



## **Tennessee Department of Transportation FTA DBE Goal and Goal-Setting Methodology for Federal Fiscal Years 2024 -2026**

### **I. Introduction**

The Tennessee Department of Transportation (“TDOT”) Division of Multimodal Transportation Resources (“DMTR”) submits this Overall DBE Goal and Goal-Setting Methodology to the Federal Transit Administration (“FTA”) for review pursuant to 49 CFR Part 26. TDOT sets forth its triennial Disadvantaged Business Enterprise (“DBE”) goal for the 2024-2026 FTA fiscal cycle.

The purpose of the DBE goal setting process is to ensure nondiscrimination in the award and administration of U.S. Department of Transportation (DOT)-assisted contracts, to create a level playing field on which DBEs can compete fairly for those contracts, and to ensure the DBE program compliance in accordance with applicable law.

### **II. Background**

TDOT is a recipient of U.S. DOT Federal Transit Administration (FTA) funding in excess of \$250,000. As a condition of receiving this financial assistance, TDOT has assured that it will comply with the FTA’s DBE requirements. Therefore, in accordance with 49 CFR § 26.45(a)(1), TDOT is required to develop and submit a triennial overall DBE goal for its DOT-assisted projects.

TDOT submits on behalf of the transit agencies that are sub-recipients of federal FTA funds, including eight (8) Human Resource Agencies (HRAs), one (1) Development District, and two (2) small town transit agencies. Together these transit agencies provide transit service in all 95 counties within the state of Tennessee. Additionally, included in the analysis are ten (10) Metropolitan Planning Organization (MPO’s), one (1) Transit Training Center, and TDOT’s DMTR.

### **III. DBE Directory and Certification**

TDOT utilizes the directory maintained by the Tennessee Uniform Certification Program (TNUCP), for all firms certified by the TNUCP (including those certified by other states.) The TNUCP directory is continuously updated with new certifications and scheduled re-certifications. It contains the information required by 49 CFR 26.31 and is available to the public via the internet at: <https://www.tdot.tn.gov/Applications/DBEDirect>. Certification is by applicable NAICS codes for services and goods provided and for which DBEs are certified.

TDOT is an active participant within the TNUCP and the lead agency administering the certification program. As a TNUCP member, TDOT makes all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE program. All obligations of the TDOT with respect to certification and non-discrimination are carried out by TNUCP. TDOT ensures that only firms certified as eligible DBEs by the TNUCP are counted as participants in the TDOT DBE program.

#### **IV. Monitoring, Enforcement**

TDOT will monitor and enforce the appropriate use of certified DBEs, including but not limited to determination of good faith efforts, ensuring appropriate DBE certification, verifying DBE subcontractors, subcontractor work performance, and timely pay of subcontractors within a prompt manner.

#### **V. DBE Good Faith Efforts**

TDOT makes a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Suggested efforts that are done as a matter of form or politeness are not good faith efforts to meet the DBE contract requirements.

Listed below are examples of such actions taken by TDOT in considering the bidder's good faith efforts to obtain DBE participation, as follows:

- A. Verification of solicitation of DBEs through all reasonable and available means;
- B. Determining whether the bidder is selecting portions of the work to be performed by the DBEs in order to increase the likelihood that the DBE goals will be achieved and negotiating in good faith;
- C. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities.

#### **VI. DBE Goal Methodology**

TDOT researched the availability of DBE firms to perform the types of work funded through DOT contracts when setting the DBE goal. There was no overconcentration of DBE firms in any of the NAICS codes corresponding to grant funded procurements anticipated over the next three-year period of 2024 - 2026.

The methodology used to calculate TDOT's triennial DBE Goal is based on 49 CFR Part 26 and guidance provided by the FTA, including the document entitled "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program." Given that TDOT is strictly as pass-through of funds awarded from FTA to transit subrecipients, it was necessary for TDOT to reach out to its transit agencies to determine their expenditures of FTA funds to formulate a goal.

