



U.S. Department
of Transportation

**Federal Highway
Administration**

Illinois Division

April 29, 2022

3250 Executive Park Dr.
Springfield, IL 62703
(217) 492-4640
www.fhwa.dot.gov/ildiv

In Reply Refer To:
HDA-IL

Mr. Omer Osman, Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Subject: Approval of the Disadvantaged Business Enterprise Goal Setting Methodology
for Federal Fiscal Years 2022-2024

Dear Mr. Osman:

We have reviewed the Disadvantaged Business Enterprise (DBE) Goal Methodology for Federal Fiscal Years 2022-2024, submitted by the Illinois Department of Transportation (IDOT). The overall DBE goal of 20.27 percent (1.8 percent Race Neutral and 18.47 percent Race and Gender-conscious) is approved. Details of the approval are enclosed.

IDOT is expected to make a good faith effort to meet its overall annual goal each year during the three-year period. Any mid-cycle adjustment needed to reflect a substantial change in circumstances requires prior FHWA approval. The next regularly scheduled DBE Goal Methodology submittal by IDOT will be due on August 1, 2024.

Sincerely,

Arlene K. Kocher
Division Administrator

Enclosure

ecc: Ms. Kristin Meredith, Office of the Secretary
Ms. Margaret van Dijk, Deputy Secretary of Administration, Diversity and Legal Affairs,

**EXPLANATION FOR APPROVAL OF THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL SETTING
METHODOLOGY ILLINOIS DEPARTMENT OF TRANSPORTATION (IDOT)
FOR FEDERAL FISCAL YEARS 2022-2024**

The following establishes the Federal Highway Administration's (FHWA) rationale for approving the Illinois Department of Transportation (IDOT) DBE Goal Methodology for Federal Fiscal Years (FFY) 2022-2024. IDOT is expected to make a good faith effort to meet its overall annual DBE goal each year during the three-year period. Any mid-cycle adjustment needed to reflect a substantial change in circumstances requires prior FHWA approval. The next regularly scheduled DBE goal submission by IDOT will be due to FHWA on August 1, 2024.

Goal Setting Methodology (49 CFR § 26.45)

The Illinois Department of Transportation (IDOT) submits its Disadvantaged Business Enterprise (DBE) Overall Goal Setting Methodology Report to the United States Department of Transportation Federal Highway Administration (FHWA) for review and approval, asserting preparation in compliance with 49 CFR § 26.45, the United States Department of Transportation's (USDOT's) *Tips for Goal Setting*, and other official USDOT guidance.

The regulations require that the overall goal be prepared using a two-step process. According to the *USDOT Tips for Goal Setting*¹ approved by the General Counsel of the USDOT, recipients must first determine a base figure for the relative availability of certified and non-certified minority and woman-owned business enterprises in the relevant market area, hereafter collectively referred to as DBEs. Next, recipients must examine all relevant evidence to determine what adjustment to the base figure, if any, is needed to arrive at an overall goal. The final adjusted figure is the recipient's overall goal and represents the proportion of federal transportation funding the recipient is expected to allocate to DBEs during the subsequent three federal fiscal years (FFY). Once the adjusted overall goal is determined, the process requires considering what portion of the goal will be met by race and gender-neutral measures.

If a recipient purports that it can meet its overall goal with race and gender-neutral measures, those measures must be utilized. In contrast, if the recipient determines it cannot achieve the entire overall goal using only race and gender-neutral measures, it must establish a race and gender-conscious portion of the overall goal.²

In December 2021, IDOT submitted a goal methodology report with an overall recommended DBE goal for FFY 2022-2024 of 17.00 percent. However, IDOT asserts that the report did not consider public comment or complete data, including projections on the number and types of projects to be undertaken in FFY 2022-2024, and how the projected work during this three-year period has shifted, providing more opportunity for DBEs to participate in IDOT projects. IDOT accordingly withdraws the prior goal methodology report and submits the instant revised methodology report for FFY 2022-2024. IDOT states that, based on the requirements set forth

¹ United States Department of Transportation, "Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program," <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

² 26.51(f)(1), §26.51(d)

in 49 CFR Part 26, official USDOT guidance, and consideration of all data, it sets an overall goal for FFY 2022-2024 of **20.27%** (weighted base figure). IDOT’s justification for this change is outlined at the end of Step One.

