\$118,217,125	100%	100%	100%

**Exhibit 6**  
**Weighted Availability by Procurement Type**  
**Adjusted for Previous and Imminent Decertifications**

Category	Weight			Availability			Weighted M/W/DBE Availability		
	Central	Northern	Southcoast	Central	Northern	Southcoast	Central	Northern	Southcoast
Construction (Prime and Subcontractors)	94.31%	96.41%	97.63%	13.34%	12.00%	8.43%	$94.31\% * 13.34\% = 12.58\%$	$96.41\% * 12.00\% = 11.56\%$	$97.63\% * 8.43\% = 8.23\%$
PSA Prime Consultants	5.69%	3.59%	2.37%	7.72%	7.72%	7.72%	$5.69\% * 7.72\% = 0.43\%$	$3.59\% * 7.72\% = 0.27\%$	$2.37\% * 7.72\% = 0.18\%$
<b>Total</b>	100%	100%	100%				$12.58\% + 0.43\% = 13.01\%$	$12.00\% + 0.27\% = 12.27\%$	$8.43\% + 0.18\% = 8.61\%$

This process yielded the following step one base figures for airports by region:

**Central Region Airports: 13.01%**

**Northern Region Airports: 12.27%**

**Southcoast Region Airports: 8.61%**

## Step Two Adjustments

ADOT&PF analyzed available evidence to determine what adjustments, if any, were needed to the step one base figures to arrive at overall goals that accurately reflect DBE availability by region. The following summarizes the evidence that was reviewed:

### 1. Current Capacity of DBEs to perform USDOT Assisted Work

ADOT&PF explored adjusting the base figures to account for past participation and the current capacity of DBEs to perform work on its FAA-assisted contracts. Some of the M/W/DBEs counted in the base figure are noncertified firms. ADOT&PF, similar to other state DOT's, has historically experienced difficulty in encouraging firms to become DBE certified, and it is important to note that although noncertified minority and woman-owned firms are counted as potential DBEs in determining the base figure, ADOT&PF may only count the utilization of certified DBEs in its reporting to FAA. Per the USDOT Tips for Goal Setting guidance, the most recent five years of ADOT&PF DBE utilization on FAA-assisted contracts for the period of FFY2009-FFY2013 is listed below:

**Exhibit 7<sup>12</sup>**

#### **ADOT&PF DBE Utilization on FAA-Assisted Contracts**

<b>Federal Fiscal Year</b>	<b>FAA DBE Utilization</b>
2009	3.60%
2010	3.00%
2011	2.70%
2012	17.30%
2013	4.30%
<b>Median DBE Utilization</b>	<b>3.60%</b>

Calculating the average of the base figures and the median annual DBE utilization yielded the following overall goals:

$$\text{Central Region: } \frac{13.01\% + 3.60\%}{2} = 8.30\%$$

$$\text{Northern Region: } \frac{12.27\% + 3.60\%}{2} = 7.93\%$$

$$\text{Southcoast Region: } \frac{8.61\% + 3.60\%}{2} = 6.10\%$$

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<sup>12</sup>ADOT&PF Uniform Reports of Commitments/Awards and Payments, 2009 - 2013

2. Other Disparity Studies

No disparity studies aside from the 2014 ADOT&PF Disparity Study Update have been conducted in Alaska since the original ADOT&PF Disparity Study was completed by D. Wilson Consulting Group, LLC in 2008.

3. 2014 ADOT&PF Disparity Study

MGT reviewed several pieces of evidence to determine what, if any, step two adjustments should be made. This evidence is summarized below:

- a. Median Past Participation: MGT provided an evaluation of median past participation separate than that conducted by ADOT&PF. The median past participation analysis conducted by MGT is reflective of DBE participation during the study period (FFY2007-FFY2011), and was found to be 5.00%. No adjustment for the current capacity of DBEs to perform work was made by MGT.
  - b. Self-Employment Analysis (“But For” Discrimination)<sup>13</sup>: MGT conducted a multivariate regression analysis of Public Use Micro data Samples (PUMS) derived from the 2011 U.S. Census to determine the following items, and for which the findings regarding each item are presented respectively:
    - i. If racial, ethnic, and gender minority groups are less likely than nonminority males to be self-employed:
      - The findings from the regression analysis revealed that regarding whether racial, ethnic and minority groups are less likely than nonminority males to be self-employed, with all other variables<sup>14</sup> held constant, that:
        - Among analyzed industries in Alaska, nonminority males were nearly twice as likely to be self-employed as nonminority women and Native Americans.
        - In Alaska, nonminority males were over seven times as likely as nonminority women to be self-employed in professional services.
        - In Alaska, nonminority males were nearly eight times as likely as Native Americans to be self-employed in professional services.
- However, due to limitations in sample size only several findings can be considered statistically significant, and more importantly as it pertains to the implementation of ADOT&PF’s DBE Program, all findings specific

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<sup>13</sup> 2014 ADOT&PF Disparity Study, Appendix L.

<sup>14</sup> MGT included as predictors of employment status: Race and Sex; Availability of Capital; Marital Status; Ability to Speak English Well; Disability Status; Age and Age Squared; Owner’s Level of Education; Number of Individuals Over the Age of 65 Living in Household; Number of Children Under the Age of 18 Living in Household.

to the construction industry were of inadequate sample size to be considered statistically significant<sup>15</sup>.

