

**The Vermont Agency of Transportation**  
**Overall DBE Three Year Goal Methodology**  
**On FHWA-Assisted Projects**

**Introduction and Overview of Goal Setting Process:**

The Vermont Agency of Transportation (VTrans) has availed itself of a variety of techniques to comply with the goal setting provisions for participation by disadvantaged business enterprises (DBEs) in its FHWA-assisted contracting program, as required by Section 26.45 of the DBE Regulations.

VTrans has solicited ideas and suggestions for developing and implementing overall goals by inviting input from the women, minority, and general contracting community. In keeping with our past process, we have utilized a collaborative and inclusive approach to formulating a goal setting methodology, which has included a series of open meetings as well as scheduled, direct, and interactive exchanges with industry and community groups, and prime and DBE contractors and consultants.

Information concerning the purpose and elements of the DBE Program were widely disseminated in writing, and through a series of presentations and public meetings involving a diverse range of individuals and organizations, including our currently certified DBEs, our non-DBE contractors and consultants, the Associated General Contractors - Vermont Chapter, the American Council of Engineering Consultants, the Vermont Commission on Women, the U.S. Small Business Administration, the Vermont Public Transportation Association, the Vermont Procurement Technical Assistance Center, the Vermont Agency of Commerce and Community Development, the Vermont Women's Business Center, the Vermont Small Business Development Centers, the Vermont Partnership for Fairness and Diversity, the Vermont Community Action Agencies, the Vermont Department of Labor, the Micro Business Development Program, the Women's Small Business Program, Vermont Works for Women (formerly Northern New England Tradeswomen), the Vermont Refugee Resettlement Program, Vermont Chambers of Commerce, Vermont Regional Planning Commissions, the Vermont League of Cities and Towns, the University of Vermont Transportation Research Center, regional planning commissions, transit providers and various towns and municipalities.

VTrans is mindful of the supplemental guidance issued by the U.S. Department of Transportation, Office of the Secretary, via Charles E. James, Sr., the Director of the Departmental Office of Civil Rights (DOCR), originally on a Memorandum dated April 1, 2020, and subsequently extended by Memoranda dated July 27, 2020, November 25, 2020, and June 29, 2021, concerning DBE and ACDBE Program Requirements during COVID-19 Public Health Emergency. In particular, as it relates to the DBE Overall Goal Methodology Public Participation Requirements, the DOCR guidance provides as follows:

"49 CFR 26.45(g)(1) requires recipient agencies, as part of their triennial overall goal setting process, to provide opportunities for publication, as well as consultation with stakeholder groups, prior to submitting the methodology to the relevant OA for review.

This regulatory provision states that consultation with stakeholder groups must include a scheduled, direct, interactive exchange (e.g., an in-person meeting, video conference, teleconference) with as many interested stakeholders as possible. In light of the COVID-19 public health emergency, recipients may use alternative methods for carrying out required stakeholder consultation such as:

1. Instead of holding in-person meetings, recipients may use other options allowed under the rule, such as video conference or teleconferencing, by making use of technologies such as FaceTime, Skype, GoToMeeting, Zoom, and other similar telecommunication applications.”

In accordance with this guidance, VTrans has engaged in multiple virtual meetings and events during the spring and summer of 2021 to share information about the VTrans DBE Program and our proposed FY 2022 – 2024 DBE overall goal with our DBEs and small businesses, as well as representatives from many of our program partners, including the following: The Vermont Procurement Technical Assistance Center, the U.S. Small Business Administration, the Vermont Small Business Development Centers, the Vermont Department of Buildings and General Services, the Vermont Agency of Commerce and Community Development, the Vermont Commission on Women, Vermont Works for Women, Creative Workforce Solutions, the State of Vermont Racial Equity Consortium, and the Vermont Partnership for Fairness and Diversity. During these virtual meetings and mini-conferences and workshops, staff from the VTrans Office of Civil Rights have provided information and invited feedback on certification and contracting opportunities at VTrans, including a detailed discussion of our DBE goal setting process and proposed DBE goal and methodology for FY 2022 - 2024.

Feedback from these individuals and organizations included information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the scope and effectiveness of VTrans’ efforts to establish a level playing field for the participation of DBEs.

The final goal for our FHWA-assisted contracting program was established through an ongoing dialogue with all our stakeholders and represents an informed consent by stakeholder groups.

To comply with the goal setting provisions of the DBE regulations, VTrans has employed the two-step process outlined in Section 26.45, by first creating a baseline figure reflecting the relative availability of “ready, willing and able DBEs” in our marketplace, and then examining all relevant evidence, including past DBE participation, to determine what adjustments, if any, are needed to arrive at our overall goal.

