

IN THE BOARD OF COMMISSIONERS OF THE STATE OF OREGON

FOR THE COUNTY OF YAMHILL

SITTING FOR THE TRANSACTION OF COUNTY BUSINESS

In the Matter of Adopting the Oregon Department)
of Transportations Disadvantaged Business) BOARD ORDER 16- 84
Enterprise (DBE) Program, Policy and Goals;)
and Declaring an Emergency.)

THE BOARD OF COMMISSIONERS OF YAMHILL COUNTY, OREGON (“the Board”) sat for the transaction of county business in formal session on March 10, 2016, Commissioners Mary Starrett, Stan Primozech, and Allen Springer, being present.

THE BOARD MAKES THE FOLLOWING FINDINGS:

WHEREAS the Yamhill County Transit Area (YCTA) is required per 49 CFR Part 26 to establish a goal for its Disadvantaged Business Enterprise Plan; and

WHEREAS the Oregon Department of Transportation (ODOT) is committed to a Civil Rights Program for the Participation of Disadvantaged Business Enterprises (DBEs) in Federal Transportation Administration (FTA) funded contracting opportunities in accordance with 49 CFR Part 26, thus satisfying this requirement for ODOT; and

WHEREAS it has been determined that the Local Market Area for Yamhill County with regard to contracting firms is the Portland Metropolitan Area, Yamhill, Polk and Marion Counties; and

WHEREAS the Yamhill County Transit Area is committed to the same goals as the Oregon Department of Transportation with regard to nondiscrimination on the basis of race, color, sex, or national origin and the protection of these civil rights in contracting opportunities with YCTA.
NOW, THEREFORE,

IT IS HEREBY ORDERED BY THE BOARD that it is the official policy of the Yamhill County Transit Area to adopt the Oregon Department of Transportation DBE Program’s policy and program goals, attached hereto as Exhibit “A”. To ensure that the YCTA is in compliance with the Federal Department of Transportation requirements the YCTA will revise and update the official policy when changes are made to the Oregon Department of Transportation’s DBE Program’s policy and program goals.

(Signature Page to Follow)

DONE at McMinnville, Oregon on March 10, 2016.

ATTEST

YAMHILL COUNTY BOARD OF COMMISSIONERS

BRIAN VAN BERGEN

County Clerk

MARY STARRETT

Chair

By: 

Deputy LUCY FLORES MENDEZ

STAN PRIMOZICH

FORM APPROVED BY:



CHRISTIAN BOENISCH

County Legal Counsel

ALLEN SPRINGER

ALLEN SPRINGER

Exhibit A

Oregon Department of Transportation
Proposed Overall DBE Goal FFY 2015 – 2017
FTA-Funded Contracting

Summary Rationale:

The Oregon Department of Transportation (ODOT) proposes an overall Disadvantaged Business Enterprise (DBE) goal for its Federal Transit Administration (FTA) funded contracting of 8% for each of the Federal Fiscal Years (FFY) 2015 through 2017. ODOT expects that the overall goal can be achieved through race and gender neutral (RN) participation.

The proposed overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all business ready, willing, and able to participate in USDOT FTA - assisted contracts. The Project Chart lists the public transit projects used to determine the DBE overall goal of 8%. Subrecipients of FTA funding are required to report DBE usage and encouraged to use other small businesses as appropriate.

Contracting Opportunity	2015-2017	NAICS	DBE	Non DBE	ESB	MWB	WBE
Signage	75,000	423990	8	123	4	5	10
Prev. Maintenance	7,320,475.5	811198	0	16	3	1	0
Purchased Service	17,936,673	485991	7	75	3	3	2
Hardware/Software	12,336	541512	28	451	25	44	30
Shelters	33,858	236220	34	503	147	38	29
Planning	888,276	541618	53	64	104	47	106
Marketing	403,108.5	541810	5	490	15	8	28
Transp. Equipment	173,238	423860	2	36	1	3	1
TOTAL	\$26,842,965		137	1,758	172	149	86

1. DBE PROGRAM GENERAL REQUIREMENTS

1.1 Objectives (§§ 26.1, 26.23)

The Disadvantaged Business Enterprise (DBE) Program objectives are found in the DBE Policy statement on the first page of this program.

