

Step 1 - MDOT Base Goal Setting (FFY 2010 Goal = 5.8%)

Base calculations: The Numerator portion represents the total number of DBE firms that attempted to participate on MaineDOT projects as reported by Primes, or as evidenced by submitting bids as Primes. The Denominator portion represents the universe of all firms (including DBE firms) that attempted to participate on MaineDOT projects, also as reported by Primes, or as evidenced by submitting bids as Primes.

In accordance with requirements of the 49 CFR Part 26, in July 2009 MDOT sent a "Bidders List" letter asking primes to identify DBE and non-DBE firms that submitted quotes as subcontractors in 2008-2009 (actual period April 2008 to April, 2009). The Department received 43 responses.

In the responses, Prime contractors reported 332 firms that had quoted on subcontracts. The responses indicated 43 bid as Prime Contractors. This makes the total of all contractors bidding 375 (denominator).

Forty-Nine (49) of the firms were DBE subs. 1 the 49 DBE subs also bid as a Prime, leaving 49 DBEs that quoted as subs (numerator).

A total of 87 contractors bid as Primes on MaineDOT projects between April, 2008 and April, 2009 (denominator).

BASELINE CALCULATION

Numerator:

DBEs bidding as Primes (General) 1

DBEs quoted as Subcontractors 49

TOTAL 49

Denominator:

Total Primes bidding 87

All subs reported by Primes as quoting 332

TOTAL 419

Baseline Goal: 11.7 %

The results of Step 1 indicate that **11.7%** is a valid baseline goal under current rules and processes for the determination of eligibility.

Step 2 - Impact to Goal:

In the second tier of its calculation process, the Department assessed the impact of specific factors requiring narrowly tailoring of the DBE program.

1. Capacity limits.

Statewide:

The amount of non-DOT work available to contractors in Maine has been significantly decreased over the last several years; there have not been sudden increases in private development, so there is no anticipated capacity limit related to outside sources. Maine's economy is slowly growing, as is the number of contractors and special trades businesses. There is no reason to adjust the goal based upon statewide economy and resources.

DBE/ Project Specific:

However, we do receive complaints of unavailability of DBE's on specialized services, especially those used most frequently on transportation projects. Our short construction season creates a situation where all the work for the year must get done in the same 5 to 7 month time frame. This limits the capacity and availability of DBE firms. Specialty work like striping, guardrail and landscaping often happen at the end of the season and must be crammed into only a couple months for projects statewide. The amount of these refusals is likely to equal 10% of potential DBE work.

Geography is also an issue. Smaller companies can not afford to travel long distances to do small amounts of work and frequently refuse to quote for our more remote locations. These refusals represent approximately 8% of potential DBE work.

Extraordinary Projects:

There are no projects significant enough to cause extraordinary impact this federal fiscal year.

Base adjusted for capacity limits: $11.7 \times 82\% = 9.59\%$

2. Past participation.

<u>FFY 05</u>	<u>FFY 06</u>	<u>FFY 07</u>	<u>FFY 08</u>
1 st half 05 (4.0)	1 st half 06 (10)	1 st half 07 (3.61)	1 st half 08 (6.88)
2 nd half 05 (8.0)	2 nd half 06 (5.94)	2 nd half 07 (3.80)	2 nd half 08 (3.22)
6%	7.97%	3.71%	5.05%

Median Past Participation

The median past participation is 5.68% is then averaged with the adjusted base calculation of 9.59%. The average of the median past participation figure and the Step 1 Base Figure is 7.63%

Adjustment for median past participation: 7.63%

3. Census figures:

Census: The 2002 data used was the most current census date available.

All firms

Heavy Construction other than building construction contractors 22,398

Minority-owned firms

Heavy Construction other than building construction contractors 263

Women-owned firms

SIC 16 Heavy Construction other than building construction contractors 1,370

The Census data indicates minorities own 1.1% of Heavy Construction firms, and women own 6.1% of Heavy Construction firms.

Using the Census figures, with minority and women owned firms as the numerator and all firms as the denominator, the percentage is **7.29%**.

The applicability of the Census figures remains in question:

- The minority or women owned firms counted in the Census are those firms that are 51% *owned* -- but not necessarily *controlled* -- by minorities or women.
- Social and economic disadvantage are not addressed in the Census numbers.
- The Census figures also do not address the size limits of the businesses or the personal net worth of the minority or women owners.
- These totals may not be reflective of the actual totals since an assumption is made that women and minorities are separate groups.

49 CFR Part 26 is clear in stating that to be included in the program, individuals must “demonstrate group membership, ownership, *control*, and *social and economic disadvantage*.”

Also the regulations say the overall goal “must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate...”

Ready, willing and able DBEs are those DBEs providing quotes/bids to Contractors who bid on the Department’s projects, or those DBEs themselves bidding as primes. The

Census figures broadly count total Heavy Construction firms and total Specialty Trades firms, but the only demonstrable evidence of the total field of “ready, willing and able” firms are the Department’s Prime Bidders List and the Contractors’ lists of firms providing quotes or bids on their projects.

In no way should the goal exceed the available number of firms, ready willing and able, and qualified as DBEs. Because census data does not ask that specific question, however, only indicates the total women and minority owned firms are roughly 7.29% assuming the groups are mutually exclusive, and because we can assume all those firms are not qualified as DBEs, we recommend for an adjustment based upon census data that the goal not exceed 80% of that figure. We assume 80% of these businesses would qualify as DBEs as a rule of thumb based upon the historical pattern that only 80% of businesses that apply for DBE certification in Maine are actually certified. This calculation results in a recommendation for census data adjustment of the goal to 5.83%.

Adjustment for Census Data: 5.83%

Additional Considerations:

Disparity Studies: No relevant disparity studies have been conducted within the state’s jurisdiction.

General Economics: The Producer Price Index (PPI) for Highway and Street Construction increased 6.2% for 9/06 to 9/07. There were no significant changes that would impact possible DBE participation.

Adjustment for additional considerations: 8.52%

New FFY 2010 DBE Adjusted Goal

Base: 11.7 %

Base adjusted for capacity limits: 9.59%

Base adjusted for past participation: 7.63%

Base adjusted for census data: 5.83%

Adjustment for additional considerations: 8.52%

FFY 2010 Goal 5.8%

Race and Gender-Neutral and Conscious Measures

The Department's DBE Program goal of 5.8% for FFY 10 will be 5.8% race and gender-neutral. The Department's goal since the new regulations were issued has been race and gender-neutral.

Contract goals will not be necessary for additional attainment.

The Department uses its DBE Supportive Services allocation wholly to support the DBE Program, and not to pay administrative salaries. The funding supports a number of projects and/or initiatives around the state, outreach and technical assistance to businesses.

Finally, as stated previously, the Department has no evidence of discrimination on the part of contractors and does have evidence of continuing good faith effort.

Public Participation

The public will be notified by publication the third full week in July in the Kennebec Journal, the State's newspaper of record for legal advertisements. Additionally, the goal notification and methodology will be posted in other statewide newspapers, specifically the Portland Press Herald and the Bangor Daily News, and on the MaineDOT website at: <http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php>

Several interested stakeholders will be notified directly by e-mail of the goal publication, including: Maine Small Business Administration, Associated General Contractors, and ACEC. Public comment will be accepted for 45 days following the last date of publication.