- ii. If racial, ethnic, and gender status have an impact on individuals' earnings.
  - To answer this question, MGT compared self-employed minority and women entrepreneurs' earnings to those of nonminority males in Alaska, when the effects of other demographic and economic characteristics were controlled. The results of this analysis showed that:
    - In the construction industry, nonminority women reported significantly lower earnings than nonminority males in Alaska: 97.3% less. However, similar to the findings from item i., all of the findings pertaining to "earnings elasticity" among minority groups in construction and professional services, aside from nonminority women, had inadequate sample sizes and were therefore found to be statistically insignificant.
- iii. How much racial, ethnic, and gender discrimination influence the probability of being self-employed.
  - MGT analyzed observed self-employment rates among minority and nonminority groups and calculated predicted self-employment rates for groups as they would be if a particular group's characteristics were applied to another group's (in this case nonminority male) market structures. By this process, MGT was able to calculate percentage estimates of the disparities in self-employment between minorities and nonminority males. These calculations found that:
    - In comparing self-employed nonminority males with self-employed nonminority women in the Alaska professional services industry, over 86% of the disparity in self-employment rates was attributable to gender differences. However, within the context of the ADOT&PF DBE Program, the results of this analysis showed no disparity among any of the groups when analyzed within the construction industry.

The results of the Disparity Study's analysis of self-employment provided some evidence of lower rates of entry into and earnings from self-employment for women and minorities. ADOT&PF explored adjusting the base figures to raise the availability of women and minority businesses by the difference between self-employment rates of nonminority males and other groups. However, because there were no disparities in self-employment identified in the construction industry, this process would only be applicable to the professional services procurement type which receives less than 6% of the total weight of the base figures in all three regions, and only for groups that showed significant disparities (Native Americans and Nonminority Women), resulting in only a

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<sup>15</sup> 2014 DOT&PF Disparity Study, App L-6

minor adjustment to the base figure. Thus, no adjustment was made to the base figure to account for “but for” discrimination.

- c. Non-Certified Firms: MGT did not make any adjustment to the proposed goal to account for non-certified firms that could potentially become certified. No adjustment was made due to a lack of comprehensive data on how many of these firms could become certified. However, ADOT&PF accounted for the availability of non-certified firms that could potentially become certified in the step one base figures.
- d. Anecdotal Analysis<sup>16</sup>: Aside from disparity analyses, MGT also conducted an analysis of anecdotal information by using a combination of surveys, focus groups, public hearings, and personal interviews to collect data with the purpose of identifying issues that were common to businesses in the relevant market area during the study period.

The method that was used to conduct the analysis was began by randomly selecting a sample of DBE and non-DBE prime and subcontractors from ADOT&PF’s master vendor database to ensure the validity and integrity of the anecdotal data collection. From the sample, DBEs and non-DBEs were contacted to participate in focus groups, surveys and personal interviews.

The survey of vendors gathered information on business ownership, work performed with the State, work performed in the private sector, and barriers, perceived or real, that prevented firms from doing business with ADOT&PF during the study period. Oppenheim Research, a third party research firm, administered the surveys that resulted in 393 completed responses.

MGT also facilitated two focus groups, one with prime contractors, and one with subcontractors. Participants were randomly selected using ADT&PF’s master vendor database.

Personal interviews were conducted with primes and subs, including both DBEs and non-DBEs that were not included in other anecdotal activities. The interviews gathered information about the owner of the firm, as well as metrics regarding business size, and their experiences in conducting, or attempting to conduct business with ADOT&PF. Additionally, questions were asked related to the interviewee’s experience with the DBE program, and instances of disparate treatment or discrimination, experienced or perceived, by the firm while conducting or attempting to conduct business with ADOT&PF.

The responses from the survey of vendors found that among the 151 M/W/DBEs that responded to survey questions about barriers to doing business, the biggest concern for M/W/DBE primes was competing with large firms (17.2% of M/W/DBE respondents). This was also the biggest concern voiced from M/W/DBE subcontractors (15.2%). Additional barriers that were cited by M/W/DBE respondents included:

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<sup>16</sup> 2014 ADOT&PF Disparity Study, Ch. VI

- Prime Contractors
  - Unnecessary and restrictive contract specifications – 14%
  - Contracts being too large – 11.3%
  - Limited time given to prepare the bid or prequalification package – 11%
  - Lack of personnel – 11%
- Subcontractors
  - Slow payment or nonpayment of from primes – 13.9%
  - Lack of personnel – 11.3%
  - Limited time given to prepare their bid or quote – 10.6%
  - Contracts too large – 9.3%

Looking at some of the anecdotal responses provided from prime contractors when asked about barriers they face in doing business with ADOT&PF, responses included obstacles in the procurement process, meeting DBE goals, and the Central Region WBE Waiver.

From subcontractors, when asked about barriers they face in doing business or attempting to do business with primes on ADOT&PF projects, many cited obstacles in the bid process, specifically the perception that DBEs do not have the capacity or expertise to perform the work created a barrier.

