



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**Tennessee Division**

December 29, 2020

404 BNA Drive, Suite 508  
Nashville, Tennessee 37217  
Phone (615) 781-5770

Mr. Clay Bright  
Commissioner  
Tennessee Department of Transportation  
James K. Polk Building, Suite 700  
Nashville, TN 37243

In Reply Refer To:  
HDA-TN

Subject: Fiscal Year 2021 - 2023 Disadvantaged Business Enterprise Goal Approval

Dear Commissioner Bright:

The Federal Highway Administration (FHWA) has reviewed and approved the overall Disadvantaged Business Enterprise (DBE) goal submitted by the Tennessee Department of Transportation (TDOT). For the Fiscal Years 2021 - 2023, the TDOT submitted an overall DBE goal of 9.61% (1.43% is projected to be achieved through race neutral measures and 8.18% through race conscious measures). In accordance with 49 CFR 26.51, these portions should be monitored throughout each year of the three-year goal period to ensure contract goals are appropriately established and achieved.

If you have any questions please contact Joi Hamilton Jones, Civil Rights Program Specialist at 615-781-5790.

Sincerely,

**PAMELA M  
KORDENBROCK**

Digitally signed by  
PAMELA M KORDENBROCK  
Date: 2020.12.29 11:14:07  
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Pamela M. Kordenbrock  
Division Administrator

cc: Ms. Sabrina David, Deputy Division Administrator, FHWA TN Division  
Ms. Theresa Claxton, Program Development Team Leader, FHWA TN Division  
Ms. Joi Hamilton Jones, Civil Rights Specialist, FHWA TN Division  
Ms. Martha Kenley, DBE National Program Manager, FHWA  
Mr. Joe Galbato, Deputy Commissioner / Chief Financial Officer, TDOT  
Mr. Paul Degges, Deputy Commissioner / Chief Engineer, TDOT  
Mr. Brian Egan, Construction Director, TDOT  
Mr. Vince Malone, Civil Rights Director, TDOT  
Mr. David Neese, Small Business Development Director, TDOT



**Tennessee Department of Transportation**  
**Overall Annual DBE Goal**  
**Federal Fiscal Year 2021-2023**

**TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT)**  
**FFY 2021-2023 OVERALL ANNUAL DISADVANTAGED BUSINESS ENTERPRISE (DBE)**  
**GOAL**

For the FFY 2021 - 2023 DBE Goal submission, the Tennessee Department of Transportation (TDOT) Disadvantaged Business Enterprise Program (DBE) has a proposed goal of 9.61%. This overall goal is expected to be achieved through 8.18% race-conscious and 1.43% race-neutral means. Annual reviews of the data will be conducted and updates will be provided as needed.

The purpose of the DBE Program is to:

- \* Remedy past and current discrimination,
- \* Ensure a level playing field,
- \* Foster equal opportunity on DOT-assisted contracts,
- \* Improve flexibility and efficiency, and
- \* Facilitate prime contracting opportunities for DBEs.

In an effort to reach this level playing field, TDOT examined its program and local markets, then determined the amount of participation DBEs would be expected to achieve in the absence of present and past effects of discrimination. These efforts are outlined on the subsequent pages.

### **TDOT Market Area**

In order to formulate the DBE goal, the local area market has to be identified. The local market area is defined as the area where the substantial majority of contracting dollars are spent and the area in which the substantial majority of the contractors and subcontractors are located. Tennessee has the potential to have a high percentage of contractors from out-of-state since it is bordered by eight states (KY, VA, NC, GA, AL, MS, AR, MO) and extends about 430 miles East to West and 110 miles North to South. However, based on state construction data, this does not prove to be the case.

Calculating the percentage of in-state vs. out-of-state prime contractor and subcontractor firms receiving TDOT projects over a three-year period (2017-2019 FFY), TDOT overwhelmingly contracted with local (Tennessee) contractors on Federal-aid projects. As TDOT does not maintain a "bidder's list," the most representative method to capture both prime and subcontractor award information was to use goal award information tracked through TDOT's Small Business Development Program (SBDP). After analyzing this data, it was determined that a substantial majority of prime contracts with goals attached (94%) were let to in-state contractors. A substantial number of DBE subcontracts on goal projects (79%) were also let to in-state firms, as shown in **Table 1**. Of the out-of-state DBE participation, there were sixteen DBEs from nine states awarded DBE contracts during this period: MS (2); KY (3); GA (2); FL (3); IL (1); AL (2); PA (1); UT (1); and NC (1). TDOT therefore defines the State of Tennessee as its market area.

