

Massachusetts Department of Transportation Highway Division

DBE Goal Setting Step-by-Step Methodology FY2020 – FY2022

The U.S. Department of Transportation (USDOT) regulations appearing at 49 Code of Federal Regulations (CFR), Part 26, require each recipient of USDOT financial assistance to establish a triennial goal for participation of Disadvantaged Business Enterprises (DBEs) in its USDOT-assisted contracting activities funded through the Federal Highway Administration (FHWA). The DBE overall goal must be based on demonstrable evidence of the availability of ready, willing, and able (RWA) DBEs relative to all businesses ready, willing, and able to participate on Massachusetts Department of Transportation's (MassDOT) USDOT-assisted contracts ("Relative Availability of DBEs"). For the goal setting purpose, the definition of ready, willing, and able (RWA) is a certified business that has submitted a bid or quote on a USDOT prime or subcontract based on the data examined for a three-year period. The total number of RWA DBEs also includes those firms that are likely to become DBEs during the goal implementation period as described on page 3 of this document.

MassDOT may undertake an annual review of the methodology, if necessary, to ensure the goal continues to reflect conditions that exist in the local highway transportation contracting market.

The Massachusetts Department of Transportation's Proposed Overall DBE Goal is 13.6%. (Race Neutral (RN) = 3.43%) (Race Conscious (RC) = 10.21%). The overall goal will be implemented for Federal fiscal years 2020, 2021, and 2022.

Step 1. Determination of Base Figure for Relative Availability of DBEs

MassDOT uses the "bidders list" in its approach to determine the base figure for FHWA-assisted contracts, and the Commonwealth of Massachusetts is used as the local market area. The area designated is based on the geographic distribution of contracting dollars and the areas in which the majority of contractors participate during the assessment period. The data that was collected resulted in a list of primes and subcontractors, DBEs and non-DBEs that directly participated in or attempted to participate in FHWA-assisted contracts. This information was collected from each prime bidder on a quarterly basis and supplemented by firms that currently perform on MassDOT's highway projects and which will likely become certified as DBEs during the goal implementation period. Responses from bidders and supplemental information were deemed complete, resulting in a statistically sound estimate of the universe of all bidders, including DBE and non-DBE subcontractors.

For Architects & Engineering (A&E) contracts, an equivalent separate bidders list was established. Since MassDOT requires annual prequalification by all firms (prime consultants and subconsultants, DBEs and non-DBEs) that seek work on MassDOT A&E contracts, the list of Prequalified A&E consultants was deemed appropriate and found to constitute a complete listing of RWA firms that seek participation in this area.

MassDOT established the period for its data to be from October 1, 2015 to September 30, 2018 (three-year period). MassDOT determined that 89.7% of contract awards/commitments during the three-year period went to firms located in Massachusetts. In addition, it was determined that 88.1% of all firms that participated in the three-year period were located in Massachusetts. This information is noted in the table below:

Description	Total Program Awards/Commitments	Amount Represented by Massachusetts Firms	Massachusetts Market Portion (%)
	FY2016-FY2018	FY2016-FY2018	FY2016-FY2018
Geographic Distribution of Contract \$	\$1,538,104,984	\$1,379,765,481	89.7%
Geographic Distribution of Participating Prime Contractors	300	255	85.0%
Geographic Distribution of all Participating Contractors	815	718	88.1%

From a review of the data relative to construction contracting, MassDOT determines that 109 DBE firms sought work on FHWA-assisted contracts and subcontracts. MassDOT also determines a total universe of 1627 businesses, comprising of DBEs and non-DBEs.

In determining the supplemental information of firms that could become certified during the goal implementation period, MassDOT performed the following calculations:

- a. Identified the number of firms certified under the Commonwealth’s Minority and Women Business Enterprise (M/WBE) Program that participated on MassDOT -administered highway contracts in the previous three-year period.
- b. Identified the number of these firms that have properly maintained their certification and are not subject to ineligibility proceedings under the Commonwealth’s program.
- c. Identified and calculated the percentage of M/WBEs that also held DBE certification for the previous three-year period.
- d. Made adjustment to the total number of firms identified in “b” by the percentage determined in “c”.

