

## **EXPLANATION FOR APPROVAL OF THE MISSOURI DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL SETTING METHODOLOGY FOR FEDERAL FISCAL YEAR 2024-2026**

The following establishes the Federal Highway Administration's (FHWA) rationale for approving the Missouri Department of Transportation (MoDOT) DBE Goal Methodology for Federal Fiscal Year (FFY) 2024-2026. MoDOT is expected to make a good faith effort to meet its overall annual DBE goal each year during the three-year period. MoDOT will implement a DBE goal of 13.87%, with 3.35% to be achieved through race/gender-neutral means and 10.52% to be achieved through race/gender-conscious means. The next regularly scheduled DBE goal submission by MoDOT will be due to FHWA on August 1, 2026.

### **Goal Setting Methodology (49 CFR § 26.45)**

The US Department of Transportation's (DOT) DBE regulations at 49 CFR § 26.45(b) require recipients to set overall goals based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on FHWA-assisted contracts in the relevant market area.

#### **A. Step One Base Figure (49 CFR § 26.45(c))**

##### **Relevant Geographic Market Area—**

The first element in estimating DBE availability was to determine empirically the relevant local product and geographic market areas for MoDOT's federally-assisted contracts.

MoDOT procured an Availability Study completed in February 2024. In the Study, Keen Independent analyzed the local marketplace conditions and the availability of firms to perform contracts and subcontracts focused on the "relevant geographic market area" for an agency's contracting. The study team determined the relevant geographic market area for MoDOT's highway construction and engineering contracts through the following steps:

- For each prime contractor and subcontractor receiving a MoDOT prime contract or subcontract, Keen Independent determined whether the company had a business establishment in (a) Missouri, (b) the Kansas portion of the Kansas City Metropolitan Statistical Area (MSA), or (c) the Illinois portion of the St. Louis MSA based upon MoDOT vendor records and additional research.<sup>1</sup> (Keen Independent included the non-Missouri portions of each of those two metropolitan

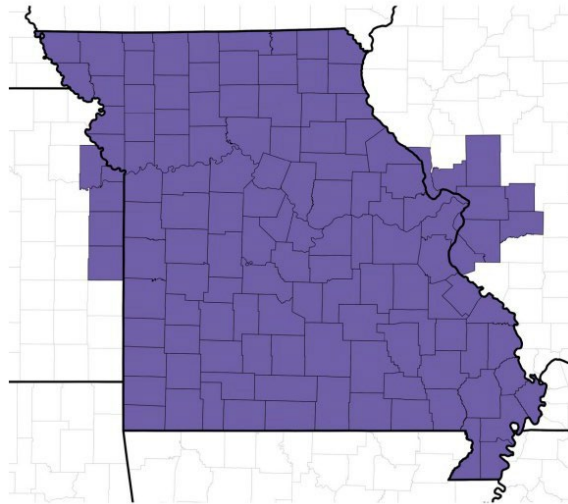
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<sup>1</sup> Relevant geographic market area includes the state of Missouri, Kansas portion of the Kansas City MO-KS Metropolitan Statistical Area (Johnson County, Leavenworth County, Linn County, Miami County and Wyandotte County), and the Illinois portion of the St. Louis, MO-IL Metropolitan Statistical Area (Bond County, Calhoun County, Clinton County, Jersey County, Macoupin County, Madison County, Monroe County and St. Clair County).

areas because contractors and consultants located in one part of a metropolitan area tend to work across that metropolitan area.)

- Keen Independent then added the dollars for firms in these three areas and compared that subtotal to the total contract dollars examined for all contractors and vendors.

Based upon analysis of combined MoDOT and LPA contract dollars from October 2017 through September 2022, firms with locations in Missouri and the Kansas portion of the Kansas City, MO-KS MSA, and the Illinois portion of the St. Louis, MO-IL MSA, obtained 93 percent of FHWA-funded transportation contract dollars. This might be a minimum estimate of the amount of work performed by “local” companies, as some of the firms identified as outside the area could have locations in Missouri that were not identified in study team research.



Source: Keen Independent Research from MoDOT procurement data.

Based on this information, Keen determined that Missouri, the Kansas portion of the Kansas City MSA, and the Illinois portion of the St. Louis MSA should be selected as the relevant geographic market area for MoDOT's highway contracting. Therefore, Keen's availability analysis and other research focused on firms with locations in Missouri and relevant Kansas and Illinois counties.

## **Description of Data Used and Collection Method-**

In the study, Keen examined the availability of DBEs for transportation contracts to develop the base figure for MoDOT's overall DBE goal for FHWA-funded contracts. The availability analysis determines the percentage of MoDOT contract dollars that might go to currently certified and potential DBEs based on their relative availability for specific types, sizes and locations of MoDOT's FHWA-funded prime contracts and subcontracts.

