

# State of Hawaii

Department of Transportation  
Disadvantaged Business Enterprise

FFY 2021 – 2023

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 2021 through 2023 to the Federal Transit Administration pursuant to [49 CFR Part 26, section 26.45](#).

Based on the results of a DBE Availability and Disparity Study prepared in December 2019 by Keen Independent Research (Keen Independent), HDOT proposes a 14.63% DBE goal for FFYs 2021 through 2023 for FTA-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 FTA-assisted contracts.

The 2019 Availability and Disparity Study report provided information to HDOT as it considered (1) its overall DBE goal for FFY 2021 through FFY 2023 for FTA-funded contracts, and (2) its projection of the portion of its overall DBE goal to be achieved through neutral means. HDOT estimates all of the overall goal can be achieved through race- and gender-neutral participation on HDOT FTA-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.

### **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 FTA-funded transportation contracts.

In the 2019 Availability and Disparity Study report, availability analysis determined the percentage of HDOT FTA-funded contracts 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 14.63% of HDOT FTA-funded transportation contracts based on analysis of FTA-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 FTA-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 100% of HDOT FTA-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 FTA-funded contracts from July 2011 through July 2016. There were 31 types of work that accounted for about 93% of FTA-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 14.63% for HDOT's FTA-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
<b>Total MBE</b>	<b>161</b>	<b>53.0 %</b>
WBE (white women-owned)	13	4.3
<b>Total MBE/WBE</b>	<b>174</b>	<b>57.2 %</b>
Total majority-owned firms	130	42.8
<b>Total firms</b>	<b>304</b>	<b>100.0 %</b>

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 FTA-funded contract in the five-year study period (July 2011 through June 2016). For some contracts, DBE availability could be about 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 FTA-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 electrical work (\$98,750) on an HDOT 2011 Federal Transit 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:

- a. Were in business in 2011;
- b. Indicated that they performed electrical work on transportation-related projects;
- c. Reported working or bidding on subcontracts in Hawaii in the past seven years;
- d. Reported bidding on work of similar or greater size in the past seven years;
- e. Reported ability to perform work on Molokai; and
- f. Reported qualifications and interest in working as a subcontractor on local government transportation projects.

There were 27 businesses in the availability database that met those criteria. Of those businesses, 17 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 63% (i.e., 17/27 = 63.0%).

The weight applied to this contract was  $\$98,750 \div \$32 \text{ million} = 0.31\%$  (equal to its share of total FTA-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 FTA-funded contracts is 48.86% for contracts during the five-year study period.

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

	FTA
African American	0.05 %
Asian Pacific American, Native Hawaiian or Pacific Islander	16.96
Hispanic American	0.88
American Indian or Alaska Native	5.03
Subcontinent Asian American	0.64
Total MBE	<u>23.56 %</u>
WBE (white women-owned)	25.31
<b>Total MBE/WBE</b>	<b><u>48.86 %</u></b>

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

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.

**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 48.86% dollar-weighted availability figure by not counting any MBE or WBE firms as potential DBEs that appear to be ineligible for certification. There were two 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 two categories of MBE/WBEs, the dollar-weighted availability for current and potential DBEs is 14.63%, or 34.23 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 FTA-Funded Contracts, July 2011–June 2016**

Calculation of base figure	FTA
Total MBE/WBE	48.86 %
Less firms that graduated from the DBE Program or denied DBE certification in recent years or exceed revenue limits	34.23
Subtotal	14.63 %
Plus white male-owned DBEs	--
Current and potential DBEs	14.63 %

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 FTA-funded contracts is 14.63%.

