

State of Hawaii

Department of Transportation

Highways Division

Disadvantaged Business Enterprise

FFY 2020 – 2022

Proposed Goal & Methodology

March 2020

Introduction

The Hawaii Department of Transportation hereby submits its proposed annual, overall Disadvantaged Business Enterprise goal for federal fiscal years 2020 through 2022 to the Federal Highway Administration pursuant to [49 CFR Part 26, section 26.45](#). From Federal Fiscal Year 2017 through Federal Fiscal Year 2019, HDOT projected a DBE goal of 29.05%, of which it projected that 0.26 percentage points be met through neutral means, while 28.79 percentage points would be met through race- and gender-conscious means. In August 2019, HDOT submitted a DBE goal of 25.60% for FHWA-funded contracts for federal fiscal years 2020 through 2022, which has now been refined.

Based on the results of the 2019 DBE Availability and Disparity Study prepared by Keen Independent Research (Keen Independent), HDOT proposes an updated 17.26% DBE goal for FFYs 2020 through 2022 for FHWA-funded contracts. The overall goal is based on demonstrable evidence of ready, willing and able DBEs relative to all businesses currently ready, willing and able to participate on HDOT's FHWA-assisted contracts.

The 2019 Availability and Disparity Study report provided information to HDOT as it considered refinements to (1) its overall DBE goal for FFY 2020 through FFY 2022 for FHWA-funded contracts, and (2) its projection of the portion of its overall DBE goal to be achieved through neutral means. HDOT now estimates that all of the overall goal can be achieved through race- and gender-neutral participation on HDOT FHWA-assisted projects. HDOT proposes that it will create and promote a new SBE Program through which the Department will encourage small businesses to become certified and participate in HDOT contracting opportunities. The SBE Program will include setting SBE contract goals on certain FHWA-funded contracts.

I. Determining a Base Figure — Pursuant to 49 CFR Section 26.45(c)

HDOT began the process of determining its overall DBE goal by establishing a base figure for DBE participation in HDOT's FHWA-funded transportation contracts.

In the 2019 Availability and Disparity Study report, availability analysis determined the percentage of HDOT FHWA-funded contract dollars from July 2011 through June 2016 that might go to current or potential DBEs (defined on page 5) if they had the same chance of winning that work as any other available firm, after accounting for the type, size and location of those prime contracts and subcontracts. HDOT used a dollar-weighted approach to determine this overall availability estimate.

As presented in Chapter 4 of the Availability and Disparity Study, one might expect current and potential DBEs to receive 17.26% of HDOT FHWA-funded transportation contracts based on analysis of FHWA-funded contracts from July 2011 through June 2016 and current availability of firms to perform that work.

This section explains how the relative availability of current and potential DBEs was calculated.

Relevant Geographic Market Area and Types of Work. Based on analysis of FHWA-funded contracts for July 2011 through June 2016, Keen Independent determined that Hawaii should be selected as the relevant geographic market area for the Availability and Disparity Study.

- About 95% of HDOT FHWA-funded contract dollars from July 2011 through June 2016 went to firms with locations in Hawaii. Therefore, the availability analysis examined firms with locations in Hawaii.
- Keen Independent also examined the types of work involved in FHWA-funded contracts from July 2011 through July 2016. There were 31 types of work that accounted for about 96% of FHWA-funded contract dollars. The availability analysis focused on firms performing these 31 types of work.

DBE Availability. As briefly set out below and explained in detail in Chapter 4 and Appendix D of the 2019 Availability and Disparity Study report, Keen Independent compiled a master availability database and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an availability figure of 17.26% for HDOT's FHWA-funded transportation contracts.

Availability is expressed as the percentage of the associated contracting dollars that one might expect DBEs to receive based on various factors including the type of work involved, the location of the work and the size of the contract or subcontract, and then dollar-weighting results to prepare an overall availability estimate.

In the base figure analysis, firms considered as DBEs were those businesses that were DBE-certified or appeared that they could be DBE-certified based on revenue criteria described in federal regulations including 49 CFR Section 26.65.

Master Availability Database. Keen Independent developed a master availability database (current and potential DBEs and non-DBEs) by contacting thousands of firms to collect information about availability for HDOT contracts. The firms contacted for the database came from sources including, but not limited to:

- Companies that had previously identified themselves to HDOT as interested in learning about future work by being prequalified for certain types of work or being on bidding lists; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related sub-industries in Hawaii (D&B's Hoover's business establishment database). (D&B's Hoover's database is accepted as the most comprehensive and complete source of business listings in the nation.)

Keen Independent completed surveys with 1,101 Hawaii businesses. After consolidating duplicate responses and removing companies that are no longer in business, not-for-profit, unable to perform transportation-related work or uninterested in discussing availability for HDOT work, the final database contains 304 businesses, of which 174 (or 57%) were minority- or women-owned (MBE or WBE). (See Figure 1 below.)

Head Count DBE Availability. The 57% figure represents a simple “head count” of MBE and WBE firms and is only the initial stage of calculating the DBE availability base figure. The availability calculation is further refined by dollar-weighting and by removing any MBE or WBE firms that are ineligible to become DBE certified from the potential DBE count.

