



Illinois Department of Transportation

Office of Business & Workforce Diversity
2300 South Dirksen Parkway / Springfield, Illinois 62764

July 9, 2015

Ms. Catherine Batey
FHWA Illinois Division Administrator
Federal Highway Administration
3250 Executive Park Drive
Springfield, Illinois 62703

Dear Ms. Batey:

The Illinois Department of Transportation ("IDOT" or "the Department") sets its overall goal on a three-year cycle. The Department's next scheduled submittal date is August 1, 2015. At this time, it has been determined that the Department will need additional time to collect data in order to develop an approach to setting an overall goal. In accordance with 49 CFR 26.45(f)(5), the Department requests that FHWA approve an interim goal which mirrors our current aspirational goal of 22.77%. Granting this request will allow IDOT to collect additional information, improve its understanding of DBE availability and, ultimately, adjust its overall goal accordingly. Under 26.45(f)(5), the goal-setting mechanism must (i) reflect the relative availability of DBEs in the local market to the maximum extent feasible given the data available and (ii) avoid imposing undue burdens on non-DBEs. An interim goal of 22.77% reflects the relative availability of DBEs in the local market given the existing data and avoids imposing undue burdens on non-DBEs.

RELATIVE AVAILABILITY OF DBEs IN THE LOCAL MARKET

When setting an interim goal, the goal-setting mechanism must reflect the relative availability of DBEs in the market to the maximum extent feasible given the data available. In the past, the Department commissioned an availability study by National Economic Research Associates ("NERA") and used the study to support its overall goal setting. More recently, Mason Tillman Associates, Ltd. ("MTA") produced a disparity study for IDOT that was published in 2011.

IDOT timely submitted its last goal-setting before August 1, 2012. After receiving comments from FHWA, IDOT committed to updating its data and MTA developed a 2012 availability study. This study showed similar findings to the 2011 study regarding the relative availability of firms. In due course, FHWA approved the Department's final 2013-2015 Overall DBE Goal Setting Report ("Goal Report"). Consequently, the aforementioned documents include the most recent, comprehensive data available to the Department and will be used to establish the relative availability of DBEs in IDOT's local market for the interim goal setting.

The prior studies and the Goal Report address the four elements of the goal-setting process, including a Step 1 and 2 analysis, race-neutral projections, and public participation. The prior approved methodology was explained, the work was shown, data was described, the local market area was determined, the availability percentage was refined by weighting, and there continues to be evidence for a Step 2 adjustment. The attached goal-setting report contains substantially similar information and data from the Goal Report, but includes updated information for past race and gender-neutral attainment and other factors.

In sum, the Goal Report demonstrated that the 2011 and 2012 studies supported a weighted base figure of 23.07% (see 49 CFR 26.45(c); Goal Report, p. 6-8). After determining the base figure, an adjustment was made to establish the overall goal at 22.77% (49 CFR 26.45(d); Goal Setting Document, p. 9-12). IDOT adopts the same data and methodology for calculating the relative availability of DBEs in the local market area, as demonstrated by the data in the recent studies and is included in the attached Interim Goal Setting Report ("Interim Goal Report").

UNDUE BURDEN ON NON-DBES

When setting an interim goal, the goal-setting mechanism must avoid imposing undue burdens on non-DBEs. IDOT continues to avoid imposing undue burdens on non-DBEs by providing a fair, flexible process which allows competition in the marketplace and levels the playing field in which non-DBEs are not prevented from bidding or participating on IDOT contracts. Accordingly, the Department will continue to focus on the race and gender-neutral initiatives detailed in the attached document.

In addition, although past goal settings took the median race-neutral achievement for a five year period, the Department proposes to adopt the latest and highest race-neutral attainment of 3.56% in the last five years and round it up so as to account for the anticipated benefits from both the new Business Development Program and IDOT's continued Supportive Services efforts. Race and gender-conscious goals will be limited to contracts with sufficient opportunities for DBE participation and will be set on a contract-by-contract basis. In this way, the Department intends to avoid imposing undue burdens on non-DBEs.

