

**MAINE DEPARTMENT OF TRANSPORTATION  
OFFICE OF PASSENGER TRANSPORTATION  
FFY 2011-13 DBE GOAL**

**OVERALL GOAL**

MaineDOT, through its Statewide Multimodal Planning Division, intends to expend 1.34% of the amounts received from federal financial assistance on FTA-assisted contracts with certified small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). For the last five years, the MaineDOT average goal has been 1.31% and the average achievement has been 1.17%. MaineDOT fully believes this goal of 1.34% can be met without contract specific goals, MaineDOT intends to fulfill the goal with a wholly race neutral program.

**METHOD OF ESTABLISHING GOAL**

**Step 1 – Determining a base figure**

**49 CFR 45 (b) States “Your 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 your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.”**

MaineDOT will calculate the overall goal using the criteria based in **49 CFR § 26.45(c) “Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs.”**

The determination will be based on a level of DBE participation relative to all businesses ready, willing and able to participate on FTA-assisted contracts, and reflect a level MaineDOT would expect in the absence of discrimination. The overall goal setting procedure is based on the following:

- (1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.**

**Market Area:**

The market area was determined to be Statewide, since the substantial majority of the contractors and subcontractors with which MaineDOT does business are located in Maine, and the entire state is the area in which MaineDOT spends the substantial majority of its contracting dollars.

**Data Sources:**

The NAICS data for transit providers, agencies/firms included in category 485,

NAICS code	Description	Estab-lish-ments	Revenue (\$1,000)	Annual payroll (\$1,000)	Paid employees
<b>485</b>	<b><u>Transit &amp; ground passenger transportation</u></b>	<b>85</b>	<b>49,395</b>	<b>21,047</b>	<b>1,272</b>
4853	<u>Taxi &amp; limousine service</u>	44	11,060	4,223	332
48531	<u>Taxi service</u>	29	5,479	2,042	224
48532	<u>Limousine service</u>	15	5,581	2,181	108
4854	<u>School &amp; employee bus transportation</u>	21	17,946	8,418	555
4859	<u>Other transit &amp; ground passenger transportation</u>	10	10,284	3,818	206

Economic Census 2002, Maine Data for NAICS 485

There are no DBE firms in Maine’s catalog under these NAICS codes. However, there are firms that offer support services to transit providers including additional categories.

The MainedOT DBE Directory lists the following firms when searching under the category “transit”. None of these firms are prime DBE transit providers. Their scopes are related to the NAICS codes for other services related to transit contracts/subcontracts.

- **ALTERNATE TRANSIT ADVERTISING, INC., 541810**
- **ASHTON ASSOCIATES INC., 541320**
- **FITZGERALD & HALLIDAY 541330**
- **ICST, INC. 541511**
- **KFH GROUP INCORPORATED, 541320**
- **KKO & ASSOCIATES, 541320**
- **MOBILITAT, 541511**
- **PRECISION COMPLIANCE, INC., 541320 (or 926120)**

The following NAICS codes match the codes offered by the above providers for Maine.

Economic Census 2002, Maine Data for various NAICS codes related to transit contracts/subcontracts

NAICS code	Description	Estab-lish-ments	Revenue (\$1,000)	Annual payroll (\$1,000)	Paid employees
541320	<u>Urban planning services</u>	39	11,319	4,018	121
541330	<u>Engineering services</u>	269	386,927	164,371	3,340
541511	<u>Custom Computer Programming Services</u>	145	48,947	22,450	582
541810	<u>Advertising Agencies</u>	56	38,935	17,487	333

[http://www.census.gov/econ/census02/data/me/ME000\\_54.HTM#N541](http://www.census.gov/econ/census02/data/me/ME000_54.HTM#N541)

Therefore, the denominator would be  $85 + (39+269+145+ 56) = 594$  to represent all potential transit firms and transit related firms for potential contracts and subcontracts in Maine.

The numerator would be 8, the number of DBE's under these categories available to do the identified support work in Maine.

The base goal based upon the 2002 census and DBE Directory data would be:  $8/594 = 1.34\%$

**(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.**

Maine has not conducted any disparity studies that would apply to the calculation of this goal.

**(4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.**

This method is not used for goal calculation, but is used in a discussion of the goal in a following section (See Step 2). New Hampshire, a state similar in size and population has 2.5% goal.

**(5) Alternative methods. You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.**

MaineDOT does not propose any alternative method for base goal calculation.