Figure 1. Availability “Head Count” of Transportation Construction and Engineering-Related Businesses Included in 2019 Availability and Disparity Study

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	5	1.6 %
Asian Pacific American, Native Hawaiian or Pacific Islander-owned	126	41.4
Hispanic American-owned	18	5.9
American Indian or Alaska Native-owned	2	0.7
Subcontinent Asian American-owned	10	3.3
Total MBE	161	53.0 %
WBE (white women-owned)	13	4.3
Total MBE/WBE	174	57.2 %
Total majority-owned firms	130	42.8
Total firms	304	100.0 %

Note: Numbers rounded to nearest tenth of 1%. Percentages may not add to totals due to rounding.

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 4, page 9).

Dollar-Weighted Availability. For each of the availability analyses prepared for the Availability and Disparity Study, Keen Independent developed dollar-weighted availability benchmarks. This approach is consistent with USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

To calculate dollar-weighted availability, Keen Independent determined the number of DBEs and the total number of firms available for each FHWA-funded contract in the five-year study period (July 2011 through June 2016). For some contracts, DBE availability could be 0% and in other contracts DBE availability could be 75% or more.

Keen Independent then dollar-weighted the availability results for each prime contract and subcontract based on the dollars of that prime contract or subcontract relative to the total dollars of FHWA-funded contracts in the study period. The method to determine the dollar-weights is described in detail in Chapter 4 — Section E, and Appendix D of the Availability and Disparity Study.

Dollar-weighted availability is much more precise than a simple “head count” of businesses because it considers the following factors regarding available firms: (1) qualifications and interest in performing prime contracts and/or subcontracts, (2) type of work performed, (3) location of contracting opportunity, and (4) size of the contract or subcontract. Figure 2 below presents an

example of an availability calculation. Availability calculations were first done for minority- and women-owned firms (MBE/WBEs) and then refined to show results for current and potential DBEs.

Figure 2. Example of an Availability Calculation for an HDOT Subcontract

One of the subcontracts examined was for concrete flatwork (\$82,062) on an HDOT 2015 Federal Highway Administration-funded contract. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- Were in business in 2015;
- Indicated that they performed concrete flatwork on transportation-related projects;
- Reported working or bidding on subcontracts in Hawaii in the past seven years;
- Reported bidding on work of similar or greater size in the past seven years;
- Reported ability to perform work on Maui; and
- Reported qualifications and interest in working as a subcontractor on local government transportation projects.

There were 14 businesses in the availability database that met those criteria. Of those businesses, 8 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 57 percent (i.e., 8/14 = 57.1%).

The weight applied to this contract was \$82,062 ÷ \$815 million = 0.01% (equal to its share of total FHWA-funded contract dollars for HDOT contracts).

Keen Independent repeated this process for each prime contract and subcontract.

Source: Keen Independent availability analysis.

As shown in Figure 3, the overall dollar-weighted MBE/WBE availability for HDOT FHWA-funded contracts is 52.97% for contracts during the five-year study period. The dollar-weighted result is somewhat lower than the headcount of available MBE/WBE firms (57%) because minority- and women-owned firms comprised a smaller portion of firms available for the largest highway construction prime contracts than for other prime contracts or subcontracts.

Figure 3. Overall Dollar-Weighted Availability Estimates by MBE/WBE group for HDOT FHWA-Funded Contracts, July 2011–June 2016

Race/ethnicity and gender	FHWA
African American-owned	0.65 %
Asian Pacific American, Native Hawaiian or Pacific Islander-owned	26.05
Hispanic American-owned	2.53
American Indian or Alaska Native-owned	2.74
Subcontinent Asian American-owned	6.20
Total MBE	38.17 %
WBE (white women-owned)	14.80
Total MBE/WBE	52.97 %

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 4, page 15).

Potential and Certified DBE Availability Adjustments. To determine the DBE base figure, which focuses on availability of currently certified DBEs and firms that could be certified as DBEs, Keen Independent refined the 52.97% dollar-weighted availability figure by not counting any MBE or WBE firms as potential DBEs that appear to be ineligible for certification. There were three groups of MBE/WBEs that did not count as potential DBEs when calculating the base figure:

- MBE/WBEs that in recent years graduated from the DBE Program or had applied for DBE certification in Hawaii but were denied (based on information supplied by HDOT’s Office of Civil Rights).
- MBE/WBEs that reported annual revenue in the availability surveys that exceeded the revenue limits for DBE certification for their sub-industry over the most recent three years (at the time of the 2018 survey).
- MBE/WBEs that indicated in follow-up interviews that they were not eligible or not interested in DBE certification (interviews performed in the Availability and Disparity Study).

After subtracting the availability of these three categories of MBE/WBEs, the dollar-weighted availability for current and potential DBEs is 17.26%, or 35.71 percentage points lower than total MBE/WBE availability. This information is shown in Figure 4 below.

Figure 4. Overall Dollar-Weighted Availability Estimates for MBE/WBEs for HDOT FHWA-Funded Contracts, July 2011–June 2016

Calculation of base figure	FHWA
Total MBE/WBE	52.97 %
Less firms that graduated from the DBE Program or denied DBE certification in recent years or exceed revenue limits	<u>35.71</u>
Subtotal	17.26 %
Plus white male-owned DBEs	<u>--</u>
Current and potential DBEs	17.26 %

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 4, page 18).

