



ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES
2015 DBE PROGRAM SHORTFALL ANALYSIS & ACTION PLAN

FEDERAL HIGHWAY ADMINISTRATION

ALASKA DEPARTMENT OF TRANSPORTATION & PUBLIC FACILITIES, CIVIL RIGHTS OFFICE

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INTRODUCTION

The Alaska Department of Transportation & Public Facilities (ADOT&PF/the Department) had an overall DBE goal of 8.46% for federal fiscal year (FFY) 2015. ADOT&PF projected a race-conscious (RC) achievement of 0.00% and race-neutral (RN) achievement of 8.46%. The actual RC and RN achievements were 1.68% and 6.05% respectively, constituting an overall achievement of 7.73%. Therefore, ADOT&PF did not meet the overall DBE goal. In accordance with 49 CFR Part 26.47 the ADOT&PF Civil Rights Office (CRO) conducted a detailed analysis to identify the factors that contributed to the shortfall, and established specific steps and milestones to address the factors identified by the analysis and enable the Department to meet its overall DBE goal in FFY2016.

4 main factors were found to have contributed to the shortfall in overall DBE utilization; DBE participation, the availability of DBEs in key work categories, non-competitive quotes, and the removal of firms from the DBE program. To understand the factors that contributed to the shortfall, it is helpful to first discuss the ADOT&PF DBE Program and the market in which ADOT&PF operates. During the first 3 quarters of FFY2015, the Department operated under its FFY2014 DBE program goal of 10.82% (RC: 5.73% RN: 5.09%), and on July 1, 2015, upon approval of the RN DBE program plan and contract specifications, began implementing an entirely RN DBE program with an overall DBE goal of 8.46%.

Regarding the market in which ADOT&PF operates, Alaska is home to a relatively small community of construction contractors when compared to other states. Currently, there are 193¹ DBEs certified to perform work across 122 unique work categories² and 3 operating regions³. Due to the geographic size of the market area, location can be a potential barrier to doing business across regions because of added logistical costs. Because of this, during the certification process DBEs identify in which regions they are able to perform work, for each work category that they are requesting certification for. Of DBEs currently certified in construction-related⁴ work categories, 92 are certified in the Central Region, 75 in the Northern Region, and 75 in the Southcoast Region. While these numbers reflect the total number of DBEs certified in construction-related work categories in each region, the actual number of construction-related DBEs that pursued contracting opportunities on FHWA-assisted contracts during FFY2015 was considerably less.

DBE PARTICIPATION

One of the key aspects of the ADOT&PF DBE program is the Planholders Self-Registration List (PHSRL). The PHSRL is an online portal which allows DBE and non-DBE firms to register their interest in performing work on federal-aid contracts as a prime contractor, subcontractor, supplier, or consultant. A review of available⁵ data on DBE interest in participating on FHWA-assisted construction projects revealed that during the previous 12 months, 23 unique DBEs registered on the PHSRL, with 15 registering for more than 1 project. Similarly, 28 unique DBEs

¹ Excluding Airport Concessionaires.

² DBEs are certified by ADOT&PF Work Category – a numerical descriptor similar to North American Industry Classification System (NAICS) codes.

³ ADOT&PF operates across 3 geographic regions within the State of Alaska – the Central Region, the Northern Region, and the Southcoast Region.

⁴ Construction-related work categories encompass both highway and non-highway construction.

⁵ PHSRL DBE participation data is available for the trailing 12 months.

were awarded subcontracts on FHWA-assisted construction projects during FFY2015. Based on the data, a reasonable inference can be made that a low participation rate among certified DBEs compounds the challenges to meeting the overall DBE goal posed by having a relatively small population of certified DBEs. The underlying causes of low DBE participation are currently unknown, but may include competition from Alaska Unified Certifications Program partners, or other factors. As ADOT&PF continues to monitor the transition to RN, the Department will take steps to determine the causes of low DBE participation rates.

DBE AVAILABILITY IN KEY WORK CATEGORIES

Comparing the types of work commonly performed on FHWA-assisted contracts with the types of work that DBEs are certified to perform offers some explanation of the shortfall in overall DBE utilization. The following table reflects the top 10 subcontracted work categories by federal dollars expended on FHWA-assisted construction contracts during FFY2015, the number of DBEs certified in the respective work categories, and the percentage of FFY2015 DBE utilization attributable to these work categories:

WORK CATEGORIES	PERCENTAGE OF SUBCONTRACT DOLLARS	CERTIFIED DBES⁶	% OF FFY2015 DBE UTILIZATION
Trucking	15.28%	16	17.14%
Traffic Markings	7.95%	1	0.00%
Guardrail	6.91%	1	4.39%
Sidewalks	6.08%	11	6.44%
Concrete	5.59%	23	1.69%
Construction Surveying & Monuments	5.46%	8	9.26%
Signals & Lighting	4.77%	6	6.59%
Traffic Maintenance	3.02%	2	9.11%
Standard Signs	2.93%	9	7.39%
Excavation & Embankment	2.79%	28	5.65%
Telecommunications	2.41%	6	7.85%

Figure 1⁷

From Figure 1 it is apparent that DBE availability is not evenly distributed among the top 10 subcontracted work categories, and in 2 out of the top 3 subcontracted work categories, there is only 1 certified DBE. It makes sense then that low DBE availability in key work categories may have contributed to the shortfall in overall DBE utilization.

