

**NEW JERSEY DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE GOAL SUBMISSION
FEDERAL FISCAL YEARS 2020 THROUGH 2022**

The New Jersey Department of Transportation (NJDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the United States Department of Transportation (USDOT), 49 C.F.R. Part 26. As a requirement of the federal regulations, the NJDOT must submit a triennial DBE goal.

NJDOT has determined its annual DBE goal for Federal Fiscal Years 2020 through 2022 as 13.23% of the total federal financial assistance NJDOT will expend on Federal Highway Administration (FHWA) contracts. NJDOT projects that 3.91% of the total funding expended on federally-assisted highway projects for this period can be achieved through race and gender neutral means or methods, and the remaining 9.32% can be achieved through race and gender conscious means or methods. While NJDOT's Federal Fiscal Years 2017 through 2019 saw a drop in race-neutral attainment from prior fiscal years, NJDOT anticipates correcting this downturn by maximizing outreach potential for DBE and ESBE groups, re-analyzing the placement of ESBE goals, and finding appropriate contracts for ESBE or DBE prime set-asides where feasible.

The Department will seek to attain a maximum portion of its DBE goal utilizing race and gender neutral means. Race and gender neutral DBE participation and race and gender conscious DBE participation is monitored by the NJDOT Division of Civil Rights on a monthly basis and adjustments are made accordingly to ensure that NJDOT neither exceeds nor falls short of meeting its DBE goal on an annual and overall basis.

I. Establishing the Step One Base Figure

A. Market Area Analysis

As required by 49 CFR 26.45(c), the analysis must include the identification of the market area. The market area is the geographical area that represents a particular market. There must be sufficient facts to support a market area determination. NJDOT has determined that there are sufficient facts to conclude that the State of New Jersey is its market area. Between July 1, 2015 and June 30, 2018, NJDOT awarded the substantial majority, (96%), of its contracts to New Jersey based firms. Therefore, the State of New Jersey is NJDOT's market area.

The following table depicts the overall number and dollar value of construction and consulting contracts or agreements awarded by NJDOT between July 1, 2015 and June 30, 2018. As depicted in Table 1, NJDOT awarded 359 prime contracts or agreements valued at \$1,610,394,656. Of these contracts, 340 or 96.007% were awarded to New Jersey based companies. The dollar value of those contracts was \$1,546,106,574 or 96.007% of the total amount expended. Based on this data, NJDOT's market area is concluded to be the State of New Jersey.

Table 1: NJDOT Contracts or Agreements awarded from 2015-2018

Geographic Distribution of Participating Contractors (2015 - 2018)	Number of Contracts	Dollar Value	Percentage of Total Dollars
New Jersey Based Contractors	340	\$1,546,106,574	96.007%
New York Based Contractors	9	\$7,795,000	.484%
Connecticut Based Contractors	4	\$3,540,000	.219
Pennsylvania Based Contractors	6	\$52,953,082	3.29%

B. Defining the Variables

The Step One Base Figure is a measurement of the actual relative availability of DBEs and potential DBEs to perform the types of work that NJDOT intends to contract. It is the percentage of DBEs among all firms that are ready, willing, and able to compete for DOT-assisted contracts. This percentage is calculated by dividing the number of DBEs ready, willing, and able to perform the types of work that NJDOT will fund during this triennial period, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to perform these same work types.

Pursuant to 49 CFR 26.45(c)(1), NJDOT has determined the work type areas under the North America Industrial Classification System (“NAICS”) for the period of the triennial goal and the number of all ready, willing and able businesses available in its market that perform work in the same NAICS codes by using the 2016 Census Bureau's County Business Pattern (CBP) database. The 2016 CBP is the most current data available at the time of this proposed goal.

