

## **SUBPART C - GOALS, BONA-FIDE EFFORT AND COUNTING SECTION 1**

### **GOALS AND GOAL SETTING**

WYDOT, in accordance with DOT guidelines, will determine WYDOT's Disadvantaged Business Enterprise Annual Participation Goal (APG) for each fiscal year.

**WYDOT's Disadvantaged Business Enterprise Annual Participation Goal through August 1, 2024 will be 0.20% utilizing an all race- and gender- neutral program.**

#### **STEP 1 ANALYSIS: BASE GOAL CALCULATIONS**

**A. Method Selected:**

WYDOT calculates the APG using the criteria in 49 CFR Part 26.45. The determination is based on a level of DBE participation relative to all businesses ready, willing and able to participate on Federally assisted contracts, and reflects a level WYDOT would expect in the absence of discrimination. WYDOT's methodology is based on demonstrable evidence of local market conditions and is designed to ultimately attain a goal that is narrowly tailored to the relative availability of DBE's in the Wyoming market.

**B. Description of Data Used:**

The APG setting procedure is based on the following data sources:

1. WYDOT has compiled a Consultant List data beginning in October, 1999. This list includes all registered consulting firms. Also included are the professional discipline types of firms utilized for design services.
2. From the best information available based on contracts administered under 49 CFR 26, WYDOT has reviewed a list of those firms who have participated in bidding and/or quoting on for WYDOT consulting projects this fiscal year.
3. WYDOT's local market area has been determined to be the entire state of Wyoming plus the following adjacent states: Colorado, Montana, Utah, North Dakota, South Dakota and Idaho. This determination is supported by the Consultant List.
4. From the Bidder's List, North American Industry Classification System (NAICS) codes were gathered from all respondents to the Information Survey. WYDOT will utilize other data where available, including capacity studies, past participation statistics, and disparity studies.
5. DBE businesses will be certified by WYDOT in order to be considered as an eligible Disadvantaged Business Enterprise and will be listed in the WYDOT DBE Directory. This listing includes both resident and nonresident DBE firms. Using this listing, WYDOT will identify the DBE firms that could be used on WYDOT Federal-aid projects to fulfill the APG.
6. Using the data compiled in the above steps, a variance may occur as a result of the data found for determining the APG. The baseline APG established may be adjusted to reflect this.

**C. Description of Calculation:**

**DBE Availability -**

WYDOT compiled the NAICS data found in the WYDOT Bidder's List data utilizing the NAICS codes supplied by firms responding to the Information Survey. The Bidder's List includes WYDOT certified DBE firms.

**DBE’s Ready, Willing and Able -**

The NAICS codes listed below are only those applicable to highway and airport work. The Bidder’s List includes prequalified contractors, subcontractors, suppliers, specialist firms, and WYDOT certified DBE firms. WYDOT prequalifies prime bidders for highway design and construction, but also for other types of work for many other agencies outside WYDOT. In addition, WYDOT is the Unified Certification Office in the state, and certifies DBE firms for several other agencies, many of which do not perform types of work that could be utilized in consultant services.

In light of these factors, WYDOT chose to remove those NAICS codes that did not apply to the types of Federal-aid highway work that WYDOT typically lets to contract. With the NAICS codes remaining for contractors and subcontractors, WYDOT received the results shown in TABLE 1.

<b>TABLE 1</b>			
<b>NAICS Code</b>	<b>Classification Description</b>	<b>Totals By Bidder’s List</b>	<b>Bidder’s List DBEs</b>
N541330	Engineering Services/Planning	480	1
Total Number of Engineering Firms Wyoming		480	1
<b>Step 1 - DBE Program Based Goal</b>			<b>0.20%</b>

Table 1 represents the number of active bidders from the current Bidder’s List. The numbers are consistent with bidders lists from FY 1999 to present, that being an average of 450 active bidders.

**D. Resultant Baseline Goal:**

The resultant baseline goal from the Step 1 analysis is a goal of 0.20% .

**STEP 2 ANALYSIS:**

**ADDITIONAL FACTORS ANALYSIS FOR POSSIBLE ADJUSTMENT**

**1. Past Participation - Commitments:**

WYDOT has accumulated sufficient history on actual contract awards and subcontract commitment that current prime contractor participation can be based on those DBE commitments made. This is done with the realization that commitment history is a cumulative factor, not attached to any set fiscal year because of the variance in the number of projects available to let and the nature of Federal FAA funding. However, this decision falls in line with the spirit of the regulations in that commitments are a reliable indicator of actual participation.

**Commitments -**

The commitments made to DBEs on projects let to contract consistent with 49 CFR 26, and tracked as stated in 26.37 and 26.55, is currently 6.85% of project dollars bid as shown in TABLE 2. Past commitment is representative of what might be expected in FY2021 based on the type of projects from each of the past years.

<b>Table 2</b>					
<b>WYDOT FAA Consulting Contracts Awarded &amp; DBE Subcontract Commitments at Time of Award</b>					
	<b>Prime Contracts Awarded</b>	<b>\$\$ Value Prime Contracts Awarded</b>	<b>DBE Contract Commitment \$\$</b>	<b>Annual DBE Goal</b>	<b>% DBE Commitment At Time of Award</b>
FY 2015	1	\$445,864.00	\$0.00	N/A	0.00%
FY 2019	1	\$694,660.00	\$79,170.00	N/A	11%

<b>Table 2</b>					
<b>WYDOT FAA Consulting Contracts Awarded &amp; DBE Subcontract Commitments at Time of Award</b>					
<b>Contract Total</b>		\$1,140,524.00	\$79,170.00		6.85%

## 2. Past Participation - Payments:

WYDOT has accumulated sufficient history on actual contract and subcontract payments so that current participation can be based on actual DBE payments made. The decision to use the data falls in line with the spirit of the regulations in that actual payments are a primary indicator of actual participation.

