



COLORADO
Department of Transportation

Overall Annual DBE Goal for Highway Design and Construction

Federal Fiscal Years 2022 – 2024

US DOT Federal Highway Administration (FHWA)

CDOT Civil Rights & Business Resource Center

Table of Contents

EXECUTIVE SUMMARY	3
DBE GOAL SETTING METHODOLOGY	4
Market Area Determination.....	4
Availability Data	5
Relevant Types of Work	6
Construction.....	6
Professional Services.....	6
STEP 1: BASE FIGURE CALCULATION.....	7
Construction Base Figure	7
Professional Services Base Figure	8
Combined Base Figure	8
Alternative Delivery Impact on Base Figure.....	9
STEP 2: ADJUSTMENTS TO THE BASE FIGURE	10
Professional Services Prequalification List.....	11
Adjusted Base Figure.....	11
Historical DBE Participation	12
Other Disparity Studies	12
2020 State of Colorado Disparity Study	12
City and County of Denver 2018 Disparity Study.....	13
Future Contracting Opportunities.....	14
Impact of Pandemic	14
Funding Outlook.....	14
BREAKOUT OF RACE NEUTRAL / RACE CONSCIOUS PARTICIPATION.....	15
Race-Neutral and Race-Conscious DBE Goals.....	17
Race-Neutral Methods.....	18
Marketing and Outreach.....	18
Emerging Small Business Program	19
Emerging Small Business Program Enhancements	20
DBE Supportive Services: Connect2DOT	20
PUBLIC PARTICIPATION & FEEDBACK	22

EXECUTIVE SUMMARY

This document explains the methodology used by the Colorado Department of Transportation (CDOT) to establish its three-year (FFY 2022-2024) overall annual Disadvantaged Business Enterprise (DBE) goal for contracts that contain funding assistance from the U.S. Department of Transportation (USDOT) Federal Highway Administration (FHWA). Determination of the goal includes identifying a base figure for the relative availability of DBEs based on demonstrable evidence of the availability of ready, willing, and able DBEs as compared to the availability of all businesses participating on federally-funded DOT-assisted contracts.

In accordance with 49 CFR 26.45, CDOT's goal methodology consists of two steps:

1. Establishing the base figure for the relative availability of DBEs.
2. Adjusting to the base figure as a result of available data.

To establish the base figure and determine the relative availability of DBEs to perform work on CDOT projects, CDOT evaluated the;

- Relevant market area for contractor participation,
- Potential contracting opportunities in construction, professional services, and alternative delivery (design-build, CM/GC),
- Availability and ability of DBE certified firms to participate on those potential contracts,
- Anecdotal evidence gathered from other disparity studies and through association meetings and a public comment period.

This resulted in a base figure of 9.82% of DBE participation annually over the next three fiscal years. CDOT then considered all available evidence to determine whether adjustments should be made to the base figure calculation. Based upon an evaluation of market conditions and the availability of CDOT prequalified professional services firms, CDOT made an adjustment that modified the **overall DBE annual goal to 11.89%**. Additional factors were considered including historical DBE participation, other disparity studies, the impact of the pandemic, projected future funding, and capacity. This analysis did not warrant further adjustments to the goal.

CDOT also considered what percentage of the goal can be obtained through race-neutral means. CDOT has a robust small business support services program called Connect2DOT that has been implemented statewide to assist in developing ready, willing, and able DBE firms. CDOT also has an Emerging Small Business (ESB) Program designed specifically to assist CDOT in increasing race-neutral participation on its contracts. New ESB program enhancements are currently in development which are expected to increase race-neutral DBE participation over the next three fiscal years. By taking into consideration these efforts along with an analysis of historical race-neutral participation, CDOT is proposing a split of **4.33% race-neutral and 7.56% race-conscious participation**.

CDOT is committed to monitoring DBE participation for federal-aid highway design and construction projects to ensure the overall goal is being met. DBE achievements will be evaluated annually to determine whether market conditions warrant adjustments to the overall DBE goal, or individual race-conscious and race-neutral components.

DBE GOAL SETTING METHODOLOGY

The methodology described in 49 CFR 26.45(c) (1) was used to determine the base figure for the relative availability of DBEs. This is based on demonstrable evidence of the availability of ready, willing, and able DBEs as compared to the availability of all businesses in the relevant market area to participate on federally-funded DOT-assisted contracts.

Market Area Determination

The first step in establishing the DBE goal is to determine the relevant market area for the analysis. This is the geographic area where the majority of CDOT contractors are located and where a majority of contracting dollars are spent.

Historical contracting data for the past three fiscal years (FFY 2018-2020) shows that a total of 1,349 prime and subcontractors worked on CDOT contracts. Of those, 1,175 (87%) were located in Colorado and 174 (13%) were located out-of-state.

