



North Dakota Department of Transportation

Francis G. Ziegler, P.E.
Director

John Hoeven
Governor

September 3, 2009

Mr. Wendall Meyer
Division Administrator
Federal Highway Administration
1471 Interstate Loop
Bismarck, ND 58503-0567

Attention: Sandy Zimmer

Dear Mr. Meyer:

The North Dakota Department of Transportation is committed to eliminating unlawful discrimination in its state, federal, and federally assisted programs on the basis of race, color, national origin, religion, sex, age, physical or mental handicap or disability, political opinion or affiliation, status with regard to marriage or public assistance, or participation in lawful activity off the employer's premises during non-working hours which is not in direct conflict with the essential business-related interests of the employer. In addition, the Department ensures that all beneficiaries and potential beneficiaries of these programs are offered an equal participation opportunity.

In accordance with 49 CFR Part 26, the Department calculated the FY 2010 Disadvantaged Business Enterprise (DBE) goal at **7.32 percent**. The Department calculates the DBE goal using a two-step process;

STEP 1

Availability of DBEs is determined from information supplied by all bidders on prime and consultant contracts, subcontractors and suppliers from April 1, 2008, to March 30, 2009. The data from this timeframe is considered to be an accurate reflection of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts.

There are a total of **396** bidders and quoters on construction projects: **37** DBEs and **359** non-DBEs. A total of **31** consultants bid on consulting projects: **6** DBEs and **25** Non-DBEs (see chart below).

A weighted average was developed by determining what percent non-DBEs and DBEs obtained of prime contracting, subcontracting, and consulting dollars. **This calculation establishes a base figure for Step 1 of 7.68 percent.**

| | PRIMES BIDDERS | SUBCONTRACTORS OR SUPPLIERS | CONSULTANTS | TOTAL |
|--------------|-------------------|--------------------------------|-------------|------------|
| DBE | 5 | 32 | 6 | 43 |
| NON-DBE | 76 | 283 | 25 | 384 |
| TOTAL | 81 | 315 | 31 | 427 |

| | DOLLARS | PERCENT |
|--------------|----------------------|----------------|
| PRIME | \$187,489,973 | 72.43% |
| SUBCONTRACT | \$59,823,633 | 23.11% |
| CONSULTANTS | \$11,541,440 | 4.46% |
| TOTAL | \$258,855,046 | 100.00% |

$$5/81 = 6.17\% (.7243) = 4.47\%$$

$$32/315 = 10.16\% (.2311) = 2.35\%$$

$$6/31 = 19.35\% (.0446) = 0.86\%$$

$$7.68\%$$

STEP 2

To determine past median participation, DBE participation was analyzed for the past **eight** fiscal years, FY 2001-2008.

| YEAR | DBE | NON-DBE | TOTAL | PERCENTAGE |
|----------------|----------------------|------------------------|------------------------|--------------|
| FY 2001 | \$10,339,657 | \$146,291,015 | \$156,630,672 | 6.60% |
| FY 2002 | \$9,088,665 | \$158,460,142 | \$167,548,807 | 5.42% |
| FY 2003 | \$13,557,367 | \$177,030,545 | \$190,587,912 | 7.11% |
| FY 2004 | \$13,150,084 | \$167,755,961 | \$180,906,045 | 7.29% |
| FY 2005 | \$16,391,067 | \$225,008,990 | \$241,400,057 | 6.79% |
| FY 2006 | \$21,811,298 | \$268,650,893 | \$290,462,191 | 7.51% |
| FY 2007 | \$17,881,255 | \$201,191,041 | \$219,072,296 | 8.16% |
| FY 2008 | \$17,498,476 | \$250,768,604 | \$268,267,080 | 6.52% |
| TOTAL | \$119,717,869 | \$1,595,157,191 | \$1,714,875,060 | |

The FY 1999 information was data calculated with different reporting requirements, based on the mid-year changes to the DBE regulations. It is our opinion that utilizing information on participation from FY 1999 distorts the percentage and is not an accurate comparison with future data.

The Department did not have an approved DBE program until June of 2000. Since the current program was not approved until late in FY 2000, policies and procedures were not fully implemented and refined as they were in the following years. Therefore, FY 2000 is not considered to be an accurate reflection of current DBE capacity.

The FY 2001-2005 did not include the consultant program. The data for Step 1 of the FY10 goal setting methodology indicates consultants represent less than one percent of the overall goal and approximately 4.46% of the program dollars. Since the median is used and the percentages have fluctuated less than one percent, the effect of consultants not being included in the FY 2001-2005 figures is considered minimal. Consultant information began being gathered during FY 2006 and is reflected in the FY 2007-2009 data listed in Step 2.

