



Alaska Department of Transportation & Public Facilities
Disadvantaged Business Enterprise Program
Triennial Goal Methodology:
Federal Highway Administration FFY2015-FFY2017
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The purpose of this document is to explain how the Alaska Department of Transportation & Public Facilities (ADOT&PF / the Department) Civil Rights Office (CRO) has set the Disadvantaged Business Enterprise (DBE) Triennial Goal for FFY2015 – FFY2017, compliant with 49 CFR Part 26. ADOT&PF is required to submit overall DBE goals once every three years to FHWA, and per 49 CFR Part 26.45 the overall DBE 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 FHWA-assisted contracts. Regulations have set forth several examples of acceptable methods for determining the relative availability of DBEs. Previously, in setting the triennial goal for FFY2012 – FFY2014 (the previous goal), ADOT&PF retained the services of D. Wilson Consulting Group, LLC to conduct an availability and disparity study that included procurement activities from FFY2002 – FFY2006 for ADOT&PF-let construction contracts and professional service agreements (PSAs) – the two primary procurement types let by the Department. The results of the study provided an estimate for the combined availability of certified DBEs and minority and women-owned business enterprises that were not certified DBEs (M/W/DBEs). This estimate was used as the base figure in the previous goal methodology from ADOT&PF, and adjusted down based on past participation to arrive at the FFY2012 – FFY2014 overall goal of 10.82% which is effective through FFY2014.

To arrive at an overall DBE goal for FFY2015 – FFY2017 that is reflective of the level of DBE participation that could be reasonably expected, absent the effects of discrimination, the following process was followed in accordance with the requirements of 49 CFR Part 26.45:

1. **Step One Base Figure:** Determine a base figure for the relative availability of DBEs within the relevant market area.
2. **Step Two Overall Goal:** Analyze available evidence to determine what, if any, adjustment is needed to the Step One Base Figure.
3. **Race-Neutral and Race-Conscious Split:** Provide a projection of the portion of the overall goal that is expected to be met through race-neutral means and the portion that is expected to be met through race-conscious means.

Step One Base Figure

To estimate the relative availability of DBEs, ADOT&PF first determined the relevant market area, ADOT&PF based its determination of the relevant market area on data derived from the 2014 ADOT&PF Disparity Study (the Disparity Study) conducted by MGT of America, Inc. (MGT) which was collected using the following method:

Geographic units (such as states and boroughs) were found to be acceptable to use based on several considerations. First, courts have accepted the use of standard geographic units in conducting equal employment opportunity (EEO) and disparity studies. Second, because geographic units are externally determined, there are no subjective determinations being made, and lastly, U.S. Census and other federal agencies frequently collect data in this manner.

MGT performed a two-step analysis to determine the relevant market area for the study. First an analysis of the overall market area was conducted to determine the market area and to establish the extent to which ADOT&PF utilized firms. Geographic locations of firms utilized by ADOT&PF during the study period were reviewed using MGT’s Zone Improvement Plan (ZIP) Code Database. Once the geographic locations of firms were identified, all boroughs and counties where dollars were awarded were analyzed and included in the overall market area. Once the overall market area was established, the relevant market area was determined for each of the business categories analyzed (construction, Architecture/Engineering/Land Surveying (AELS), and Non-AELS). The firms’ geographic location that received the most dollars, all of which totaled at least 75 percent¹ of the overall market area, were identified, and the resulting market area analysis for FHWA-assisted contracts is shown below:

Exhibit 1²
Market Area Analysis: FHWA

| Location of Firms | Construction | | AELS | | NON-AELS | |
|-------------------|---------------------------|----------------|------------------------|----------------|------------------------|----------------|
| | \$ | % | \$ | % | \$ | % |
| Inside Alaska | \$1,085,203,528.00 | 89.42% | \$19,081,745.00 | 85.12% | \$15,396,618.00 | 92.37% |
| Outside Alaska | \$128,403,368.00 | 10.58% | \$3,336,129.00 | 14.88% | \$1,272,636.00 | 7.63% |
| Total | \$1,213,606,896.00 | 100.00% | \$22,417,874.00 | 100.00% | \$16,669,254.00 | 100.00% |

The relevant market area was found to be the State of Alaska, where firms were awarded 89.42% of FHWA funded construction project dollars, 85.12% of AELS project dollars, and 92.37% of non-AELS project dollars³.

To arrive at a step one base figure that is representative of the relative availability of DBEs, ready, willing, and able to perform work on FHWA-assisted contracts, ADOT&PF reviewed acceptable methods per 49 CFR Part 26 to determine which would yield the most accurate results. Three methods were considered by ADOT&PF, and the summary of findings regarding each method follows:

1. Use a Bidder’s List

Per 49 CFR Part 26.45, ADOT&PF considered using its bidder’s list to estimate DBE availability. This method consists of determining the number of DBEs that have bid on USDOT-assisted, ADOT&PF-let prime contracts and subcontracts. Then determining the number of all businesses that have bid on prime or subcontracts during the same time period, and dividing the number of DBE bidders by the number for all businesses to derive a base figure for the relative availability of DBEs in the relevant market area.

¹ MGT uses the “75 percent rule” to determine the relevant market area. This rule is generally accepted in antitrust cases. In another relevant case, *James C. Jones v. New York County Human Resources Administration*, 528 F.2d 696 (.2d Cir. 1976), the court accepted less than 100 percent of the data when it was reasonable to assume that the missing data would not significantly change the results of the analysis.

² 2014 DOT&PF Disparity Study, Ch. IV-6, Ex. 4C

³ 2014 DOT&PF Disparity Study, Ch. IV-6

This method was ultimately disregarded by ADOT&PF for several reasons. First, this method was found to be a less accurate measure of DBE availability than the Disparity Study, as this data was already accounted for in the Disparity Study's availability analysis. Second, this method fails to take into account the availability of firms that could potentially become certified, and therefore provides a less accurate estimate of DBE availability.

2. Use DBE Directories and Census Bureau Data

Per 49 CFR Part 26.45, ADOT&PF considered using the Alaska Unified Certifications Program (AUCP) DBE Directory along with Census Bureau data to derive a base figure for DBE availability. This method consists of determining the number of ready, willing, and able DBEs in the relevant market area through the AUCP DBE directory, then using the Census Bureau's County Business Pattern database to determine the number of all ready, willing, and able businesses available in the relevant market area to perform work in the same NAICS codes. The number of ready, willing, and able DBEs is then divided by the number of all businesses ready, willing, and able, to derive a base figure for the relative availability of DBEs in the relevant market area.

This method was also disregarded by ADOT&PF for several reasons. As with using a bidder's list, this method fails to take into account the availability of firms that could potentially become certified DBEs. Also, this method was found to be less accurate than the 2014 ADOT&PF Disparity Study, which accounts for the availability of certified DBEs, as well as minority and women-owned firms that are not certified DBEs in its availability analysis.

3. Use Data from a Disparity Study

In July of 2012, the ADOT&PF CRO contracted with MGT to conduct a DBE Availability and Disparity Study Update (the Disparity Study). This five year study includes procurement activities from FFY2007 – FFY2011, and draws on multiple data sources to provide an analysis of the availability of M/W/DBEs. MGT analyzed the availability of firms using custom census, vendor data, and the ADOT&PF's Plan Holders List.

To estimate the availability of construction prime contractors, MGT used ADOT&PF's Plan Holders List. Availability was based on firms located in the State of Alaska that were identified as general contractors that had obtained plans/proposals on construction projects awarded during the study period.

To estimate the availability of construction subcontractors, MGT utilized custom census, in addition to the firms represented in the construction prime contractor availability, and construction subcontractors utilized on ADOT&PF-let projects during the study period. Some cases have allowed custom census to calculate the availability of firms using Dun & Bradstreet - a current data source containing individual firms, firm revenue, number of employees, and specific areas of work. There were several deficiencies to the Dun & Bradstreet data which included:

- No racial, ethnic, and gender information.
- No indication of whether a firm is interested or willing to work on ADOT&PF projects.
- No indication of whether a firm primarily works on projects as a prime contractor or subcontractor.
- No indication of whether a firm has a professional license in the State of Alaska.

These deficiencies were addressed in the Disparity Study by first pulling a random sample of firms from Dun & Bradstreet, limiting the results to firms located in the State of Alaska, and identified as providing construction services based on their six-digit North American Industry Classification System (NAICS) codes^{4 5}. Once the sample was pulled, MGT cross referenced firms with the State of Alaska’s Department of Commerce, Community, and Economic Development’s Division of Corporations, Business, and Professional Licensing database. The remaining deficiencies were addressed through conducting a short survey in which firms were asked:

- Ethnicity, race, and gender information.
- If they had bid, or considered bidding on ADOT&PF projects (indicating the firm’s interest/willingness)
- When bidding on projects (not limited to ADOT&PF projects), if they bid primarily as a prime contractor, subcontractor, or both.