The theory that low DBE availability in key work categories as well as a low DBE participation rate (as determined by PHSRL registrations) contributed to the shortfall in DBE utilization should be further evidenced by a high⁸ proportion of RC construction contracts being awarded on good faith efforts (GFE). Under the ADOT&PF DBE program, contract goals are set based on subcontractable work and the availability of DBEs presumably available to perform that work. On RC construction contracts where prime contractors do not meet the contract goal, primes must demonstrate GFE to utilize DBEs by contacting interested DBEs that are registered on the

⁶ Counts reflect DBEs certified as of 12/20/15, and do not include firms that became not certified during FFY2015.

⁷ Percentage figures are estimates derived from the CRO Contract Compliance Database.

⁸ For the purposes of this analysis, 50.00% or greater is considered a high proportion of contracts awarded on GFE.

PHSRL. If DBEs that were presumed to be available are generally not active on the PHSRL, then it stands to reason that there would likely be a high percentage of RC contracts being awarded on GFE versus meeting the goal.

The CRO reviewed data pertaining to RC contract awards during FFY2015 to determine the prevalence of RC projects being awarded on GFE. During FFY2015 64 RC prime contracts were awarded, with 49 construction projects and 15 PSAs. Construction projects accounted for 97.34% of the federal dollars awarded on RC contracts, while PSAs accounted for 2.66%. ADOT&PF further reviewed RC construction contracts to establish the percentage of those that were awarded on GFE. Data showed that the majority of RC construction contracts did not meet the advertised RC DBE goals, and were awarded on GFE. Projects awarded on GFE constituted 51.02% of RC construction contracts, and 60.94% of federal dollars awarded during FFY2015. This data is consistent with the theory that low DBE availability in key work categories combined with a low participation rate among certified DBEs may have contributed to the shortfall in overall DBE utilization.

NON-COMPETITIVE QUOTES

To further explore causes of the shortfall in DBE utilization, the CRO analyzed DBE utilization on the 3 largest FHWA-assisted contracts awarded during FFY2015, as DBE utilization on these contracts had a larger dollar-weighted impact on the Departments ability to meet the overall DBE goal. The 3 largest FHWA-assisted contracts awarded during FFY2015 by federal dollars are:

- HSIP: Parks Highway Grade Separations 2014 Design Build - \$21,173,000
- Dalton Highway MP 401 - 414 Reconstruction - \$26,731,479
- Parks Highway MP 44.5 - 48.8 Reconstruction, Church Rd to Pittman Rd - \$38,293,456

Combined, these contracts constitute 23.81% of all FFY2015 FHWA dollars expended, and had combined dollar-weighted FFY2015 DBE utilization of 1.07%.

There are several items to note regarding these contracts; all 3 were awarded with RC DBE goals, and 2 out of the 3 projects were awarded on GFEs which were reviewed and found to be compliant by the CRO. The project that met the DBE goal was a Design/Build project with an assigned DBE goal of 2.30% - this is important to note because ADOT&PFs contract specifications for Design/Build projects do not require a DBE commitment at the time of award beyond committing to meet the DBE goal, and therefore, DBE utilization on this contract is 0.00% until the project commences, at which time the DBE commitment will be updated.

The CRO analyzed GFE records to identify factors that may have hindered DBE utilization on these projects. The analysis found that for both projects prime contractors had rejected non-competitive quotes from DBEs, and had not received quotes from DBEs for work that was considered subcontractable, which may be attributable to low DBE availability in key work categories. Additionally, large, multi-year and Design-Build projects awarded during FFY2015 will likely have subcontracts executed in coming years that will be reflected on future Uniform Reports of DBE Awards and Commitments.

CERTIFICATIONS

The ADOT&PF CRO also reviewed DBE certifications records for FFY2015 to determine whether DBE certifications and removals contributed to the shortfall in DBE utilization. During FFY2015 40 DBEs were removed from the program (including several of the largest certified DBEs by volume of work in FFY2014), and 18 new DBEs were certified. ADOT&PF conducted a review to determine what portion of overall DBE utilization in FFY2014 was attributable to DBEs that were removed in FFY2015. This analysis revealed that \$7,894,295, or 20.05% of FFY2014 DBE utilization was attributable to firms that were removed in FFY2015⁹. The net reduction of certified DBEs is a likely factor that impacted the Departments ability to meet the overall DBE goal during FFY2015.

