



**Tennessee Department of Transportation
Overall Annual DBE Goal
FFY 2010**

August 1, 2009

**TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT)
FFY 2010 OVERALL ANNUAL DISADVANTAGED BUSINESS ENTERPRISE
(DBE) GOAL**

The purpose of the DBE Program is to:

- Remedy past and current discrimination,
- Ensure a level playing field,
- Foster equal opportunity on DOT-assisted contracts,
- Improve flexibility and efficiency, and
- Reduce the burden of the DBE program on small businesses.

In an effort to reach this level playing field, TDOT examined its program and local markets, then determined the amount of participation DBEs would be expected to achieve in the absence of present and past effects of discrimination. These efforts are outlined on the subsequent pages.

US DOT GOAL SETTING REQUIREMENTS

TDOT, as required by 49 CFR Part 26.45, utilized the two step process in the development of their overall DBE goals. **Step 1** indicates that you must begin your goal setting process by determining a base figure for the relative availability of DBEs, and **Step 2** allows you to adjust this base figure by considering all the evidence available in your jurisdiction.

TDOT is also required to project portions of the overall goal it expects to meet through race-neutral and race-conscious measures (49 CFR Part 26.51). Additionally, recipients must provide for public participation in the establishment of their overall goal as well as to specify the local market used for the calculation.

STEP 1 - Determine the Base Figure

The local market area is defined as the area in which the substantial majority of the contractors and subcontractors with which the TDOT does business are located, and the area in which TDOT spends the substantial majority of its contracting dollars. The state of Tennessee is a wide state (500 miles across) with several major urban centers across the state. As well as being a major transportation hub for eight surrounding states Tennessee has consistently been rated in the top three for the best roads in the country due to numerous road improvement projects throughout the state. Tennessee is also the site of a major interstate construction project, I-69 which is a congressional ear mark that is part of NAFTA which will run through a major part of west Tennessee. Tennessee is more densely populated than some more rural states which is why the entire state has been defined as the local market area.

TDOT reviewed the alternatives for establishing a base figure listed in 49 CFR Part 26.45. The base figure was developed using a ratio between DBEs listed on TDOT’s pre-qualified/bidder’s list. Baseline percentages were derived by dividing the 81 DBEs pre-qualified to work for TDOT in the past year by all 804 firms that are pre-qualified to work for TDOT in the past year.

Table 1 – Relative Availability of DBEs

<u>TDOT DBE Firms on Pre-qualified/Bidder’s List</u>	<u>TDOT Pre-qualified/Bidders List</u>	<u>Relative Availability</u>
81	804	10.07%

TDOT calculated a Step 1 base availability figure of 10.07% using the formula below:

$$\frac{\text{\# of DBE pre-qualified/bidder’s list firms ready willing and able to perform work. (81)}}{\text{\# of all firms/contractor’s listed on TDOT’s pre-qualified/bidder’s list (804)}}$$

$$\times 100\% = \text{Base Figure 10.07\%}$$

STEP 2 - Adjust the Base Figure

The goal setting guidance from the Office of Small and Disadvantaged Business Utilization (OSDBU) states, “If you feel that an adjustment based on past participation (capacity) is warranted, and you cannot determine any more precise way to make the adjustment, you may average the figure in Step 1 with a figure which represents your past participation.” In suggesting methods for determining past participation, the OSDBU guidance also states, “Your goal-setting process will be more accurate if you use the median of your past participation to make your adjustment because the process of determining the median excludes all abnormally high or abnormally low past participation figures.” We have utilized the median throughout.

In 2006, TDOT commissioned a Disadvantaged Business Enterprise Availability and Utilization Study to determine the participation of minority and woman-owned business enterprises (M/WBE’s) in TDOT’s contracts. The findings indicated that there was an underutilization of the available ready, willing, and able M/WBEs and small businesses and the utilization of such businesses in TDOTs construction and engineering and related consulting services contracts. These findings support the use of goals and a more race conscious program versus a race neutral program for Tennessee as well as the use of the base figure calculated in step 1.