MOVING FORWARD

During the past year, the state of Illinois has faced challenges which have impacted the Department and its operations. Although the DBE program is exceedingly important, it was determined that there was not sufficient time to gather a comprehensive bidders list or to procure a consultant to develop a disparity study or other method prior to the August 1, 2015 submittal date. IDOT does not currently gather sufficient information on trucking firms or suppliers with its registered subcontractor list and would need additional time to gather appropriate data for goal-setting purposes. As a proposed alternative, a new disparity study would also require additional time. In order to start the process, the Department contacted stakeholders in early June and subsequently issued a Request for Information ("RFI") on June 15, 2015. Upon receipt of the RFI responses, the Department will determine the preferred method and will issue a Request for Proposals ("RFP"). It is anticipated that the procurement process may take six months or longer.

In accordance with the DBE regulations, and in the interest of transparency, the Department is scheduling a video hearing to consult with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Department's efforts to establish a level playing field for the participation of DBEs. This video hearing will provide for an interactive exchange with as many stakeholders as possible and will also be live-streamed for those who are unable to participate at one of the video locations in both Chicago and Springfield, Illinois. The video hearing will be scheduled for July 24th, 2015.

Ms. Catherine Batey
July 9, 2015
Page Three

Additionally, prior to the FHWA submittal of the interim goal, the Department will provide for a 30-day public comment period. It is intended that this 30 day period will begin on the date of the video hearing. All communications received from the public will be provided to FHWA to supplement this interim goal-setting proposal and may be used for future goal-setting purposes.

INTERIM GOAL

IDOT projects it shall meet 5% of its overall DBE goal through race and gender-neutral means and 17.77% through race and gender-conscious measures for a total overall goal of 22.77% and requests approval of an interim goal until sufficient data can be collected.

We look forward to a response from FHWA on the Department's request for this interim goal setting. Should you have any questions, please do not hesitate to contact my office or William Barnes, IDOT Chief Counsel.

Sincerely,



Bruce A. Harmening, Interim Deputy Director
Office of Business & Workforce Diversity

Enclosures

bcc: Randy Blankenhorn
William Barnes
Traci Baker
Dana Goodrum
Ellen Byron
Sannaz Etemadi



Illinois Department of Transportation

Office of Business & Workforce Diversity
2300 South Dirksen Parkway / Springfield, Illinois 62764

IDOT DBE Program Initiatives 2015

1. Business Development Program – Foundation for Growth

IDOT is committed to providing support and development to DBEs in Illinois. The Foundation for Growth Business Development Program is designed to evaluate and provide a structured process for DBEs to receive firm-specific training and guidance to assist in their growth and competitiveness within the transportation industry. The program will provide each DBE firm with a full business analysis, tailored targeted training that may be eligible for reimbursement, and a host of other opportunities to increase the competitiveness of the participants and to diversify certification categories. The commitment is one to two years based on the entry stage of the DBE firm. As of October 1, 2014 all firms are required to complete a DBE Needs Assessment for application into the program and to receive supportive services assistance. This provides IDOT with a host of valuable information to tailor programs, workshops and events to specific needs identified in the assessment.

2. Integrated DBE Database

On June 1, 2015 IDOT launched a new database that increases the confidence and accuracy in DBE participation and contract awards. This new system allows the Department to review and monitor data in meaningful ways that allows for more targeted programmatic initiatives, process enhancements, and outreach.

3. DBE Revolving Loan Program

On July 1, 2013, Public Act 98-0117 took effect in Illinois creating the Disadvantaged Business Enterprise Working Capital Revolving Fund Loan Program. The IDOT DBE Loan Program provides assistance to DBEs that are ready, willing, and able to participate in Agency construction contracts with project financing costs through the availability of low-interest lines of credit. DBE firms have the opportunity to submit an application to the Bureau of Small Business Enterprises for pre-eligibility determination. Upon award, the DBE firm submits notice of award to SBE within 5 days, and the application is submitted to the Loan Selection Committee responsible for reviewing their credentials and determining if a loan will be awarded. Once a loan is awarded, an escrow account is established for the DBE firm receiving the loan. A Fund Control Agent works directly with DBEs awarded loans in order to develop a loan repayment plan and monitor the progress of each loan recipient's efforts to repay the loan. This program also allows for credit restoration training, project scheduling assistance, and other business support to ensure a holistic approach to successful participation in the program.