To achieve the objectives of the Oregon Department of Transportation (ODOT) DBE policy, ODOT will circulate the DBE policy as follows:

To The Oregon Transportation Commission (OTC) – The Office of Civil Rights (OCR) provides annual updates to the OTC and as required. OCR will include the DBE policy with each annual update.

To the Business Community – OCR will circulate the DBE Policy statement at key stakeholder events. Examples of key events include, the annual ODOT-AGC (Association of General Contractors) meeting, and “Doing Business with ODOT” small business workshops. Additionally, when the DBE Program plan update is posted to the OCR webpage, OCR will announce the plan update to the OCR list-serve and include the DBE Policy statement in the announcement. The policy will also be sent electronically to all sub-recipients of Federal Transit Authority (FTA) funded grants and included in the FTA required State Management Plan (SMP). Also, OCR will work with the Office of Procurement (OPO) and Office of Project Letting (OPL) to include the policy statement with project and proposal DBE provisions.

To ODOT Personnel – OCR will coordinate an annual update on Inside ODOT (the Agency’s internal newsletter) and periodic updates in the Agency’s internal Diversity Newsletter. OCR will also circulate the DBE Policy statement at internal OCR and DBE-related training sessions.

1.2 Applicability (§ 26.3)

This program applies to all US Department of Transportation (USDOT) financial assistance where ODOT expends federal funds as the recipient of:

Federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 and Titles I, III, and V of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: Legacy for Users (SAFETEA-LU),

Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102240, SAFETEA-LU, Titles I, III, V, and VI, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178, Federal-aid highway and Federal transit funds authorized under Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141.

Projects funded by Federal Aviation Administration are administered by Oregon Department of Aviation (ODA). For more information on ODA’s DBE Program, see:

<http://www.oregon.gov/aviation/Pages/Affirmative-Action-.aspx>

1.3 Definitions (§ 26.5)

ODOT adopts the definitions contained in 49 CFR 26.5 for this program (see Exhibit A for Part 26).

1.4 Non-discrimination Requirements (§ 26.7)

ODOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, ODOT will not directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the purpose of this program with respect to individuals of a particular race, color, sex, or national origin.

1.5 Assurances (§ 26.13)

A. Federal Financial Assistance Agreement Assurance (§ 26.13(a))

ODOT has received federal financial assistance from USDOT, and as a condition of receiving this assistance, has signed the following assurance that it will comply with 49 CFR 26:

[Recipient] shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear verbatim in financial assistance agreements between ODOT and sub-recipients.

B. Contract Assurance (§ 26.13(b))

ODOT will ensure that the following clause is placed verbatim in every USDOT assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

ODOT physically incorporates FHWA Form 1273 into each highway construction contract that is partly or completely funded under Title 23 and requires that contractors physically incorporate the form into each subcontract.

1.6 Authority and Applicable Law (§ 26.3)

The USDOT Regulations (49 CFR 26) published in the Federal Register, as amended January 28, 2011, established a requirement that all recipients of USDOT funds establish a Disadvantaged Business Enterprise Program. The regulations are applicable both to ODOT's Federal-aid construction and to its non-construction activities including transit and personal service contracts.

The USDOT's legal authority for its DBE regulations includes Executive Order 11625 (October 13, 1971), which required that federal executive agencies develop comprehensive plans and programs to encourage minority business participation. USDOT requires ODOT to establish a DBE Program as a condition for receiving USDOT federal funds.

The Title VI, Civil Rights Act of 1964 requires non-discrimination in federally assisted programs or activities on the grounds of race, color, sex, or national origin.