**Table 1 – Percentage of contracts to Tennessee firms**

<b>Data Description</b>	<b>Total Program Awards</b>	<b>Amount Represented by Tennessee Firms</b>	<b>Tennessee Market Percentage</b>
<b>Distribution of Prime Contractor Awards</b>	<b>586</b>	<b>551</b>	<b>94%</b>
<b>Distribution of Subcontractor Awards (out of 586 Prime contracts)</b>	<b>762</b>	<b>605</b>	<b>79%</b>

### **Establishing the DBE goal**

Establishing the DBE goal involves two primary steps. **Step One:** Determining a base figure for the relative availability of DBEs, and **Step Two:** Examining evidence in the state to determine what adjustments, if any, are necessary to the base figure to arrive at the overall goal.

#### **Step One: Determining the Base Figure – 49 CFR §26.45(c)**

Pursuant to 49 CFR 26.45, TDOT has used the following methodology to determine the **baseline figure** for its 2021 - 2023 DBE goal. After comparing several methods to determine the availability of ready, willing and able (RWA) DBEs, information mined from U.S. Census Data was decided as the most representative way to refine an accurate Step One Figure.

#### ***Step One***

The most recent U.S. Census County Business Patterns (CBP) data was used to determine the percentage of RWA DBEs in the Tennessee market area for Step One. Using the DBE directory information for firms in the defined market area, TDOT carefully reviewed the area of work performed by DBEs, creating an analysis of firms in those codes in comparison to the 2018 CBP NAICS codes (most current data available) for all businesses in Tennessee.

The Civil Rights Office also did an extensive search for potential DBE businesses on the Governor's Office of Diversity Business Enterprise ([GoDBE](#)) website. Businesses were searched by minority status and gender (women-owned businesses) in the category of Construction. Although there were 541 businesses initially listed under GoDBE's *Construction* category, this proved to be broad and the majority of these businesses would not qualify as DBEs (or were already certified as DBEs) that would be ready, willing and able to work on federally funded highway construction projects. Per USDOT's [Tips for Goal-Setting in the Disadvantaged Business Enterprise \(DBE\) Program](#), "You should take steps to filter out businesses that are not relevant to your calculations where possible." DBEs not included in Step 1 were due to their extremely limited usage potential for state highway transportation contracts. These were excluded so as not to skew the results. Therefore, those who did not qualify were excluded and the number



was later reduced to 56 (16 Potential Construction DBEs in Table 2 + 40 Potential Engineering DBEs in table 3) potential DBEs.

TDOT has a total of 179 (see tables 2 and 3) DBE firms determined to be ready, willing and able to work on FHWA funded projects in the defined market area. This number includes both construction and consultant firms. We also targeted 56 (see tables 2 and 3) potential firms from the above-mentioned sources. The NAICS codes for those firms yield a total of 3,697 (see tables 2 and 3) firms. The tables below, in combination with the formulas that follow, will show the Step One Process.

**Table 2 - Tennessee County Business Patterns – 2018 US Census  
(Construction/Maintenance/Trucking)**

<b>2018 NAICS Code</b>	<b>Description (Construction)</b>	<b>TDOT DBE</b>	<b>Potential DBEs (GoDBE List)</b>	<b>Census</b>
<b>Construction and Maintenance</b>				
238120	Structural steel and precast concrete contractors	10	1	75
238110	Poured concrete foundation and structure contractors	34	0	348
237310	Highway/Street/Bridge Construction	19	5	176
561990	Flagger/Traffic Control Services	12	0	165
	<b>Construction &amp; Maintenance Subtotal</b>	<b>75</b>	<b>6</b>	<b>764</b>
<b>Trucking</b>				
484220	Specialized freight (except used goods) trucking, local	<b>44</b>	<b>10</b>	<b>420</b>
	<b>TOTAL</b>	<b>119</b>	<b>16</b>	<b>1184</b>

**Percentage of DBE Firms in Construction, Maintenance, Trucking**

**119 (DBEs) + 16 (Potential DBEs) = 135**

**135 / 1184 (TN NAICS Total) = 11.40%**



**Table 3 - Tennessee County Business Patterns – 2018 US Census  
(Engineering/Consulting)**

2018 NAICS Code	Description (Construction)	TDOT DBE	Potential DBEs (GoDBE List)	Census
<b>Engineering and Consulting</b>				
541330	Engineering Services	16	25	818
541611	Administrative management and general management consulting services	21	0	805
541512	Computer systems design services	7	0	586
541370	Surveying and mapping (except geophysical) services	4	1	181
541620	Environmental consulting services	8	14	123
	<b>TOTAL</b>	<b>56</b>	<b>40</b>	<b>2513</b>

