



**ODOT'S DBE PROGRAM:
FREQUENTLY ASKED QUESTIONS
May 2015**



DBE PROGRAM BACKGROUND

1. What is the Disadvantaged Business Enterprise (DBE) program, and what are the program objectives?

- The Oregon Department of Transportation is committed to a Civil Rights Program to ensure the participation of Disadvantaged Business Enterprises (DBEs) in contracting opportunities. ODOT's policy is not to discriminate on the basis of race, color, sex, and/or national origin in awarding and administering USDOT-assisted contracts.

DBE Program Objectives are to:

- Ensure compliance with DBE regulations and non-discrimination requirements
- Ensure DBE's can compete fairly for USDOT-funded contracts
- Ensure that only firms that can meet certification requirements participate in the DBE program
- Help develop firms to compete successfully outside the DBE Program

2. What are ODOT's general DBE program requirements?

- To meet DBE program requirements, ODOT must:
 - Issue and implement a [DBE Program Policy Statement](#);
 - Set overall annual goals for DBE utilization on its USDOT-assisted contracts, including an overall goal for FHWA-funded contracts;
 - Make good faith efforts to meet the overall goal;
 - Project the portion of each overall goal the agency expects to meet through race- and gender-neutral measures (non-discriminatory hiring of DBE's) and the portion expected to be met through race- and gender-conscious measures (hiring of DBE's to meet assigned contract goals);
 - Comply with DBE reporting obligations;
 - Monitor and enforce contractor compliance with the DBE program;
 - Ensure Local Public Agency sub-recipients also comply with DBE reporting, monitoring and enforcement requirements.

3. Who is eligible to participate as a DBE contractor on ODOT contracts?

- Only firms certified in Oregon by the [Office of Minority, Women and Emerging Small Business](#) are eligible to participate as a DBE on ODOT projects. (See Q&A on *DBE Certification Requirements* for additional information.)
- For its work to count toward meeting a DBE goal, a DBE firm must be certified in the type of work it has been contracted to perform.



DBE PROGRAM BACKGROUND

4. What are the benefits of participating in the DBE program?

- ODOT provides numerous supportive services including training and outreach opportunities to DBEs and other certified small businesses, some of which only DBE firms are eligible to receive.
 - [Civil Rights – List of Events](#)
 - [Civil Rights – Small Business Support](#)
 - [Training at ODOT](#)
- In general, all DBE firms that are awarded contracts (prime- and sub-) are counted toward meeting the Agency's overall annual DBE goal. Prime contractors are required to entertain bids or proposals from all types of potential subcontractors, including DBE firms, on a non-discriminatory basis.
- For contracts with an assigned DBE goal, eligible DBE firms may be hired to meet the assigned goals, providing contracting opportunities for eligible DBE firms.
- See Q&A on *Eligibility for Meeting DBE Goals* for more information on which firms are eligible to meet an assigned contract goal.



DBE CERTIFICATION ELIGIBILITY REQUIREMENTS

1. What is a Disadvantaged Business Enterprise (DBE)?

- A DBE is a for-profit, small business that is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals who are citizens or lawfully admitted permanent residents.

2. What are the DBE groups, and how are they defined?

- The DBE groups are defined under the term “socially and economically disadvantaged individual” in [49 CFR 26.5](#) of the DBE regulations as follows:
 - **Black (African) Americans**, which includes persons having origins in any of the Black racial groups of Africa;
 - **Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - **Native Americans**, which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - **Asian-Pacific Americans**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - **Subcontinent Asian Americans**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - **Women**;
 - **Any additional groups** whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
 - **Other individuals** determined to be socially and economically disadvantaged on a case-by case basis.