The Program is also subject to the following laws: Section 30 of the Airport and Airway Development Act of 1970 and Section 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety Capacity Expansion Act of 1987; Section 905 of the Railroad Act of 1978 (45 USC 903); and Section 19 of the Urban Mass Transportation Act of 1964, as amended (Public Law 95-599).

1.7 DBE Financial Institutions (§ 26.27)

It is ODOT policy to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. OCR has reviewed the Federal Reserve Board's statistical release on minority-owned financial institutions at the following the Federal Reserve website:

<http://www.federalreserve.gov/releases/mob/>

The Federal Reserve Board releases this information quarterly. The current release at the time of this program update showed there were no minority-owned financial institutions in Oregon (see Exhibit B). OCR will annually re-evaluate the availability of DBE financial institutions.

2. PROGRAM RESPONSIBILITIES

2.1 Oregon Department of Transportation (ODOT)

As a recipient of US Department of Transportation (USDOT) financial assistance, the Oregon Department of Transportation (ODOT) is required to implement a Disadvantaged Business Enterprise (DBE) program according to the requirements explained in 49 CFR 26. As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged persons are to benefit from the DBE Program.

The Director of ODOT is responsible for establishing the [DBE policy](#) for the Department and is responsible to ensure adherence to this policy. The Manager of the Office of Civil Rights (OCR), in coordination with all ODOT Officers, Division Managers, District Managers, and Procurement Office staff, is responsible for the development, implementation and monitoring of the DBE Program for contracts in accordance with the Department's nondiscrimination policy.

2.2 ODOT Office of Civil Rights

ODOT's OCR is responsible for ensuring compliance with federal regulations in determining the eligibility of applicant firms seeking participation in the program. OCR is also responsible for establishing a minimum expected participation goal on a triennial basis and determining credit towards meeting the assigned DBE participation goal on federally assisted contracts the department awards.

Roles and Responsibilities: Overview

A. DBE Liaison Officer

The following individual is the designated DBE Liaison Officer:

Tiffany Hamilton

Disadvantaged Business Enterprise Program Manager

Phone: (503) 986-4355

Fax: (503) 986-6382

Tiffany.Hamilton@odot.state.or.us

The DBE Liaison Officer is delegated by the Director the responsibility of developing and implementing policy and directing the DBE Program. The DBE Program Manager, who has direct independent access to the Director concerning DBE program matters, has responsibility for the day-to-day operation and oversight of the DBE Program as it applies to meeting Federal Highway (FHWA) and Federal Transit Authority (FTA) requirements for USDOT-assisted contracts and activities. The DBE Liaison Officer is responsible for implementing all aspects of the DBE program. The Agency must have adequate staff to administer the program in compliance with 49 CFR 26. OCR reporting policy and the ODOT organization chart are attached as Exhibit C.

B. DBE Program Manager

The DBE Program Manager develops and implements program functions based on federal rules and regulations to provide opportunities for DBEs. The position establishes the overall ODOT goal, identifies ODOT contracts for DBE goal evaluation, establishes goals on identified contracts, monitors and evaluates contractual progress of DBE contractors, gathers and reports statistical data, and other information as required by FHWA. This position also provides support and guidance in developing the overall ODOT goal calculations and program outreach for transit-related activities as required by FTA.

Additionally, this position provides technical assistance and advice to ODOT personnel, outside contractors and consultants, and other agencies that perform contract administration and compliance in accordance with 49 CFR 26. This position assists in the design, monitoring, training, evaluation, and reporting of the DBE program consistent with current federal law. The program manager will recommend actions to be taken by staff in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. This position reports directly to the Manager of the Office of Civil Rights.

C. Intermodal Civil Rights Manager

The Intermodal Civil Rights Manager establishes the overall ODOT goal, monitors and evaluates DBE compliance by sub-recipients, and gathers and reports statistical data and other information as required by FTA and Federal Rail Administration (FRA), as required.