Construction Contracts

By applying the factors above, MassDOT determines that 114 firms certified under the Commonwealth’s M/WBE Program participated on MassDOT administered highway construction projects in the previous three-year period. Of this number, it was found that 8 firms were decertified under the Commonwealth’s Program. In the previous three-year period, certification records showed that 68 of the 114 firms certified as M/WBEs were also certified as DBEs as shown in the calculations below:

- $114 - 8 = 106$ (number of eligible M/WBEs)
- $68/114 = 59.6\%$ (percentage of M/WBEs certified as DBEs)
- $106 \times .596 = 63$ (likely number to *become* RWA DBEs)
- $63 + (\# \text{ of actual RWA DBEs identified from the bidders list}) = \text{Total RWA DBEs or the numerator to be used in the baseline goal calculation.}$

Baseline Calculation for Construction:

- # of RWA DBEs identified from the bidders list = 109
- # of firms likely to *become* RWA DBEs = 63
- Total # of RWA DBEs = 172
- Total universe of all businesses (including DBEs and non-DBEs) = 1627

Based on this information, MassDOT determines the relative availability of DBEs in Construction to be 10.6% (172/1627).

A&E Contracts

By applying the same factor for supplemental information, MassDOT determined that 48 A&E firms certified under the Commonwealth’s M/WBE Program have participated on MassDOT administered A&E projects in the previous three-year period. Of this number, it was found that 5 were decertified under the Commonwealth’s Program. In the previous three-year period, certification records showed that 29 of the 48 firms certified as M/WBEs were also certified as DBEs as shown in the calculations below:

- $48 - 5 = 43$ (number of eligible M/WBEs)
- $29/48 = 60.4\%$ (percentage of M/WBEs certified as DBEs)
- $43 \times .604 = 26$ (likely number to *become* RWA DBEs)
- $26 + (\# \text{ of RWA DBEs identified from the bidders list}) = \text{Total RWA DBEs or the numerator to be used in the baseline goal calculation}$

Baseline Calculation for A& E Firms:

- # of RWA DBEs identified from the Prequalified A&E List = 29
- # of firms likely to *become* RWA DBEs = 26
- Total # of *actual* RWA DBEs = 55
- Total universe of all businesses (including DBEs and non-DBEs) = 201

Based on this information, MassDOT determines the relative availability of A&E consultant DBEs to be 27.3% (55/201).

Weighting

Based on projected value of FHWA-assisted construction and A&E consultant awards, MassDOT’s FHWA-assisted contracting program is generally comprised of 90% construction contracts and 10% A&E consultant contracts. Accordingly, the following calculations were performed to derive an appropriately weighted baseline goal:

	Relative Availability of DBEs	MassDOT's FHWA-assisted contracting Program	Weighted Value
Construction Contracts	10.6%	90%	9.5%
A&E Contracts	27.4%	10%	2.8%
Step 1 Baseline Goal			12.3%

Step2. Examination of Other Evidence for Determination of Availability and Adjustments

MassDOT examined the current capacity of DBEs to perform work on FHWA-assisted contracts based on the value of work performed by DBEs in the previous five (5) federal fiscal years (FY2014-FY2018). The table below shows total DBE participation relative to total participation on closed contracts over the 5-year period.

<i>FHWA - Year Data</i>	<i>FY2018</i>	<i>FY2017</i>	<i>FY2016</i>	<i>FY2015</i>	<i>FY2014</i>	<i>5 Year total</i>
<i>Total Value of payments on closed contracts</i>	\$ 44,029,990	\$ 71,684,715	\$397,356,015	\$ 154,961,450	\$ 514,551,926	\$1,182,584,096
<i>Total DBE Participation</i>	\$ 4,201,308	\$ 10,650,714	\$ 66,570,796	\$ 24,721,625	\$ 62,152,911	\$168,297,354
<i>Percentage</i>	10%	15%	17%	16%	12%	15% (median)
<i>DBE Race/Gender Neutral</i>	\$ 177,813	\$ 2,460,063	\$ 33,148,748	\$ 13,841,027	\$ 17,380,653	\$ 67,008,304
<i>DBE Race/Gender Conscious</i>	\$ 4,023,495	\$ 8,190,471	\$ 33,422,048	\$ 10,880,598	\$ 44,772,258	\$ 101,288,870

Based on current capacity of DBEs to perform work, MassDOT seeks the following adjustment:

	DBE Participation	Adjustment to Step 1 Baseline Goal (DBE participation total /2)
Step 1 Baseline	12.3%	
Median Past DBE Participation	15.0%	
Total	27.3%	13.6%

As part of this process, MassDOT sought additional evidence in related fields within its jurisdiction that could affect opportunities for DBEs to form, grow, and compete, such as statistical disparities for DBEs to obtain finance, bonding and insurance.

