

# **OKLAHOMA DEPARTMENT OF TRANSPORTATION**

## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM GOAL ON FEDERALLY-ASSISTED PROJECTS FOR FEDERAL FISCAL YEARS 2023, 2024 & 2025**

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**In Compliance with:  
Title 49 Part 26 of the Code of Federal Regulations  
(49 CFR Part 26)**



## INTRODUCTION

This report details the Oklahoma Department of Transportation's (ODOT) process for setting the Federal Fiscal Years (FFY) 2023, 2024 and 2025 overall goal for Disadvantaged Business Enterprise (DBE) participation in federally assisted highway projects. The goal setting methodology complies with the DBE rule set forth in the Code of Federal Regulations, 49 CFR Part 26.45. The methodology includes data from both the construction and preconstruction side.

This submission includes a description of the methodology used to establish the goal, including the base figure and the evidence by which it was calculated, evidence relied upon for any adjustments to the base figure, and a projection of the portions of the overall goal expected to be met through race-conscious and race-neutral measures, respectively.

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## **DESCRIPTION OF METHODOLOGY**

### **Proposed DBE Goal for Federal Fiscal Years 2023, 2024, and 2025**

The Oklahoma Department of Transportation (ODOT) proposes the following goal for participation by DBEs on federally assisted contracts for FFYs 2023, 2024 and 2025:

Race Neutral	-	7.82%
Race Conscious	-	<u>8.18%</u>
Total DBE Goal	-	16.00%

ODOT complied with 49 CFR 26.45 by following a two-step process for analyzing relevant data to establish its overall DBE goal:

- Step 1 describes the calculation of a base figure for the relative availability of minority- and woman-owned firms.
- Step 2 is the examination of all the evidence available to determine if an adjustment to the base figure is needed to arrive at the overall goal. If the examination shows no need for an adjustment, then no adjustment is to be made.

#### **I. Step One Base Figure Section 26.45(c)**

To establish the base figure, ODOT commissioned Colette Holt & Associates (“CHA”) to perform a disparity study (Disparity Study) of its contracts funded by the Federal Highway Administration in conformance with strict constitutional scrutiny and the Disadvantaged Business Enterprise (“DBE”) program regulations at 49 C.F.R. Part 26 to determine the relative availability (percentage) of Disadvantaged Business Enterprise (DBE) firms available to bid on ODOT’s FHWA-assisted contracting opportunities. As described in USDOT Guidance and 49 C.F.R. §26.45(c), this percentage, or DBE Relative Availability, can be calculated as follows:

$$\frac{\text{Ready, Willing and Able DBEs}}{\text{All Firms Ready, Willing and Able (DBEs and non-DBEs)}}$$

To meet this requirement, the Disparity Study determined ODOT’s utilization of Disadvantaged Business Enterprises during fiscal years 2015 through 2019; the availability of these firms as a percentage of all firms in ODOT’s geographic and industry market areas; and any disparities between ODOT’s utilization of DBEs and DBE availability.

To achieve this, the Disparity Study:

- Analyzed the use and availability of minority- and woman-owned firms in Oklahoma public highway transportation construction and design contracts.
- Examined other quantitative analyses of marketplace conditions and further analyzed disparities in the wider Oklahoma construction economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. The Disparity Study also gathered qualitative data about the experiences of minority- and woman-owned firms in obtaining ODOT’s contracts and the associated contracts. The disparity study followed

federal regulations and court decisions regarding DBE and other business assistance programs.

- Reviewed anecdotal information from data collected through:
  - In-depth business owner interviews (98 participants)
  - Business owner surveys/written testimony (120 participants who submitted anecdotal information)

The Disparity Study examined ODOT's contract and procurement data dollars for the fiscal years 2015 through 2019. After contacting prime vendors and taking other steps to obtain a complete set of variables, the Final Contract Data File ("FCDF") contained 349 prime contracts and 1,706 subcontracts. The total net dollar value of prime contracts was \$1,221,522,596; the total net dollar value of subcontracts was \$475,477,246. The Final Contract Data File was used to determine the geographic and product markets for the analyses, and to estimate the utilization of DBEs on ODOT's construction and design contracts.

### **Establishing the Relevant Market Area**

To determine the relevant geographic market area, ODOT analyzed data from the 2021 Disparity Study, which found that 87.6% of contracts were awarded to firms located within the geographic boundary of the State of Oklahoma. Therefore, the State of Oklahoma was determined to be the relevant market area.

### **DBE Availability**

To arrive at the Step-One base figure, ODOT used data from the 2021 Disparity Study in accordance with 49 CFR §26.4(c)(3) to determine the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in FHWA-assisted contracts within the Market Area. The DBE relative availability for each NAICS code is listed in column A in the table below.