D. Civil Rights Field Coordinators

Civil Rights Field Coordinators provide technical assistance and advice to the project management and field personnel who perform contract administration and compliance in accordance with 49 CFR 26. These positions assist in the design, monitoring, training, evaluation and reporting of the DBE program consistent with current federal and state laws. Field Coordinators will recommend action to be taken by field personnel in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. They also provide regional DBE program outreach to contractors and small businesses. These positions report directly to the Field and Business Support Manager.

E. Field and Support Business Manager

Field and Support Business Manager supervises and coordinates the work of the staff in the Field Coordination Unit and the Business Support Unit. This position manages the ongoing development and design of the Civil Rights Compliance Tracking system database to support operations and strategies of the Small Business programs for the state of Oregon internal and external customers.

F. Emerging Small Business Program Manager

Emerging Small Business Manager oversees the Supportive Services Programs such as the Small Contracting Program, ESB/DBE Mentor-Protégé program, and, in concert with the DBE Program Manager, acts as the DBE Program liaison to the small business community at industry and partner organizations' meetings.

G. Office of Minority, Women and Emerging Small Business (OMWESB)

In accordance with an Inter Agency Agreement signed between OCR and OMWESB, OMWESB is responsible for carrying out the DBE certification and maintaining a database of currently certified DBEs (as well as of women- and minority-owned and emerging small businesses). OMWESB certifies DBEs in accordance with Code of Federal Regulations and Oregon Statutes. Section 6 of this document details the certification process as well as requirements for the DBE certification.

2.3 Other Support Personnel

Personnel from other offices within ODOT share responsibility for ensuring the effective implementation of the DBE Program. They will give full cooperation and active support to the OCR and designees in this effort.

A. Project Delivery and Procurement Staff

- (1) Provide OCR with draft scopes of work/specifications for projects and Requests for Proposals (RFPs) with federal funding to enable goal setting. Outreach to DBEs and, where applicable, development of appropriate DBE language.

- (2) Provide OCR with copies of all final Invitation to Bids (ITBs), RFPs, mailing lists, and advance notices.
- (3) Incorporate DBE goal and appropriate DBE language into ITBs and RFPs
- (4) Inform the OCR of any changes to ITBs or RFPs that are subject to DBE goals.
- (5) Forward copies of bids to the OCR for evaluation of compliance with DBE requirements.
- (6) Allocate appropriate resources when needed, upon mutual agreement, to participate with OCR staff at major trade fairs and outreach events targeting DBEs and other small businesses.
- (7) Incorporate all applicable DBE provisions for procurements with goals. This information can be obtained from the DBE Program Manager.
- (8) Ensure that ITBs and RFPs do not contain unnecessary requirements which could unduly restrict or eliminate small businesses from competition.

B. Project Management Staff

- (1) Monitor and enforce DBE program requirements included in contracts, giving DBE Program compliance the same priority as compliance with all other legal obligations incurred by ODOT under its financial assistance agreements with USDOT. (See also, Section 5, Monitoring Performance and Contractor Compliance, and [ODOT Construction Manual - Chapter 18](#), Workforce and Small Business Equity Programs.)
- (2) Enforce DBE contract goal commitments, payment and reporting obligations, DBE termination and substitution limitations, good faith efforts requirements, and commercially useful function and crediting requirements.
- (3) Ensure Paid Summary Reports (available on the [DBE Forms page](#)) and other DBE compliance-required documents are sent to the OCR Field Coordinator for each project on a monthly basis.
- (4) Perform Commercially Useful Function (CUF) reviews on DBEs performing work on a project.
- (5) Alert OCR to potential problems concerning DBE utilization during contract administration and document such efforts. Secure OCR technical assistance and concurrence on DBE contract and subcontract matters in accordance with this DBE Program Plan, the DBE contract provisions, regulations, and ODOT Construction Manual - Chapter 18, as appropriate.

