



Overall Disadvantaged Business Enterprise (DBE) Goal for Aviation Design and Construction

Federal Fiscal Years 2019-2021

Civil Rights Division

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Executive Summary

The Texas Department of Transportation (TxDOT) submits its triennial Disadvantaged Business Enterprise (DBE) goal and goal-setting methodology for the Federal Fiscal Year (FFY) period of 2019-2021 to the Federal Aviation Administration (FAA) of the United States Department of Transportation (USDOT), in accordance with Title 49 Code of Federal Regulations (CFR) Part 26.

For FFYs 2019–2021, TxDOT has established an overall DBE goal of 12.0%. TxDOT plans to achieve the overall DBE goal through 5.6% race-neutral (RN) means and 6.4% race-conscious (RC) means.

TxDOT's goal methodology consists of two steps:

1. Establish the base figure for the relative availability of DBEs.
2. Adjust the base figure based on analysis of available evidence.

TxDOT used the 2009 Texas Disparity Study (2009 Disparity Study) to calculate the base figure of the relative availability of DBEs. For this methodology, the 2009 Disparity Study is the most up-to-date study conducted in Texas regarding ready, willing, and able minority- and women-owned businesses. We adjusted the base figure after an evaluation of past participation, comments from public consultation forums, and online survey results. In 2018 TxDOT engaged a consultant, Colette Holt and Associates to conduct a disparity study, and anticipates it will be available in early 2019.

Annually, TxDOT will monitor DBE participation for federal-aid aviation design and construction projects to determine if market conditions warrant adjustments to the overall DBE goal. Additionally, TxDOT will monitor and make necessary adjustments to the RN and RC measures toward the overall goal.

As required by FAA, through a Memorandum of Understanding, sub-recipients of aviation design and construction federal pass-through funds are required to adopt TxDOT's federally approved DBE program. As part of this requirement, sub-recipients must adopt TxDOT's methods to establish the DBE goal and are required to report DBE awards, commitments, and payments.

Methodology

TxDOT followed the two-step methodology outlined in 49 CFR §26.45 to calculate an overall DBE goal. TxDOT's methodology included the following items:

- description of the methods used to establish the overall DBE goal;
- base figure and evidence used for its calculation;
- summary and rationale for available evidence used to make adjustments to the base figure; and
- projections for the portions of the goal that will be met through RN and RC means.

Consistent with §26.45(c)(3), TxDOT incorporated data from the 2009 Disparity Study to calculate the base figure and aspirational goals. The aspirational goals considered the relative availability of ready, willing and able DBE firms, past utilization on federally funded State of Texas contracts, and TxDOT-only contracts. TxDOT's analysis for adjustments supports the 2009 Disparity Study's assessment of the relative availability of DBEs. The base figure was adjusted following an analysis of current DBE participation figures on TxDOT federally funded contracts and TxDOT's public survey results. TxDOT considered additional adjustments by extending public comment on the proposed methods (§26.45(g)). Additionally, the overall DBE goal provides for the participation by all certified DBEs and is not subdivided into group-specific goals (§26.45(h)). Although TxDOT is not required to have the FAA's concurrence to implement the overall DBE goal, the FAA may consult with TxDOT to review the overall goal, if necessary (§26.45(f)(4)).

Step 1. Determining a Base Figure for the Relative Availability of DBEs

TxDOT examined the five methods described in §26.45(c) and determined the data from the 2009 Disparity Study provided the most applicable and significant information for the base figure. To fine-tune the process for the base figure calculations, we incorporated the aspirational goals for the relevant procurement categories of Heavy Construction and Professional Services (Table 1). The State of Texas HUB procurement goals produced in the 2009 Disparity Study mirrored the same two-step process outlined in 49 CFR §26.45. The 2009 Disparity Study examined conditions that exist in the market area and conducted a utilization analysis within the state of Texas. It set out to determine, from an analysis of these conditions, whether they justify a race-conscious state contracting program. The 2009 Disparity Study provided evidence to “support the continuation of a moderate program to promote HUB utilization” and made recommendations based on its findings. It recommended the program narrowly-tailor women and minority participation policies to address the identified disparities. The 2009 Disparity Study and information regarding the availability figures are available from the Texas Comptroller of Public Accounts (CPA) at comptroller.texas.gov/procurement/prog/hub/disparity/.

Table 1. State of Texas HUB Aspirational Goals

Procurement Category	HUB Utilization (FY 2006-2008)	Disparity Study (Proposed Goal)
Heavy Construction	7.3%	11.2%
Professional Services	16.1%	23.6%

Source: 2009 Disparity Study (Exhibit 9-6)

Estimated Weight of Expenditures

TxDOT considered different types of contracts anticipated in the upcoming three-year period against the relative availability of DBEs, projected funding categories, and the regions where these projects are taking place. We see the highest concentration of projects and activities in and around four major metropolitan areas (Fort Worth, Houston, Dallas, and Austin).

