

The Vermont Agency of Transportation Overall DBE Goals

Introduction and Overview of Goal Setting Process:

The VT Agency of Transportation has availed itself of a variety of techniques to comply with the goal setting provisions for participation by disadvantaged business enterprises (DBEs) in its DOT-assisted contracting program, as required by Section 26.45 of the DBE Regulations.

The VT Agency of Transportation has solicited ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. In keeping with our past process, we utilized a collaborative and inclusive approach to formulating a goal setting methodology, which included a series of open meetings with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program were widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors of Vermont, the American Council of Engineering Consultants, the Vermont Commission on Women, the Vermont Entrepreneurship Collaborative, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women's Business Center, the Vermont Small Business Development Centers, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women's Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), Vermont Chambers of Commerce, Vermont Regional Planning Commissions, the Chittenden County Metropolitan Planning Commission, public transit providers and various towns and municipalities.

Feedback from these individuals and organizations included information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the scope and effectiveness of the VT Agency of Transportation's efforts to establish a level playing field for the participation of DBEs.

The final goal for each of our USDOT-assisted contracting programs was established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

In accordance with the requirements of 49 CFR Part 26, Section 26.45 the VT Agency of Transportation publishes the goals in various media to solicit public comment.

To comply with the goal setting provisions of the DBE regulations, the VT Agency of Transportation has employed the two step process outlined in Section 26.45, by first creating a baseline figure reflecting the relative availability of "ready, willing and able DBEs" in our marketplace, and then examining all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at our overall goal.

While the VT Agency of Transportation has affirmed its commitment to meeting the maximum feasible portion of our overall goal using race-neutral means, we have also provided the requisite projection of a breakout of participation derived from both race-neutral and race-conscious measures, as specified in Section 26.51. In addition to summarizing our current race-neutral program components, we have identified a variety of new strategies, the implementation of which will serve as additional program performance measures.

Amount of Goal:

Federal Highway Administration (FHWA) Goal:

In FY 2010 - FY 2012, the VT Agency of Transportation intends to expend 4.0% of the Federal financial assistance received from FHWA with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of the VT Agency of Transportation that this expenditure be obtained through a race and gender neutral program.

Federal Transit Administration (FTA) Goal:

In FY 2012 – FY 2014, the VT Agency of Transportation intends to expend 4.08% of the federal financial assistance received from the Federal Transit Administration with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of the VT Agency of Transportation that this expenditure be obtained through a race and gender neutral program.

Goal Methodology:

Goal Methodology: Federal Highway Administration (FHWA) Goal:

Pursuant to February 2010 USDOT rule amendments to 49 CFR Section 26.45, the VT Agency of Transportation’s overall annual goal of 4.0% on FHWA funded contracts is effective for a period of three years, FY 2010 – FY 2012. The following describes the goal methodology used to determine this three year goal:

Step 1: Base Figure for the Relative Availability of DBEs:

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. The VT Agency of Transportation employed the bidder’s list method (Example #2) for calculating a base figure. This method allowed us to measure availability by the number of firms that have directly participated in or attempted to participate in our DOT-assisted contracting program in the recent past. We obtained our data and calculated the relative availability percentage in the following manner:

- Our bidder’s list survey identified all prime contractors (construction and consultants) that bid on DOT-assisted contracts in calendar year 2008, a total of 176 prime contractors. Prime contractor bidders identified all subcontractors who provided a quote on any DOT-assisted contracts in calendar year 2008.
- Based on the number of known prime bidders (176) and the number of additional subcontractors identified who bid or quoted (372), and their status as DBEs or non-DBEs, we have been able to calculate the relative availability percentage as follows:

DBE Primes that bid	8
<u>DBE Subs that quoted</u>	<u>21</u>
Total DBEs that bid or quoted	29
Total Primes that bid	176
<u>Total Subs that quoted</u>	<u>372</u>
Total Businesses that bid or quoted	548
Relative Availability of DBEs in the Marketplace (29 of 548)	5.29%

Step 2: Adjustment to Base Figure:

As specified in Section 26.45, once the relative availability of ready, willing and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Accordingly, the VT Agency of Transportation has gone beyond the formulaic measurement of current availability in Step 1, to consider and account for other evidence of conditions affecting DBEs, including past participation and trends, capacity limits, goals of other DOT recipients, and the impact of other specific factors requiring the narrow tailoring of the DBE program.