C. Oregon Department of Justice - Office of the Attorney General

- (1) Address legal matters relating to DBE program implementation.
- (2) Render legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
- (3) Advise OCR regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
- (4) Represent ODOT in all legal actions involving DBE issues.
- (5) Provide OCR and the Office of Minority, Women, and Emerging Small Business (OMWESB) with legal opinions concerning DBE certification involving complex issues of ownership and control.

2.4 Sub-recipients (including Local Public Agencies)

A sub-recipient is defined for the purposes of this DBE Program Plan as any entity, public or private, who receives USDOT financial assistance through ODOT. All subrecipients that let USDOT assisted contracts must follow the requirements of 49 CFR 26, (including insertion of DBE clauses in grant agreements and contracts).

Sub-recipients will develop a DBE Program where required by federal law, or endorse and abide by ODOT's DBE Program Plan. ODOT will make an effort to ensure the subrecipients comply with all requirements. An agreement will be executed with subrecipients which will bind sub-recipients to place appropriate DBE clauses in federally assisted contracts and to devise an appropriate DBE Program covering those contracts where required.

Upon FHWA approval, and as required, FTA approval, of the ODOT DBE Program Plan, or upon modifications to the Plan, all sub-recipients shall be notified in writing by ODOT that they must adopt the revised plan. Any ODOT sub-recipients who will award more than \$250,000 in FTA funds to primes (excluding transit vehicle purchases) per annum must prepare their own DBE Program Plan and submit it to ODOT for approval within a reasonable time period.

A. Sub-recipient Adoption of FHWA Approved ODOT DBE Program Plan

Sub-recipients adopting the ODOT Program Plan shall submit to ODOT written confirmation of such action signed by the appropriate executive officer having legal authority to obligate the sub-recipient. ODOT will notify sub-recipients of all Plan amendments.

B. Sub-recipient Submission of Program Document to ODOT for Approval

Sub-recipients that prepare their own DBE program plan shall submit the plan (signed by the appropriate executive officer) to ODOT Office of Civil Rights for review and approval. ODOT will provide written notice to sub-recipients of any document deficiencies to be corrected prior to approval. Once approved by ODOT, the sub-recipient's document will be forwarded to the appropriate federal operating authority for concurrence.

ODOT will conduct an annual review of all sub-recipients having their own program plan to ensure program compliance prior to submitting annual updates to the appropriate federal operating authority. ODOT's

annual updates will include a status statement regarding sub-recipients' performance and compliance with their program documents. After approval of the plan by ODOT, sub-recipients shall submit written requests to ODOT for approval of all proposed amendments. Sub-recipients shall be required to submit annual updates to ODOT reflecting program activities for the reporting period.

C. Local Public Agency Certification

Currently, local public agencies (LPAs) certified to manage FHWA-funded projects contract back to ODOT all civil rights-related work, including DBE program requirements. More information on Local Public Agency Certification can be found at the [Statewide Programs Unit – Certification Program Website](#) of ODOT.

The civil rights section of the [Local Agency Guidance \(LAG\) Manual](#) tells LPAs how to request contract goal assignments from ODOT OCR, when to include DBE and other civil rights provisions in LPA contracts, what project compliance monitoring and documentation is required, and how to cooperate with OCR Field Coordinators on FHWA-funded projects.

3. DBE GOAL DEVELOPMENT

3.1 Overall Annual DBE Goal

As a recipient of US Department of Transportation (USDOT) financial assistance, and per 49 CFR Part 26, the Oregon Department of Transportation (ODOT) is required to set an overall goal for Disadvantaged DBE participation in USDOT assisted contracts. Unless indicated by a valid disparity study and USDOT-approved waiver, the overall goal will not be subdivided into group specific goals, or be established as a quota system.

ODOT OCR will establish an overall annual goal on a triennial basis for the participation of DBEs in all budgeted contracts utilizing Federal-aid highway funds. ODOT OCR will establish a separate overall annual goal on a triennial basis for the participation of DBEs in all budgeted contracts utilizing Federal Transit Authority (FTA) funds. The overall annual goals will be expressed as a percentage of the total amount of Federal-aid funds the Department anticipates spending in the fiscal year.

