

## **SECTION VIII.**

### **Overall Annual DBE Goal**

As part of implementing the Federal DBE Program, ODOT must set an overall annual DBE goal. Federal regulations (49 CFR Part 26.45) outline a two step process for setting the overall goal:

- Step 1: Establishing a base figure; and
- Step 2: Making any needed adjustment to the base figure.

#### **Step 1: Establishing a Base Figure**

As presented in the Section IV availability analysis, minority- and women-owned firms currently or potentially certified as DBEs would be expected to receive 9.3 percent of prime contract and subcontract dollars for ODOT's FHWA-funded contracts, based on their relative availability for that work.

- ODOT should consider 9.3 percent as the base figure for its overall annual aspirational goal for DBE participation if the types of FHWA-funded contracts for the time periods covered by future goals will be similar to FHWA-funded contracts from July 2004 through June 2009. If the mix of work between construction- and engineering-related procurements will differ in the future, ODOT can apply new weights to develop a new base figure. (As shown in Figure VIII-1, the current weight is 95 percent for construction contracts and 5 percent for engineering-related contracts.)
- ODOT must develop goal for DBE participation including all DBE groups, and should not subdivide the goal by DBE group.<sup>1</sup> (The data BBC presents by DBE group is to document how the overall DBE goal might be calculated.)
- The 9.3 percent base figure is similar to the 8 to 9 percent annual DBE goals ODOT established during study period years. ODOT only included certified DBEs in its base figure calculations. BBC also counted minority- and women-owned firms that possibly could be certified as DBEs but are not currently certified.<sup>2</sup> BBC also had more detailed information concerning available firms and performed a more sophisticated analysis of relative availability for individual MBE/WBE groups.

Figure VIII-1 on the next page summarizes base figure information also presented in Section IV.

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<sup>1</sup> See 49 CFR Section 26.45 (h).

<sup>2</sup> Consistent with USDOT guidance, as discussed in Section IV.

**Figure VIII-1.  
Calculation of base figure for overall annual DBE goal**

Potential DBEs	Utilization benchmark (availability %)		
	Construction	Engineering	Total
African American-owned	0.3 %	0.9 %	0.4 %
Asian-Pacific American-owned	0.0	3.9	0.2
Subcontinent Asian American-owned	0.0	0.0	0.0
Hispanic American-owned	0.7	1.4	0.7
Native American-owned	4.0	7.0	4.1
WBE (white women-owned)	<u>4.0</u>	<u>3.1</u>	<u>3.9</u>
<b>Total potential DBEs</b>	<b>9.0 %</b>	<b>16.2 %</b>	<b>9.3 %</b>
<b>Sector weight</b>	<b>95 %</b>	<b>5 %</b>	

**Step 2: Making Any Needed Adjustment to the Base Figure**

ODOT can make upward or downward adjustments to the base figure as it determines its overall annual DBE goal. It does not have to make a step 2 adjustment as long as it considers appropriate factors and explains its decision.

The Federal DBE Program outlines factors that recipients of USDOT funds must consider when assessing whether to make a “step 2” adjustment to the base figure:<sup>3</sup>

1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant data.

BBC completed an analysis of each of the step 2 factors and was able to quantify the effect of certain factors on the base figure. Other information BBC examined was not as easily quantifiable, but is still relevant as ODOT assesses whether or not to make a step 2 adjustment.

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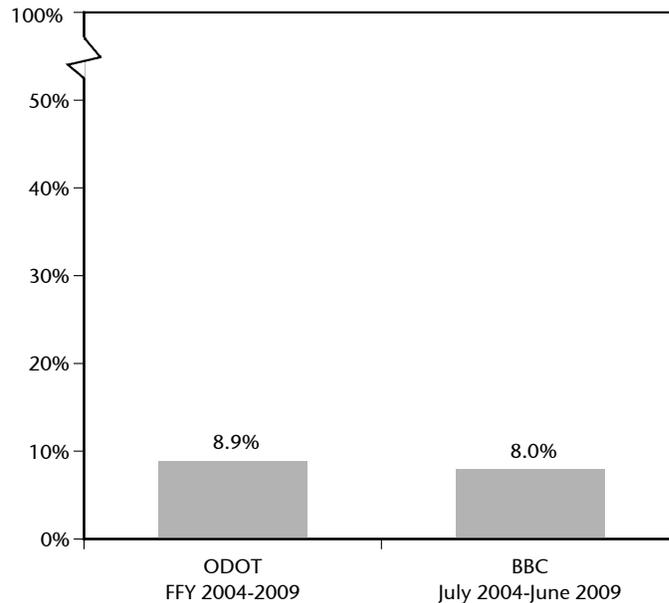
<sup>3</sup> 49 CFR Section 26.45

**1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.** ODOT's DBE participation reports to FHWA for the past five years indicate median DBE participation of 8.9 percent.<sup>4</sup> BBC's independent analysis indicates 8.0 percent DBE utilization for FHWA-funded contracts (based on aggregate utilization over this period, not median utilization for the five years). Figure VIII-2 presents these estimates.