While VTrans has affirmed its commitment to meeting the maximum feasible portion of our overall goal using race-neutral means, we have also provided the requisite projection of a breakout of participation derived from both race-neutral and race-conscious measures, as specified in Section 26.51. In addition to summarizing our current race-neutral program components, we have identified a variety of new strategies, the implementation of which will serve as additional program performance measures.

### **Amount of Goal:**

#### **Federal Highway Administration (FHWA) Goal:**

**In FY 2022 - FY 2024, VTrans intends to expend 7.32% of the Federal financial assistance received from FHWA with small business concerns owned and controlled by socially and economically disadvantaged individuals (DBEs). It is the intent of VTrans that this expenditure is obtained through a race and gender-neutral program.**

### Goal Methodology: Federal Highway Administration (FHWA) Goal:

Pursuant to the 2010 USDOT rule amendments to 49 CFR Section 26.45, VTrans' overall annual goal of 7.32% on FHWA funded contracts is effective for a period of three years: FY 2022 – FY 2024. In setting the goal for VTrans, it is required that the goal setting process begin with a base figure for the relative availability of DBEs. The 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 FHWA assisted contracts.

VTrans has reviewed the alternatives listed in 49 CFR Part 26 and selected the use of the DBE Directory and Census Bureau Data as the best approach for goal development. VTrans has gathered business establishment information and DBE certification information for its step one analysis. In an effort to narrowly tailor our submission, we targeted establishments with specific NAICS codes corresponding to the work that VTrans includes in our federally assisted projects for both Construction Contractors and Professional Services consultants. The following describes the goal methodology used to determine this three-year goal:

#### Step 1: Base Figure for the Relative Availability of DBEs

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs ("base figure") for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms (Method 1). VTrans employed the use of our DBE directory and Census Bureau data for calculating a base figure. We obtained our data and calculated the relative availability percentage in the following manner:

- VTrans maintains detailed spending projections for all programs that are funded by FHWA for the period FY 2022 – 2024 in the Statewide Transportation Improvement Program (STIP). Itemized federal spending was categorized by six-digit North American Industry Classification System (NAICS) code, based on projected expenditures during this triennial period. The collection of NAICS codes, their descriptions and projected federal spending is shown below in Table 1.

**Table 1. Projected Spending by NAICS Code**

NAICS Code	Description	% of Total
236210	Industrial building construction	2.0%
236220	Commercial and institutional building construction	2.6%
237310	Highway, street, and bridge construction	61.6%
238990	All other specialty trade contractors	8.9%
541330	Engineering services	18.2%
541370	Surveying, mapping (exc. geophysical) services	1.3%
541620	Environmental consulting services	1.9%
541990	Other professional, scientific, and technical services, including planning	3.5%
	TOTAL	100.0%

- We determined the number of ready, willing, and able DBEs in our market from our DBE registry for each of these NAICS codes. The VTrans registry (at <http://apps.vtrans.vermont.gov/dberegistry/>) supports searches by NAICS code, allowing for the simple tabulation of the number of available firms.
- The next step was to determine the appropriate market area for the analysis. In the past, the default market area has been the State of Vermont, but for each of these NAICS codes, Vermont firms represented only a small minority of the certified DBEs. Table 3 shows the distribution of DBE firms in the VTrans directory by state for each of the relevant NAICS codes.

**Table 2. Vermont-certified DBE Firms by State**

NAICS Code	Total DBE firms	VT	MA	NY	NH	PA	NJ	CT	Other
236210	2	1					1		
236220	11	1	2	2		2	2		2
237310	21	4	4	7		2	1		3
238990	10	3	1	1	2	1		1	1
541330	33	4	7	5	2	2		2	10
541370	5	2	1					1	1
541620	18	7	5	2	1		1		2
541990	11	3	2					1	5

- To make the denominator of the availability calculation more consistent with the geography of the numerator (the DBE firms) a broader area was defined which includes all of Vermont and New Hampshire, seven counties in northern and western Massachusetts, five counties in northern and central Connecticut, and 13 counties in eastern New York (as far south as Dutchess County). This area is the same as was used in the development of the DBE goal for FTA and FAA-assisted contracts. This area excludes the most urbanized portions of Massachusetts and New York, which have many more establishments than the other parts of those states, and which would have depressed the DBE goal. Of course, this area also excludes the home states of many of the firms in the DBE registry, with New Jersey, Maryland, Pennsylvania, and Florida particularly well represented there.
- Finally, using the Census Bureau's County Business Pattern (CBP) database, we determined the number of establishments for the relevant area for each of the NAICS codes. The most recent available data from the census is for 2018.

