

2021-2023
FEDERAL TRANSIT ADMINISTRATION (FTA)
DBE METHODOLOGY AND GOAL

Developed by the



pennsylvania
DEPARTMENT OF TRANSPORTATION

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2021-2023 FTA DBE METHODOLOGY AND GOAL INLINE CORRECTION DEVELOPED BY THE PENNSYLVANIA DEPARTMENT OF TRANSPORTATION

The Pennsylvania Department of Transportation (PennDOT) has developed its DBE goal and goal-setting methodology in accordance with the federal regulatory mandate as set forth in Title 49 Code of Federal Regulations (Part 26), and the guidance set forth in the *Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program* (TIPS) published by the U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization. While PennDOT's DBE goal and methodology is established every three years, PennDOT conducts interim reviews or mid-course "inline adjustments" annually to assess market conditions and to ensure that its goal remains legally defensible.

This document is divided into three primary sections: an overview of the goal-setting process, a detailed discussion of the DBE goal-setting methods, and several appendices. The overview provides a brief background regarding the federal regulation governing the DBE program, a summary of the process used to establish the DBE goal, public consultation and outreach efforts, administration of the goal, and concludes with a statement of the proposed DBE goal for FFY-2021-23. The ensuing discussion provides a more detailed explanation of the goal setting process, including actual steps involved in the process. The appendices include a list of terminology and definitions, along with a technical addendum showing the calculations from which the goal was derived.

OVERVIEW OF THE GOAL-SETTING PROCESS

The Regulatory Mandate

All state departments of transportation (state DOTs) are required to submit triennial overall goals for DBE participation using the two-step goal-setting process set forth in Section 26.45 of Part 26. This process is intended to address the following objectives of the DBE program as defined by 49 C.F.R. Part 26.1:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in highway, transit, and airport financial assistance programs;
- Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- Ensure that the DOT's DBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in DOT-assisted contracts;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

- Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

This methodology considers relevant data in determining the level of participation that PennDOT could expect in the absence of discrimination or other socio-economic barriers. In accordance with Section 26.45 of Part 26, the DBE goal-setting process involves establishing a base figure for the relative availability of DBEs in the market; describing the evidence with which it was calculated; making adjustments to that figure to make it as precise as possible, where appropriate; and, describing the evidence relied upon for such adjustments. As an extension of this process, Section 26.45 requires that state DOT's meet the "maximum feasible portion" of its overall DBE utilization goal through *race-neutral means of facilitating race-neutral DBE participation*.

Under Part 26, goals must be established and submitted to the Federal Transit Administration (FTA) on a triennial basis. This methodology details PennDOT's approach for setting the overall DBE goal and maximizing race-neutral means for attainment of that goal for the federal fiscal years 2021 through 2023.

Summary of the Two-Step Goal-Setting Effort

To comply with the goal setting provisions of the DBE regulation, PennDOT employed the two-step process set forth in Section 26.45 of Part 26. In addition, PennDOT projected percentages of the overall goal attributed to both *race-conscious* and *race-neutral* means required by Sections 26.45 and 26.51.

STEP-1 – Baseline Goal

Step-1 calls for the calculation of a base figure reflecting the relative availability of DBEs to perform the work intended to be let within each local marketplace. PennDOT identified each federally funded project anticipated for the remainder of the triennial period. Local markets were determined based on data gleaned from past bidding patterns. Then ready, willing, and able (RWA) DBE and enterprise universe firms (EU) were identified for each project within those local markets. For larger capital projects and rail projects, the Department included potential DBEs in its analysis.

To complete the potential DBE analysis, PennDOT defined the geographic market for all federally-assisted contracting based on where contractors within each North American Industrial Classification System (NAICS) code were located. PennDOT subsequently identified the number of potential DBE firms within that geographic market area using a measure of race-neutrality for each NAICS code. The final baseline ratio of DBEs was calculated by dividing the total number of DBEs (current and potential) by the number of all ready, willing, and able firms (DBEs and non-DBEs) within the local market.

