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MAINE DEPARTMENT OF TRANSPORTATION OFFICE OF PASSENGER TRANSPORTATION FFY 2010 DBE GOAL

OVERALL GOAL

MaineDOT, through its Statewide Multimodal Planning Division, intends to expend **1.9%** of the amounts received from federal financial assistance on FTA-assisted contracts with certified small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). For the last five years, the MaineDOT average goal has been 1.08% and the average achievement has been 1.43%. MaineDOT fully believes this goal of 1.9% can be met without contract specific goals, MaineDOT intends to fulfill the goal with a wholly race neutral program.

METHOD OF ESTABLISHING GOAL

Step 1 – Determining a base figure

49 CFR 45 (b) States “Your overall 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 your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.”

MaineDOT will calculate the overall goal using the criteria based in **49 CFR § 26.45(c) “Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs.”**

The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on FTA-assisted contracts, and reflect a level MaineDOT would expect in the absence of discrimination. The overall goal setting procedure is based on the following:

- (1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.**

Market Area:

The market area was determined to be Statewide, since the substantial majority of the contractors and subcontractors with which MaineDOT does business are located in Maine, and the entire state is the area in which MaineDOT spends the substantial majority of its contracting dollars.

Data Sources:

The NAICS data for transit providers, agencies/firms included in category 485,

NAICS code	Description	<u>Estab-lish-ments</u>	<u>Revenue (\$1,000)</u>	<u>Annual payroll (\$1,000)</u>	<u>Paid employees</u>
485	<u>Transit & ground passenger transportation</u>	85	49,395	21,047	1,272
4853	<u>Taxi & limousine service</u>	44	11,060	4,223	332
48531	<u>Taxi service</u>	29	5,479	2,042	224
48532	<u>Limousine service</u>	15	5,581	2,181	108
4854	<u>School & employee bus transportation</u>	21	17,946	8,418	555
4859	<u>Other transit & ground passenger transportation</u>	10	10,284	3,818	206

Economic Census 2002, Maine Data for NAICS 485

There are no DBE firms in Maine's catalog under these NAICS codes. However, there are firms that offer support services to transit providers including additional categories.

The MainedOT DBE Directory lists the following firms when searching under the category "transit". None of these firms are prime DBE transit providers. Their scopes are related to the NAICS codes for other services related to transit contracts/subcontracts.

- **ALTERNATE TRANSIT ADVERTISING, INC., 541810**
- **ASHTON ASSOCIATES INC., 541320**
- **KFH GROUP INCORPORATED, 541320**
- **KKO & ASSOCIATES, 541320**
- **LAPCHICK CREATIVE, 541613**
- **MOBILITAT, 541511**
- **PRECISION COMPLIANCE, INC., 541320 (or 926120)**
- **Z STUDIO, 541430**

The following NAICS codes match the codes offered by the above providers for Maine.

Economic Census 2002, Maine Data for various NAICS codes related to transit contracts/subcontracts

NAICS code	Description	<u>Estab-lish-ments</u>	<u>Revenue (\$1,000)</u>	<u>Annual payroll (\$1,000)</u>	<u>Paid employees</u>
541320	<u>Urban planning services</u>	39	11,319	4,018	121
541430	<u>Graphic Design Services</u>	55	14,445	4,390	147
541511	<u>Custom Computer Programming Services</u>	145	48,947	22,450	582
541613	<u>Marketing Consulting Services</u>	67	48,601	11,463	289
541810	<u>Advertising Agencies</u>	56	38,935	17,487	333

http://www.census.gov/econ/census02/data/me/ME000_54.HTM#N541

Therefore, the denominator would be $85 + (39+55+145+ 67+56) = 362$ to represent all potential transit firms and transit related firms for potential contracts and subcontracts in Maine.

The numerator would be 7, the number of DBE's under these categories available to do the identified support work in Maine.

The base goal based upon the 2002 census and DBE Directory data would be: $7/362 = 1.9\%$

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

Maine has not conducted any disparity studies that would apply to the calculation of this goal.

(4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

This method is not used for goal calculation, but is used in a discussion of the goal in a following section (See Step 2). New Hampshire, a state similar in size and population has 2% goal.

(5) Alternative methods. You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

MaineDOT does not propose any alternative method for base goal calculation.

Maine DOT FTA – Funded DBE BASE GOAL = 1.9%

Step 2 - ADJUSTMENTS TO BASE

26.43(d) states “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any is needed to the base figure in order to arrive at your overall goal.”