Secondly, NJDOT has determined the number of ready, willing, and able DBEs. “Ready willing and able DBEs” are DBEs certified to work in the NJ Unified Certification Program (NJ UCP) Directory with NAICS codes in work categories where NJDOT would normally contract. This data was captured in February 2019 (see, Table 2). In order to ensure that all potential DBE firms are counted among those “ready, willing and able” DBEs, NJDOT has also included construction and professional services firms that have been certified as Small, Minority and Women Owned Business Enterprises by the New Jersey Department of the Treasury, Division of Revenue and Enterprise Services who do not currently appear on the NJ UCP Directory. These firms are found in the New Jersey Selective Assistance Vendor Information (NJSAVI) Directory. Thus, “all firms ready, willing and able” includes all firms in NJDOT’s market area, as identified in the 2016 Census Bureau County Business Pattern (CBP) database, with North American Industry Classification System (NAICS) codes in work categories where NJDOT would normally contract.”

Table 2: Ready, Willing and Able DBE's

NAICS Descriptions	NAICS Code	NJUCP & NJ SAVI	2016 Census Data
Water and Sewer Line and Related Structures Construction	237110	47	223
Highway, Street, and Bridge Construction	237310	152	306
Other Heavy and Civil Engineering Construction	237990	96	129
Poured Concrete Foundation and Structure Contractors	238110	47	334
Structural Steel and Precast Concrete Contractors	238120	51	102
Other Foundation, Structure, and Building Exterior Contractors	238190	35	135
Electrical Contractors and Other Wiring Installation Contractors	238210	91	2724
Other Building Equipment Contractors	238290	18	242
Painting and Wall Covering Contractors	238320	62	940
Other Building Finishing Contractors	238390	23	230
Site Preparation Contractors	238910	82	732
All Other Specialty Trade Contractors	238990	82	881
Cement Manufacturing	327310	0	3
Ready-Mix Concrete Manufacturing	327320	2	69
Fabricated Structural Metal Manufacturing	332312	24	59
Electrical Apparatus & Equipment & Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	55	474
Specialized Freight (except Used Goods) Trucking, Local	484220	70	566
Title Abstract and Settlement Offices	541191	1	262
Landscape Architectural Services	541320	42	162
Engineering Services	541330	266	1568
Geophysical Surveying and Mapping Services	541360	16	8
Surveying and Mapping (except Geophysical) Services	541370	49	198
Marketing Consulting Services	541613	65	1143
Environmental Consulting Services	541620	111	348
Public Relations Agencies	541820	43	209
Marketing Research and Public Opinion Polling	541910	40	217
Landscaping Services	561730	29	4393
Remediation Services	562910	65	218
Potential DBE firms (NJSavi MBEs, WBEs, MWBEs and SBEs)		408	
		2072	16875

C. Calculating the Step One Base Figure

Step One Base Figure = Ready, willing and able DBEs ÷ All firms ready, willing and able

Step One Base Figure = 2072 ÷ 16875

Step One Base Figure = 12.27%

D. Weighting

NJDOT chose not to use weighting in its 2020 through 2022 DBE goal calculation. Weighting does not increase the accuracy of NJDOT's step one base figure. Based on past experience, weighting tends to diminish the projected participation of consulting and professional services firms. In the past, NJDOT weighted the base figure according to the projected, federally funded Statewide Transportation Improvement Program (STIP) expenditures for construction services and consulting services. While the STIP represents the best data available to determine NJDOT's future expenditures, it does not provide the best information as to how those expenditures will be divided between construction and professional services work. For example, the 2011 STIP indicated that 96% of NJDOT contract dollars would be spent on construction projects and 4% on consulting. However, many of the construction projects in the 2011 STIP contained engineering, consulting, and other professional services components that were not identified as separate expenditures in the STIP. Dividing the number of DBEs in the NJUCP Directory and potential DBEs in the NJSavi Directory by the number of all businesses provides the most accurate measure of the relative availability of DBEs in NJDOT's market.

II. Adjusting the Step One Base Figure

In accordance with 49 CFR 26.45(d), the factors to be considered in determining whether or not adjustments are necessary are as follows: past participation; evidence from disparity studies; statistical disparities in the ability of DBEs to get financing, bonding and insurance; data on employment, self-employment, education and training, union programs and apprenticeship programs; and any other data that would help to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination.