The custom census, construction prime contractor availability, and M/W/DBE subcontractor utilization during the study period were then compiled, and cross referenced to avoid double-counting firms, to arrive at an estimate of construction subcontractor availability.

To estimate the availability of M/W/DBE AELS and Non-AELS prime consultants to perform work on ADOT&PF-let PSAs, MGT used vendor data. This was determined to be an acceptable method because there is case law where studies estimating availability based on vendor data have been upheld in federal court⁶. In estimating prime consultant availability, vendor data was extracted from ADOT&PF’s BizTrak data management system. Data is continuously tracked on

⁴ 20 unique NAICS codes were identified among the Dun & Bradstreet data as relating to construction services. These codes were comprised of Timber Operations (113310), Commercial & Heavy Construction Contractors (237110), Highway, Street, & Bridge Construction Contractors (237310), Concrete & Masonry Contractors (238110, 238140), Electrical Contractors (238210), Plumbing & HVAC Contractors (238220), Drywall, Plaster, Acoustic & Insulation Contractors (238310), Painting & Wall Covering Contractors (238320), Specialty Contractors (238330, 238350, 238990), Roofing, Siding, & Sheet Metal Contractors (238390), Site Preparation Contractors (238910), Architectural & Structural Metals Manufacturing (332322), Wholesale Sector (423320), Electrical Products Wholesalers (423610), Wholesale Sector (423990), Building Materials Dealers (444190), Transportation Services Sector (488490).

⁵ It is important to note that the list of NAICS codes in footnote 3 is not exhaustive of all NAICS codes represented in the subcontractor availability, but only the custom census portion of subcontractor availability. These do not necessarily include the NAICS codes from the construction prime contractor availability, and construction subcontractor utilization during the study period, which were also included in the calculations for construction subcontractor availability.

⁶ *H.B. Rowe v. North Carolina DOT*, 589 F.Supp.2d 587 (ED NC 2008)

all USDOT-assisted professional services agreements in the BizTrak data management system, and is updated on a continual basis by the ADOT&PF CRO.

ADOT&PF found the 2014 ADOT&PF Disparity study to be the most accurate and refined data available, and found this to be an appropriate and acceptable method for several reasons:

- Federal regulations allow for using data from a disparity study to calculate a base figure for the overall availability of DBEs.
- The availability analysis from the 2014 ADOT&PF Disparity Study accounts for both certified DBEs, and firms that could potentially become certified DBEs.
- The 2014 ADOT&PF Disparity Study is a current data source, relevant to the market in which ADOT&PF operates.
- The 2014 ADOT&PF Disparity Study availability analysis yields the most accurate data available as it is composed of data from multiple sources, including those that are utilized in other methods considered (such as the ADOT&PF Plan Holders List), in order to provide a consolidated picture of current market conditions within the State of Alaska.

Method

To arrive at the step one base figure, ADOT&PF utilized data from the Disparity Study, which provides an analysis of the number of M/W/DBEs in the relevant market area ready, willing, and able to perform work on FHWA-assisted contracts let by ADOT&PF. The analysis explores the availability of firms operating as construction prime contractors, construction subcontractors, and PSA prime contractors because these procurement types constitute the majority of federal expenditures on projects let by ADOT&PF. The analysis does not estimate PSA subcontractor availability because of the very small expenditure on PSA subcontracting (less than 1 million over the study period).

In determining the step one base figure, ADOT&PF first analyzed the M/W/DBE availability data from the Disparity Study, which was derived according to the methods previously mentioned, is inclusive of certified DBEs as well as minority, and women-owned firms that are not certified, and was broken out by construction prime contractor, construction subcontractor, AELS prime consultant, and Non-AELS prime consultant procurement types. ADOT&PF then established the availability of construction contractors (prime contractors and subcontractors) and PSA prime consultants (AELS and Non-AELS) by combining the related data sets from the availability analysis by construction-type and PSA-type. ADOT&PF reviewed the recompiled data sets to avoid the double counting of firms (i.e. construction prime contractors that are also considered available construction subcontractors), and used the resulting M/W/DBE and non-M/W/DBE firm counts to determine availability. The following table summarizes the firm counts by procurement type and the resulting availability estimates:

Exhibit 2
Availability by Procurement Type

| Category | Count of M/W/DBE Firms | Count of All Available Firms | M/W/DBE Availability |
|---|------------------------|------------------------------|-----------------------------|
| Construction (Prime Contractors and Subcontractors) | 143 | 753 | $\frac{143}{753} = 18.99\%$ |
| PSA Prime Consultants | 51 | 337 | $\frac{51}{337} = 15.14\%$ |

To refine the procurement type availability estimates, ADOT&PF cross referenced the available M/W/DBEs derived from the Disparity Study with all decertification records maintained by the ADOT&PF CRO to exclude non-certified firms from the numerator that had previously been decertified. This step was taken to obtain a more accurate availability estimate for non-certified firms that could potentially become certified, under the premise that decertified firms are not likely to seek recertification beyond the appeals process. There are many causes behind changes in a firm’s certification status, among the most frequently observed are denied applications⁷, and voluntarily withdrawing from the DBE program. Excluding non-certified firms from the numerator that had previously been decertified yielded the following adjusted M/W/DBE availability figures:

Exhibit 3
Availability by Procurement Type
Adjusted for Previous Decertifications

| Category | Count of M/W/DBE Firms | Count of All Available Firms | M/W/DBE Availability |
|---|------------------------|------------------------------|----------------------------|
| Construction (Prime Contractors and Subcontractors) | 98 | 753 | $\frac{98}{753} = 13.02\%$ |
| PSA Prime Consultants | 26 | 337 | $\frac{26}{337} = 7.72\%$ |

In following guidance from the USDOT Tips for Goal-Setting in the DBE Program, ADOT&PF refined the data further by addressing imminent decertifications in step one. Utilizing the ADOT&PF CRO BizTrak data management system, and in consultation with AUCP Certifications staff, ADOT&PF identified among currently certified DBEs, those that will be imminently decertified because they no longer meet the requirements of 49 CFR Part 26⁸. These firms were then cross referenced with the

⁷ Applications are denied when a firm does not meet the requirements set forth in 49 CFR Part 26 for reasons such as exceeding business size standards, exceeding personal net worth requirements and other reasons including management and operational control of firms, and independence.

⁸ The most significant factor that influenced imminent decertifications stemmed from changes presented in the Federal Register (64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014). Specifically, changes in the interpretation of 49 CFR Part 26.73 had a material impact on the eligibility of some Alaska Native Corporation-owned firms to participate in the DBE Program.

M/W/DBE availability data and excluded from the numerator to arrive at a more accurate estimate of M/W/DBE availability. The following table reflects the availability of M/W/DBEs, adjusted for previously decertified firms and firms that will be imminently decertified:

Exhibit 4
Availability by Procurement Type
Adjusted for Previous and Imminent Decertifications

| Category | Count of M/W/DBE Firms | Count of All Available Firms | M/W/DBE Availability |
|---|------------------------|------------------------------|----------------------------|
| Construction (Prime Contractors and Subcontractors) | 94 | 753 | $\frac{94}{753} = 12.49\%$ |
| PSA Prime Consultants | 26 | 337 | $\frac{26}{337} = 7.72\%$ |

Weighting the Base Figure

The USDOT Tips for Goal-Setting in the DBE Program guidance states that “while weighting is not required by the rule, it will make your goal calculation more accurate.” Following this guidance, ADOT&PF explored ways to weight the DBE availability data derived from the Disparity Study. The following summarizes the methods to weight the base figure that were reviewed by ADOT&PF:

- Weight by Work Categories: ADOT&PF CRO tracks which types of work are performed on its projects based on ADOT&PF Work Categories (numeric descriptors of the primary work being done on FHWA-funded projects, similar to NAICS Codes). An analysis of FHWA expenditures from FFY2007-FFY2011 by ADOT&PF Work Category was performed to determine the percent of payments within each Work Category. However, due to the lack of comprehensive data regarding the availability of DBEs relative to all firms ready, willing, and able to perform work on FHWA-funded projects broken out by ADOT&PF Work Category⁹, this method was disregarded by ADOT&PF as not being viable for weighting the base figure.
- Weight by NAICS Code: As previously mentioned, ADOT&PF CRO tracks the type of work being performed on its FHWA-funded projects by Work Category, and not by NAICS code. As these two descriptors would need to be meticulously translated from one to the other in an objective, consistent, and accurate manner before an analysis could be conducted, this method was disregarded by ADOT&PF as not being viable for weighting the base figure¹⁰.

⁹ Specifically, comprehensive DOT&PF Work Category data for non-DBEs is insufficient to perform a weighting by work category.

¹⁰ DOT&PF is currently working to establish a conversion tool to match DOT&PF Work Categories with their corresponding NAICS codes.

