



U.S. Department
of Transportation
Federal Highway
Administration

Texas Division

February 25, 2020

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In Reply Refer To:
HDA-TX

Mr. Michael D. Bryant
Director, Office of Civil Rights
Texas Department of Transportation
125 E. 11th Street
Austin, TX 78701

Dear Mr. Bryant:


We have completed our review of the Texas Department of Transportation (TxDOT) DBE goal methodology for FY 2020-2022 and we approve TxDOT's DBE goal methodology as submitted.

In accordance with the provisions of 49 CFR part 26.45, our review considered the overall goal of 14.4%, the description of the data and methodology, the projection of race neutral and race conscious portions (6.9% and 7.5% respectively), any adjustments, and the evidence of public participation in the process. Our review determined the goal setting methodology is consistent with the requirements of 49 CFR part 26.45 and that the requirements for public participation have been met.

TxDOT is responsible for continually monitoring achievement toward the approved DBE goal, tallying race neutral and race conscious participation, and if warranted, coordinating any goal adjustments with the Federal Highway Administration (FHWA) - Texas Division.

The next DBE goal methodology is due to FHWA on August 1, 2022. If you have any questions, please contact Angelica Rodriguez, Civil Rights Specialist at (512) 536-5986.

Sincerely,


For Achille Alonzi
Division Administrator



Memorandum

Subject: Explanation of Approval of the Texas DOT
DBE Program Goal Setting Methodology for
FY 2020-2022

Date: February 13, 2020

From: Meghan P. Jones
Attorney Advisor

In Reply Refer To:
HCC-MA

To: Al Alonzi
Division Administrator

I have reviewed the above referenced Texas Division Office Explanation of Approval of the Texas DOT DBE Program Goal Setting Methodology for FYs 2020-2022.

I find the document legally sufficient.



Meghan P. Jones



Overall Disadvantaged Business Enterprise Triennial Goal for the Federal Highway Administration

Fiscal Years 2020-2022

Civil Rights Division

I. Introduction

The Texas Department of Transportation (TxDOT) submits this report on its Disadvantaged Business Enterprise (DBE) triennial goal, and the methods used to calculate that goal, to the United States Department of Transportation's (DOT) Federal Highway Administration (FHWA) for review in accordance with 49 CFR §26.45, as amended by Docket No. OST-2010-0021.

This submission covers Fiscal Years (FY) 2020–2022 and supports the overall DBE goal of 14.4%. TxDOT plans to satisfy this overall goal by combining a 7.5% race-conscious component with a 6.9% race-neutral component.

TxDOT's goal methodology consists of two steps:

1. Establishing the base figure for the relative availability of DBEs and
2. Adjusting the base figure to reflect available data.

TxDOT commissioned a disparity study¹ from Colette Holt & Associates (CHA) that was completed and posted on TxDOT's website in November 2019. As part of the analysis, CHA determined the base figure of DBE availability and provided data relevant to determine whether to adjust the base figure. The data and results are discussed below.

II. Step One Base Figure

Because of the large volume of FHWA-funded contracts, CHA created a sample file of 396 contracts funded with FHWA dollars. These contracts represented the contracts with the largest dollar values. The Final Contract Data File for analysis contained a total award amount of \$9,582,519,333, representing 281 contracts to primes; of this amount, 2,716 associated subcontracts received \$3,858,102,871. The Final Contract Data File was used to determine the geographic and product markets for the analyses, to estimate the utilization of DBEs on those contracts, and to calculate DBE availability in TxDOT's marketplace.

A defensible disparity study must determine empirically the industries that comprise the agency's product or industry market. This is also a requirement under the DBE program regulations official guidance². The accepted approach is to analyze those detailed industries, as defined by 6-digit North American Industry Classification System ("NAICS") codes³ that make up at least 75% of the prime contract and subcontract payments for the study period.⁴ However, for this study, CHA went further and applied a "90/90/90" rule, whereby the study analyzed NAICS codes for federally-funded and state-funded contracts that cover over 90% of the total contract dollars; over 90% of the prime contract dollars; and over 90% of the subcontract dollars. CHA took this approach to assure a comprehensive analysis of TxDOT's activities.