To arrive at the proposed overall goal of 4.0%, the Step 1 Base Figure of 5.29% was adjusted, based on the following data and criteria:

- **Capacity Limits:**
 - **Current capacity of DBEs to perform work in our DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years:** VTrans has analyzed data reflecting DBE participation and trends on FHWA-funded projects in recent years. For the past four years, the average DBE goal attainment is 5.93% (FY 2004: 6.05%; FY 2005: 6.6%; FY 2006: 5.16%; FY 2007: 5.2%; and FY 2008: 6.65%). For the first half of FY 2009, we achieved a DBE participation level of 2.32%. While this level is consistent with DBE participation in our region, it represents a significant downward trend from VTrans DBE participation levels achieved in past years. For the preceding three year period (FY 2000 – 2003), DBE participation averaged 15.79%. As more fully discussed below, the primary reasons for the decreased level of DBE participation are the “graduation” of our most active DBEs, the large increase in the number of large/extraordinary projects that generally provide less DBE contracting opportunities, and the overall increase in the size of the federal-aid construction contracting program, which exceeds the capacity of our most active DBEs. It is anticipated that this last scenario will be particularly profound in FY 2010, with the infusion of ARRA funding.
 - **DBE capacity to compete as primes and subs:**
 - **DBE Primes:** The number of DBEs prequalified to bid as prime contractors on VTrans highway construction projects has dropped dramatically in recent years, from 16 in FY 2000 to a current low of 6. This is primarily due to the “graduation” of our most successful DBEs, whose owners no longer qualify because they exceed the Personal Net Worth (PNW) cap, which has not been raised since 1999. In past years, prime contracts accounted for 50% or more of total DBE participation. Currently, most of the DBEs that are eligible to compete as primes are specialty DBEs, and the average size of their prime contract awards is under \$500,000.
 - **DBE Subs:** The capacity of DBE subs to compete on VTrans federally-funded projects is limited by a number of factors as well: Vermont’s short construction season creates a situation where all work for the year must be done within a relatively short (5-8 month) time frame. Specialty work such as line striping, guardrail and landscaping often occurs at the end of the construction season and must be packed into a few months for projects throughout the state, thereby limiting the capacity of smaller firms. Mobilization is becoming increasingly costly for smaller firms that can’t afford to travel long distances to do small jobs and have therefore curtailed the submission of bids for work in some of the state’s more remote locations. Finally, the proliferation of large projects (in excess of \$10 million) has adversely impacted Vermont’s DBEs. These projects are frequently awarded to out-of-state firms that are less likely to use Vermont DBEs or incur the cost for

bringing in their own DBEs, and the percentage of DBE work items on large projects is significantly reduced.

- **Goals of Other DOT Recipients:** As part of the goal setting process, Section 26.45 recognizes the relevance of goals set by other DOT recipients, and authorizes the consideration and use of the goal of another DOT recipient in the same or substantially similar market. The highway construction industry is substantially uniform throughout the northern tier of New England, comprised of Vermont, New Hampshire, and Maine, and the three states share many of the same contractors and market conditions. Therefore, VTrans has considered the goals set by New Hampshire and Maine as relevant in its own goal setting process.

For FY 2008, Maine DOT set an overall annual goal of 4.5%, a downward adjustment from the Step 1 Base Figure of 4.8%. For FY 2009, Maine DOT set an overall annual goal of 5.8%, a downward adjustment from the Step 1 Base Figure of 8.52%. Maine DOT has not yet established a proposed overall annual goal on FHWA funded projects for FY 2010.