**Maine DOT FTA – Funded DBE BASE GOAL = 1.34%**

## **Step 2 - ADJUSTMENTS TO BASE**

**26.43(d) states “Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any is needed to the base figure in order to arrive at your overall goal.”**

**(1) There are many types of evidence that must be considered when adjusting the base figure. These include:**

**(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;**

Past participation in FTA funded services for the Department are as follows:

<u>FFY 06</u>	<u>FFY 07</u>	<u>FFY 08</u>	<u>FFY 09</u>	<u>FFY 10 (1<sup>st</sup> half)</u>
<u>Goal .75%</u>	<u>Goal 0.6%</u>	<u>Goal 1.4%</u>	<u>Goal 1.9%</u>	<u>Goal 1.9%</u>
<b>0.5%</b>	<b>2.9%</b>	<b>.14%</b>	<b>2.13%</b>	<b>.20%</b>

Details of DBE commitments and awards data presented above:

- '06 is \$45,140.00 out of \$9,133,494.04 and 0 prime contracts and 6 subcontracts out of 81 prime and 6 subcontracts.
- '07 is \$233,943.00 out of \$5,652,897.86 and 1 DBE prime contracts and 5 DBE subcontracts of 73 prime contracts and 8 subcontracts.
- '08 is \$127,254.82 out of \$9,777,682.23 and 0 DBE prime contracts and 7 DBE subcontracts out of 38 prime contracts and 7 subcontracts.
- '09 is \$75,074 out of \$8,465,346 and 1 DBE prime contracts and 6 DBE subcontracts out of 66 prime contracts and 8 subcontracts
- '10 (1<sup>st</sup> half) is \$74,965.00 out of \$4,839,463.00 and 0 DBE prime contracts and 3 DBE subcontracts out of 34 prime contracts and 5 subcontracts

The median past participation is 1.0%. For FFY 08, the 1.4% DBE commitment was not attained. Because the goal significantly exceeded the FFY 07 goal of .75%, and the FY 07 goal was more than met, contract specific goals are not recommended for FFY 10. FFY 09 goal of 1.9% was exceeded through race neutral measures. For the first half of FFY 10 we are only at .20% of our goal of 1.9%. There has been a noticeable goal fluctuation every other year and this is attributed to MaineDOT's two year contract with one DBE firm which is a prime contractor at 100% participation. If adjustment for past participation were made, the recommended goal would be the average of the median past participation and the base goal:

$$(.5 + 2.9 + .14 + 2.13 + .20)/5 = 1.17\%$$

If the MaineDOT were to adjust their recommended FTA DBE BASE Goal for Median Past Participation, it would equal 1.17%. However, as there is evidence that multi-year contracting cause fluctuation in achievement of goals, it is not recommended to adjust the goal this year.

**(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and**

There have been no related disparity studies for Maine.

**(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.**

The base figure selected is not the goal of another recipient.

However, New Hampshire and Vermont have substantially similar markets for Transit contracting.

- Vermont's base goal for 2010 was 3.94% with no adjustment.
- New Hampshire's base goal for 2010 was calculated several ways for comparison. The overall goal with adjustment was 2.5%.

Maine generally has smaller metropolitan areas, smaller contracts, and much more rural services to consider. Maine does not currently have enough specific data from the other states on their transit programs to adjust the goal for differences in Maine.

In addition, Maine does have sufficient other data to produce an independent base goal.

**(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:**

**(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;**

Maine has not collected this data related to transit contracts. Anecdotally, bonding and financing are generally difficult to obtain for small businesses in Maine, especially tribal businesses.

**(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.**

Maine has not collected this data related to transit contracts.

**(2) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the ``but for'' factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.**

Maine will not attempt to adjust the base figure based upon the effects of the DBE program. The Maine Department of Transportation advocates for the DBEs on each federally funded contract and provides assistance in locating DBEs to the prime contractors. We do not have data to compare the effect of the program to the results we would get without the program. Thus, we do not have a logical way to make an adjustment. The DBE supportive services contract with Eastern Maine Development Corporation/Maine Procurement Technical Assistance Center is still fairly new, therefore no data as to its impact is available.

**(3) Other Discussion Related to Maine's Historical Data:**

The Department's bidders list of actual and potential FTA funding sub-recipient agencies/firms is as follows:

**Bidders that submitted either prime or subcontract bids on FTA funded work for the last 2 years:**

1. AECOM USA, Inc.
2. Alternate Transit Advertising, Inc.
3. Ameritran Service Corp.
4. Androscoggin Valley Council of Governments
5. Aroostook Regional Transportation
6. Ashton Associates Incorporated
7. BACTS
8. BAT Community Connector
9. Biddeford-Saco-Old Orchard Transit
10. C & G Boat Works
11. Carolyn Ridge
12. Casco Bay Island Transit District
13. City of Bath