When eight years of data are available, past median participation is determined by eliminating the high and low percents of participation and then averaging the remaining two years. Therefore, the percents of participation for FY 2001, FY 2002, and FY 2008 will be eliminated as they represent the lowest percents of participation. The percents of participation for FY 2004, FY 2006, and FY 2007 will be eliminated as they represent the highest percents of participation. The remaining two years of data, for FY 2003 is 7.11 percent and for FY 2005 is 6.79 percent. Added together, they equal 13.90 percent which, when divided by 2, equals 6.95 percent. The 6.95 percent is then added to the Step 1 figure of 7.68 percent for a total of 14.63 percent divided by 2 equals 7.32 percent. This results in a downward adjustment to the base figure developed in Step 1 to 7.32 percent.

ADJUSTMENTS

NDDOT also considered available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete. To determine the effects of discrimination on opportunities for DBEs to get financing, bonding, or insurance, we contacted the following:

ND Attorney General's Office
ND Department of Banking and Financial Institutions
ND Department of Commerce
ND Department of Human Services
ND Small Business Development Center
ND Office of Management and Budget
ND University System

We received no information from these sources indicating that adjustment based on this evidence is warranted. No disparity studies have been conducted in the state. Therefore, no adjustment has been made for this factor.

BREAKOUT OF ESTIMATED RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION

The DBE regulations require NDDOT to meet the maximum feasible portion of our overall goal by race-neutral means. This will be achieved in the following way:

1. Using the supportive services newsletter, inform DBEs and non-DBEs about important issues, such as taxes, worker compensation, unemployment insurance, and other available resources for information on basic business topics. Businesses intending to bid as prime contractors use the newsletter to advertise which projects

they are bidding on. The newsletter is published two weeks prior to each regularly scheduled bid opening. The newsletter is electronically posted to the Civil Rights Division Web site, and hard copies are mailed to those individuals or businesses who have requested a paper copy. Businesses are notified of the availability of the electronic version via the Civil Rights Division listserv.

2. Provide an electronic supportive services room for DBEs and non-DBEs the day before each bid opening to facilitate the exchange of quotes. Free access to plans and proposals are provided at various district offices around the state and in the central office.
3. Provide the Notice to Bidders list of upcoming projects free of charge to any DBE or non-DBE.
4. Implement a supportive services program that provides training to DBEs in the areas of: electronic bidding, how to quote electronically, bidding reports and data available after each bid opening, plan reading, other sites within the Department's website that will assist them in the bidding and quoting process and to be more successful as a DBE.
5. Ensure distribution of NDDOT's DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors and state and federal contracting agencies.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to:

1. DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures or through the consultant selection process;
2. DBE participation through a subcontract on a prime contract that does not carry a DBE goal; and
3. DBE participation through a subcontract with a prime contractor that did not consider a firm's DBE status in making the award.

NDDOT believes it will meet the goal of **7.32** percent by using race-neutral and race-conscious means as necessary.

When **eight** years of data are available, past median race-neutral participation is determined by eliminating the high and low percents of race-neutral participation and then **averaging** the data from the remaining **two** years. Therefore, the percents of race-neutral participation for FY 2002, FY 2003, and FY 2007 will be eliminated as they represent the lowest percents of participation. The percents of participation for FY 2001, FY 2004, and FY 2008 will be eliminated as they represent the highest percents of participation. The remaining year of data for **FY 2005 is 49.19** percent and FY 2006 is 49.00 percent participation. **These two amounts added together equal**

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98.19 percent then divided by 2 equals 49.095 or 49.10 percent. The race-neutral portion of the goal will be determined by taking 49.10 percent of 7.32 percent, which equals 3.59 percent.

| Fiscal Year | Percent Achieved | Percent Race-Neutral | |
|-------------|------------------|----------------------|--------|
| 2001 | 6.60% | 3.54% | 53.64% |
| 2002 | 5.42% | 2.31% | 42.62% |
| 2003 | 7.11% | 2.98% | 41.91% |
| 2004 | 7.29% | 4.31% | 59.12% |
| 2005 | 6.79% | 3.34% | 49.19% |
| 2006 | 7.51% | 3.68% | 49.00% |
| 2007 | 8.16% | 3.59% | 44.32% |
| 2008 | 6.52% | 4.03% | 61.81% |

- 49.10 percent of the proposed 7.32 percent DBE goal = 3.59 percent--will be met by race-neutral means.
- 50.90 percent of the proposed 7.32 percent DBE goal = 3.73 percent--will be met by race-conscious means.

Goals will be set on construction projects to achieve the race-conscious portion of the goal. Consultant participation will be achieved through race-neutral participation.

If you have any questions regarding the goal calculation, contact Deb Igoe at 701-328-2576.

Sincerely,



Francis G. Ziegler, P.E.
Director

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