For FY 2008, New Hampshire DOT set an overall annual goal of 5% on FHWA-funded projects, a downward adjust from the Step 1 Base Figure of 6.62%. For FY 2009, New Hampshire retained the overall annual goal of 5%. For FY 2010, New Hampshire DOT has proposed reducing the overall annual goal from 5% to 4%.

- **Additional Considerations:**
 - **Disparity studies:** No relevant disparity studies have been conducted within the state's jurisdiction.
 - **General economics:** The rising prices of petroleum and steel have caused a large increase in the cost of materials for highway and bridge construction. These costs have escalated at a much greater rate than the general economy, forcing VTrans and our prime contractors to spend an increasingly larger percentage of project budgets on materials. The majority of our DBE companies operate labor intensive businesses, such as line striping, landscaping and flagging. The additional contract dollars are currently going to suppliers, pavers, and prime contractors. This skews the percentage of funding being spent on DBE bid items, requiring more DBE work to be done to achieve the same percentage of work based on contract dollars as in the past. An adjustment is appropriate to compensate for the difference in labor intensive opportunity caused by rising material prices.
 - **American Recovery and Reinvestment Act (ARRA) funding:** VTrans anticipates the receipt of approximately \$125 million in ARRA funding for road and bridge construction over the next two years. This amount, together with already programmed federal-aid projects, will dramatically increase the dollar volume of projects against which DBE participation is measured. It is unlikely that certified DBEs will be able to grow their capacity (workforce, equipment, bonding, etc.) quickly enough to keep up with the industry demands over the next few years. Accordingly, it is projected that even if the dollar volume of DBE participation increases significantly, the DBE participation percentage will likely see a decline beginning in FY 2010.

Based on all the additional data, evidence and criteria affecting DBE participation levels, as described above, VTrans has adjusted the Step 1 Base Figure of 5.297%, to arrive at the proposed overall goal of 4.0% for FY 2010 – FY 2012.

Goal Methodology: Federal Transit Administration (FTA) Goal:

Step 1: Base Figure for the Relative Availability of DBEs:

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms. The VT Agency of Transportation employed the use of our DBE directory and Census Bureau Data (Example #1) for calculating a base figure. We obtained our data and calculated the relative availability percentage in the following manner:

- We determined the number of ready, willing and able DBEs in our market from our DBE directory. Then, using the Census Bureau's County Business Pattern (CBP) database, we determined the number of all ready, willing and able businesses available in our market that perform work in the same North American Industry Classification System (NAICS) codes.
- For the purpose of setting an overall DBE goal for funds received from FTA, it was determined that our market or service area was Statewide. Data from the CBP database was filtered for the State of Vermont, and for the following twenty-eight (28) NAICS code categories, which were determined to be applicable for contracting opportunities on our public transit and rail projects:

<u>NAICS Code Number:</u>	<u>NAICS Code Description:</u>
237990	All other heavy and civil engineering construction (incl. Mass transit)
238-ALL	Special trade contractors
447190	Other gasoline stations
485310	Taxi service
485410	School and employee bus transportation
485999	All other transit & ground passenger trans.
541310	Architectural services
541320	Landscape architectural services
541330	Engineering services
541340	Drafting services
541350	Building inspection services
541370	Surveying, mapping (exc. geophysical) services
541430	Graphic design services
541512	Computer systems design services
541519	Other computer related services
541611	Admin & gen management consulting services
541613	Marketing consulting services
541618	Other management consulting services
541620	Environmental consulting services
541810	Advertising agencies
541820	Public relations agencies
541850	Display advertising
541860	Direct mail advertising
541890	Other services related to advertising
541922	Commercial photography
541930	Translation and interpretation services
541990	Other professional, scientific, and technical services, including planning
621511	Medical laboratories (incl D & A testing)