As previously mentioned, survey, focus group, interview, and public hearing participants were asked if they experienced discriminatory or disparate behavior by ADOT&PF, its primes, or the private sector during the study period. The following exhibit illustrates the percentage of survey respondents who stated that they experienced discriminatory behavior from either ADOT&PF, prime contractors/professional consultants contracted by ADOT&PF, or while conducting business in the private sector:

**Exhibit 8<sup>17</sup>**

**Discrimination Survey Results**

<b>Respondent Category</b>	<b>By ADOT&amp;PF</b>	<b>By Prime Contractors</b>	<b>Private Sector</b>
<b>M/W/DBE (Prime)</b>	3.30%		
<b>Non-M/W/DBE (Prime)</b>	0.90%		
<b>M/W/DBE (Subcontractor)</b>		6.60%	
<b>Non-M/W/DBE (Subcontractor)</b>		4.40%	
<b>M/W/DBE Firms</b>			9.30%
<b>Non-M/W/DBE Firms</b>			7.00%

With respect to the type of disparate treatment, M/W/DBE respondents reported:

<sup>17</sup> 2014 DOT&PF Disparity Study Ch. VI-12, Ex. 6H

- An informal network precluded their firms from obtaining work in the private sector (17.2%)
- Infrequently or never being solicited when there were no DBE goals (40.4%)
- Being dropped from a project after being included to satisfy good faith efforts requirements<sup>18</sup> (9.9%)
- Experiencing unequal or unfair treatment from primes (20.5%)

In addition to the comments received from business owners, MGT interviewed two trade associations and asked them to provide their perceptions on the implementation of the DBE goals, barriers their members faced, and any other comments they felt were relevant to the disparity study. Both trade associations voiced support for the DBE program; however, their members have expressed frustration with several aspects of the program. In part, they believe that the current goals are established on a miscalculated availability of firms truly “qualified” to do work for ADOT&PF. They stated that firms are certified as DBEs in areas they do not have the experience or capacity to work. They stated that in some cases, the firms are certified to do work where professional licenses (i.e., engineering) are required and the DBE firm does not hold that license. Therefore, it was the perception of the stakeholders interviewed that this inflates the number of DBEs in the [AUCP] DBE directory, but is unrealistic when bidders are attempting to identify “qualified” DBEs to meet the goals. Members of these trade associations found that the establishment of “unachievable” goals is a barrier to meeting the DBE goals.

Access to capital was also explored as a potential barrier. Survey respondents were asked if they had applied for a commercial loan during the study period and whether they were approved or denied. If they were denied, they were asked what they believed was the basis of their denial. Of the 162 (41.2% of total) respondents that applied for a commercial loan, 36% were M/W/DBEs. Less than 11% of M/W/DBE applicants were denied loans; four of the six firms that were denied loans were Alaska Native-owned.

Anecdotal responses from prime contractors regarding access to capital showed that prime participants did not have an overwhelming concern about access to capital. However, subcontractor participants did express concerns with access to capital since they rely on the primes to pay them in a timely fashion. Participants agreed that, if subcontractors do not have a line of credit, it is difficult to keep their company in business.

In summarizing the findings of the anecdotal analysis, between the focus groups, survey of vendors, public hearing testimonies, and personal interviews, MGT and its sub consultants received data from 464<sup>19</sup> business owners or representatives that have

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<sup>18</sup> DOT&PFs Contract Specification 120-3.03(3) *Termination of a DBE* stipulates that a contractor shall not terminate a DBE without good cause and the prior written consent of DOT&PF.

<sup>19</sup> By comparison, the Ninth Circuit Court of Appeals accepted anecdotal information from 57 interviewees in *Coral Construction*.

done business with, or attempted to do business with, ADOT&PF. The findings showed that among the M/W/DBEs who responded to questions about barriers to doing business, the biggest concern for both prime and subcontractors was competing with large firms. With respect to disparate treatment, the most frequently cited instances involved infrequently, or never being solicited when there were no DBE goals, which is examined further in the Department's determination of the race-conscious/race-neutral split.

### **Summary of Evidence Considered for Step 2 Adjustments**

ADOT&PF examined all available evidence to determine what, if any, step 2 adjustments were necessary to arrive at an overall goal that accurately reflects the availability of all DBEs ready, willing, and able to participate on FAA-assisted contracts let by the Department. As previously mentioned, ADOT&PF continues to experience difficulty in encouraging noncertified firms to apply for certification. In addition, ADOT&PF determined that there is not sufficient evidence of past discrimination in the construction industry as evidenced through the multivariate regression analysis of self-employment rates, the disparity analysis, and the anecdotal analysis to suggest that any downward revisions of the base figures to account for the current capacity of DBEs would perpetuate the effects of past discrimination. Therefore, ADOT&PF performed an adjustment to the step one base figures to account for the current capacity of DBEs to perform work. This process yielded the following step 2 goals:

$$\text{Central Region: } \frac{13.01\% + 3.60\%}{2} = 8.30\%$$

$$\text{Northern Region: } \frac{12.27\% + 3.60\%}{2} = 7.93\%$$

$$\text{Southcoast Region: } \frac{8.61\% + 3.60\%}{2} = 6.10\%$$



## Race-Neutral/Race-Conscious Projection

Based on the information collected and data reviewed, ADOT&PF has established overall DBE goals for Central Region, Northern Region, and Southcoast Region airports for FFY2015-2017. ADOT&PF based its race-neutral/race-conscious projection for how it will achieve the overall goals on the following evidence:

