



Tennessee Department of Transportation
Overall Annual DBE Goal
Federal Fiscal Year 2015-2017



TENNESSEE DEPARTMENT OF TRANSPORTATION (TDOT)
FFY 2015-2017 OVERALL ANNUAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL

For the 2015-2017 DBE Goal submission, the Tennessee Department of Transportation (TDOT) Disadvantaged Business Enterprise Program (DBE) has a proposed goal of 8.05%. This overall goal is expected to be achieved through 6.54% race-conscious and 1.51% race-neutral means. Annual reviews of the data will be conducted and updates will be provided as needed.

The purpose of the DBE Program is to:

- Remedy past and current discrimination,
- Ensure a level playing field,
- Foster equal opportunity on DOT-assisted contracts,
- Improve flexibility and efficiency, and
- Facilitate prime contracting opportunities for DBEs.

In an effort to reach this level playing field, TDOT examined its program and local markets, then determined the amount of participation DBEs would be expected to achieve in the absence of present and past effects of discrimination. These efforts are outlined on the subsequent pages.

TDOT Market Area

In order to formulate the DBE goal, the local area market has to be identified. The local market area is defined as the area where the substantial majority of contracting dollars are spent and the area in which the substantial majority of the contractors and subcontractors are located. Tennessee has the potential to have a high percentage of contractors from out-of-state due to the fact that it is bordered by eight states (KY, VA, NC, GA, AL, MS, AR, MO) and extends about 430 miles East to West and 110 miles North to South. However, based on state construction data, this does not prove to be the case.

Calculating the percentage of in-state vs. out-of-state prime contractor and subcontractor firms receiving TDOT projects over a three year period (August 2010 – August 2013), TDOT overwhelmingly contracted with local (Tennessee) contractors on Federal-aid projects. As TDOT does not maintain a “bidder’s list,” the most representative method to capture both prime and subcontractor award information was to use goal award information tracked through TDOT’s Small Business Development Office. After analyzing this data, it was determined that a substantial majority of prime contracts with goal attached (93%) were let to in-state contractors. A substantial number of DBE subcontracts on goal projects (85%) were also let to in-state firms, as shown in **Table 1**. TDOT therefore defines the State of Tennessee as its market area.

**Table 1 – Percentage of contracts to Tennessee firms**

Data Description	Total Program Awards	Amount Represented by Tennessee Firms	Tennessee Market Percentage
Distribution of Prime Contractor Awards	555	431	93%
Distribution of Subcontractor Awards (out of 555 Prime contracts)	1149	1016	88%

Establishing the DBE goal

Establishing the DBE goal involves two primary steps. **Step One:** Determining a base figure for the relative availability of DBEs, and **Step Two:** Examining evidence in the state to determine what adjustments, if any, are necessary to the base figure to arrive at the overall goal.

Step One: Determining the Base Figure – 49 CFR §26.45(c)

Pursuant to 49 CFR 26.45, TDOT has used the following methodology to determine the **baseline figure** for its 2015 - 2017 DBE goal. After comparing several methods to determine the availability of ready, willing and able (RWA) DBEs, information mined from U.S. Census Data was decided as the most representative way to refine an accurate Step One Figure.

Step One

The most recent U.S. Census County Business Patterns (CBP) data was used to determine the percentage of RWA DBEs in the Tennessee market area for Step One. Using the DBE directory information for firms in the defined market area, TDOT carefully reviewed the area of work performed by DBEs, creating an analysis of firms in those codes in comparison to the 2011 CBP NAICS codes (most current data available) for all businesses in Tennessee.

The Civil Rights Office also did an extensive search for potential DBE businesses on the Governor's Office of Diversity Business Enterprise ([GoDBE](#)) website. Businesses were searched by minority status and gender (women-owned businesses) in the category of Construction. Although there were 251 businesses initially listed under GoDBE's *Construction* category, this proved to be broad and the majority of these businesses would not qualify as DBEs that would be ready, willing and able to work on federally funded highway construction projects. Therefore, those who did not qualify were excluded and the number was later reduced to 45 potential DBEs.