Data sources used in the goal-setting process included:

- U.S Census Bureau County Business Patterns (CBP) (<https://www.census.gov/programs-surveys/cbp.html>),
- TDOT's Office of Small Business Development's Tennessee Uniform Certification Program (TNUCP) Disadvantage Business Enterprise Directory (<https://www.tdot.tn.gov/APPLICATIONS/DBEDirect/>),
- Governor's Office of Diversity Business Enterprise (GoDBE) (<https://www.tn.gov/generalservices/procurement/central-procurement-office--cpo-/governor-s-office-of-diversity-business-enterprise--godbe--diversity-business-enterprise-directory.html>), and;
- Input from TDOT subrecipients of FTA funds concerning their expenditures over the three preceding fiscal years in various industrial groupings based on 6-digit North American Industry Classification System (NAICS) codes.

The result of the analysis yielded a Base Goal of 2.04% and a Weighted Base Goal of 1.96%. TDOT anticipates that this goal will be achieved in FY 2024 – 2026 through race-neutral means. However, to remain compliant with federal regulations and USDOT guidance, TDOT will attempt to meet the maximum feasible portion of its proposed 2.0 % overall DBE goal through the use of race and gender-neutral measures, by employing more data analytics within its DBE participation processes.

This submission includes the following supporting documentation:

1. A description of the methodology used to establish the base goal (Step 1A),
2. A description of how the base goal was adjusted based on anticipated business opportunities in various industrial groupings and the relative availability of DBEs in each grouping (Step 1B),
3. Discussion of the analysis of whether an adjustment to the weighted base goal was needed (Step 2),
4. Discussion of how TDOT plans to achieve the overall goal, and
5. Description of the public participation performed in relation to the DBE Goal and Goal- Setting Methodology.

#### **A. Step 1A - Base Goal**

Step 1A analysis resulted in a DBE Base Goal of 2.04%, as presented in **Table 1** below. The base goal reflects the number of RWA DBEs within our local market area (as defined below) in selected NAICS industry codes relative to the total number of businesses in those same industries. The industries included in the table are those in which TDOT and TDOT's transit subrecipients expect to have expenditures in FY 2023 – 2026.

**Table 1: Base Goal**

FY 2023 - 2026		Governor's DBE List	TN-UCP DBE List	Higher Count of DBE's	Total TN Businesses	Relative Availability	Base Goal (%)
NAICS Codes	FY 2023 - 2026 Industries						
423830	Industrial Machinery and Equipment Merchant Wholesalers (Micro-Purchases)	1	5	5	550	.009	0.90%
541330	Engineering Services	5	37	37	828	.0446	4.46%
541611	Administrative Management and General Management Consulting Services	1	73	73	865	0.0843	8.44%
541618	Other Management Consulting Services	56	27	56	38	0.0145	1.47%
238220	Electric/Plumbing/HAVC	52	26	52	2,862	0.0182	1.82%
238910	Specialty Trade Contractors (Site-Prep)	15	61	61	1,159	0.0523	5.23%
238320	Painting/Wall Covering	18	37	37	1,378	0.0269	2.69%
315190	Uniforms	3	0	3	3	1.00	100%
323113	Printing	16	6	16	521	0.0307	3.07%
424710	Fuel Purchases (Fuelman; Exxon, etc.)	0	1	1	3,466	0.0003	.03%
423210	Furniture Merch Wholesalers	4	5	5	540	0.0009	.09%
485999	Contract Transportation Services	5	5	5	63	0.0793	7.93%
517911	Telecommunication	15	0	15	1,300	0.0115	1.15%
524127	Insurance (Health, Life, Property, Casualty)	5	0	5	574	0.0087	.87%