ODOT's overall goal is based on demonstrable evidence of ready, willing and able DBEs available to participate on USDOT assisted contracts. To the maximum extent feasible, ODOT intends to meet the established goals through the race- and gender-neutral measures described in Section 4.3 of ODOT's DBE Program Plan. Where race- and gender-neutral measures are inadequate to meet an overall goal, ODOT will establish contract-specific goals for particular projects with subcontracting opportunities (race- and gender-conscious method) as provided under a current, valid waiver from USDOT. In setting the overall annual goal for ODOT, the USDOT requires that the goal setting process begin with a base figure for the relative availability of DBEs. The 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 USDOT assisted contracts. In particular, recipients must follow the USDOT's two-step methodology for goal setting to determine the level of DBE participation they expect absent the effects of discrimination:

Step 1 – Compute the base figure using data from one of the of the following options set out in 49 CFR 26.45(c) to determine relative availability: (1) DBE directories and census reports, (2) bidders list, (3) disparity study, (4) the goal of another DOT, or (5) other alternatives.

Step 2 – Adjust the base figure to make it as precise as possible utilizing the guidelines established in 49 CFR Part 26.45 and the goal-setting tips published by the USDOT's Office of Small and Disadvantaged Business Utilization.

In establishing this goal, ODOT is also required to do the following:

- Provide for public participation in the establishment of the overall goal;
- Specify the relevant market Area used for the calculation;
- Project the portions of the overall goal it expects to be met through race-neutral and race-conscious measures, respectively (see 49 CFR Part 26.51).

See, USDOT publication [Tips for Goal-Setting in the DBE Program](http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-settingdisadvantaged-business-enterprise) at:

<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-settingdisadvantaged-business-enterprise>

A. Establishing Base Figure - Determining Relative DBE Availability

For FHWA-funded contracts and grants, ODOT will use a percentage figure derived from a valid, applicable disparity study to determine the base figure of DBE relative availability in accordance with option (3) under 49 CFR 26.45(c) to determine DBE relative availability.

Beginning in 2007, and again in 2011 and 2013 ODOT hired a consultant to conduct a disparity study, a disparity study update, and DBE availability update respectively to analyze data on DBE, minority-owned, and women-owned business availability, utilization, and disparity in FHWA assisted contracting data.. See each study on the OCR [DBE Program – Disparity Studies](#) webpage for a detailed description of the data collection and management processes.

For FTA-funded contracts and grants, ODOT will use the OMWESB DBE Directory and census reports.

B. Adjustment to Base Figure

ODOT will consider any reasonable adjustment to the base figure based on demonstrable evidence indicating that the availability of DBEs for USDOT assisted contracts for the fiscal year may be higher or lower than the base figure indicates, past performance, verifiable barriers to success, adjustments indicated by studies (including disparity and availability studies), and any other relevant factors which can be supported with data. At a minimum, the OCR will analyze the results of ODOT's efforts to contract with DBEs for the most recent five federal fiscal years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of efforts by other DOTs or similar agencies to contract with DBEs.

C. Race-neutral Analysis

Once the overall annual goal is proposed, the OCR will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be

achieved by establishing contract goals for particular projects that have subcontracting opportunities. This analysis is a review of past contracting history with information including, but not limited to:

- (1) DBE participation as prime contractors on USDOT assisted contracts;
- (2) DBE participation on projects where no DBE goals have been established;
- (3) DBE Participation on prime contracts exceeding contract goals;
- (4) DBE participation on projects as non-committed DBE subcontractors.

OCR will monitor and adjust the use of contract-specific goals in accordance with 49 CFR Part 26.51 (f). When projecting the percentage of the overall annual goal to be achieved through establishing contract-specific goals, OCR will analyze the actual achievement of the overall annual goal through race-neutral methods in the current and previous five years. When establishing contract specific goals during the current fiscal year, the OCR shall analyze the progress towards achieving the overall annual goal and increase or reduce the use of contract-specific goals accordingly. ODOT will adjust the ratio of race- and gender-conscious and race- and gender-neutral methods to comply with court decisions, legal challenges and guidance from USDOT, FHWA, or FTA as applicable.