A. TxDOT's Unconstrained Product Markets for FHWA-Funded Contracts

Tables 1 through 3 present the NAICS codes used to define the product market for TxDOT's FHWA-funded contracts. These contracts were disaggregated by level of contract (i.e., was the firm receiving the contract as a prime vendor or a subcontractor), the label for each NAICS code, and the industry percentage distribution of the number of contracts and spending across NAICS codes. The following tables present TxDOT's unconstrained product market, which was later constrained by the geographic market area, discussed below.

¹ <https://ftp.dot.state.tx.us/pub/txdot/civ/txdot-disparity-study-2019.pdf>

² https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf; see also 49 C.F.R § 26.45.

³ www.census.gov/eos/www/naics.

⁴ "Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program," Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, pp. 50-51 ("National Disparity Study Guidelines").

1. TxDOT's Product Market for FHWA-Funded Contracts

*Table 1
Industry Percentage Distribution of Contracts by Dollars Paid for FHWA Contracts*

NAICS Code	NAICS Code Description	Pct. Total Contract Dollars	Cumulative Pct. Total Contract Dollars
237310	Highway, Street, and Bridge Construction	60.64%	60.64%
541330	Engineering Services	15.56%	76.20%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.56%	78.76%
488490	Other Support Activities for Road Transportation	2.04%	80.80%
238910	Site Preparation Contractors	1.80%	82.60%
238120	Structural Steel and Precast Concrete Contractors	1.58%	84.18%
238990	All Other Specialty Trade Contractors	1.50%	85.69%
541310	Architectural Services	1.33%	87.02%
484220	Specialized Freight (except Used Goods) Trucking, Local	1.32%	88.33%
541420	Industrial Design Services	1.29%	89.63%
561730	Landscaping Services	1.14%	90.77%
TOTAL			100.0%⁵

Source: CHA analysis of TxDOT data.

*Table 2
Industry Percentage Distribution of FHWA Contracts by Dollars Paid
Prime Contracts*

NAICS Code	NAICS Code Description	Pct. Total Contract Dollars	Cumulative Pct. Total Contract Dollars
237310	Highway, Street, and Bridge Construction	87.37%	87.37%
541330	Engineering Services	3.39%	90.76%
488490	Other Support Activities for Road Transportation	3.17%	93.93%
238990	All Other Specialty Trade Contractors	1.72%	95.65%
561730	Landscaping Services	1.44%	97.09%
237110	Water and Sewer Line and Related Structures Construction	1.17%	98.26%
TOTAL			100.0%⁶

Source: CHA analysis of TxDOT data.

⁵ Agency spending across another 156 NAICS codes comprised 9.23% of all spending.

⁶ Agency spending across another 7 NAICS codes comprised 1.74% of all spending.

Table 3
Industry Percentage Distribution of Contracts by Dollars Paid for FHWA Contracts
Subcontracts

NAICS Code	NAICS Code Description	Pct. Total Contract Dollars	Cumulative Pct. Total Contract Dollars
541330	Engineering Services	33.62%	33.62%
237310	Highway, Street, and Bridge Construction	20.98%	54.59%
238210	Electrical Contractors and Other Wiring Installation Contractors	6.36%	60.95%
238910	Site Preparation Contractors	4.48%	65.44%
238120	Structural Steel and Precast Concrete Contractors	3.92%	69.36%
541310	Architectural Services	3.31%	72.67%
484220	Specialized Freight (except Used Goods) Trucking, Local	3.27%	75.93%
541420	Industrial Design Services	3.21%	79.14%
238220	Plumbing, Heating, and Air-Conditioning Contractors	1.53%	80.67%
238990	All Other Specialty Trade Contractors	1.18%	81.85%
236210	Industrial Building Construction	1.17%	83.03%
237990	Other Heavy and Civil Engineering Construction	1.15%	84.18%
212321	Construction Sand and Gravel Mining	1.04%	85.22%
541219	Other Accounting Services	1.03%	86.25%
541380	Testing Laboratories	1.00%	87.24%
541620	Environmental Consulting Services	0.99%	88.24%
TOTAL			100.0% ⁷

Source: CHA analysis of TxDOT data.

2. TxDOT's Geographic Market for FHWA-Funded Contracts

The courts and the DBE regulations⁸ require that a recipient limit the reach of its race- and gender-conscious contracting program to its geographic market area.⁹ While it may be that the state's jurisdictional boundaries comprise TxDOT's geographic market area, this element of the analysis must be empirically established.¹⁰

The study applied the standard of identifying the firm locations that account for at least 75% of contract and subcontract dollar payments in the contract data file to determine the geographic market area.¹¹ Location was determined by ZIP code and aggregated into counties as the geographic unit.

