

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Transportation



PROJECT GOAL SETTING METHODOLOGY

Pursuant to 49 CFR 26.45(3), with permission granted from the Federal Highway Administration (FHWA) the District Department of Transportation (DDOT) is establishing a Disadvantaged Business Enterprise (DBE) project goal for the South Capitol Street Corridor Project – Phase I (Project). DDOT proposes a DBE project goal of **20.64%**. This Project DBE goal represents 13.05% for the design phase of the project and 21.77% for the construction phase of the project.

The following describes the goal methodology used to determine this Project DBE Goal:

Step 1 - Determination of Relative Availability of DBE Contractors

The first step in determining the relative availability of DBE Contractors is to identify DDOT's local market area. The local market area is defined by the U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization's (OSDBU) website "*Tips for Goal Setting in the Disadvantaged Business Enterprise Program*" (<http://osdbu.dot.gov/dbeprogram/tips.cfm>) as the area in which the substantial majority of the contractors and subcontractors with which DDOT does business is located, and the area in which DDOT spends the substantial majority of its contracting dollars.

As was established from DDOT's FY 2016-2018 overall DBE goal methodology, the local area market for DDOT is the Washington, DC Metropolitan Area, hereafter referred to as "Metro Area". The Metro Area is defined by the U.S. Census Bureau Metropolitan Statistical Area as Washington-Alexandria-Arlington-DC-MD-VA-WV. This area includes the District of Columbia; the Virginia cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park; the Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford and Warren; the Maryland counties of Calvert, Charles, Prince George's and Frederick; and the West Virginia county of Jefferson (<http://censtats.census.gov/cgi-bin/msanaic/msasect.pl>). It also includes the Bethesda, Rockville-Frederick Maryland Metropolitan Division, which comprises Frederick and Montgomery Counties (<http://www.census.gov/population/metro/files/lists/2009/List1.txt>). The geographical area of the Washington MSA is presented in **Table 1**.

Table 1: Washington Metropolitan Statistical Area

District of Columbia, DC
Calvert County, MD
Charles County, MD
Frederick County, MD
Montgomery County, MD
Prince George's County, MD
Alexandria City, VA
Arlington County, VA
Clarke County, VA
Fairfax City, VA
Fairfax County, VA
Falls Church City, VA
Fauquier County, VA
Fredericksburg City, VA
Jefferson County, WV
Loudoun County, VA
Manassas Park City, VA
Prince William County, VA
Spotsylvania County, VA
Stafford County, VA
Warren County, VA

The data used in setting the Project goal were derived from the DBE directories and Census Data, as outlined §26.45(C)(1):

- DDOT's and the Washington Metropolitan Area Transit Authority's electronic DBE Directories. These directories comprise all engineering and highway-related construction firms, suppliers, consultants, etc. certified by the U.S. Department of Transportation-approved **Metropolitan Washington Unified Certification Program (MWUCP)** between **DDOT** and the **Washington Metropolitan Area Transit Authority (WMATA)**.
- The Census Bureau 2013 Country Business Pattern for the geographical area of Washington-Arlington, Alexandria, DC-MD-VA-WV Metropolitan Statistical Area (<http://censtats.census.gov/cgi-bin/msanaic/msadctl.pl>). This data is used to provide a more accurate account of all firms within the geographic market based upon current census data. The data is collected annually. The data used in this report reflects data which was collected in 2013 and released for public use in April 2015.

In order to ensure the most accurate goal possible, the availability data from the sources above was broken out into the NAICS codes anticipated to be involved in this Project as set out in **Table 2** below.