## 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.

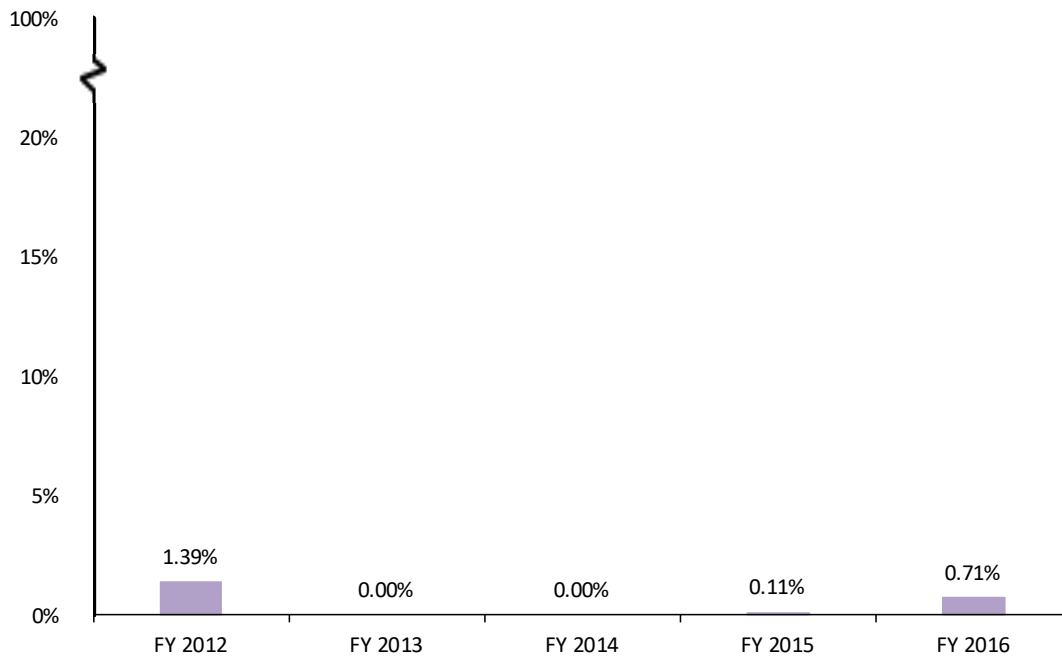
**1. Current Capacity of DBEs to Perform Work, Measured by the Volume of Work DBEs Performed in Recent Years.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars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

DBE Participation Based on HDOT Uniform Reports to FTA. Based on commitments/awards data from HDOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FTA, the median DBE participation from FFY 2013–FFY 2018 is 0.00%.

DBE Participation Based on Keen Independent Utilization Analysis for FTA-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 0.11% on FTA-funded contracts from FFY 2012 through FFY 2016. This value would suggest a downward step 2 adjustment based on past DBE participation.

HDOT chooses to use the median DBE participation estimated by Keen Independent (0.11%) to consider a step 2 adjustment.

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



Source: Keen Independent 2019 Availability and Disparity Study (Chapter 9, 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 local 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 report provides detailed results of the business ownership regression analyses). Those analyses revealed that Asian Pacific/Native Hawaiian and other minority groups as well as white women working in construction were less likely than nonminorities and white men, respectively, to own construction businesses, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.<sup>1</sup>
- 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 28.11%. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FTA-funded construction and engineering prime contracts and subcontracts that HDOT awarded from July 2011 through June 2016). Calculations are explained below.

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<sup>1</sup> 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**

	a.	b.	c.	d.	e.
<b>Current and potential DBEs</b>	<b>Current availability</b>	<b>Disparity index for business ownership</b>	<b>Availability after initial adjustment*</b>	<b>Availability after scaling to 100%</b>	<b>Components of overall DBE availability**</b>
<b>Construction</b>					
Asian Pacific American, Native Hawaiian or Pacific Islander	6.01 %	30	20.03 %	17.08 %	
Other minorities	5.75	65	8.85	7.54	
White women	<u>0.08</u>	31	<u>0.26</u>	<u>0.22</u>	
Minorities and women	11.84 %	n/a	29.14 %	24.84 %	20.81 %
All other businesses	<u>88.16</u>	n/a	<u>88.16</u>	<u>75.16</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>117.30 %</b>	<b>100.00 %</b>	
<b>Engineering and other subindustries</b>					
Asian Pacific American, Native Hawaiian or Pacific Islander	17.76 %	38	46.73 %	36.23 %	
Other minorities	9.78	n/a	9.78	7.58	
White women	<u>1.47</u>	n/a	<u>1.47</u>	<u>1.14</u>	
Minorities and women	29.01 %	n/a	57.98 %	44.96 %	7.30 %
All other businesses	<u>70.99</u>	n/a	<u>70.99</u>	<u>55.04</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>128.97 %</b>	<b>100.00 %</b>	
<b>Total for current and potential DBEs</b>	<b>14.63 %</b>	n/a	n/a		<b>28.11 %</b>
<b>Difference from base figure</b>					<b>13.48 %</b>

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 FTA-funded contract dollars in that category (construction = 83.8%, engineering = 16.2%).