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

Past participation in FTA funded services for the Department are as follows:

<u>FFY 05</u>	<u>FFY 06</u>	<u>FFY 07</u>	<u>FFY 08</u>	<u>FFY 09 (1st</u>
<u>Goal .75%</u>	<u>Goal .75%</u>	<u>Goal 0.6%</u>	<u>Goal 1.4%</u>	<u>half) Goal 1.9%</u>
2.6%	0.5%	2.9%	.14%	1.0%

Details of DBE commitments and awards data presented above:

- '05 is \$106, 575.00 out of \$4,113,600.00 and 2 prime contracts and 2 subcontracts of totals 61 prime and 11 subcontracts.
- '06 is \$45,140.00 out of \$9,133,494.04 and 0 prime contracts and 6 subcontracts out of 81 prime and 6 subcontracts.
- '07 is \$233,943.00 out of \$5,652,897.86 and 1 DBE prime contracts and 5 DBE subcontracts of 73 prime contracts and 8 subcontracts.
- '08 is \$127,254.82 out of \$9,777,682.23 and 0 DBE prime contracts and 7 DBE subcontracts out of 38 prime contracts and 7 subcontracts.
- '09 (1st half) is \$51,393.57 out of \$4,951,329 and 1 DBE prime contracts and 2 DBE subcontracts out of 41 prime contracts and 2 subcontracts

The median past participation is 1.0%. For FFY 08, the 1.4% DBE commitment was not attained. Because the goal significantly exceeded the FFY 07 goal of .75%, and the FY 07 goal was more than met, contract specific goals are not recommended for FFY 10. MaineDOT does not recommend contract goals/race conscious effort because the first half of FFY 09 reports 1.0% attainment, within range of the 1.9% goal for this year to date. If adjustment for past participation were made, the recommended goal would be the average of the median past participation and the base goal:

$$(1.0 + 1.9)/2 = 1.45\%$$

If the MaineDOT were to adjust their recommended FTA DBE BASE Goal for Median Past Participation, it would equal 1.45%. However, as there is evidence that multi-year contracting causes fluctuations in achievement of goals, it is not recommended to adjust the goal this year.

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

There are no related disparity studies for Maine.

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

The base figure selected is not the goal of another recipient.

However, New Hampshire and Vermont have substantially similar markets for Transit contracting.

- Vermont's base goal for 2009 was 3.77% with no adjustment.
- New Hampshire's base goal for 2009 was calculated several ways for comparison. The overall goal with adjustment was 2.0%.

Maine generally has smaller metropolitan areas, smaller contracts, and much more rural services to consider. Maine does not currently have enough specific data from the other states on their transit programs to adjust the goal for differences in Maine.

In addition, Maine does have sufficient other data to produce an independent base goal.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

Maine has not collected this data related to transit contracts. Anecdotally, bonding and financing are generally difficult to obtain for small businesses in Maine, especially tribal businesses.

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

Maine has not collected this data related to transit contracts.

(2) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the ``but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

Maine will not attempt to adjust the base figure based upon the effects of the DBE program. The Maine Department of Transportation advocates for the DBEs on each federally funded contract and provides assistance in locating DBEs to the prime contractors. We do not have data to compare the effect of the program to the results we would get without the program. Thus, we do not have a logical way to make an adjustment. The DBE supportive services contract with Eastern Maine Development Corporation/Maine Professional Technical Assistance Center is still fairly new. We plan to study the impact of this program in 2010.

(3) Other Discussion Related to Maine's Historical Data:

The Department's bidders list of actual and potential FTA funding sub-recipient agencies/firms is as follows:

Bidders that submitted either prime or subcontract bids on FTA funded work for the last 3 years:

1. AMES	2. Alternate Transit Advertising, Inc.
3. Androscoggin Valley Council of Governments	4. Aroostook Regional Transportation
5. Ashton Associates Incorporated	6. Bangor Chrysler, Plymouth, Dodge
7. Barton & Gingold	8. BAT Community Connector
9. BACTS	10. Biddeford-Saco-Old Orchard Beach Transit Committee
11. BMI	12. Carolyn Ridge
13. Casco Bay Island Transit District	14. Casey & Godfrey
15. City of Bath	16. Coastal Transportation. Inc.
17. Community Concepts	18. DMJM Harris
19. Domenech, Hicks & Krockmalnic Architects	20. Don Brown Bus Sales
21. Downeast Transportation	22. Economic Dev Research Group
23. Fitzgerald & Halliday, Inc.	24. Freeport Transit, Inc.
25. Garrand & Company, Inc.	26. Greater Portland Council of Governments
27. HNTB Corporation	28. Holt & Lachman