**Percentage of DBE Firms in ENGINEERING & CONSULTING**

**56 (DBEs) + 40 (Potential DBEs) = 96**

**96 / 2513 (TN NAICS Total) = 3.82%**

**Table 4 – Federal-Aid Utilization for FFY 2018 by Program Area**

Program	Federal-Aid Share of Contracts Awarded (Dollars)	Percentage of Total
Construction, Maintenance and Trucking	\$736,665,559.13	93.58%
Engineering and Consulting	\$50,521,530.54	6.42%
<b>Total</b>	<b>\$787,187,089.67</b>	<b>100%</b>

**Step One Base Figure**

$$\text{Step One Base Figure} = (\text{Percentage of Total}) \frac{\text{Ready, Willing, and Able DBEs}}{\text{All Firms (DBEs and non - DBEs)}}$$

### Step One Base Figure, weighted by type of work to be performed

$$\begin{aligned}
 & \left[ .936 \left( \frac{\# \text{ CONSTRUCTION, MAINTENANCE, TRUCKING DBEs}}{\# \text{ CONSTRUCTION, MAINTENANCE, TRUCKING Firms}} \right) \right. \\
 & \quad \left. + .064 \left( \frac{\# \text{ ENGINEERING \& CONSULTING DBEs}}{\# \text{ ENGINEERING \& CONSULTING Firms}} \right) \right] \times 100\% \\
 & = \left[ .936 \left( \frac{135 \text{ CONSTRUCTION, MAINTENANCE, TRUCKING DBEs}}{1184 \text{ CONSTRUCTION, MAINTENANCE, TRUCKING Firms}} \right) \right. \\
 & \quad \left. + .064 \left( \frac{96 \text{ ENGINEERING \& CONSULTING DBEs}}{2513 \text{ ENGINEERING \& CONSULTING Firms}} \right) \right] \times 100\% \\
 & = \left[ .936 \left( \frac{135}{1184} \right) + .064 \left( \frac{96}{2513} \right) \right] \times 100\% \\
 & = [.936(.1140) + .064(.038)] \times 100\% = [.1067 + .0024] \times 100\% \\
 & = \mathbf{10.91\%}
 \end{aligned}$$

Final Step One Base Figure= **10.91%**

### Step Two: Adjust the Base Figure – 49 CFR § 26.45(d)

Step Two of the goal setting calculation process is intended to adjust the Step One Base Figure to make it as precise as possible. Regulations require TDOT to consider all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the Base Figure in order to arrive at the overall goal. TDOT also considered the capacity of DBEs to perform work based upon past performance, as measured by the volume of work DBEs have performed in recent years. Past projects used in this calculation are all transportation-related Federal-aid projects with similar scope, opportunities and characteristics of future projects to be let by TDOT, and are therefore suitable for use in this calculation. **Table 5** (next page) contains a summary of the expenditures to DBEs on projects for the last five (5) completed fiscal years. This chart indicates actual DBE attainments vs. commitments and money expended throughout TDOT for this period of time.

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Table 5 – Past Performance 2015-2019

<b><u>FISCAL YEAR</u></b>	<b><u>GOAL COMMITMENT</u></b>	<b><u>GOAL ATTAINMENT</u></b>	<b><u>\$ EXPENDED</u></b>
<b><u>FFY 2019</u></b>			
Race Conscious	6.84%	6.60%	Prime: \$941,501,179
Race Neutral	1.43%	1.76%	DBE: \$78,709,2133
	8.27%	8.36%	8.36%
<b><u>FFY 2018</u></b>			
Race Conscious	6.24%	6.83%	Prime: \$787,187,090
Race Neutral	1.43%	1.47%	DBE: \$65,334,426
	7.67%	8.30%	8.30%
<b><u>FFY 2017</u></b>			
Race Conscious	6.54%	6.20%	Prime: \$625,049,176
Race Neutral	1.51%	0.69%	DBE: \$38,738,878
	8.05%	6.89%	6.89%
<b><u>FFY 2016</u></b>			
Race Conscious	6.54%	7.27%	Prime: \$542,907,689
Race Neutral	1.51%	1.02%	DBE: \$45,011,396
	8.05%	8.29%	8.29%
<b><u>FFY 2015</u></b>			
Race Conscious	6.54%	7.15%	Prime: \$597,326,689
Race Neutral	1.51%	1.43%	DBE: \$51,265,560
	8.05%	8.58%	8.58%