- A. TDOT first considered the capacity of DBEs to perform work based upon past performance. Contract dollars give a picture of the historical capacity of the DBEs to perform work in the TDOT contracting program. This data captures all awards to DBEs in the past four completed fiscal years. Table 2 below contains a summary of the expenditure data. Note that Table 2 includes contracts funded with federal funds including state and local matching funds.

Table 2 – Contract Dollars to DBEs – DBE Capacity

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u> ¹	<u>DBE % of Total Awards</u>
FFY 2005	\$ 29,216,031	\$ 646,004,842	4.52%
FFY 2006	\$ 56,043,517	\$ 603,850,145	9.28%
FFY 2007	\$ 30,784,300	\$ 388,800,000	7.97%
FFY 2008	\$ 40,107,206	\$ 660,842,888	8.19%
* FFY 2009	\$ 9,272,706	\$ 132,648,041	6.99%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

¹ Figures taken from FHWA Uniform Report of DBE Commitments/Awards and Payments to more accurately reflect DBE participation

$$\text{Median \%} = (6.99\% + 7.97\% + 8.19\%) / 3 = \mathbf{7.72\%}$$

$$\text{Adjusted Base Figure \%} = (10.07\% + 7.72\%) / 2 = \mathbf{8.90\%}$$

- B. The regulations also allow an adjustment of the Base Figure based upon consideration of evidence from related fields that show opportunities for DBEs to form, grow, and compete. Due to historical data presented in Table 2 above, and detailed later in this methodology's Race-Neutral participation, TDOT has determined there is evidence supporting further adjustment to the Base Figure.

Table 3 – Types of Work/Contracts (both prime & sub)
TDOT intends to let during the upcoming FFY 2010

<u>Type of Work</u>	<u>Funding</u>			<u>Total Estimated</u>
	<u>Federal</u>	<u>State</u>	<u>Local</u>	<u>Contract Dollars</u>
Bridge	\$ 48,496,000	\$ 36,325,000	\$ 1,608,000	\$ 86,429,000
Grading	\$ 302,500,000	\$ 171,600,000	\$ 2,420,000	\$ 476,520,000
Intersections	\$ 11,855,000	\$ 2,929,000	\$ 981,000	\$ 15,765,000
Resurfacing	\$ 42,425,000	\$ 60,220,000	\$ 386,000	\$ 103,031,000
Design	\$ 0	\$ 0	\$ 0	\$ 0
Other	\$ 2,055,000	\$ 36,597,000	\$ 123,000	\$ 38,775,000
TOTAL	\$ 407,331,000	\$ 307,671,000	\$ 5,518,000	\$ 720,520,000

Note that Table 3 includes federally funded contracts that require state and local matching funds.

Enhancement Grant Programs

In an effort to increase the opportunity for small, minority-owned, and women-owned businesses to participate in federal financially-assisted projects, DBE goals have been placed on Transportation Enhancement (TE) grant projects. According to 49 CFR Part 26 (Appendix A), as a condition of receiving federal financial assistance for contracts let by local entities, grantees must comply with this rule pertaining to the participation of DBEs in federal financially-assisted programs.

More than \$200 million in grants have been distributed by TDOT since the federal Transportation Enhancement Program began providing funds to local communities in 1991. The money has gone to 180 communities across the Volunteer State. Local officials have used the funds to build sidewalks, bike and pedestrian trails, and to renovate historic train depots and other transportation related structures.

Enhancement grant information is provided for the past two federal fiscal years.

Table 4 – Enhancement Grant Information for 2009

<u>Year</u>	<u>DBE Awards</u>	<u>Total Awards</u>	<u>DBE % of Total Awards</u>
2008	\$ 88,984	\$ 741,537	12%
2009	\$ 473,116	\$ 4,057,775	12%

Local Programs

Local Programs are those federal and state funded programs that are available to local governments to improve their transportation systems.

ANTICIPATED RACE-NEUTRAL AND RACE-CONSCIOUS METHODS

The federal regulations require TDOT to meet the maximum feasible portion of its overall goal by using race and gender-neutral (hereafter referred as race-neutral) means of facilitating DBE participation.