4. DBE Supportive Services Program

IDOT's Supportive Services Program is executed through our partnerships with both DBE and non-DBE consultants who provide management and technical supportive services assistance, and corresponding supportive services programs that fall under the umbrella Supportive Services Program. This support is provided at no charge to IDOT's DBE firms, to firms seeking IDOT DBE certification, to IL UCP DBE certified firms who have an IDOT contract, and to prime contractors doing business with IDOT. The following management and technical services are provided to assist meeting barriers identified through needs assessments, anecdotal evidence, public hearings and public comment responses:

- **Management Assistance includes:**
 - o Cash Flow
 - o Finance & Bonding
 - o Loan Package Preparation
 - o Accounting Systems
 - o Obtaining Work
 - o Doing Business Through Electronic Media
 - o Website Development / Marketing Materials
 - o Safety Plans & Contract Review
 - o Equipment & Resources
 - o Business Plans
 - o Computer Systems
 - o Management Assessments
 - o Work Category Expansion Assistance
 - o Prequalification Assistance

- **Technical Assistance Includes:**
 - o Review of Plans & Specifications
 - o Estimating & Bidding Assistance
 - o Development of Production & Labor Schedules
 - o Preparing Required Reporting Forms & Documentation
 - o Reviewing IDOT Contract-Related Documents/Reports
 - o Project Site Inspections
 - o Contract Troubleshooting

5. Mentor Protégé Programs

IDOT implemented Mentor-Protégé Programs for construction and consultant engineering services to enhance DBE capabilities to perform prime contracts and subcontracts in partnership with prime contractors and engineers and to, ultimately, increase utilization of available DBEs. The program is intended to assist firms by increasing their expertise and experience in a variety of work categories. Additionally, the program was created to provide developmental assistance to DBEs and enhance the protégé's business and technical capabilities to do more complex work.

The Mentor-Protégé relationship includes a development plan which outlines the parties' goals and expectations, monitoring and reporting provisions, duration of the relationship and the services and resources to be provided to the protégé by the mentor. As part of the relationship, the mentor must provide the protégé with a commercially useful function in the performance of the contract.

6. Highway Construction Careers Training Program (HCCTP)

IDOT, through the Illinois Community College Board, created a Highway Construction Careers Training Program with participating community colleges throughout IDOT's nine districts. The program includes an eight to ten week course, held two to three times per academic year, that provides intense training in highway construction-related skills such as math for trades, job readiness, technical skills coursework, and OSHA 10 certification. Minorities, women, and disadvantaged individuals are encouraged to participate. IDOT construction contracts, with assigned trainee hours assigned, contain a special provision to provide a \$15/hour incentive for prime contractors to hire HCCTP graduates. This initiative has received approval from FHWA for use on the Department's federal-aid contracts. Through this program, the Department is investing in a skilled and diverse workforce and encouraging hiring and placement of participants with potential business formation by participants.

7. Fostering Small Business Participation

The new regulations require USDOT recipients to structure contracting requirements in order to facilitate competition by small businesses and take all reasonable steps to eliminate obstacles to participation in their respective trades. Specific reference is made to removing unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as either prime contractors or subcontractors. IDOT anticipates implementing a small business enterprise component to its DBE Program.

A concerted effort will be made over the next three years to unbundle more contracts and identify small businesses with the capacity to perform IDOT contracts. USDOT's new small business requirement necessitates a more focused outreach and technical support system to encourage the small contractor to bid IDOT projects.

8. SBE Compliance Workshops

The Office of Business & Workforce Diversity's Bureau of Small Business Enterprises has started offering workshops to industry, DBE firms and associations/organizations on various compliance issues to assist primes and subcontractors, both DBE and non-DBE, in successfully complying with the DBE program, including adhering to and understanding Commercially Useful Function Reviews to ensure maximum goal credit on IDOT projects.