### 2014 ADOT&PF Disparity Study

- Disparity Analysis<sup>20</sup>: For FAA-assisted contracts let by the Department, during the study period, and within the relevant market area:
  - Analysis of the State of Alaska: Overall, M/W/DBE construction subcontractors were utilized in excess of the level of utilization that would be expected, absent the effects of discrimination. This was also true for most groups when analyzed individually on a statewide basis, with the exceptions of African Americans, Alaska Tribal Corporations, Asian Indian/Pacific Islanders, and Hispanic Americans. ADOT&PF performed an analysis of certified DBEs and found that there are 3 Asian Indian/Pacific Islander owned firms, 4 Alaska Tribal Corporations, 5 African American owned firms, and 13 Hispanic American owned firms certified in construction services work categories.
  - Regional Analysis: When utilization and availability were analyzed with respect to each Alaska Region individually, the results differed from the overall analysis of the relevant market area<sup>21</sup>. Some key findings from this analysis revealed that in the Central and Southcoast regions, while there were disparities identified among certain groups, overall, M/W/DBE firms were overutilized relative to their availability. In the Northern Region, there was substantial underutilization among the following M/W/DBE groups:
    - Alaska Native Corporation
    - American Indians/Alaska Native
    - Asian Indian/Pacific Islander
    - Hispanic AmericansMoreover, in Alaska's Northern Region there was substantial underutilization of M/W/DBE firms as a whole.
- Non-Goal Analysis<sup>22</sup>: Given that ADOT&PF operated both race-conscious and race-neutral DBE programs at different times during the study period, MGT was able to perform a non-goal analysis to examine M/W/DBE utilization on ADOT&PF construction projects with DBE goals and without DBE goals.
  - Analysis of the State of Alaska: The analysis revealed that statewide across FAA-assisted contracts, M/W/DBE subcontractors received 32.67% of subcontract

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<sup>20</sup> 2014 ADOT&PF Disparity Study Ch.V

<sup>21</sup> 2014 DOT&PF Disparity Study, Appendix A-52, Exhibit A-45

<sup>22</sup> 2014 ADOT&PF Disparity Study Appendix A-37, Exhibit A-31

dollars awarded on projects with DBE goals, compared to 20.98% of subcontract dollars awarded on project without DBE goals, constituting \$8,701,111 and \$19,958,461 respectively. Statewide, M/W/DBE availability was determined to be 18.95%. Therefore regardless of whether or not contracts were awarded with DBE goals, M/W/DBE subcontractors were consistently used in excess of their availability.

- Regional Analysis<sup>23</sup>: When analyzed on a regional basis<sup>24</sup> it was found that within Alaska’s Central and Southcoast Regions, M/W/DBE construction subcontractors were utilized in excess of their availability on contracts, regardless of whether or not DBE goals were assigned. However, in Alaska’s Northern Region M/W/DBE construction subcontractors were underutilized on contracts without DBE goals (9.24% M/W/DBE construction subcontractor utilization on contracts awarded without DBE goals, versus 18.88% M/W/DBE construction subcontractor availability in Northern Region).
- Anecdotal Evidence of Discrimination<sup>25</sup>: MGT performed an anecdotal data analysis which provided insight into disparate treatment, real and perceived, in the relevant market area. The anecdotal analysis found that:
  - Access to Capital: Survey respondents were asked if they had applied for a commercial loan during the study period and whether they were approved or denied. Of the 162 respondents that applied for a commercial loan, 36% were M/W/DBEs. Less than 11% of M/W/DBE applicants (6 firms) were denied loans; four of these six firms denied loans were Alaska Native-owned.
  - Discrimination and Disparate Treatment: The following chart, which was previously cited, was also considered in making the race-conscious/race-neutral projection:

**Exhibit 8<sup>26</sup>**

**Discrimination Survey Results**

<b>Respondent Category</b>	<b>By ADOT&amp;PF</b>	<b>By Prime Contractors</b>	<b>Private Sector</b>
<b>M/W/DBE (Prime)</b>	3.30%		
<b>Non-M/W/DBE (Prime)</b>	0.90%		
<b>M/W/DBE (Subcontractor)</b>		6.60%	
<b>Non-M/W/DBE (Subcontractor)</b>		4.40%	
<b>M/W/DBE Firms</b>			9.30%
<b>Non-M/W/DBE Firms</b>			7.00%

<sup>23</sup> 2014 ADOT&PF Disparity Study, Appendix A-38, Exhibit A-32

<sup>25</sup> 2014 ADOT&PF Disparity Study Ch. VI

<sup>26</sup> 2014 DOT&PF Disparity Study Ch. VI-12, Ex. 6H

Regarding disparate treatment, respondents reported the following:

- Seldom or never being solicited when there were no DBE goals - 40.4% (61 firms).
  - An informal network precluded their firms from obtaining work in the private sector – 17.2% (26 firms).
  - Being dropped from a project after being included to satisfy good faith efforts requirements<sup>27</sup> – 9.9% (15 firms).
  - Discrimination from ADOT&PF and its prime contractors – 2.6% (4 firms)
- Relevant Case Law: The Disparity Study provided an analysis<sup>28</sup> of the state of the law applicable to affirmative action programs of contracting agencies, as the law has been interpreted and evolved in federal courts. ADOT&PF took the findings from this legal analysis into consideration while examining evidence to project the portion of the overall goal that will be met through race-neutral/race-conscious means. The conclusions drawn from the legal analysis performed by MGT showed that in implementing a race or gender-conscious contracting program, a governmental entity must demonstrate identified, systemic discrimination on the basis of race<sup>29</sup>, and to satisfy strict scrutiny, agencies must provide a compelling interest for a race or gender-conscious program. “The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race and gender-conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys, and other methods of anecdotal data collection. If a factual predicate is found for race and gender-conscious efforts the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding the random inclusion of groups into the program”<sup>30</sup>.

#### Median Race-Neutral Participation

ADOT&PF took into consideration certified DBE participation for the five most recent fiscal years, for which the percentage participation is shown below:

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<sup>27</sup> ADOT&PFs Contract Specification 120-3.03(3) *Termination of a DBE* stipulates that a contractor shall not terminate a DBE without good cause and the prior written consent of DOT&PF.

<sup>28</sup> 2014 ADOT&PF Disparity Study, Ch. II.

<sup>29</sup> *Crososon*, 488 U.S. at 469.