STEP ONE: DETERMINING A BASE FIGURE – 49 CFR PART 26.45 (c)

IDOT’s overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing and able to participate on IDOT contracts (i.e., the relative availability of DBEs). The goal must reflect IDOT’s determination of the level of DBE participation IDOT can expect absent the effects of discrimination. IDOT cannot simply rely on the national goal, its prior overall goal, or past DBE participation rates without reference to the availability of DBEs in IDOT’s market (49 CFR 26.45 (b)).

IDOT began the goal-setting process by determining a base figure for relative availability of DBEs. The base figure is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all ready, willing, and able businesses to perform the recipient’s anticipated FHWA-assisted contracts.³

Several options are available for establishing a base figure for relative availability of DBEs⁴. The options IDOT used for its methodology include:

- **DBE Directories and Census Data Method** – DBE directories of Illinois USDOT recipients are consolidated into the Illinois **Unified Certification Program (IL UCP)** database. The IL UCP is a “one-stop” certification process for DBEs and includes five local USDOT-funded agencies, including IDOT, City of Chicago, Chicago Transit Authority, Metra, and Pace. Using the IL UCP database to determine DBE availability is limited to USDOT-certified businesses; however, USDOT Tips requires including businesses that while not certified, are potential DBEs, to determine availability. IDOT also found the website for the **United States Bureau of the Census** (census.gov) a resource for data on the North American Industry Classification System (NAICS) code of Illinois businesses.⁵
- **Alternative Method(s)** – Alternative methods may be used to determine a base figure for the overall goal. Any methodology used to determine a base figure must be based on demonstrable evidence of the local market conditions and be designed to ultimately attain a goal that is related to the relative availability of DBEs and potential DBEs in the recipient’s market area. The alternative method provides the most flexibility, but it is also subject to a higher level of scrutiny. Aside from the IL UCP database and Bureau of the Census website mentioned earlier, the other

³ United States Department of Transportation, “Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program.”

⁴ Options also include use of bidders a list, data from a disparity study, or use of goal of another DOT recipient in substantially similar market.

⁵ The Census Bureau’s County Business Pattern (CBP) data are derived from business federal income tax filings and, therefore, cannot address businesses’ willingness to do business with IDOT. Additionally, the CBP does not have the functionality to filter Caucasian male-owned businesses that work exclusively in the private sector, or those not interested in contracting with IDOT. Essentially, the CBP over-counts Caucasian males and the IL UCP under-counts DBEs, thus this method understates the relative availability of DBEs.

databases used to obtain information:

- IDOT’s **Construction Subcontractor Tracking** system (CST) which lists the awarded amounts, final amounts, goal amounts, and contractors utilized on construction contracts.
- IDOT’s **Certification** database (CER) for the Bureau of Small Business Enterprises which was used to verify the certification status of DBEs that were tabulated as ready, willing, and able during the period of July 1, 2019, to June 30, 2020.
- The **United States Office of Personnel Management’s** website, which listed all recipients of Paycheck Protection Program (PPP) loans by state (<https://www.federalpay.org/paycheck-protection-program>). IDOT states that the PPP database was crucial in matching Illinois DBE firms with their appropriate NAICS codes that are shown in Tables 3 and 4.

A. Base Figure Calculation

The initial phase of the Step One analysis required the compilation of critical data regarding IDOT’s contracting. The relevant data considered for the Step One analysis included the following:

- Definition of the market area from an analysis of contracts awarded July 1, 2019, to June 30, 2020.
- Classification of FHWA-assisted work areas by NAICS code.