- The CBP database identified a total of 2,867 businesses ready, willing and able to perform work in the above-listed 28 NAICS code categories in Vermont. A total of 117 certified DBEs are listed in our directory that are ready, willing and able to perform work in these same 28 NAICS code categories. We divided the number of DBEs by the number of all businesses, to determine the relative availability of DBEs in our marketplace:

$$\frac{\text{Ready, willing and able DBEs (117)}}{\text{All ready, willing and able businesses (2867)}}$$

Relative Availability of DBEs in the Marketplace (117 of 2867)

4.08%

Step 2: Adjustment to Base Figure:

As specified in Section 26.45, once the relative availability of ready, willing and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Accordingly, the VT Agency of Transportation has gone beyond the formulaic measurement of current availability in Step 1, to consider and account for other evidence of conditions affecting DBEs, including past participation and trends, as well as the anticipated effect that changes in the DBE program may produce in DBE participation levels in the coming year.

The VT Agency of Transportation has determined that no adjustment to the Step 1 Base Figure of 4.08% is warranted, after consideration of all relevant data and criteria, including the current capacity of DBEs to perform work in our FTA-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.

After careful consideration of all the relevant data, evidence and criteria affecting DBE participation levels, the VT Agency of Transportation has determined that no adjustment to the Step 1 Base Figure of 4.08% is warranted; we have, therefore, arrived at the proposed overall goal of 4.08% for FY 2012 – 2014 for our FTA-assisted contracts.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

The VT Agency of Transportation will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The VT Agency of Transportation uses the following race-neutral means to increase DBE participation:

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions;
- Carrying out information and communications programs on contracting procedures and specific contract opportunities;
- Producing and distributing free How To Do Business with the Agency of Transportation Guide and other resource materials;
- Providing formal and informal training and presentations to DBEs and other contractors.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs;
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;

- Administering a business development program for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.
- Producing and distributing a monthly electronic newsletter that showcases successful DBEs, introduces new DBEs, provides a calendar of events, and many web links to contracting and business development resources.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars;
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.;
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links;
- Providing services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Serving on the Advisory Council of the Vermont Women's Business Center (VWBC), and supporting the VWBC's mission through collaborative efforts and sponsorship of training programs;
- Participating in the Vermont Entrepreneurship Collaborative, the Vermont Technical Assistance Providers Association, and other organizations dedicated to developing business development resources and promoting small and disadvantaged businesses;
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with the VT Agency of Transportation;
- Networking with local, state and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers; and
- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities.

In addition to the above-described race-neutral means that the VT Agency of Transportation already employs to increase DBE participation, we propose implementing and expanding our efforts in the following ways:

- Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low. We propose working within our organization and with the transportation industry to identify new and/or emerging businesses, with a particular focus on areas which will be critical to the industry in the next decade. We will then actively pursue the creation of businesses that can perform and develop expertise in these emerging areas.
- Providing more one-on-one business counseling services to our DBEs;

- Ensuring that our prime contractors consider the use of DBEs in all possible work categories, by providing quick reference guides detailing the expertise and capacities of our DBEs;
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities;
- Assisting more DBEs to establish prequalification status; and
- Providing more effective outreach with minority businesses.

Breakout of Estimated Race-Neutral and Race-Conscious Participation: FHWA-Assisted Contracting Program:

On our FHWA-assisted contracts, the VT Agency of Transportation estimates that, in meeting our overall goal of 4.0% we will obtain 3.0% from race-neutral participation and 1.0% through race-conscious measures.

The recent level of DBE participation on FHWA- assisted contracts supports our estimated breakout.

Breakout of Estimated Race-Neutral and Race-Conscious Participation: FTA-Assisted Contracting Program:

On our FTA-assisted contracts, the VT Agency of Transportation estimates that we will meet our entire overall goal of 4.08% through race-neutral participation, and that we will not have to resort to race-conscious measures.

The recent level of DBE participation on FTA- assisted contracts supports our estimated breakout.

On All USDOT-Assisted Contracts:

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see Section 26.51(f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.