Once a baseline ratio was established for each NAICS Code for each project, PennDOT weighted the ratios according to the anticipated expenditures within each of NAICS Code to yield a

relative availability of DBEs. Weighting by NAICS Codes ensures that the Step-1 Base figure is as accurate as possible in relation to PennDOT contracting practices.

STEP-2 – Adjustments to the Goal

Under Step-2 of the goal setting process, the Department examined all relevant evidence in its jurisdiction to determine what adjustments, up or down, needed to be made to the base figure to arrive at the overall goal. Step-2 accounts for variables affecting DBEs in the Commonwealth. Under the Pennsylvania Unified Certification Program (PAUCP) PennDOT and four other entities in the Commonwealth certify DBEs recognize each other's certification (certification by one is certification by all). The PAUCP list of DBEs is used in tandem with the Department's bidders' list.

The Department adjusted each project's step-1 ratio based on local market conditions. Generally, for small projects no step-2 adjustments were warranted. For larger projects, the Department used past data on contracting opportunity, and past DBE participation on FTA-assisted projects resulting in the final goals for FTA-assisted projects for the federal fiscal year 2020.

Race-Neutral/Race-Conscious Allocation

In cases where fewer than 6 DBE contractors were present in the market, the ratios for those NAICS codes on those projects were deemed race-neutral. Any DBE participation that would be attained by DBE primes was also deemed race-neutral. The remainder anticipated attainment was allocated as race-conscious.

Data Sources

Bidders' lists were supplied to the Department by each transit authority receiving federal funds through the Department. The Department aggregated these lists into one master bidders' list eliminating duplicates and verifying each firm's DBE status using the PAUCP list.

The Department delineated each firm's primary NAICS code for goal calculation purposes. The Department then identified the number of all firms located in Pennsylvania and other states that match the pertinent NAICS codes through the publicly available online Hoovers Database (a Dunn and Bradstreet product available at many libraries).

Data for subcontracting opportunity was taken from results on similar projects and, in some cases, estimates based on the most recent engineering plans. Past participation data was aggregated from the Department's semi-annual submissions to FTA.

No additional objective and verifiable data were available that required further adjustments to the goal setting process. Although one disparity study was available for the City of Philadelphia, it addresses the types of work performed under city contracts and is confined geographically to the Philadelphia metropolitan area. PennDOT reviewed this study and concluded that it does not contain data relevant to this submission; therefore, the findings were not incorporated in this methodology. The PennDOT Disparity Study conducted by BBC Consultants focused on

FHWA-funded projects and therefore was not sufficiently narrowly tailored to use for FTA projects. BBC also performed a disparity study for the Pennsylvania Department of General Services (DGS). Because of the wide-ranging nature of DGS contracts, PennDOT determined that disparity study was also insufficiently narrowly-tailored to apply to FTA-assisted contracts. PennDOT intends to expand research efforts to acquire other objective and verifiable data that may be useful in its goal-setting methodology for future submissions.

Consultation and Outreach Efforts

In accordance with Section 26.45(f), PennDOT will submit its overall goal and methodology to DOT on August 1, 2020. Consistent with the Part 26 mandate, PennDOT employs outreach efforts to collect and utilize the most refined and best available data in its marketplace. To ensure thorough analysis of this data, PennDOT avails itself of highly qualified research professionals and statistical analysts from Indiana University of Pennsylvania and the Pennsylvania State University. These research professionals are equipped to analyze and organize local market sector data from an economic, statistical, and sociological perspective. Since establishment of the goal requires this thorough analysis of available and applicable data in the local marketplace, and these professionals work with such data on a regular basis, they are an essential part of our DBE team.

PennDOT's current DBE Supportive Services Program contractor, ProRank Business Solutions Inc., assists PennDOT with the implementation of its race-neutral initiatives. This contractor retains a network of DBEs and other small businesses and provides a number of managerial, technical, and financial workshops and networking sessions throughout the Commonwealth.

