

# Disadvantaged Business Enterprise (DBE) Program Triennial Goal Methodology

May 31, 2019

# Agenda

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- What is a DBE?
- DBE Program Background
- Recipient Role
- Triennial Goal Setting Methodology

# What is a DBE?

- In order to apply for certification as a Disadvantaged Business Enterprise (DBE), a person's firm *must* meet the following eligibility criteria stated in 49 CFR Part 26:
- The disadvantaged individual must be a U.S. citizen (or resident alien) and be a member of a [socially and economically disadvantaged group](#).
- The disadvantaged individual applying must have a personal net-worth (PNW) of less than \$1,320,000. Items excluded from personal net worth calculation include an individual's ownership interest in the applicant firm and his or her equity in their primary. Also, if an individual demonstrates that he/she is able to accumulate substantial wealth, the individual's claim of economic disadvantage may be denied, even though the individual's PNW is less than \$1.32 million.
- Depending on the primary business activity, a firm (including its affiliates) must not have average annual gross receipts over the firm's previous three fiscal years in excess of \$23,980,000 (\$56,420,000 for airport concessionaires in general with some exceptions). Lower size standards may apply depending on business activity determination.
- The firm must be a for-profit small business where socially and economically disadvantaged DBE owner(s) own at least a 51% interest, and have managerial and operational control of the business operations; the firm must not be tied to another firm in such a way as to compromise its independence and control.
- The socially and economically DBE owner(s) must possess the power to direct or cause the direction to the management and policies of the firm and to make day-to-day, as well as long-term decisions on matters of management, policy and operations.
- If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

# DBE Program Background



Purpose: To create a level playing field and foster equal opportunity in DOT-assisted contracts.

Major events that shaped the development of the Department of Transportation DBE program:

## Timeline of Events

1964	1971	1975	1977	1978	1979	1980
Title VI of Civil Rights Act prohibiting discrimination on basis of race	President Nixon encourages use of Minority Business Enterprises (MBE) as subcontractors on federally assisted projects	Federal Highway Administration develops a MBE program	Public Works Employment Act requires 10% of federal funds allocated to local projects be expended with MBEs	President Carter issues Urban Policy Statement directing agencies to triple their MBE participation within one year and develop MBE goals on federally assisted projects	President Carter's Executive Order 12138 adds a policy that prohibits discrimination against women owned businesses (WBE) and adopts affirmative action plan for WBEs	US Department of Transportation issues regulation 49 CFR Part 23 establishing goals for MBEs and WBEs on federally assisted projects

# DBE Program Background



To create a level playing field and foster equal opportunity in DOT-assisted contracts.

Major events that shaped the development of the Department of Transportation DBE program:

## Timeline of Events

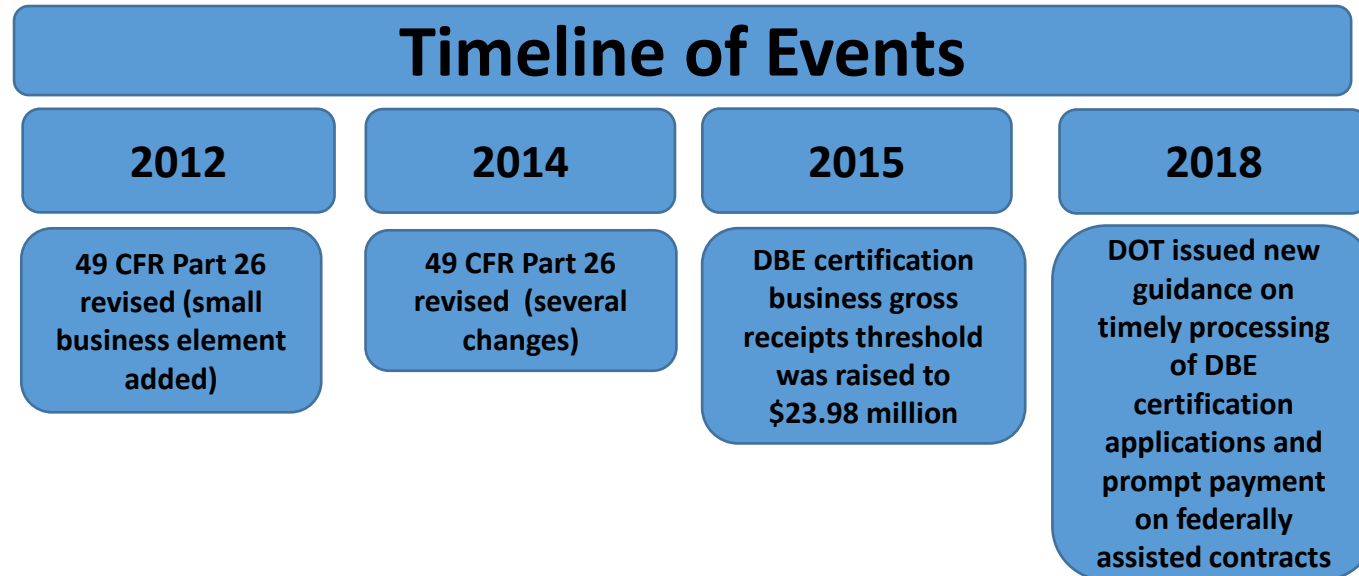
1982	1985	1987	1991	1997	1999	2005
Surface Transportation Assistance Act required not less than 10% of amounts appropriated be expended with DBEs	Consolidated Omnibus Budget Reconciliation Act established penalties for misrepresenting a firm as a DBE for DBE certification	Surface Transportation and Uniform Relocation Assistance Act added women as disadvantaged, set small business size standards and certification criteria for DBEs	Intermodal Surface Transportation Efficiency Act required not less than 10% of DOT funds be expended with DBEs	Transportation Equity Act for 21 <sup>st</sup> Century required not less than 10% of DOT funds be expended with DBEs	49 CFR Part 26, the Final Rule for Participation by DBEs in DOT Financial Assistance Program issued	Western States Paving vs Washington State Department of Transportation. Applies to AK, AZ, CA, HI, ID, MT, NV, OR, WA. Evidence for race-conscious measures inadequate. 5