Past Participation in order from lowest to highest: 6.89%, 8.29%, **8.30%**, 8.36%, 8.58%

We then averaged the five-year median Past Participation figure of 8.30% with our Step One Base Figure of 10.91% to arrive at a proposed goal of 9.61%:

$$\frac{10.91\% + 8.30\%}{2} = \frac{19.21\%}{2} = 9.61\%$$

**Adjusted Base Figure= 9.61%**

### **Anticipated Race-Neutral and Race-Conscious Methods**

The federal regulations require TDOT to meet the maximum feasible portion of its overall goal by using race and gender-neutral (hereafter referred as race-neutral) means of facilitating DBE participation. TDOT will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (49 CFR 26.51(f)) and track and report race-neutral and race-conscious participation separately.

When a DBE is awarded a contract as the prime contractor, or when contractors award subcontracts to DBEs on projects with no goal or DBE usage exceeds the participation required by the project goal, this is recognized as race neutral participation.

TDOT uses the following means to increase race-neutral DBE participation:

- Continue the supportive services program to develop and improve immediate and long-term business management, record-keeping, and financial and/or accounting capabilities for small businesses;
- Provide assistance to DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, including utilizing our own website to disseminate information, including our DBE Directory, bid opportunities, and updated information on Part 26;
- Provide supportive 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;
- Created a small business element for the DBE program;
- Provide networking opportunities with local, state and federal agencies, non-profit, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral networks with technical assistance and service providers;



- Work with Tennessee Road Builders Association to involve DBEs and small businesses in events involving TDOT (as well as with other government and/or private contracting opportunities).

**Breakout of Estimated Race-Neutral Participation**

The following table contains a summary of all DBE race-neutral participation (prime contracting and sub-contracting opportunities) from the past five completed fiscal years. This chart provides the median percentage of contract work that DBEs have secured through race-neutral participation in the past.

**Table 6 – DBE Race-Neutral Attainment on Consulting and Construction Contracts**

<b>Federal Fiscal Year</b>	<b>Race Neutral Attainment</b>
<b>2019</b>	<b>1.76%</b>
<b>2018</b>	<b>1.47%</b>
<b>2017</b>	<b>0.69%</b>
<b>2016</b>	<b>1.02%</b>
<b>2015</b>	<b>1.43%</b>

Race Neutral attainment for last five years in order from lowest to highest  
**0.69% + 1.02% + 1.43% + 1.47% + 1.76%**  
**Median % = 1.43%**

**Total FFY 2021 - 2023 Anticipated Race-Neutral Participation 1.43%**

In an amendment to 49 CFR Part 26, which became effective March 5, 2010, FHWA revised the DBE goal setting guidance to have DOTs begin implementing three-year DBE goals, with the ability to revise the goal to better represent any changes in construction contract trends on an annual basis. In accordance with the new guidance, the Tennessee Department of Transportation has established its Disadvantaged Business Enterprise overall goal for the three-year period for federal fiscal years 2021 - 2023 at for new contracts, with **1.43%** to be obtained through those projects without goals (race-neutral methods) and the remaining through goals using race-conscious methods.

**Final 3-Year FFY Goal Participation:**

During the course of the following three FFYs, TDOT will continue to review the contracts awarded, including future contracts with possible DBE participation, to determine whether adjustments to the goal are warranted. Should TDOT determine that an adjustment to the DBE goal is warranted for a more accurate representation of contract trends, the revised DBE goal will be posted on the website of TDOT’s Civil Rights Office Small Business Development Program at <https://www.tn.gov/tdot/civil-rights/small-business-development-program.html>.