- Weight by Procurement Type: To arrive at a step one base figure that reflects the actual availability of DBEs in the State of Alaska, and in line with the recommendations from the Disparity Study, the DBE availability figures from Exhibit 4 were weighted by FHWA expenditures during the study period by procurement type. Weighting the base figure by procurement type provides a more accurate estimation of the level of DBE participation that could reasonably be expected, absent the effects of discrimination. It does so because it places more weight on the availability of M/W/DBEs in procurement types that will receive a larger percentage of federal funds, and vice versa. The calculations in Exhibit 5 demonstrate this process and the resulting weighted availabilities by procurement type.

Exhibit 5
Weighted Availability by Procurement Type
Adjusted for Previous and Imminent Decertifications

| Category | FHWA Expenditure | Weight | Weighted M/W/DBE Availability |
|---|------------------|--|-------------------------------|
| Construction (Prime and Subcontractors) | \$1,085,203,528 | $\frac{\$1,085,203,528}{\$1,119,681,891} = 96.9\%$ | $12.49 * 96.9\% = 12.10\%$ |
| PSA Prime Consultants | \$34,478,363 | $\frac{\$34,478,363}{\$1,119,681,891} = 3.1\%$ | $7.72 * 3.1\% = 0.23\%$ |
| Total | \$1,119,681,891 | 100% | 12.33% |

This process yielded the following step one base figure:

Step One Base Figure = 12.10% + 0.23% = 12.33%

Step Two Adjustments

ADOT&PF analyzed available evidence to determine what adjustments, if any, were needed to the base figure to arrive at the overall goal. The following summarizes the evidence that was reviewed:

1. Current Capacity of DBEs to Perform USDOT Assisted Work

ADOT&PF explored adjusting the base figure to account for past participation and the current capacity of DBEs to perform work on its FHWA-assisted contracts. Some of the M/W/DBEs counted in the base figure are noncertified firms. ADOT&PF, similar to other state DOT's, has historically experienced difficulty in encouraging firms to become DBE certified, and it is important to note that although noncertified minority and women-owned firms are counted as potential DBEs in determining the base figure, ADOT&PF may only count the utilization of certified DBEs in its reporting to FHWA. Per the USDOT Tips for Goal Setting guidance, the most recent five years of ADOT&PF DBE utilization on FHWA-assisted contracts for the period of FFY2009 – FFY2013 is listed below:

Exhibit 6¹¹

ADOT&PF DBE Utilization on FHWA-Assisted Contracts

| Federal Fiscal Year | FHWA DBE Utilization |
|-------------------------------|-----------------------------|
| 2009 | 4.6% |
| 2010 | 4% |
| 2011 | 6.5% |
| 2012 | 4.6% |
| 2013 | 9.1% |
| Median DBE Utilization | 4.6% |

Calculating the average of the base figure and the median annual DBE utilization yielded an overall goal of 8.46%:

$$\frac{4.60\% + 12.33\%}{2} = 8.46\%$$

2. Other Disparity Studies:

No disparity studies aside from the 2014 ADOT&PF Disparity Study Update have been conducted in Alaska since the original ADOT&PF Disparity Study was completed by D. Wilson Consulting Group, LLC in 2008.

3. Public Participation:

ADOT&PF conducted public outreach in accordance with 49 CFR Part 26.45(g). Please see page 28 of the goal methodology for details.

¹¹ DOT&PF Uniform Reports of Commitments/Awards and Payments, 2009 - 2013

4. 2014 ADOT&PF Disparity Study:

MGT reviewed several pieces of evidence to determine what, if any, step two adjustments should be made. This evidence is summarized below:

- a. Median past participation: MGT provided an evaluation of median past participation separate than that conducted by ADOT&PF. The median past participation analysis conducted by MGT is reflective of DBE participation during the study period (FFY2007 – FFY2011), and was found to be 4.00%. Because this figure was not significantly different than the 3.6% overall goal proposed by MGT, no adjustment for the current capacity of DBEs to perform work was made by MGT.
- b. Self-Employment Analysis (“But For” Discrimination)¹²: MGT conducted a multivariate regression analysis of Public Use Micro data Samples (PUMS) derived from the 2011 U.S. Census to determine the following items, and for which the findings regarding each item are presented respectively:
 - i. If racial, ethnic, and gender minority groups are less likely than nonminority males to be self-employed:
 - The findings from the regression analysis revealed that regarding whether racial, ethnic and minority groups are less likely than nonminority males to be self-employed, with all other variables¹³ held constant, that:
 - Among analyzed industries in Alaska, nonminority males were nearly twice as likely to be self-employed as nonminority women and Native Americans.
 - In Alaska, nonminority males were over seven times as likely as nonminority women to be self-employed in professional services.
 - In Alaska, nonminority males were nearly eight times as likely as Native Americans to be self-employed in professional services. However, due to limitations in sample size only several findings can be considered statistically significant, and more importantly as it pertains to the implementation of ADOT&PF’s DBE Program, all findings specific to the construction industry were of inadequate sample size to be considered statistically significant¹⁴.
 - ii. If racial, ethnic, and gender status have an impact on individuals’ earnings.

¹² 2014 DOT&PF Disparity Study, Appendix L

¹³ MGT included as predictors of employment status: Race and Sex; Availability of Capital; Marital Status; Ability to Speak English Well; Disability Status; Age and Age Squared; Owner’s Level of Education; Number of Individuals Over the Age of 65 Living in Household; Number of Children Under the Age of 18 Living in Household.

¹⁴ 2014 DOT&PF Disparity Study, App L-6

- To answer this question, MGT compared self-employed minority and women entrepreneurs' earnings to those of nonminority males in Alaska, when the effects of other demographic and economic characteristics were controlled. The results of this analysis showed that:
 - In the construction industry, nonminority women reported significantly lower earnings than nonminority males in Alaska: 97.3% less. However, similar to the findings from item i., all of the findings pertaining to "earnings elasticity" among minority groups in construction and professional services, aside from nonminority women, had inadequate sample sizes and were therefore found to be statistically insignificant.
- iii. How much racial, ethnic, and gender discrimination influence the probability of being self-employed.
- MGT analyzed observed self-employment rates among minority and nonminority groups and calculated predicted self-employment rates for groups as they would be if a particular group's characteristics were applied to another group's (in this case nonminority male) market structures. By this process, MGT was able to calculate percentage estimates of the disparities in self-employment between minorities and nonminority males. These calculations found that:
 - In comparing self-employed nonminority males with self-employed nonminority women in the Alaska professional services industry, over 86% of the disparity in self-employment rates was attributable to gender differences. However, within the context of the ADOT&PF DBE Program, the results of this analysis showed no disparity among any of the groups when analyzed within the construction industry.

The results of the Disparity Study's analysis of self-employment provided some evidence of lower rates of entry into and earnings from self-employment for women and minorities. ADOT&PF explored adjusting the base figure to raise the availability of women and minority businesses by the difference between self-employment rates of nonminority males and other groups. However, because there were no disparities in self-employment identified in the construction industry, this process would only be applicable to the professional services procurement type which receives 3.1% of the total weight of the base figure, and only for groups that showed significant disparities (Native Americans and Nonminority Women), resulting in only a minor adjustment to the base figure. Thus, no adjustment was made to the base figure to account for "but for" discrimination.

- c. Non-Certified Firms: MGT did not make any adjustment to the proposed goal to account for non-certified firms that could potentially become certified. No adjustment was made

due to a lack of comprehensive data on how many of these firms could become certified. However, ADOT&PF accounted for the availability of non-certified firms that could potentially become certified in the step one goal.

- d. Anecdotal Analysis¹⁵: Aside from disparity analyses, MGT also conducted an analysis of anecdotal information by using a combination of surveys, focus groups, public hearings, and personal interview to collect data with the purpose of identifying issues that were common to businesses in the relevant market area during the study period.

The method that was used to conduct the analysis was began by randomly selecting a sample of DBE and non-DBE prime and subcontractors from ADOT&PF's master vendor database to ensure the validity and integrity of the anecdotal data collection. From the sample, DBEs and non-DBEs were contacted to participate in focus groups, surveys, and personal interviews.

The survey of vendors gathered information on business ownership, work performed with the State, work performed in the private sector, and barriers, perceived or real, that prevented firms from doing business with ADOT&PF during the study period. Oppenheim Research, a third party research firm, administered the surveys that resulted in 393 completed responses.

MGT also facilitated two focus groups, one with prime contractors, and one with subcontractors. Participants were randomly selected using ADT&PF's master vendor database.

Personal interviews were conducted with primes and subs, including both DBEs and non-DBEs that were not included in other anecdotal activities. The interviews gathered information about the owner of the firm, as well as metrics regarding business size, and their experiences in conducting, or attempting to conduct business with ADOT&PF. Additionally, questions were asked related to the interviewee's experience with the DBE program, and instances of disparate treatment or discrimination, experienced or perceived, by the firm while conducting or attempting to conduct business with ADOT&PF.