In cases where an Availability and Disparity Study has provided evidence that some, but not all, presumptive groups should be included in race- and gender conscious goals, ODOT will request a waiver from USDOT to allow the goals to be applied only to those groups identified as having a substantial or significant disparity in contracting.

D. Public Participation and Outreach Efforts

In establishing overall DBE goals, ODOT will provide for public participation. This will include: Public Notices published in trade and minority circulars; notices posted on the ODOT OCR website; public meetings; and, announcements and discussion at organizational and industry meetings.

Prior to finalizing the Overall Goals Analysis Report, ODOT will notify USDOT recipients, and other USDOT grantees, minority, women, and general contractors groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ODOT's efforts to establish a level playing field for the participation of DBEs, of the proposed goal.

ODOT will publish a notice announcing its proposed overall goal and the race neutral/race-conscious breakout, informing the public that ODOT's Overall Goals Analysis Report is available for inspection during normal business hours at the Office of Civil Rights for a period of thirty (30) days, and that ODOT and the USDOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

In conjunction with ODOT's activities to meet its overall DBE goals, ODOT conducts various public participation and outreach activities designed to

broaden awareness of ODOT's Office of Civil Rights Program for Contracts. The measures described in 49 CFR 26.51, focusing on race-neutral means will be actively pursued; ODOT also encourages its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. ODOT will continue to organize and offer training programs for to help businesses meet DBE eligibility requirements, to familiarize potential contractors with procurement procedures and requirements, and to otherwise develop effective programs to further DBE participation in ODOT's contracting activities.

E. Goal Submissions

- (1) The three-year overall goal report will be submitted to the appropriate operating authority (FHWA or FTA), for review on August 1 of the relevant year. The goal is published on the [ODOT Civil Rights DBE Resource Documents](#) page.
- (2) A description of the methodology used to establish the goal, including the Base Figure, and the supporting data from which it was calculated, with any adjustment, will be included.
- (3) A projection of the portions of the overall goal which will be met by race- and gender-neutral means and basis for that projection will be included.
- (4) The overall goal for ODOT Transit activities will be submitted to FTA every three years by August 1. This goal is based on non-vehicle monies only and is specific to agencies which receive greater than \$250,000 from ODOT Transit.

F. Transit Vehicle Manufacturers Certification

The Department shall require any transit vehicle manufacturers to certify that they have established an overall annual DBE participation goal that has been approved by FTA before they can bid on any Authority contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal for other FTA-assisted contract expenditures apply.

3.2 Contract-Specific Goal

A. Contract Goal Setting

DBE participation goals may be assigned on Federal-aid highway (construction and professional services) projects that have subcontracting possibilities. Unless prohibited, contract goals will be established to meet any portion of the overall goal not met by using race-neutral means (49 CFR §26.51(d)). Contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals, unless verified data (for example, through a disparity study) supports the need to more narrowly tailor the goals for specific groups, and a waiver has been approved by USDOT.

In May 2005, the U.S. Ninth Circuit Court ruled that a state department of transportation could not establish a race- and gender-conscious DBE program without evidence showing that discrimination and inequity in contracting opportunities in that state's transportation industry had occurred. Consequently, ODOT hired a consultant to conduct a disparity study in 2007 and an update in 2011. Based on the results of these studies, ODOT sought and obtained a waiver from the requirement of 49 CFR §26.51(d) from the USDOT to allow ODOT to assign contract goals only for those DBE groups shown to have experienced substantial disparities in contracting with ODOT. For current information, see the ODOT Office of Civil Rights [DBE Program Waiver](#) page. For ODOT's FHWA-funded construction contracts and architecture and engineering and related services (A&E) contracts, prior to solicitation of bids, all proposed projects are reviewed by the OCR to identify work that could be performed by DBEs. The procedure and criteria used in assigning project goals include:

- (1) Project location, size, duration, and dollar value.
- (2) The nature of project, (type of work and potential scheduling and coordination work).
- (3) Availability of certified DBE firms within a reasonable distance from the project location that perform items identified capable of being subcontracted.
- (4) Any other relevant criteria, including court decisions and DBE Program Waivers or directives from USDOT.