Base Figure. The base figure representing potential and certified DBEs available for HDOT’s FHWA-funded contracts is 17.26%.

II. Consideration of Possible Step 2 Adjustments — 49 CFR Section 26.45(d)

In accordance with DBE Program regulations, after the base figure was calculated, HDOT considered available evidence to determine whether or not the figure should be adjusted higher or lower than the base figure (a “step 2 adjustment”). The regulations indicate an agency must consider the following:

- Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years.
- Information on employment, self-employment, education, training and unions.
- Any disparities in the ability of DBEs to get financing, bonding and insurance.
- Other relevant factors.

Taking into account relevant information from the 2019 Availability and Disparity Study, HDOT considered each of the factors below in determining whether or not to adjust the base figure.

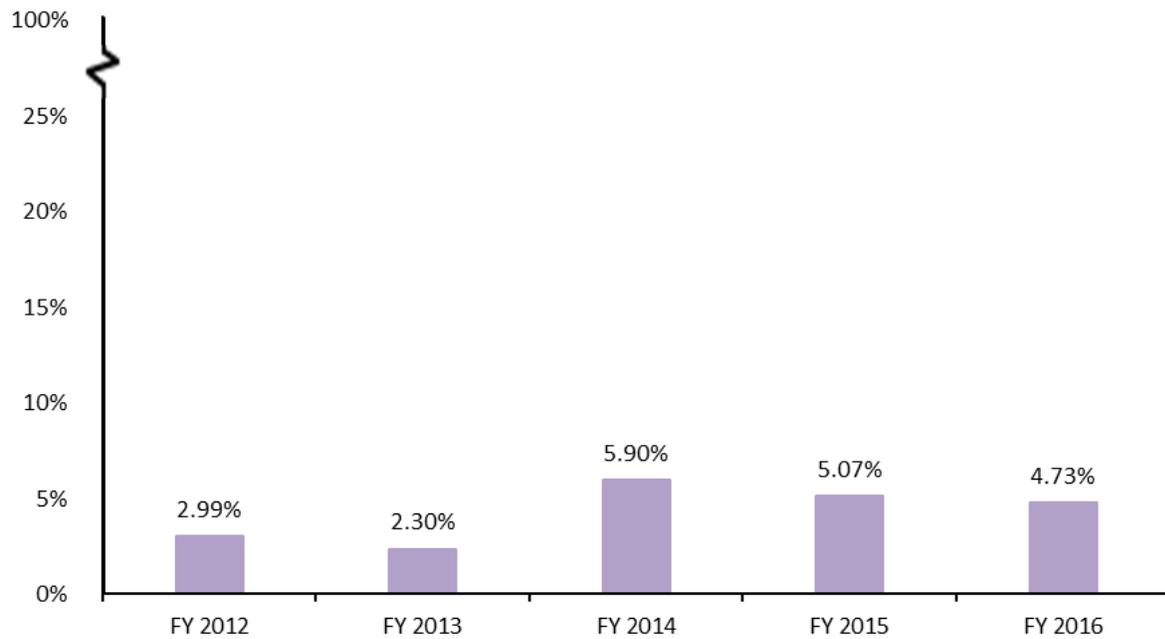
1. Current Capacity of DBEs to Perform Work, Measured by the Volume of Work DBEs Performed in Recent Years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

DBE Participation Based on HDOT Uniform Reports to FHWA. Based on commitments/awards data from HDOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA, the median DBE participation from FFY 2013–FFY 2018 is 6.11%.

DBE Participation Based on Keen Independent Utilization Analysis for FHWA-Funded Contracts. Figure 5 presents information about past DBE participation based on Keen Independent Utilization Analysis. Keen Independent’s analysis identified a median DBE participation of 4.73% on FHWA-funded contracts from FY 2012 through FY 2016. This value would suggest a larger downward step 2 adjustment based on past DBE participation.

HDOT chooses to use the median DBE participation estimated by Keen Independent (4.73%) to consider a step 2 adjustment.

Figure 5. Keen Independent Analysis of Past DBE Participation on HDOT FHWA-Funded Contracts, FY 2012–FY 2016



Source: Keen Independent 2019 Availability and Disparity Study (Chapter 8, page 3).

2. Information Related to Employment, Self-employment, Education, Training and Unions.

Chapter 7 of the 2019 Availability and Disparity Study summarizes information about conditions in the Hawaii transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Hawaii are presented in Appendices E through H. Keen Independent’s analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement and business ownership in the Hawaii construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform HDOT transportation contracts.

It may not be possible to quantify all the cumulative effects that barriers may have had in depressing the availability of minority- and women-owned firms in the Hawaii transportation contracting industry, however, the effects of barriers in business ownership can be quantified, as explained below.

In the 2019 Availability and Disparity Study, Keen Independent used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Hawaii construction and engineering industries.

- The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the Availability and Disparity Study provides detailed results of the business ownership regression analyses). Those analyses revealed that Asian Pacific/Native Hawaiian and other minority groups were less likely than nonminorities to own construction businesses and that white women were less likely than white men to own construction firms, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.¹
- In addition, women working in the Hawaii architecture and engineering industry were less likely than men to own engineering companies (although, this difference was not statistically significant). A substantial disparity in firm ownership persisted for Asian Pacific Americans and Native Hawaiians working in the industry.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if Asian Pacific Americans, Native Hawaiians and white women owned businesses at the same rate as similarly situated nonminorities and white men, respectively, in those two industries. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

As the explanation of these calculations are somewhat complex, HDOT provides Figure 6 to document how these upward adjustments were determined. A detailed explanation of each portion of the calculation follows the figure.