<sup>30</sup> 2014 ADOT&PF Disparity Study, Ch. II-13.

**Exhibit 9**  
**Race-Conscious and Race-Neutral DBE Participation**  
**On FAA-Assisted Contracts FFY2009-FFY2013**

Year	Participation - Race Neutral	Participation - Race Conscious	Total DBE Participation	Percentage of Participation - Race Neutral	Percentage of Participation - Race Conscious
2009	\$6,648,767.00	\$0.00	\$6,648,767.00	100.00%	0.00%
2010	\$2,948,552.00	\$1,957,706.00	\$4,906,258.00	60.10%	39.90%
2011	\$1,140,874.00	\$3,141,360.00	\$4,282,234.00	26.64%	73.36%
2012	\$11,624,277.00	\$3,448,061.00	\$15,072,338.00	77.12%	22.88%
2013	\$1,724,333.00	\$1,837,604.00	\$3,561,937.00	48.41%	51.59%
<b>Total</b>	<b>\$24,086,803.00</b>	<b>\$10,384,731.00</b>	<b>\$34,471,534.00</b>	<b>69.87%</b>	<b>30.13%</b>

Summary of Considerations

The preceding evidence was collectively reviewed by ADOT&PF to arrive at a race-neutral/race-conscious projection for how the overall DBE goals for airports in each region will be met. In reviewing the evidence, ADOT&PF found that:

- The results of the regional disparity analyses revealed that within the Central and Southcoast Regions, M/W/DBE construction subcontractor utilization exceeded the level of participation that would be expected, absent the effects of discrimination in those regions. This finding contrasts with that of the disparity analysis of Alaska’s Northern Region, where there was substantial underutilization of M/W/DBE construction subcontractors as a whole, in addition to underutilization of all represented M/W/DBE groups available to perform work in the Northern Region.
- The non-goal analysis performed by MGT reflects findings similar to those of the disparity analysis. Specifically, within the Central and Southcoast Regions, M/W/DBE construction subcontractor utilization on FAA-assisted contracts for airports in those regions was in excess of the levels of participation that would be expected absent the effects of discrimination, regardless of whether or not race-conscious goals were assigned. There was evidence of lower levels of M/W/DBE construction subcontractor utilization on contracts where there were no race-conscious goals assigned, however, a relevant question that has arisen in the case law is whether evidence of a decline in M/W/DBE utilization following a change in, or termination of, an M/W/DBE program is relevant and persuasive evidence of discrimination. In *WSDOT v. Western States Paving*, the Ninth Circuit stated that “even in States in which there has never been discrimination, the proportion of work that DBEs receive on contracts that lack affirmative action requirements will be lower than the share that they obtain on contracts that include such measures because minority preferences afford DBEs a competitive advantage”<sup>31</sup>. Thus ADOT&PF concluded that although there were lower rates of utilization on projects without DBE goals for airports in the Central and Southcoast Regions, the fact that M/W/DBE construction subcontractor utilization on those projects exceeded the rate of M/W/DBE availability discredits the argument that discrimination was the cause for the reduced utilization.

<sup>31</sup> *Western States Paving*, 407 F. 3d at 1000.

In contrast to the findings for the Central and Southcoast Regions, the non-goal analysis of Alaska’s Northern Region showed that M/W/DBE firms in the region were underutilized relative to their availability when contracts were awarded without race-conscious goals.

- ADOT&PF reviewed anecdotal information from the Disparity Study and found that there was evidence of discrimination based on survey respondent reports of seldom or never being solicited when there were no DBE goals on the project. However, with respect to the Central and Southcoast Regions the statistical evidence from the non-goal analysis and disparity analysis did not provide much support for this assertion. With regard to contracts awarded in Alaska’s Northern Region, the statistical evidence does corroborate the anecdotal findings.

In consideration of the available evidence – including the level of non-goal M/W/DBE construction subcontractor participation, the Disparity Study legal analysis, and the statistical analyses; ADOT&PF found that the available evidence did not provide a strong factual predicate for setting a race-conscious component of the overall DBE goals for airports in the Central and Southcoast Regions. In regards to Alaska’s Northern Region, it is the Department’s determination that sufficient evidence exists to support setting a race-conscious component of the overall DBE goal for Northern Region airports. To determine the race-conscious/race-neutral components of the overall DBE goal for Northern Region airports, the Department based its projection on the historic proportion of aggregate race-conscious/race-neutral DBE participation to total DBE participation for FAA-assisted contracts as referenced in Exhibit 9. The following illustrates the process:

**Race Conscious: (Step Two Goal) x (Race-Conscious Proportion)**

$$= 7.93\% \times 30.13\% \\ = \mathbf{2.39\%}$$

**Race Neutral: (Step Two Goal) x (Race-Neutral Proportion)**

$$= 7.93\% \times 69.87\% \\ = \mathbf{5.54\%}$$

Through refocusing on race-neutral measures, innovating new strategies, and cooperation with government and industry partners, ADOT&PF proposes the following goals for airports in Central, Southcoast, and Northern Regions:

**Exhibit 10**  
**Proposed DBE Goals and**  
**Race-Conscious/Race-Neutral Splits**  
**For Alaska Airports by Region**

<b>Region</b>	<b>Goal</b>	<b>Race-Neutral Component</b>	<b>Race-Conscious Component</b>
Central	8.30%	8.30%	0.00%
Southcoast	6.10%	6.10%	0.00%
Northern	7.93%	5.54%	2.39%

The Transportation Research Board's (TRB) National Cooperative Highway Research Program (NCHRP) Synthesis 416 "Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs" (the TRB study) provides analysis and recommendations for states transitioning to race-neutral programs. The TRB study surveyed applicable state DOTs to determine what advice they would give to states that are transitioning to a 100% race-neutral program as the result of a decision similar to that which was handed down in the Ninth Circuit. This resulted in four recommendations:

1. Involve industry representatives as coaches or instructors.
2. Ensure that reliable systems are in place for collecting contract and payment data, and prepare and organize the necessary data in advance of a disparity study.
3. Ensure that the supportive services program uses a variety of strategies to help DBEs grow their businesses in a race-neutral environment.
4. Facilitate upper management support of the DBE program.