Weighting DBE relative availability results in a more accurate picture of which firms are available to participate in ODOT's opportunities and ensures that the Base Figure is narrowly tailored. For example, high availability in a NAICS code in which minimal dollars are spent would give the impression that there are more DBEs that can perform work on agency contracts than are actually ready, willing and able. Conversely, a low availability in a high dollar scope would understate the potential dollars that could be spent with DBEs.

The weighting factor utilized is the percentage of work contracted by NAICS code on federally-assisted contracts. The contract data from federally-assisted contracts from 2015 thru 2019 (inclusive) was used to calculate the weighting factor for each NAICS code. This data is column B in the table below.

For each NAICS code, the DBE relative Availability (column A) is multiplied by the weighting factor (column B) to obtain the DBE goal percentage, or Base Figure by NAICS code (column C). The results by NAICS code are totaled to yield the overall weighted DBE availability. ODOT proposes to utilize this overall weighted DBE availability as its Step One base figure in calculating its Overall DBE Goal.

NAICS	NAICS Description	DBE Relative Availability (A)	Weighting (% of Total Dollars) (B)	Base Figure (C = A x B)
236220	Commercial and Institutional Building Construction	17.1%	0.001%	0.0%
237110	Water and Sewer Line and Related Structures Construction	6.4%	1.2%	0.1%
237130	Power and Communication Line and Related Structures Construction	11.1%	0.04%	0.0%
237310	Highway, Street, and Bridge Construction	20.8%	80.0%	16.6%
237990	Other Heavy and Civil Engineering Construction	12.8%	0.3%	0.0%
238110	Poured Concrete Foundation and Structure Contractors	3.6%	0.1%	0.0%
238120	Structural Steel and Precast Concrete Contractors	20.3%	0.8%	0.2%
238140	Masonry Contractors	1.5%	0.02%	0.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.9%	1.0%	0.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.0%	0.6%	0.0%
238290	Other Building Equipment Contractors	10.0%	0.004%	0.0%
238320	Painting and Wall Covering Contractors	3.4%	0.1%	0.0%
238350	Finish Carpentry Contractors	3.3%	0.004%	0.0%
238390	Other Building Finishing Contractors	3.1%	0.1%	0.0%
238910	Site Preparation Contractors	11.8%	4.0%	0.5%
238990	All Other Specialty Trade Contractors	6.1%	0.5%	0.0%
327320	Ready-Mix Concrete Manufacturing	3.5%	0.002%	0.0%
327992	Ground or Treated Mineral and Earth Manufacturing	0.0%	0.1%	0.0%
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	13.0%	0.003%	0.0%
333120	Construction Machinery Manufacturing	6.9%	0.1%	0.0%
444190	Other Building Material Dealers	5.4%	0.1%	0.0%
484110	General Freight Trucking, Local	3.4%	0.4%	0.0%
484220	Specialized Freight (except Used Goods) Trucking, Local	30.6%	0.1%	0.0%
524126	Direct Property and Casualty Insurance Carriers	2.1%	0.0001%	0.0%
541320	Landscape Architectural Services	3.0%	0.01%	0.0%
541330	Engineering Services	11.3%	4.5%	0.5%
541350	Building Inspection Services	3.0%	0.001%	0.0%
541370	Surveying and Mapping (except Geophysical) Services	15.0%	0.9%	0.1%
541380	Testing Laboratories	7.1%	0.9%	0.1%

541420	Industrial Design Services	50.0%	0.001%	0.0%
541611	Administrative Management and General Management Consulting Services	7.2%	0.001%	0.0%
541620	Environmental Consulting Services	14.7%	0.3%	0.0%
541690	Other Scientific and Technical Consulting Services	9.3%	0.2%	0.0%
541720	Research and Development in the Social Sciences and Humanities	10.1%	0.003%	0.0%
541921	Nonscheduled Chartered Passenger Air Transportation	6.7%	0.01%	0.0%
541990	All Other Professional, Scientific, and Technical Services	5.5%	0.1%	0.0%
561320	Temporary Help Services	14.1%	0.01%	0.0%
561730	Landscaping Services	3.5%	1.2%	0.0%
561990	All Other Support Services	3.2%	2.2%	0.1%
926120	Regulation and Administration of Transportation Programs	0.0%	0.01%	0.0%
<b>Total</b>			<b>100%</b>	<b>18.5%</b>

**II. Step Two: Adjustments to the Base Figure - §26.45(d):**

After establishing the Base Figure, the Oklahoma Department of Transportation (ODOT) reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within ODOT’s market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR 26.45 Step 2: DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included the ODOT’s Past DBE Goal Participation, Evidence from Disparity Studies, and Other Evidence, as follows:

**A. Past DBE Goal Attainments**

The following table below reflects the demonstrated capacity of DBEs (measured by historical DBE participation) on FHWA-assisted contracts awarded by ODOT within the last three (3) Federal Fiscal Years:

Year	Attainment
2020	13.84%
2021	10.45%
2022	13.49%
<b>Median of Past Attainments = 10.45%, 13.49%, 13.84% = 13.49% Median Past Participation</b>	

ODOT considered an adjustment to the Base Figure based on the median DBE participation on FHWA-assisted contracts awarded within the past three FFYs (2019/21).