Table 3 shows the number of VTrans-certified DBE firms in each of these categories and the number of establishments in the defined market area.

**Table 3. Relative Availability of DBE Firms by NAICS Code**

NAICS Code	Description	VT DBE Firms	CBP Total for Market Area
23621	Industrial building construction	2	28
23622	Commercial and institutional building construction	11	994
23731	Highway, street, and bridge construction	21	342
23899	All other specialty trade contractors	10	1,098
54133	Engineering services	33	1,962

54137	Surveying, mapping (exc. geophysical) services	5	242
54162	Environmental consulting services	18	371
54199	Other professional, scientific, and technical services, including	11	437
		111	5,474

**The 111 ready, willing, and able DBE firms in the Vermont DBE Registry, divided by the 5,474 total firms from the County Business Patterns database in the defined market area yields an unweighted base figure of 2.03%.**

In order to better reflect the availability of DBE contractors with regard to potential spending, we recalculated the relative availability using a weighted approach, so that the NAICS codes with higher spending are weighted more heavily. The percentages of total spending represented by each of the NAICS categories, shown in the rightmost column of Table 1, were multiplied by the percent availability of DBE contractors for each NAICS code. The results of this calculation are shown below in Table 4.

**Table 4. Weighted Average of DBE Availability**

NAICS Code	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Pct Available		Weight	Weighted Availability
236210	2	28	7.1%	x	2.0%	0.14%
236220	11	994	1.1%	x	2.6%	0.03%
237310	21	342	6.1%	x	61.6%	3.76%
238990	10	1,098	0.9%	x	8.9%	0.08%
541330	33	1,962	1.7%	x	18.2%	0.31%
541370	5	242	2.1%	x	1.3%	0.27%
541620	18	371	4.9%	x	1.9%	0.03%
541990	11	437	2.5%	x	3.5%	0.09%

**The weighted average DBE availability is the sum of the weighted availabilities in the rightmost column, which comes out to 4.71%. This is the step 1 base figure.**

**Step 2: Adjustment to Base Figure:**

As specified in Section 26.45, once the relative availability of ready, willing, and able DBEs in our marketplace has been determined, it is necessary to examine additional evidence and, if appropriate, make adjustments to the base figure, to ensure that our goal truly and accurately reflects the level of DBE participation we would expect absent the effects of discrimination. Accordingly, VTrans has gone beyond the formulaic measurement of current availability in Step 1, to consider and account for other evidence of conditions affecting DBEs, including past participation and trends, capacity limits, goals of other DOT recipients, and the impact of other specific factors requiring the narrow tailoring of the DBE program.

To arrive at the proposed overall goal of 7.32%, the Step 1 Base Figure of 4.71% was adjusted, based on the following data and criteria:

**Capacity Limits:**

- **Current capacity of DBEs to perform work in our FHWA-assisted contracting program, as measured by the volume of work DBEs have performed in recent years:** VTrans has analyzed data reflecting DBE participation and trends on FHWA-funded projects in recent years. For the past five years, the median DBE goal attainment is 9.92%:

<u>Federal Fiscal Year</u>	<u>DBE Goal Attainment</u>
FY 2017	7.54%
FY 2018	8.70%
FY 2016	9.92%
FY 2020	13.03%
<u>FY 2019</u>	<u>15.97%</u>
Five Year Median:	9.92%

Using the approach approved by USDOT’s General Counsel, we have averaged our 5 Year Past Participation Median Figure of 9.92% with our Step One Base Figure of 4.71% to arrive at a proposed goal of 7.32%:

Five Year Median Figure:	9.92%
Step One Base Figure:	4.71%
Average:	7.32%

Recent attainment levels support an upward adjustment to 7.32%, as do our DBE participation trends, particularly as measured by dollar volume. As FHWA funding has increased in recent years, VTrans DBEs have demonstrated a significant growth in capacity, as evidenced by the strong and steady increase in the dollar volume of DBE participation. The strength of recent DBE participation levels and trends supports the proposed Step 2 upward adjustment to 7.32%.

- **Goals of Other DOT Recipients:** As part of the goal setting process, Section 26.45 recognizes the relevance of goals set by other DOT recipients and authorizes the consideration and use of the goal of another DOT recipient in the same or substantially similar market. The highway construction industry is substantially uniform throughout the northern tier of New England, comprised of Vermont, New Hampshire, and Maine, and the three states share many of the same contractors and market conditions. Therefore, VTrans has considered the goals set by New Hampshire and Maine as relevant in its own goal setting process.