3. Where can I find out how to get certified as a DBE?

The Office of Minority, Women and Emerging Small Business (OMWESB) processes all small business certifications (DBE, MBE, WBE, and ESB) for the state of Oregon. Information on how to become a certified DBE is available [here](#):



DBE GOALS

Overall DBE Goal

1. What is ODOT's overall DBE goal, and why does the agency set the goal?

- The current overall DBE goal for FHWA-funded contracts is **13.1%** for federal fiscal years 2015 – 2016.
- As a recipient of FHWA financial assistance, the agency is required to set an overall goal for DBE participation on FHWA-assisted contracts.

2. How is the overall DBE Goal calculated?

- In compliance with the federal DBE regulations, ODOT is required to calculate the overall goal on a triennial basis and submit it to FHWA for approval.
- The goal identifies the relative availability of DBEs that are ready, willing and able to compete for ODOT's FHWA-assisted contracts in comparison to all businesses known to be available to compete for such contracts. The overall goal reflects the agency's determination of the level of DBE participation that would be expected absent the effects of discrimination.
- For additional detail, see the [Annual Goal](#) calculation reports posted by federal fiscal year on the DBE Program page.

3. Do the DBE goals match the demographics of Oregon?

- The overall goal calculation takes into account ODOT's market area, which is primarily within the geographic boundaries of Oregon. See the [Annual Goal](#) calculation report for more details on ODOT's relevant market area.

4. How is ODOT's overall DBE goal achievement measured?

- Achievement is measured as a percentage of all FHWA-assisted contract dollars awarded to all DBEs at the prime- and sub-contract levels each federal fiscal year.
- For the agency's overall DBE goal, all DBE utilization is included in calculating whether the agency meets the Goal. This means **all** DBE groups, even those not eligible to meet a *contract* goal, count toward meeting the Overall DBE Goal.
- See Q&A on *Eligibility for Meeting DBE Goals* for more information on which firms are eligible to meet an assigned contract goal.



DBE GOALS

5. What methods does ODOT use to meet the overall DBE goal?

- ODOT uses both “race- and gender-conscious” and “race- and gender-neutral” methods.
- To the maximum extent possible, the agency must meet its DBE goal through race and gender neutral methods. The agency must establish contract goals for any portion of the overall goal that is not projected to be met through neutral measures.
- Based on past DBE utilization levels, the agency estimates that of the **13.1%** overall goal, **5.2%** will be met through race and gender conscious methods (assigning contract goals on select projects) and **7.9%** through race and gender neutral methods (non-discriminatory hiring of DBE firms at the prime- and subcontract-levels).
- For details, see the Annual Goal calculation reports posted on the DBE Program page under [Annual Goal](#).

Assigned Contract Goals

6. What is a DBE contract goal?

- A DBE contract goal is contract-specific and reflects the minimum percentage of the value of work to be performed by eligible DBE firms on that project.
- For contracts with assigned DBE goals, a bidder or proposer must commit, or make good faith efforts to commit, an amount sufficient to meet the assigned contract goal to eligible DBE firms as a condition of contract award.
- The “DBE Commitment” is the value of the work a prime contractor commits to a DBE to meet a contract goal. This commitment becomes a requirement of the contract.

7. Will all contracts be assigned a DBE goal?

- No. Not all contracts will be assigned DBE contract goals. ODOT may assign contract goals on select contracts.



DBE GOALS

8. What criteria are considered in setting contract goals?

- The following criteria are considered in setting contract-specific goals:
 - Project location, size, duration, and dollar value.
 - The nature of project, (type of work and potential scheduling and coordination work).
 - Availability of certified DBE firms within a reasonable distance from the project location that perform work identified as able to be subcontracted.
 - Any other relevant criteria, including court decisions and waivers or directives from USDOT.

9. If a contractor exceeds the DBE goal on a project, will that overage also be counted toward the overall DBE goal?

- Yes. When a prime contractor commits to DBE utilization over the amount needed to meet a contract goal, the overage is counted toward meeting the agency's overall goal of 13.1%.