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 9, 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 FTA-funded contract dollars that HDOT awarded for construction and engineering for July 2011 through June 2016 (i.e., an 83.8% weight for construction and 16.2% 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 MBE/WBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for MBEs and WBEs. The current combined availability of MBE/WBEs for HDOT FTA-funded transportation contracts for July 2011 through June 2016 is 14.63%, 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 working in the industry were significantly less likely to own construction firms than similarly situated nonminorities and white men.

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 Asian Pacific American, Native Hawaiian or Pacific Islanders shown for construction was calculated in the following way:  $(20.03\% \div 117.30\%) \times 100 = 17.08\%$ .
- 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 FTA-funded contract dollars in each industry (i.e., 83.8% for construction and 16.2% for engineering). For example, the study team used the 24.84% shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 83.8% for a result of 20.81%. A similar weighting of MBE/WBE availability for engineering/other produced a value of 7.30%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 28.11% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the “but for” MBE/WBE availability (28.11%) and the current availability (14.63%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 13.48 percentage points (28.11% - 14.63% =13.48%).

**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 FTA-funded contracts.

Note that financing and bonding are closely linked, as discussed in Chapter 5 and Appendix J of the Availability and Disparity Study.

**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.<sup>2</sup>

Among the “other factors” examined in the Availability and Disparity 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.

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<sup>2</sup> 49 CFR Section 26.45.

**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 FFY 2012 through FFY 2016. Based on Keen Independent’s analysis, the median DBE participation on FTA-funded contracts was 0.11% 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 14.63% base figure (calculated in Chapter 4) and 0.11% DBE participation is 14.52 percentage points ( $14.63\% - 0.11\% = 14.52\%$ ). One-half of this difference is a downward adjustment of 7.26 percentage points ( $14.52\% \div 2 = 7.26\%$ ). The goal would then be calculated as follows:  $14.63\% - 7.26\% = 7.37\%$ . Figure 7 on the following page presents 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 13.48 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 FTA-funded contracts would be 28.11% ( $14.63\% + 13.48\% = 28.11\%$ ). Figure 7 shows these calculations.

**Figure 7. Potential Step 2 Adjustments to Overall DBE Goal for FTA-Funded Contracts, FFY 2021–FFY 2023**

Step 2 adjustment component	Value	Explanation
<b>Lower range of overall DBE goal</b>		
Base figure	14.63 %	From base figure analysis
Evidence of current capacity	- 0.11	Past DBE participation (Keen Independent)
Difference	14.52 %	
	÷ 2	Reduce by one-half
Adjustment	7.26 %	Downward adjustment for current capacity
Base figure	14.63 %	From base figure analysis
Adjustment for current capacity	- 7.26	Downward step 2 adjustment
<b>Overall DBE goal</b>	<b>7.37 %</b>	Lower range of DBE goal
<b>Upper range of overall DBE goal</b>		
Base figure	14.63 %	From base figure analysis
Adjustment for "but for" factors	+ 13.48	"But for" step 2 adjustment for business ownership
<b>Overall DBE goal</b>	<b>28.11 %</b>	Upper range of DBE goal