TxDOT identified two types of federal-aid contracts (heavy construction and professional services). We reviewed the participation trend over the previous five years and forecasted participation in FFYs 2019-2021. For FFYs 2016-2018, the average projected heavy construction participation was 98.2% and the average participation for professional services projects was 1.8%. For the period covered in this triennial methodology, the average projected heavy construction participation is 92.9% and the average professional services participation is 7.1%.

Table 2. Projected Weight of Expenditures (FFYs 2016-2018)

Year	Heavy Construction	Professional Services
2016	98.1%	1.9%
2017	98.1%	1.9%
2018	98.7%	1.3%
Average	98.2%	1.8%

Table 3. Projected Weight of Expenditures (FFYs 2019-2021)

Year	Heavy Construction	Professional Services
2019	90.9%	9.1%
2020	93.2%	6.8%
2021	97.8%	2.2%
Average	92.9%	7.1%

Calculation of the Base Figure

We calculated the base figure by adding the weighted proportions of the relative availability of DBEs in heavy construction and professional services. To calculate each weighted proportion, we multiplied the average projected weight of expenditures (Table 3) by the applicable aspirational goal identified by the 2009 Disparity Study (Table 1).

Formula 1: Base Figure Calculation

$$\begin{aligned}
 \text{Base figure} &= \text{Weighted heavy construction relative availability} + \text{Weighted professional services relative availability} \\
 &= [(92.9\%)(\text{Heavy Construction Relative Availability}) + (7.1\%)(\text{Professional Services Relative Availability})] \\
 &= [(92.9\%)(11.2\%) + (7.1\%)(23.6\%)] \\
 &= [10.40 + 1.68] \\
 &= 12.08\%
 \end{aligned}$$

Base Figure
12.1%

Step 2. Adjustments to the Base Figure

TxDOT evaluated available evidence to determine if the base figure required an adjustment (Table 4). We weighed their significance and determined no adjustment to the base figure was necessary.

Table 4. Chart of Evidence

Adjustment Evidence	Consideration	Explanation
Public Consultation Forums and Survey		
Anecdotal Evidence	Yes	We analyzed anecdotal evidence but did not measure it. We reviewed it for race-neutral consideration.
Past Participation		
FFYs 2013-2017	Yes	Past participation is a relatively good gauge of anticipated participation, and capacity is a consideration.

Public Consultation Forums

In April 2018 TxDOT conducted five public consultation forums to engage the public in discussion (Table 5). We invited members from the public, which included women and minority-owned business owners; minority, women's, and general contractor groups; community organizations; public officials; and small and minority-focused business development organizations.

Table 5. Public Consultation Forums

Date	Location
April 4, 2018	Teleconference
April 6, 2018	Teleconference
April 9, 2018	Houston
April 11, 2018	Fort Worth
April 13, 2018	Austin

Following a brief presentation on the current Overall DBE Goal Methodology structure, TxDOT encouraged attendees to discuss a variety of topics, such as evidence regarding the lingering effects of past discrimination, TxDOT's efforts to establish a level playing field for DBEs, and the availability of disadvantaged and non-disadvantaged businesses to work on federally funded contracts or grant projects.

Some of the key subjects discussed included:

- Programs like the DBE Program are doing a decent job providing opportunities for the minority community; however, we still need to continue to make sure the individuals who work with the program have access to the resources and training opportunities to propagate continued development.
- TxDOT is doing a good job at improving outreach, training and other programs for DBEs, but forum attendees reported some of the information is difficult to obtain.
- TxDOT professional services contracts usually contain language that emphasizes previous TxDOT contract experience; however, DBEs without prior TxDOT experience find it difficult to successfully bid against non-DBE contractors that are currently working on TxDOT projects or have worked with TxDOT.

Forum participants supplemented the discussions by completing the DBE Program Input Survey.

DBE Program Input Survey

In addition to the public consultation forums, TxDOT distributed a DBE Program Input Survey to women- and minority-owned business owners; minority, women's and general contractor groups; community organizations; public officials; and small and minority-focused business development organizations. The purpose of the survey was to discover whether there was compelling evidence regarding effects of discrimination that serve as barriers to DBE contracting opportunities with TxDOT.

The survey items represent three major subsets of questions:

1. items concerning the effects of discrimination on opportunities for DBEs to work on federally funded contracts or grant projects;
2. items concerning the performance of TxDOT's efforts to establish a level playing field for the participation of DBEs; and
3. items concerning the availability of DBEs and non-DBEs for work on federally funded contracts or grant projects.

The majority of respondents reported strong interest in working on federal-aid projects and stated a DBE certification could be beneficial. However, the responses indicated evidence of the effects of discrimination on DBE contracting opportunities, particularly for DBEs who do not have prior contracting experience with TxDOT. Moreover, they expressed concern for obtaining access to capital in order to grow their business and become eligible to work on the large TxDOT projects.

The survey results were useful in making modifications to our DBE Program Supportive Services, as well as our outreach and economic development efforts. However, since the results supported the 2009 Disparity Study assessment, no adjustment to the base figure is necessary.