9. "Today's Challenge, Tomorrow's Reward" Statewide Conference & Other Networking Opportunities

IDOT conducts its annual "Today's Challenge Tomorrow's Reward" Conference to provide timely construction industry information networking opportunities to assist small and disadvantaged businesses. Average attendance is nearly 350 participants, including Prime and Subcontractors, Association, Organization and State Agency Representatives, IDOT staff and Federal Agency Representatives. Additionally, IDOT seeks to provide other outreach and networking events to bring firms together in each of IDOT's regions.

10. Additional Initiatives

In addition to the above initiatives, IDOT continues to take steps to improve opportunities and services for DBEs through race and gender-neutral means. Included are:

- IDOT District Resource Centers, in each of IDOT's nine districts, provide at least one computer, internet access, plans and specifications by Letting, scanner/copier/printer and staff assistance to all firms seeking to do business with IDOT.
- Statewide workshops, open to the public, are consistently held on various topics to increase knowledge, skills and expertise in doing work with IDOT and often in partnership with other state and local agencies.
- District-specific networking meetings, pre-bid meetings, and other events that are geared to connecting subcontractors with Prime contractors.
- Department website revisions to create a portal to facilitate access to information on various resources for firms wishing to do business with IDOT, including DBEs, which is available at <http://www.idot.illinois.gov/doing-business/procurements/Industry-Marketplace/dbe-supportive-services/index>
- Webinars hosted by IDOT that are geared towards a variety of DBE and small business related topics, allowing for consistent access, information and feedback from the DBE and non-DBE community through an avenue that is efficient and cost effective for both the Agency and the firms.

All of the above, existing IDOT programs are administered by the Office of Business and Workforce Diversity and Division of Highways. IDOT continues to explore other means for increasing opportunities for the DBE community with FHWA Division Office personnel and interested stakeholders as such efforts allow DBE firms, industry associations and community organizations to collaborate and discuss DBE program-related issues and best practices.

OVERALL DISADVANTAGED BUSINESS ENTERPRISE INTERIM GOAL- SETTING METHODOLOGY FFY 2016

I. INTRODUCTION

The Illinois Department of Transportation (IDOT) requests the approval for an interim aspirational goal of 22.77% based on the relative availability of DBEs in our local market area given the data currently available to IDOT, per 49 CFR 26.45(f)(5). On June 15, 2015, IDOT released a RFI for a potential new disparity study. This request for approval of an interim goal is to provide IDOT with additional time to collect data and develop an approach to setting an overall goal that is based on data reflective of our market area.

The regulations require that the overall goal be prepared using a two-step process. According to the *USDOT Tips for Goal Setting*¹, approved by the General Counsel of the USDOT, the recipient must first determine a base figure for the relative availability of certified and non-certified minority and woman-owned business enterprises in the relevant market area, hereafter collectively referred to as DBEs. Next, the recipient must examine all relevant evidence to determine what adjustment to the base figure, if any, is needed in order to arrive at an overall goal. The final adjusted figure is the recipient's overall goal, and represents the proportion of federal transportation funding the recipient is expected to allocate to DBEs during the subsequent three federal fiscal years (FFY). Once the adjusted overall goal is determined, the process requires considering what portion of the goal will be met by race and gender-neutral measures.

If a recipient purports that it can meet its overall goal with race and gender-neutral measures, those measures must be utilized. In contrast, if the recipient determines it cannot achieve the entire overall goal using only race and gender-neutral measures, it must establish a race and gender-conscious portion of the overall goal.²

A. Base Figure Determination

The base figure is intended to be a measurement of the relative percentage of ready, willing, and able businesses that are DBEs. The recipient is required to measure willing and able businesses in its marketplace, using the best available evidence, to derive a fair and accurate base figure that represents the percentage of available DBEs. According to Section 26.45(c) and *USDOT Tips*,

¹ United States Department of Transportation, "Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program", <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>

² 49 CFR Part 26, §26.51(f)(1), §26.51(d)

the overall goal must be based on demonstrable evidence of available ready, willing, and able DBEs relative to all ready, willing, and able non DBEs to participate on IDOT's federally assisted contracts.