TRANSITION TO RN

RN and RC DBE program data was evaluated to gain insight into any impacts that transitioning to a RN DBE program may have had on DBE subcontracting during FFY2015¹⁰. The CRO reviewed subcontracting data from FHWA-assisted construction and PSA contracts awarded during FFY2015 and found that on construction contracts awarded prior to transitioning to a RN program, combined RC and RN DBE subcontractor utilization was 5.52%, compared to construction contracts awarded under the RN program which had combined DBE subcontractor utilization of 16.47%. It is important to note that only 2 construction prime contracts were awarded under the RN program during FFY2015, versus 69 under the RC program.

Regarding DBE subcontracting on PSAs, combined RC and RN DBE subcontractor utilization was 6.28% under the RC program, and 0.00% under the RN program. Similar to construction contracts, there were only 4 PSAs awarded under the RN program during FFY2015, versus 27 under the RC program.

Because of the relatively fewer number of contracts awarded under the RN program during FFY2015, the comparison of DBE subcontractor utilization under RC and RN programs did not yield significant findings that could support or refute the assertion that transitioning to a RN DBE program contributed to the shortfall in overall DBE utilization. ADOT&PF will continue to monitor DBE utilization on contracts awarded under the RN program and will update FHWA as additional information becomes available.

⁹ Firms that were removed in FFY2015 that worked on ADOT&PFs FHWA-assisted contracts in FFY2014 were removed due to exceeding business size standards and for failure to cooperate with DBE certification requirements.

¹⁰ ADOT&PF administered a RC DBE program during Q1 – Q3 of FFY2015, and a RN DBE program during Q4.

SUMMARY OF SHORTFALL

Summarizing the findings of the analysis; sufficient data is not available to determine what impacts, if any, transitioning to a RN DBE program had on overall DBE utilization during FFY2015. The following factors were found to have likely contributed to the Departments shortfall in overall DBE utilization during FFY2015:

DBE Participation

Low participation among certified DBEs during FFY2015 negatively impacted the Department's ability to meet the overall DBE goal. The actual number of construction-related DBEs that pursued contracting opportunities on FHWA-assisted contracts during FFY2015 was considerably less than the total number of DBEs certified to perform construction-related work. During the previous 12 months, only 23 unique DBEs registered on the PHSRL, with 15 registering for more than 1 project. Similarly, 28 unique DBEs were awarded subcontracts on FHWA-assisted construction projects during FFY2015.

DBE Availability in Key Work Categories

Low DBE availability in several key work categories impacted the Department's ability to meet the overall DBE goal during FFY2015. Particularly, there is only 1 DBE currently certified to perform work in 2 of the top 3 subcontracted work categories by federal dollars expended.

Non-Competitive Quotes

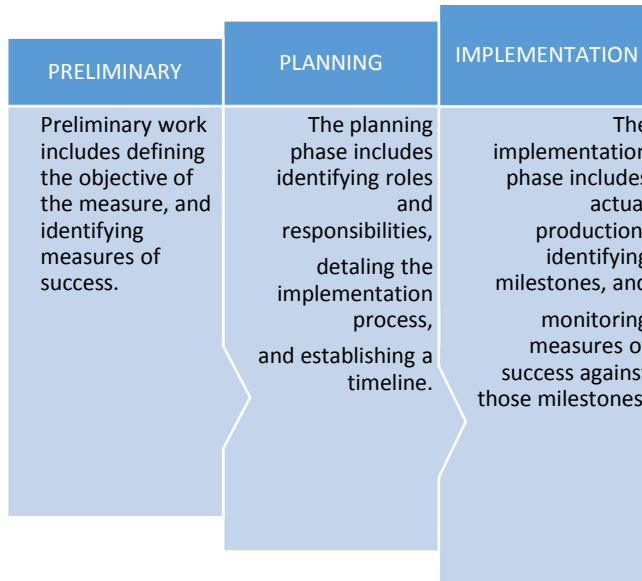
DBE utilization on large construction projects had a disproportionately negative impact on overall DBE utilization during FFY2015. Combined, the 3 largest FHWA-assisted contracts awarded during FFY2015 constituted 23.81% of all FFY2015 FHWA dollars, and had combined dollar-weighted DBE utilization of 1.07%, 7.39% below the overall goal. A review of these contracts showed that 2 were awarded based on compliant GFEs, and that the inability to meet project goals was due in part to non-competitive DBE quotes, as well as low DBE availability and participation.