Past Participation

TxDOT considered past participation as an adjustment to the base figure. We used the median instead of the mean because the median value excludes outliers (abnormally high or low numbers). TxDOT determined the median value of actual DBE goal achievement of the previous five FFYs (Table 6) to be 11.84% (FY 2014).

Table 6. DBE Goal and Achievement (FFYs 2013-2017)

Fiscal Year	Goal	Achievement
2013	11.70%	15.35%
2014	12.20%	11.84%
2015	11.44%	11.22%
2016	11.60%	10.05%
2017	11.60%	14.30%

Final Adjusted Goal

TxDOT considered all available evidence in determining an adjustment to the base figure. TxDOT determined the 2009 Disparity Study and past participation accounted for all adjustments that TxDOT had analyzed. The recommended DBE Goal for FY 2019-2021 is 12.0%. The proposed DBE Goal is the sum of RN and RC participation.

Formula 2: Final Adjusted Goal Calculation

$$\begin{aligned} \text{Adjusted Base figure} &= \text{Average (Base Figure + Median Value of Past Participation)} \\ &= [(12.08\%+11.84\%)/2] \\ &= 11.96\% \end{aligned}$$

Final Adjusted Base Figure and Proposed DBE Goal
12.0%

Race-Neutral and Race-Conscious Participation

TxDOT used the goal methods to calculate the DBE goal and a determination of how TxDOT plans to meet the goals through RN and RC measures (§26.45(f)(3) and §26.51(c)). TxDOT plans to meet the “maximum feasible portion of [the] overall goal by using race-neutral means” (§26.51(a)).

USDOT goal-setting tips recommend either increasing the race-conscious portion of the overall goal to account for failing to meet the goals in prior years or increasing the RN portion when participation exceeded the overall goal. To establish the RN and RC components consistent with USDOT goal-setting tips, TxDOT considered the amount by which past participation had exceeded or failed to achieve overall goals for FFYs 2012-2017.

First, TxDOT reviewed the RN attainment for the past six fiscal years to calculate the maximum RN participation (Table 7). We used the median instead of the mean because the median value excludes outliers (abnormally high or low numbers). The calculation for the average RN participation is determined by finding the median of RN participation. By averaging the RN achievements for FFYs 2015 and 2017, TxDOT had achieved a median RN participation of 5.1%.

Table 7. Race-Neutral and Race-Conscious Goal vs. Achievement (FFYs 2012-2017)

Fiscal Year	Goal			Achievement		
	Race-Neutral	Race-Conscious	Overall	Race-Neutral	Race-Conscious	Overall
2012	4.00%	7.70%	11.70%	3.88%	7.34%	11.22%
2013	4.00%	7.70%	11.70%	10.01%	5.34%	15.35%
2014	4.00%	7.70%	11.70%	8.26%	3.58%	11.84%
2015	4.18%	7.26%	11.44%	4.00%	7.22%	11.22%
2016	2.70%	9.50%	12.20%	2.55%	7.50%	10.05%
2017	5.00%	6.60%	11.60%	6.20%	8.10%	14.30%

Next, TxDOT determined the median RN participation. We calculated the mean of the difference between the RN achievement and goals for the two FFYs (2015 and 2017) used to calculate the median RN participation. We added the mean difference between goal and achievement for these two years to the RN median to account for exceeding and not meeting RN goals.

The resulting calculation yielded a median RN value of 5.1% and a mean RN goal gap of .51%. TxDOT has set the proposed race-neutral goal for FFYs 2019-2021 as 5.6% (Formula 3).

Formula 3: Median Race-Neutral Value + Mean (Race-Neutral Difference in Median Years)

$$\begin{aligned}
 &= [(4.00+ 6.20)/2] + [((4.00 - 4.18) + (6.20 - 5.00))/2] \\
 &= [(10.20) /2] + [((-0.18) + (1.20))/2] \\
 &= [5.10] + [1.02/2] \\
 &= 5.61\%
 \end{aligned}$$

Proposed Race-Neutral Allocation

5.6%

TxDOT will establish race-conscious measures and contract goals to meet the balance of the overall goal (§26.51(d)). The proposed race-conscious goal for FFYs 2019-2021 is 6.4% (Formula 4).

Formula 4: Race-Conscious Calculation

$$\begin{aligned} &= \text{Race-Conscious} = \text{Overall Goal} - \text{Race-Neutral} \\ &= 11.96\% - 5.61\% \\ &= 6.35\% \end{aligned}$$

Proposed Race-Conscious Allocation

6.4%

Public Participation: Review and Comment

TxDOT published a public notice announcing the proposed overall goal in the Texas Register and six major metropolitan newspapers and minority-focused publications, as well as the TxDOT website. We allowed for an extensive review and comment period, and we determined adjustments to the proposed DBE goal and the race-neutral and race-conscious allocations were not necessary based on the available evidence.