The median for the past three years is lower than the Base Figure derived from Step 1; therefore, an adjustment to the Base Figure based on ODOT’s past DBE goal participation has been made. As three years

of DBE Participation data was reviewed and the years reviewed included projects with a similar variety in scope to the scopes projected for the 2023/25 period, ODOT can reasonably assume that the rates of DBE participation reflected are an accurate reflection of DBE capacity to perform in the 2023/25 overall goal period. The adjustment is calculated in accordance with FHWA guidance by averaging the Base Figure with the Median DBE Past participation, as shown below.

$$18.5\% \text{ Base Figure} + 13.49\% \text{ Median Past Participation} = 31.99\%$$
$$31.99/2 = 16\% \text{ (rounded) Adjusted Base Figure}$$

The formula resulted in a downward adjustment to Base Figure from 18.5% to 16%.

## **B. Evidence from Disparity Studies**

Colette Holt & Associates (“CHA”) was retained by the Oklahoma Department of Transportation (“ODOT”) to perform a disparity study (Disparity Study) of its contracts funded by the Federal Highway Administration in conformance with strict constitutional scrutiny and the Disadvantaged Business Enterprise (“DBE”) program regulations at 49 CFR Part 26. The Disparity Study determined ODOT’s utilization of Disadvantaged Business Enterprises during fiscal years 2015 through 2019; the availability of these firms as a percentage of all firms in ODOT’s geographic and industry market areas; and any disparities between ODOT’s utilization of DBEs and DBE availability.

Additionally, the Disparity Study found substantively significant disparities for Black, Hispanic, and Native American firms. While there were not substantively significant disparities for Asian and White woman firms, a deeper analysis presented evidence that the high utilization for these two groups relative to their weighted availability might be caused by the unusual level of concentration of contract success among a few firms in a small number of industries. This suggests that while the ODOT’s program has succeeded in breaking down barriers to Asian and White woman participation on ODOT contracts, opportunities are highly concentrated amongst a small group of firms.

The Disparity Study further considered evidence of the experiences of minority- and woman-owned firms outside the DBE program as they are relevant and probative of the likely results of ODOT adopting a race-neutral program. To examine the outcomes throughout the Oklahoma construction industry, the Disparity Study explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in ODOT’s industry market and throughout the wider Oklahoma construction economy affects the ability of minorities and women to fairly and fully engage in ODOT’s prime contract and subcontract opportunities. The evidence from the datasets explored supports the conclusion that ODOT should consider the use of race-conscious contract goals to ensure a level playing field for all firms.

ODOT’s Disparity Study satisfies legal standards and guidance from the U.S. Department of Transportation concerning the implementation of race-conscious application, the ODOT has elected to utilize this study as a basis for continuing to implement the race-conscious component of their Overall DBE goal. ODOT will ensure that the use of race-conscious goals is narrowly tailored and consistent with other relevant legal standards.

### **C. Other Evidence**

In addition to quantitative data, anecdotal evidence of firms' marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for DBE firms such that race-conscious contract goals are needed to ensure equal opportunities to compete for ODOT contracts. To explore this type of anecdotal evidence, ODOT's Disparity Study received input from 98 participants in small group business owner interviews. We also received 120 responses to an electronic anecdotal survey and written comments during the study period.

Results from the anecdotal survey were similar to the data provided in the interviews. Responses among minority- and woman-owned firms to the closed ended questions indicate that almost a third (31.7 percent) still experience barriers to equal contracting opportunities. More than a quarter (28.3) have their competency questioned because of their race or gender. Almost 17 percent experience job-related sexual or racial harassment.

The anecdotal evidence further supports the conclusion that ODOT should consider the use of race-conscious contract goals to ensure a level playing field for all firms.

The Overall DBE Goal for FFY 2023/25 goal period for ODOT's FHWA-assisted contracts is 16%.

The proposed goal further serves to identify the relative availability of DBEs based on evidence of ready, willing, and able DBEs to all comparable firms, which are known to be available to compete for and perform on ODOT's FHWA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

### **III. Race-Neutral/Race Conscious Measures**

ODOT intends to meet the maximum feasible portion of its overall goal through race neutral measures. Race-neutral participation includes 1) When DBE prime contractors are awarded contracts through customary competitive bidding procedures, 2) When a DBE is awarded a subcontract on projects that do not carry a specific DBE goal, or 3) When a DBE is awarded a subcontract in excess of the advertised DBE project goal.