Based on the report “Business Disparities in the Construction and Design Market Area” prepared for the Commonwealth of Massachusetts Division of Capital Asset Management (DCAMM) in 2017, Nera Economic Consulting, using data from a variety of sources (Federal Reserve Board, the Kauffman Firm Survey, and NERA’s own survey) provided qualitative and quantitative evidence consistent with the presence of discrimination against minorities in the credit market for small businesses. As example, Nera stated that African American-owned firms are much more likely to report being seriously concerned with credit market problems and report being less likely to apply for credit because they fear the loan would be denied. After controlling for a large number of characteristics of the firms, NERA found that African American-owned firms, Hispanic-owned firms, and to lesser extent other minority-owned firms, are substantially and statistically significantly more likely to be denied credit than are nonminority-owned firms. Evidence was also found that women are discriminated against in this market as well. NERA stated in the report that there is no evidence that discrimination in the market for credit is significantly different in the Northeast census region or in the construction, design, and construction-related professional services industries than it is the nation or the economy as a whole.

Based on the review of the data provided in the DCAMM report, MassDOT found no demonstrable evidence that logically or directly impacts any significant areas affecting DBE participation. Therefore, MassDOT seeks no further adjustments and has set an overall goal of **13.6%**.

Race-Conscious vs. Race-Neutral Split

Based on the availability, past participation, and data presented in the table below, MassDOT projects that **3.43%** of the overall goal will be achieved through Race-Neutral (RN) measures and **10.21%** of the overall goal will be achieved through Race-Conscious measures. The RN projection is based on a review of data from a five-year period (FY2014- FY2018) shown on the table below. The **3.43%** figure represents the median that can be reasonably expected to be achieved through race-neutral participation and is based on past participation of both contracts with goals, contracts without goals, and those contracts which DBE participation exceeded the goals.

Description	FY2018	FY 2017	FY 2016	FY 2015	FY 2014	5 Year total
Total Value of Payments on Closed Projects	\$44,029,990	\$71,684,715	\$397,356,015	\$154,961,450	\$514,551,926	\$1,182,584,096
RN Participation	\$177,813	\$2,460,063	\$33,148,748	\$13,841,027	\$17,380,653	\$67,008,304
%RN Participation	0.40%	3.43%	8.34%	8.93%	3.38%	3.43% (median)

The data was compiled using the Equitable Business Opportunities (EBO) software, and other data sources maintained by the MassDOT’s Office of Diversity and Civil Rights.

Description of the types of Race-Neutral measures implemented by MassDOT:

MassDOT offers several types of Race-Neutral measures that are available to all small businesses. These include online advertising schedules, bid tabulations, and up-to-date information on prime contractors that have taken out plans and specifications during a project’s advertising period. In addition, MassDOT offers several other types of Race-Neutral measures through the Small Business Resource Center to assist small businesses, including DBEs. These technical services include participation in the business development program, information in obtaining bonding, matchmaking services for small businesses, and assistance in becoming pre-qualified to bid on MassDOT projects.

Consultation:

On July 22, 2019, MassDOT held a consultation to discuss its goal setting methodology and to solicit feedback from stakeholders. The following organizations representing construction contractors, professional service providers, minority and women owned firms in the highway and transportation industry were invited to participate in the meeting: Construction Industries of Massachusetts (CIM), Women’s Transportation Seminar (WTS), Conference of Minority Transportation Officials (COMTO), Associated Builders & Contractors (ABC), Greater New England Minority Supplier Development Council (GNEMSDC), Black Economic Council of

Massachusetts (BECM), Massachusetts Minority Contractors Association (MMCA), Hispanic American Chamber of Commerce (HACC), and the Massachusetts Uniform Certification Program (MassUCP) Office.

Business organizations in attendance were CIM, COMTO, BECM, and MassUCP. MassDOT's Assistant Secretary for the Office of Diversity and Civil Rights, Julian Tynes, presented an overview of the DBE program and methodology for developing the overall DBE goal based on the availability of DBEs. This was followed by group discussion on participation during the past 3 years, issues affecting DBE firms and other minority and woman owned businesses to form, grow, and compete in the market place, and strategies to improve participation. Some meaningful suggestions resulted from the discussion including support for developing a small business set-aside program and capacity building for small businesses. Issues of financing, bonding, insurance, human resources, accounting record keeping continue to be areas of concerns relating to small businesses.

CIM suggested that a closer look at the projects proposed for the next five years as it appears to be a decline in actual construction work and increase in maintenance that may impact the goal attainment for FY2020-FY2022. Accordingly, MassDOT will review the 5 year Capital Improvement Plan on an annual basis and adjust the goal if and when appropriate.

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