OCR assigns the goal and forwards it to the appropriate unit (construction specifications or procurement office) or local public Agency for inclusion in the project plans and specifications as applicable.

For FTA-funded grants and contracts, ODOT has an entirely race- and gender neutral DBE program. No contract goals will be assigned.

B. Aspirational Targets

DBE Aspirational Target participation evaluations have been performed in the past, but will no longer be included for federal-aid projects. No other race- or gender conscious aspirational targets will be set for small business participation on projects with federal funding.

C. Design-Build

When projects are let using the Design-Build method and when federal monies are utilized, the original RFQ and RFP will specify that there will be a DBE goal. The exact goal will be determined in the final stage of the selection process as the scope of work becomes clearer. The design and construction phases of the project will be evaluated separately.

D. Construction Management General Contractor (CM/GC)

CM/GC projects will be evaluated in the same manner as Design-Build.

3.3 Counting DBE Participation towards Meeting Annual Goals

DBE participation is credited using the following procedures (see Section 7.2, Reporting to USDOT for information on DBE participation reporting):

A. Work Actually Performed

Only the work actually performed by a DBE, (according to section 4.1.C.) will be counted toward the DBE goal. Only the type of work in which the DBE is certified, will be counted as long as the DBE performs a Commercially Useful Function (CUF). The cost of supplies and materials obtained by the DBE, or equipment leased (except from prime contractor or its affiliate), may also be counted.

B. DBE Subcontracts to non-DBE

Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal, with the exception of trucking firms leasing additional trucks in compliance with the one-for-one rule. Expenditures may only be counted if the DBE is performing a CUF. A DBE shall perform at least thirty percent of the total cost of its contract with its own work force.

C. Materials & Supplies

If materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent of the cost will be counted. If services are brokered, or materials or supplies are purchased from a broker, only the brokerage fee will be credited.

D. Achievement

DBE achievement will not be counted toward the overall goal until the DBE has been paid. OCR will track race-conscious DBE participation separately from race-neutral DBE participation. All DBE participation achieved on projects with no contract-specific goal and all participation over the amount required to meet contract-specific goals will be considered race-neutral participation. Additionally, OCR will not count the portion of DBE participation that is achieved after a DBE has been decertified during the performance of a contract.

3.4 Counting DBE Participation to Meet Annual Goals of Sub-recipients

A. Sub-recipients Adopting the ODOT Program Plan

Credit shall be authorized or deducted per the requirements of Section 3.3 regardless of whether or not the ODOT or the Sub-recipient is the contracting Agency. Certified Local Public Agency sub-recipients of Federal-aid highway program funds are required to submit bid, award, payment, and compliance reports to ODOT OCR in accordance with the civil rights section of the [Local Agency Guidelines \(LAG\) Manual](#). ODOT shall include in its semi-annual reports to FHWA the status of sub-recipient DBE participation activities falling within this category (see Section 7.2, Reporting to USDOT). FTA recipients shall be required to report semiannually demonstrating their goal attainment to-date in a manner consistent with the requirements of 49 CFR 26 reporting requirements.

B. Sub-recipients with an ODOT Approved Program Plan

As per FHWA guidance, no sub-recipients of Federal-aid highway funds fall into this category. Recipients of FTA funds shall be required to report semiannually

demonstrating their goal attainment to-date in a manner consistent with the requirements of 49 CFR 26 reporting requirements. Sub-recipients shall authorize or deduct credit for work performed by DBEs per the requirements of 3.3 above regardless of whether they or ODOT is the contracting Agency