**Table 1: Base Goal (Continued)**

FY 2023 - 2026		Governor's DBE List	TN-UCP DBE List	Higher Count of DBE's	Total TN Businesses	Relative Availability	Base Goal (%)
NAICS Codes	FY 2023 - 2026 Industries						
532420	Copier/Fax Rental	0	1	1	297	0.0033	.33%
561720	Janitorial Services (Property Services)	94	104	104	3,459	0.0301	3.01%
611430	Training	28	10	28	113	0.2477	24.77%
621111	Medical Doctors (Employee Examination)	3	1	3	4,403	0.0006	0.06%
6219999	Ambulatory Health Care Services (Drug Screening)	1	6	6	269	0.0223	2.23%
722320	Catering	12	10	12	705	0.0170	1.70%
811111	Vehicle Maintenance/Repair	1	6	6	2,692	0.0022	0.22%
812320	Dry Cleaning/Laundry Services	2	0	2	482	0.0041	0.41%
<b>Totals</b>		<b>348</b>	<b>421</b>	<b>544</b>	<b>26,567</b>	<b>0.0204</b>	<b>2.04%</b>

□ **Calculation of Relative Availability** is Number of DBEs ÷ All Firms with relevant NAICS codes in Tennessee

$$544 \div 26,567 = 0.0204$$

In order to formulate the DBE Goal, the local market area had to be identified. Grant award information to TDOT's transit subrecipients is tracked through TDOT's DMTR. It is important to note that DMTR does not actually provide program management services to its subrecipients, but yet DMTR acts as a clearinghouse to allocate funds to its subrecipients. DMTR provides planning services and studies for interested areas. DMTR awards funds directly to its transit agencies and planning organization subrecipients operating within the state of Tennessee. TDOT does not actually spend the funds but acts as a pass-through agency. Transit agencies are disbursed throughout the state, serving all rural and metropolitan areas in all 95 counties within the state. Tennessee's transit agencies do not operate outside of the state. Therefore, the local market area for this analysis was determined to be the state of Tennessee.

Next, TDOT reviewed the areas of work common to providing transit service and running a transit agency to determine industry NAICS codes. Per USDOT's Tips for Goal setting in the Disadvantaged Business Enterprise (DBE) Program, steps were taken to filter out businesses that are not relevant. These were excluded to not skew the results.

Data was obtained from the most recent U.S. Census Bureau's CBP, TNUCP, and GoDBE to calculate the base goal of ready, willing, and able (RWA) DBEs in the local market area. The total number of Tennessee firms available for each NAICS code was obtained from CBP data. The industry NAICS codes

yielded a total of 26,567 firms available in the local market area. We also calculated the relative availability of DBE firms and determined that only 0.0204 were actually available to perform work within the selected NAICS codes.

TNUCP listing and the GoDBE listing were used to determine the number of available of DBE firms, including the TNUCP for all Certified DBEs within the state of Tennessee and GoDBE for Women and Minority Business Enterprise (WBE and MBE) certifications within the state. Given that the GoDBE directory also includes small, disabled, and veteran-owned businesses that are not owned by women or minorities, the list was filtered for only minority- and women-owned firms for the purposes of this analysis. Of the DBE firms, the TNUCP yielded a greater overall number of RWA DBE firms (**421** firms total) than GoDBE (**348** firms total). That said, the TNUCP and GoDBE lists vary significantly in some sectors, because TDOT contractors are generally concentrated in the engineering and construction fields. The greater number of either the TNUCP DBE firms or GoDBE WBE and MBE firms in the state was ultimately used to (see Higher Count of DBEs in Table 1) to make the Relative Availability calculation, which is the Base Goal.

#### **B. Step 1B - Weighted Base Goal**

The Step 1B analysis resulted in a DBE Weighted Base Goal of 1.96% rounded to 2.0%, as presented in **Table 2** below. Data was collected from TDOT's transit subrecipients concerning their expected expenditures by NAICS industry code. This data was then used to calculate the weight of each industry based on planned contracting. The weight was then multiplied by the relative availability from Table 1 to obtain a weighted relative availability for each industry, resulting in the Weighted Base Goal.

