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Annual Goal for FFY 2012-2014

Maine Department of Transportation

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Introduction

MaineDOT's Annual Goal for FFY 2012-2014

Pursuant to 49 CFR 26 Maine DOT has analyzed data and has determined that their overall annual DBE attainment is **2.9 %**. At first glance this may seem a dramatic change from years past, but because of changes made in our program due to the June 2010 National Review Team (NRT) American Recovery and Reinvestment Act review, we feel that our goal is more reliable and realistic than in past years. We have been working diligently over the past year to make corrections to our program and to create a truly “race neutral” program. We are reviewing our attainment monthly to ensure that the goal is sufficient, in compliance with 49 CFR 26 and given the programmatic changes that have occurred since the NRT review.

It is important to note that although this goal is lower than goals in the past, it is based on a new methodology and new processes for tallying attainment. It does not suggest that the contracting community can lessen its commitment to DBE attainment, nor does it signify that DBEs will not be sought out for much needed participation in MaineDOT contracts.

MaineDOT Defined Market Area:

MaineDOT defines the region of the State of Maine as its market area. The contracting community that Maine DOT works with is relatively small and primarily Maine-based. Maine is also the area in which the agency spends all of its contracting dollars. Maine is an expansive, although sparsely populated, state with over 22,000 miles of roadway. MaineDOT is responsible for 8409 centerline miles of highway and 2919 bridges and spans. Although out-of-state firms do bid and subcontract on Maine Projects, because of high mobility costs and capacity, many out-of-state firms, with closer proximity to the Boston market are less likely to mobilize to Maine to work on construction projects.

Goal Methodology

Step 1 - MDOT Base Goal Setting

Census Data

Pursuant to 49CFR 26.45, MaineDOT has used the following methodology to determine the **baseline figure** for its 2012-2014 DBE goal. Maine DOT has used most recent (2007) US Census data and the Maine DOT DBE Directory to determine the number of ready, willing and able DBEs in the Maine market area.

Using the 2007 Census Bureau's County Business Pattern (CBP) database, Maine DOT has carefully reviewed the area of work performed by DBEs and using those NAICS

codes, created an analysis of firms in those codes in comparison to the Maine DBE directory.

Because of the nature of Maine DBE firms we have narrowed the scope of our NAICS search to firms with 20 or fewer employees.

Maine DOT has a total of 71 DBE firms determined as ready willing and able to work on FHWA funded projects. This number includes both construction and consultant firms. The NAICS codes for those firms yield a total of 6,244 firms. By dividing 71 by 6,244 we find that DBE capacity makes up 1.13% of these firms. **MaineDOT Baseline goal is 1.13%.**

Step 2 - Impact to Goal:

Bidders List

Although Maine DOT obtains information on bidders of MaineDOT contractors and consultants and has completed the annual bidders' survey, we have chosen not to use the Bidders List information when analyzing the DBE annual goal. MaineDOT has a very low number of DBEs bidding as primes. Given the nature of our DBE community and their capacity to bid as primes combined with the fact that Maine is a "low-bid" state, the bidders list provides an unreliable outcome and poor guide for Maine's DBE goal analysis. Our analysis of information from this year's survey placed the percentage of attainability for DBEs at 13.88%. This percentage has never been met in Maine, and given the capacity of current DBE firms, using a goal such as this would be setting both DBE and non-DBE contractors up for failure. Maine has opted to look at those who have ordered plan documents as a better gauge of interest in working on Maine DOT projects. Our DBE Supportive Service Program works extensively with DBE firms educating them on contracting with Maine DOT. Part of this assistance is helping DBE firms understand how to order plans and what to look for once those plans are obtained. That analysis is included in the upcoming section.

Past Participation

MaineDOT will use past DBE attainment measures as reported to the Federal Highway Administration in its semi-annual Uniform Reports only for the past two reporting periods (October 2010 and April 2011.) In June 2010 the FHWA ARRA National Review Team, charged with reviewing MaineDOT's DBE program, found many discrepancies in the way that the Department was managing its program. It is important to point out that MaineDOT went through a thorough and extensive FHWA review of the Program in 2005-6. Nothing in that review revealed that our approach to race-neutral participation was flawed. Although our approved methodology at the time reflected a total race neutral approach to attainment, we had been acting in many ways, as a race conscious state, requiring DBE commitments as a condition of award, following up with contractors regarding "good faith effort" and encouraging DBE participation post bid.