Table 2: Overall Market DBE Availability

NAICS Code	Description	Number of DBEs Available to Perform this Work	Number of All Firms Available (Including DBEs)	Overall Market DBE Availability
237110	Water and Sewer Line and Related Structures Construction	39	128	30.4688
237310	Highway, Street and Bridge Construction	65	164	39.6341
237990	Other Heavy and Civil Engineering Construction	26	50	52
238110	Poured Concrete Foundation and Structure Contractors	48	286	16.7832
238120	Structural Steel and Precast Concrete Contractors	17	54	31.4815
238140	Masonry Contractors	29	348	8.333
238210	Electrical Contractors and Other Wiring Installation Contractors	44	1107	3.9747
238910	Site Preparation Contractors	45	379	11.8734
238990	Other Specialty Trade Contractors	50	543	9.2081
327320	Ready-Mix Concrete Manufacturing	3	56	5.3571
484110	General Freight Trucking, Local	14	238	5.8824
541310	Architectural Services	32	523	6.1185
541320	Architectural Services (Landscaping)	21	113	18.5841
541330	Engineering Services	121	1795	6.7409
541340	Drafting Services	22	24	91.6667
541360	Geophysical Surveying and Mapping Services	5	11	45.4545
541370	Surveying and Mapping (Except Geophysical Services)	14	106	13.2075
541380	Testing Laboratories	17	84	20.2381
541611	Administrative Management & General Management	170	4268	3.9831
541620	Environmental Consulting Services	28	247	11.3360
541690	Other Scientific and Technical Consulting	45	880	5.1136
541820	Public Relations Agencies	20	814	2.4570

The overall market DBE availability for each NAICS code was then weighted by DDOT's engineer's estimate of the amount of funds that would likely be spent in each NAICS code. In order to ensure a fair bidding process on this Project, DDOT is withholding the engineer's weighted calculations. The detailed calculations have been provided to FHWA in a confidential addendum. The results of this calculation led to a **20.64%** goal for this Project. This Project goal represents 13.05% for the design phase of the project and 21.77% for the construction phase of the project.

SOUTH CAPITOL STREET CORRIDOR – PHASE I DBE Goal: 20.64%

Design -- 13.05%
Construction -- 21.77%

Step 2 – Adjustment to Base Figure

49 CFR Section 26.45(d) and the goal setting and methodology guidelines outlines data that can be analyzed and taken into consideration in order to adjust the Step 1 Base Figure. These analyses are intended to narrowly tailor the goals to the precise local market. DDOT considered all available information that could potentially be used for a Step 2 adjustment to the Project goal. With respect to past participation on similar projects, in recent years DDOT has not had a project similar to the South Capitol Street Project in size and scope. Nor have we been able to identify a similar project in another jurisdiction with similar DBE availability. For this reason we have decided not to make a Step 2 adjustment.

PUBLIC PARTICIPATION –SOUTH CAPITOL STREET CORRIDOR PROJECT – PHASE I

DBE Project Goal Community Comments

DDOT held a public meeting on April 14, 2016 at 1:30 pm to present the proposed DBE project goal to the public and to receive comments on the Project DBE goal and the goal setting methodology. The meeting was held at DDOT Headquarters, 55 M Street, SE, Room 439, Washington, DC 20003. In accordance with 49 CFR Part 26.45(g)(1)(i)(ii), the meeting notice was published on DDOT's website at <http://ddot.dc.gov/release/ddot-announces-public-meeting-disadvantaged-business-enterprise-dbe-program%E2%80%99s-overall-goals>. The original comment period was scheduled to end on May 2. The comment period was extended until 4:45 pm on May 9, 2016. The public was encouraged to submit comments to the attention of: Delmar, Lytle, AWI/South Capitol Street Program Manager, District Department of Transportation, 55 M Street, SE, Fourth Floor, Washington, DC 20003. Comments could also be made via email to ddot.awi@dc.gov.

In addition to the public meeting, DDOT held an additional opportunity for DBE stakeholders to meet on April 13, 2016 at 2:00 pm. The audience for this meeting was diverse and represented DBE-related industry partners, DBE firms, and prime contractors. Attendees were appreciative of the opportunity to voice their concerns.

Overall, there were no objections from the public to DDOT's proposed Project DBE goal. The following were questions and/or comments from the April 13 and April 14 public meetings:

1. Nick Goldstein ARBTA-

Q-Are you considering the contractors work on other projects or past projects?

A-Did take that into consideration but used the statistics that were available to date.

2. Rosalyn Styles- National Association of Contractors-

Q-When will the goals become final?

A- In the comment period now (April 1-May 2). Submitted to FHWA for approval after that.