The availability database compiled for the 2012 IDOT DBE Availability Study was used as the source of DBEs and non-DBEs that were willing to perform IDOT contracts. A business was classified as willing if it had either bid on an IDOT contract, obtained pre-qualification with the State of Illinois, certified with a government agency, or responded to the outreach campaign conducted in conjunction with this Study.

Several sources were used to identify businesses in the market area that provide construction and architecture and engineering services that IDOT procures. Sources included government listings, certification lists, trade association and chamber of commerce membership lists, unsuccessful bidders, Illinois pre-qualified businesses, other agency vendor lists, and business community meetings. Additionally, certified lists were collected from federal, state, and local agencies that certify businesses as minority, woman-owned, and disadvantaged. Businesses identified through trade association or chamber of commerce membership lists were classified as willing only after affirming their interest in contracting with IDOT through a survey.³ Additionally, firms were placed in the appropriate North American Industry Classification System (NAICS) code as identified in Table 1.

Table 1: 2010-2011 Contracts by NAICS Title and Industry

NAICS CODE	INDUSTRY	NAICS TITLE
238210	Construction	Electrical Contractors
238340		Tile and Terrazzo Contractors
238910		Site Preparation Contractors
237310		Highway, Street, and Bridge Construction
237990		Other Heavy and Civil Engineering Construction
236210		Industrial Building Construction
238110		Poured Concrete Foundation and Structure Contractors
541330		Architecture and Engineering
541620	Environmental Consulting Services	
541360	Geophysical Surveying and Mapping Services	
541370	Surveying and Mapping (except Geophysical) Services	
541380	Testing Laboratories	
541310	Architectural Services	
541611	Administrative Management and General Management Consulting Services	
541614	Transportation Management Consulting Services	
541430	Graphic Design Services	

³ For a more detailed explanation of the enumeration of available businesses by source and the determination of willingness, see the IDOT DBE Availability Study.

Relative Base Figure

USDOT Tips requires the calculation of the relative base figure by dividing the number of market area DBEs by all market area businesses (DBEs and non-DBEs), which produces a relative base figure of **39.62 percent**, as shown in Table 2. This number is simply the percentage of DBEs in the market area. Because of the way it is calculated, the relative base figure essentially over counts the number of available DBEs as it assumes that every DBE has equal weight and equal opportunity to perform IDOT contracts. However, a weighting calculation removes the presumption that all DBEs perform the same amount of work by accounting for spend in each category of work in each NAICS code. Accordingly, to more accurately reflect the nature and the scope of work, the *USDOT Tips* recommend a weighted calculation of availability. This calculation, based on the spend in each NAICS code, is also presented in Table 3.

$$\text{Relative Base Figure} = \frac{\text{Ready, willing and able DBEs}}{\text{All ready, willing and able businesses (Including DBEs and non - DBEs)}}$$

$$\text{Relative Base Figure of } 39.62\% = \frac{1900 \text{ DBEs}}{4795 \text{ Total Businesses}}$$

Table 2: Relative Base Figure

NAICS CODE	Number of Available Businesses		Percent of Available Businesses		
	DBEs	All	DBEs	Non-DBEs	All
238210	30	92	0.63%	1.29%	1.92%
238340	33	98	0.69%	1.36%	2.04%
238910	373	885	7.78%	12.76%	20.54%
237310	137	847	2.86%	6.47%	9.32%
237990	169	388	3.52%	6.65%	10.18%
236210	458	785	9.55%	10.99%	20.54%
238110	133	338	2.77%	4.28%	7.05%
541330	172	412	3.59%	5.01%	8.59%
541620	35	67	0.73%	0.67%	1.40%
541360	26	65	0.54%	0.81%	1.36%
541370	71	154	1.48%	1.73%	3.21%
541380	75	160	1.56%	1.77%	3.34%
541310	64	213	1.33%	3.11%	4.44%
541611	51	124	1.06%	1.52%	2.59%
541614	39	97	0.81%	1.21%	2.02%
541430	34	70	0.71%	0.75%	1.46%
TOTAL	1900	4795	39.62%	60.38%	100.00%

1. Weighted Base Figure

Weighting is recommended in *USDOT Tips* to ensure that the overall goal accurately reflects the scope of work. The first step is to calculate a weight for each NAICS code, which is the percentage of the budget for past contracts. Due to the fact that IDOT's federally funded contracts are identified on a contract-by-contract basis after federal funding is received, weights cannot be calculated based on anticipated contracts. Therefore, weights were calculated by the contracts awarded from July 1, 2010 to June 30, 2011.