Figure 6 calculates the impact on overall MBE/WBE availability, resulting in a possible upward adjustment of the base figure to 31.46%. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded construction and engineering prime contracts and subcontracts that HDOT awarded from July 2011 through June 2016). The calculations in Figure 6 indicate a possible upward step 2 adjustment of 14.21 percentage points. Calculations are explained below.

¹ The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois and Minnesota.

Figure 6. Potential Step 2 Adjustment Considering Disparities in Rates of Business Ownership

Current and potential DBEs	a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of overall DBE availability**
Construction					
Asian Pacific American, Native Hawaiian or Pacific Islander	5.34 %	30	17.80 %	15.06 %	
Other minorities	5.28	65	8.12	6.87	
White women	<u>1.30</u>	31	<u>4.19</u>	<u>3.55</u>	
Minorities and women	11.92 %	n/a	30.12 %	25.48 %	22.53 %
All other businesses	<u>88.08</u>	n/a	<u>88.08</u>	<u>74.52</u>	
Total firms	100.00 %	n/a	118.20 %	100.00 %	
Engineering and other subindustries					
Asian Pacific American, Native Hawaiian or Pacific Islander	51.12 %	38	134.53 %	73.35 %	
Other minorities	6.41	n/a	6.41	3.49	
White women	<u>0.42</u>	n/a	<u>0.42</u>	<u>0.23</u>	
Minorities and women	57.95 %	n/a	141.36 %	77.07 %	8.94 %
All other businesses	<u>42.05</u>	n/a	<u>42.05</u>	<u>22.93</u>	
Total firms	100.00 %	n/a	183.41 %	100.00 %	
Total for current and potential DBEs	17.26 %	n/a	n/a		31.46 %
Difference from base figure					14.21 %

Note: Numbers may not add to totals due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index.

** Components of goal calculated as value after adjustment and scaling to 100% multiplied by percentage of total FHWA-funded contract dollars in that category (construction = 88.4%, engineering = 11.6%).

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 8, page 5).

The study team completed these “but for” analyses separately for construction and engineering contracts and then weighted the results based on the proportion of FHWA-funded contract dollars that HDOT awarded for construction and engineering for July 2011 through June 2016 (i.e., an 88.4% weight for construction and 11.6% weight for engineering). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses:

- a. Current Availability. Column (a) presents the current availability of DBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for minority- and women-owned DBEs. The current combined availability of current and potential DBEs for HDOT FHWA-funded transportation contracts for July 2011 through June 2016 is 17.26%, as shown in bottom row of column (a).
- b. Disparity Indices for Business Ownership. As presented in Appendix F of the Availability and Disparity Study, Asian Pacific Americans, Native Hawaiians and white women were significantly less likely to own construction firms than similarly situated nonminorities and white men, respectively.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as nonminorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), Asian Pacific Americans, Native Hawaiians and Pacific Islanders own construction businesses at 30% of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F explains how the study team calculated the disparity indices.

- c. Availability After Initial Adjustment. Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. Availability After Scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100% for each industry. The study team re-scaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for construction firms owned by Asian Pacific Americans, Native Hawaiians or Pacific Islanders was calculated in the following way: $(17.80\% \div 118.20\%) \times 100 = 15.06\%$.

- e. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 6 shows the component of the total base figure attributed to the adjusted MBE and WBE availability for construction versus engineering and other subindustries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and for engineering/other — and multiplying it by the proportion of total FHWA-funded contract dollars in each industry (i.e., 88.4% for construction and 11.6% for engineering). For example, the study team used the 25.48% shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 88.4% for a result of 22.53%. A similar weighting of MBE/WBE availability for engineering/other produced a value of 8.94%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 31.46% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the “but for” MBE/WBE availability (31.46%) and the current availability (17.26%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 14.21 percentage points ($31.46\% - 17.26\% = 14.21\%$).

3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Hawaii marketplace.
- If MBE/WBEs face barriers in obtaining financing and bonding, it would also place those businesses at a disadvantage in obtaining and performing HDOT construction and engineering prime contracts and subcontracts.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms. The information about financing, bonding and insurance supports an upward step 2 adjustment in HDOT’s overall annual goals for DBE participation in FHWA-funded contracts.

Note that financing and bonding are closely linked, as discussed in Chapter 7 and Appendix J.

4. Other Factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.²

Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the Hawaii marketplace. There is quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. In the 2019 Availability and Disparity Study, Chapter 7 summarizes that evidence and Appendix H presents supporting quantitative analyses.

There is also qualitative evidence of barriers to the success of minority- and women-owned businesses, as summarized in Appendix J of the Availability and Disparity Study. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Hawaii transportation contracting industry.

There is not a straightforward way to project the number of MBE/WBEs available for HDOT work but for the effects of these other factors.