Keen's availability analysis focused on firms with locations in Missouri and those outside the state that were in the Kansas City or the St. Louis metropolitan areas. Only those companies that work in sub industries related to highway construction and engineering were examined.

Based on review of MoDOT prime contracts and subcontracts during the study period, the study team identified specific subindustries to include in the availability analysis. As part of the study, Keen contacted businesses within those subindustries via online and telephone surveys to collect information about their availability for specific types, sizes and locations of MoDOT and local agency prime contracts and subcontracts.

Data from the availability surveys allowed Keen to develop a representative depiction of businesses that are qualified and interested in the highest dollar volume areas of MoDOT and local agency transportation-related work, but MoDOT did not believe it should be considered an exhaustive list of every business that could potentially participate in MoDOT and local agency contracts.

**Description of Calculation Performed-** After completing surveys with 8,287 Missouri businesses, the study team reviewed responses to develop a database of businesses that are potentially available for MoDOT highway contracting work. The study team's research identified 1,194 businesses reporting that they were available for specific types of contracts that MoDOT and local agencies awarded during the study period. Of those businesses, 236 (19.77%) were minority-owned and 156 (13.07%) were white women-owned. MBE/WBEs totaled 392 firms, or about 32.83 percent of all firms in the availability database.

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	184	15.41 %
Asian-Pacific American-owned	11	0.92
Subcontinent Asian American-owned	3	0.25
Hispanic American-owned	22	1.84
Native American-owned	16	1.34
Minority business-owned	236	19.77 %
WBE (white woman-owned)	156	13.07
<b>Total MBE/WBE</b>	<b>392</b>	<b>32.83 %</b>
Majority-owned firms	802	67.17
<b>Total</b>	<b>1,194</b>	<b>100.00 %</b>

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

Source: Keen Independent Research 2023 availability survey.

Results in the above figure are based on a simple count of firms with no analysis of availability for specific MoDOT contracts. They only reflect the first step in the availability analysis.

Only a portion of the businesses in the availability database were considered potentially available for any given MoDOT construction or engineering prime contract or subcontract (referred to collectively as “contract elements”). The study team first examined the characteristics of each specific contract element, including type of work, location of work, contract size, whether it was a prime contract or a subcontract, and contract date. The study team then identified businesses in the availability database that identified themselves as qualified and interested in working for MoDOT or a local agency that performed work of that type, in that location, of that size, in that role (i.e., prime contractor or subcontractor), and that were in business in the year that the contract element was awarded.

While MBE/WBEs made up 32.83 percent of the total number of available firms for MoDOT contracts, there were scopes of work that had relatively few minority and women owned firms available to do such work and other scopes that had substantially more available MBE/WBE firms. The Study found that minority and women owned firms were less likely than other companies to be available for the largest MoDOT FHWA funded contracts. Keen examined availability on a contract-by-contract basis and then dollar-weighted the results for different sets of contract elements. Keen weighted the results using the following methodology:

- Calculated the number of MBE/WBEs (by group) and total firms available for each of the 14,510 FHWA-funded contracts and subcontracts examined from Oct. 1, 2017,

through Sept. 30, 2022, based on the specific type of work, location, and size.

- For each contract and subcontract, the share of available MBE/WBEs was calculated by group.
- A dollar weight was developed for each contract and subcontract based on the share of total MoDOT FHWA contract dollars that each contract represented (weights added to 100%). These weights were then applied to the availability results for each contract and subcontract.

Figure 13 in the Availability Study Final Report illustrates the weighting methodology through a one subcontract example.

Thus, MoDOT believes the results of relatively large contract elements contributed more to overall availability estimates than those of relatively small contract elements. This approach is consistent with USDOT's "Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program," which suggests a dollar-weighted approach to calculating availability.

Using a dollar-weighted approach typically results in lower availability estimates for MBEs and WBEs compared to a headcount approach. This is due in large part to Keen's consideration of type and size of work performed when measuring availability, and because dollar-weighted availability results are calculated for each contract element (a large prime contract has a greater weight in calculating overall availability than a small subcontract). The types and sizes of contracts for which MBE/WBEs are available in Missouri tend to be smaller than those of other businesses. Therefore, MBE/WBEs are less likely to be identified as available for the largest prime contracts and subcontracts. Also, MBE/WBEs comprise a relatively smaller portion of firms performing the types of work that comprise a large share of MoDOT contract dollars.

Taking into account the contract weights, this reduced the availability of MBE/WBE firms from 32.83% to 23.33%.

### **Identification of DBEs or Potential DBEs**

When examining availability of DBEs for FHWA-funded contracts, Keen counted two groups of firms as DBEs or potential DBEs in the base figure analysis.