**Figure VIII-2.  
Estimates of DBE participation on FHWA-funded contracts**

Note: Number of FHWA-funded contracts/subcontracts analyzed by BBC is 6,306. For more detail, see Figure K-3 in Appendix K.

Source:  
BBC Research & Consulting from ODOT's DBE participation reports and ODOT contract data.



**2. Information related to employment, self-employment, education, training and unions.** Section III of the report summarizes information concerning local marketplace conditions for minorities and women. Detailed analyses of the Oklahoma marketplace are presented in Appendices D, E, F, G and I. BBC's analysis suggests that there are certain barriers affecting entry, advancement and business ownership for minorities and women in the Oklahoma construction and engineering industries:

- Taken together, this information suggests that barriers to employment, self-employment and education exist for certain minority groups and women in Oklahoma.
- It follows that such barriers have affected the relative availability of minority- and women-owned firms to perform ODOT work.
- It may not be possible to properly quantify the extent to which barriers to employment, education and training may have depressed the relative number of minority- and women-owned firms in the local industry. However, the effect of disparities in self-employment on relative availability can be quantified, as discussed below.

<sup>4</sup> Based on median reported utilization for FFY 2004-2009

**Quantitative information on self-employment.** Through regression models, BBC investigated whether race/ethnicity/gender influenced rates of business ownership among Oklahoma workers after accounting for the effects of several neutral factors.<sup>5</sup> Section III of the report summarizes BBC’s analyses and Appendix E provides detailed results of the regression models.

BBC identified statistically significant disparities in business ownership rates for most minority groups and for women working in both the construction and engineering industries. BBC calculated the impact on the base figure if certain minority groups (and women) owned businesses at the same rates as similarly situated non-minorities (and men). These “but for” calculations are presented in Figure VIII-3. BBC’s calculations include the same categories of contracts used when determining the base figure (i.e., construction and engineering-related services). BBC made the calculations in the following way:

- BBC made separate “but for” calculations for construction and engineering, and then weighted them based on ODOT’s dollars of FHWA-funded contracts for those types of procurements.
- Within construction and engineering, BBC calculated potential base figure adjustments only for those firms for which regression analyses showed statistically significant disparities in business ownership. Thus, for construction, BBC calculated potential availability adjustments for African Americans, Hispanic Americans, Native Americans and white women. For engineering, BBC calculated potential adjustments for African Americans, Hispanic Americans, other minority groups (which primarily pertains to Asian-Pacific Americans and Subcontinent Asian Americans) and white women.

The columns of Figure VIII-3 represent the following:

- a. **Current availability.** Column (a) shows the current availability of potential DBEs as presented in Section IV.
- b. **Disparity indices for business ownership.** Column (b) presents disparity indices in business ownership for the different race/ethnic/gender groups. See Section III and Appendix E for an explanation of the regression models on which BBC based these disparities.
- c. **Availability after initial adjustment.** Column (c) presents initial availability estimates after adjusting for statistically significant disparities in business ownership. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.

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<sup>5</sup> BBC examined U.S. Census data on business ownership rates using methods similar to analyses examined in the court cases involving state departments of transportation in Illinois and Minnesota. At the time of this report, the most extensive data on business ownership come from the 2000 Census. The analyses of these data provide the highest level of accuracy and detail and are the focus of this summary.

- d. **Availability after scaling to 100%.** Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the estimates equal 100 percent. BBC re-scaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) and multiplying by 100. (e.g., for Native American-owned firms,  $[4.7\% \div 103.8\%] \times 100 = 4.5\%$ ).
- e. **Components of goal.** Column (e) shows the component of the total goal attributed to the adjusted MBE/WBE availability in each procurement area. BBC calculated each component by taking the total DBE availability estimate shown under “Total small minority and female” in column (d) and multiplying it by the proportion of total FHWA-funded contract dollars for construction and engineering (95% for construction and 5% for engineering-related contracts). The study team took the 12.4 percent shown under “Total small minority and female” in column (d) for construction (12.4%) and multiplied it by 95 percent for a result of 11.8 percent. The column (d) figure for engineering (23.6%) was multiplied by its weight of 5 percent for a result of 1.2 percent. The values in column (e) were then summed to equal the total adjusted DBE availability (last row of Figure VIII-3). This figure rounds to 12.9 percent.

In sum, the potential step 2 adjustment indicates an annual aspirational goal of 12.9 percent.

