

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2018 THROUGH 2020

The Illinois Department of Transportation (IDOT) submitted its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2015 through 2017 to the Federal Highway Administration (FHWA) on August 1, 2015. FHWA subsequently approved IDOT's goal of 22.77 percent. In accordance with 49 Code of Federal regulations (CFR) Part 26, the United States Department of Transportation's (USDOT's) "Tips for Goal-Setting," and other official USDOT guidance, IDOT based its goal and methodology on information collected from the United States Census Bureau's County Business Patterns and the Illinois Unified Certification Program directory. IDOT requested to extend the goal—a request that FHWA approved—and is currently implementing the Federal DBE Goal with the same overall DBE goal of 22.77 percent.

In 2016, IDOT commissioned BBC Research & Consulting (BBC) to conduct a disparity study related to the agency's implementation of the Federal DBE Program. BBC completed a draft of the study in December 2017 (referred to herein as the 2017 IDOT Disparity Study). Based substantially on study results, federal guidance, and relevant case law, IDOT proposes a new three-year overall DBE goal for FFYs 2018 through 2020. To determine its new overall DBE goal, IDOT closely followed federal regulations including the two-step goal-setting methodology set forth in 49 CFR Section 26.45.

Step 1. Determining a Base Figure – 49 CFR Section 26.45(c)

IDOT began the process of determining its new overall DBE goal by establishing a base figure. Consistent with USDOT guidance, IDOT established a base figure based on data from a *custom census* availability analysis that was part of the 2017 IDOT Disparity Study (for details, see Chapter 5 and Appendix E of the disparity study report). For the purposes of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—minority- and woman-owned businesses that are currently DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26.65—for FHWA-funded prime contracts and subcontracts that IDOT awarded from October 1, 2012 through September 30, 2016 (referred to herein as the study period).^{1, 2} IDOT has determined that the mix of the types and sizes of transportation contracts that it anticipates awarding in FFYs 2018 through 2020 will be similar to the mix of types and sizes of transportation contracts that it awarded during the study period.

¹ Consistent with USDOT guidance, IDOT considers any contract with at least \$1 of FHWA funding as an "FHWA-funded contract" and includes the total value of the contract in its pool of total FHWA-funded contracting dollars.

² BBC defined woman-owned businesses specifically as *non-Hispanic white woman-owned businesses*. BBC grouped minority woman-owned businesses with their corresponding minority groups (e.g., grouping Black American woman-owned businesses with all other Black American-owned businesses). For details about BBC's definition of woman-owned businesses, see Chapter 1 of the disparity study report.

Methodology for the availability analysis. The availability analysis focused on specific work areas (i.e., *subindustries*) related to the types of FHWA-funded contracts that IDOT awarded during the study period. BBC identified specific subindustries—based on 8-digit Dun & Bradstreet (D&B) industry codes—for inclusion in the availability analysis and identified the geographic areas in which IDOT awarded the vast majority of corresponding contract dollars (i.e., the relevant geographic market area). BBC based its determination of the relevant geographic market area on information about where the contractors that participated in IDOT prime contracts and subcontracts during the study period were located. The analysis indicated that, during the study period, 88 percent of IDOT’s transportation-related construction and professional services contracting dollars went to businesses with locations in Illinois, indicating that Illinois should be considered the relevant geographic market area for the study.

Overview of availability surveys. The study team developed a database of potentially available businesses through surveys with local business establishments within relevant subindustries. The study team conducted telephone surveys with business owners and managers to identify businesses that are potentially available for IDOT’s FHWA-funded prime contracts and subcontracts. BBC began the survey process by collecting information about business establishments from D&B Marketplace listings. BBC collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most related to the FHWA-funded contracts that IDOT awarded during the study period. BBC then contacted listed businesses to solicit their participation in availability telephone surveys.

Information collected in availability surveys. The study team successfully conducted telephone surveys with the owners or managers of 2,042 business establishments. Survey questions covered many topics about each organization including:

- Status as a private business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Work as a prime contractor or subcontractor;
- Interest in performing work for IDOT;
- Ability to work in specific geographic regions of Illinois;
- Largest prime contract or subcontract bid on or performed in the previous five years;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

Information about businesses that completed surveys was entered into an availability database that served as a basis for the availability analysis.