Public Consultation

Before establishing the overall goal, PennDOT continued to adhere to the public participation component of the goal-setting process required by Section 26.45 (f) by scheduling face-to-face, in-person consultations with minority, women's, general contractor groups. In addition, PennDOT seeks input from community organizations, and other officials or organizations, such as the Asian Indian Americans of Central PA, Greater Philadelphia Hispanic Chamber of Commerce, and the African American Chamber through the DBE Advisory Committee. These organizations are among those that could be expected to have information relative to the availability of disadvantaged and non-disadvantaged businesses; the effects of discrimination on opportunities for DBEs; and, PennDOT's efforts to establish a level playing field for the participation of DBEs in federally-assisted, transportation-related contracting.

In preparation for this submission, PennDOT scheduled, publicized, and convened a series of meetings during March of 2020. These meetings were originally scheduled to be held in person in the Allentown, Philadelphia, Pittsburgh, and Harrisburg areas. However, due to state directives in response to COVID-19, only the Philadelphia meeting was conducted. Two additional webinars were scheduled and conducted to allow stakeholders to participate virtually. These meetings/webinars were conducted to obtain information relevant to the goal setting process through direct, interactive exchanges. They were widely publicized in order to reach as many interested stakeholders within the Commonwealth's contracting community as

possible. During the meetings, Department program personnel as well as PennDOT's goal-setting consultants made every effort to solicit and to address questions about PennDOT's methodology and goal as well as about other issues that arise under the DBE program.

In addition to the public consultation meetings, PennDOT employs other strategies to solicit input from its customers. PennDOT meets annually with members of the Associated Pennsylvania Constructors (APC) and the American Council of Engineering Companies (ACEC) to seek input and feedback from the contracting community. PennDOT has also formed an Advisory Council made up of DBEs that meets on a regular basis. This DBE Advisory Council provided a forum to engage these DBEs and others as part of our public consultation effort.

Public Notice and Public Comment

Following these public consultation and outreach efforts, PennDOT published a notice of the proposed overall goal methodology in the *Pennsylvania Bulletin*, informing the public that the methodology used to calculate the goal was available for inspection during normal business hours at PennDOT's principal office for 30 (thirty) days following the date of the notice. As required, this notice informed the public that PennDOT and DOT would accept comments on the goals for 30 days from the date of the notice published in the *Pennsylvania Bulletin*, a publication recognized by the public as the location for public notices issued by executive agencies of the Commonwealth. The notice also appeared in general circulation media (newspapers) and available minority-focused media and trade association publications. PennDOT issued this notice in early June 2020, including addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

PennDOT's overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses which will appear in Appendix C.

PennDOT will begin using its overall goal on October 1, 2020, unless it receives other instructions from FHWA.

Administration, Implementation, and Monitoring

Contract monitoring and adjustment are required during the goal period. Following the implementation of a new overall goal, PennDOT will monitor DBE goal commitments, and DBE goal attainments. The Bureau of Equal Opportunity (BEO) collects this data and incorporates it into future project goal calculations.

Contract Goals and Adjustment of the Goal

PennDOT will use contract goals to meet any portion of the overall goal PennDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through race-neutral means or measures. The following Part 26 principles are employed during goal-setting:

- Contract goals apply on those FTA-assisted contracts that have subcontracting possibilities.
- PennDOT is not required to establish a contract goal on every federally-funded contract, and the size of contract goals will be adapted to the circumstances of each contract (e.g., type and location of work, availability of DBEs to perform the type of work).
- The DBE contract goal for a specific contract may be higher or lower than the overall goal; depending upon other factors such as the type of work for the project; the location of the project work; and the availability of DBEs for a given contract.
- Over the period covered by the overall goal, PennDOT must set goals that will cumulatively result in meeting any portion of its overall goal that it does not project being able to meet via race-neutral means.