Eligibility for Meeting DBE Goals

10. Who is eligible to meet the Overall DBE Goal?

- **Any** DBE firm certified in the type of work it has been contracted to perform (prime- or sub-level) may be counted toward meeting the agency's **overall** goal. This includes DBE groups that are not eligible to meet an assigned *contract* goal.

11. Who is eligible to meet the Assigned Contract Goals, and why are only some DBE groups eligible?

- To meet the narrow tailoring requirements of ODOT's DBE Program, only those DBE groups that were identified as being "substantially underutilized" in the [2011 Disparity Study](#) and approved under [ODOT's DBE Program Waiver](#) are currently eligible to meet the following hard contract goals :
 - **Construction Contracts** – Only African American and Sub-continent Asian-American DBE owned firms were found to be substantially underutilized and are thus eligible to meet assigned contract goals for construction contracts.
 - **A&E Contracts** – All DBE groups except, Asian Pacific American male - owned firms were found to be substantially underutilized and are eligible to meet assigned contract goals for A& E contracts.
 - See Q&A on *DBE Certification Eligibility Requirements* for a description of the DBE ethnic groups.



DBE GOALS ON A&E CONTRACTS

1. Will all A&E Contracts be assigned a goal?

- No. Not all A&E contracts will be assigned goals. DBE goals will be assigned to eligible contracts.
- Eligible A&E Contracts:
 - Are FHWA-funded
 - Exceed \$100,000 (est.)
 - Have subcontracting opportunities
 - Include types of work in which DBEs are available

2. What are the expected average-size DBE Goals on A&E Contracts?

- Average Goal Sizes (per contract type):
 - Full Service Contract (five or more disciplines) = 8.5%
 - Multi-Discipline = 8.5% or less (based on subcontract work and DBE availability in those types of work)
 - Single Discipline = No goal (unless there is plenty of subcontract work and DBE availability in those types of work)

3. Will DBE goals be assigned at the A&E Price Agreement level, or at the Work Order Contract-level?

- DBE goals will be assigned at the contract (or WOC) level.
- ODOT and Local Agency price agreements will contain provisions that indicate the DBE goal may be assigned at the WOC-level.

4. Will DBE goals be assigned to A&E Contract Amendments?

- If a goal has been assigned to a Contract, the same goal also applies to any related Amendments.



DBE GOALS ON CONSTRUCTION CONTRACTS

1. Will all Construction Contracts be assigned a DBE goal?

- No. Not all construction contracts are assigned goals. DBE goals will be assigned to eligible contracts.
- Construction Contracts eligible to be assigned DBE goals:
 - Are FHWA-funded
 - Are over \$1 million (est.)
 - Have subcontracting opportunities
 - Include types of work in which eligible DBEs are available

2. What are the expected average-size DBE Goals on Construction Contracts?

- In recent years, for projects on which construction contract goals have been assigned, the goals have ranged from 1% to 9%, with many goals set at the 1 – 2% level.
- For upcoming projects, the agency anticipates setting goals in the 1% to 10% range, with many goals set at the 4 - 6% level.



CONTRACT ADMINISTRATION: MONITORING DBE PARTICIPATION

1. Are assigned DBE contract goals “hard” goals that are contractually enforced, or merely “aspirational” targets?

- The DBE Contract Goals are “hard” goals and will be included as enforceable provisions in the contract.
- The prime contractor must make good faith efforts throughout its performance of the contract to meet the assigned DBE goal and to meet its commitment to DBE firms hired to meet the contract goal.

2. How does ODOT track whether a DBE Contract Goal or DBE Commitment has been met?

- **Subcontractor Payment Reports:** Credit toward meeting a DBE contract goal is only allowed after the committed DBE has been paid for the work performed under its contract.
 - ODOT tracks payments to subcontractors, including DBEs, on the [Summary Report of Subcontractors Paid \(SRSP\) or Paid Summary Report \(PSR\) form](#). PSRs are for projects Bid on or after 10/23/2014. Contractors must complete and submit the SRSP or PSR form as required by the DBE contract provisions.
- **Commercially Useful Function Requirement:** Additionally, credit for DBE participation is only allowed when the DBE firm performs a commercially useful function (CUF) in the performance of its contract work. The prime contractor is responsible for ensuring that any DBE firm it hires performs CUF-compliant work.
 - A DBE performs a Commercially Useful Function when it is responsible for execution of the work of the contract and for carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material itself.