Considering businesses as potentially available. BBC considered businesses to be potentially available for IDOT’s FHWA-funded prime contracts or subcontracts if they reported possessing *all* of the following characteristics:

- a. Being a private business (as opposed to a nonprofit organization);
- b. Having performed work relevant to IDOT FHWA-funded contracting;
- c. Having bid on or performed work in Illinois in the past five years; and
- d. Being interested in work for IDOT.³

BBC also considered the following information to determine if businesses were potentially available for specific contracts that IDOT awarded during the study period:

- e. The ability to work in specific regions of Illinois;
- f. The largest contract bid on or performed in the past (to inform an assessment of *relative capacity*); and
- g. The year the business was established.

Steps to calculating availability. As part of the availability analysis, BBC collected and analyzed relevant information to develop dollar-weighted availability estimates to help IDOT set its overall DBE goal. Dollar-weighted availability estimates represent the percentage of contracting dollars that potential DBEs would be expected to receive based on their availability for specific types and sizes of IDOT’s FHWA-funded prime contracts and subcontracts. Only a subset of businesses in the availability database was considered potentially available for any particular prime contract or subcontract (referred to more generally as *contract elements*). BBC identified the specific characteristics of each prime contract and subcontract that the study team examined as part of the disparity study, and then for the purposes of helping IDOT establish a base figure, took the following steps to calculate the availability of potential DBEs for each contract element:

1. For each contract element, the study team identified businesses in the availability database that reported that they:
 - Are interested in performing transportation-related work in that particular role for that specific type of work (based on 8-digit D&B industry codes) for IDOT;
 - Are able to serve customers in the geographic location where the contract element originated;
 - Have bid on or performed work of that size; and
 - Were in business in the year that IDOT awarded the contract.
2. The study team then counted the number of potential DBEs (by race/ethnicity and gender) relative to all businesses in the availability database that met the criteria specified in Step 1.

³ That information was gathered separately for prime contract and subcontract work.

3. The study team translated the numeric availability of potential DBEs for the contract element into percentage availability.

BBC repeated those steps for each FHWA-funded contract element that the study team examined as part of the disparity study. BBC multiplied the percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of the overall availability of potential DBEs and estimates of availability by each relevant racial/ethnic and gender group. Figure 1 presents detailed information about the base figure for IDOT's overall DBE goal:

- Column (a) presents the groups of potential DBEs that BBC considered as part of the base figure analysis;
- Column (b) presents the availability percentage for each group for FHWA-funded *construction* contract elements;
- Column (c) presents the availability percentage for each group for FHWA-funded *professional services* contract elements; and
- Column (d) presents the availability percentage for each group for *all* FHWA-funded contract elements considered together (i.e., construction and professional services contracts).

As presented at the bottom of column (d), the availability analysis shows that potential DBEs could be considered available for 17.6 percent of IDOT's FHWA-funded prime contracts and subcontracts. Thus, IDOT considers **17.6 percent as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 0.97 for construction contracts and 0.03 for professional services contracts based on the volume of dollars of FHWA-funded contracts that IDOT awarded in each industry during the study period.

Figure 1.
Availability components of the base figure
(based on availability of potential DBEs for FHWA-funded transportation contracts)

a. Business group	Base figure component		
	b. Construction	c. Professional Services	d. Total
Asian Pacific American-owned	0.4 %	1.7 %	0.4 %
Black American-owned	0.6	8.9	0.9
Hispanic American-owned	2.6	1.8	2.6
Native American-owned	0.0	0.0	0.0
Subcontinent Asian American-owned	0.9	4.5	1.0
Non-Hispanic white woman-owned	<u>12.9</u>	<u>10.6</u>	<u>12.7</u>
Total potential DBEs	17.3 %	24.8 %	17.6 %
Industry weight	97 %	3 %	

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Source: 2017 IDOT Disparity Study.

