

# Maine DOT DBE Goal for FY 2010

## OVERALL GOAL (§26.45)

MaineDOT projects to expend 5.9% of the amounts received under the Federal Regulation 49 CFR Part 26, to small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of MaineDOT that this expenditure be obtained to the extent practicable, through a race and gender-neutral program (see 49 CFR §26.5 for definitions.)

## GOAL

In accordance with US DOT guidelines, MaineDOT will determine the DBE Program overall goal for 2010.

## METHOD OF ATTAINMENT

MaineDOT calculates the overall goal using the criteria based in 49 CFR §26.45. The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflect a level of participation expected in the absence of discrimination. The overall goal setting procedure is based on the following:

### STEP 1: BASE FIGURE

In determining the DBE goal for FY 2010, MaineDOT identified all subcontractors (DBE and non-DBE) that provided bids or quotes to prime contractors and consultants pursuant to any advertised Federal-aid project during of April 2008 through April 2009. This data was collected from our online Plan Holders list for the year of April 2008 through April 2009. Also used was data collected from the submitted DBE Utilization form collected at bid time for all bids let during the period of April 2008 through April 2009.

MaineDOT further determined the number of all businesses that have bid or quoted on Federally-assisted contracts as prime or subcontractors. With this information, MaineDOT was able to determine the availability of ready, willing and able DBE's relative to all businesses ready, willing and able to participate on Federally-assisted contracts. The table below identifies the base figure or "Total Percentage" of participation based on the relative availability of DBEs.

Primes that have bid (430 firms)	
Subcontractors that have bid or quoted (70 firms)	
All business that have bid or quoted	500
DBE's that have bid or quoted	34
<b>Total Percentage</b>	<b>6.8%</b>

$$34 \div 500 = 6.8\%$$

## STEP 2: ADJUSTMENT TO BASE FIGURE

In the second tier of its calculation process, the Department assessed the impact of specific factors requiring narrowly tailoring of the DBE program.

### Past participation.

<b><u>FFY 05</u></b>	<b><u>FFY 06</u></b>	<b><u>FFY 07</u></b>	<b><u>FFY 08</u></b>	<b><u>FFY 09</u></b>
1 <sup>st</sup> half 05 (4.0)	1 <sup>st</sup> half 06 (10)	1 <sup>st</sup> half 07 (3.61)	1 <sup>st</sup> half 08 (6.88)	1 <sup>st</sup> half 09 (6.31)
2 <sup>nd</sup> half 05 (8.0)	2 <sup>nd</sup> half 06 (5.94)	2 <sup>nd</sup> half 07 (3.80)	2 <sup>nd</sup> half 08 (3.22)	2 <sup>nd</sup> half 09 (3.84)
<b>6%</b>	<b>7.97%</b>	<b>3.71%</b>	<b>5.05%</b>	<b>5.07%</b>

### Mean Past Participation

The mean past participation is **5.05%** is then averaged with the base calculation of **6.8%**. The average of the mean past participation figure and the Step 1 Base Figure is **5.9%**

**Adjustment for mean past participation: 5.9%**

### Additional Considerations:

Disparity Studies: No relevant disparity studies have been conducted within the state's jurisdiction.

There are no additional steps needed to adjust the base figure in order to narrowly tailor the DBE Program.

MaineDOT will meet the maximum feasible portion of the overall goal by using race and gender-neutral means of facilitating DBE participation. Processes will be outlined to assist prime contractors in their efforts to facilitate race-neutral DBE participation. Race and gender-neutral participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE contract goal, or even if there is a DBE contract goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g. a prime contractor that uses a strict low bid system to award subcontracts).

Race and gender-neutral means include, but are not limited to, the following:

1. Carrying out information and communication programs on contracting procedures and specific contract opportunities, such as ensuring the inclusion of DBEs, and other small businesses, on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors;

2. Providing a copy of the Invitation For Bids, when requested to MaineDOT-certified DBE's for each bid letting;
3. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
4. Ensuring distribution of MaineDOT's DBE Directory, through print and electronic means, to potential prime contractors and subcontractors;
5. Providing technical assistance and other services;
6. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media;
7. Working with prime contractors (by phone, e-mail, and in person) who take out sample proposals for upcoming MaineDOT projects to search for DBEs capable to perform portions of the project. We inquire what potential items of work they will be subcontracting out. In turn our office contacts all DBEs capable of performing the work requested and highly encourages them to submit a bid to the prime. In this manner our office is assisting the prime in performing good faith efforts by linking the prime and DBEs in the initial phase of the proposal stage for the project.
8. Accounting for the participation of DBEs in consulting and municipally managed projects with Federal participation.