TDOT has a total of 134 (see tables 2 and 3) DBE firms determined to be ready willing and able to work on FHWA funded projects in the defined market area. This number includes both construction and consultant firms. We also targeted 45 (see tables 2 and 3) potential firms from the above mentioned sources. The NAICS codes for those firms yield a total of 3,630 (see tables 2 and 3) firms. The tables below, in combination with the formulas that follow, will show the Step One Process.

**Table 2 - Tennessee County Business Patterns – 2011 US Census
(Construction/Maintenance/Trucking)**

2011 NAICS Code	Description (CONSTRUCTION)	TDOT DBE	Potential DBEs (GoDBE List)	Census
CONSTRUCTION & MAINTENANCE				
238120	Structural steel and precast concrete contractors			57
238110	Poured concrete foundation and structure contractors			263
423840	Industrial Supplies Merchant Wholesaler			163
237310	Highway/Street/Bridge Construction			178
561990	Flagger/Traffic Control Services			175
	Construction & Maintenance Subtotal			836
TRUCKING				
484220	Specialized freight (except used goods) trucking, local			372
	TOTAL			1208

Percentage of DBE Firms in CONSTRUCTION, MAINTENANCE, TRUCKING

87(DBEs) + 32 (Potential DBEs) = 119

119 / 1208 (TN NAICS Total) = 9.30%

**Table 3 - Tennessee County Business Patterns – 2011 US Census
(Engineering/Consulting)**

ENGINEERING & CONSULTING				
541330	Engineering Services			811
541611	Administrative management and general management consulting services			754
541512	Computer systems design services			480
541370	Surveying and mapping (except geophysical) services			190
541620	Environmental consulting services			120
	TOTAL			2355



Percentage of DBE Firms in ENGINEERING & CONSULTING

47(DBEs) + 13 (Potential DBEs) = 60
60 / 2355 (TN NAICS Total) = 2.55%

Table 4 - FEDERAL-AID UTILIZATION FOR FFY2014 BY PROGRAM AREA

PROGRAM	FEDERAL-AID SHARE OF CONTRACTS AWARDED (Dollars)	PERCENTAGE OF TOTAL
CONSTRUCTION, MAINTENANCE, TRUCKING	\$400,036,728.59	85.5%
ENGINEERING & CONSULTING	\$67,914,777.08	14.5%
Total	\$467,951,505.67	100%

Step One Base Figure

$$\text{Step One Base Figure} = \frac{\text{Ready, Willing, and Able DBEs}}{\text{All Firms (DBEs and non - DBEs)}}$$

Step One Base Figure, Weighted by type of work to be performed

$$\begin{aligned} & \left[.855 \left(\frac{\# \text{ CONSTRUCTION, MAINTENANCE, TRUCKING DBEs}}{\# \text{ CONSTRUCTION, MAINTENANCE, TRUCKING Firms}} \right) \right. \\ & \quad \left. + .145 \left(\frac{\# \text{ ENGINEERING \& CONSULTING DBEs}}{\# \text{ ENGINEERING \& CONSULTING Firms}} \right) \right] \times 100\% \\ & = \left[.855 \left(\frac{119 \text{ CONSTRUCTION, MAINTENANCE, TRUCKING DBEs}}{1280 \text{ CONSTRUCTION, MAINTENANCE, TRUCKING Firms}} \right) \right. \\ & \quad \left. + .145 \left(\frac{60 \text{ ENGINEERING \& CONSULTING DBEs}}{2350 \text{ ENGINEERING \& CONSULTING Firms}} \right) \right] \\ & \quad \times 100\% \\ & = \left[.855 \left(\frac{119}{1280} \right) + .145 \left(\frac{60}{2350} \right) \right] \times 100\% \\ & = [.855(.0930) + .145(.0255)] \times 100\% \\ & = [.0795 + .0037] \times 100\% = \mathbf{8.32\%} \end{aligned}$$

Final Step One Base Figure= 8.32%



Per USDOT's [Tips for Goal-Setting in the Disadvantaged Business Enterprise \(DBE\) Program](#), "You should take steps to filter out businesses that are not relevant to your calculations where possible." DBEs not included in Step 1 were due to their extremely limited usage potential for state highway transportation contracts. These were excluded so as not to skew the results.