Step 2. Determining if an Adjustment is Needed – 49 CFR Section 26.45(d)

After establishing the base figure, IDOT considered relevant information to determine whether any adjustment was needed to the base figure as part of determining the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, IDOT evaluated information about:

- Current capacity of DBEs to perform work on USDOT-assisted contracting as measured by the volume of work DBEs have performed in recent years;
- Information related to employment, self-employment, education, training, and unions;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance; and
- Other relevant data.⁴

Current capacity of DBEs to perform work on USDOT-assisted contracting as measured by the volume of work DBEs have performed in recent years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded contracts in recent years. USDOT further suggests that agencies should choose the median level of annual DBE participation for those years as the measure of past participation:

Your goal setting process will be more accurate if you use the median (instead of the average or mean) of your past participation to make your adjustment because the process of determining the median excludes all outlier (abnormally high or abnormally low) past participation percentages.⁵

Figure 2 presents past DBE participation based on IDOT’s Uniform Reports of DBE Awards or Commitments and Payments as reported to FHWA. According to the Uniform Reports, median DBE participation in FHWA-funded contracts from FFYs 2012 through 2016 was 14.6 percent.

Figure 2.
Past certified DBE participation in FHWA-funded contracts, FFY 2012-2016

Source:
Awards reported on IDOT’s Uniform Reports of DBE Awards/Commitments and Payments.

FFY	DBE Attainment	Annual DBE Goal	Difference
2012	15.89 %	22.77 %	-6.9 %
2013	14.36	22.77	-8.4
2014	14.60	22.77	-8.2
2015	15.53	22.77	-7.2
2016	13.77	22.77	-9.0

The information about past DBE participation supports a downward adjustment to IDOT’s base figure. If IDOT were to use the possible approach that USDOT outlines in “Tips for Goals Setting” based on Uniform Reports of DBE Awards/Commitments and Payments, the overall goal would

⁴ 49 CFR Section 26.45.

⁵ Section III (A)(5)(a) in USDOT’s “Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program.” <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

be the average of the 17.6 percent base figure and the 14.6 percent median past DBE participation, yielding a potential overall DBE goal of 16.1 percent. BBC's analysis of DBE participation in FHWA-funded contracts in the IDOT Disparity Study indicated DBE participation (12.6%) that is also lower than the base figure. If IDOT were to adjust its base figure based on information about DBE participation from the disparity study, the overall goal would be the average of the 17.6 percent base figure and the 12.6 percent DBE participation, yielding a potential overall DBE goal of 15.1 percent.

Any disparities in the ability of DBEs to get financing, bonding, and insurance. BBC's analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that minorities; women; and minority- and woman-owned businesses in Illinois do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men (for details, see Chapter 3 and Appendices C and D of the disparity study report). Any barriers to obtaining financing, bonding, and insurance might limit opportunities for minorities and women to successfully form and operate businesses in the Illinois contracting marketplace. Any barriers that minority- and woman-owned businesses face in obtaining financing, bonding, and insurance would place those businesses at a disadvantage in competing for IDOT's FHWA-funded prime contracts and subcontracts. Thus, information from the disparity study about financing, bonding, and insurance supports an upward adjustment to IDOT's base figure.

Information related to employment, self-employment, education, training, and unions. BBC used regression analyses to investigate whether race/ethnicity or gender affects rates of self-employment among workers in the local transportation-related construction and professional services industries. The regression analyses allowed BBC to examine those effects while statistically controlling for various race- and gender-neutral characteristics of workers including education and age (for details, see Chapter 3 and Appendix C of the disparity study report). The analyses revealed that Black Americans, Hispanic Americans, and women are significantly less likely than non-Hispanic whites and men to own construction businesses after accounting for various race- and gender-neutral characteristics. In addition, Asian Pacific Americans, Black Americans, and Hispanic Americans are less likely to own businesses in the local professional services industry after accounting for race- and gender-neutral characteristics. Thus, information about business ownership also supports an upward adjustment to IDOT's base figure.

BBC analyzed the specific impact that barriers to self-employment have on the base figure. BBC estimated the availability of potential DBEs if minorities and women owned businesses at the same rate as non-Hispanic white men who shared similar race- and gender-neutral characteristics. BBC took the following steps to complete the analysis:

1. BBC made adjustments to availability percentages for construction and professional services contracts based on observed disparities in self-employment rates for minorities and women. BBC only made adjustments for those groups that exhibited statistically significant disparities in self-employment rates compared to non-Hispanic whites and men.