3. What are the consequences of non-compliance?

- Failure to meet an assigned DBE contract goal may result in the imposition of contract remedies such as temporary or permanent withholding of payments, suspension of work, a finding of breach of contract, or termination of the contract.



DBE NETWORKING, OUTREACH & RESOURCES

1. I'm a Prime Contractor, where do I find eligible DBE firms?

- Oregon's OMWESB certification database includes a directory of certified DBE firms at:
<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp?XID=6787&TN=oregon4biz>
- The OMWESB Directory allows you to search by certification type (DBE, MBE, WBE, ESB), ethnicity, NAICS commodity codes, key word, location, firm name, and owner name.
- The Directory is updated daily with current certification information.

2. I'm a DBE firm, where do I find out about upcoming contract opportunities and which Prime Contractors are pursuing work on ODOT projects?

- For construction contracts, primes and DBE firms can look on **eBIDS** to see which firms have expressed listed themselves as either bidding plan holders or informational plan holders on specific projects.
- For professional services contracts, primes and DBE firms can look on Oregon Procurement Information Network (**ORPIN**) to see which firms have expressed interest in specific opportunities.
<http://orpin.oregon.gov/open.dll/welcome>

3. Where can Prime Contractors, DBEs, and other small business contractors connect and learn about outreach and training opportunities?

- ODOT, OAME, and AGC Oregon-Columbia Chapter have partnered in the [Small Business Initiative](#) to provide prime and sub-contractors with outreach, networking, and training information.
- [ODOT – ACEC Liaison Committee Meetings](#)
 - The Liaison Committee serves as the management and communication hub of the partnership. Meetings are expected to proactively provide a forum for raising issues, communicating with the partnership community, and overseeing and distributing work assignments to the standing committees. Open meetings are held every other month, and attendees are expected to be a mixture of ODOT technical managers and support services staff as well as general ACEC member firms.
- The Daily Journal of Commerce (DJC) also regularly hosts DMWESB networking events where prime, sub, agency, and various service provider representatives gather. <http://djcoregon.com/>



DBE NETWORKING, OUTREACH & RESOURCES

4. What other resources are available to help Prime Contractors and DBE and other small businesses connect?

Chambers of Commerce

- [African American Chamber of Commerce](#)
- [Asian Pacific American Chamber of Commerce](#)
- [Oregon Hispanic Chamber of Commerce](#)
- [Oregon Native American Chamber of Commerce](#)
- [Philippine American Chamber of Commerce](#)
- [U.S. Chamber of Commerce](#)

Associations

- [American Council of Engineering Companies](#) (ACEC)
- [American Subcontractors Association](#)
- [Associated General Contractors](#) (AGC)
- [National Association of Women in Construction](#) (NAWIC)
- [National Association of Minority Contractors-Oregon](#) (NAMCO)
- [Oregon Association of Minority Entrepreneurs](#) (OAME)
- [Oregon Builders Congress](#)
- [Oregon Native American Business & Entrepreneurial Network](#) (ONABEN)
- [Oregon Small Business Development Center Network](#) (SBDC)
- [Service Corps of Retired Executives](#) (SCORE)

5. Where do you go for more information about DBE goals and DBE requirements?

- DBE program information can be found on the following web pages:
 - [ODOT Office of Civil Rights DBE Program Webpage](#)
 - [DBE Forms](#)
 - [Federal DBE Regulations](#)
 - [DBE Certification Information](#)
- Current DBE provisions:
 - [Construction](#)
 - [A&E](#)

For more information, please contact:

[ODOT Office of Civil Rights](#)

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