A. Past Participation

The Department determined that the Step One Base Figure would be adjusted based on past participation. An adjustment based on past participation is warranted because past participation is an indicator as to the feasibility of the DBE goal; therefore, to ensure the feasibility of the DBE goal, NJDOT averaged the figure obtained in Step One with a figure which represented past DBE participation. In order to obtain a more precise past participation measurement, NJDOT calculated the median DBE participation in 2014, 2015, 2016, 2017 and 2018. NJDOT adjusted the Step One Base Figure by taking the average of the median past participation figure and the Step One Base Figure. This method ensures that past participation is not given disproportionate weight.

DBE Participation is measured in terms of federal contracting dollars that are awarded or committed to DBEs. This figure is expressed as a percentage of the total federal financial assistance the NJDOT will expend on FHWA contracts.

NJDOT's past participation from years 2014 through 2018 has been 14.51%, 13.01%, 14.19%, 13.17%, and 15.81%. Therefore, the Median Past Participation is 14.19%. (See, Table 3).

Table 3: Median of Past Participation

Year	DBE Attainment	Median Participation
2014	14.51%	
2015	13.01%	
2016	14.19%	
2017	13.17%	
2018	15.81%	
		14.19%

The Step One analysis resulted in a Step One Base Figure of 12.27%. The average of 12.27% and 14.19% is 13.23%. Therefore, 13.23% is the Step One Base Figure adjusted for past participation.

$$DBE\ Goal = (Step\ One\ Base\ Figure + Median\ Past\ Participation) \div 2$$

$$DBE\ Goal = (12.27\% + 14.19\%) \div 2$$

$$DBE\ Goal = (26.46\%) \div 2$$

$$DBE\ Goal = 13.23\%$$

B. Adjustment based on data on employment, self-employment, education and training, union programs or apprenticeship programs

NJDOT is not aware of any data on employment, self-employment, education and training, union programs or apprenticeship programs that would be relevant to the goal setting process. Therefore, this data was not considered in adjusting the Step one Base Figure.

However, it is important to mention the Department's DBE Supportive Services Program. NJDOT contracted a consultant to develop and facilitate a DBE Supportive Services Program (SSP). The SSP is a cohort which provides intensive classroom training in a number of business and technical topics including business planning, organizational development, marketing, public procurement, human resources, bonding and financial management, construction project management, safety, technology and Legal, etc. In addition, the DBE firms receive individualized one-on-one coaching and technical assistance to address any

issues that may be specific to the individual firm. Participants are also provided the opportunity, through a NJDOT sponsored Contractor Venture Forum, to expand their professional networks and establish relationships with large prime contractors.

The program has been very successful. It has helped DBE firms better navigate their way in conducting business with the Department as a prime and/or subcontractor. Each cohort starts with twenty firms. Fourteen firms graduated from the class of 2017 and sixteen firms graduated from the class of 2018. We are currently running our third cohort. Ten of the firms from the graduating classes have received contracting opportunities on NJDOT projects. It was also the first time four of the firms contracted with the Department.

C. Adjustment based on disparity studies and/or statistical studies conducted in our market area

There were two studies conducted in recent years with regard to small and/or minority owned businesses in New Jersey. The New Jersey Department of Transportation acknowledges the results and findings of the studies but did not utilize the data to adjust the Step One Base Figure.

Euquant, Inc., an economic research company specializing in performance evaluations of small, minority and diverse suppliers, was commissioned by The New Jersey Construction Alliance (NJCA) to conduct the 2017 Capacity Analysis of Certified DBEs in New Jersey (NJDOT and NJ Transit). The NJCA consists of members from the following organizations: Associated Construction Contractors of New Jersey, Utility & Transportation Contractors Association, Carpenter Contractor Trust, New Jersey Laborers' Employers' Cooperation & Education Trust and Engineers labor-Employer Cooperative. The purpose of the report was to determine the amount of work that each DBE certified by the New Jersey Department of Transportation (NJDOT) and the New Jersey Transit Corporation (NJ Transit) can perform. In the report, Euquant, Inc. stated "*It is not a disparity study, which means it does not seek to determine whether DBEs are underutilized relative to their readiness, willingness or ability to perform work. This study has a different objective and purpose. It does not compare the capacity or utilization of DBEs to that of Non-DBEs. In fact, it provides no information on Non-DBEs. It focuses on DBEs exclusively.*"