TDOT uses the following means to increase race-neutral DBE participation:

- Provide formal and informal training and presentations to DBE and other contractors;

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- Continue the supportive services program to develop and improve immediate and long-term business management, record-keeping, and financial and/or accounting capability for DBEs;
- Conduct periodic surveys, quarterly meetings, hosting an annual DBE conference to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info;
- Provide assistance to DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, including utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26;
- Provide supportive services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Provide assistance to DBEs in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with TDOT through the Bond Guarantee Program;
- Provide networking opportunities with local, state and federal agencies, non-profit, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral network with technical assistance and service providers.

In addition to the above described means that TDOT already employs to increase DBE participation, we propose implementing and/or expanding our efforts in the following ways:

- Assist firms in which DBE participation has historically been low by working within TDOT and with the transportation industry to identify new and/or emerging businesses, with a particular focus on areas which will be critical to the industry in the next decade.
- Actively pursue businesses that can perform and develop expertise in these emerging areas, and recommended work through Enhancement Grant and Local Program Projects.
- Continue and expand outreach with minority and women-owned businesses and trade organizations.

Breakout of Estimated Race-Neutral Participation

TDOT will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (49 CFR 26.51(f)) and track and report race-neutral and race-conscious participation separately.

When a DBE is awarded a contract as the prime contractor, or when contractors award subcontracts to DBEs on projects that have no goal or award subcontracts to DBEs which exceed the participation required by the project goal, this is recognized as race neutral participation.

TDOT considered the following factors in projecting the portion of its overall goal that it will be able to meet through race-neutral means:

1. TDOT has not reached or maintained an overall DBE goal level for any consecutive 2-year period. Therefore, it is not reasonable for TDOT to assume that companies will achieve participation over and above the race-conscious portion of next year’s overall DBE goal.
2. As result of TDOT obtaining a portion of its past participation by DBE's contracting as primes, these contracts should be considered race-neutral attainment and can be used as a basis for estimating a similar level of race-neutral participation in the next program year. In accordance with the US DOT’s goal-setting standards, TDOT has calculated the past year’s participation for DBE prime contractors as follows:

Table 5 – DBE Prime Achievements on Construction Contracts

FFY	DBE Awards	Total Awards¹	DBE % of Total
FFY 2005	\$ 0	\$ 646,004,842	0.00%
FFY 2006	\$ 0	\$ 603,850,145	0.00%
FFY 2007	\$ 143,411	\$ 388,800,000	0.04%
FFY 2008	\$ 0	\$ 660,842,888	0.00%
* FFY 2009	\$ 0	\$ 132,648,041	0.00%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

¹ Figures taken from FHWA Uniform Report of DBE Commitments/Awards and Payments to more accurately reflect DBE participation

Median % = (0.00% + 0.00% + 0.00%) / 3 = 0.00%

3. In addition to utilizing DBE primes, TDOT has also been able to achieve a portion of its past participation through the use of DBE subcontractors on contracts without DBE goals. Such attainment should be considered race-neutral and can be used as an additional source for projecting a comparable level of race-neutral participation in the following year. In accordance with the USDOT’s goal-setting standards, TDOT

calculated the past year’s participation for DBE subcontractors on contracts without goals as follows:

Table 6 – DBE Subcontractor Achievements on Construction Contracts Without Goals

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u> ¹	<u>DBE % of Total</u>
FFY 2005	\$ 2,533,302	\$ 646,004,842	0.39%
FFY 2006	\$ 7,659,707	\$ 603,850,145	1.27%
FFY 2007	\$ 3,658,836	\$ 388,800,000	0.94%
FFY 2008	\$ 4,399,546	\$ 660,842,888	0.66%
* FFY 2009	\$ 3,626,190	\$ 132,648,041	2.73%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

¹ Figures taken from FHWA Uniform Report of DBE Commitments/Awards and Payments to more accurately reflect DBE participation

$$\text{Median \%} = (0.66\% + 0.94\% + 1.27\%) / 3 = \mathbf{0.96\%}$$

- In an effort to account for more DBE participation, TDOT plans to monitor contracts without goals. Core areas such as Consultant, Research/Planning, and Right-Of-Way divisions are included along with Construction, thereby tracking additional DBE participation throughout TDOT.