Spending in the state of Texas accounted for 96.7% of all contract dollars paid in TxDOT's unconstrained product market for FHWA-funded contracts. Therefore, the state of Texas constituted the geographic market area from which the availability data was drawn for FHWA-funded contracts.

⁷ Agency spending across another 148 NAICS codes comprised 11.74% of all spending.

⁸ https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf; see also 49 C.F.R § 26.45.

⁹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT DBE program).

¹⁰ *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore "economic reality").

¹¹ National Disparity Study Guidelines, p. 49.

3. TxDOT's Utilization of DBEs on FHWA-Funded Contracts

Having determined TxDOT's product and geographic market areas for federally-funded and state-funded contracts, the next essential step was to determine the dollar value of TxDOT's utilization of DBEs, as measured by payments to prime firms and subcontractors and disaggregated by race and gender. TxDOT and its subrecipients did not collect data for most non-DBE subcontractors, as well as other records critical for the study. CHA therefore obtained missing data from prime vendors, a lengthy process, as well as reconstruct other contract records, including researching the race and gender ownership of subcontractors and assigning NAICS codes to those firms.

The following Tables present data on the total contract dollars paid by TxDOT for each NAICS code in the constrained product market and the share the contract dollars comprise of all industries. It is important to note the contract dollar shares are equivalent to the weight of each NAICS code spending. These weights were used to transform data from unweighted availability to weighted availability, discussed below.

Tables 4 through 6 present TxDOT's utilization by contract dollars paid for FHWA-funded contracts.

*Table 4
NAICS Code Distribution of FHWA-Funded Contract Details*

NAICS Code	NAICS Code Description	Total Contract Dollars	Pct. Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$5,735,819,264.00	65.0%
541330	Engineering Services	\$1,466,111,872.00	16.6%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$245,144,960.00	2.8%
488490	Other Support Activities for Road Transportation	\$195,651,840.00	2.2%
238910	Site Preparation Contractors	\$152,116,384.00	1.7%
238120	Structural Steel and Precast Concrete Contractors	\$147,225,328.00	1.7%
238990	All Other Specialty Trade Contractors	\$143,463,008.00	1.6%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$124,418,592.00	1.4%
541420	Industrial Design Services	\$123,880,072.00	1.4%
561730	Landscaping Services	\$100,109,528.00	1.1%
237110	Water and Sewer Line and Related Structures Construction	\$93,540,056.00	1.1%
237990	Other Heavy and Civil Engineering Construction	\$56,219,800.00	0.6%
541620	Environmental Consulting Services	\$51,340,872.00	0.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$48,060,020.00	0.5%
236210	Industrial Building Construction	\$45,271,772.00	0.5%
212321	Construction Sand and Gravel Mining	\$40,079,828.00	0.5%
541380	Testing Laboratories	\$38,456,804.00	0.4%
541310	Architectural Services	\$11,520,141.00	0.1%
541219	Other Accounting Services	\$2,291.08	0.0%
Total		\$8,818,432,432.08	100.0%

Source: CHA analysis of TxDOT data.

Table 5
 Distribution of FHWA Funded Contract Dollars by Race and Gender
 (total dollars)