# DBE Program Background



To create a level playing field and foster equal opportunity in DOT-assisted contracts.

Major events that shaped the development of the Department of Transportation DBE program:



# U.S. Department of Transportation DBE Program Regulation – 49 C.F.R. Part 26 (Code of Federal Regulations)



Billions



Federal Transit  
Administration  
(FTA)

Billions



State and Local  
Transportation  
Agencies

# Recipient Role

DBE Regulations: 49 C.F.R. Part 26

Federal Transit  
Administration



State and Local Transportation Agencies (Recipients)

Recipients which expect to award contracts (excluding transit vehicle purchases ) exceeding \$250,000 in a Federal fiscal year are required to set three-year goals for DBE participation in this DOT-assisted work. This is called the Triennial DBE Overall goal.

The 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 on DOT-assisted contracts.

The goal must reflect what you could expect the level of DBE participation to be absent the effects of discrimination.



# Triennial Goal Methodology

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- Gather the data
- Determine the **availability** of **ready, willing, and able DBEs** relative to **ALL businesses** ready, willing and able to participate on DOT-assisted contracts 26 CFR §26.45(b)
- Express the goal as a percentage of the recipient's federal funding

# Step One – Develop a Base Figure

- **Base Figure** represents the **relative availability** of DBEs in **relevant geographic market area**

Number of Ready, Willing  
and Able DBEs

= Base Figure %

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Number of **All** Firms  
Ready, Willing & Able

Number of DBEs: Search the California Department of Transportation's Uniform Certification Program (CUCP) database for DBEs that are certified in an identified work category.

Source: [http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

Number of All Firms (DBEs and non-DBEs): Search the United States Census Bureau's most recent California Business Patterns (CBP) database for all firms in an identified work category.

Source: U.S. Census data tool, American FactFinder, Geography Area Series: County Business Patterns, 2016 Business Patterns

# Step One – Develop a Base Figure

## ECCTA DOT-Assisted Contracting Opportunities for FFY 2020- FFY 2022

### 1)ADA Operating Assistance

0 DBE firms in market area

= 0 % Base Figure

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29 Total firms in market area

# Step One – Develop a Base Figure

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- Weighting by Work Category
  - To determine the work category, most recipients use the North American Industrial Classification System (NAICS), which is the standard used by Federal agencies in classifying business establishments
  - Weighting ensures that the Step One base figure is as accurate as possible
  - Provides a more narrowly-tailored model of business availability
  - Weights used are allocation of dollars spent within each work category
  - Resulting percentage shows where dollars are allocated to each work category

# Step One – Develop a Base Figure

NAICS CODE	CONTRACTING OPPORTUNITY	FTA DOLLARS	WEIGHTED % OF TOTAL FTA DOLLARS	DBE AVAILABILITY	BASE FIGURE
485113 (Bus and other Motor Vehicle Transit Systems)	ADA operating assistance	\$1,131,584	1	0	0
<b>Total</b>		<b>\$1,131,584</b>	<b>1</b>	<b>Overall Base Figure</b>	<b>0</b>

# Step Two - Adjustment

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Examine all available evidence and determine what adjustments, if any, are necessary

- Capacity of DBEs to perform work
- Statistical disparities (BART Disparity Study, Caltrans Disparity Study)
- Past DBE participation
- Input from interested parties

# Step Two – Adjustment

## Example: Agency ABC Past DBE Participation

<b>2017</b>	6.00%
<b>2018</b>	4.00%
<b>2015</b>	<b>3.00%</b>
<b>2014</b>	3.00%
<b>2016</b>	2.00%

- **EXAMPLE:** Using Past DBE Participation Method

1. Tally total DBE achievement percentage for 5 years
2. Find Median

Based on past participation information, an agency can determine if an adjustment to the overall goal base figure may be needed.

Not currently using past participation for adjustment to ECCTA's goal since ECCTA does not frequently have DOT-assisted contracting opportunities in every Federal fiscal year.

# Triennial DBE Goal

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No adjustments were made to ECCTA's overall goal base figure.

**ECCTA's overall DBE goal for FTA-assisted contracts for FFY 2020-2022 is 0 (zero)%.**

ECCTA will continue reviewing its contracting opportunities for any changes that may become necessary. A revised DBE goal will be set if any new FTA-assisted contracting opportunities arise during the Federal fiscal period of October 1, 2019 through September 30, 2022.