As part of its monitoring efforts, PennDOT may make adjustments to the goal. Section 26.51(f)(2) of Part 26. states that if, during the three-year period in which PennDOT is using contract goals, it determines that it will exceed its overall goals, it must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. Similarly, if PennDOT determines it will fall short of the overall goal, it will make appropriate modifications in race-neutral or race-conscious (contract) measures to allow it to meet the overall goal.

Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The Department will ensure all information is complete, accurate, and adequately documents the bidder/offeror's good faith efforts before PennDOT commits to the performance of the contract by the bidder/offeror. Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Challenges regarding Good Faith Efforts are addressed by an Interdisciplinary Review Team using PennDOT's two-tier good faith effort administrative reconsideration process. In addition, PennDOT maintains a committee available to entertain good faith efforts matters that cannot be resolved by initial reviewers.

**Overall Goal for Participation by DBEs
in PennDOT's Federally-Assisted Contracts**

PennDOT's goal-setting methodology described in this document is still a work in progress and will be updated as data becomes available. The completed methodology will be submitted to the Federal Transit Authority on August 1, 2020.

Work in Progress

DETAILED DISCUSSION OF PENNDOT'S DBE GOAL SETTING METHODS AND RACE-NEUTRAL/RACE-CONSCIOUS PROJECTIONS

The guiding principal for determining the DBE goal is stated in 49 C.F.R. § 26.45(b): "The goal must reflect [PennDOT's] ... determination of the level of DBE participation [PennDOT] ... would expect absent the effects of discrimination." In making this determination, PennDOT is instructed that the "overall goal must be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts."

The regulation requires that the overall goal be determined by a two-step process.

STEP-1 – BASELINE GOAL

Step-1 calls for "determining a base figure for the relative availability of DBEs" (49 C.F.R. § 26.45(c)). "Relative availability of DBEs" means "the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts" (49 C.F.R. § 26.49(b)). This determination was made for each of the NAICS codes on each project representing the work the Department anticipates funding with FTA funds during the remainder of the 2021-2023 federal fiscal years.

PennDOT Ready, Willing, and Able Firms

The Step-1 calculation was performed by first determining the total number of PennDOT ready, willing, and able enterprise firms or units ("Enterprise Units" or EU) and the number of ready, willing, and able Disadvantaged Business Enterprise firms or units ("DBE Units" or DBEs) in each NAICS code on each project. The federal regulation does not contain a definition of "ready, willing, and able." PennDOT assumed that firms responding to bids from sub-recipients or which have performed work on federally-assisted projects are "ready, willing and able." (RWA)

Project Types

The Department identified four different types of projects based on the bidding patterns for each.

1. **Small local projects with little to no subcontracting opportunity.** Most often bidders come from the county where the transit authority is located or nearby. Because of the large scope of the Potential DBE Analysis, it is not applicable to small local projects. RWA EU firms are calculated using the U.S. Census' County Business Patterns (CBP) for each pertinent NAICS code. RWA DBEs are those firms listed in the UCP and located within the project's market area.
2. **Small capital projects defined as those with a total cost under \$1,000,000.** The market for these projects usually includes the county where the transit authority is located and nearby counties. The Potential DBE Analysis is not appropriate for these projects. RWA firms are taken from the CBP. DBEs are those firms listed in the UCP and located within the project's market area.

3. **Large capital projects defined as those with a total cost of \$1,000,000 or more.** The Department uses the potential DBE analysis in step-1 for these projects. The market for these projects includes counties within a 100-mile radius. All firms for these projects, (DBEs and non-DBEs) are taken from the Department's bidder's list located in the identified market area with the pertinent primary NAICS code.
4. **Rail projects.** The Department also uses the potential DBE analysis in step-1 for rail projects. The market for rail projects includes all counties within a 100-mile radius. All firms for these projects, (DBEs and non-DBEs) are taken from the Department's bidder's list located in the identified market area with the pertinent primary NAICS code.