NAICS Code	Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
212321	\$0	\$0	\$0	\$0	\$0	\$0	\$40,079,828	\$40,079,828
236210	\$0	\$2,679,384	\$3,529,328	\$16,325,290	\$545,821	\$23,079,823	\$22,191,948	\$45,271,771
237110	\$0	\$3,864,139	\$0	\$0	\$5,996,840	\$9,860,979	\$83,679,074	\$93,540,053
237310	\$33,760,500	\$62,626,992	\$3,056,542	\$856,566	\$105,427,422	\$205,728,022	\$5,530,091,216	\$5,735,819,238
237990	\$0	\$9,399,355	\$0	\$0	\$1,687,669	\$11,087,024	\$45,132,775	\$56,219,799
238120	\$132,823	\$13,934,259	\$68,147,217	\$13,280,294	\$1,896,739	\$97,391,332	\$49,834,005	\$147,225,337
238210	\$0	\$9,605,948	\$6,581	\$0	\$12,968,783	\$22,581,312	\$222,563,655	\$245,144,967
238220	\$260,875	\$6,219,779	\$0	\$0	\$23,705,289	\$30,185,943	\$17,874,076	\$48,060,019
238910	\$1,790,890	\$8,875,859	\$17,462,058	\$3,884,637	\$22,301,752	\$54,315,196	\$97,801,186	\$152,116,382
238990	\$0	\$1,299,285	\$0	\$51,156	\$9,538,919	\$10,889,360	\$132,573,651	\$143,463,011
484220	\$942,110	\$58,318,509	\$0	\$120,875	\$12,591,849	\$71,973,343	\$52,445,249	\$124,418,592
488490	\$0	\$14,032,043	\$0	\$0	\$0	\$14,032,043	\$181,619,805	\$195,651,848
541219	\$0	\$0	\$0	\$0	\$0	\$0	\$2,291	\$2,291
541310	\$0	\$0	\$77,244	\$0	\$2,224,194	\$2,301,438	\$9,218,703	\$11,520,141
541330	\$8,461,263	\$37,591,373	\$10,139,282	\$1,324,813	\$121,370,586	\$178,887,317	\$1,287,224,524	\$1,466,111,841
541380	\$1,256,581	\$27,494,165	\$1,455,758	\$0	\$0	\$30,206,504	\$8,250,301	\$38,456,805
541420	\$41,664	\$0	\$0	\$0	\$0	\$41,664	\$123,838,405	\$123,880,069
541620	\$0	\$2,829,450	\$146,820	\$0	\$6,887,250	\$9,863,520	\$41,477,351	\$51,340,871
561730	\$235,628	\$958,302	\$105,181	\$0	\$11,380,284	\$12,679,395	\$87,430,131	\$100,109,526
Total	\$46,882,334	\$259,728,842	\$104,126,011	\$35,843,631	\$338,523,397	\$785,104,215	\$8,033,328,174	\$8,818,432,389

Table 6
Distribution of FHWA-Funded Contract Dollars by Race and Gender
(share of total dollars)

NAICS Code	Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
212321	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
236210	0.0%	5.9%	7.8%	36.1%	1.2%	51.0%	49.0%	100.0%
237110	0.0%	4.1%	0.0%	0.0%	6.4%	10.5%	89.5%	100.0%
237310	0.6%	1.1%	0.1%	0.0%	1.8%	3.6%	96.4%	100.0%
237990	0.0%	16.7%	0.0%	0.0%	3.0%	19.7%	80.3%	100.0%
238120	0.1%	9.5%	46.3%	9.0%	1.3%	66.2%	33.8%	100.0%
238210	0.0%	3.9%	0.0%	0.0%	5.3%	9.2%	90.8%	100.0%
238220	0.5%	12.9%	0.0%	0.0%	49.3%	62.8%	37.2%	100.0%
238910	1.2%	5.8%	11.5%	2.6%	14.7%	35.7%	64.3%	100.0%
238990	0.0%	0.9%	0.0%	0.0%	6.6%	7.6%	92.4%	100.0%
484220	0.8%	46.9%	0.0%	0.1%	10.1%	57.8%	42.2%	100.0%
488490	0.0%	7.2%	0.0%	0.0%	0.0%	7.2%	92.8%	100.0%
541219	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541310	0.0%	0.0%	0.7%	0.0%	19.3%	20.0%	80.0%	100.0%
541330	0.6%	2.6%	0.7%	0.1%	8.3%	12.2%	87.8%	100.0%
541380	3.3%	71.5%	3.8%	0.0%	0.0%	78.5%	21.5%	100.0%
541420	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541620	0.0%	5.5%	0.3%	0.0%	13.4%	19.2%	80.8%	100.0%
561730	0.2%	1.0%	0.1%	0.0%	11.4%	12.7%	87.3%	100.0%
Total	0.5%	2.9%	1.2%	0.4%	3.8%	8.9%	91.1%	100.0%

Source: CHA analysis of TxDOT data.

B. Availability of DBEs in TxDOT's FHWA-Funded Markets

CHA next estimated the availability of disadvantaged, minority- and women-owned firms (collectively, DBEs) in TxDOT's market area.¹² Availability estimates are also crucial for TxDOT to set narrowly tailored contract goals on its federally-funded contracts.