**Current DBEs.** When performing the base figure analysis for the overall DBE goal, the study team identified firms in the availability database as "current DBEs" if they were certified as DBEs in Missouri as of May 2023. Keen obtained certification information from MoDOT.

**Potential DBEs that are not currently certified.** Keen also included potential DBEs in the availability calculations for FHWA-funded contracts. All minority- and women-

owned firms that were not DBE-certified were counted as potential DBEs except for the following groups:

- Firms that in recent years graduated from the DBE Program, were decertified from the Program or applied for DBE certification in Missouri and were denied (based on information supplied by MoDOT); and
- Businesses in the availability interviews that reported average annual revenue over three years exceeding the revenue limits for DBE certification for their subindustry.
- Firms that upon follow-up by MoDOT indicated that they were not interested or would not qualify for DBE certification or were not successfully reached in MoDOT's follow-up research.

This process follows guidance in the Final Rule effective November 3, 2014, and the United States Department of Transportation's (USDOT's) "Tips for Goal- Setting". The availability is determined by looking at DBE firms that are certified and those that are not currently certified but could be certified as a DBE.

Adjusting for these three categories of MBE/WBEs reduces the base figure weighted availability by 9.46 percentage points (as shown in table below) from the 23.33% contract weighted availability. As a result, the base figure for MoDOT's overall DBE goal is 13.87 percent. It represents the level of current/potential DBE participation anticipated based on analysis of FHWA- funded contracts from October 2017 through September 2022.

Calculation of base figure	2024 Study
Current and potential DBEs	13.87 %
Plus white male-owned firms	<u>0.00</u>
<b>Total current and potential DBEs</b>	<b>13.87 %</b>

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

Source: Keen Independent availability analysis.

In summary, the weighted base figure was calculated using the following method:

Availability Database: 32.83%

23.33% weighted availability of FHWA funded contracts

9.46% reduction due to removing DBE firms that were denied, exceeded business limits, uninterested firms

23.33% weighted availability – 9.46% reduction = 13.87% weighted availability base figure.

## Step Two Adjustment Evaluation

### B. Step Two Adjustments (49 CFR § 26.45(d))

Once the base figure was calculated, MoDOT examined all of the evidence available in its jurisdiction to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected absent the effects of discrimination.

#### Past DBE utilization

MoDOT considered the current capacity of DBEs to perform work in Missouri, as measured by the amount of work performed by certified DBEs on federal-aid projects over the past five years.

The median for MoDOT's participation for FFY 2019 through FFY 2023 is 11.42%.

FFY	DBE Participation
2019	10.74%
2020	<b>11.42%</b>
2021	12.19%
2022	11.93%
<b>2023</b>	10.08%

MoDOT's current Statewide Transportation Improvement Program (STIP) for State FY 2024-2028 will be a \$14 billion investment – the largest program to date with more than 1,500 projects and includes \$3 billion in General Revenue funds for several projects, including improving I-70, fixing low-volume minor roads and upgrading railroad safety crossings. The \$14 billion is made up of federal and state revenues and includes \$10.4 billion in contractor awards for road and bridge construction, averaging \$2.1 billion per year. This investment doubles MoDOT's average infrastructure budget of the last 2-3 years.

MoDOT considered the Step 2 Calculation as used in previous overall goal methodologies.

**Step 2 Calculation:**

Baseline DBE Availability:	13.87%
Median Past DBE Participation:	11.42%
<b>Average:</b>	<b>12.65%</b>

**The result is 12.65%**

The result of a Step 2 calculation would have the effect of reducing the overall goal, while the number of opportunities for DBE's is only increasing. Therefore, while MoDOT considered making the step 2 adjustment as outlined above, MoDOT will use the Baseline DBE Availability of 13.87% for the overall goal for FFY 2024 – 2026.

**C. Public Participation (49 CFR § 26.45 (g))**

**Consultation**

MoDOT's External Civil Rights Division sent email invitations to contractors, consultants, DBE firms, industry stakeholders, general contractor trade associations, minority and women trade associations, as well as community-based organizations to attend DBE goal public meetings. The Public meeting and overall goal notices were also posted on the MoDOT External Civil Rights website from February 1, 2024 – February 21, 2024. The results of the Availability Study and the proposed overall DBE goal were discussed at each public meeting. MoDOT held three public meeting at the following locations:

- **February 13, 2024 at 3:00 p.m. – 5:00 p.m.**, Southeast Community Center, 4201 East 63<sup>rd</sup> Street, Kansas City, MO;
- **February 14, 2024 at 2:00 p.m. – 4 p.m.**, Maryland Heights Community Center, 2300 McKelvey Rd., Maryland Heights, MO;



- **February 20, 2024 at 3:00 p.m. – 5:00 p.m.**, Virtual Public Meeting via Microsoft TEAMS.