**Table 2: Weighted Base Goal**

NAICS	Industry	Weight Based on Planned Contracting	Relative Availability	Weighted Base Goal %
238220	Electrical/ Plumbing/HAVC	0.00258	0.0182	.0046%
238320	Painting/Wall Covering	0.00007	0.0269	.0001%
238910	Specialty Trade Contractors (Site Prep)	0.00000	0.0523	0%
315190	Uniforms	0.00204	1.00	.204%
323113	Printing	0.04589	0.0307	.1408%
424710	Fuel Purchases [Fuelman; Exxon, etc.]	0.30914	0.0003	.0092%
485999	Contract Transportation Services	0.03396	0.0793	.2693%
517911	Telecommunications	0.08549	0.0115	.0983%
524127	Insurance (Health, Life, Property, Casualty)	0.13279	0.0087	.1155%
532420	Copier / Fax Rental	0.00262	0.0033	.0007%
541611	Management Consulting	0.00423	0.0843	.0357%
561720	Janitorial Services (property services)	0.01562	0.0301	.0470%
611430	Training	0.00664	0.2477	.1644%
621111	Medical Doctors (Employee Examination)	0.00183	0.0006	.00011%
621999	Ambulatory Health Care Services (Drug Screening)	0.00660	0.0223	.015%
722320	Catering	0.00000	0.0170	0%
811111	Vehicle Management / Repair	0.14107	0.0022	.031%
812320	Dry Cleaning / Laundry Services	0.00000	0.0041	0%
423830	Industrial Machinery and Equipment Merchant Wholesalers (Micro-Purchases)	0.14107	.009	.127%
541330	Engineering Services	0.00000	.0446	0%
541618	Other Management Consulting Services	0.6444	.0145	.934%
<b>Totals</b>		1.148	1.708	1.960%

**C. Step 2: Adjustment to the Weighted Base Goal**

For Step 2, TDOT considered whether an adjustment of the base goal was necessary. Regulations require TDOT to consider all available evidence in its jurisdiction to determine what adjustment, if any, is needed to the Weighted Base Goal in order to arrive at the overall goal. TDOT considered the capacity of DBEs to perform work based upon past performance for transit-related Federal-aid awards. It was determined that the Adjustment of the Weighted Base Goal of **2.0%** is reasonable and attainable.

Reasons for not making an adjustment to the Weighted DBE Goal include:

- TDOT functions primarily in a pass-through capacity in that the transportation agency, itself, does not make extensive use of FTA funds, rather it's transit subrecipients spend money directly (see Figure 1),
- All TDOT subrecipients make their own purchases directly, which is often limited to what is locally available for most of our rural transit HRA subrecipients,
- Contracting opportunities and projects planned for the next three fiscal years are similar to those in the past,
- TDOT's role as a pass-through of FTA funds has, in turn, resulted in TDOT struggling in past years to attain past DBE Goals even with efforts by staff to engage potential DBEs to join the program,
- In terms of direct spending of FTA funds, TDOT only expends those when it provides training for its transit subrecipients, so that they do not have to procure training and assistance individually with their FTA funds (see Table 3),
- Previous DBE Triennial Goals were much higher and unattainable based on TDOT's actual expenditures directly using FTA funds (example: DBE Goal of 3.08% for 2018 – 2020). There have been recent aberrant trends that may suggest a higher goal is attainable, however TDOT's federal expenditure history has proven otherwise.

In looking at TDOT's only direct spending of FTA funds over the last three FYs, TDOT's contracting opportunities spending has been well under \$65,000.00 per year (**Table 3**). TDOT, itself, has no direct expenditures for transit outside of NAICS codes 541611 and 541618, as TDOT is not involved in building transit facilities or transit administration or operation. In addition, the data from which this information was pulled would have also identified if any of its transit subrecipients had DBE expenditures; there was a minimum amount captured for the past three FYs.