29. Howard/Stein-Hudson	30. IBI Group
31. ICST, Inc.	32. Innovative Resource Group
33. Jack Smith Consulting	34. Kay Nordstrom
35. Kennebec Valley Community Action Program	36. Keville Enterprises
37. KFH Group, Incorporated	38. KKO & Associates, LLC
39. KM CHNG Environmental	40. Land Design Group,
41. Larry Glantz/Muskie School, USM	42. Lincoln Chevrolet
43. Matthews Buses	44. McMahon
45. METRO	46. Mike Merwin
47. Mobilitat, Inc.	48. Mundle & Assoc.
49. Normandeau,	50. Northern Bus Sales
51. Northstar Hydro	52. O'Connor GMC
53. Oak Square Resources, LLC	54. Patsy's, Inc.
55. Penquis CAP	56. Peter Schauer
57. Precision Compliance	58. Pupil Transportation Consultants
59. Quisqueya Software and Systems, Inc.	60. Regional Transportation Program
61. Sharon Eaton	62. Shepard Bros.
63. Smart Associates	64. Smith Group
65. South Portland Bus Service	66. Southern Maine Planning Commission
67. Systra	68. Tom Crikelair
69. TranSystems Corporation	70. URS Corporation
71. V.I.P. Tours and Travel	72. VHB, Inc.
73. Von Grossman and Company	74. W.C. Cressey & Son, Inc.
75. Waldo Community Action Partners	76. Walker Chevrolet, Inc.
77. Warner Trans Consulting	78. Washington Hancock Community Agency
79. West's Transportation, Inc.	80. Western Maine Transportation Services
81. Wilbur Smith Associates	82. York County Community Action Corp.
83. Isle au Haut Boat Services	84.
85.	86.

Total number of bidders = 83 firms. The number 83, therefore, is the denominator.

Of these firms, the following are DBE's:

1. Alternate Transit Advertising	2. Ashton Associates Incorporated
3. Precision Compliance, Inc	4. Fitzgerald & Halliday, Inc.
5. Lapchick Creative	6. ICST, Inc
7. Innovative Resource Group	8. KM CHNG Environmental
9. Keville Enterprises	10. Mobilitat, Inc.

Number of bidding DBE's = 10 firms.

Therefore for the base goal, 10 is the numerator.

$$10/83 = 12.05\%$$

We know from past attainment that this is not a reasonable base goal. Although we are fortunate to have a large proportion of DBE bidders, they are primarily bidding on small subcontracts, (typically approximately 1% of monetary value of the work) which amounts to lower attainment percentages in dollars. There is one DBE prime bidder, but with the frequency of contracting, we cannot guarantee they will get the winning prime bid on the contract in their area of operation, nor do we want to base the goal on that assumption. There are very few opportunities for sub-recipients to sub-contract as most services are delivered by the non-profits themselves. There are two Tribal Governments who provide service but as they are considered municipal, these factors cannot be considered.

OVERALL GOAL CALCULATION

FFY 2010 FTA non-adjusted DBE goal: 1.9 %

RACE NEUTRAL AND CONSCIOUS MEASURES

The Department was not able to exceed its DBE goal for 2008 due to low award of DBE subcontracts. However, in 2007, Maine exceeded its DBE goal by a significant amount (goal .6%, achievement, 2.9%). The first part of FY 09 reports a 1.0% achievement, which does not exceed the 1.9% goal but is within reach. One of the reasons for this For this reason, we believe the **FFY 2010 calculated goal DBE goal of 1.9% will be met via wholly race neutral measures.**

The Department uses its DBE Supportive Services allocation fully to support the DBE Program, and not to pay administrative salaries. The funding supports a number of projects and/or initiatives around the state, including outreach and technical assistance to businesses. The program information can be accessed by a website at:

http://www.emdc.org/business/services_detail.cfm?services_group_id=01.05.2007.10.18.49&show_service=true

Finally, as stated previously, the Department has no evidence of discrimination on the part of transit contractors and does have evidence of continuing good faith effort.

PUBLIC PARTICIPATION PLAN

The public will be notified by publication June 15th, 16th, and 17th in the Kennebec Journal, the State's newspaper of record for legal advertisements.

Additionally, the goal notification and methodology will be posted in other statewide newspapers (Bangor Daily News and the Portland Press Herald) and on the MaineDOT website, <http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php>.

Several interested stakeholders were notified directly by e-mail of the goal publication, including current service providers and those on the bidder's list (given above in the goal discussion – See Step 2). Barbara Donovan sent a notice via e-mail of the final draft of the goal and methodology on June 11th, 2009.

Public comment were accepted for 45 days following the last date of publication. The public comment period will be complete on July 31th, 2009. There were no public comments received and no participation in the conference call.

A conference call was set up on Friday, June 12 at 3:30 to solicit comments on the methodology from the above notified agencies on the DBE draft methodology process. No comments were received by 3:50.