The second step to weight availability is to divide the number of DBEs by the total number of businesses in each NAICS code. The results are then multiplied by the corresponding weight in each NAICS code. Lastly, the weighted percentages in each NAICS code are combined to determine the weighted base figure. Table 3 presents the calculation of weighted availability, which was determined to be **23.07 percent** for DBEs and **76.93 percent** for non-DBEs.

$$\text{Weight (as a percent of contract Dollars for NACIS Category 2010-2011)} \left[\frac{\text{\# of DBEs in category}}{\text{\# of all firms in category}} \right] = \text{Weighted Percent for NACIS Category}$$

Table 3: Weighted Base Figure

NAICS Code	Percent of Businesses		Awarded Contract Amount	Weight	Weighted Availability	
	DBEs	All			DBEs	Non-DBEs
238210	30	92	\$ 682,611.43	0.03%	0.01%	0.02%
238340	33	98	\$ 1,098,680.71	0.05%	0.02%	0.03%
238910	373	885	\$ 208,664,116.49	9.70%	4.09%	5.61%
237310	137	847	\$ 1,598,540,017.64	74.28%	12.02%	62.27%
237990	169	388	\$ 58,725,899.49	2.73%	1.19%	1.54%
236210	458	785	\$ 2,657,549.77	0.12%	0.07%	0.05%
238110	133	338	\$ 40,721,438.08	1.89%	0.74%	1.15%
541330	172	412	\$ 76,799,489.78	3.57%	1.49%	2.08%
541620	35	67	\$ 15,441,746.41	0.72%	0.37%	0.34%
541360	26	65	\$ 5,485,509.07	0.25%	0.10%	0.15%
541370	71	154	\$ 16,729,326.06	0.78%	0.36%	0.42%
541380	75	160	\$ 80,048,841.39	3.72%	1.74%	1.98%
541310	64	213	\$ 3,394,404.86	0.16%	0.05%	0.11%
541611	51	124	\$ 39,720,209.26	1.85%	0.76%	1.09%
541614	39	97	\$ 2,864,796.37	0.13%	0.05%	0.08%
541430	34	70	\$ 344,825.72	0.02%	0.01%	0.01%
TOTAL	1900	4795	\$ 2,151,919,462.53	100.00%	23.07%	76.93%

V. STEP TWO BASE FIGURE ADJUSTMENT

A. Consideration for Adjustments to the Base Figure

The Step Two base figure adjustment, as recommended in *USDOT Tips*, requires examining relevant and reliable data in the recipient’s market area to determine if an adjustment to the base figure is warranted. The consideration of an adjustment is intended to account for any impact the relevant factors may have on DBEs’ contracting opportunities with IDOT. The following factors were considered for the Step Two adjustment and it was determined that a modest adjustment to the weighted base figure would be made due to:

- Past DBE Participation
- Saturation of the geographic market area by other public contracting agencies

1. Past DBE Participation

DBE participation, hereafter referred to as utilization, was generated from IDOT’s Uniform Report of DBE awards and commitments. Table 4 details DBE utilization, federal portion only, on contracts awarded from 2010 – 2014. The determination of past DBE utilization includes several years (2013 and 2014) outside the period studied for the 2012 IDOT DBE Availability Study. The five-year range presented here (2010-2014) represents the most up to date data IDOT has available at this time. The median race and gender-neutral DBE utilization achieved by IDOT was 2.32% percent.

Table 4 also demonstrates past utilization as reported as achievements on IDOT’s Uniform Reports. The overall median past utilization is 14.48%, for the same time period of 2010-2014.