Across the three public meetings individuals in attendance included DBE firms, prime contractors, industry stakeholders and community-based organizations such as the Associated General Contractors of Missouri, the Missouri Asphalt Paving Association and SITE Improvement Association. In total, there were 57 attendees at all meetings.

At these meetings, some participants expressed concerns about the DBE goal increase:

“Is there enough [availability of DBE firms] there to cover [a larger transportation program], because the program has grown, now we’re growing the goal also?”

“I have concerns about the goal in light of the increased MoDOT program. I am concerned about the capacity of DBEs to do more work or their willingness to take on more work because they don’t want to graduate from the program.”

“When we looked at this [before] . . . MoDOT would have a list for [a] contract [of interested DBE contractors] in your area, and so the contractors I know we’ve gone through . . . we’ll submit to them and request a quote for each project that we’re bidding because they’re listed on there. . . because they’re interested in working in this area, and [every time] we only get the same five DBE companies that want to work in our area.”

“One of the things that I find of interest out of this is that there’s a great deal of people who are interested in becoming DBE’s, but they’re not becoming DBE’s and they’re not getting into this industry. . . As a contractor, we can’t control that. . . Whose responsibility is it to turn these people who are interested in being DBE’s and interested in doing work for MoDOT and turning them into DBEs so that we can actually go safely put [them] on a job to perform work?”

While these comments raise valid concerns amongst the contracting community, MoDOT did not find that they hold a strong basis on which the proposed overall DBE goal should be adjusted. The comments primarily focused on contract goals, which will still be considered on a contract-by-contract basis. MoDOT also received the following comment from a DBE firm in rebuttal to the above:

“ . . . if we were to go down the path of limiting DBEs to the dollar amount from a previous program or something relative, you’ve just capped the capacity for any DBE to grow. . . ”

MoDOT posted the proposed overall DBE goal on MoDOT’s External Civil Rights Division website. A copy of the notice is attached.

## **D. Race and Gender- Neutral and Conscious Measures (49 CFR § 26.51)**

MoDOT projects that it will meet 3.35% of its overall goal of 13.87% through race-neutral

measures and 10.52% of its overall goal through race-conscious contract goals. MoDOT will monitor DBE participation throughout the year to adjust its use of contract goals to ensure that their use does not exceed the overall goal.

**Description of Information Relied On** - To estimate the portions of the goal to be met through race-neutral and race-conscious measures, MoDOT evaluated past race-neutral DBE participation as defined in §26.51(a). MoDOT's median achievement on federal-aid contracts through race-neutral means for FFY 2019-2023 was 3.35%.

<b>FFY</b>	<b>Race-Neutral DBE Participation</b>
2019	2.57%
2020	2.58%
2021	4.26%
2022	4.34%
2023	<b>3.35%</b>

**Description of the Types of Race-Neutral Measures Implemented by the State -**

Ongoing and new initiatives seek to reduce discriminatory barriers, increase capacity and level the playing field for the participation of DBEs and other small contractors. They are also designed to assist MoDOT in meeting the increased goal for DBE participation as prime contractors and subcontractors.

**Race-neutral measures to achieve DBE participation**

To achieve the maximum feasible portion of the goal through remedies other than subcontracting goals, MoDOT implements the following measures:

- Vendor communication and outreach.
- Certification outreach and resources.
- DBE Supportive Services program offering development assistance to DBE firms in various areas of their business operation.
- Mentor Protégé Program- Assist firms with prompt payment concerns.
- Consider opportunities for DBE firms to work directly with MoDOT.

In addition, the Department is in the process of implementing the following additional race-neutral approaches to increase DBE participation:

- Enforcement of bidder non-discrimination and fairly priced subcontractor quotations, whereby prime contractors would be required to maintain information on all subcontractor quotes received to permit MoDOT to audit any claims that subcontractor quotes were being shopped or that DBEs unfairly inflate prices.
- Creating a mechanism whereby prime contractors record, and DBE's confirm, payments made to them throughout the life of a contract. This will enable MoDOT to proactively monitor a running tally of DBE attainments and prompt payment.

- Full implementation of the small business element of the DBE Program, which was approved by the Federal Highway Administration on August 22, 2012.

MoDOT will continue enhancing and executing these race-neutral initiatives upon approval of the 2024-2026 Overall DBE goal methodology.

### **Conclusion**

For the above reasons, MoDOT's goal setting methodology and race-neutral/race-conscious projections for FY 2024 – 2026 of 3.35% through race neutral means and 10.52% through race conscious measures for a goal of 13.87% is approved by the Missouri Division.

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Division Administrator

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Date

Attachment: Copy of Approved DBE Goal Methodology  
cc: Rachyl Smith, HCR