Table 7 – DBE Subcontractor Achievements on Right-Of-Way Contracts Without Goals

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u>	<u>DBE % of Total</u>
FFY 2005	\$ 26,496	\$ 3,788,772	0.70%
FFY 2006	\$ 9,558	\$ 1,908,288	0.50%
FFY 2007	\$ 7,384	\$ 1,697,616	0.43%
FFY 2008	\$ 11,320	\$ 2,549,112	0.44%
* FFY 2009	\$ 6,133	\$ 1,108,368	0.55%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

$$\text{Median \%} = (0.44\% + 0.50\% + 0.55\%) / 3 = \mathbf{0.50\%}$$

Table 8 – DBE Subcontractor Achievements on Consultant Contracts Without Goals

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u>	<u>DBE % of Total</u>
FFY 2005	\$ 26,496	\$ 47,684,888	1.49%
FFY 2006	\$ 1,110,561	\$ 49,240,287	2.26%
FFY 2007	\$ 1,057,745	\$ 27,434,452	3.86%
FFY 2008	\$ 452,846	\$ 28,381,030	1.60%
* FFY 2009	\$ 361,019	\$ 18,162,190	1.99%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

$$\text{Median \%} = (1.60\% + 1.99\% + 2.26\%) / 3 = \mathbf{1.95\%}$$

Table 9 – DBE Subcontractor Achievements on Long-Range Planning Contracts Without Goals

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u>	<u>DBE % of Total</u>
FFY 2005	\$ 0	\$ 1,545,741	0.00%
FFY 2006	\$ 0	\$ 1,864,843	0.00%
FFY 2007	\$ 0	\$ 4,399,100	0.00%
FFY 2008	\$ 0	\$ 0	0.00%
* FFY 2009	\$ 0	\$ 0	0.00%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

$$\text{Median \%} = (0.00\% + 0.00\% + 0.00\%) / 3 = \mathbf{0.00\%}$$

Therefore, TDOT calculated its FFY 2010 anticipated race-neutral participation as follows:

- Median Past Achievements by DBE Prime Contractors (Table 5).....0.00%
- Median Past Achievements by DBE Subcontractors on Contracts Without Goals (Table 6).....0.96%
- Past Achievements by DBE Subcontractors on Right-Of-Way Contracts Without Goals (Table 7)..... 0.50%
- Past Achievements by DBE Subcontractors on Consultant Contracts Without Goals (Table 8)..... 1.95%
- Past Participation by DBE Subcontractors on Long-Range Planning Contracts Without Goals (Table 9)..... 0.00%

Total FFY 2010 Anticipated Race-Neutral Past Participation.....3.41%

5. TDOT’s bi-annual Uniform Report of DBE Commitments/Awards and Payments provides evidence supporting an adjustment to the anticipated Race-Neutral participation goal. Table 10 shows historical data of total DBE attainment for the previous 4 federal fiscal years. Due to this evidence, TDOT feels an adjustment to the base figure is warranted.

Table 10 – DBE Subcontractor Actual Race-Neutral Attainment

<u>FFY</u>	<u>DBE Awards</u>	<u>Total Awards</u> ¹	<u>DBE % of Total</u>
FFY 2005	\$ 2,476,517	\$ 646,004,842	0.38%
FFY 2006	\$ 7,659,707	\$ 603,850,145	1.27%
FFY 2007	\$ 5,707,793	\$ 388,800,000	1.47%
FFY 2008	\$ 15,524,280	\$ 660,842,888	2.35%
* FFY 2009	\$ 3,626,190	\$ 132,648,041	2.73%

* Denotes a partial year (October 1, 2008 – April 30, 2009)

¹ Figures taken from FHWA Uniform Report of DBE Commitments/Awards and Payments to more accurately reflect DBE participation

Median % = (1.27% + 1.47% + 2.35%) / 3 = 1.70%

ADJUSTED FFY 2010 DBE GOAL PARTICIPATION:

FFY 2010 Anticipated Race-Neutral Participation = 1.70%

FFY 2010 Anticipated Race-Conscious Participation = 7.20%

FFY 2010 Anticipated DBE Goal Participation = 8.90%

CONTRACT GOALS

TDOT will use contract goals to meet any portion of the overall goals that it does not project being able to meet using non-goal means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of TDOT’s overall goal that is not projected to be met through the use of race-neutral means.