Table 4: Past DBE Participation/Utilization

YEAR	TOTAL FHWA AWARDS	AVG RACE NEUTRAL DBE ACHIEVEMENT	AVG OVERALL DBE ACHIEVEMENT
2010	\$1,381,932,640	1.53% (\$21,198,494)	14.20% (\$197,601,740)
2011	\$1,330,697,967	2.62% (\$34,917,708)	16.98% (\$225,096,010)
2012	\$804,857,707	3.56% (\$28,684,705)	16.18% (\$130,197,874)
2013	\$1,234,141,224	2.32% (\$28,654,894)	14.36% (\$177,208,227)
2014	\$925,239,689	2.18% (\$20,186,096)	14.48% (\$133,945,522)

Percentages reflected as average semi-annual submissions

2. Saturation of the Market Area

IDOT's market area was examined to determine if the relevant area may be saturated with contracting opportunities from other public agencies. There are several major construction and architecture and engineering projects that will be initiated by other local governments receiving federal financial assistance expected to generate substantial, competing, contracting opportunities in IDOT's market area.

Many of these planned construction and architecture and engineering projects were scheduled to be let by 2013 and are expected to draw heavily upon the capacity of all businesses, including DBEs currently and/or in the near future. The Illinois Tollway Board of Directors adopted a 15-year, \$12 billion capital program called *Move Illinois: The Illinois Tollway Driving the Future*. IDOT applauds the increased opportunities for DBEs while understanding that the impact of these projects may lower the actual availability of businesses to perform on IDOT projects.

B. Step Two Adjustment Summary

IDOT understands the overall DBE goal to be an aspirational one, which would reflect the level of DBE participation in the absence of discrimination in the marketplace. The United States District Court for the Tenth Circuit once observed "it would be 'sheer speculation' to even attempt to attach a particular figure to the hypothetical number of minority enterprises that would exist without discriminatory barriers to minority DBE formation."⁴ As a result, guidance for a Step Two adjustment does not provide a prescriptive formula and merely suggests examining the relevant marketplace conditions in order to narrow the impact of the effects of discrimination on the base figure.⁵

Accordingly, the regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on "demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought." 26.45(d)(3). The regulations provide that a recipient must attempt to set a goal that will best reflect the possibility for maximum DBE participation to remediate past discrimination with a realistic expectation for achievement. After careful consideration of both past utilization not exceeding the aspirational goal and saturation in IDOT's District 1 by other public contracting agencies, the 23.07 percent weighted base figure for the 2012 study was adjusted downwards to **22.77 percent**.⁶

⁴ *Adarand VII*, 228 F.3d 1147,1174 (2000) (See *City of Richmond v. Croson*, 488 U.S. at 499).

⁵ Jon Wainwright and Colette Holt, Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program, p. 83, Transportation Research Board, 2010.

⁶ IDOT's Disparity Study released in 2011 supported a Step One base figure of 25.59% as reported to FHWA in the submittal of IDOT's DBE Goal Setting Document of August 1, 2012 and discussed at IDOT's public hearing for the goal setting on July 18, 2012. Updated data used in the 2012 study is based on one additional year's worth of data, is not substantially different from the previous data, and does not necessitate a new study.

VI. RACE AND GENDER-NEUTRAL GOAL

C. Formulation of the Race and Gender-Conscious/Neutral Portions of the Goal

The final requirement of the goal-setting process is to determine the portion of the overall goal that will be achieved by race and gender-neutral means. As required by 49 CFR 26.51, IDOT should achieve the maximum feasible portion of the overall DBE goal using race and gender-neutral means. From 2012 to 2014, median race and gender-neutral DBE participation was 2.32 percent with the highest attainment being 3.56% as indicated in Table 4. With the addition of the Business Development Program, DBE Revolving Loan Program and additional race neutral initiatives, IDOT feels race-neutral achievement will continue to climb. As such, IDOT projects it will meet **5.00 percent** of its overall DBE goal through race and gender-neutral measures and **17.77 percent** through race and gender-conscious measures in the interim period.

Race and gender-conscious goals would be limited to contracts with subcontracting opportunities. Furthermore, the subcontracting goals will be set on a contract-by-contract basis.