1. IDOT’s Relevant Market Area

The relevant market area was determined to specify the geographical area for seeking available businesses. A cluster analysis by business location and award amount was prepared using data from the prime contracts awarded during the study period of July 1, 2019, to June 30, 2020. As set forth in 49 CFR Part 26, to be certified as a DBE, a business must be a for-profit entity that is at least 51 percent owned by one or more individuals who are socially and economically disadvantaged. Therefore, all procurement with non-profits and government agencies were excluded from the analysis. The analysis revealed that 95.9 percent of the contract dollars were awarded in the State of Illinois, indicating that Illinois should be considered the relevant geographic market area.⁶ Table 1 presents the market area findings.

Table 1: Location of Contracts Awarded during the Study Period

BUSINESS LOCATION	TOTAL CONTRACTS	PERCENT OF DOLLARS
State of Illinois	892	95.9%
Outside of Illinois	38	4.1%
TOTAL	930	100.0%

⁶ For perspective, IDOT’s DBE Goal Document submitted in 2012 revealed that 94.06% of IDOT’s transportation-related construction and professional services contracting dollars went to Illinois businesses in State Fiscal Year 2011, and the 2017 Disparity Study commissioned by IDOT revealed that 88% of total contract dollars went to Illinois businesses during Federal Fiscal Years 2013-2016.

2. Classification of Procurement Areas by NAICS Codes

All contracts awarded during the study period were classified using a combination of sources. The primary source was a description of the contracts awarded **July 1, 2019, to June 30, 2020**. The balance was classified by Internet research. Table 2 below presents the NAICS codes and industries that were represented in IDOT’s 2019-2020 contracts.⁷

Table 2: 2019-2020 Contracts - NAICS Titles and Industries Represented

NAICS CODE	INDUSTRY	NAICS TITLE
238210	Construction	Electrical Contractors
238340		Tile and Terrazzo Contractors
238910		Site Preparation Contractors
237310		Highway, Street, and Bridge Construction
237990		Other Heavy and Civil Engineering Construction
236210		Industrial Building Construction
238110		Poured Concrete Foundation and Structure Contractors
541330	Architecture and Engineering	Engineering Services
541620		Environmental Consulting Services
541380		Testing Laboratories
541611		Administrative Management and General Management Consulting Services
541614		Transportation Management Consulting Services
541430		Graphic Design Services

B. Base Figure Determination

The base figure is intended to be a measurement of the relative percentage of ready, willing, and able businesses that are DBEs. The recipient is required to measure willing and able businesses in its marketplace, using the best available evidence, to derive a fair and accurate base figure that represents the percentage of available DBEs. According to Section 26.45(c) and *USDOT Tips*, the overall goal must be based on demonstrable evidence of available ready, willing, and able DBEs relative to all ready, willing, and able non-DBEs to participate on IDOT’s federally assisted contracts.

Several sources were used to identify businesses in the market area that provide construction and architecture and engineering services that IDOT procures. Sources included government listings and databases, certification lists, unsuccessful bidders, and listings of firms by NAICS category who received Paycheck Protection Program (PPP) loans.

1. Relative Base Figure

USDOT Tips requires the calculation of the relative base figure by dividing the number of market area DBEs by all market area businesses (DBEs and non-DBEs), which produces a relative base figure of **21.50 percent**, as shown in Table 3. This number is simply the percentage of DBEs in the market area. The relative base figure calculation essentially over counts the number of

⁷ Comments from the public hearing recommended IDOT consider additional NAICS titles and industries in surveying (541370) and landscaping architectural services (541320). IDOT conducted an analysis with those additional categories, but there was not a significant change of the base figure of DBE availability as these companies were certified in other NAICS codes and included in the original analysis.