**Figure VIII-3.**  
**Potential adjustment to base figure for overall annual DBE goal**

Business ownership	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of goal**
<b>Construction</b>					
African American	0.3 %	54	0.6 %	0.5 %	
Hispanic American	0.7	59	1.2	1.1	
Native American	4.0	86	4.7	4.5	
Other minority groups	0.0	no adjustment	0.0	0.0	
White women	<u>4.0</u>	62	<u>6.5</u>	<u>6.2</u>	
<b>Total small minority and female</b>	9.0 %		12.8 %	12.4 %	11.8 %
Majority and large MBE/WBE	<u>91.0</u>		<u>91.0</u>	<u>87.6</u>	
<b>Total firms</b>	100.0 %		103.8 %	100.0 %	
<b>Engineering</b>					
African American	0.9 %	32	2.8 %	2.6 %	
Hispanic American	1.4	66	2.1	1.9	
Native American	7.0	no adjustment	7.0	6.4	
Other minority groups	3.9	36	10.8	9.9	
White women	<u>3.1</u>	75	<u>3.1</u>	<u>2.8</u>	
<b>Total small minority and female</b>	16.2 %		25.9 %	23.6 %	1.2 %
Majority and large MBE/WBE	<u>83.8</u>		<u>83.8</u>	<u>76.4</u>	
<b>Total firms</b>	100.0 %		109.7 %	100.0 %	
<b>Total small minority and female after adjustments and weighting</b>					12.9 %

Note: \* Initial adjustment is calculated as current availability divided by the disparity index.  
 \*\* Components of goal calculated as value after adjustment and scaling to 100% multiplied by percentage of total FHWA-funded contract dollars in that category (construction is 95%, engineering is 5%).  
 \*\*\* Small minority and female firms includes those firms that BBC surveyed and who reported annual revenues below the Federal DBE revenue caps. MBE/WBE firms reporting annual revenues over DBE limits are not included in this total.

Source: BBC Research & Consulting.

### **3. Statistical disparities in the ability of DBEs to get financing, bonding and insurance.**

BBC collected and analyzed information concerning access to financing, bonding and insurance. There is evidence that minority- and women-owned firms do not have the same access to capital as majority-owned firms.

Any barriers in access to capital, bonding and insurance would affect the opportunities for minorities and women to form and successfully operate construction, engineering and related firms.

- As discussed in Section III, because firms typically must have working capital, bonding and insurance to be awarded and perform ODOT construction prime contracts, any greater barriers to obtaining these business inputs for minorities and women would place these firms at a disadvantage in obtaining ODOT construction contracts.
- Similarly, if minority- and women-owned engineering and related firms face disadvantages obtaining financing and insurance, they may have disadvantages obtaining ODOT professional services contracts. Insurance is a requirement for obtaining ODOT work and sufficient working capital is a practical necessity to perform ODOT contracts.

Unequal access to financing, bonding and insurance may adversely affect the current availability of minority- and women-owned firms to perform ODOT work, which adds to the evidence for an upward Step 2 adjustment. However, the impact on the base figure could not be explicitly quantified. Section III summarizes this information, Appendix F presents detailed quantitative analyses and Appendix I reviews relevant qualitative information.

**4. Other relevant data.** The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make a step 2 adjustment to the base figure.<sup>6</sup> One factor BBC examined was the relative success of minority- and women-owned firms in the local transportation contracting industry. There is evidence of disparities for certain groups of minority- and women-owned firms. Section III summarizes this information, Appendix G presents detailed quantitative analyses and Appendix I provides a review of qualitative information collected as part of the study.

As with access to financing, bonding and insurance, quantification of how these factors affect the base figure was not possible.

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<sup>6</sup> 49 CFR Section 26.45

**Summary of information for step 2 analysis.** BBC's in-depth analysis of each factor outlined in the Federal DBE Program suggests that ODOT consider one of the following options concerning a step 2 adjustment.

**Option 1 – making an upward adjustment.** Over the long-term, there are reasons that ODOT might consider a higher overall aspirational goal than the 9.3 percent base figure.

- If ODOT were to make an upward adjustment, it might consider the 12.9 percent figure for DBE participation after adjusting for business ownership rates (shown in Figure VIII-2).
- Analyses of access to capital and other factors summarized above also support an overall annual aspirational goal higher than 9.3 percent.

**Option 2 – making no step 2 adjustment.** USDOT regulations clearly state that an agency such as ODOT is required to review a broad range of information when considering whether a step 2 adjustment is necessary. ODOT, however, is not required to make such an adjustment as long as it can explain what factors were considered and why no adjustment is warranted. As emphasized in the USDOT Tips for Goal Setting, "If the evidence suggests that an adjustment is warranted, it is critically important to ensure that there is a rational relationship between the data you are using to make the adjustment and the actual numerical adjustment made."<sup>7</sup>

After considering marketplace conditions and past DBE participation, ODOT might adopt the 9.3 percent base figure for its overall annual aspirational goal for DBE participation without making a step 2 adjustment.

- Marketplace conditions, especially the analysis of business ownership, indicate an upward adjustment.
- However, other factors may indicate a downward adjustment. BBC's estimate of overall DBE participation on FHWA-funded contracts for July 2004 through June 2009 was about 8.0 percent and ODOT's assessment of median DBE participation indicated 8.9 percent. This level of participation may represent a minimum demonstration of "current capacity of DBEs to perform work," which is slightly lower than the 9.3 percent base figure.

ODOT's decision concerning a step 2 adjustment must explain each of the factors considered.

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<sup>7</sup> USDOT. Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program. <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.