The responses from the survey of vendors found that among the 151 M/W/DBEs that responded to survey questions about barriers to doing business, the biggest concern for M/W/DBE primes was competing with large firms (17.2% of M/W/DBE respondents). This was also the biggest concern voiced from M/W/DBE subcontractors (15.2%). Additional barriers that were cited by M/W/DBE respondents included:

- Prime Contractors
 - Unnecessary and restrictive contract specifications – 14%
 - Contracts being too large – 11.3%
 - Limited time given to prepare the bid or prequalification package – 11%

¹⁵ 2014 DOT&PF Disparity Study, Ch. VI

- Lack of personnel – 11%
- Subcontractors
 - Slow payment or nonpayment of from primes – 13.9%
 - Lack of personnel – 11.3%
 - Limited time given to prepare their bid or quote – 10.6%
 - Contracts too large – 9.3%

Looking at some of the anecdotal responses provided from prime contractors when asked about barriers they face in doing business with ADOT&PF, responses included obstacles in the procurement process, meeting DBE goals, and the Central Region WBE Waiver.

From subcontractors, when asked about barriers they face in doing business or attempting to do business with primes on ADOT&PF projects, many cited obstacles in the bid process, specifically the perception that DBEs do not have the capacity or expertise to perform the work created a barrier.

As previously mentioned, survey, focus group, interview, and public hearing participants were asked if they experienced discriminatory or disparate behavior by ADOT&PF, its primes, or the private sector during the study period. The following exhibit illustrates the percentage of survey respondents who stated that they experienced discriminatory behavior from either ADOT&PF, prime contractors/professional consultants contracted by ADOT&PF, or while conducting business in the private sector:

Exhibit 7¹⁶

Discrimination Survey Results

| Respondent Category | By ADOT&PF | By Prime Contractors | Private Sector |
|------------------------------------|-----------------------|-----------------------------|-----------------------|
| M/W/DBE (Prime) | 3.30% | | |
| Non-M/W/DBE (Prime) | 0.90% | | |
| M/W/DBE (Subcontractor) | | 6.60% | |
| Non-M/W/DBE (Subcontractor) | | 4.40% | |
| M/W/DBE Firms | | | 9.30% |
| Non-M/W/DBE Firms | | | 7.00% |

With respect to the type of disparate treatment, M/W/DBE respondents reported:

- An informal network precluded their firms from obtaining work in the private sector (17.2%)
- Infrequently or never being solicited when there were no DBE goals (40.4%)
- Being dropped from a project after being included to satisfy good faith efforts requirements¹⁷ (9.9%)

¹⁶ 2014 DOT&PF Disparity Study Ch. VI-12, Ex. 6H

- Experiencing unequal or unfair treatment from primes (20.5%)

In addition to the comments received from business owners, MGT interviewed two trade associations and asked them to provide their perceptions on the implementation of the DBE goals, barriers their members faced, and any other comments they felt were relevant to the disparity study. Both trade associations voiced support for the DBE program; however, their members have expressed frustration with several aspects of the program. In part, they believe that the current goals are established on a miscalculated availability of firms truly “qualified” to do work for ADOT&PF. They stated that firms are certified as DBEs in areas they do not have the experience or capacity to work. They stated that in some cases, the firms are certified to do work where professional licenses (i.e., engineering) are required and the DBE firm does not hold that license. Therefore, it was the perception of the stakeholders interviewed that this inflates the number of DBEs in the [AUCP] DBE directory, but is unrealistic when bidders are attempting to identify “qualified” DBEs to meet the goals. Members of these trade associations found that the establishment of “unachievable” goals is a barrier to meeting the DBE goals.

Access to capital was also explored as a potential barrier. Survey respondents were asked if they had applied for a commercial loan during the study period and whether they were approved or denied. If they were denied, they were asked what they believed was the basis of their denial. Of the 162 (41.2% of total) respondents that applied for a commercial loan, 36% were M/W/DBEs. Less than 11% of M/W/DBE applicants were denied loans; four of the six firms that were denied loans were Alaska Native-owned.

Anecdotal responses from prime contractors regarding access to capital showed that prime participants did not have an overwhelming concern about access to capital. However, subcontractor participants did express concerns with access to capital since they rely on the primes to pay them in a timely fashion. Participants agreed that, if subcontractors do not have a line of credit, it is difficult to keep their company in business.

In summarizing the findings of the anecdotal analysis, between the focus groups, survey of vendors, public hearing testimonies, and personal interviews, MGT and its sub consultants received data from 464¹⁸ business owners or representatives that have done business with, or attempted to do business with, ADOT&PF. The findings showed that among the M/W/DBEs who responded to questions about barriers to doing business, the biggest concern for both prime and subcontractors was competing with large firms. With respect to disparate treatment, the most frequently cited instances involved infrequently, or never being solicited when there were no DBE goals. However,

¹⁷ DOT&PFs Contract Specification 120-3.03(3) *Termination of a DBE* stipulates that a contractor shall not terminate a DBE without good cause and the prior written consent of DOT&PF.

¹⁸ By comparison, the Ninth Circuit Court of Appeals accepted anecdotal information from 57 interviewees in *Coral Construction*.

while a large percentage of M/W/DBE survey respondents said that they would not be utilized in the absence of DBE goals, the statistical data from the Disparity Study's non-goal analysis indicated that there generally was utilization of M/W/DBE subcontractors in construction and on PSAs in the absence of goals.

Summary of Evidence Considered for Step 2 Adjustments

ADOT&PF examined all available evidence to determine what, if any, step 2 adjustments were necessary to arrive at an overall goal that accurately reflects the availability of all DBEs ready, willing, and able to participate on FHWA-assisted contracts let by the Department. As previously mentioned, ADOT&PF continues to experience difficulty in encouraging noncertified firms to apply for certification. In addition, ADOT&PF determined that there is not sufficient evidence of past discrimination in the construction industry as evidenced through the multivariate regression analysis of self-employment rates, the disparity analysis, and the anecdotal analysis to suggest that a downward revision of the base figure to account for the current capacity of DBEs would perpetuate the effects of past discrimination. Therefore, ADOT&PF performed an adjustment to the step one base figure to account for the current capacity of DBEs to perform work. **This process yielded a step 2 goal of 8.46%.**

Race-Neutral/Race-Conscious Projection

Based on the information collected and data reviewed, ADOT&PF has established an overall goal of 8.46% DBE participation for FFY2015-FFY2017. ADOT&PF based its race-neutral/race-conscious projection for how it will achieve the overall goal on the following evidence:

2014 ADOT&PF Disparity Study

- Disparity Analysis¹⁹: For FHWA-assisted contracts let by the Department, during the study period, and within the relevant market area:
 - Analysis of the State of Alaska: Overall, M/W/DBE construction subcontractors were utilized in excess of the level of utilization that would be expected, absent the effects of discrimination. This was also true for most groups when viewed individually, with the exceptions of Alaska Native Corporations, Alaska Tribal Corporations, and Asian Indian/Pacific Islanders, which showed substantial disparities. DOT&PF performed an analysis of certified DBEs and found that there is 3 Asian Indian/Pacific Islander-owned firms, 4 Alaska Tribal Corporation-owned firms, and 20 Alaska Native Corporation-owned firms certified in construction services work categories.
 - Regional Analysis: When utilization and availability were analyzed with respect to each Alaska Region individually²⁰, the results differed from the overall analysis of the relevant market area²¹. Some key findings from this analysis revealed that while there were disparities identified in the utilization rates of certain groups, no individual group showed disparity across all three regions. When viewed by region, there was overutilization of M/W/DBE firms as a whole in all individual regions.
- Non-Goal Analysis²²: Given that ADOT&PF operated both race-conscious and race-neutral DBE programs at different times during the study period, MGT was able to perform a non-goal analysis to examine M/W/DBE utilization on ADOT&PF construction projects with DBE goals and without DBE goals. The analysis revealed that across all federally-assisted contracts, M/W/DBE subcontractors received 40.5% of the dollars awarded on projects with DBE goals, compared to 24.4% of the dollars awarded on projects with no DBE goals, constituting \$15.7 million and \$80.8 million respectively²³. When analyzed for only FHWA-assisted contracts, the analysis revealed that when DBE goals were assigned, 75.3% of the subcontract dollars awarded (\$5.4 million) went to

¹⁹ 2014 DOT&PF Disparity Study Ch.V.

²⁰ DOT&PF separates its operations according to three geographical regions – Northern Region, Central Region, and Southeast Region, all of which are within the relevant market area.

²¹ 2014 DOT&PF Disparity Study, Appendix A, Exhibit A-42.

²² 2014 DOT&PF Disparity Study Ch. IV-26

²³ For the majority of the study period, DOT&PF operated under an entirely race-neutral program.

M/W/DBEs, while 26.00% of the subcontract dollars awarded (\$66.2 million) went to DBEs when no goals were assigned²⁴.