available DBEs as it assumes that every DBE has equal weight and equal opportunity to perform IDOT contracts. However, in the practical application of the overall DBE goal, not all DBEs have equal opportunity for participation as opportunity is dependent on the spent amount in each NAICS code. To more accurately reflect the nature and scope of work, IDOT used the formula for calculating credit recommended by the *USDOT Tips*:

$$\text{Relative Base Figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All ready, willing, and able businesses (Including DBEs and non-DBEs)}}$$

$$\text{Relative Base Figure of } \mathbf{21.50\%} = \frac{\mathbf{865 \text{ DBEs}}}{\mathbf{4023 \text{ Total Businesses}}}$$

Table 3: Relative Base Figure

NAICS CODE	NUMBER OF AVAILABLE BUSINESSES		PERCENT OF AVAILABLE BUSINESSES		
	DBEs	All	DBEs	Non-DBEs	All
238210	70	264	1.74%	4.82%	6.56%
238340	20	82	0.50%	1.54%	2.04%
238910	107	628	2.66%	12.95%	15.61%
237310	199	641	4.95%	10.98%	15.93%
237990	6	67	0.02%	1.65%	1.67%
236210	6	141	0.02%	3.48%	3.50%
238110	37	385	0.92%	8.65%	9.57%
541330	173	966	4.30%	24.01%	28.31%
541620	24	81	0.60%	1.41%	2.01%
541380	7	126	0.02%	3.11%	3.13%
541611	177	434	4.40%	6.39%	10.79%
541614	10	32	0.25%	0.55%	0.80%
541430	29	176	0.72%	3.65%	4.37%
TOTAL	865	4023	21.50%	78.50%	100.00%

2. Weighted Base Figure

IDOT must consider if the relative base figure calculation over-counts the number of available DBEs as it assumes that every DBE has an equal opportunity and equal weight to perform IDOT contracts. In the practical application, not all DBEs have equal opportunity for participation as opportunity is dependent on the amount of dollars spent in each NAICS code. As recommended by USDOT, to more accurately reflect the relative availability of DBE firm IDOT performed a weighted calculation of availability.

However, before undertaking a weighted calculation, IDOT examined the awarded contract amounts per NAICS code, with the results listed in Table 4 below:

Table 4: Awarded Contract Amounts Per NAICS Code

NAICS CODE	NUMBER OF AVAILABLE BUSINESSES		AWARDED CONTRACT AMOUNT
	DBEs	All	
CONSTRUCTION NAICS			
238210	70	264	\$24,101,016
238340	20	82	\$772,041
238910	107	628	\$142,660,886
237310	199	641	\$1,457,823,361
237990	6	67	\$25,412,183
236210	6	141	\$103,578,043
238110	37	385	\$341,738,436
TOTAL CONST.	445	2208	\$2,096,085,966
ARCHITECTURE AND ENGINEERING NAICS			
541330	173	966	\$2,420,921
541620	24	81	\$24,818,770
541380	7	126	\$28,584,874
541611	177	434	\$3,714,580
541614	10	32	\$5,312,639
541430	29	176	\$14,743,228
TOTAL A&E	420	1815	\$79,595,012
TOTAL	865	4023	\$2,175,680,978

When the awarded contract amounts are taken into consideration, 96.34% of contract dollars were awarded to firms representing the Construction NAICS Codes, and 3.66% were awarded to firms in the Architecture & Engineering NAICS Codes. IDOT reasons that this strongly suggests the need for a weighted base figure. According to *USDOT Tips*, “weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate.” Thus, the new formula becomes:

$[.96 (\text{Construction DBEs} / \text{All Construction Firms}) + .04 (\text{Architecture and Engineering DBEs} / \text{All Architecture and Engineering Firms})] \times 100 = \text{Step One Base Figure, weighted by type of work to be performed.}$

$$[.96 (445/2208) + .04 (420/1815)] \times 100 =$$

$$[.96 (.2015) + .04 (.2314)] \times 100 = [.1934 + .0093] \times 100 = \mathbf{20.27}$$

IDOT calculates the weighted base figure is **20.27%**.