Step Two: Adjust the Base Figure – 49 CFR § 26.45(d)

Step Two of the goal setting calculation process is intended to adjust the Step One Base Figure to make it as precise as possible. Regulations require TDOT to consider all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the Base Figure in order to arrive at the overall goal. TDOT considered the capacity of DBEs to perform work based upon past performance, as measured by the volume of work DBEs have performed in recent years. Past projects used in this calculation are all transportation-related Federal-aid projects with similar scope, opportunities and characteristics of future projects to be let by TDOT, and are therefore suitable for use in this calculation.

| **Table 5** (next page) contains a summary of the expenditures to DBEs on projects for the last five (5) completed fiscal years. This chart indicates actual DBE attainments vs. commitments and money expended throughout TDOT for this period of time.



Table 5 – Past Performance 2009-2013

<u>FISCAL YEAR</u>	<u>GOAL COMMITMENT</u>	<u>GOAL ATTAINMENT</u>	<u>\$ EXPENDED</u>
<u>FFY 2013</u>			
Race Conscious	5.74%	5.18%	Prime: \$544,424,450
Race Neutral	1.86%	2.60%	DBE: \$42,342,089
	7.60%	7.78%	
<u>FFY 2012</u>			
Race Conscious	5.74%	7.89%	Prime: \$721,040,580
Race Neutral	1.86%	0.24%	DBE: \$58,605,400
	7.60%	8.13%	
<u>FFY 2011</u>			
Race Conscious	7.20%	5.54%	Prime: \$614,375,112
Race Neutral	1.70%	1.12%	DBE: \$40,910,246
	8.90%	6.66%	
<u>FFY 2010</u>			
Race Conscious	7.20%	6.26%	Prime: \$537,393,638
Race Neutral	1.70%	1.86%	DBE: \$43,625,970
	8.90%	8.12%	
<u>FFY 2009</u>			
Race Conscious	5.66%	5.62%	Prime: \$889,777,388
Race Neutral	3.07%	1.51%	DBE: \$63,404,674
	8.73%	7.13%	

Past participation for the last five years was 7.78%.

Past Participation in order from lowest to highest: 6.66%, 7.13%, **7.78%**, 8.12%, 8.13%

| We then averaged the five-year median Past Participation figure of **7.78%** with our Step One Base Figure of **8.32%** to arrive at a proposed goal of **8.05%**:



$$\frac{7.78\% + 8.32\%}{2} = \frac{16.1\%}{2} = 8.05\%$$

Adjusted Base Figure= 8.05%

Other Considerations for Step 2 Goal Adjustments

Additional sources of information are to be considered to counter the past effects of discrimination. If any of these sources are to be included, they would be calculated as additional adjustments to Step 2 to provide the most realistic goal possible. To be considered, TDOT would need “relevant and reliable” data evidence that the DBE contractors are subject to discriminatory practices consistent with an additional source that would warrant an adjustment.

Evidence from a disparity study was one consideration for an adjustment. A Disparity Study was conducted by Mason-Tillman Associates, Ltd. (MTA) in 2006. MTA conducted the study through a review of TDOT’s Finance Division’s financial systems, as well as through contract data for July 1, 2000 to June 30, 2005 TDOT contracts. Other sources (anecdotal evidence, other government data record review, etc.) were also used.

The study did find there was a statistically significant underutilization of minority and women business enterprises in formal prime contracts in both TDOT contracting and consulting industries. However, TDOT did not feel the study was concluded in a manner which presented much relevant data into the causes and/or remedies for the underutilization that would warrant its use in the Goal Methodology. The results were broad and did not provide sufficient information relative to discrimination in the local market area by TDOT or similar contracting agencies.

TDOT also considered evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, including the ability of DBEs to get financing, bonding, and insurance as it relates for participation in TDOT’s program, as well as data on employment, self-employment, education and training programs. Under the current economic conditions and fiscal restraint, DBEs have had difficulty obtaining access to capital needed for financing, bonding, and insurance. However, non-DBEs have also fared poor in these areas due to the economy and other factors.