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

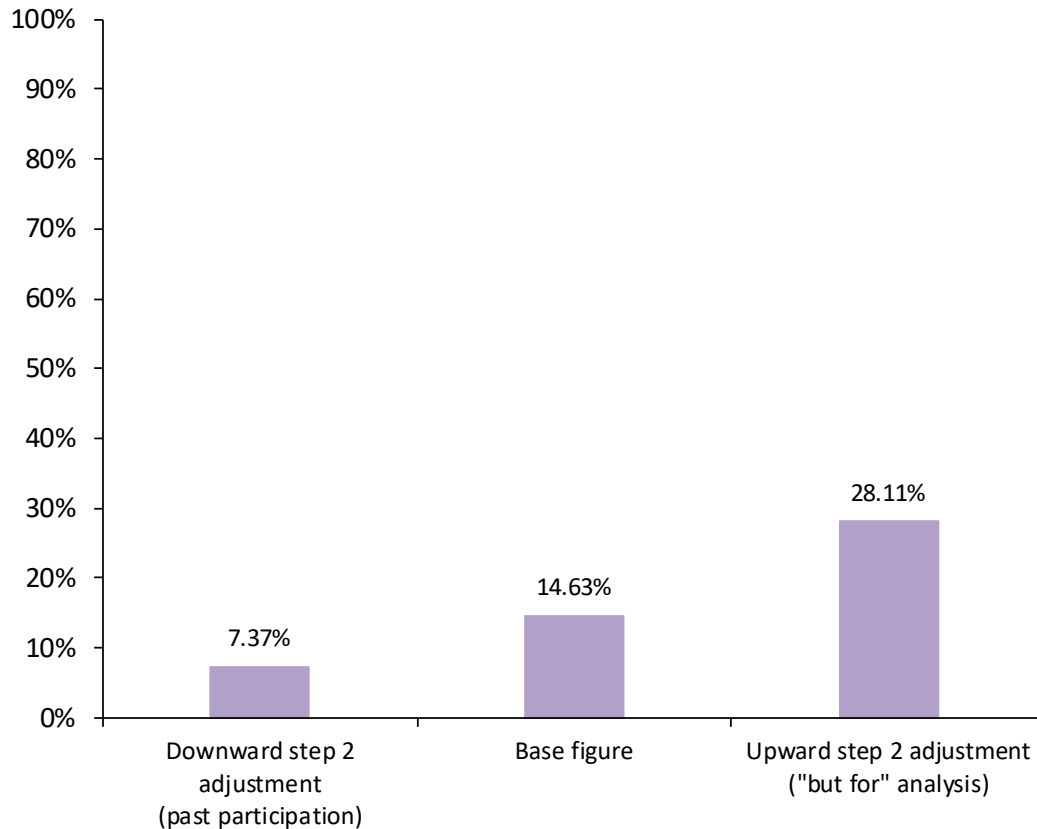
Source: Keen Independent 2019 Availability and Disparity Study (Chapter 9, page 8).

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 FTA-funded contracts would be 7.37%. 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 28.11%. Figure 8 on the following page summarizes this information.

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



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

**Adjustments Summary.** For FTA-funded contracts, HDOT proposes using the base figure of 14.63% as its DBE goal for FFY 2021 through FFY 2023. HDOT chose not to make a step 2 adjustment based on the following rationale:

- The goal of 28.11% is much greater than the median past DBE participation of 0.11%, which supports using the base figure rather than an upward step 2 adjustment.
- In FFYs 2013 through 2018, HDOT fell short of its DBE goal (8.69%) by more than 8 percentage points each fiscal year, which indicates that an upward-adjusted goal of 28.11% on FTA-funded projects might not be achievable.
- Total MBE/WBE participation from July 2011 through June 2016 was 11.8%, suggesting that a goal of 14.63% might be feasible if more of minority- and women-owned firms that receive FTA-funded contract dollars became certified as DBEs.

### **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.<sup>3</sup> 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.<sup>4</sup>
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.<sup>5</sup>

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)?<sup>6</sup>
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.

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<sup>3</sup> 49 CFR Section 26.51.

<sup>4</sup> See <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

<sup>5</sup> 49 CFR Section 26.51.

<sup>6</sup> 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.



**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 of the Availability and Disparity Study, 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 FTA-Funded Contracts. Chapter 5 of the Availability and Disparity Study provides utilization and disparity results for FTA-funded contracts from July 2011 through June 2016. HDOT did not set DBE contract goals on FTA-funded contracts.

- The participation of minority- and women-owned firms in FTA-funded contract was 11.8%.
- Most of the minority- and women-owned firms receiving work on FTA-funded contracts were not certified as DBEs. Of the 24 MBE/WBE firms that received a contract or subcontract, only seven were DBE-certified.
- The utilization of minority- and women-owned firms was lower of what might be expected from the availability analysis. There were substantial disparities for both MBEs and WBEs on FTA-funded contracts.
- MBE/WBEs received 9.9% of FTA-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 it may have, 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 FTA-funded contracts was considerably below HDOT’s overall DBE goal for FFY 2013 through FFY 2018, as shown in Figure 9 below.