Local Market Analysis

PennDOT determined the local market for each project based on demonstrated interest in federally-assisted contracts among contractors and subcontractors and meeting the regulation's requirement that for each project, the market being the area where a substantial majority of contractors and subcontractors with which PennDOT does business are located.

Analysis of Potential DBEs

PennDOT performed a potential DBE analysis by identifying the primary geographic market for each NAICS using calculations that weight jurisdictions within and outside of the Commonwealth in accordance with each contractor's location.

The geographic market represents that area where a substantial majority of contractors and subcontractors with which PennDOT does business are located. Using each firm's primary NAICS code, the Department developed a unique geographic market for each NAICS code.

Next, an analysis of potential DBEs resulted in revised ratios by incorporating potential DBEs identified within each NAICS geographic area into local markets on large capital and rail projects. PennDOT also used the potential DBE analysis in an advisory capacity on small local projects.

PennDOT's approach to identifying potential DBEs uses a data-driven approach that expands this analysis beyond existing bidders' lists and past participation to best reflect the actual availability of RWA DBE firms. The methodology considers interest and capability, incorporating the UCP and DBE directories as a subset of a larger list of potential DBEs. It also addresses latent barriers DBEs may encounter in contracting with PennDOT as required in 29 CFR 26.45 (d). The following steps outline the process for determining potential DBEs. Actual calculations are provided in the Technical Addendum:

1. Identify the primary NAICS code and location of each firm on the bidders' list.
2. Identify the total number of firms (EU) in each jurisdiction within the geographic market for each NAICS code.
3. Identify the total number of DBE firms in each NAICS code by cross-referencing the UCP list.

4. Determine a measure of race neutrality by calculating the ratio of PennDOT non-DBE firms to all firms within each sub-market NAICS code profile. Absent discrimination, the ratio of DBE firms within PennDOT contracting should be identical to the ratio of non-DBEs firms to all non-women and minority owned firms within the local market generally:

$$\frac{\text{PennDOT non-DBE firms}}{\text{All non-women and minority owned Firms}}$$

5. Identify the number of potential DBEs for each jurisdiction within the NAICS code's geographic market area using the listing of woman- and minority-owned firms from Hoover Online Database produced by Dun and Bradstreet.
6. Multiply the number of potential DBEs by the weight assigned to that jurisdiction in the geographic market analysis.
7. Add the number of existing PennDOT DBEs (PA and non-PA) and the weighted number of potential non-PA DBEs to calculate a total number of potential DBEs for each NAICS code.
8. In cases where PennDOT's DBE ratio is *lower* than that in the geographic market, the DBE ratio is adjusted upward to match the measure of race neutrality ratio in step 7. In cases where PennDOT's DBE ratio is *higher* than that in the geographic market, the expected DBE ratio remains at the higher level. No adjustment is made since this ratio reflects the actual number of PennDOT DBEs relative to all firms.

Baseline Ratio

Finally, the number of DBE Units, whether adjusted by the potential DBE analysis or not, is divided by the total number of Enterprise Units to arrive at the baseline ratio. This provides the Step-1, or preliminary calculation of the level of DBE participation one would expect absent the effects of discrimination. The step-1 ratios for each project are weighted according to the anticipated federal expenditure on each project. Those weighted ratios are then summed to yield PennDOT's overall step-1 ratio.

STEP-2 – ADJUSTMENTS TO THE BASE GOAL

Step-2 calls for PennDOT to "examine all of the evidence available in [PennDOT's] ... jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at [PennDOT's] ... overall goal." (49 C.F.R. § 26.45(d)). PennDOT must indicate what changes it makes in Step-2 to the Step-1 Baseline Goal, and the evidence relied upon for those changes. If any relevant, available evidence is not used, PennDOT must explain why that evidence was not used in the Step-2 changes. (49 C.F.R. § 26.45(f)(3)).

Essentially, Step-2 requires PennDOT to incorporate into the goal calculations any available evidence that will improve the accuracy of the Step-1 Baseline Goal in order to carry out the overall objective of determining the level of DBE participation that would occur absent the effects of discrimination.