CHA applied the "custom census" approach with refinements to estimating availability and utilized three different databases:

1. The TxDOT Final Contract Data File;
2. A Master DBE Directory compiled by CHA; and
3. Dun & Bradstreet/Hoovers Database downloaded from the companies' website.

The Master DBE Directory combined the results of an exhaustive search for directories and other lists containing information about minority- and women-owned businesses. The resulting list of minority- and women-owned businesses is comprehensive.

¹² For this analysis, the term "DBE" includes firms that are certified by government agencies and minority- and women-owned firms that are not certified. As discussed in Chapter II, the inclusion of all minority- and women-owned businesses in the pool casts the broad net approved by the courts and recommend by USDOT that supports the remedial nature of the programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of DBE availability calculation that casts a broader net."); [https://www.transportation.gov/sites/dot.gov/files/docs/Tips for Goal-Setting in DBE Program 20141106.pdf](https://www.transportation.gov/sites/dot.gov/files/docs/Tips%20for%20Goal-Setting%20in%20DBE%20Program%2020141106.pdf).

CHA took the following steps to develop the Dun & Bradstreet/Hoovers Database. After compiling the Master DBE Directory, the firms used in this Custom Census analysis were limited to those firms operating within TxDOT's constrained product market. CHA purchased the firm information from Hoovers for the firms in the NAICS codes located in the Agency's market area to form the Dun & Bradstreet/Hoovers Database. Hoovers, a Dun & Bradstreet company, maintains a comprehensive, extensive, and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. In the initial download, the data from Hoovers simply identify a firm as being minority-owned.¹³ However, the company does keep detailed information on race and ethnicity (i.e., is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers.

Table 7
DBE Availability for FHWA-Funded Contracts

NAICS Code	Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
212321	0.15%	2.09%	0.12%	0.13%	3.43%	5.92%	94.08%	100.00%
236210	4.32%	9.56%	1.28%	0.91%	9.76%	25.83%	74.17%	100.00%
237110	1.78%	7.03%	0.43%	0.18%	6.83%	16.25%	83.75%	100.00%
237310	5.91%	15.51%	1.25%	0.71%	9.16%	32.54%	67.46%	100.00%
237990	1.92%	8.49%	0.49%	0.11%	6.05%	17.05%	82.95%	100.00%
238120	4.23%	17.46%	2.11%	1.43%	9.91%	35.14%	64.86%	100.00%
238210	0.98%	5.58%	0.27%	0.19%	5.27%	12.29%	87.71%	100.00%
238220	0.55%	3.12%	0.07%	0.10%	3.45%	7.29%	92.71%	100.00%
238910	3.89%	10.10%	0.60%	0.47%	8.33%	23.39%	76.61%	100.00%
238990	0.90%	3.66%	0.19%	0.13%	4.59%	9.46%	90.54%	100.00%
484220	7.46%	22.85%	0.27%	0.64%	9.58%	40.80%	59.20%	100.00%
488490	2.52%	3.98%	0.04%	0.21%	4.65%	11.40%	88.60%	100.00%
541219	1.00%	1.42%	0.12%	0.48%	12.72%	15.74%	84.26%	100.00%
541310	2.17%	5.22%	0.90%	1.65%	9.04%	18.98%	81.02%	100.00%
541330	2.91%	6.96%	1.94%	2.03%	7.05%	20.89%	79.11%	100.00%
541380	1.83%	4.17%	1.81%	1.06%	7.69%	16.56%	83.44%	100.00%
541420	2.36%	1.84%	0.64%	0.72%	20.56%	26.11%	73.89%	100.00%
541620	2.61%	4.46%	1.11%	1.28%	13.24%	22.70%	77.30%	100.00%
561730	1.06%	2.27%	0.11%	0.14%	4.33%	7.91%	92.09%	100.00%
TOTAL	1.66%	5.12%	0.53%	0.53%	6.09%	13.93%	86.07%	100.00%

Source: CHA analysis of TxDOT data; Hoovers; CHA Master Directory.

As a result of the foregoing analysis, DBEs and businesses eligible for DBE certification might be expected to receive 13.93% of TxDOT's FHWA-funded prime contract and subcontract dollars based on their availability for that work, as noted in Table 7. Thus, TxDOT is using 13.93% as the base figure for its overall DBE goal because it anticipates that the types, sizes, and locations of FHWA-funded contracts that the agency awards in the future will be similar to the FHWA-funded contracts that it awarded during the disparity study period, October 1, 2011 through September 30, 2016.