**Figure 9. HDOT Overall DBE Goal and Reported DBE Participation on FTA-Funded Contracts, FFY 2013 through FFY 2018**

Federal fiscal year	DBE goal	DBE commitments/awards	Difference from DBE goal
2013	8.69 %	0.00 %	-8.69 %
2014	8.69	0.29	-8.40
2015	8.69	0.00	-8.69
2016	8.69	0.00	-8.69
2017	8.69	0.00	-8.69
2018	8.69	0.00	-8.69

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

The Keen Independent analysis of DBE utilization on FTA-funded contracts from July 2011 through June 2016 indicated annual DBE participation from 0.00% to 1.39% over this time period, also substantially below HDOT’s overall DBE goal. Figure 5 of this document 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 FTA-funded contracts for July 2013 through June 2018;
- Keen Independent estimates of DBE participation on FTA-funded contracts for which no DBE contract goals applied; and
- Information concerning DBE participation as prime contractors on FTA-funded contracts.

The discussion below 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 shown in Figure 10, HDOT’s Uniform Reports of DBE Awards/Commitments and Payments submitted to FTA for FFY 2013 through FFY 2018 indicate a median race-neutral participation of 0.0%.

**Figure 10. HDOT-reported Race-neutral and Race-conscious DBE Participation on FTA-Funded Contracts for FFY 2013–FFY 2018**

Federal fiscal year	DBE commitments/awards		
	Total	Race-neutral	Race-conscious
2013	0.00 %	0.00 %	0.00 %
2014	0.29	0.29	0.00
2015	0.00	0.00	0.00
2016	0.00	0.00	0.00
2017	0.00	0.00	0.00
2018	0.00	0.00	0.00

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

DBE Participation on Contracts Without DBE Contract Goals. All of the DBE participation on FTA-funded contracts during the July 2011 through June 2016 study period occurred without DBE contract goals.

DBE Participation as Prime Contractors. HDOT also reviewed DBE participation based on prime contract dollars. From July 2011 through June 2016, the median annual DBE participation on prime contracts was 0.00% on FTA-funded contracts.

**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 FTA-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 6.9 percentage points greater DBE participation on its FTA-funded contracts at its airports 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 FTA-Funded Contracts.** HDOT considered upward and downward adjustments to the base figure to set its overall DBE goals for FTA-funded contracts. Based on the results of the 2019 Availability and Disparity Study summarized in this document, HDOT proposes a 14.63% DBE goal on FTA-funded contracts for FFYs 2021 through 2023. HDOT proposes that it will meet this goal through solely neutral measures and intends to design and promote a new SBE Program 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 FTA-funded contracts of 14.63%, HDOT believes it is appropriate to design and promote a new SBE Program to achieve its overall DBE goals through solely neutral means for those airports.

- As discussed previously in this document and in 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 6.9 percentage points greater DBE participation in its FTA-funded contracts if minority- and women-owned firms that appear to be eligible for DBE certification became certified.

HDOT considered all of the information in the 2019 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 2021–2023 and race-neutral and -conscious projections for FTA-funded contracts, paired with the same figures for the previous three fiscal years.

When HDOT prepared its overall DBE goal of 8.69% for FFY 2018 through FFY 2020, it projected meeting its goal through solely race-conscious means. The first column Figure 11 presents these recent projections. The second column of numbers in Figure 11 illustrates projections using the proposed overall DBE goal of 14.63%, with 100% of the overall DBE goal to be achieved through an SBE Program and other neutral means.

**Figure 11. Current HDOT overall DBE goal and projections of race-neutral participation for FTA-Funded contracts for FFY 2021 through FFY 2023**

Component of overall DBE goal	FFY 2018- FFY 2020	FFY 2021- FFY 2023
Overall goal	8.69 %	14.63 %
Neutral projection	- <u>0.00</u>	- <u>14.63</u>
Race-conscious projection	8.69 %	0.00 %

Source: Keen Independent 2019 Availability and Disparity Study (Chapter 9, page 14).

## 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 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 Proposed 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 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](http://www.keenindependent.com/hdotdisparitystudy2019);
- c. Via email at [HDOTdisparitystudy2019@keenindependent.com](mailto: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 that goal 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 overall DBE goal calculation to FTA.

**Notice of Proposed Goal.** HDOT will publish a notice of its proposed 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.