- Anecdotal Evidence of Discrimination²⁵: MGT performed an anecdotal data analysis which provided insight into disparate treatment, real and perceived, in the relevant market area. The anecdotal data analysis found that:
 - Access to Capital: Survey respondents were asked if they had applied for a commercial loan during the study period and whether they were approved or denied. Of the 162 respondents that applied for a commercial loan, 36% were M/W/DBEs. Less than 11% of M/W/DBE applicants (6 firms) were denied loans; four of these six firms denied loans were Alaska Native-owned.
 - Discrimination and Disparate Treatment: The following chart, which was previously cited, was also considered in making the race-conscious/neutral projection:

Exhibit 7²⁶

Discrimination Survey Results

| Respondent Category | By ADOT&PF | By Prime Contractors | Private Sector |
|------------------------------------|-----------------------|-----------------------------|-----------------------|
| M/W/DBE (Prime) | 3.30% | | |
| Non-M/W/DBE (Prime) | 0.90% | | |
| M/W/DBE (Subcontractor) | | 6.60% | |
| Non-M/W/DBE (Subcontractor) | | 4.40% | |
| M/W/DBE Firms | | | 9.30% |
| Non-M/W/DBE Firms | | | 7.00% |

Regarding disparate treatment, respondents reported the following:

- Seldom or never being solicited when there were no DBE goals - 40.4% (61 firms).
- An informal network precluded their firms from obtaining work in the private sector – 17.2% (26 firms).
- Being dropped from a project after being included to satisfy good faith efforts requirements²⁷ – 9.9% (15 firms).
- Discrimination from ADOT&PF and its prime contractors – 2.6% (4 firms)

²⁴ By comparison, M/W/DBE availability was found to be 18.95%.

²⁵ 2014 DOT&PF Disparity Study Ch. VI

²⁶ 2014 DOT&PF Disparity Study Ch. VI-12, Ex. 6H

²⁷ DOT&PFs Contract Specification 120-3.03(3) *Termination of a DBE* stipulates that a contractor shall not terminate a DBE without good cause and the prior written consent of DOT&PF.

- Relevant Case Law: The Disparity Study provided an analysis²⁸ of the state of the law applicable to affirmative action programs of contracting agencies, as the law has been interpreted and evolved in federal courts. ADOT&PF took the findings from this legal analysis into consideration while examining evidence to project the portion of the overall goal that will be met through race-neutral/race-conscious means. The conclusions drawn from the legal analysis performed by MGT showed that in implementing a race or gender-conscious contracting program, a governmental entity must demonstrate identified, systemic discrimination on the basis of race²⁹, and to satisfy strict scrutiny, agencies must provide a compelling interest for a race or gender-conscious program. “The compelling interest begins with showing disparities, if any, between the availability and utilization of firms by demographic category. However, the disparity analysis must be supplemented by factoring in issues such as type of work, as well as firm capacity and interest in pursuing agency contracts. How subcontractors are treated in the absence of goals is also an important part of the factual predicate for a race and gender-conscious program. This quantitative analysis must then be supplemented with qualitative evidence from interviews, surveys, and other methods of anecdotal data collection. If a factual predicate is found for race and gender-conscious efforts the program still must be narrowly tailored. Critical elements of narrow tailoring include taking race neutral measures seriously, setting goals near business availability, having mechanisms for flexible program implementation, and avoiding the random inclusion of groups into the program”³⁰.

Median Race-Neutral Participation

ADOT&PF took into consideration certified DBE participation for the five most recent fiscal years, for which the percentage participation is shown below:

Exhibit 8
ADOT&PF Race-Conscious and Race-Neutral
Participation – FFY2009-FFY2013

| Year | Participation - Race Neutral | Participation - Race Conscious |
|---------------|------------------------------|--------------------------------|
| 2013 | 5.73 | 3.4 |
| 2012 | 2.14 | 2.46 |
| 2011 | 5.38 | 1.1 |
| 2010 | 4.02 | 0 |
| 2009 | 4.55 | 0 |
| MEDIAN | 4.55 | 1.1 |

²⁸ 2014 DOT&PF Disparity Study, Ch. II.

²⁹ *Croson*, 488 U.S. at 469.

³⁰ 2014 DOT&PF Disparity Study, Ch. II-13.

Public Participation

ADOT&PF conducted public outreach in accordance with 49 CFR Part 26.45(g). Please see page 28 of the goal methodology for details.

Summary of Considerations

The preceding evidence was collectively reviewed by ADOT&PF to arrive at a race-neutral/race-conscious projection for how the overall DBE goal will be met. In reviewing the evidence, ADOT&PF found that:

- The results of the disparity analysis revealed significant disparities among Alaska Native Corporations, Alaska Tribal Corporations, and Asian Indian/Pacific Islander-owned construction subcontractors on FHWA-assisted contracts. However, additional evidence of discrimination must supplement these statistical disparities to satisfy strict scrutiny.
- The non-goal analysis performed by MGT revealed that overall, M/W/DBE construction subcontractors were consistently used in excess of their availability, regardless of whether or not DBE goals were assigned. However, there was a disparity between the utilization rates on projects when DBE goals were assigned, versus when no DBE goals were assigned. A relevant question that has arisen in the case law is whether evidence of a decline in M/WBE utilization following a change in, or termination of, an M/WBE program is relevant and persuasive evidence of discrimination. In *WSDOT v. Western States Paving*, the Ninth Circuit stated that “even in States in which there has never been discrimination, the proportion of work that DBEs receive on contracts that lack affirmative action requirements will be lower than the share that they obtain on contracts that include such measures because minority preferences afford DBEs a competitive advantage”³¹. Thus ADOT&PF concluded that although there were lower rates of utilization on projects without DBE goals, the fact that utilization on those projects exceeded the rate of availability of M/W/DBEs discredits the argument that discrimination was the cause for the reduced utilization.
- ADOT&PF reviewed anecdotal information from the Disparity Study and found that there was evidence of discrimination based on survey respondent reports of seldom or never being solicited when there were no DBE goals on the project. However, the statistical evidence did not provide much support for this assertion since for most of the M/W/DBE groups, except Alaska Natives, there was not much difference in construction subcontractor utilization between projects with and without DBE goals³².
- Examination of past race-neutral participation found that the median race-neutral participation achieved over the past five fiscal years was 4.55%. However, the non-goal analysis revealed that M/W/DBEs were utilized in excess of their availability on projects with goals, and projects without goals. Considering this evidence, ADOT&PF expects that in the absence of race-

³¹ *Western States Paving*, 407 F. 3d at 1000.

³² 2014 DOT&PF Disparity Study Ch. IV-27, Ex. 4W.

conscious goals, DBEs will continue to be utilized and participation that would otherwise be counted as race-conscious would be counted as race-neutral.

The Transportation Research Board's (TRB) National Cooperative Highway Research Program (NCHRP) Synthesis 416 "Implementing Race-Neutral Measures in State Disadvantaged Business Enterprise Programs" (the TRB study) surveyed applicable state DOTs on whether eliminating race-conscious measures affected their state's ability to meet its DBE goal, and whether they had seen an increase or a decrease in DBE participation after race-conscious measures were removed. Six out of seven state DOT respondents indicated that eliminating the race-conscious element of their DBE program did not affect their ability to meet their DBE goal. In light of this, and in regard to the median race-neutral DBE participation on ADOT&PF-let contracts, ADOT&PF determined that this figure does not provide an accurate estimate of the level of race-neutral participation that could be expected under a race-neutral program, and that an upward adjustment would be necessary to accurately reflect the level of race-neutral participation that could be expected, absent the effects of discrimination.

In consideration of the available evidence - including the level of non-goal M/W/DBE subcontractor participation, the Disparity Study legal analysis, and the statistical analyses; ADOT&PF found that the available evidence did not provide a strong factual predicate for setting a race-conscious component of the annual DBE goal.

During FFY2014 ADOT&PF achieved 9.6% DBE participation on its FHWA-assisted contracts, continuing a trend of year-over-year DBE participation increases. ADOT&PF will work to continue this trend into the future by strengthening its race-neutral program. Through refocusing resources on race-neutral measures, innovating new strategies, and cooperation with government and industry partners, **ADOT&PF expects to meet 8.46% DBE participation through race-neutral means, and 0.00% through race-conscious means.**

The TRB study provides analysis and recommendations for states transitioning to 100% race-neutral programs. The TRB study surveyed applicable state DOTs to determine what advice they would give to states that are transitioning to a 100% race-neutral program as the result of a decision similar to that which was handed down in the Ninth Circuit. This resulted in four recommendations:

1. Involve industry representatives as coaches or instructors.
2. Ensure that reliable systems are in place for collecting contract and payment data, and prepare and organize the necessary data in advance of a disparity study.
3. Ensure that the supportive services program uses a variety of strategies to help DBEs grow their businesses in a race-neutral environment.
4. Facilitate upper management support of the DBE program.