The report measured the capacity of DBE firms from the NJUCP Directory. The analysis focused on six construction service industries and six professional service industries. The report defined capacity as the volume of work that a company is capable of performing efficiently during a given period. The report evaluated capacity for the following Construction industries: Drainage, hazmat, dredging and demolition; paving, grading, and general concrete work; bridge construction and repair, steel erection; heavy highway construction; guide rails and signage; and miscellaneous construction, fencing, underground utilities. It also evaluated capacity for the following Professional Services industries: design, bridge, highway, utility, aerial; inspection, bridge painting, roadway concrete materials; environmental services, hazmat screening, remediation support, planning, transportation demand management, mixed modal system, air quality; structural evaluation and bridge inspection; and intelligence transportation systems (concrete and inspections)"

The 2017 Capacity Analysis of Certified DBEs in New Jersey (NJDOT and NJ Transit) did not evaluate all of the possible subcontracting opportunities that are available to DBE or ESBE firms based upon a project's Engineers Estimate. The analysis provided valuable information – but not something that would change the Department's mathematical analysis.

A second report, conducted by the Port Authority of New York and New Jersey (PANYNJ), one of the New Jersey Unified Certification Program's (NJUCP) agency partners, addressed a Minority and Women-owned Business Enterprise (MWBE) study to determine if minority-owned and women owned businesses have had equal access to PANYNJ's prime contract and subcontract opportunities. The study "MWBE Disparity Analysis 2017" was conducted by Mason Tillman Associates, Ltd. The study included firms that are located outside of the New Jersey Department of Transportation's market area and work types that may not be utilized on NJDOT projects. The market area utilized included: the New York Counties of Nassau, Rockland, Suffolk, and Westchester; and the northern New Jersey Counties of Bergen, Essex, Hudson, Middlesex, Morris, Passaic, Somerset, and Union.

Neither report justified an adjustment to the Step One Base figure as they did not consider all possible subcontracting opportunities available to the DBE or ESBE firms on available contracts or the market area did not adequately represent our market area.

D. The DBE Goal for Federal Fiscal Years 2020 through 2022

Based on the above methodology, NJDOT has determined its annual DBE goal for Federal Fiscal Years 2020 through 2022 as 13.23% of the total federal financial assistance NJDOT will expend on Federal Highway Administration (FHWA) contracts.

III. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split

The NJDOT has established an Emerging Small Business Enterprise (ESBE) certification in order to meet the maximum feasible portion of its DBE goal through race-neutral means in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26.51. NJDOT has received Federal financial assistance from the USDOT, and as a condition of receiving this assistance, NJDOT has signed an assurance that it will comply with 49 CFR Part 26.

To ensure that the maximum feasible portion of the overall DBE goal is met by using race-neutral means towards facilitation of DBE participation, NJDOT will establish ESBE goals on its contracts. All DBEs are considered to be ESBEs for the purposes of goal setting. ESBE goals can be satisfied through the use of DBE and/or certified ESBE firms.

ESBE contracting goals for USDOT federally funded construction projects are determined by the NJDOT Contractor Compliance Unit with the help of the NJDOT Bureau of Construction Services. The NJDOT Bureau of Construction Services conducts a review of the Engineer's Estimate for a specific project and identifies the items typically subcontracted by a prime

contractor on similar projects. This review will determine the approximate percentage of the project that will be subcontracted to other firms.