Summary of Approaches for Making Step 2 Adjustments. Quantification of potential downward or upward step 2 adjustments is summarized below.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs Have Performed in Recent Years. Analysis of this factor might indicate a downward step 2 adjustment if HDOT analyzed its estimates of past DBE participation from FY 2012 through FY 2016. Based on Keen Independent’s analysis, the median DBE participation on FHWA-funded contracts was 4.73% for fiscal years 2012–2016.

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 17.26 base figure (calculated in Chapter 4) and 4.73% DBE participation is 12.53 percentage points ($17.26\% - 4.73\% = 12.53\%$). One-half of this difference is a downward adjustment of 6.27 percentage points ($12.53\% \div 2 = 6.27\%$). The goal would then be calculated as follows: $17.26\% - 6.27\% = 11.00\%$. The top portion of Figure 7 on the following page summarizes these calculations.

2. Information Related to Employment, Self-employment, Education, Training and Unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 14.21 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If HDOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 31.47% ($17.26\% + 14.21\% = 31.47\%$). The bottom portion of Figure 7 shows these calculations.

² 49 CFR Section 26.45.

Figure 7. Potential Step 2 Adjustments to Overall DBE Goal for FHWA-Funded Contracts, FFY 2020–FFY 2022

Step 2 adjustment component	Value	Explanation
Lower range of overall DBE goal		
Base figure	17.26 %	From base figure analysis
Evidence of current capacity	- 4.73	Past DBE participation (Keen Independent)
Difference	12.53 %	
	÷ 2	Reduce by one-half
Adjustment	6.27 %	Downward adjustment for current capacity
Base figure	17.26 %	From base figure analysis
Adjustment for current capacity	- 6.27	Downward step 2 adjustment
Overall DBE goal	11.00 %	Lower range of DBE goal
Upper range of overall DBE goal		
Base figure	17.26 %	From base figure analysis
Adjustment for "but for" factors	+ 14.21	"But for" step 2 adjustment for business ownership
Overall DBE goal	31.47 %	Upper range of DBE goal

Note: Numbers may not add to totals due to rounding.

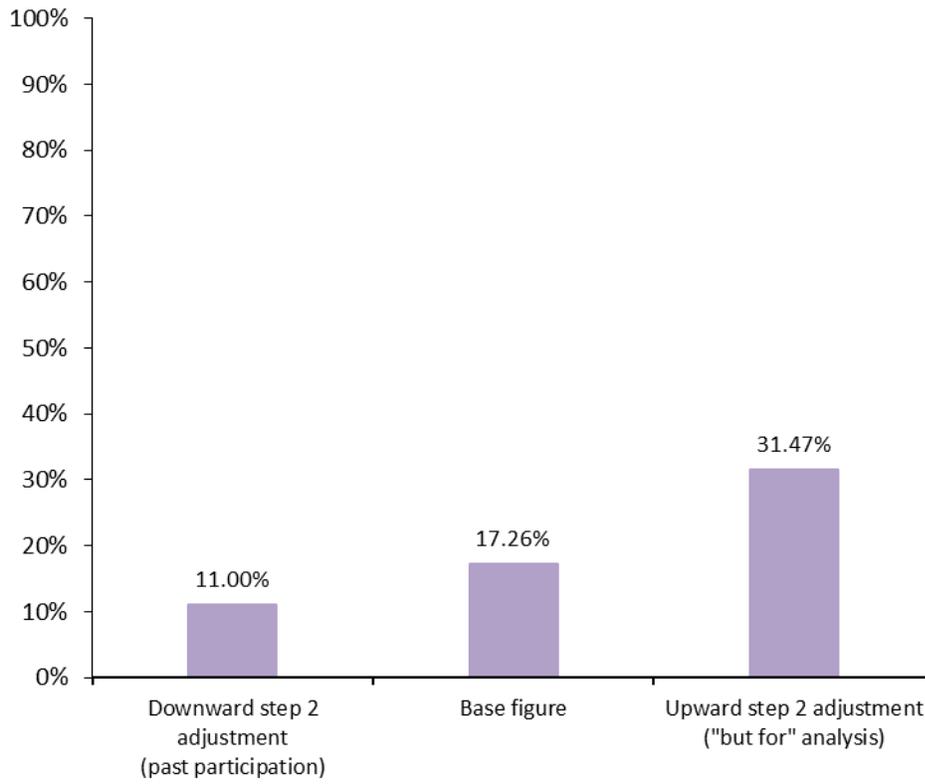
Source: Keen Independent 2019 Availability and Disparity Study (Chapter 8, page 8).

3. Any Disparities in the Ability of DBEs to Get Financing, Bonding and Insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

4. Other Factors. Impact of the many barriers to success of MBE/WBEs in Hawaii could not be specifically quantified. However, the evidence supports an upward adjustment.

HDOT considered the above information when determining whether to make a downward, upward or no step 2 adjustment when establishing its overall DBE goal. If HDOT made a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts would be 11.00%. If HDOT decided to not make a downward adjustment and instead makes an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 31.47%. Figure 8 below summarizes this information.

Figure 8. Potential Step 2 Adjustments to Overall DBE Goal for FHWA-Funded Contracts, FFY 2020–FFY 2022



Source: Keen Independent 2019 Availability and Disparity Study (Chapter 8, page 9).