Employment data from the U.S. Bureau of Labor Statistics shows that as of December 2013, Tennessee has [7.7% unemployment](#) and is ranked 44 out of 51 (50 states plus D.C.) for the highest unemployment rates. Also, per SBA data, most of Tennessee’s small businesses would be considered “very small” as 82.6 percent of all businesses have no employees (sole proprietorships), and most employers have fewer than 20 employees.



Regarding education, 2009 Census data shows that Tennessee is ranked 42 out of 51 for [high school graduation rates](#) at 83.1%, providing evidence that educational attainment is also low.

After a thorough review and consideration, TDOT has not found that this evidence warrants further adjustment to the overall goal. This evidence demonstrates that Tennessee has some challenges overall in education, training, and employment, but this is not exclusive to the DBE community.

ANTICIPATED RACE-NEUTRAL AND RACE-CONSCIOUS METHODS

The federal regulations require TDOT to meet the maximum feasible portion of its overall goal by using race and gender-neutral (hereafter referred as race-neutral) means of facilitating DBE participation. TDOT will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (49 CFR 26.51(f)) and track and report race-neutral and race-conscious participation separately.

When a DBE is awarded a contract as the prime contractor, or when contractors award subcontracts to DBEs on projects with no goal or DBE usage exceeds the participation required by the project goal, this is recognized as race neutral participation.

TDOT uses the following means to increase race-neutral DBE participation:

- Continue the supportive services program to develop and improve immediate and long-term business management, record-keeping, and financial and/or accounting capabilities for small businesses;
- Provide assistance to DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, including utilizing our own website to disseminate information, including our DBE Directory, bid opportunities, and updated information on Part 26;
- Provide supportive services to help DBEs improve long-term development, increase opportunities to participate in a variety of different kinds of work, handle increasingly significant projects, successfully compete as prime contractors, and achieve eventual self-sufficiency;
- Provide assistance to DBEs in overcoming limitations such as an inability to obtain bonding or financing, and identify and eliminate other barriers to contracting with TDOT;
- Contact DBEs for Letters of Interests to Primes on non-goal construction and consulting opportunities;
- Created a small business element for the DBE program;



- Provide networking opportunities with local, state and federal agencies, non-profit, academic and business communities to obtain maximum partnering opportunities and resources, and develop comprehensive resource and referral networks with technical assistance and service providers;
- Make DBEs aware of contracting opportunities in all TDOT divisions, and not just limit notifications to construction projects.

Breakout of Estimated Race-Neutral Participation

The following table contains a summary of all DBE race-neutral participation (prime contracting and sub-contracting opportunities) from the past five completed fiscal years. This chart provides the median percentage of contract work that DBEs have secured through race-neutral participation in the past.

Table 6 – DBE Race-Neutral Attainment on Consulting and Construction Contracts

Federal Fiscal Year	Race Neutral Attainment
2013	2.60%
2012	0.24%
2011	1.12%
2010	1.86%
2009	1.51%

Race Neutral attainment for last five years in order from lowest to highest

$$0.24\% + 1.12\% + 1.51\% + 1.86\% + 2.60\%$$

$$\text{Median \%} = 1.51\%$$

Total FFY 2015-2017 Anticipated Race-Neutral Past Participation **1.51%**

THREE YEAR GOAL

In an amendment to 49 CFR Part 26, which became effective March 5, 2010, FHWA revised the DBE goal setting guidance to have DOTs begin implementing three-year DBE goals, with the ability to revise the goal to better represent any changes in construction contract trends on an annual basis. In accordance with the new guidance, the Tennessee Department of Transportation has established its Disadvantaged Business Enterprise overall goal for the three-year period for federal fiscal years 2015 – 2017 at **8.05%** for new contracts, with **1.51%** to be obtained through those projects without goals



(race-neutral methods) and the remaining **6.54%** through goals using race-conscious methods.