The NJDOT Contractor Compliance Unit will also review the Engineer's Estimate and the Bureau of Construction Service's determination of the subcontracting opportunities and project a percentage to be subcontracted to DBE and ESBE firms. NJDOT only counts DBE participation on ESBE goal contracts when reporting progress toward meeting overall DBE goals. ESBE participation is not counted toward the overall DBE goal. ESBE certification exists to maximize the race neutral requirement of the DBE program. NJDOT will monitor the effect of ESBE certification on DBE utilization.

To be eligible for ESBE certification, the firm must be a for-profit business, meet the SBA size standards in its industry as defined in 13 CFR Part 121.201 and be 51% owned and controlled by one or more economically disadvantaged individuals who are citizens of the United States or lawfully admitted permanent residents whose personal net worth does not exceed \$ 1.32 million.

In order to calculate the portion of the goal that will be achieved through race neutral means, NJDOT calculated the median annual past percentage of the goal that was achieved through race neutral means from 2014 through 2018. NJDOT's past race neutral participation from 2014 through 2018 has been 3.88%, 3.91%, 5.99%, 4.53%, and 3.20% (See Table 4.) The median annual past race neutral participation is 3.91%. Therefore, NJDOT projects that 3.91% of the total federal financial assistance the Department will expend on FHWA contracts can be achieved through race and gender neutral means or methods, and the remaining 9.32% can be achieved through race and gender conscious means or methods.

Table 4: Race/Gender Neutral Participation (2014-2018)

Race/Gender Neutral Participation		
Federal Fiscal Year	Actual Participation	Race/Gender Neutral Participation
2014	14.51%	3.88%
2015	13.01%	3.91%
2016	14.19%	5.99%
2017	13.17%	4.53%
2018	15.81%	3.20%
Race/Gender Neutral Participation		3.91%

IV. Consultation and Public Participation

Before establishing the final triennial goal, NJDOT consulted with the African American Chamber of Commerce of New Jersey, the Statewide Hispanic Chamber of Commerce of New Jersey, Construction Industry Advancement Program, Utility and Transportation Contractors Association, Associated Construction Contractors of New Jersey, Regional Alliance for Small Contractors, New Jersey Association of Woman Business Owners, New Jersey Small Business Development Center, and New Jersey Asphalt Pavement Association to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the NJDOT's efforts to establish a level playing field for the participation of DBEs.

On May 18, 2019 NJDOT published a notice of the proposed overall DBE goal of 13.23%. The notice informed the public that a meeting would be held on Tuesday June 18, 2019. During the meeting, NJDOT presented its goal development process and considerations that factored into the preliminary goal. The notice also informed the public that the Department would accept comments at the NJDOT Headquarters or Federal Highway Administration until June 30, 2019.

The public notice was published on the NJDOT's website. In addition to publishing the notice on the NJDOT website, NJDOT e-mailed the notice to key members of the contracting community. NJDOT held a public consultation meeting on June 18, 2019 from 10:00AM to 11:30AM at the New Jersey Department of Transportation, David J. Goldberg Transportation Complex, 1035 Parkway Avenue Trenton, NJ 08625.

A. Public Comment I

During the meeting Mr. George Lobman from the Utility and Transportation Contractors Association of New Jersey (UTCANJ) made the following comment:

"One of the things that we look forward to is making these goals. Goals are always something that we try to obtain. One of the concerns that we have is that the quality of project is not always commensurate with the goal that's suggested for that project. Example would be a mainline paving project on a highway which has very limited items of construction other than just paving. If the project has concrete, guide rail, drainage, rock, ex., anything in that nature, then you can usually get a minority or a business enterprise to come in and get those goals for you. However, when you only have one item which is HTP asphalt, it's a spray paved asphalt on that road, you're very likely never going to be able to reach this goal because there are no subcontractors that are going to be able to come in and partake some of that job that the contractor originally wins the bid in. So the only thing we look forward to is to making sure that the project itself is able to make the goal and not something that's defeating before it's even been bid."

In response to Mr. Lobman's comment I included the procedures that the Department's Contract Compliance Unit follows when setting individual project goals. This guidance is also listed in the Department's DBE Program Document.