2. BBC then combined adjusted availability percentages for construction contracts with adjusted availability percentages for professional services contracts in a dollar-weighted fashion.

Figure 3 presents the results of the analysis, which is referred to as a *but for* analysis, because it estimates the availability of potential DBEs but for the continuing effects of past race- and gender-based discrimination. The rows and columns of Figure 3 present the following information from the but for analysis:

Figure 3.
Adjustment to base figure to account for disparities in self-employment rates

Industry and group	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of base figure**
Construction					
(1) Asian Pacific American	0.4 %	n/a	0.4 %	0.3 %	
(2) Black American	0.6	87	0.7	0.6	
(3) Hispanic American	2.6	61	4.3	4.0	
(4) Native American	0.0	n/a	0.0	0.0	
(5) Subcontinent Asian American	0.9	n/a	0.9	0.8	
(6) White woman	<u>12.9</u>	<u>68</u>	<u>18.9</u>	<u>17.5</u>	
(7) Potential DBEs	17.3 %	n/a	25.2 %	23.3 %	22.6 %
(8) All other businesses ***	<u>82.7</u>	<u>n/a</u>	<u>82.7</u>	<u>76.7</u>	
(9) Total	100.0 %	n/a	107.8 %	100.0 %	
Professional services					
(10) Asian Pacific American	1.7 %	13	13.2 %	10.0 %	
(11) Black American	8.9	35	25.4	19.2	
(12) Hispanic American	1.8	32	5.7	4.3	
(13) Native American	0.0	n/a	0.0	0.0	
(14) Subcontinent Asian American	4.5	n/a	4.5	3.4	
(15) White woman	<u>7.9</u>	<u>n/a</u>	<u>7.9</u>	<u>6.0</u>	
(16) Potential DBEs	24.8 %	n/a	56.7 %	43.0 %	1.3 %
(17) All other businesses	<u>75.2</u>	<u>n/a</u>	<u>75.2</u>	<u>57.0</u>	
(18) Total	100.0 %	n/a	131.8 %	100.0 %	
(19) TOTAL	17.6 %	n/a		n/a	23.9 %

Note: Numbers rounded to nearest tenth of 1%. Numbers may not add to totals due to rounding.
 * Initial adjustment is calculated as current availability divided by the disparity index.
 ** Components of the base figure were calculated as the value after adjustment and scaling to 100%, multiplied by the percentage of total FHWA-funded contract dollars in each industry (construction = 97%, professional services = 3%).
 *** All other businesses included majority-owned businesses and minority- and woman-owned businesses that were not potential DBEs.

Source: BBC Research & Consulting and IDOT data.

- a. Current availability.** Column (a) presents the current availability of potential DBEs by group and by industry. Each row presents the availability for each group. Before any adjustment, the availability of potential DBEs for IDOT’s FHWA-funded construction and professional services contracts that the agency awarded during the study period is 17.6 percent, as shown in row (19) of column (a).

- b. Disparity indices for self-employment.** For each group that is significantly less likely than non-Hispanic white men to own construction or professional services businesses, BBC estimated business ownership rates if those groups owned businesses at the same rate as non-Hispanic white men who share the same race- and gender-neutral characteristics. BBC then calculated a self-employment disparity index for each group by dividing the observed self-employment rate by the estimated self-employment rate and then multiplying the result by 100. Values of less than 100 indicate that, in reality, the group is less likely to own businesses than what would be expected for non-Hispanic white men who share the same race- and gender-neutral characteristics.

To simulate business ownership rates if minorities and women owned businesses at the same rate as non-Hispanic white men in a particular industry, BBC took the following steps: 1) BBC performed a probit regression analysis predicting business ownership including only workers in the dataset who were non-Hispanic white men; and 2) BBC then used the coefficients from that model and the mean personal characteristics of individual minority groups (or non-Hispanic white women) working in the industry (i.e., personal characteristics, indicators of educational attainment, and indicators of personal financial resources and constraints) to simulate business ownership for each group that was significantly less likely than non-Hispanic white men to own construction or professional services businesses.