ADOT&PF recognizes that moving to a race-neutral implementation of its DBE program in two regions constitutes a major shift in policy, and in line with the recommendations of the TRB study, has prepared changes to its race-neutral program in order to facilitate a smooth transition.

As more DBE participation data for FAA-assisted contracts let by the Department becomes available, future modifications to the race-conscious/race-neutral split of the overall goals for airports may be necessary. ADOT&PF will work closely with FAA to monitor the transition.

The following describes ADOT&PFs race-neutral efforts and is broken out into two sections. The first section describes new initiatives to encourage DBE participation, some of which are made possible by redirecting resources currently used to implement ADOT&PFs race-conscious program. The second section illustrates the race-neutral efforts of ADOT&PFs current program, which the Department will continue to implement moving forward.

### **New Initiatives**

In transitioning to entirely race-neutral DBE program implementation for two of the three Alaska Regions, ADOT&PF CRO with assistance from DBE program stakeholders has taken steps to strengthen its race-neutral efforts in order to continue facilitating DBE participation absent the use of race-conscious project goals.

ADOT&PF conducted research and performed outreach with stakeholders in order to identify effective and feasible changes that would strengthen its race-neutral program. Relying on findings from the TRB study, as well as discussion with stakeholders including the Associated General Contractors of Alaska (AGC), ADOT&PF will implement the following measures:

#### **1) Facilitating DBE Participation through Pre-Bid Notification of Subcontracting Opportunities:**

According to the TRB study, reaching out to DBEs to inform them of subcontracting opportunities was found to be an effective strategy by 62% of state DOTs, and was identified as very or extremely effective by 38% of respondents. ADOT&PF expects that this will be a particularly effective measure in transitioning to a race-neutral program for several reasons. Working with prime contractors to

identify which bid items they intend to subcontract will allow the CRO to perform outreach to interested and qualified DBEs and encourage participation, as well as keep DBEs informed of subcontracting opportunities. Also, an added emphasis on facilitating DBE participation would allow the CRO to become more involved in DBE outreach for individual contracts than it currently is during the good faith effort process, whereby the CRO evaluates the outreach efforts made by prime contractors.

Discussions with stakeholders regarding pre-bid notification of subcontracting opportunities were met with enthusiasm, and ADOT&PF expects to add this measure as a part of its DBE Program Plan Update.

- 2) Aspirational Subcontractor Project Goals: In reviewing ADOT&PFs DBE Program, MGT recommended the occasional use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. Building on this recommendation, ADOT&PF CRO intends to set aspirational project goals in the same manner that it currently sets race-conscious project goals, which will benefit the DBE program by allowing ADOT&PF to gauge the actual level of DBE participation on its FAA-assisted contracts versus the amount that would be expected based on current CRO goal setting processes.
- 3) Increased Reporting: ADOT&PF recognizes the need for increased monitoring of DBE utilization and program implementation due to the magnitude of change associated with transitioning to race-neutral program implementation for two regions. Therefore it is the intention of the Department to increase its focus on program monitoring and reporting. As part of the race-neutral program plan, ADOT&PF CRO will begin presenting quarterly updates for AGCs DOT Steering Committee, which is composed of representatives from ADOT&PFs prime contractors from across the State. The intent of these meetings is to keep the contracting community informed regarding year-to-date DBE utilization, and to advocate for the DBE program. Implementing the previous measures will not only help foster open communication with the contracting community, but will also play an important role in how ADOT&PF intends to brand and market its DBE program to stakeholders.
- 4) Mentor/Protégé Program: 49 CFR Part 26.35 allows for the implementation of mentor/protégé arrangements as part of a state's DBE program. Mentor/protégé programs pair a DBE firm with an established DBE or non-DBE firm, and the established firm provides business development assistance to the protégé DBE firm. According to the TRB study, 60% of states that had implemented such a program found it to be effective, with 30% finding it very or extremely effective. Because of the success other states have had with implementing these programs, and expressions of interest from industry partners within the State of Alaska, the ADOT&PF CRO recently commissioned a study to:
  - Perform research on other mentor/protégé program efforts and identify keys to the success of other programs, and challenges.
  - Develop an appropriate DBE assessment tool which to apply appropriate metrics to measure business capacity and a DBE firm's propensity for success in the program.

ADOT&PF will implement its mentor-protégé program based on the recommendations of the study. Currently, the CRO is in communication with industry partners and potential mentor-protégé program participants to define the details of the program. The Department expects that these additional efforts to build the capacity of currently certified DBEs will likely increase the rate of DBE participation, and prove to be beneficial to the DBE program. ADOT&PF will continue to keep FAA updated as the program evolves.

- 5) Outreach to M/WBEs: According to the TRB study, one of the measures found to be most effective by states operating in 100% race-neutral programs was outreach to firms identified during an availability or disparity study. Many of the minority and women-owned firms identified as ready, willing, and able to perform work on FAA-assisted contracts in the 2014 ADOT&PF Disparity Study are not currently certified DBEs. Therefore, ADOT&PF will perform outreach to encourage non-certified M/WBEs identified in the Disparity Study to become certified.