Q-Any push from the District to increase the number of certifications? And increase the marketing so as many DBEs can be included as possible. Her association is willing to help with this.

A- Have been priming the community over the past three DBE Summits. Will also do additional outreach. This is one of the reasons associations were included in this meeting.

3. Angela Reese- Tuttur Perini-

Q- Contract amount totals-How many projects go into that?

How many large and how many small? - Smaller scale projects get higher DBE participation due to the smaller scale of work.

How many DBE suppliers will be able to handle large work such as Steele work?

Does the USDOT Tips take that into account?

A- UD DOT Tips was used to set all of the above. DBE goal follows the tips for adjustment. All of these questions will be addressed further in the Report.

4. Sharon Bland-JMT-

Q- Does DDOT have any programs that help DBEs prepare for large scale projects?

A-This question was referred to the DDOT Office of Civil Rights to be addressed at another time being that it is not a question directly for the SCS DBE methodology.

5. Iberia Miles-TreKnot

Comment- Expressed that she is impressed with the percentages for this project.

In addition to the above questions and comments from the public meetings, DDOT also received comments via letters from two of the proposal teams for the South Capitol Street Corridor Project.

On May 2, 2016, proposer Skanska Facchina Joint Venture submitted the following comments:

“The Prime Contractors foresee difficulties in attaining DDOT’s DBE goals of 15.32% for Design and 21.64% for Construction on the South Capitol Street Corridor - Phase I project. Per the contract documents, the self-perform requirement on this project is 40%. When deducting these values from the total contract amount, the effective DBE goals increase to 25% for Design and 36% for Construction without considering substantial elements of marine and specialty work that is extremely unlikely to be performed by DBE firms.

Additionally, this project has a Project Labor Agreement (PLA) component that may not have been reflected in DDOT's DBE Goal Setting Report issued April 1, 2016. How many of the DBE firms identified in this report's Table 5 are Union companies and Merit Shop companies? More importantly, what percentage of the Merit Shop DBE firms might be willing to sign a PLA for this project? The PLA agreement will deter DBE firms from bidding on the project, thereby becoming unavailable and decreasing the availability pool of DBE firms.

We would like to recommend that the 21.64% construction goal be reduced to the 10% range of total contract value or apply the 21.64% goal to the total construction subcontract value."

On May 2, 2016, proposer South Capitol Bridgebuilders submitted the following comments:

"It is our opinion that the 15.32% design goal is achievable. There are a number of qualified DBE design firms that will add value to the Project. We also believe the goal of 21.64% for construction would normally be achievable for a standard highway type project in the Washington, DC area. Unfortunately, this is not a standard highway type Project. The South Capitol Project's main component, the reconstruction of the Frederick Douglas Memorial Bridge and demolition of the existing FDMB, requires a variety of large, expensive, specialized equipment to construct the work. Along with this equipment are the highly experienced supervisory staff that are trained to manage field personnel and apply our proven processes and procedures required to execute the work.

The NAICS codes do not differentiate between constructions of extremely complex bridges compared to standard highway bridges. We request that consideration be given to account for the reality that there are not any DBE firms qualified to perform the complex construction and demolition of the Frederick Douglas Memorial Bridge. In addition, except for a few elements of construction, the work associated with the FDMB cannot be separated into small components for the purpose of DBE inclusion.

Furthermore, the construction of the South Capitol Street Corridor Project will overlap with other major transportation projects in the Washington Metropolitan Area, for example the \$2 billion I-66 Outside the Beltway in Fairfax, VA, and the \$2.0 billion Purple Line in Bethesda, MD. As indicated in Table 7 of the Disadvantaged Business Enterprise Goal Setting Report, past DBE performance in the District was calculated based on annual expenditures of around \$100 Million a year. The construction of these major projects will substantially increase the typical annual expenditures on transportation projects to more than ten times the base figure calculation.

For the reasons expressed above, we believe the DBE goal for construction should be adjusted. As outlined in the table below, we request the Construction DBE percentage be adjusted to 11.58% based on availability of qualified DBE firms."