BBC then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the simulated business ownership rate and then multiplying the result by 100. Values of less than 100 indicate that, in reality, the group is less likely to own businesses than what would be expected for non-Hispanic white men who share similar personal characteristics. Column (b) presents disparity indices related to self-employment for the different racial/ethnic and gender groups. For example, as shown in row (2) of column (b), Black Americans own construction businesses at 87 percent of the rate that one might expect based on the estimated self-employment rates of non-Hispanic white men who share similar personal characteristics.

- c. Availability after initial adjustment.** Column (c) presents availability estimates by group and by industry after initially adjusting for statistically significant disparities in self-employment rates. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for self-employment in column (b) and then multiplying by 100. Note that BBC only made adjustments for those groups that are significantly less likely than similarly-situated non-Hispanic white men to own businesses.
- d. Availability after scaling to 100 percent.** Column (d) shows adjusted availability estimates that BBC rescaled so that the sum of the availability estimates equaled 100 percent for each industry. BBC rescaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total businesses" in column (c)—in row (9) for construction and in row (18) for professional services—and multiplying by 100. For example, the rescaled adjusted availability estimate for Black American-owned construction businesses shown in row (2) of column (d) was calculated in the following way: $(0.7\% \div 107.8\%) \times 100 = 0.6\%$.

e. **Components of goal.** Column (e) shows the component of the total base figure attributed to the adjusted minority- and woman-owned availability for each industry. BBC calculated each component by taking the total availability estimate shown under “Potential DBEs” in column (d)—in row (7) for construction and in row (16) for professional services—and multiplying it by the proportion of total FHWA-funded contract dollars for which each industry accounts (i.e., 0.97 for construction and 0.03 for professional services). That is, BBC used the 23.3 percent shown in row (7) of column (d) for construction and multiplied it by 0.97 for a result of 22.6 percent (see row (7) of column (e)). The values in column (e) were then summed to equal the base figure adjusted for barriers in business ownership—23.9 percent—as shown in the bottom row of column (e).

Other relevant data. The Federal DBE Program suggests that federal funding recipients also examine “other factors” when determining whether to make any adjustments to their base figures.⁶

Business success. There is quantitative evidence that certain groups of minority- and woman-owned businesses are less successful than businesses owned by non-Hispanic white men and face greater barriers in the marketplace, even after accounting for race- and gender-neutral factors (for details, see Chapter 3 and Appendix C of the disparity study report). There is also qualitative evidence of barriers to the success of minority- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects minority- and woman-owned businesses in the local transportation contracting industry (for details, see Appendix D of the disparity study report). Thus, information about business success also supports an upward adjustment to IDOT’s base figure.

Evidence from disparity studies conducted within the jurisdiction. USDOT suggests that federal fund recipients also examine evidence from disparity studies conducted within their jurisdictions when determining whether to make adjustments to their base figures. There have been several other disparity studies conducted for state agencies in Illinois in recent years (e.g., for the State of Illinois and Illinois Tollway). However, those agencies’ contracts differ substantially in terms of size and type from the FHWA-funded contracts that IDOT awarded during the study period. In addition, the methodology that was used for those disparity studies is substantially more limited than the methodology that BBC used to conduct the 2017 IDOT Disparity Study. Therefore, the results from other disparity studies are of limited use to IDOT in determining whether to make an adjustment to its base figure.

Adjustment. IDOT has considered all information relevant to a potential adjustment and proposes to make an upward adjustment to its base figure. IDOT has decided to make an upward adjustment to account for the continuing effects of race- and gender-based discrimination in the marketplace. However, IDOT has also taken into account the current capacity of DBEs to perform work on the agency’s FHWA-funded contracts, because the agency believes that it is important to set its overall DBE goal to be reflective of the level of past DBE participation in relevant contracting. Consistent with USDOT guidance, IDOT has decided to take the average of the base

⁶ 49 CFR Section 26.45.

figure (17.6%), the base figure adjusted for race- and gender-based barriers in self-employment (23.9%), and median past DBE participation (14.6%), yielding an **overall DBE goal of 18.7%** for FFYs 2018-2020.