Individual DBE and ESBE contracting goals for NJDOT federally funded construction projects will be determined by the Contractor Compliance Unit with the help of the Bureau of Construction Services. The Bureau of Construction Services will conduct a review of the Engineer's Estimate for a specific project to identify the items typically subcontracted by a prime contractor on similar projects. This review will determine the approximate percentage of the project that will be subcontracted to other firms.

The Contractor Compliance Unit will also review the Engineer's Estimate along with the Bureau of Construction Service's determination of the subcontracting opportunities in order to project a contracting goal percentage to be subcontracted to DBE or ESBE firms.

To ensure that the above goal is proper, reasonable, and realistic, the Contractor Compliance Unit will carefully analyze the Engineer's Estimate, the Bureau of Construction Services subcontracting determination, and the current list of certified and registered DBE and ESBE firms who perform work typically sub-contracted on these types of projects. When determining availability of DBE and ESBE firms, the Contractor Compliance Unit will also consider other projects that those firms might be participating in.

In addition to the above considerations, once the goal is set per contract, NJDOT gives the contractor the discretion to determine which work items they will subcontract out and which they will perform themselves."

B. Public Comment II

Ms. Carol Fulton from the Associated Construction Contractors of New Jersey (ACCNJ) made the following comment:

"We would be curious to know why the UCON study was not used as part of your methodology. There was a lot of work and effort and true data that probably would have been helpful if that was used. And second, maybe a little related to what George was saying, is/was specialty work considered when setting these goals because, not just asphalt paving, but there are projects that are true specialty jobs and there are so few contractors that are certified and capable of doing that work, which was the point of the study was to see what the capacity was. So we would like to know why that capacity study is not used as part of the goal setting."

Ms. Fulton, ACCNJ's Diversity and Compliance Director, also submitted a letter dated June 28, 2019. In addition to the comment above, the letter requested clarification in the following areas:

"As part of the New Jersey Construction Alliance (NJCA) that commissioned the 2017 Equant Capacity Analysis to study the capacity of DBE firms certified by the New Jersey Department of Transportation and NJ Transit, we are disappointed to learn the findings of the study were not considered in the methodology to determine the current triennial DBE goal. The intent of the study was to better understand why contractors are challenged to find DBE's able to perform subcontracting in specific industries and where industry can help grow capacity. Project goals are sometimes developed without

due diligence to identify specialty work or properly inspect the capabilities of DBEs to perform some aspect of work on a construction contract. A critical finding from the study indicated DBEs had the most extensive capacity in sectors where the smallest amount of contracting occurred and the lowest capacity in the two areas where the most substantial amount of contracting occurred. NJDOT's largest spend is in Heavy and Highway and Bridge Construction, yet the DBE capacity was the lowest in these two sectors of the twelve industries evaluated in the study. We respectfully request that NJDOT identify and account for specialty work in your final evaluation of the current triennial goal. In addition, inaccuracies still exist in the NAICS classification codes and business descriptions of DBEs. ACCNJ strongly urges NJDOT to rectify these issues as quickly as possible."

In response to Ms. Fulton's letter and comments, the Department acknowledges that the EuQuant Capacity Analysis was very informative. NJDOT did not utilize the data to adjust the Step One Base Figure because as mentioned above in our response to Mr. Loban from the UTCANJ, NJDOT's Contract Compliance Unit thoroughly evaluates each project to determine whether or not each individual project should have a DBE or ESBE goal. To ensure that the above goal is proper, reasonable, and realistic, the Contractor Compliance Unit will continue to carefully analyze the Engineer's Estimate, the Bureau of Construction Services sub-contracting determination, and the current list of certified and registered DBE and ESBE firms who perform work typically sub-contracted on these types of projects. When determining availability of DBE and ESBE firms, the Contractor Compliance Unit may also consider other projects in which those firms might be participating; however, the unit has no control over timelines and when projects are initiated.