For FY 2021 - 2023, New Hampshire DOT has set an overall annual goal of 4.82% on FHWA-funded projects and intends to achieve this level of DBE participation running a race and gender-neutral program.

For FY 2019 - 2021, Maine DOT has set an overall annual goal of 2.4%. Maine DOT intends to achieve this level of DBE participation running a race and gender-neutral program.

## Other Step 2 Adjustment Factors:

VTrans has considered several other potential Step 2 adjustments to the base figure before concluding the analysis:

- **Disparity Studies:** There has been no known disparity study performed in Vermont, New Hampshire, or Maine for any public agency or private sector company.
- **Statistical Disparities in the Ability of DBEs to Get the Financing, Bonding, and Insurance Required to Participate in the VTrans DBE Program:** VTrans has not collected and analyzed this data relative to FHWA-funded contracts. VTrans offers training, mentoring, and one-on-one business coaching to its DBEs through the VTrans Business Development Program, and partners with the Small Business Administration and other agencies to promote accessible financing, bonding, and insurance to all certified DBEs. This has not been identified as a barrier to contracting and procurement opportunities for DBEs in Vermont.
- **Data on Employment, Self-Employment, Education, Training and Union Apprenticeship Programs, to the Extent They Relate to the Opportunities for DBEs to Perform in the VTrans DBE Program:** VTrans has not collected and analyzed this data relative to FHWA-funded contracts. Through the VTrans Business Development Program, DBEs are assessed for training needs, and VTrans funds DBE training to remove barriers, build capacity, and enhance critical business skills.

Based on all the additional data, evidence and criteria affecting DBE participation levels, as described above, VTrans has adjusted the Step 1 Base Figure of 4.71%, to arrive at the proposed overall goal of 7.32% for FY 2022 – FY 2024.

### **Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.**

26.51(b) (1-9)

The overall goal for the VTrans DBE program for FHWA assisted contracts is established on a triennial basis. The overall goal for federal fiscal years 2022 -2024 has been set at 7.32% utilizing the methodologies described in 49 CFR Part 26.

VTrans will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. By submission of this goal methodology, VTrans commits that it will regularly monitor its progress in achieving the goal over the next three years and adjust its measures to include race conscious efforts, if necessary.

VTrans uses the following race-neutral means to promote DBE participation:

- Providing technical assistance and other services to DBEs, directly and via consultants, seminars, partnerships with technical assistance providers and academic institutions.
- Administering a business development program, the Vermont Business Development Program (VBDP), for certified DBEs that provides one-on-one business counseling and needs assessments, business and marketing plan development, and training and networking opportunities.

- Carrying out information and communications programs on contracting procedures and specific contract opportunities, including electronic notification of all bidding and contracting opportunities on a weekly basis.
- Providing formal and informal training and presentations to DBEs and other contractors.
- Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs.
- Providing frequent updates to our DBEs on all bidding and subcontracting opportunities.
- Providing prompt payment monitoring and enforcement for payments to all subcontractors, including DBEs.
- Conducting periodic user surveys and needs assessments to better determine DBE needs (e.g., training, financing, etc.) and to obtain better contact info.
- Ensuring distribution of our DBE Directory, through print and electronic means, to the widest feasible universe of potential prime contractors, including mail distribution to all potential prime bidders, and widespread distribution at conferences, expos, and seminars.
- Developing and delivering small business training and networking opportunities, including the annual Government Contracting Conference, the annual Women's Economic Opportunity Conference, matchmaker events, etc.
- Assisting DBEs to develop their capability to utilize emerging technology and conduct business through electronic media, and utilizing our website to disseminate information, including our Directory, bid opportunities, updated information on Part 26, and useful links.
- Providing 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.
- Providing assistance in overcoming limitations such as an inability to obtain bonding or financing and identify and eliminate other barriers to contracting with the VT Agency of Transportation.
- Networking with local, state, and federal agencies, non-profits, academic and business communities to obtain maximum partnering opportunities and resources and develop comprehensive resource and referral network with technical assistance and service providers.



- Coordinating with other state DBE Liaison Officers, to ensure certification reciprocity and to maximize interstate contracting opportunities; and
- Assisting DBEs to establish prequalification status.

**On our FHWA-assisted contracts, VTrans estimates that we will meet our entire overall goal of 7.32% through race-neutral participation, and that we will not have to resort to race-conscious measures.**

The recent level of DBE participation on FHWA- assisted contracts supports our estimated breakout. We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.