Adjustments Summary. For FHWA-funded contracts, HDOT proposes utilizing the base figure of 17.26% as its DBE goal for FHWA-funded projects from FFY 2020 through FFY 2022, based on the following rationale. HDOT proposes this downward adjustment based on the following rationale:

- The proposed goal of 17.26% is substantially greater than the median past DBE participation of 4.73%.
- In FFYs 2013 through 2016, HDOT fell short of its DBE goal (29.05%) by more than 20 percentage points each fiscal year; this indicates that an upward-adjusted goal of 31.47% on HDOT projects might not be achievable. In HDOT’s 2016 shortfall analysis, HDOT reported that several factors might cause the shortfall, including an outdated Disparity Study, lack of ability of DBEs to obtain bonding and geographic challenges. The HDOT FFY 2017–2019 Proposed Goal and Methodology document demonstrated that geographic challenges might be the most difficult barrier for Hawaii DBEs to overcome.³

³ See <https://hidot.hawaii.gov/administration/files/2016/05/HWYGoalMethodology17-19.pdf>

III. Race-Neutral / Race-Conscious Projections — 49 CFR Section 26.51(d)

To comply with the Federal DBE Program, HDOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.⁴ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. HDOT has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, HDOT has projected the portion of its overall DBE goals that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.⁵
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁶
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 9.

Figure 9.
Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]

You must also explain the basis for the State’s race-neutral/race-conscious division and why it is the State’s best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient’s race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient’s market, the race-neutral measures it employs and information on contracting in the recipient’s contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient’s contracts that do not have contract goals; past prime contractors’ achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state’s programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women’s businesses participate in programs without goals.

Source:
FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year].

⁴ 49 CFR Section 26.51.

⁵ See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

⁶ 49 CFR Section 26.51.

Based on 49 CFR Part 26 and the resources above, HDOT considered the following questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency's past experience in meeting its overall DBE goal?
3. What has DBE participation been when HDOT has not applied DBE contract goals (or other race-conscious remedies)?⁷
4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

The balance of this section is organized around each of those general areas of questions.

1. Is There Evidence of Discrimination within the Local Transportation Contracting Marketplace for any Racial, Ethnic or Gender Groups? The 2019 Availability and Disparity Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

Marketplace Conditions. As discussed in Chapter 7, Keen Independent examined conditions in the Hawaii marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes, as presented in Appendix J of the Availability and Disparity Study.

Results of the Disparity Analysis for FHWA-Funded Contracts. Chapter 6 of the Availability and Disparity Study examines FHWA-funded contracts with and without DBE contract goals.

- There was little difference between overall participation of minority- and women-owned firms with goals (34.7%) and without goals (33.9%) for FHWA-funded contracts. It does not appear that there was any overall difference in the participation of minority- and women-owned firms when HDOT set a DBE contract goal and when HDOT did not.

⁷ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

- Most of the minority- and women-owned firms receiving work on FHWA-funded contracts were not certified as DBEs (of the 149 MBE/WBE firms that received a contract or subcontract, 54 were DBE-certified).
- For both goals and non-goals contracts, firms owned by Asian Pacific Americans, Native Hawaiians and Pacific Islanders exceeded what might be expected from the availability analysis. There is no evidence of disparities for this group from analysis of HDOT FHWA-funded contracts with and without DBE contract goals.
- For contracts without goals, there were substantial disparities for African American-, Hispanic American-, American Indian or Alaska Native-, Subcontinent Asian American- and white women-owned firms.
- MBE/WBEs received 32.5% of FHWA-funded contract dollars going to primes.

Summary. HDOT reviewed the information about utilization and availability of minority- and women-owned firms in its contracts in Chapters 5 and 6 and analysis of marketplace conditions presented in Chapter 7 and Appendices E through J of the 2019 Availability and Disparity Study, as well as other information, when considering the extent to which it can meet its overall DBE goal through neutral measures.

2. What has been the Agency’s Past Experience in Meeting its Overall DBE Goal? DBE participation based on DBE commitments/awards on FHWA-funded contracts was considerably below HDOT’s overall DBE goal for FFY 2013 through FFY 2018, as shown in Figure 10 below.

Figure 10. HDOT Overall DBE Goal and Reported DBE Participation on FHWA-Funded Contracts, FFY 2013 through FFY 2018

Federal fiscal year	DBE goal	DBE commitments/ awards	Difference from DBE goal
2013	53.43 %	5.90 %	-47.53 %
2014	53.43	1.30	-52.13
2015	53.43	6.33	-47.10
2016	53.43	8.88	-44.55
2017	29.05	3.85	-25.20
2018	29.05	7.43	-21.62

Source: HDOT Uniform Reports of DBE Awards/Commitments and Payments.

The Keen Independent analysis of DBE utilization on FHWA-funded contracts from July 2011 through June 2016 indicated annual DBE participation from 2.30% to 5.90% over this time period, also substantially below HDOT’s overall DBE goal. Figure 5 provides these results.

3. What has DBE Participation Been when HDOT has not Applied DBE Contract Goals (or Other Race-Conscious Remedies)? The 2019 Availability and Disparity Study examined three sources of information to assess race-neutral DBE participation:

- HDOT-reported race-neutral DBE participation on FHWA-funded contracts for the most recent years;
- Keen Independent estimates of DBE participation on FHWA-funded contracts for which no DBE contract goals applied; and
- Information concerning DBE participation as prime contractors on FHWA-funded contracts.