## **DBE Goal Consultation Process / Public Participation**

Due to uncertain times and limited contact presented by the threat of COVID-19, TDOT is following the directive as outlined in the July 27 memo from Departmental Office of Civil Rights (as stated below) and limiting all face-to-face contact by having online presentations concerning the goal:

**In light of the COVID-19 public health emergency, recipients may use alternative methods for carrying out required stakeholder consultation such as:**

- 1. Instead of holding in-person meetings, recipients may use other options allowed under the rule, such as video conference or teleconferencing, by making use of technologies such as FaceTime, Skype, GoToMeeting, Zoom, and other similar telecommunication applications.**
- 2. If virtual technology is not accessible, recipients should reach out to stakeholders via email or telephone to ask for their written feedback and input concerning the overall goal methodology.**

### **Steps to Incorporate Public Participation**

1. The process included online WebEx meetings to provide public participation.
2. Invitations sent to all DBEs currently on the TNUCP certification list prior to meeting.
3. Invitations sent to all TNUCP certifying partners prior to meeting.
4. Invitations sent to all members of the DBE Advisory Committee (this committee includes prime contractors, TDOT DBE contractors, members of the TDOT Construction, Local Programs and Legal Divisions, Local Banking Officials, Go-DBE Staff, MNA and Airport and Transit staff).
5. Any written and verbal comments were recorded and submitted to FHWA.
6. TDOT's DBE plan will be revised to address the consultation process.

### **Outline of TDOT Public Participation**

In order to comply with 26.45(g) providing public participation, we participated in statewide consultation meetings on the following dates:

#### **September 17, 2020**

##### **Virtual meeting conducted at 2:00 central**

22 in attendance

Questions received:

1. What is the best way to identify TDOT opportunities?
2. Is the number regarding the census the total number of DBEs in the state? Why is it so much higher than the number of DBEs you have listed?
3. Why do you use the 2018 census data? So much has changed since 2018.
4. Why the census and why not the Department of Revenue?

**September 18, 2020**

**Virtual meeting conducted at 2:00 central**

21 in attendance

No Questions received

**September 24, 2020**

**Virtual meeting conducted at 2:00 central**

29 in attendance

Questions received:

1. Is this meeting being recorded?

**September 25, 2020**

**Virtual meeting conducted at 2:00 central**

19 in attendance

Questions received:

1. Do you think you will be able to meet this goal you have set?

**Phone messages:**

**From a DBE (received 9/18):**

Concern with race-neutral and race-conscious meang actual race of the subcontractor.

**e-mailed messages:**

**From a TDOT prime contractor (received 9/24):**

If the goal is obtained in percentage of dollars why is the calculation not done in the same way? I think the dollar value of the work quoted needs to be considered not just the quantity of quotes to the total. We are capturing data post letting I would be curious to know the percentages based on those numbers. I would think way less than 10 percent of our quotes are from DBE firms especially if it was done based on dollars. Using the aforementioned methodology if you had 50k in sub work with one package at 49k and one at 1k with a DBE quoting the 1k and a non DBE quoting the 49k the goal would be set based on 25k not 1k in the future.

I am just concerned with raising the goal to historically high levels when the pool of qualified dbe's does not appear to be rising proportionally Would be counterproductive.

Don't know if I can participate in meetings this week taking care of some family medical issues but will try. Thanks for all you do.

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**From a TDOT prime contractor (received 9/24):**

David,

Thank you for the explanation of how the DBE goal is established. It seems the only variable considered is the number of firms and no consideration to the capabilities or level of

participation of the firms. When assigning a goal to a specific project, is the availability of DBE subcontractors in that area or Region considered? Are any of these other factors considered?

Matching DEB subcontractors to items available

Volume (capacity) capabilities or potential DBE subcontractors

Other projects going on at the same time in the same area

If these are not being considered, can they be? Some areas struggle to meet the proposed goals. If given the opportunity to discuss further with specific details, I will make myself available.

Thank you for your consideration of these matters.



**PUBLIC NOTICE**  
**Disadvantaged Business Enterprise Goal for FFY 2021-2023**

The Tennessee Department of Transportation (TDOT) hereby announces its FFY 2021-2023 Disadvantaged Business Enterprise (DBE) Program Goal under the guidelines of 49 CFR Part 26 and the regulations and directions of the U. S. Department of Transportation (DOT) of 9.61% for participation in the Federal Highway Construction Program.

This goal has been set based upon information currently available and will be available for public inspection online at [www.tn.gov/tdot/civil-rights/small-business-development-program.html](http://www.tn.gov/tdot/civil-rights/small-business-development-program.html)

Written comments pertaining to this goal should be sent to the attention of the Small Business Development Program Director, at [David.Neese@tn.gov](mailto:David.Neese@tn.gov). Comments will be accepted through September 29, 2020. An additional comment period shall run through October 17, 2020 in order to provide the public additional feedback opportunity due to COVID 19, if needed.

**TDOT is an Equal Opportunity Employer**