ADOT&PF recognizes that moving to a 100% race-neutral program constitutes a major shift in policy, and in line with the recommendations of the TRB study, has prepared changes to its race-neutral program in order to facilitate a smooth transition. Additionally, in accordance with the requirements of

49 CFR Part 26.45, ADOT&PF provided for consultation and publication with the public regarding the proposed goal.

As more DBE participation data for FHWA-assisted contracts let by the Department becomes available, future modifications to the race-conscious/race-neutral split of the overall goal may be necessary. ADOT&PF will work closely with FHWA to monitor the race-neutral program transition.

The following describes ADOT&PFs race-neutral efforts and is broken out into two sections. The first section describes new initiatives to encourage DBE participation, some of which are made possible by redirecting resources currently used to implement ADOT&PFs race-conscious program. The second section illustrates the race-neutral efforts of ADOT&PFs current program, which the Department will continue to implement moving forward.

New Initiatives

In transitioning to a race-neutral program, ADOT&PF CRO with assistance from DBE program stakeholders has taken steps to strengthen its race-neutral efforts in order to continue facilitating DBE participation absent the use of race-conscious project goals.

ADOT&PF conducted research and performed outreach with stakeholders in order to identify effective and feasible changes that would strengthen its race-neutral program. Relying on findings from the TRB Study, as well as discussions with stakeholders including the Associated General Contractors of Alaska (AGC), ADOT&PF will implement the following measures:

- 1) **Facilitating DBE Participation through Pre-Bid Notification of Subcontracting Opportunities:**
According to the TRB study, reaching out to DBEs to inform them of subcontracting opportunities was found to be an effective strategy by 62% of state DOTs, and was identified as very or extremely effective by 38% of respondents. ADOT&PF expects that this will be a particularly effective measure in transitioning to a race-neutral program for several reasons. Working with prime contractors to identify which bid items they intend to subcontract will allow the CRO to perform outreach to interested and qualified DBEs and encourage participation, as well as keep DBEs informed of subcontracting opportunities. Also, an added emphasis on facilitating DBE participation would allow the CRO to become more involved in DBE outreach for individual contracts than it currently is during the good faith effort process, whereby the CRO evaluates the outreach efforts made by prime contractors.
Discussions with stakeholders regarding pre-bid notification of subcontracting opportunities were met with enthusiasm, and ADOT&PF expects to add this measure as a part of its DBE Program Plan Update.
- 2) **Aspirational Subcontractor Project Goals:** In reviewing ADOT&PFs DBE Program, MGT recommended the occasional use of aspirational subcontractor project goals for selected groups in regions where there is very low DBE subcontractor utilization. Building on this recommendation, ADOT&PF CRO intends to set aspirational project goals in the same manner that it currently sets race-conscious project goals, which will benefit the DBE program in several ways. Setting aspirational project goals

will allow ADOT&PF to gauge the actual level of DBE participation on its FHWA-assisted contracts versus the amount that would be expected based on current CRO goal setting processes. Additionally, setting aspirational project goals will allow the CRO to maintain its current infrastructure in the event that conditions warrant implementing a race-conscious element of the overall DBE goal.

- 3) Increased Reporting: ADOT&PF recognizes the need for increased monitoring of DBE utilization and program implementation due to the magnitude of change associated with transitioning to a race-neutral program. Therefore it is the intention of the Department to increase its focus on program monitoring and reporting. As part of the race-neutral program plan, ADOT&PF will include quarterly reporting to FHWA of progress against the DBE goal. Additionally, ADOT&PF CRO will begin presenting quarterly updates for AGCs DOT Steering Committee, which is composed of representatives from ADOT&PFs prime contractors from across the State. The intent of these meetings is to keep the contracting community informed regarding year-to-date DBE utilization, and to advocate for the DBE program. Implementing the previous measures will not only help foster open communication with the contracting community, but will also play an important role in how ADOT&PF intends to brand and market its DBE program to stakeholders.

- 4) Mentor/Protégé Program: 49 CFR Part 26.35 allows for the implementation of mentor/protégé arrangements as part of a state's DBE program. Mentor/protégé programs pair a DBE firm with an established DBE or non-DBE firm, and the established firm provides business development assistance to the protégé DBE firm. According to the TRB study, 60% of states that had implemented such a program found it to be effective, with 30% finding it very or extremely effective. Because of the success other states have had with implementing these programs, and expressions of interest from industry partners within the State of Alaska, the ADOT&PF CRO recently commissioned a study to:
 - Perform research on other mentor/protégé program efforts and identify keys to the success of other programs, and challenges.
 - Develop an appropriate DBE assessment tool which to apply appropriate metrics to measure business capacity and a DBE firm's propensity for success in the program.

ADOT&PF will implement its mentor-protégé program based on the recommendations of the study. Currently, the CRO is in communication with industry partners and potential mentor-protégé program participants to define the details of the program. The Department expects that these additional efforts to build the capacity of currently certified DBEs will likely increase the rate of DBE participation, and prove to be beneficial to the DBE program. ADOT&PF will continue to keep FHWA updated as the program evolves.

- 5) Outreach to M/WBEs: According to the TRB study, one of the measures found to be most effective by states operating in 100% race-neutral programs was outreach to firms identified during an availability or disparity study. Many of the minority and women-owned firms identified as ready, willing, and able to perform work on FHWA-assisted contracts in the 2014 ADOT&PF Disparity Study

are not currently certified DBEs. Therefore, ADOT&PF will perform outreach to encourage non-certified M/WBEs identified in the Disparity Study to become certified.

Additionally, ADOT&PF has established partnerships with the Minority Business Development Agency (MBDA) as well as the Procurement Technical Assistance Center (PTAC) of Alaska in order to support the Department's certifications outreach efforts. These partners will assist interested firms with the certifications process, which can be time-consuming and confusing for companies seeking certification.

While the ADOT&PF CRO has experienced difficulty encouraging non-certified firms to become certified in the past, the CRO expects that through outreach and highlighting the benefits of certification, a renewed focus on certifying M/WBEs will add to the population of certified DBEs, and ultimately help to increase DBE participation on FHWA-assisted contracts.

- 6) Coordination with Industry: An integral part of ADOT&PF's race-neutral program is coordination with industry partners. ADOT&PF will continue to leverage its relationships with industry partners in order to facilitate DBE participation on FHWA-assisted contracts. Currently, the CRO is working with AGC of Alaska to allow DBEs access to tools available to AGC members such as AGC Online Plans. This is a tool recently developed by AGC where all construction projects, procurements, and RFPs in Alaska are listed and accessed. Expanding the scope of the tool to include a function for prime contractors to advertise requests for subcontractor bids on projects is also being explored. Additionally, AGC has signaled a willingness to provide DBEs interested in using these tools with tutorials and assistance to realize the full benefits of them.
- 7) Recording Outreach Efforts: ADOT&PF CRO will continue to strongly encourage prime contractors to utilize DBEs wherever feasible, and also encourage reporting of outreach efforts performed to obtain DBE participation on FHWA-assisted contracts. As the details of this type of project-specific reporting come available, ADOT&PF will provide FHWA with updates.
- 8) Tailored Training: The ADOT&PF CRO is exploring how it can better tailor its current training offerings to individual firms. One of the ways that this may be accomplished is by surveying prime contractors on FHWA-assisted contracts to obtain "performance reports" of DBEs that were subcontracted to perform work on those projects. The intention is similar to that of the mentor/protégé program, in that a more experienced contractor would provide the CRO insight into what types of training individual firms would most benefit from. This type of data collection will allow the CRO to present training offerings in a smarter, and more targeted way that will ultimately benefit DBEs by avoiding a one-size fits-all approach.
- 9) Upgrading Information Systems: ADOT&PF will be transitioning to a new system that will help to integrate the functions of the different sections within the Department, including the CRO. This will increase the effectiveness of the ADOT&PF DBE Program by easing workloads, and allowing the CRO to focus more of its resources on facilitating DBE participation. ADOT&PF will provide FHWA with updates as progress is made.