The discussion on the following pages examines these three sets of participation figures.

Race-Neutral DBE Participation in Recent HDOT Uniform Reports. Per USDOT instructions, HDOT counts “neutral” participation as any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

As show in Figure 11, HDOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for FFY 2013 through FFY 2018 indicate a median race-neutral participation of 0.16%.⁸

Figure 11. HDOT-Reported Race-Neutral and Race-Conscious DBE Participation on FHWA-Funded Contracts for FFY 2013–FFY 2018

Federal fiscal year	DBE commitments/awards		
	Total	Race-neutral	Race-conscious
2013	5.90 %	0.06 %	5.84 %
2014	1.30	0.51	0.79
2015	6.33	0.26	6.07
2016	8.88	0.58	8.30
2017	3.85	0.03	3.82
2018	7.43	0.02	7.41

Source: HDOT Uniform Reports of DBE Awards/Commitments and Payments.

⁸ 0.32% is the halfway point between the “middle” pair of values for annual race-neutral DBE commitments/awards: 0.02% in FFY 2018 and 0.58% in FFY 2016.

DBE Participation on Contracts Without DBE Contract Goals. The 2019 Availability and Disparity Study also analyzed DBE participation on HDOT's FHWA-funded contracts without DBE contract goals. HDOT achieved a median DBE participation of 6.74% for FY 2012 through FY 2016 on FHWA-funded contracts without goals, as discussed in Chapter 8 of the Availability and Disparity Study.

DBE Participation as Prime Contractors. HDOT also reviewed DBE participation figures based on prime contract dollars. From July 2011 through June 2016, the median DBE participation on prime contracts was 0.58% for FHWA-funded contracts.

Including non-certified firms, MBE/WBEs received 32.5% of FHWA-funded prime contract dollars from July 2011 through June 2016.

4. What is the Extent and Effectiveness of Race- and Gender-Neutral Measures that the Agency Could Have in Place for the Next Fiscal Year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, HDOT reviewed the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or might consider for future implementation.

HDOT has extensive efforts to assist DBEs and other small businesses through technical assistance and other means. There are many programs outside HDOT that also assist these businesses. Appendix H of the 2019 Availability and Disparity Study report includes examples of these programs. HDOT and other agency business assistance will continue in the future.

In addition, HDOT proposes that it will implement a small business enterprise (SBE) contract goals program. HDOT would certify firms as SBEs in the same way it certifies companies as DBEs, except they would not need to be owned and controlled by minorities or women. It would set SBE goals in the same way as DBE goals. Monitoring of SBE participation would be the same as DBE participation.

Federal regulations in 49 CFR Part 26.39(b)(1) allow the use of set-asides for SBE prime contractors for USDOT-funded contracts, which would provide HDOT another tool it could use to boost participation of small businesses. Hawaii state law allows HDOT to restrict competition on small contracts to SBE bidders.

HDOT proposes implementing an SBE program for the following reasons:

- About 94% of the businesses available for HDOT USDOT-funded contracts are within the federal small business size limit based on the revenue they reported in the availability survey for this study. Of those small businesses, 59% are minority- or women-owned.
- All of the current DBEs in Hawaii would automatically qualify as SBEs.

- White men comprise about 12% of the workforce in Hawaii. The concept of “social disadvantage” for people who are not white differs in a state that has a workforce that is almost 90% people of color and women. The 2019 Availability and Disparity Study found evidence of social disadvantages for women and minorities compared with men and nonminorities, but those disadvantages may occur in different ways than on the Mainland. An SBE Program might tailor operation of the Federal DBE Program to better achieve success in removing barriers for socially and economically disadvantaged businesses in this demographically unique state.
- In the in-depth interviews in the Availability and Disparity Study report, a number of firms commented on the preponderance of business owners of color and women business owners in the Hawaii transportation contracting market. Some minority and female business owners reported that DBE contract goals are not needed. Many current firms eligible to be certified as DBEs have not done so, and there may be some stigma concerning certification as a “disadvantaged business” that might not arise for small business certification. For example, the Filipino American female owner of a professional services firm stated, “[DBE certification] was not necessary after a while. If you look at the rules ... everyone is pretty much a minority here.”
- Minority and female business owners in Hawaii frequently reported disadvantages because they were a small business competing against large businesses. In Hawaii, some of those large businesses are owned by minorities or women. Large minority-owned firms win a large portion of HDOT’s FHWA-funded contracts.
- An SBE contract goals program for USDOT-funded contracts might be especially effective in encouraging minority- and women-owned business participation with wide promotion coupled with further unbundling of HDOT contracts, continued technical assistance for DBEs, restricting bidding on small contracts to SBEs, and parallel efforts to include small businesses in HDOT’s non-federally-funded contracts.
- In addition, the 2019 Availability and Disparity Study determined that HDOT could achieve 11 percentage points greater DBE participation on its FHWA-funded contracts if minority- and women-owned firms that appear to be eligible for DBE certification became certified. An SBE Program might be the most effective way to encourage these firms to be certified (as an SBE and DBE).

IV. Summary

1. Overall DBE Goals for FHWA-Funded Contracts. HDOT considered upward and downward adjustments to the base figure to set its overall DBE goals for FHWA-funded contracts. Based on the results of the 2019 Availability and Disparity Study summarized in this document, HDOT proposes a 17.26% DBE goal on FHWA-funded contracts for FFYs 2020 through 2022. HDOT proposes that it will meet this goal through solely neutral measures and intends to design and promote a new SBE Program, including SBE contract goals, to achieve its overall DBE goal.