14. Coastal Transportation. Inc.
15. Community Concepts
16. Cranberry Isles
17. Don Brown Bus Sales
18. Downeast Transportation
19. Fitzgerald & Halliday, Inc.
20. Greater Portland Council of Governments
21. Greater Portland Transit Dist.
22. ICST, Inc.
23. Innovative Resource Group
24. Isle au Haut Boat Services
25. Kennebec Valley Community Action Program
26. Keville Enterprises
27. KKO & Associates, LLC
28. KM CHNG Environmental
29. Larry Glantz/Muskie School, USM
30. Lewiston-Auburn Transit Committee
31. Matthews Buses
32. METRO
33. Mike Merwin
34. Mobilitat, Inc.
35. NNEPRA
36. Northern Bus Sales
37. Northern New England Passenger Rail
38. Northstar Hydro
39. O'Connor GMC
40. Patsy's, Inc.
41. Penquis CAP
42. Peter Schauer
43. Precision Compliance
44. Regional Transportation Program
45. Sharon Eaton
46. South Portland Bus Service
47. South Portland Bus Service
48. Southern Maine Planning Commission
49. Tom Crikelair
50. W.C. Cressey & Son, Inc.
51. Waldo Community Action Partners
52. Warner Trans Consulting
53. Washington Hancock Community Agency
54. West's Transportation, Inc.
55. Western Maine Transportation Services
56. Woodbury & Morse
57. York County Community Action Corp.

Total number of bidders = 57 firms. The number 57, therefore, is the denominator.

**Of these firms, the following are DBE's:**

1. Alternate Transit Advertising	2. Ashton Associates Incorporated
3. Precision Compliance, Inc	4. Fitzgerald & Halliday, Inc.
5. ICST, Inc.	6. Innovative Resource Group
7. Keville Enterprises	8. Mobilitat, Inc.

Number of bidding DBE's = 8 firms.

Therefore for the base goal, 8 is the numerator.

$$8/57 = 14.03\%$$

We know from past attainment that this is not a reasonable base goal. Although we are fortunate to have a large proportion of DBE bidders, they are primarily bidding on small subcontracts, (typically approximately 1% of monetary value of the work) which amounts to lower attainment percentages in dollars. There is one DBE prime bidder, but with the frequency of contracting, we cannot guarantee they will get the winning prime bid on the contract in their area of operation, nor do we want to base the goal on that assumption. There are very few opportunities for sub-recipients to sub-contract as most services are delivered by the non-profits themselves. There are two Tribal Governments who provide service but as they are considered municipal, these factors cannot be considered.

### **OVERALL GOAL CALCULATION**

**FFY 2011 FTA non-adjusted DBE goal: 1.34 %**

### **RACE NEUTRAL AND CONSCIOUS MEASURES**

The Department was not able to exceed its DBE goal for 2008 due to low award of DBE subcontracts. However, in 2007, Maine exceeded its DBE goal by a significant amount (goal .6%, achievement, 2.9%). In FFY 09 we exceeded our goal of 1.9% and met 2.13%. The first part of FFY 10 we have achieved .20% of our 1.9% goal. One of the reasons for this is attributed to MaineDOT's two year contract with one DBE firm which is a prime contractor at 100% participation. For this reason, we believe the **FFY 2011 calculated goal DBE goal of 1.34% will be met via wholly race neutral measures.**

The Department uses its DBE Supportive Services allocation fully to support the DBE Program, and not to pay administrative salaries. The funding supports a number of projects and/or initiatives around the state, including outreach and technical assistance to businesses. The program information can be accessed by a website at: [http://www.emdc.org/business/services\\_detail.cfm?services\\_group\\_id=01.05.2007.10.18.49&show\\_service=true](http://www.emdc.org/business/services_detail.cfm?services_group_id=01.05.2007.10.18.49&show_service=true)

Finally, as stated previously, the Department has no evidence of discrimination on the part of transit contractors and does have evidence of continuing good faith effort.

## **PUBLIC PARTICIPATION PLAN**

Several interested stakeholders were notified directly by e-mail of the draft goal publication, including current service providers and those on the bidder's list (given above in the goal discussion – See Step 2.)

A half hour conference call was set up on Thursday, October 14, 2010 at 3:30 to receive comments from stakeholders prior to the public notification, on the methodology. No comments were received.

The public was notified by publication October 15<sup>th</sup>, 16<sup>th</sup>, and 17<sup>th</sup> in three local newspapers: the Kennebec Journal, Bangor Daily News and the Portland Press Harold/Maine Sunday Telegram's legal advertisements.

Additionally, the goal notification and methodology was posted on the MaineDOT website, <http://www.state.me.us/mdot/disadvantaged-business-enterprises/dbe-home.php> .

Public comment was accepted for 45 days following the last date of publication. The public comment period was completed on December 1, 2010. No public comments were received.