**Table 3: TDOT Direct Expenditures Three Fiscal Years**

NAICS	TDOT Dollars Spent on DBE Contracting Opportunities Reporting Period SFY 2020 - 2022		
	SFY 2020	SFY 2021	SFY 2022
423830			
541611	\$12,198.15	\$62,011.00	\$21,454.00
541618	\$13,235.13		
<b>Totals</b>	\$25,433.28	\$62,011.00	\$21,454.00



**Table 4: TDOT DBE Goals and Achievements Three Fiscal Years**

<b>FFY</b>	<b>DBE goal</b>	<b>DBE Participation</b>
<b>2020</b>	<b>1.6%</b>	<b>*24.02%</b>
<b>2021</b>	<b>1.6%</b>	<b>*10.33%</b>
<b>2022</b>	<b>1.6%</b>	<b>6.56%</b>

\* “TDOT in recent periods has initiated a renewed emphasis on DBE reporting and through that review has refined the DBE data collection process. We believe the results of this process have now improved data collection accuracy and our more recent results reflect contracting opportunities of TDOT and its subrecipients more appropriately.”

**VII. Encouraging Small Business Participation**

TDOT’s DMTR and TDOT’s Civil Rights Division will work collaboratively toward achievement of the stated DBE goal. Previously, the goal has been achieved through race-neutral means primarily and through good faith efforts.

Given the results of this goal-setting exercise, it is apparent that there are some industry groups that do not participate fully in TDOT’s TNUCP program but do participate in the certification provided by the Governor’s Office of Diversity Business Enterprise. DMTR plans to encourage transit agencies to explore the Governor’s listing, and to encourage businesses with which they wish to do business to become certified through the TNUCP program at TDOT and through the Governor’s Office of Diversity Business Enterprise.

**VIII. Publication and Consultation**

**A. Publication**

TDOT will issue a Public Notice on TDOT Civil Rights and Multimodal’s websites, publishing the Draft Proposed FTA Overall DBE Goal-Setting Methodology for FFY 2024-2026. The notice will inform the public that the proposed goal and rationale were available for inspection at TDOT’s Administration office during normal business hours for 30 days following the date of the Public Notice, and that TDOT would accept comments on the goal analysis for 30 days from the date of the Public Notice. And in accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26. If feedback is received our agency will update the proposed DBE methodology.

**B. Consultation**

Over the last three years, TDOT Civil Rights’ staff has also attended and established outreach events to encourage DBE participation within the local community and sends updates on potential bidding opportunities. During the events, TDOT passed out information on how to become a vendor for TDOT a DBE. TDOT participated in, and hosted, the following outreach activities to increase DBE participation and utilization.

## Outreach Dates

### TDOT Public Participation and Outreach Activities

May 2021	Regional DBE training to TDOT field employees
July 2021	Spoke with prime contractors about TDOT DBE program at the Tennessee Road Builders Association (TRBA) midyear meeting
May 26, 2022	DBE Utilization Training with Transportation Providers
June 23, 2022	Procurement Technical Assistance Center (PTAC) Online Outreach Event
July 13, 2022	TN Roadbuilders Association (TRBA) Midyear Meeting
August 8 & 9, 2022	DBE Annual Meeting
August 21, 2022	Minority Enterprise Development Week (Medweek) Zoom Meeting
October 26, 2022	TDOT DBE-SS Webinar: Importance of Job Cost Accounting
November 2, 2022	TDOT DBE-SS Webinar: Markup, Overhead & Profit (Bidding)
December 3, 2022	TDOT DBE-SS Webinar: Ask the Experts Roundtable
March 21, 2023	Unity In Diversity All DBE Meeting
May 19, 2023	Doing Business with The Government – APEX Meeting
May 23, 2023	Small and Diverse Business Expo
May 24, 2023	Small Business Consortium