Description	% of Contract Value	Work available for DBE firms	Notes
New FDMB Construction	45%	1%	Specialized bridge work by Prime Contractor. DBE firms are qualified to perform deck feature work such as handrail, curb, and lighting.
Existing FDMB Demolition	2%	0%	All Specialty Work
Three Landside Bridges	13%	21%	Standard highway bridges
Standard Highway Construction	40%	21%	
>>> Weighted Average <<<	100%	11.58 %	

“The dollar value to which the DBE Goal is to be applied should be only the value of actual construction.

Contract Value – (OH & P) – (Indirect Costs) – (Design Cost) = Actual Construction Value.

(Actual Construction Value) * (DBE % Goal) = DBE Goal Dollar Value”

In response to the comments from both proposal teams, DDOT would make several points, both general and specific. First, as a general matter, when establishing DBE goals on individual projects, such as the South Capitol Street Corridor Project, Phase I, the agency uses the criteria and methodologies permitted by 49 CFR 26.45 and the USDOT “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.” The project goal can only be adjusted based on relevant and reliable data that necessitates such an adjustment. DDOT considered all available information that could potentially be used for an adjustment and determined that an adjustment was not necessary.

Second also as general matter, it is important to remember that the successful bidder on the South Capitol Street Corridor Project will be required to *either* meet the DBE Project goal or demonstrate good faith efforts to meet the DBE Project goal. As set forth in 49 CFR Part 26, if the Project goal is not met, evidence of good faith efforts must be submitted. DDOT will consider all evidence of good faith efforts submitted. DDOT strongly recommends that bidders carefully review Appendix A of 49 CFR Part 26 in order to familiarize themselves with what constitutes good faith efforts.

Third, in terms of the specific points raised by the proposal teams, we address each one below:

1. **One team expressed concerns that the project requires that a certain percentage of work be self-performed.** Many, if not most highway construction projects include a percentage of work that must be self-performed by a prime contractor. Nowhere in the DBE rules or regulations is self-performance a suitable or accepted rationale for goal adjustment. Still, if any proposal team would like to apply for a reduction in the amount of work required to be self-performed on this project, DDOT will carefully consider all reasonable requests.
2. **Both teams, asserted in their comments, that this project involves specialized work for which they assert there are fewer qualified DBEs.** 49 CFR 26 requires that DDOT set goals based on the best available data. DDOT is not permitted to increase or reduce goals based on anecdotal assertions about the availability of firms to perform particular types of work. DDOT's Project Management Team is very knowledgeable about the number and qualifications of DBEs available to work on this project and they have expressed no concerns about the ability of proposal teams to meet the goals. If the proposal teams have any specific data available with regard to the actual availability of qualified DBEs that they propose could be used to make a mathematical adjustment to the goals, DDOT would review that data.
3. **One proposal team contended that we should consider the existence of a Project Labor Agreement (PLA) on this project in setting the goal.** DDOT disagrees that the existence of a PLA is reason to adjust the goal on this, or any project. With that said, DDOT would point proposal teams to the US Department of Transportation's own official guidance "Questions and Answers." One Question and Answer, under the subject heading of Good Faith Efforts, makes clear that a DBE's union or non-union status is not a permissible rationale for rejecting the firm's participation. The same Question and Answer makes clear that DDOT may not, as a condition of meeting good faith efforts, require a prime contractor to use a DBE that refuses to observe the stated requirements of a project labor agreement.
4. **One proposal team contended that DDOT should adjust the goal because there will be a significant number of other transportation projects occurring simultaneously in the Washington Metropolitan Area.** DDOT is unaware of any DBE regulation or guidance that permits adjustments to be made to a goal based on anecdotal evidence that there will be a large number of transportation projects in a given market area. Indeed, DDOT would note that there are almost *always* a large number of heavy and highway projects underway in and around the nation's capital. Moreover, DDOT would note that economists have regularly noted that the construction industry is especially elastic, permitting firms to add more employees and do more work when demand requires. This is true for DBE and non-DBE firms alike. If project teams have specific data that would indicate that an adjustment on this basis is necessary, DDOT would be happy to review the data. Please be advised, however, that such data must be sufficiently detailed so as to permit DDOT to calculate a particular adjustment to the goal based on the current work load in our area.