2. Could HDOT Project that it Can Meet All of its Overall DBE Goal through Neutral Means? If Not, How Much of the Overall DBE Goal Can HDOT Project to be Met through Neutral Means?

HDOT has considered whether it can achieve its overall DBE goal through neutral means alone or whether race-conscious programs are needed. With HDOT's proposed overall DBE goals for FHWA-funded contracts of 17.26%, HDOT believes it is appropriate to design and promote a new SBE Program to achieve its overall DBE goal through solely neutral means for FHWA-funded contracts.

- As discussed previously in this document and in Chapter 8 of the Availability and Disparity Study report, most potential SBEs in Hawaii are minority- or women-owned, based on Keen Independent's analysis of small businesses available for HDOT work. And, minority- and women-owned firms are disproportionately small businesses.
- HDOT would set SBE contract goals in the same way as it currently sets DBE contract goals. The same firms currently eligible to count toward the goals would still be available to count toward the goals as SBEs.
- Federal regulations and Hawaii state law allow HDOT to limit bidding on small contracts to SBE prime contractors and consultants, giving HDOT a new tool to increase SBE and DBE participation.
- HDOT would continue technical assistance and other assistance to DBEs.
- With outreach and additional reasons to become certified, such as small contracts reserved for bidding by SBEs, a new SBE Program could encourage more firms to become certified as DBEs. The minority- and women-owned firms attracted to a new SBE certification would also be certified as DBEs.
- As previously noted, Keen Independent determined that HDOT could achieve 11 percentage points greater DBE participation if minority- and women-owned firms that appear to be eligible for DBE certification became certified.

HDOT considered all of the information in the Availability and Disparity Study report and other sources when reaching its decision on any use of race- and gender-conscious programs (such as DBE contract goals). The balance of this section summarizes proposed DBE goals for FFYs 2020–2022 and race-neutral and -conscious projections for FHWA-funded contracts, paired with the same figures for the previous three fiscal years.

When HDOT prepared its overall DBE goal of 29.05% for FFY 2017 through FFY 2019, it projected a 0.26 percentage point neutral and 28.79 percentage point race-neutral/race-conscious split. The first column Figure 12 presents these recent projections. The second column of numbers in Figure 12 illustrates projections using the proposed overall DBE goal of 17.26%, with all of the overall DBE goal to be achieved through an SBE Program and other neutral means.

Figure 12. Current HDOT Overall DBE Goal and Projections of Race-Neutral Participation for FHWA-Funded Contracts for FFY 2020 through FFY 2022

Component of overall DBE goal	FFY 2017- FFY 2019	FFY 2020- FFY 2022
Overall goal	29.05 %	17.26 %
Neutral projection	- <u>0.26</u>	- <u>17.26</u>
Race-conscious projection	28.79 %	0.00 %

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 8, page 15).

V. Public Participation — 49 CFR Section 26.45(g) and 26.15(b)(1)

HDOT and Keen Independent implemented an extensive public participation process as part of the 2019 Availability and Disparity Study.

Opportunity to Comment. During the Availability and Disparity Study, HDOT and the study team provided substantial opportunities for the public to provide information that might contribute to the Study’s findings. These activities include:

- An External Stakeholder Group that met with HDOT and the study team at key junctures of the study process.
- A study website that posted information from the beginning of the study.
- A telephone hotline and dedicated email address for anyone wishing to comment.
- Opportunities for company owners and managers to provide information about their businesses and any perceived barriers in the marketplace. Keen Independent reached thousands of businesses through online surveys and telephone surveys conducted in 2018.
- In-depth personal interviews and focus groups with business owners, trade associations and others throughout the state.

Through these methods, Keen Independent reviewed input from more than 190 businesses and other groups across Hawaii, which is summarized in the 2019 Availability and Disparity Study.

Public Comment Process for the Draft 2019 Availability and Disparity Study Report and Revised HDOT DBE Goal. Before finalizing the Availability and Disparity Study report, Keen Independent published a draft report for public comment. The study team distributed the draft report and HDOT published its revised overall DBE goal in early February 2020. The public was able to provide input through the following means:

- a. In person or via video at a February 24, 2020 public meeting;
- b. Online at www.keenindependent.com/hdotdisparitystudy2019;
- c. Via email at HDOTdisparitystudy2019@keenindependent.com; or
- d. Through regular mail to HDOT Office of Civil Rights, 200 Rodgers Boulevard, Honolulu, HI 96819.

The February 24, 2020 public meeting concerning the study and HDOT's proposed methods for meeting its DBE goals was held in person in Honolulu and via remote viewing at district offices on Maui, Kauai and Hawaii Island.

Feedback received at the public meeting and through communications through mid-March was incorporated into the final Availability and Disparity Study report. HDOT also reviewed this additional information before formally submitting its revised overall DBE goal calculation to FHWA.

Notice of Proposed Goal. HDOT will publish a notice of its proposed revised overall goal on its [DBE Program](#) web page and [DBE Disparity Study](#) website. The agency will also implement additional methods of publishing its proposed overall goal.