TDOT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. It need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBEs to perform the particular type of work).

The Tennessee Department of Transportation (TDOT) has established its Disadvantaged Business Enterprise (DBE) overall goal for federal fiscal year 2010 (FFY 2010) at **8.90%** for new contracts, with **7.20%** through goals using race-conscious methods and the remaining **1.70%** to be obtained through those projects without goals or race-neutral methods.

DBE Goal Consultation Process / Public Participation

A public notice announcing the proposed overall goal and its rationale was available for inspection during normal business hours. A copy of the notice and names of the publications utilized are attached.

The TDOT Consultation Process is outlined below with the dates, times and the public notice locations. During the course of meeting in the four regions across the state, DBEs were given an opportunity for input and comments. No written or verbal comments were received.

Steps to Incorporate Consultation Process

1. The process includes regional meetings in each of the four regions.
2. Letters/Invitations were sent to all DBEs currently on TDOT's certification list prior to meeting.
3. Public notices were sent out with a 45-day comment period local papers and media with the correct and current goal proposed for the FFY.
4. Any written and verbal comments were recorded and addressed.
5. TDOT's DBE plan was revised to address the consultation process.

Outline of TDOT Consultation Process

1. Facilitated statewide public information meetings. A comment box was available at each meeting.

Meeting locations are as follows:

Tuesday, June 16, 2009

Nashville Business Incubation Center
315 10th Avenue North
Nashville, TN 37203
8:15 a.m. – 12:00 p.m.

Tuesday, June 23, 2009

Renaissance Business Center
555 Beale Street
Memphis, TN 38103

8:15 a.m. – 12:00 p.m.

Tuesday, July 7, 2009

The Literacy Imperative Building
201 Harriet Tubman
Knoxville, TN 37915
8:15 a.m. – 12:00 p.m.

Tuesday, July 21, 2009

TDOT Regional Office
4005 Cromwell Road
Chattanooga, TN 37422
8:15 a.m. – 12:00 p.m.

TDOT published a legal notice requesting public comments on the goal in the following community newspapers statewide serving the largest minority population:

1. Pride Newspaper Group
2. Chattanooga Courier (Chattanooga)
3. Clarksville Press (Clarksville)
4. Murfreesboro Vision (Murfreesboro)
5. Nashville Pride (Nashville)
6. The Enlightener (Knoxville)
7. The Tribune (Middle TN)
8. West Tennessee Examiner
9. Kingsport Times-News (Kingsport)
10. Johnson City Press (Johnson City)
11. Jonesborough Herald & Time (Jonesborough)
12. Nashville City Paper (Nashville)
13. Hispanic Papers
14. Tri-State Defender



PUBLIC NOTICE

Disadvantaged Business Enterprise Goal for FFY 2010

The Tennessee Department of Transportation (TDOT) hereby announces its FFY 2010 Disadvantaged Business Enterprise (DBE) Program Goal under the guidelines of 49 CFR Part 26 and the regulations and directions of the U. S. Department of Transportation (DOT) of 8.90% for participation in the Federal Highway Construction Program.

This goal has been set based upon information currently available and will be available for public inspection at its CIVIL RIGHTS OFFICE Suite 1800, James K. Polk, Bldg., 505 Deaderick Street, Nashville, TN 37243-0347 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday for 45 days following the publication of this notice.

Comments should be sent to the attention of the Small Business Development Program Director, at the address shown above.

TDOT is an Equal Opportunity Employer

SOURCES OF INFORMATION FOR METHODOLOGY

- ❖ Construction Division
- ❖ Program Operations
- ❖ Project Management Office of Local Programs
- ❖ Central Services Division
- ❖ Right-of-Way Division
- ❖ Long Range Planning Division
- ❖ Environmental Division
- ❖ Design Division
- ❖ Project Planning Division
- ❖ Civil Rights Division