FINAL 3-YEAR FFY DBE GOAL PARTICIPATION:

3-YEAR FFY Anticipated Race-Neutral Participation = 1.51%

3-YEAR FFY Anticipated Race-Conscious Participation = 6.54%

3-YEAR FFY Anticipated DBE Goal Participation = 8.05%

During the course of the following three FFYs, TDOT will continue to review the contracts awarded, including future contracts with possible DBE participation, to determine whether adjustments to the goal are warranted. Should TDOT determine that an adjustment to the DBE goal is warranted for a more accurate representation of contract trends, the revised DBE goal will be posted on the website of TDOT's Civil Rights Office Small Business Development Program at: <http://www.tdot.state.tn.us/civil-rights/smallbusiness/>

DBE Goal Consultation Process / Public Participation

A public notice announcing the proposed overall goal and its rationale was made available for inspection during normal business hours. A copy of the notice and names of the publications utilized are attached.

The TDOT Consultation Process is outlined as follows with the public notice locations. During the course of these meetings, DBEs were given an opportunity for input and comments.

Steps to Incorporate Public Participation

1. The process included meetings to provide public participation.
2. Invitations sent to all DBEs currently on the TNUCP certification list prior to meeting.
3. Public notices were sent out with a 45-day comment period in local papers and media with the current goal proposed for FFY 2015-2017.
4. Any written and verbal comments were recorded and submitted to FHWA.
5. TDOT's DBE plan will be revised to address the consultation process.

Outline of TDOT Public Participation

1. TDOT facilitated public information meetings. A comment box was available at each of the four regional offices.



Region 1 Knoxville
Region 2 Chattanooga

Region 3 Nashville
Region 4 Jackson

2. In order to comply with 26.45(g) providing public participation, we participated in consultation meetings with the following groups:

Associated General Contractors (AGC) of TN-Middle TN Branch
2924 Foster Creighton Drive
Nashville, TN. 37204
Dhan James, Executive Director
June 3, 2014

Tennessee Road Builders Association
Mid-Year Meeting
Downtown Hilton Hotel
Kent Starwalt, Executive Vice President
July 16, 2014

TDOT Supportive Services/DBE Training Meetings

Nashville

TDOT Region 3 Office
6601 Centennial Blvd.
Nashville, TN
May 13, 2014

Memphis

Renaissance Business Development Center
555 Beale Street
Memphis, TN
May 20 and 21, 2014

Oak Ridge

Technology 2020 BUILDING
1010 Commerce Park Drive
Oak Ridge, TN
Tuesday June 17, 2014

Chattanooga

TDOT Region 2 Auditorium
4005 Cromwell Road
Chattanooga, TN
June 18, 2014

A Public Notice of the 2015-2017 goal was published in the following newspapers on May 25, 2014. This notice, which follows the listed news publications, announced the proposed goal and included the timeframe for public inspection of the document as well as for comments.



***Pride Newspaper Group**

Contact Person: Larry Davis

Nashville Pride
 Chattanooga Courier
 Knoxville Enlightener
 Murfreesboro Vision
 Clarksville Press
 941 44th Avenue North
 Nashville, TN 37209
 Bus: 615.292.9150
 Fax: 615.292.9056
prideads@comcast.net

***The Tennessee Tribune**

Contact Person: Steven E. Benson
 1818 Morena Street
 Nashville, TN 37208
 Bus: 615.321.9551
 Fax: 615.321.0409
sales1501@aol.com

***West Tennessee Examiner**

Contact Person: Bill Marable
 426 E. Main St.
 Jackson TN 38301
 Bus: 731.935.2222
 Fax: 731.935.2490
Wtegoodnews1@bellsouth.net

Kingsport Time-News

P.O. Box 479
 701 Lynn Garden Drive
 Kingsport, TN 37662-0479
 Bus: 423.246.8121
 Bus: 1-800-251-0328
lbellamy@timesnews.net

Johnson City Press

Contact Person: Tonya Tipton
 204 West Main ST
 Johnson City, TN 37605
 Bus: 423.929.3111
 Fax: 423.929.9007
adcoppy@johnsoncitypress.com

Jonesborough Herald & Tribune

Contact: Brandy
 P.O. Box 277
 Jonesborough, TN 37659
 Bus: 423.753.3136
 Fax: 423.753.6528
ads@heraldandtribune.com

***Tri-State Defender**

203 Beale Street, Suite 200
 Memphis, TN 38103
 Phone: 901.523.1818
 Fax: 901.523.1820
advertising@tri-statedefender.com

***Memphis Silver Star News**

Contact Person: Jimmy Williams
 3019 Park Avenue
 Memphis, TN 38114-2723
 Phone: (901) 452-8828
 Fax: (901) 452-1656
silverstarnews@bellsouth.net