It is also noted that the EuQuant study did not take into consideration all of the subcontracting opportunities that may be available to DBE or ESBE firms. For example, prime contractors committed or utilized DBE firms on construction projects in the following work categories between October 1, 2017 and September 30, 2018: Electrical Contractors and Other Wiring Installation; Other Measuring and Controlling Device Manufacturing; Sign Manufacturing; Lumber, Plywood, Millwork, and Work Panel Merchant Wholesalers; Other Construction Material Merchant Wholesaler; Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesaler; Hardware Merchant Wholesalers; Industrial Supplies Merchant Wholesalers; General Freight Trucking; Specialized Freight Trucking; Motion Pictures and Video Production; Engineering Services – Construction Coordination Services; Building Inspection Services; Solid Waste Collection; Landscaping Services; All other Support Services, Flagging, Traffic Control Services; and All Other Miscellaneous Waste Management Services. These were not included in their analysis and, thus, compromised the study's finding.

Finally, NJDOT's Disadvantaged and Small Business Program's Unit continuously updates certification records. When necessary, we also update a firm's business description, NAICS codes, and contact information. Reminder, the firms are certified by three different agencies (NJDOT, NJ Transit or The Port Authority of New York and New Jersey) and although each agency follows the UCP and federal guidelines, they can interpret similar information differently.

C. Public Comment III

Ms. Campanelli, owner of the DBE firm Clean Earth Matters LLC, made the following comment:

"And the purpose of my comment is to address the dependence of prime contractors on major items of DOT contracts to be considered for DBE utilization. I would like to say that I perform, my firm performs, work items that are not considered major items, but could be subcontracted to DBE firms to meet the goals. I would encourage prime contractors to look beyond just the concrete and the guide rail when trying to attain the aspirational goals as they are set by the department because these programs are important to expand participation of firms like mine, and I appreciate the opportunity to participate".

NJDOT is also asking prime contractors to consider a project's major work items and to consider all of the possible subcontracting opportunities identified in the Engineers Estimate when attempting to achieve a project's DBE or ESBE goal.

6. Conclusion

As noted above, the DBE goal is a measurement of the actual relative availability of DBEs and potential DBEs to perform the types of work that NJDOT intends to contract. It is the percentage of DBEs among all firms that are ready, willing, and able to compete for DOT federally-assisted contracts. This percentage is calculated by dividing the number of DBEs ready, willing, and able to perform the types of work that NJDOT will fund this year, by the number of all firms (DBEs and non-DBEs) ready, willing, and able to perform the types of work that the Department will fund this year.

Individual DBE and ESBE contracting goals for USDOT federally funded construction projects are not arbitrarily set; rather, they are determined by the Contractor Compliance Unit with the assistance of the Bureau of Construction Services. The Bureau of Construction Services conducts a review of a construction firm's Engineer's Estimate for a specific project to identify the items typically subcontracted by a prime contractor on similar projects. This review determines the approximate percentage of the project to be subcontracted to other firms.

The Contractor Compliance Unit also reviews the construction firm's Engineer's Estimate along with the Bureau of Construction Service's determination of the subcontracting opportunities in order to project a contracting goal percentage to be subcontracted to DBE and/or ESBE firms. To ensure that the goal is proper, reasonable, and realistic, the Contractor Compliance Unit carefully analyzes the firm's Engineer's Estimate, the Bureau of Construction Services sub-contracting determination, and the current list of certified DBE and ESBE firms who could perform work typically sub-contracted on these types of projects. When determining availability of DBE and ESBE firms, the Contractor Compliance Unit also considers other projects in which those firms might be participating. The Contract Compliance Unit sets a goal that reflects a fraction of sub-lettable work items. Once set, NJDOT provides the prime contractor with an opportunity to determine the work items that they will perform and those that will be subcontracted to other firms.

Furthermore, the setting of the goal should not hinder opportunities for the prime contractor; it is not an unreasonable expectation. Under 49 CFR 26 Appendix A, when NJDOT establishes a DBE or ESBE goal on a contract, “a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve [the] DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.”

Thus, with the above process clearly delineated in the regulations and in the specifications of the Department, NJDOT will begin using its overall goal of 13.23% on October 1, 2019.