¹³ The variable is labeled: "Is Minority Owned" and values for the variable can be either "yes" or "no".

III. Step Two Adjustments to the Base Figure

Once the base figure has been calculated, TxDOT must examine all evidence available in its jurisdiction to determine if an adjustment is necessary to reflect the level of DBE participation expected absent the effects of discrimination. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on TxDOT’s federally-assisted contracts, as measured by the volume of work DBEs performed in recent years, and evidence from disparity studies conducted anywhere within TxDOT’s jurisdiction, to the extent not already accounted for in the base figure. If available, TxDOT also must consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding, and insurance required to participate in the Program, and data on employment, self-employment, education, training, and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” §26.45(d)(3).

A. Past DBE Utilization

TxDOT considered the current capacity of DBEs to perform work on its FHWA-assisted projects, as measured by the amount of work performed by certified DBE’s on FHWA-funded contracts over the past five years.

DBE Participation FY 2014: 14.90%
DBE Participation FY 2015: 15.45%
DBE Participation FY 2016: 17.06%
DBE Participation FY 2017: 10.83%
DBE Participation FY 2018: 12.70%

The TxDOT median past DBE participation for FY 2014 through 2018 is 14.9%.

B. Evidence from local disparity studies

No other local jurisdictions have conducted studies relevant to TxDOT’s contracting activities. While the City of Austin, Texas, conducted a study within the last five years, it remains a draft and has not been accepted by the City.

C. Disparities affecting DBE opportunities

The Study explored the Census Bureau data and literature relevant to how discrimination in the Texas highway industry market and throughout the wider economy affects the ability of minorities and women to fairly and fully engage in TxDOT’s prime contract and subcontract opportunities. Data from the Census Bureau’s Survey of Business Owners indicate very large disparities between Minority and Women Business Enterprise (M/WBE) firms and non-M/WBE firms when examining the sales of all firms, the sales of employer firms (firms that employ at least one worker), or the payroll of employer firms. Data from the Census Bureau’s American Community Survey (ACS) indicate that Blacks, Hispanics, Native Americans, Asian/Pacific Islanders, Others, and White women were underutilized relative to White men. Controlling for other factors relevant to business outcomes, wages, and business earnings were lower for these groups compared to White men. Data from the ACS further indicate that non-Whites and White women are less likely to form businesses compared to similarly situated White men. The literature on barriers to access to commercial credit and the development of human capital further reports that minorities continue to face

constraints on their entrepreneurial success based on race. These constraints negatively impact the ability of firms to form, grow, and succeed.

While relevant and probative to whether TxDOT needs to continue to employ race-conscious measures to meet its DBE goal, as well as the types of supportive services and other approaches to level the playing field TxDOT should consider, the Study recognized that these results are difficult to quantify within the rigors of the strict scrutiny standards.

TxDOT next considered the current capacity of DBE firms to perform work in its market area, as measured by the amount of work performed by DBEs on FHWA-assisted projects over the past five years. Following the USDOT's Office of Small and Disadvantaged Business Utilization's *Guidance on Tips for Goal-Setting in the Disadvantaged Business Enterprises (DBE) Program*, CHA combined the step 1 base figure with its median past DBE participation for an average of 14.4% (step 1 base figure of 13.93% + median past participation of 14.9% = 28.83%÷2 = 14.4%).

IV. Race-Neutral and Race-Conscious Participation

The regulations require that TxDOT must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation (see §26.51(a); see also §26.45(f)(3), and §26.51(c)).

The race-neutral attainment for the past five fiscal years is presented in Table 9 to determine the maximum race-neutral participation. TxDOT's median percentage on federal-aid contracts through race-neutral means for FY 2014-2018 was 6.9%.

Table 9
Race-Neutral and Race-Conscious Goal vs. Achievement

Fiscal Year	Goals			Achievement		
	Race-Neutral	Race-Conscious	Overall	Race-Neutral	Race-Conscious	Overall
2014	6.40%	5.30%	11.70%	6.23%	8.67%	14.90%
2015	6.40%	5.30%	11.70%	9.20%	6.25%	15.45%
2016	6.40%	5.30%	11.70%	10.10%	6.95%	17.06%
2017	5.80%	6.80%	12.60%	6.36%	4.47%	10.83%
2018	5.80%	6.80%	12.60%	6.90%	5.81%	12.70%

TxDOT also considered the amount by which past goals were exceeded, as well as past history of inability to achieve goals, in determining the race-neutral and race-conscious proportion consistent with USDOT goal-setting tips. Specifically, USDOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years' goals that were not met, or increasing the race-neutral portion to account for exceeding goals.¹⁴ Since TxDOT exceeded its goal by only 0.10% in FY 2018, we will use the median race-neutral achievement of 6.90% as our measure. TxDOT will establish race-conscious measures and contract goals to meet the balance of the overall goal (see §26.51(d)).