Certifications

The net reduction of 22 certified DBEs is a likely factor that impacted the Departments ability to meet the overall DBE goal during FFY2015. Among the firms removed from the DBE program were several of the largest DBEs by volume of FFY2014 work.

ACTION PLAN

In accordance with the requirements of 49 CFR Part 26.47, ADOT&PF has taken steps to address the factors identified as contributing to the shortfall in overall DBE utilization, and has specified measures that will be used to support meeting the overall DBE goal in FFY2016. ADOT&PF employs a wide range of RN measures to facilitate DBE participation on FHWA-assisted contracts. The RN measures described in this section only include those measures which will specifically address the factors identified in the shortfall analysis. A comprehensive update on all RN measures will be submitted to FHWA along with the next RN program analysis submission. The following flow chart illustrates how ADOT&PF categorizes the status of each of the measures reviewed:



DBE Orientations

Description: For FFY2016 the CRO has implemented quarterly procurement training and DBE program orientation for new and existing DBEs. These trainings will provide DBEs with introductions on using the PHSRL, navigating the procurement process, and maintaining certifications. 2 DBE Orientations have already been held during FFY2016, which the CRO expects will help to address the challenges posed by low participation among certified DBEs on the PHSRL, as well as mitigating the risks posed by DBEs being removed from the program due to misunderstandings of certifications requirements.

Phase: Implementation – ADOT&PF began implementation in October of 2015 and will provide FHWA with a progress report along with the next RN program analysis submission.

PHSRL Expansion

Description: The PHSRL is an important component of ADOT&PFs DBE program, and serves as a portal for DBE and non-DBE subcontractors to express interest in participating on FHWA-assisted contracts. ADOT&PF has expanded the PHSRL initiative for FFY2016 to include professional services procurements. Encouraging DBEs certified in both construction and professional services work categories who are not already utilizing the PHSRL will be a key focus of outreach efforts such as The Transporter quarterly newsletter, and the upcoming DBE conference in March of 2016.

Phase: Implementation – ADOT&PF began implementation in July of 2015 and will provide FHWA with a progress report along with the next RN program analysis submission.

Minority and Woman-Owned Business Enterprise (M/WBE) Outreach

Description: Low DBE availability in key work categories poses a risk to meeting the overall DBE goal in FFY2016. To address this risk, ADOT&PF has taken steps to increase the number of certified DBEs by coordinating a DBE certification and recruitment event with the Procurement Technical Assistance Center (PTAC). This event serves in addition to M/WBE outreach already in place under the CRO Support Services Section. Additionally, in FFY2016 the CRO will campaign currently certified DBEs to refer non-certified M/WBEs to the program.

Phase: Planning – The CRO currently leverages existing outreach efforts to identify potential DBE firms, however, an organized and comprehensive outreach effort will be needed during FFY2016 to maximize the benefit of this RN measure. The CRO expects to develop and submit an outreach plan to FHWA along with the next RN program analysis submission.

Mentor-Protégé Program

Description: The CRO has contracted with a third-party DBE consulting firm to assist in establishing a Mentor-Protégé program to be implemented in FFY2016. The Mentor-Protégé program will help ADOT&PF address the challenges to meeting the overall DBE goal posed by limitations in DBE capacity and low DBE availability in key work categories. By entering into mentor-protégé arrangements with more established firms, DBEs can build their capacity to work on larger projects and potentially become certified in other work categories.

Phase: Planning – ADOT&PF expects to implement a pilot Mentor-Protégé program during the FFY2016 construction season with participating professional services firms. ADOT&PF will provide FHWA with a progress report along with the next RN program analysis submission.

Providing DBEs with One-on-One Business Reviews

Description: As part of the Departments emphasis on business development under the RN program, the Map to Success Specialized Assistance Program offers one-on-one consultation with business advisors who conduct in-depth analyses of firms' business operations. The consultations are intended to identify areas for improvement, and upon completion of the initial assessment, provide firms with a business profile that includes recommendations for strengthening their business infrastructure. The goal of the program is to provide business owners with the tools necessary to bring their businesses to a performance level that would result in an increased percentage of work on FHWA-assisted contracts.

Phase: Implementation

Coordination with Industry

Description: Coordination with industry partners stands to benefit all DBE program stakeholders, including DBEs, non-DBEs, and ADOT&PF. By working with both DBE and non-DBE stakeholders the Department is able to more efficiently implement the DBE program by identifying overlapping processes, leveraging external resources such as the Procurement Technical Assistance Center (PTAC), and facilitate open communication with industry groups such as the Associated General Contractors (AGC) of Alaska.

Phase: Implementation