In establishing a goal, IDOT is required to consider making adjustment to the base figure using factor listed in the federal regulations. IDOT is not required to make an adjustment if the evidence does not suggest an adjustment is necessary. If the evidence suggests that an adjustment may be required, there must be a rational relationship between the data used to make the adjustment and the actual numerical adjustment made.

STEP TWO: BASE FIGURE ADJUSTMENT – 49 CFR PART 26.45 (d)

A. DBE Past Participation

The Step Two base figure adjustment, as recommended in *USDOT Tips*, requires examining relevant and reliable data in the recipient’s market area to determine if an adjustment to the base figure is warranted. The consideration of an adjustment is intended to account for any impact the relevant factors may have on DBEs’ contracting opportunities with IDOT. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.⁸ As identified, IDOT has determined no adjustment should be made.

One factor for considering whether a base figure adjustment is required is to review past DBE participation. *USDOT Tips* 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. Other factors to consider if adjusting the base figure is needed to arrive at an overall goal includes evidence from disparity studies conducted within IDOT’s jurisdiction and evidence from related fields that affect the opportunities for DBEs to form, grow and compete. IDOT’s last disparity study, completed in 2017, shows an availability analysis of 19.9% for DBEs.⁹

Table 5 represents past DBE participation based on IDOT’s Uniform Reports of DBE Awards or Commitments and Payments as reported to FHWA. According to these Uniform Reports, median DBE participation in FHWA-funded contracts from FFYs 2018 through 2021 was **14.22 percent** (median = the middle or average of the middle numbers $\therefore 13.49\% + 14.95\% \div 2 = 14.22\%$).

Table 5: Past Certified DBE Participation in FHWA-Funded Contracts, FFY 2018-2021

FEDERAL FISCAL YEAR	DBE ATTAINMENT	ANNUAL DBE GOAL	DIFFERENCE
2018	13.49%	18.70%	- 5.21%
2019	15.05%	18.70%	- 3.65%
2020	13.06%	18.70%	- 5.64%
2021*	14.95%	18.70%	- 3.75%

*Supplemental data for FFY 2021 is provided. As IDOT has not yet adjusted the goal for FFY 2022-2024, it continues to use the annual DBE goal established for FFY 2019-2021.

There is a difference between the Step One weighted base figure of 20.27% and the median past DBE participation. This may suggest the capacity of DBEs to perform highway project work does not match availability of DBE firms. However, IDOT reasons that additional data does not support that suggestion. In examining IDOT contract data from calendar year 2020, 2021 and the first quarter of 2022, 60% of the number of contracts (and 25% by contract dollar amount) had hot mix asphalt as a predominate work item in the contract. These contracts averaged DBE goals of 7.95%, largely due to the high cost of entry of doing business in this area as well as few opportunities to subcontract the work to DBEs.

⁸ 49 CFR 26.45(d)

⁹ IDOT is in the process of selecting a vendor for an updated disparity study, with an estimated completion date of December 2023. IDOT may request adjustment of the goal if the disparity study suggests it is required.

While it is not appropriate to adjust the measurements of relative DBE availability solely due to the size of IDOT’s expanding contracting program, if the type of work IDOT expects to contract changes dramatically, this does impact the goal regardless of the level of funding IDOT expects to receive.¹⁰ Analysis of IDOT’s Multi-Year Program (MYP) for FY 2022-2027 identifies major construction programs and work categories and shows the type of work is shifting.¹¹ The Project Listing Index beginning on page 20 of the 2022-2027 MYP provides a comprehensive list of expected projects. IDOT highlights the scope of projects expected for District 1, where 73% of certified DBEs are located, as having a significant amount of interchange reconstruction and bridge replacement work expected to be completed with many subcontracting opportunities for DBEs.

The shifts identified in the MYP provide support as to why past achievement is not indicative of what DBE participation may be achieved in FFY 2022-2024. To merely look at the past achievement rate is not dispositive that further efforts to increase DBE attainment cannot be made. Therefore, IDOT declines to adjust the base goal of 20.27 percent.