We had also been basing our participation and attainment on commitments made on our DBE utilization form but had not been keeping a monthly tally of DBE participation and did not take into account the fact that some DBEs might not be working on a particular project during that fiscal year or that other DBEs may have been hired in the interim. We also had not been tracking DBE payments from contractors.

It is important to note that no contract was ever denied based on DBE attainment in Maine, only that our office was requiring bid award commitments as well as “good faith effort” justification.

In order to track correct credit toward DBE attainment, the department’s contracts office forwards copies of all executed subcontracts, both DBE and non-DBEs to the Civil Rights Office. This information is then entered into a database by project and pin number with full subcontract dollar amounts. The Civil Rights Office tracks actual subcontract dollar amounts for both DBEs and non-DBEs for Semi-Annual reporting purposes.

Our reasons for omitting DBE participation prior to April 2010 is because not only do the numbers not reflect a race neutral approach to attainment, they were not based on actual numbers but only on commitments. Our only gauge of our new process is for the reporting period of **April 1, 2010 to September 30, 2010 which produced an attainment figure of 2.96% and reporting dates October 1, 2010 to March 31, 2011 which was 2.81%. An average of these two reports is 2.88%**

Weighted analysis of past and future participation:

To better determine past and future participation we have separated and weighted construction contractors and consultant contractors by using guidance from “*Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program,*” In the past we have found that because of the amount of prime contractors as compared with our consultant firms and the dollar amounts that consulting contracts secure vs. construction contracting, our percentage for attainment was skewed and was not realistic, given the availability and capacity of our DBE subcontractors on construction projects.

Construction

Based on the timeframe of 10/1/08 to 9/30/09, 24.60% (\$60,820,120) of the MaineDOT construction dollars were subcontracted and 75.40% (\$186,404,745.) were accomplished by prime contractors. Based on a timeframe of 10/1/09 to 9/30/10 we find 27.36% (\$65,979,893) were subcontracted and 72.64% (\$189,819,281) were accomplished by Primes.

Using these two prior fiscal years as a gauge, and our upcoming program amounts, we anticipate, based on this past participation, that in FY 10/1/11 to 9/30/12 our total that amount to be 30% (75,000,000) will be subcontracted and that 70% (\$175,000,000) will be accomplished by prime contractors.

Maine requires that prime contractors are pre-qualified in one of seven categories for award consideration. Of our pre-qualified contractors, only 1 is a certified DBE firm and only in the buildings discipline. There are a total of 18 pre-qualified firms in the buildings category. During this timeframe, the department anticipates 1% of the total program will be contracted to pre-qualified buildings firms.

Maine does not require that subcontractors be pre-qualified.

Anticipated participation:

$$\text{Prime contractors} = 1 \text{ DBE} / 18 \text{ Total} * 1.00\% = 0.056\%$$

In the time period of 10/1/2008 to 9/30/2009 the Department had 259 contractors that demonstrated they were ready, willing, and able to perform work in the time period as evidenced by ordering bid documents. Of these subcontractors, 13 were certified DBE firms.

In the time period of 10/1/2009 to 9/30/2010 the Department had 313 contractors that demonstrated they were ready, willing, and able to perform work in the time period as evidenced by ordering bid documents. Of these subcontractors, 11 were certified DBE firms.

Anticipated participation:

Averaging the two years for total contractors and DBEs our analysis follows:

$$\text{Subcontractors} = 12 \text{ DBE} / 286 \text{ Total} * 30\% = 1.25\%$$

Total = 0.056% + 1.25% = 1.81% Expected DBE goal for construction.

Consultant:

Based on the timeframe of 10/1/08 to 9/30/09, 12.08% (\$4,174,697) of the MaineDOT consultant dollars were subcontracted and 87.20% (\$18,444,823) were accomplished by prime consultants.