Where race neutral measures are inadequate to meet the overall goal, ODOT will utilize race-conscious means (establish contract-specific DBE goals) on FHWA-assisted contracts with subcontracting opportunities and relative DBE availability.

ODOT may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. ODOT's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

ODOT projects to meet 7.82% of the adjusted goal (16%) via race-neutral means and 8.18% via race-conscious means. The table below illustrates the past race-neutral and race-conscious DBE participation (including DBE prime contractors and DBE subcontractors on contracts without goals or more than project goals) obtained in FFY's 2020 through 2022.



<b>Table 4: Past Race-Neutral DBE Participation</b>			
<b>FFY</b>	<b>Attained %</b>	<b>RC</b>	<b>RN</b>
2020	13.84%	5.17%	8.67%
2021	10.45%	3.56%	6.88%
2022	13.49%	5.66%	7.82%
<b>Median RN past participation = 7.82%</b>			

Race Neutral and Race Conscious Projections

Based on the race neutral figures and attainments from FFYs 2020-2022, the median is 7.82%. Based on the median race-neutral participation of the previous years, ODOT could expect to meet 7.82% of the calculated goal via race-neutral means.

DOT has identified that the amount of past participation obtained on recent and like projects can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period. ODOT confirmed that the projects completed during FFYs 2020 through 2022 were similar to the types of projects being procured in the upcoming overall goal period, a required criterion for consideration in utilizing DBE prime participation to validate race-neutral application. As 7.82% DBE participation was achieved on like-projects during the period reviewed, ODOT concluded that this rate of DBE participation should be considered in the amount of race-neutral participation that could be expected in the overall goal period.

ODOT has and continues to implement several of the means discussed in the regulations to increase the race-neutral participation by DBE firms. These means include 1) Providing technical assistance and other services to all small businesses, 2) Conducting public forums to communicate the requirements of the DBE Program and the benefits to all interested firms, 3) Improving the previously implemented DBE supportive services program, 4) Recruiting DBE applicants, particularly in fields in which DBE participation has historically been low, and 5) Increasing coordination with and support of ODOT's pre-construction branch to increase DBE participation in and tracking of DBE participation in non-construction contracts. The above list is an example of the efforts the Department makes to improve the participation of DBEs in the highway program.

Through the DBE Supportive Services Program, ODOT is increasing efforts to improve the viability of existing firms by offering tailored assessments, specific training and technical assistance. Related activities include recruitment of DBE firms with concentration on underutilized minority groups and underutilized areas of work, aiding in business development, increasing contract success opportunities, and improving overall DBE performance. ODOT will target recruiting efforts toward areas of subcontracting previously underrepresented by the existing DBE population such as bridge repair and painting. By increasing the pool of certified DBEs in areas of work not currently performed by DBEs, ODOT forecasts that the availability of DBEs for subcontracting will increase.

**IV. Public Participation And Facilitation**

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 2645(g), minority, women, local business chambers, and community organizations within ODOT's market area were consulted and provided an opportunity to review ODOT's goal analysis and provide input.

The public participation process included the following:

- A. Consultation. A public meeting was held on July 21st, 2022 in Oklahoma City, OK. Information regarding the public meeting was posted on the ODOT Contract Compliance Division's website on July 10, 2022.
- B. Published Notice. The proposed goal methodology report along with an electronic comment form was posted on the ODOT Contract Compliance Division's website, emailed to all who email address that were registered to receive updates from ODOT, and emailed to the Association of Oklahoma General Contractors (AOGC) and American Counsel of Engineering Consultants (ACEC) for additional notification to its members on July 24, 2022. The notice informed the public of the proposed goal and its rationale. The notice also stated that the report was available for inspection during normal business hours and that comments would be accepted until August 23, 2022.
- C. Comments. No persons, businesses, or representatives attended the public meeting and no comments were received during the 30 days following the notice or meetings or during the period that the proposed methodology was posted to the public. Previous Overall Goal Methodologies posted for public comment also did not receive comments relative to the goal methodology or availability of DBEs.

Furthermore, ODOT consults and will continue to consult with minority groups and organizations year-round via event attendance and facilitation to directly solicit the public in-person regarding input they have on DBE opportunities and any real and/or perceived barriers to DBE participation.

Comments received from ODOT's on-going consultation will be reviewed and considered in determining whether an adjustment to the 16% Overall Goal (RN Application 7.82% / RC Application 8.18%) is necessary.