B. Race and Gender-Neutral Goal

The final requirement of the goal-setting process is to determine the portion of the overall goal that will be achieved by race and gender-neutral means. As required by 49 CFR 26.51, the maximum feasible portion of the overall DBE goal should be achieved using race and gender-neutral means. The median past race and gender-neutral DBE participation through Federal Fiscal Years 2018 through 2020 was 1.8 percent, as indicated in Table 6 below. Consequently, IDOT projects that it shall meet **1.8 percent** of its overall DBE goal through race and gender-neutral measures and **18.47 percent** through race and gender-conscious measures.

Table 6: Race-Neutral as % of DBE Expenditures, FFY 2018-2020

Federal Fiscal Year	Total amount of expenditures (Federally assisted contracts)	Actual Amount of Expenditures to DBEs	R/C (% of DBE Expenditures)	R/N (% of DBE Expenditures)
2018	\$930,850,365	\$115,703,367	98.2%	1.8%
2019	\$1,030,467,180	\$181,814,869	99.1%	0.9%
2020	\$467,035,725	\$87,586,873	97.5%	2.5%

SOURCE: Uniform Report of DBE Commitments / Awards and Payments

C. Public Participation Process

In accordance with 49 Code of Federal Regulations 26.45(g), the Illinois Department of Transportation is to provide an opportunity for public participation in establishing its overall Disadvantaged Business Enterprise goal. This is accomplished by making the goal setting methodology and rationale available for public inspection.

On August 9, 2021, IDOT published the Overall DBE Goal-Setting Methodology Report on its public website (dbe (illinois.gov)). A dedicated email address was displayed for

¹⁰ *Tips for Goal Setting in the DBE Program*. <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

¹¹ [2022-2027 MYP Book - Internet Version.pdf \(illinois.gov\)](#)

anyone wishing to comment on the report (DOT.DBEPublicComment@illinois.gov). The document and the email address were available on the public website through the close of business on September 8, 2021, and the dedicated email account was checked throughout that period.

Once the report was published on the website, an email with the report and instructions on how to comment on it was also sent out to all 2,171 DBEs in the Illinois Unified Certification Program on August 9, 2021. This email originated from another dedicated address, DOT.SBE@illinois.gov.

IDOT received one response at the dedicated email address during this period. It was from a DBE certified in landscape architectural services who believed that IDOT's goals were too low and that the methodology should have included the NAICS code for the landscape architecture category. After considering the response, no changes were made to the base figure. Landscape architecture has not historically been considered a category in the methodology, primarily because IDOT has in-house landscape architects who perform such work when it is included in a contract.

On March 10 and March 17, 2022, IDOT held virtual public information meetings via Webex to provide the "scheduled, direct, interactive exchange" as required by 49 CFR 26.45(g)(1)(i). During this period, the document and dedicated email address were again made available on the public website.¹² On March 2, 2022, information on the goal methodology and the meetings was sent to 2,295 DBEs in the Illinois Unified Certification Program. On the following day, the same information was sent to 1,019 contractors on the IDOT "Contractor's Packet" e-mail list and 136 addresses in IDOT's "Newsflash" electronic subscription service.

At the public information meetings, the proposed goal and methodology were presented, and attendees were given the opportunity to comment and ask questions. The Webex virtual meeting on March 10 was held from 10:30am-11:30am and drew 106 attendees. The second Webex virtual meeting on March 17 was held from 4:00pm-6:30pm and drew 26 attendees. DBEs provided perspective on why prior goals were not achieved and offered suggestions for improvement and how IDOT may be able to increase DBE achievement. Recommendations were made to include as part of the goal analysis additional NAICS codes in surveying and landscape architecture.

Conclusion

For the above reasons, FHWA approves goal setting methodology and race-neutral/race-conscious split for FY 2022 - FY 2024.



Division Administrator

April 29, 2022

Attachment: Copy of Approved DBE Goal Methodology
cc: Martha Kenley, HCR