Based on the timeframe of 10/1/09 to 9/30/10, 4.87% (\$999,493) of the MaineDOT consultant dollars were subcontracted and 95.13% (\$19,542,037) were accomplished by prime consultants.

We anticipate that for FFY 10/1/11 to 9/30/12, 10% (\$2,500,000) will be accomplished by subconsultants, and 90% (\$22,500,000) will be accomplished by prime consultants.

Anticipated participation Prime Consultants:

Specialty Areas (SA)	DBEs	Total consultants	% of overall program*	% of DBE in SA
Aerial Mapping	1	5	1.0%	0.20%
Bike Pedestrian	2	38	1.5%	0.08%
Bridge Inspection	2	26	2%	0.15%
Construction Inspection	1	28	45%	1.61%
Design	6	71	25%	2.11%
Environmental	6	86	1	0.01%
Geotechnical	2	10	4%	0.8%
Planning	1	56	6%	0.11%
Survey	3	41	1.5%	0.11%
Total				5.18%

*projected based on 2009 and 2010 percentages.

MaineDOT compiles and updates an “interested parties contact list” which is a list of those firms indicating interest in MaineDOT consultant contracts. This list was most recently updated May 2011. This list is broader than the agencies “prequalification list and therefore demonstrates a more accurate snapshot of those firms “ready and willing” to work. The department had 232 consultants that demonstrated they were ready, willing, and able to perform work. Of this list 22 were certified DBE firms.

$$10\% * (22/232) = 0.95\%$$

Anticipated participation:

$$\text{Total} = 5.18\% + 0.95\% = 6.13\% \text{ Expected DBE goal for consultants.}$$

The total anticipated construction and consultants payments for FFY 2012-13 are \$275,000,000. Of this 25,000,000 is anticipated to go to consultants and \$250,000,000 to construction contracts. Weighting the goals base on this:

$$1.81\% * (250/275) + 6.13 * (25/275) = 2.21\%$$

MaineDOT has adjusted this goal upward, based on the attainment achieved in the past two Uniform Reports $(2.88\% + 2.21\%)/2 = \mathbf{2.54\%}$

Potential DBE attainment based on characteristics of the firms in our local area is **2.54%**. This information is consistent with current uniform reports and therefore justifies our current attainment and goal adjustment.

Information from Contractor Associations:

MaineDOT surveyed the largest construction contractor association group in Maine, the Maine Chapter of Associated General Contractors (AGC). AGC has a membership of 250 individual businesses. Of these businesses 8 are certified DBEs. The percentage of DBEs to membership is **3.2%**. It is important to note that many of the members do not contract with MaineDOT.

Final Analysis

Since the implementation of our new process we only have reliable data from our last two uniform reports. Comparing the outcome of those reports with the anticipated goal for the upcoming season we are comfortable that a goal of **2.9%** is attainable and fair. This goal challenges our contracting community to continue their commitment to DBE participation.

Race and Gender-Neutral and Conscious Measures

The Department's DBE Program goal of 2.9% FFYs 2012-2015 will be achieved entirely through race and gender-neutral means. Contract goals will not be necessary for additional attainment. The Department has found little success with race conscious contract goals due to the workforce capacity limits of our DBE companies and their availability to perform or their ability to mobilize on multiple projects. If, through monthly analysis, we determine that we will not achieve the goal, we will take measures to do so, which may include targeted project goals.

Use of Supportive Services Program in race neutral efforts.

In order for the Maine DOT to meet its goal through race neutral means, it has implemented a strong Disadvantaged Business Enterprise Supportive Services (DBE SS) Program in accordance with 23 CFR 230.204. The program successfully assists minority and women owned firms to build strong businesses able to successfully compete when bidding for federally funded transportation projects and consulting contracts, thus increasing equal opportunity, competition and diversity in Maine's bridge and highway construction industry.