Where appropriate, PennDOT looked to its own data to determine the amount of contracting opportunity on each contract and adjusted ratios accordingly.

The Department looked to its past DBE participation to adjust the step-1 ratio. As recommended in the TIPS, the Department uses median annual attainment for FTA-assisted projects over the last five years. This median annual attainment will be averaged with the adjusted step-1 ratio for all large capital and rail projects to yield the step-2 ratios for those projects.

Race-Neutral/Race-Conscious Projections

The final DBE goal established by PennDOT can be attained in two ways. First, it can be attained through race-conscious means such as contract goals. Second, the goal can be attained via race-neutral means as when DBEs receive work, even though no special effort is made on the part of PennDOT or contractors to singularly engage DBEs (as noted in the Program Terms section of this document, race neutral means may be characterized by efforts designed to assist all small businesses as opposed to measures designed to benefit DBEs alone).

DBE regulations 49 C.F.R. § 26.51 (a) states in part that PennDOT is to “meet the maximum feasible portion of [the] overall goal through race-neutral means.” Under Section 26.51(b), race-neutral means include: providing assistance in overcoming limitations such as the inability to obtain bonding or financing by simplifying the bonding process; reducing bonding requirements; eliminating the impact of surety costs from bids; and, providing services to help DBEs and other small businesses obtain bonding and financing. Race-neutral participation includes, but is not limited to situations such as a DBE winning a prime contract through customary competitive procurement procedures; is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in awarding the contract (e.g. a prime contractor that uses a strict low bid system to award subcontracts).

PennDOT examined each of the proposed federally-funded projects to determine whether the contracting opportunity could be best achieved through race-conscious or race-neutral means. Local projects where no subcontracting opportunity exists offer are projected to provide exclusively race-neutral attainment. On capital projects, only attainment from subcontractable portions of the project are projected to be race-conscious. Further, in cases where limited number of DBEs are available to perform the work in the local market, PennDOT projected that portion of the goal to be race-neutral. On large capital projects and rail projects, PennDOT looked to its experience on similar projects and where available current engineering plans to identify which work on those projects would likely be completed by prime or subcontractors.

Evidence from Related Fields

Under Part 26, the Department must consider evidence from related fields that affect opportunities for DBEs to form, grow, and compete. The City of Philadelphia produced a disparity study for federal fiscal year 2018 by Econsult Solutions, Incorporated and Milligan and Company, LLC, which was released in June 2019. Since the study focuses on the City of

Philadelphia and its surrounding area, it is not generalizable to the Commonwealth as a whole. Nothing in the study rises to the level of support for an adjustment for this item.

PennDOT commissioned a disparity study in 2018 by BBC Research and Consulting (BBC). This study focused on highway construction and therefore is not generalizable to FTA-funded projects. Concurrently with that study BBC performed a disparity study for the Pennsylvania Department of General Services (DGS). Because DGS projects represent a far broader scope than FTA-funded projects in the Commonwealth, those findings are not applicable to this methodology.

Good Faith Efforts

In 2018, the Department held three Good Faith Efforts hearings. In all three cases, the Interdisciplinary Review Team determined that the Prime Contractors had made good faith efforts to obtain DBE participation on those projects. Evidence from these hearings has been considered when setting project goals on similar projects.

Work in Progress

APPENDIX A – TERMINOLOGY

TERMINOLOGY

The following program terms tailored to the local conditions of the Commonwealth of Pennsylvania consistent with 49 C.F.R. part 26 are provided for reference:

BIDDERS' LIST – The list of firms who have bid on FTA-funded projects placed for bid by the Department's FTA subrecipients. Each subrecipient provided a list that was then compiled into a master list for the Department's use.

DEPARTMENT – As used in this document, PennDOT refers to the Pennsylvania Department of Transportation of the Commonwealth of Pennsylvania.