Race-/Gender-Neutral and Race-/Gender-Conscious Split – 49 CFR Section 26.51 (c)

In accordance with federal regulations and USDOT guidance, IDOT will attempt to meet the maximum feasible portion of its proposed 18.7 percent overall DBE goal through the use of race- and gender-neutral measures. IDOT considered median DBE participation as the result of race- and gender-neutral efforts during FFYs 2012 through 2016 to project the portion of its overall goal that it will meet using race- and gender-neutral measures during FFYs 2018-2020. Figure 4 presents past DBE participation as the results of race- and gender-neutral efforts during FFYs 2012-2016. Median DBE participation as the result of race- and gender-neutral efforts for those five years was 3.3 percent.

Figure 4.
Median past DBE race- and gender-neutral participation

Source:

Awards reported on IDOT's Uniform Reports of DBE Awards/Commitments and Payments.

FFY	DBE Attainment
2012	3.52 %
2013	2.32
2014	2.32
2015	3.33
2016	3.62

Figure 5 presents IDOT's proposed race- and gender-neutral and race- and gender-conscious split for its overall DBE goal. IDOT used myriad race- and gender-neutral measures to encourage DBE participation in its FHWA-funded contracts in FFYs 2012-2016 (for details, see Chapter 9 of the disparity study report). The agency still uses most of those measures and will continue using them through FFY 2020. Based on that information, IDOT projects that it will be able to meet 3.3 percent of its proposed DBE goal for FFYs 2018-2020 through the use of race- and gender-neutral measures. IDOT projects that it will meet the remainder of its proposed 18.7% overall DBE goal—15.4%—through the use of race- and gender-conscious measures (i.e., DBE contract goals).

Figure 5.
Race- and gender-neutral and race- and gender-conscious split

Goal portion	Percent Allocation
Race- and gender-neutral	3.3 %
Race- and gender-conscious	15.4
Overall DBE goal	18.7 %

DBE Groups Eligible for Race- and Gender-Conscious Measures – 49 CFR Section 26.15

Several seminal court cases have indicated that in order to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious program measures to those minority groups “that have actually suffered discrimination” within its transportation contracting industry.^{7, 8} Moreover, USDOT official guidance states that “even when discrimination is present in a state, a program is narrowly tailored only if its application is limited to those specific groups that have actually suffered discrimination or its effects.”⁹ As provided in 49 CFR Part 26, such guidance is “valid, and express[es] the official positions and views of the Department of Transportation”¹⁰

As part of the 2017 IDOT Disparity Study, BBC assessed whether there were any disparities between the participation and availability of minority- and woman-owned businesses on IDOT contracts (for details, see Chapter 7 and Appendix F of the disparity study report). The study showed substantial disparities—that is, disparities whereby utilization was less than 80% of availability—for most minority- and woman-owned business groups across different sets of contracts and particularly on contracts that IDOT awarded without the use of race- and gender-conscious measures. Based on all available information including disparity analysis results from the 2017 IDOT Disparity Study, IDOT proposes that the following relevant groups be considered eligible to participate in the race- and gender-conscious measures that will be part of the agency’s implementation of the Federal DBE Program:

- Black American-owned businesses;
- Hispanic American-owned businesses;
- Native American-owned businesses; and
- Subcontinent Asian American-owned businesses;
- Non-Hispanic white woman-owned businesses.¹¹

Public Participation – 49 CFR Section 26.45(g)

Public participation is a key component of IDOT’s process for setting its overall DBE goal. IDOT informed FHWA that it would complete its public participation process once the agency produced and submitted a revised Goal & Methodology document.

⁷ *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1191, 1199, 2013 WL 1607239 (9th Cir. April 16, 2013)

⁸ *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006)

⁹ United States Department of Transportation Official Questions and Answers (Q&A’s) Disadvantaged Business Enterprise Program Regulation (49 CFR 26),

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/official-questions-and-answers-qas-disadvantaged>

¹⁰ 49 CFR Section 26.9.

¹¹ Courts have found that a substantial disparity index for non-Hispanic white woman-owned businesses may raise an inference of discrimination sufficient to support inclusion of all women in a recipient’s DBE program. See *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1195, 1198 (9th Cir. 2013).