***Hispanic Papers**

Contact Person: Eliud Trevino
 (cell) 615.582.4318
 EL Paisano (McMinnville)
 El Crucero de Tennessee
 Mondo Hispano (Knoxville)
 El Graphico (Memphis)
 2805 Foster Ave., Suite 207
 Nashville, TN 37210
 Bus: 615.469.6876
 Fax: 615.469.1859
cruceronews@aol.com

***Denotes Minority Newspapers**



PUBLIC NOTICE

Disadvantaged Business Enterprise Goal for FFY 2015-2017

The Tennessee Department of Transportation (TDOT) hereby announces its FFY 2015-2017 Disadvantaged Business Enterprise (DBE) Program Goal under the guidelines of 49 CFR Part 26 and the regulations and directions of the U. S. Department of Transportation (DOT) of 8.10% for participation in the Federal Highway Construction Program.

This goal has been set based upon information currently available and will be available for public inspection at the TDOT Civil Rights Office Suite 1800, James K. Polk Bldg., 505 Deaderick Street, Nashville, TN 37243-0347 between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday for 30 days following the publication of this notice. Written comments will be accepted for 45 days following the date of publication, and can be sent to the Civil Rights Office address (listed previously) above or to the email below.

Written comments pertaining to this goal should be sent to the attention of the Small Business Development Program Director, at the address shown above. A comment box will also be available at the four TDOT Regional Offices for written input.

A video summary of the 2015-2017 Proposed Goal is available online at <https://www.youtube.com/watch?v=ayC1ED47r6As>

E-mail comments may be sent to TDOT.DBEP@tn.gov

Public Comment Period: May 25, 2014 – July 13, 2014

TDOT is an Equal Opportunity Employer



SOURCES OF INFORMATION FOR METHODOLOGY

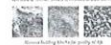
- ❖ Construction Division
- ❖ Program Operations
- ❖ Project Management Office of Local Programs
- ❖ Right-of-Way Division
- ❖ Long Range Planning Division
- ❖ Environmental Division
- ❖ Design Division
- ❖ Strategic Transportation Investments Division
- ❖ Civil Rights Division
- ❖ Census Data
- ❖ TDOT Disparity Study (2006, Mason-Tillman Associates, Inc.)



One written comment was received (by The Tennessee Road Builders Association)



213 Fifth Avenue, North Nashville, Tennessee 37219
(615) 255-5751 FAX (615) 255-6937 Internet: www.trba.org



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**First Vice President
& Treasurer**

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Dale McCulloch
Wink Neal
Carlton Smith
Rick Turner

**Immediate
Past President**

Tony Boals

**Executive Vice
President**

Kent D. Starwalt

July 21, 2014

Ms. Elizabeth Michael
Director
Small Business Development Program
TDOT Civil Rights
Suite 1800
James K. Polk Bldg.
505 Deaderick Street
Nashville, Tennessee 37243-0347

Dear Ms. Michael:

Thank you granting a two-week time extension for the Tennessee Road Builders Association (TRBA) to provide comment on the Tennessee Department of Transportation's (TDOT) Disadvantaged Business Enterprise (DBE) Goal for FFY 2015-2017. Thank you also for the opportunity to review the methodology that TDOT used in proposing its new goal.

Both the race-conscious goal of 6.59% and the race-neutral goal of 1.51% seem fair based on the methodology used by the TDOT.

We support the department's desire that more of the overall goal be achieved through race-neutral means. We have determined that there is a great deal of misinformation or even lack of information by the contracting community on how to achieve, or even exceed, the race-neutral goal. We look forward to working with TDOT in providing information to contractors to better clarify what "race-neutral" means how they can report to the department on the use of DBE firms on non-goal projects.

Thanks again for the opportunity to provide our comments.

Sincerely,

Kent D. Starwalt
Executive Vice President

Cc: TRBA Board of Directors
Joi Hamilton Jones, FHWA

Good Roads Save Lives, Time and Money!