V. Race Neutral Measures Implemented by TxDOT

TxDOT encourages race neutral DBE participation through several avenues. TxDOT created the Alliance Program as its Business Development Program to provide supportive services and trainings specifically for

¹⁴ *Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program: IV. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split; A. Consider the Amount by Which You Exceeded Your Goals in the Past. & F. Consider Past History of Inability to Achieve Goals.* (<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>).

individual DBE firms to become and remain competitive within the heavy highway construction market. The Alliance Program engaged four vendors to provide services in four regions within Texas. The program works to assist small firms to identify contract opportunities and develop strategies to grow from being a subcontractor to eventually seek work as a prime contractor.

TxDOT fosters small business participation through certifying small business entities in the Small Business Enterprise (SBE) Program. The SBE program applies when there is neither a federal goal or a state Historically Underutilized Business (HUB) goal that is required for a contract. The SBE program allows SBE firms to work as subcontractors or prime contractors.

TxDOT has participated in the United States Department of Transportation (USDOT), Office of Small and Disadvantaged Business Utilization's (OSDBU) Access to Capital Conferences for Small Businesses in multiple locations in Texas. These conferences provide tools and resources for small businesses seeking opportunities for growth by improving their financial capabilities.

TxDOT has conducted a series of outreach events to connect DBEs to projects in its districts through its Projects Adding Value by Expanding Diversity (PAVED) initiative that focused on upcoming projects in TxDOT's districts, and through its Big Opportunities Start Small (BOSS) Business Conferences focusing on all available opportunities in a district.

TxDOT has also partnered with stakeholders in substantial outreach programs across the state to encourage eligible firms to become DBE certified. This is one way to increase reported DBE participation through neutral means, as some of these companies may already be doing business with TxDOT. Certification will allow this participation to count toward TxDOT's overall DBE goal.

TxDOT has worked to expand and improve access to available business resources online. TxDOT created the BOSS guide to direct small businesses interested in working with TxDOT. The guide provides information for all work types across the department, identifies appropriate certifications for specific types of work, breaks down small, medium, and large contracts, qualification requirements, and provides contact information for the relevant division within TxDOT.

TxDOT publishes an online newsletter with more than 6,000 external subscribers and counting. The monthly email newsletter informs the business community about the department, including features on important updates to regulations, upcoming contract opportunities, events, available resources, and other helpful tips.

TxDOT has supported the Prime Time series conducted by Associated General Contractors of Texas in Dallas, Houston, and San Antonio. Training is provided to DBE participants and educates them on working with prime contractors and how to successfully navigate through TxDOT contracts. The knowledge gained also enables DBEs looking to grow their business as prime contractors.

During FY 2020 through 2022, TxDOT will continue to work with industry partners to provide resources and assistance to increase DBE utilization on upcoming design build projects, as well as traditional design bid build projects in each district. TxDOT is committed to its efforts to increase race neutral DBE participation.

VI. Public Participation: Review and Comment

DBE Methodology Website and Analytics

TxDOT created a webpage devoted to the DBE Goal methodology, which provided a link to the document and its rationale, as well as a public forum (online survey) to allow comments to be sent electronically. The website provided a schedule of the nine public outreach meetings and links to register for the meetings. All public meetings were held at TxDOT District Offices in Houston, Dallas, Fort Worth, Austin, and San Antonio between October 21, 2019 and November 1, 2019. In total, the meetings had 267 registrants and 162 attendees.

Date	Location
October 21	Houston (AM)
October 21	Houston (PM)
October 23	Fort Worth (AM)
October 23	Fort Worth (PM)
October 24	Dallas (AM)
October 24	Dallas (PM)
October 28	Austin (AM)
October 28	Austin (PM)
November 1	San Antonio (AM)

TxDOT also created a web banner on its external Business page to increase the public's interest and to direct traffic to the DBE Methodology website. TxDOT received 1, 243 total page views from October through November 25, 2019. The link to the website, online survey, and public meeting invitation were distributed electronically using TxDOT's Diversity Management System and through emails to targeted groups, including DBE firms in the TUCP public directory, TxDOT's professional services and construction contractors lists, and other stakeholders.