Continued Efforts

ADOT&PF has a broad range of race-neutral measures already in place to encourage the participation of all small businesses on its FHWA-assisted contracts. Many of the race-neutral measures implemented by ADOT&PF are measures commonly implemented among other state DOTs, while other measures ADOT&PF implements are innovative and unique to Alaska. ADOT&PF policies and procedures seek to facilitate small business participation and nondiscrimination in its FHWA-assisted contracts let by the Department. It is ADOT&PFs policy to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. In addition, Alaska statues address issues of prompt payment between both the Department and prime contractors, as well as between prime contractors and subcontractors for contracts let by the Department³³. The ADOT&PF DBE program is administered through the CRO, as are the majority of race-neutral efforts. The race-neutral efforts currently implemented can be generalized into four primary categories:

- Supportive Services and Training
- Administrative Support
- Marketing and Outreach
- Financial Assistance

Supportive Services and Training: According to the TRB study on race-neutral measures, supportive services and training measures ranked among the highest in terms of effectiveness, and were also the most widely used of the four categories among state DOTs. Through the CRO Office of Support Services, ADOT&PF seeks to improve business and economic opportunities for small businesses through the implementation of the following supportive services and training efforts:

1) Providing DBEs with One-on-One Business Reviews

The Map to Success Specialized Assistance Program offers one-on-one consultation with business advisors who conduct in-depth analyses of firms' business operations. The consultations are intended to identify areas for improvement, and upon completion of the initial assessment, provide firms with a business profile that includes recommendations for strengthening their business infrastructure. The goal of the program is to provide business owners with the tools necessary to bring their businesses to a performance level that would result in an increased percentage of work on FHWA-assisted contracts. A total of 91% of TRB study respondents in a survey of state DOTs had utilized this race-neutral strategy, and of the 91% of respondents, 91% rated it effective, with 60% rating it very or extremely effective, making it the most effective implementation of supportive services and training as reported by state DOTs.

³³ The Alaska prompt payment statute allows for interest on amounts not paid, and requires a shorter time-frame for payment to be made than provided for by federal regulations. Federal regulations provide for prompt payment of retainage within 30 days of satisfactory completion by the subcontractor. Under Alaska statute, the prime contractor is to pay the subcontractor for satisfactory performance under the subcontract within eight working days after receiving payment from which the subcontractor is to be paid

2) Providing Firms with Training Classes and Technical Education

Workshops and training are frequently offered by the CRO Office of Support Services free of charge to certified DBE firms. These trainings cover a diverse range of topics, not limited to:

- Construction Law
- Bonding
- Marketing and Advertising
- Human Resource Management
- Joint Ventures
- ADOT&PF Procurement
- Government Contracting
- Contract Law

Providing firms with training classes and technical education is a method frequently used by state DOTs to encourage DBE participation. 98% of State DOT respondents in the TRB study reported using this strategy, 83% of those that had used it found it to be effective, and of those, 39% found it to be a very or extremely effective method. Respondents also described several examples of effective implementations of this strategy - tailoring training to meet the needs of different DBE subgroups, and involving members of industry in training programs as coaches or instructors, which coincides with ADOT&PF's race-neutral program updates that were previously mentioned.

Administrative Support: Administrative support strategies include measures taken to facilitate DBE participation through adjustments in policy or by establishing initiatives. ADOT&PF has taken steps to provide administrative support to DBEs wherever it is feasible to do so. Examples have included:

1) The Plan Holders Self Registration List (PHSRL) In February of 2013, the CRO initiated the development of the DBE Stakeholders Committee, composed of DBEs, Prime Contractors, and the AGC. The objectives of the Committee were to:

- Create an online portal to connect primes & DBEs
- Increase DBE participation
- Foster open communication
- Improve procurement opportunities for DBEs
- Improve the GFE process

The result of this initiative was the PHSRL, an online portal which allows DBEs, SBEs, and non-DBE subcontractors to self-register as interested subcontractors on projects. The PHSRL gives prime contractors access to all subcontractors who are interested in participating on a project, and benefits DBEs by:

- Allowing firms to express interest in individual projects

- Giving DBEs access to Online Public Notices, whereby firms receive automatic email notifications that will notify them of upcoming projects (this type of outreach was found to be effective by 74% of respondents in the TRB study).
- Allowing DBEs to sign up for non-federally funded projects, thereby increasing their business opportunities to participate in State funded projects.

Since the PHSRL was implemented, the CRO has performed outreach to raise awareness of the PHSRL, and provides assistance wherever possible to ensure that firms that are interested in bidding are able to access the platform. ADOT&PF will continue providing FHWA with periodic updates regarding the PHSRL.

Marketing and Outreach: Marketing and outreach refers to efforts taken to market and publicize the DBE program, as well as outreach efforts to connect with DBEs and potential DBEs. The CRO performs many types of outreach in the form of creating and maintaining a DBE Directory, hosting statewide outreach initiatives, publishing newsletters, and maintaining the CRO website.

1) *The Transporter*

The CRO Office of Support Services publishes a quarterly newsletter, *The Transporter*, to communicate DBE program news, upcoming events, and any other important news concerning DBE firms. The newsletter is made available on the CRO website³⁴, and is also emailed to prime contractors, industry stakeholders, and all DBE firms. According to the TRB study, this particular outreach strategy is one that is often used by state DOTs, and of the states that use it, 62% found it to be effective.

2) Quality Assurance Reviews

ADOT&PF CRO implemented a new race-neutral measure during the 2014 construction season – quality assurance reviews (QARs). The objective of this outreach strategy is to evaluate DBEs’ experience on ADOT&PF construction projects from the DBE perspective, as well as from the perspectives of the prime contractor, and ADOT&PF project personnel. The CRO accomplishes this by conducting on-site surveys on active FHWA-assisted construction projects. Implementing QARs will be a valuable tool for ensuring that DBEs are treated fairly on FHWA-assisted contracts going forward, and allowing for feedback from DBE program stakeholders.

3) Facilitating Meetings and Networking between DBEs and Prime Contractors

96% of state DOT respondents from the TRB study had utilized this strategy in their DBE programs. Of those that had used it, 69% found it to be effective, with 47% rating it very or extremely effective. ADOT&PF has experienced success with this strategy in the past, and maintains a strong emphasis on facilitating DBE participation by connecting DBEs and prime contractors.

³⁴ <http://dot.alaska.gov/cvlrts/events.shtml>

Throughout the year, the CRO Office of Support Services hosts networking opportunities for DBEs to connect them with government procurement offices, prime contractors, other DBEs, and private industry through:

- The Future Connections Program - an outreach strategy coordinated with industry partners to introduce DBEs to prime contractors and government agencies.
- The Annual DBE and Small Business Subcontractor Conference - serves as an opportunity for DBEs to network, receive the latest information about the DBE program, receive quality training, and learn about business resources. This event is offered free of charge to certified DBEs.

Financial Assistance Strategies: Several loan programs are available to small businesses in the State of Alaska, including:

1) The DBE Reimbursement Program

The DBE Reimbursement Program is offered through the CRO Office of Support Services. Through this program, DBE firms may receive assistance to cover the costs of training or consultation and/or association fees/dues that enhance the management skills or expertise of the DBE. A 50% reimbursement program is available to individuals of qualifying DBE firms. Under this program firms may be reimbursed for 50% tuition or other costs (up to \$1,000.00 per calendar year) for business or technical training, workshops, consulting services, and professional association fees/dues. Small Business Development Center core classes are reimbursed at 90% through the program.

2) Short Term Lending Program (STLP)

The STLP is a program facilitated by USDOT which provides access to working capital through revolving lines of credit guaranteed by the STLP. These lines of credit can be used for transportation-related contracts with the accounts receivables for these contracts constituting the collateral. The lines of credit can be granted as high as \$750,000.00 for as long as five years.

3) Micro Loan Fund

The Alaska Division of Economic Development has provided a Micro Loan Fund for secured loans up to \$35,000.00 for one individual over six years. These loans can be used for working capital, equipment, construction, or other commercial purposes for Alaska Businesses.

4) 504 Loan Program and 7(a) Loan Guarantee Program

Small businesses can also take advantage of the U.S. Small Business Administration 504 Loan Program and 7(a) Loan Guarantee Program.

5) Kenai Peninsula Economic Development District

The Kenai Peninsula Economic Development District also has provided a revolving loan fund for loans between \$5,000.00 and \$50,000.00, as well as a micro loan fund for loans between \$1,000.00 and \$25,000.00.

Public Participation

In accordance with the requirements of 49 CFR Part 26.45, ADOT&PF provided for consultation and publication of the proposed overall goal and race-conscious/race-neutral split. This was done to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the DBE program. ADOT&PF utilized a two-step approach to obtain public comment. The Department first worked to raise awareness among interested stakeholders, and second, established a formalized process for interested stakeholders to submit comments. The overall process began on February 3, 2015 with the publication of the proposed goal and methodology on the CRO website.

To facilitate public participation in the goal-setting process, ADOT&PF developed an outreach plan to gather input from as many interested stakeholders as possible. The plan consisted of targeted outreach to minority and women's business organizations, public notices, and communication with DBE and non-DBE contractors. On February 9, 2015 email notification³⁵ of the overall goal and public comment period was sent to DBE and non-DBE contractors, as well as the following organizations:

- Procurement Technical Assistance Center
- Small Business Administration Alaska Region
- Minority Business Development Agency
- Procurement Technical Assistance Center – Alaska Native & Native American Programs
- Small Business Development Center
- National Association for the Advancement of Colored People (NAACP)
- Associated General Contractors of Alaska (AGC)

ADOT&PF followed up with additional outreach efforts to the general public through the following means:

- Advertisements were placed in the *Fairbanks News Miner* and *Anchorage Daily News* on February 8, 2015³⁶
- On February 3, 2015 the CRO posted details of the overall goal methodology and public comment period on the State of Alaska Online Public Notices web portal³⁷
- Three public notices were posted on Craigslist Community Events on February 9, 2015 for each Alaskan Region³⁸

Instructions for submitting comments and feedback were included with all outreach efforts. The purpose of setting a formal process for submitting comments is to maintain organization in the public participation phase of the goal setting process and to aid in tracking feedback. A Comment Form was

³⁵ Attachment 2.