The following services are offered though MaineDOTs supportive services program and specific program will be targeted for instruction. Tuition reimbursement for successfully completed classes taken by DBEs to grow and/or improve their business in the Federal-aid bridge and highway construction industry will also be allowed. This program:

- Provides technical and resource assistance with financial and business planning including accounting, invoicing and auditing practices, business planning, marketing/networking, and setting and achieving goals. Assistance with bonding,

financial assistance, lease agreements, taxes, fringe benefits, and payroll. Assure capability to comply with all FHWA requirements and paperwork regarding personnel, EEO, Title VI, DBE, AA, training and Davis Bacon and related Acts.

- Provides Technical and general assistance with awareness, process, estimating, and submitting quotes for MaineDOT federal aid contracts. Survey and report the bid items DBEs are capable of completing and share this information on the web and with Prime contractors. Offer guidance to DBEs regarding MaineDOT project plans and website to keep up to date with contract opportunities in their business areas.
- Development of lists of DBEs and non-DBEs willing to participate in a mentoring program. Development of goals for mentoring and specific topics to cover. Assignment of willing prime contractors/consultants to formally mentor willing DBE contractors/consultants. Monitoring of the effort. Facilitate meetings as necessary.
- Provides technical support for computer systems, particularly CAD translation to Micro-station to be compatible with MaineDOT files and electronic bidding assistance (using the web and using BIDEX). Also, hardware/software technical support and webpage development as related to bridge and highway construction.
- Provides technical support and education regarding partnering with other consultants/contractors/agencies and how to create and deliver products or services under a joint venture. DBEs participating will have new tools to improve or expand their business capabilities.
- Provides technical assistance and education regarding reading, writing and understanding construction contracts and subcontracts. Legal assistance in ensuring contracts and subcontracts protect the interest of the DBE, include all phases of the work, and contain all needed language for compliance when working on a FHWA funded projects.
- Widely distributes an information guide and brochure regarding the DBE program. Update, print, and distribute new materials as needed. Continue to educate contractors and consultants, as well as MaineDOT personnel, about the purpose of the program and their obligations under Federally Funded contracts. Continue opportunities to present workshops, briefings and training sessions statewide. Educate the SBA's Small Business Development counselors and other entities about the DBE program.
- Networking/Conference held in conjunction with the Maine SBA Office and other partners. Matchmaking session between DBEs and prime consultants and contractors. Networking time for DBEs to meet with civil rights staff and each other, and other activities to promote DBE growth and quality. Educational seminars.

The MaineDOT DBE SS consultant uses a variety of methods to assess a firm's current qualifications. These include, but are not limited to:

- One-on-one business review at the DBE's home office
- Feedback from primes and from MaineDOT requesting assistance for a firm
- Requests from the DBEs themselves for assistance

The MaineDOT DBE SS consultant uses industry business standards and MaineDOT prequalification standards, as well as feedback from the primes and others to determine what each DBE should have for comparable skills and qualifications. This is done on a case by case basis as each company delivers a unique set of products and services.

Public Participation

MaineDOT met with AGC and Maine Asphalt Paving Association in the winter and spring of 2011 to discuss changes to the program and get input on DBE concerns and process.

The Civil Rights Office also did an extensive search of potential and real DBE businesses on the Maine Women's Business Center at CEI website:

<http://www.wbcmaine.org/OnlineDirectory> Although there were 19 businesses listed as women owned "construction and remodeling" businesses, the majority of these businesses would not qualify as DBEs able and ready to work on federally funded construction projects. There were some consultant related businesses that could and do bid on contracts but the numbers were nominal.

Maine DOT works closely with Eastern Maine Development Corporation, which contracts with us to implement our DBE Supportive Service Program and work to counsel women and minority owned businesses on the DBE program.

The public will be notified by publication the first full week in June in the Kennebec Journal, the State's newspaper of record for legal advertisements, as well as the Bangor Daily News and the Portland Press Herald. Additionally, the goal notification and methodology will be posted on the MaineDOT website. Several interested stakeholders will be notified directly by e-mail of the goal publication, including Maine Small Business Administration, Associated General Contractors, Maine Better Transportation Association, American Council of Engineering Companies, Maine Asphalt Pavement Association and the Maine Disadvantaged Business Enterprises. Written public comment will be accepted for 45 days following the last date of publication and a public hearing will be held prior to reporting date of August 1, 2011.