This is done with the realization that payment history is a cumulative factor, not necessarily attached to any set fiscal year because of the nature of the construction industry. The projects let in a specific year are not necessarily the same projects completed in that same fiscal year, therefore Table 2 showing commitments at time of award has no direct correlation to the payment history shown in Table 3.

### Payments -

The payments made to DBEs on completed projects let to contract, consistent with 49 CFR 26, and tracked as stated in 26.37 and 26.55, is currently 6.85% of project dollars bid as shown in TABLE 3. Past participation is representative of what might be expected in FY2021 based on the type of projects from each of the past years.

<b>Table 3</b>					
<b>WYDOT DBE Contract &amp; Subcontract Payments - Percent of Attainment</b>					
	Prime Contracts Completed	\$\$ Value Prime Contracts Completed	DBE Contract Payments	Annual DBE Goal	% DBE Participation Attained
FY 2015	1	\$445,864.00	\$0.00	N/A	0.00%
FY 2019	1	\$694,660.00	\$78,170.00	N/A	11%
<b>Contract Total</b>		\$1,140,524.00	\$78,170.00		6.85%

Note This is the first DBE Goal methodology submitted for approval to FAA

### Step 2 Adjustment:

A review of the currently available data sources shows the following:

1. Step 1 NAICS data indicates the current construction industry in Wyoming reflects a Step 1 base figure DBE firm population availability of **0.20%**.
2. Past participation of project bids, award and commitment data indicates prime contractor commitments to DBE on contracts let to bid under 49 CFR 26 of **6.85%**. Bid and commitment history is cumulative.
3. Past participation of contract and subcontract payments to DBEs on completed projects let to bid under 49 CFR 26 of **6.85%**, which reflects contract dollars over and above the original levels of commitment at time of bid letting. Contract and subcontract payment history is cumulative.

4. The leveling out of DBE commitments and DBE payments in relation to the current DBE community of firms that are ready, willing and able to participate in Federal-aid highway design and construction is reflected in these cumulative histories.
5. The cumulative histories support these observations;
  - a) the DBE community has fewer numbers of firms over the years, presently being 4.46%, as is reflected in the entire construction industry, however,
  - b) the DBE community of ready, willing and able firms has acquired a greater percentage of awards and commitments compared to their community size, and
  - c) the DBE community of ready, willing and able firms has acquired a greater percentage of additional subcontracts and payments than was originally committed.
6. Tables 2 and 3 demonstrate that WYDOT's program is successful in achieving the program objectives, thus no adjustment to the base goal is necessary.

After consideration of all these factors, WYDOT has determined not to make a Step 2 adjustment to the baseline goal.

**Based on the best information, WYDOT will set an Annual Aspirational Goal of 0.20 % for FY 2021.**

**RACE- AND GENDER- NEUTRAL/RACE- AND GENDER- CONSCIOUS:**

WYDOT had reviewed factors to determine the race- and gender- neutral and/or race- and gender-conscious APG percentages as outlined in 49 CFR 26.51. As stated in 26.51(f)(3):

“If the DBE participation [WYDOT] has obtained by race-neutral means alone meets or exceeds [WYDOT's] overall goals for two consecutive years, [WYDOT] is not required to make a projection of the amount of [WYDOT's] goal [WYDOT] can meet using such means in the next year. [WYDOT] does not set contract goals on any contracts in the next year. [WYDOT] continues using only race-neutral means to meet [WYDOT's] overall goals unless and until [WYDOT] does not meet [WYDOT's] overall goal for a year.”

**Therefore, WYDOT will continue utilizing an all race- and gender- neutral program to achieve the FY 2021 DBE goal.**

However, WYDOT reserves the right to evaluate typical construction projects (for example, involving grading, draining, paving and structures), for DBE goals. WYDOT will not use contract goals unless program administration determines that contract goals would better fulfill the program intent. WYDOT will not use quotas or set-aside contracts.

**Public Involvement** - Public involvement in the goal setting process includes:

1. Consultation - Two standing committees, the WCA/WYDOT/ACEC Joint Highway Committee (Wyoming Contractor's Association, Wyoming Department of Transportation, and the American Council of Engineering Companies of Wyoming), and the WCA DBE/EEO Committee are active in the consultation process. The Contractor Development Association (CDA), an association of small construction and construction-related businesses, is also included in the consultation process. There are also minority and women businesses represented in these groups. Monthly, bi-monthly or quarterly meetings are held under the

- auspices of these groups, with full open discussions. All meetings are open to the participation of all contractors, subcontractors, and DBEs in the local market.
2. Published Notice - A Public Legal Notice was published in the major newspapers in the local market area, announcing the period of time for public comment on the proposed process, and where comments could be mailed or received.
  3. Comments - There were no public comments received.

**FTA-Assisted Contracts** - FTA-assisted contracts will utilize the FHWA APG.

In accordance with 49 CFR 26.49, transit vehicle manufacturers, as a condition of being authorized to bid on FTA-assisted transit vehicle procurement, will also be required to establish and submit for FTA's approval an overall DBE percentage goal.

**FAA-Assisted Contracts** - FAA-assisted contracts will utilize the FHWA APG.

Ref: 49 CFR 26.41, 26.43, 26.45 and 26.49