Additionally, ADOT&PF has established partnerships with the Minority Business Development Agency (MBDA) as well as the Procurement Technical Assistance Center (PTAC) of Alaska in order to support the Department's certifications outreach efforts. These partners will assist interested firms with the certifications process, which can be time-consuming and confusing for companies seeking certification.

While the ADOT&PF CRO has experienced difficulty encouraging non-certified firms to become certified in the past, the CRO expects that through outreach and highlighting the benefits of certification, a renewed focus on certifying M/WBEs will add to the population of certified DBEs, and ultimately help to increase DBE participation on FAA-assisted contracts.

- 6) Coordination with Industry: An integral part of ADOT&PF's race-neutral program is coordination with industry partners. ADOT&PF will continue to leverage its relationships with industry partners in order to facilitate DBE participation on FAA-assisted contracts. Currently, the CRO is working with AGC of Alaska to allow DBEs access to tools available to AGC members such as AGC Online Plans. This is a tool recently developed by AGC where all construction projects, procurements, and RFPs in Alaska are listed and accessed. Expanding the scope of the tool to include a function for prime contractors to advertise requests for subcontractor bids on projects is also being explored. Additionally, AGC has signaled a willingness to provide DBEs interested in using these tools with tutorials and assistance to realize the full benefits of them.
- 7) Recording Outreach Efforts: ADOT&PF CRO will continue to strongly encourage prime contractors to utilize DBEs wherever feasible, and also encourage reporting of outreach efforts performed to obtain DBE participation on FAA-assisted contracts. As the details of this type of project-specific reporting come available, ADOT&PF will provide FAA with updates.
- 8) Tailored Training: The ADOT&PF CRO is exploring how it can better tailor its current training offerings to individual firms. One of the ways that this may be accomplished is by surveying prime contractors on FAA-assisted contracts to obtain "performance reports" of DBEs that were subcontracted to perform work on those projects. The intention is similar to that of the



mentor/protégé program, in that a more experienced contractor would provide the CRO insight into what types of training individual firms would most benefit from. This type of data collection will allow the CRO to present training offerings in a smarter, and more targeted way that will ultimately benefit DBEs by avoiding a one-size fits-all approach.

- 9) Upgrading Information Systems: ADOT&PF will be transitioning to a new system that will help to integrate the functions of the different sections within the Department, including the CRO. This will increase the effectiveness of the ADOT&PF DBE Program by easing workloads, and allowing the CRO to focus more of its resources on facilitating DBE participation. ADOT&PF will provide FAA with updates as progress is made.

### **Continued Efforts**

ADOT&PF has a broad range of race-neutral measures already in place to encourage the participation of all small businesses on its FAA-assisted contracts. Many of the race-neutral measures implemented by ADOT&PF are measures commonly implemented among other state DOTs, while other measures ADOT&PF implements are innovative and unique to Alaska. ADOT&PF policies and procedures seek to facilitate small business participation and nondiscrimination in its FAA-assisted contracts let by the Department. It is ADOT&PFs policy to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. In addition, Alaska statues address issues of prompt payment between both the Department and prime contractors, as well as between prime contractors and subcontractors for contracts let by the Department<sup>32</sup>. The ADOT&PF DBE program is administered through the CRO, as are the majority of race-neutral efforts. The race-neutral efforts currently implemented can be generalized into four primary categories:

- Supportive Services and Training
- Administrative Support
- Marketing and Outreach
- Financial Assistance

Supportive Services and Training: According to the TRB study on race-neutral measures, supportive services and training measures ranked among the highest in terms of effectiveness, and were also the most widely used of the four categories among state DOTs. Through the CRO Office of Support Services, ADOT&PF seeks to improve business and economic opportunities for small businesses through the implementation of the following supportive services and training efforts:

- 1) Providing DBEs with One-on-One Business Reviews

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<sup>32</sup> The Alaska prompt payment statute allows for interest on amounts not paid, and requires a shorter time-frame for payment to be made than provided for by federal regulations. Federal regulations provide for prompt payment of retainage within 30 days of satisfactory completion by the subcontractor. Under Alaska statute, the prime contractor is to pay the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid

The Map to Success Specialized Assistance Program offers one-on-one consultation with business advisors who conduct in-depth analyses of firms' business operations. The consultations are intended to identify areas for improvement, and upon completion of the initial assessment, provide firms with a business profile that includes recommendations for strengthening their business infrastructure. The goal of the program is to provide business owners with the tools necessary to bring their businesses to a performance level that would result in an increased percentage of work on FAA-assisted contracts. A total of 91% of TRB study respondents in a survey of state DOTs had utilized this race-neutral strategy, and of the 91% of respondents, 91% rated it effective, with 60% rating it very or extremely effective, making it the most effective implementation of supportive services and training as reported by state DOTs.

2) Providing Firms with Training Classes and Technical Education

Workshops and training are frequently offered by the CRO Office of Support Services free of charge to certified DBE firms. These trainings cover a diverse range of topics, not limited to:

- Construction Law
- Bonding
- Marketing and Advertising
- Human Resource Management
- Joint Ventures
- ADOT&PF Procurement
- Government Contracting
- Contract Law

Providing firms with training classes and technical education is a method frequently used by state DOTs to encourage DBE participation. 98% of State DOT respondents in the TRB study reported using this strategy, 83% of those that had used it found it to be effective, and of those, 39% found it to be a very or extremely effective method. Respondents also described several examples of effective implementations of this strategy - tailoring training to meet the needs of different DBE subgroups, and involving members of industry in training programs as coaches or instructors, which coincides with ADOT&PF's race-neutral program updates that were previously mentioned.