Each time MaineDOT submits its overall goal for review and approval by the US DOT, MaineDOT will also submit the portion of the overall goal that can be expected to be met through race and gender-conscious means and the basis for that position.

The MaineDOT assesses the percent of DBE participation on a monthly basis. If it is determined that any time during the FY of the DBE program, the 5.9% stipulated goal will not be achieved, MaineDOT may use contract goals as a race and gender-conscious means of meeting any portion of the overall goal not achieved by use of race and gender-neutral means.

The following provisions apply to the use of race-conscious contract goals:

1. MaineDOT will use contract goals only on those Federally assisted projects that have subcontracting possibilities.
2. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by MaineDOT's overall goal, MaineDOT will set contract goals so that they will cumulatively result in meeting any portion of MaineDOT's overall goal not obtainable through the use of race and gender-neutral means.

3. Contract goals will provide for participation by all certified DBEs and not be subdivided into group-specific contract goals.

To ensure that MaineDOT's DBE Program continues to be narrowly tailored to overcome the effects of discrimination, use of contract goals will be adjusted as follows:

1. If MaineDOT concludes that it can meet its overall goal through race and gender-neutral means, contracting goals will not be used.
2. If, during the course of any year in which MaineDOT uses contract goals, MaineDOT determines that the overall goal will be exceeded, MaineDOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the overall use of contract goals does not result in exceeding the overall goal.

To ensure that prime contractors demonstrate good faith efforts necessary to fulfill contract goals (race-conscious measures) assigned to Federally-assisted projects, they will be required to incorporate the following measures pursuant to the bidding process:

- a) Offering Assistance. The prime contractor may offer assistance to DBEs and small businesses in the areas of interpreting plans, preparing proposals, providing advice to obtain bonding and insurance, etc. Any assistance requested or provided shall be documented.
- b) Discussions with Small Businesses. The prime contractor shall respond to all requests from DBEs and small businesses that are submitting quotes including, but not limited to: quantities, expected overtime, project scheduling, pit information, method of measurement, payment schedule, items of work included in the quote.
- c) Accepting and Evaluating All Bids Offered. Prime contractors, DBEs and small businesses shall accept and evaluate all bids offered, regardless of work elements intended to be subcontracted. DBEs and small businesses should not be limited to smaller subcontracts because a larger amount of work is intended to be subcontracted to a larger business.
- d) Submitting Quotes from DBEs. Prime contractors must submit a DBE Utilization form to indicate the name of the DBEs to be used, items bid, price per bid item, total bid/quote, and must be submitted with their bid on bid day.

### **Public Participation**

The MaineDOT provides for public participation by publishing a notice of their proposed goal in three of Maine's statewide newspapers for three consecutive days annually. This notice offers a forty-five day opportunity to examine and evaluate MaineDOT's justification for the proposed goal by visiting MaineDOT headquarters (address, business hours and contacts are provided) and/or MaineDOT's website at:

<http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php>

The MaineDOT did not receive any comments as a result of these measures.

Further input is solicited through discussion and e-mail with the following sources: Associated General Contractors, Maine Small Business Administration, and ACEC. Public comment will be accepted for 45 days following the last date of publication.

### **Goal Monitoring**

The MaineDOT will confer with the local chapter of the Associated General Contractors to ascertain efforts to utilize DBEs and small businesses by race and gender neutral measures. The MaineDOT will continue to monitor DBE participation through the 2<sup>nd</sup> quarter of the FY 2010 program. If the rate of participation indicates that the MaineDOT will not attain its FY 2010 goal, the MaineDOT may implement project goals as a race and gender-conscious measure. MaineDOT will continue to monitor attainment of the overall goal and the contract goals to determine whether the intent of project goals has been met. The MaineDOT will make a determination whether the project goals need to be continued. In any year in which MaineDOT meets part of the goal through race and gender-neutral means and the remainder through contract goals, MaineDOT will maintain data separately on DBE payments in those contracts with and without contract goals, respectively. MaineDOT will report this data to DOT as provided in 49 CFR §26.11.