³⁶ Attachment 3.

³⁷ Attachment 4.

³⁸ Attachment 5.

issued with notifications to stakeholders³⁹ along with details regarding live public meetings hosted to explain the goal methodology as well as take comments and answer questions. Live public meetings were held twice during the public comment period – February 12th and 18th. The meetings were presented in Anchorage, and participants in Juneau and Fairbanks were invited to attend on-site videoconference sessions on February 12th and 18th respectively⁴⁰. As an alternative for participants unable to attend any one of the on-site presentations, a teleconference line was set up to accommodate them.

The majority of comments received were obtained during the live sessions or via phone call. To capture comments from the live sessions, minutes were kept and the sessions were recorded for review and response by the Department. ADOT&PF received feedback from DBE and non-DBE firms, and the comments and responses are summarized below:

DBE Firms

- 1) Several DBEs had questions surrounding the Disparity Study's Non-Goal Analysis. Specifically, representatives from these firms requested clarification as to how the results of the Non-Goal Analysis were interpreted, and how this information led to the proposed race-conscious/race-neutral split.
 - *ADOT&PF Response: The non-goal analysis performed by MGT revealed that M/W/DBE construction subcontractors were consistently used in excess of their availability, regardless of whether or not DBE goals were assigned. There was, in fact, a disparity between the M/W/DBE utilization rates on projects when DBE goals were assigned, versus when no DBE goals were assigned. This disparity is to be expected because on projects awarded with race-conscious goals, DBEs are afforded a competitive advantage. The Department interprets the fact that M/W/DBE utilization on projects awarded without race-conscious goals still exceeds the level of participation that would be expected absent the effects of discrimination to mean that discrimination is not the reason for the disparity in M/W/DBE utilization rates on projects awarded with and without race-conscious goals.*
- 2) One DBE firm posed a question asking what effect an entirely race-neutral goal would have on the current good faith efforts process.
 - *ADOT&PF Response: The good faith effort process would not exist as it does under the current program. The competitive advantage that DBEs are afforded on race-conscious projects (where prime contractors are required to meet the project goal or demonstrate their good faith effort to meet the project goal) would be removed. However, ADOT&PF will continue to monitor the levels of DBE participation on its FHWA-assisted projects regardless of race-conscious measures, and through race-neutral measures will work to continue facilitating DBE participation.*

³⁹ Attachment 6.

⁴⁰ Attachment 7.

- 3) One DBE firm inquired if the PHSRL will no longer be necessary under the proposed goal.
- *ADOT&PF Response: While the current good faith efforts process (which requires the use of the PHSRL) would not be required, the PHSRL will continue to serve an important purpose in the DBE Program. As a valuable resource for identifying firms that are interested in performing work on individual projects, the ADOT&PF CRO will continue to raise awareness and encourage continued use of the PHSRL. Additionally, the PHSRL is an important piece of the DBE Program's infrastructure and will continue to be maintained.*
- 4) One DBE asked what effect the proposed goal would have on the Central Region Waiver for nonminority women-owned DBEs.
- *ADOT&PF Response: While the Central Region Waiver for nonminority women-owned DBEs is still technically in place, under an entirely race-neutral program no competitive advantage is afforded to any DBEs in the form of race-conscious project goals. Therefore, the Central Region Waiver would not have any effect in an entirely race-neutral program.*
- 5) The Department received one comment from a nonminority woman-owned sole proprietor that is also a certified DBE. The commenter detailed the difficulties and successes they had experienced as a subcontractor on ADOT&PF-let contracts, and stated their support for the proposed goal and additions to the race-neutral program. Specifically, the commenter has expressed a strong interest in the mentor-protégé program as a tool to improve their business practices. Additionally, the commenter stated that they believed that the removal of race-conscious goals and the Central Region Waiver for nonminority women and would improve the bidding process.
- *ADOT&PF Response: There are environments that warrant the use of race-conscious measures in the bidding process, though based on the evidence available; it is the Department's view that race-conscious measures are not currently needed to ensure a level playing field for DBE firms. In the absence of race-conscious goals, the Department will continue to collaborate with DBEs and others to identify ways to facilitate DBE participation on its contracts.*
- 6) A DBE subcontractor asked why the base figure was calculated by refining the M/W/DBE availability data to exclude firms that had previously been, or would imminently be decertified. As an alternative, this contractor suggested using the average of M/W/DBE availability and averaging that figure with the availability of certified DBEs.
- *ADOT&PF Response: The method that you are describing was explored by the Department. However, in working with our partners at FHWA it was determined that averaging the two figures mentioned could result in arbitrarily including/excluding firms that could potentially become certified. The method chosen avoids this arbitrary*

inclusion/exclusion of firms and seeks to provide the most accurate estimation of DBE availability based on information available.

- 7) A DBE subcontractor asked when the Department expected the transition to the new goal to be complete, and what would happen if the proposed overall goal is not approved.
- *ADOT&PF Response: We intend to formally submit the proposed goal to FHWA in mid-March, though at the time being it is unclear how long after that we would expect to receive a response. Regarding the second part of the question, if FHWA does not concur with the Department's proposed goal, the next step would likely be to add a race-conscious component to the overall goal. However, any race-conscious component would be very limited in scope and involve multiple waivers to account for the findings of the disparity study.*
- 8) A DBE contractor voiced their concern that with many M/W/DBEs who are non-certified and could become certified, that the removal of race-conscious goals would be a step backwards and not addressing the potential to raise the status of socially and economically disadvantaged populations.
- *ADOT&PF Response: The Department realizes that transitioning to an entirely race-neutral DBE program can reduce one of the incentives for new DBEs to become certified. This fact is mitigated by the augmented race-neutral program measures that will be implemented. Through refocused outreach efforts and offering new benefits to firms, the Department fully expects to be successful in its efforts to recruit new DBEs.*
- 9) A DBE contractor provided suggestions for additional outreach efforts the Department could consider engaging in. The outreach efforts suggested included public service announcements on television, radio, and media other than the State of Alaska website. Regional conventions such as the Alaska Federation of Natives could serve as another opportunity to perform public outreach.
- *ADOT&PF Response: Some of the outreach efforts made by the Department included newspaper advertising, in addition to social media, and Alaska Public Notices. The Department appreciates the suggestions provided, and will work to incorporate those methods in its approach to obtaining public participation in the future.*
- 10) One individual provided several suggestions for how they would like to see the DBE program improved at the federal level, as well as a suggestion for improving the State's DBE Program. This commenter suggested that the Department should facilitate pre-bid meetings between prime contractors and DBEs to set accurate contract goals near DBE availability.
- *ADOT&PF Response: The Department appreciates suggestions for ways to improve its processes. As part of the proposed race-neutral program, additional resources will be directed to connecting prime contractors with DBEs to facilitate participation. As details become available, the Department will work to keep DBEs and non-DBEs informed.*

Non-DBE Firms

- 1) A non-DBE contractor stated that while they would enjoy a race-neutral environment, if DBE utilization rates go down, will a race-conscious component be re-implemented?
 - *DO&PF Response: If the Department finds that it is unable to meet the overall goal exclusively through race-neutral means, a race-conscious component of the overall goal would likely need to be implemented.*

- 2) A non-DBE prime contractor expressed concern at the finding that 40.4% of indications of discriminatory behavior surrounded “seldom or never being solicited when there were no DBE goals”. They stated that as a prime contractor their firm doesn’t solicit bids from any subcontractors, but rather it is normal practice for subcontractors to contact them. The contractor emphasized that DBEs are actually receiving preferential treatment when they are solicited. Further, the commenter stated that it would be beneficial for DBEs to function in the bid process in the same manner as non-DBE firms by proactively contacting the prime contractor.
 - *ADOT&PF Response: An important note about the Study’s Discrimination Survey is that it seeks to identify discriminatory practices, real or perceived. That some entities hold that practices by others constitute discriminatory behavior, while others perceive those same practices to be nondiscriminatory suggests that there may be some confusion between firms regarding the business practices of their peers. In transitioning to a race-neutral program, the Department will seek to work with DBE and non-DBE contractors to identify and remedy any misunderstandings in the bidding process. Specifically, the mentor-protégé program will offer a unique opportunity for this type of knowledge sharing between younger and more established firms. Ultimately, these efforts will serve as a means to facilitate DBE participation on FHWA-assisted contracts let by ADOT&PF.*