Administrative Support: Administrative support strategies include measures taken to facilitate DBE participation through adjustments in policy or by establishing initiatives. ADOT&PF has taken steps to provide administrative support to DBEs wherever it is feasible to do so. Examples have included:

1) The Plan Holders Self Registration List (PHSRL) In February of 2013, the CRO initiated the development of the DBE Stakeholders Committee, composed of DBEs, Prime Contractors, and the AGC. The objectives of the Committee were to:

- Create an online portal to connect primes & DBEs
- Increase DBE participation

- Foster open communication
- Improve procurement opportunities for DBEs
- Improve the GFE process

The result of this initiative was the PHSRL, an online portal which allows DBEs, SBEs, and non-DBE subcontractors to self-register as interested subcontractors on projects. The PHSRL gives prime contractors access to all subcontractors who are interested in participating on a project, and benefits DBEs by:

- Allowing firms to express interest in individual projects
- Giving DBEs access to Online Public Notices, whereby firms receive automatic email notifications that will notify them of upcoming projects (this type of outreach was found to be effective by 74% of respondents in the TRB study).
- Allowing DBEs to sign up for non-federally funded projects, thereby increasing their business opportunities to participate in State funded projects.

Since the PHSRL was implemented, the CRO has performed outreach to raise awareness of the PHSRL, and provides assistance wherever possible to ensure that firms that are interested in bidding are able to access the platform.

Marketing and Outreach: Marketing and outreach refers to efforts taken to market and publicize the DBE program, as well as outreach efforts to connect with DBEs and potential DBEs. The CRO performs many types of outreach in the form of creating and maintaining a DBE Directory, hosting statewide outreach initiatives, publishing newsletters, and maintaining the CRO website.

1) *The Transporter*

The CRO Office of Support Services publishes a quarterly newsletter, *The Transporter*, to communicate DBE program news, upcoming events, and any other important news concerning DBE firms. The newsletter is made available on the CRO website<sup>33</sup>, and is also emailed to prime contractors, industry stakeholders, and all DBE firms. According to the TRB study, this particular outreach strategy is one that is often used by state DOTs, and of the states that use it, 62% found it to be effective.

2) Quality Assurance Reviews

ADOT&PF CRO implemented a new race-neutral measure during the 2014 construction season – quality assurance reviews (QARs). The objective of this outreach strategy is to evaluate DBEs' experience on ADOT&PF construction projects from the DBE perspective, as well as from the perspectives of the prime contractor, and ADOT&PF project personnel. The CRO accomplishes this by conducting on-site surveys on active FAA-assisted construction projects. Implementing QARs will be a valuable tool for ensuring that DBEs are treated fairly on FAA-assisted contracts going forward, and allowing for feedback from DBE program stakeholders.

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<sup>33</sup> <http://dot.alaska.gov/cvlrts/events.shtml>

3) Facilitating Meetings and Networking between DBEs and Prime Contractors

96% of state DOT respondents from the TRB study had utilized this strategy in their DBE programs. Of those that had used it, 69% found it to be effective, with 47% rating it very or extremely effective. ADOT&PF has experienced success with this strategy in the past, and maintains a strong emphasis on facilitating DBE participation by connecting DBEs and prime contractors.

Throughout the year, the CRO Office of Support Services hosts networking opportunities for DBEs to connect them with government procurement offices, prime contractors, other DBEs, and private industry through:

- The Future Connections Program - an outreach strategy coordinated with industry partners to introduce DBEs to prime contractors and government agencies.
- The Annual DBE and Small Business Subcontractor Conference - serves as an opportunity for DBEs to network, receive the latest information about the DBE program, receive quality training, and learn about business resources. This event is offered free of charge to certified DBEs.

Financial Assistance Strategies: Several loan programs are available to small businesses in the State of Alaska, including:

1) The DBE Reimbursement Program

The DBE Reimbursement Program is offered through the CRO Office of Support Services. Through this program, DBE firms may receive assistance to cover the costs of training or consultation and/or association fees/dues that enhance the management skills or expertise of the DBE. A 50% reimbursement program is available to individuals of qualifying DBE firms. Under this program firms may be reimbursed for 50% tuition or other costs (up to \$1,000.00 per calendar year) for business or technical training, workshops, consulting services, and professional association fees/dues. Small Business Development Center core classes are reimbursed at 90% through the program.

2) Short Term Lending Program (STLP)

The STLP is a program facilitated by USDOT which provides access to working capital through revolving lines of credit guaranteed by the STLP. These lines of credit can be used for transportation-related contracts with the accounts receivables for these contracts constituting the collateral. The lines of credit can be granted as high as \$750,000.00 for as long as five years.

3) Micro Loan Fund

The Alaska Division of Economic Development has provided a Micro Loan Fund for secured loans up to \$35,000.00 for one individual over six years. These loans can be used for working capital, equipment, construction, or other commercial purposes for Alaska Businesses.

4) 504 Loan Program and 7(a) Loan Guarantee Program

Small businesses can also take advantage of the U.S. Small Business Administration 504 Loan Program and 7(a) Loan Guarantee Program.

5) Kenai Peninsula Economic Development District

The Kenai Peninsula Economic Development District also has provided a revolving loan fund for loans between \$5,000.00 and \$50,000.00, as well as a micro loan fund for loans between \$1,000.00 and \$25,000.00.