Public Outreach Notification

To notify the public of the triennial DBE goal methodology, TxDOT distributed four emails to inform and invite all to attend one of the nine scheduled outreach meetings, participate in the open comment period, and submit feedback through the online survey. More than 63,000 emails were distributed to over 28,000 individual recipients, including DBE companies and other stakeholders, on October 14, 2019, October 18, 2019, October 22, 2019, and November 20, 2019.

Digital and print advertisements were also placed in Subcontractors USA, one of the largest minority-owned publications in Texas, geared towards the contractor and subcontractor community. The print advertisement and individual emails were placed throughout the month of October. Individual email blasts and the print advertisement included notification of the public outreach meetings and solicitation for public feedback on the proposed goal methodology. The print advertisement was released in the October 2019 edition of Subcontractors USA on October 14, 2019. There were 20,000 copies of the printed edition distributed, including 5,000 copies mailed statewide. Public announcements were emailed to 10,000 recipients on October 11, 2019, October 14, 2019, and October 18, 2019.

Public Comments

The open comment period was held from October 11, 2019 through November 25, 2019. TxDOT received 62 online responses and six written comments about the proposed methodology. Public comments were received from contractors and consultants, including DBEs, TxDOT subrecipients, and other members of the public. Fewer than 10 respondents expressed concerns that the proposed overall goal was too high. Most respondents expressed appreciation for the information presented, and added the meeting helped clarify the methodology process, differences between state and federal goals, and goal setting on district projects. Individuals also provided recommendations for TxDOT to increase its outreach efforts, hire additional staff at

the Civil Rights Division, and more collaboration from industry partners. Respondents with working experience in other jurisdictions expressed that the goal was satisfactory and in line with the DBE goals of other states.

Most comments were directed to meeting the goals established for individual TxDOT projects. Some expressed concern that there is a lack of current DBEs that have the capacity to meet the goals established by TxDOT. Others expressed the challenge of using the public DBE Directory to identify DBEs that are truly capable of performing work on TxDOT projects, including local government contracts with DBE goals. Others stated that TxDOT should reevaluate certain internal policies to reduce potential barriers for smaller firms. Some of the identified barriers included qualification and capacity requirements on professional service and heavy highway construction projects. Many also recommended for TxDOT to increase the number of waived projects to help build DBE capacities and therefore will be able to bid as a prime on TxDOT projects. Workforce issues were a concern for all contractors large and small. Many voiced fears that requirements to use the Department of Homeland Security's E-Verify system on TxDOT projects may impact the current workforce negatively and lead to even fewer DBEs available to compete in the market. Some non-DBE contractors expressed their desire for Texas to be a "race-neutral" state like other DOTs, such as Florida. Finally, legislative changes also raised concerns that an increased number of alternative delivery contracts, including design build projects, would stretch the limits of the industry to sustain an increased project volume.

VII. Final Adjusted Goal

The recommended DBE Goal for FY 2020-2022 is 14.4%. TxDOT projects it will meet 7.5% of this goal through contract goals and 6.9% through race-neutral measures. The proposed DBE Goal is the sum of the race-conscious participation and the race-neutral participation.

DBE participation for federal-aid highway design and construction projects will be evaluated annually to determine whether market conditions warrant adjustments to the overall DBE goal and/or individual race-neutral and race-conscious components.

As required by FHWA, subrecipients of highway design and construction federal pass-through funds are required to adopt TxDOT's federally approved DBE program. As part of this requirement, subrecipients must adopt TxDOT's methods to establish the DBE goal and are required to report DBE awards, commitments and payments.

It should be noted that TxDOT's overall DBE goal provides for the participation of all certified DBEs. The overall goal is not subdivided into group-specific goals (see §26.45(h)).

Furthermore, TxDOT is not required to have the FHWA's concurrence to implement the DBE goal; however, if FHWA's review suggests there are concerns regarding the methods, it may, after consulting with TxDOT, adjust the overall goal, methodology, or require TxDOT to do so (§26.45(f)(4)).