DBE – Disadvantaged Business Enterprise; A small, for-profit business that meets the size, ownership, control, and definitional requirements of 49 C.F.R. Part 26.5 and has been certified by the UCP under the federal regulation set forth in 49 C.F.R. Part 26.

ENTERPRISE UNIVERSE (EU) – All (DBE and no-DBE) ready, willing, and able firms within an established local market.

GEOGRAPHIC MARKET – PennDOT has calculated custom marketplaces for each NAICS code based on the locations listed on the Department's bidders list.

LOCAL MARKET – PennDOT determined local markets for each project based on bidding patterns on similar projects.

NAICS CODE - The North American Industry Classification System (NAICS) is the standard used by federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

POTENTIAL DBE – Minority- or woman-owned firms that are not yet identified as RWA by PennDOT but meet the requirements for DBE certification and are currently operating within a pertinent NAICS code within that NAICS code's identified geographic market.

PENNDOT – As used in this document, PennDOT refers to the Pennsylvania Department of Transportation of the Commonwealth of Pennsylvania.

POTENTIAL NEW DBEs – Estimated number of new DBE firms that could be expected to bid on federally-funded transit projects in addition to existing DBEs.

RACE NEUTRALITY – A measure of participation in federally-funded transit projects among DBE and non-DBE firms expected in the absence of discrimination. This measure is calculated as a ratio of DBE firms to all firms within a defined NAICS code available in the local market.

READY, WILLING, AND ABLE (RWA) BUSINESSES/ENTERPRISES – The current universe of businesses interested, capable, and authorized to perform work on PennDOT's federally-assisted, transportation-related contracts. *Ready* refers to those businesses that perform a

APPENDIX A – TERMINOLOGY

trade, function or service that may be utilized on PennDOT's federally-assisted contracts. *Willing* refers to ready businesses that have either performed or expressed a bona fide interest in performing a function on PennDOT's federally-assisted contracts. *Able* refers to ready and willing businesses that have fulfilled PennDOT's requirements to participate in the performance of its federally-assisted contracts. In sum, those businesses that are ready, willing, and able to perform on PennDOT's federally assisted contracts are businesses authorized by PennDOT to participate in its federally-assisted contracts that have either expressed or demonstrated an interest in doing so.

READY, WILLING, AND ABLE (RWA) DBEs – Those businesses that meet the definition of “ready, willing, and able businesses” and that have been certified by PennDOT or any of the other entities that certify DBEs in the Commonwealth under the Commonwealth’s approved Unified Certification Program (PA UCP) as a DBE consistent with the provisions of 49 C.F.R. Part 26. In sum, PennDOT’s universe of ready, willing and able DBEs within the meaning of 49 C.F.R. Part 26, consists of certified DBEs that have either expressed or demonstrated an interest in participating in federally-assisted Department contracts and have been authorized to do so.

RELATIVE AVAILABILITY OF DBEs – Consistent with 49 C.F.R. Part 26.45, “relative availability” of DBEs refers to demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on PennDOT’s federally-assisted transportation-related contracts.

RACE-NEUTRAL MEASURES – Consistent with Section 26.5, the definitional section of the federal regulation set forth in 49 C.F.R. Part 26, PennDOT’s race-neutral measures are those designed to assist all small businesses as opposed to measures designed to benefit DBEs alone.

RACE-CONSCIOUS MEASURES – Consistent with the definitional section of the federal regulation set forth in 49 C.F.R. Part 26, PennDOT’s race-conscious measures are those that are focused exclusively on DBEs. These include traditional contract goal.

APPENDIX B – TECHNICAL ADDENDUM

Technical Addendum

This section is still under development as we are gathering the necessary data and working on the calculations. Please continue to check back during this Public Comment period. As we continue to work on the goal calculations, we will update this document and repost.

APPENDIX C: SUMMARY OF PUBLIC COMMENTS AND RESPONSES

Summary of Public Comments and Responses

This section will be compiled from the written comments received in response to this Public Comment period.

Work in Progress