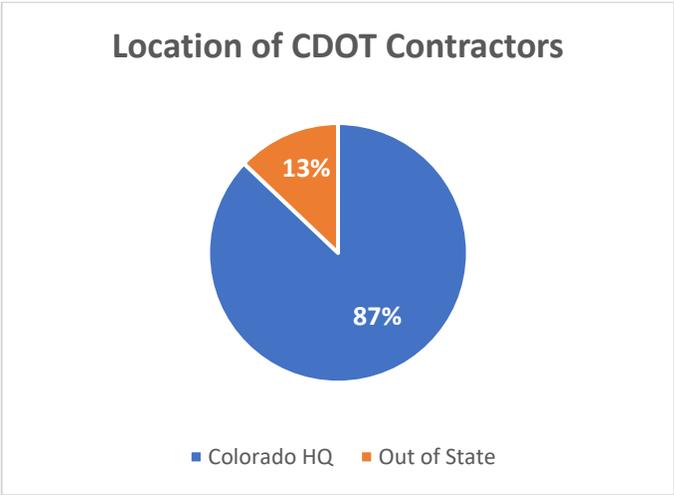


Table 1 below shows that the majority of CDOT dollars and contracts in the past three fiscal years were awarded to firms headquartered in the state of Colorado. Nearly 89% of prime contracts and more than 92% of subcontracts were awarded to Colorado-based firms. Considering the percent of contracts awarded to Colorado firms, CDOT determined the state of Colorado as the market area.

Table 1: Contracts Awarded to Colorado Firms FFY 2018-2020, Excluding Design-Build

Prime Contracts	Colorado Firms	Subcontracts	Colorado Firms
Total Dollars	\$1,417,286,433	Total Dollars	\$672,893,705
Percent of All Dollars	88.84%	Percent of All Dollars	92.71%
Percent of All Contracts	89.25%	Percent of All Subcontracts	91.57%
Percent of All Firms Utilized	84.69%	Percent of All Firms Utilized	86.21%

Availability Data

After determining the relevant market area, CDOT analyzed the relative availability of DBEs in Colorado using the process suggested in *49 CFR 26.45(c)(3), Use data from a disparity study*. CDOT first looked at the 2020 State of Colorado Disparity Study¹ conducted by Keen Independent Research. The study analyzed whether there is a level playing field for Historically Underutilized Businesses (HUBs) in the Colorado marketplace. It examined conditions in the construction, A&E, professional services, brokerage and investment, goods and other services industries and encompassed state-funded contracts between July 1, 2014 and June 30, 2018 for each department of state government.

Although CDOT participated, the study cast a wide net across all agencies and all categories of contracting with the State of Colorado. It was not primarily focused on highway construction and construction-related professional services. It also only included CDOT contracts that were fully state-funded which are not necessarily representative of federal-assisted contracts. After a thorough analysis of the study, CDOT determined the data was not granular enough to be used for the availability of DBEs for CDOT contracts. For example, the study determined there were a total of 20 DBEs with a primary NAICS relevant to highway construction and professional services. CDOT's analysis of the UCP DBE Directory found 732 DBEs with these primary NAICS. Although they may not all be "ready, willing, and able," CDOT determined that this represents a more accurate count of DBEs available to participate on CDOT contracts.

As a result, CDOT used the statewide UCP DBE Directory to identify DBE certified firms in highway construction and construction-related professional services in accordance with the process suggested in *49 CFR 26.45(c)(1), Use of DBE Directories and Census Bureau data*. The DBE Directory includes Colorado-based firms, as well as out-of-state firms that are certified as a DBE in Colorado. As suggested by Section E of the *Tips for Goal Setting*, to ensure an "apples to apples" comparison with Census data, only DBE firms with their principal place of business in the state of Colorado were included in the calculation. As of March 24, 2021, there were 1,702 firms listed on the DBE directory and 1,362 with headquarters in Colorado. A total of 732 of those DBE firms have a primary NAICS related to CDOT contracting.

CDOT also used data from the U.S. Census Bureau *2019 County Business Patterns (CPB)* as of April 23, 2021 to identify the total number of Colorado-based firms available in relevant primary NAICS. CPB is an annual data series that provides subnational economic data by industry and contains the most complete, current, and consistent data for business establishments. In order to compare DBE firms with Census data compiled by primary NAICS, CDOT conducted an analysis of the primary type of work performed by Colorado-based DBEs. When making a certification determination, the Colorado UCP does not identify the primary NAICS of the firm. For the availability analysis, CDOT assigned a primary NAICS to each firm using the following information:

- NAICS codes assigned to the firm by the Colorado UCP
- Primary NAICS assigned to the firm for the past DBE methodology
- CDOT Vendor Directory self-registered primary NAICS code
- U.S. Small Business Administration Dynamic Small Business Search
- Knowledge of the firm's products/services and information from the company's website and public online directories

¹ 2020 State of Colorado Disparity Study: <https://osc.colorado.gov/spco/state-of-colorado-disparity-study>

Relevant Types of Work

To begin the base figure calculation, CDOT first sought to determine potential contracting opportunities for the next three federal fiscal years. Based upon an evaluation of the CDOT FY 2022-2025 Statewide Transportation Improvement Program (STIP) draft report, CDOT anticipates the type of work over the next three years will be similar in nature to the past three years. CDOT also compared the weighted dollar amounts used for the previous Goal Setting Methodology (FFY 2015-2017) to the contracting data used for this analysis (FFY 2018-2020) and determined that the values were very similar. This adds credence to using past contracting data as an accurate representation of future contracting opportunities.

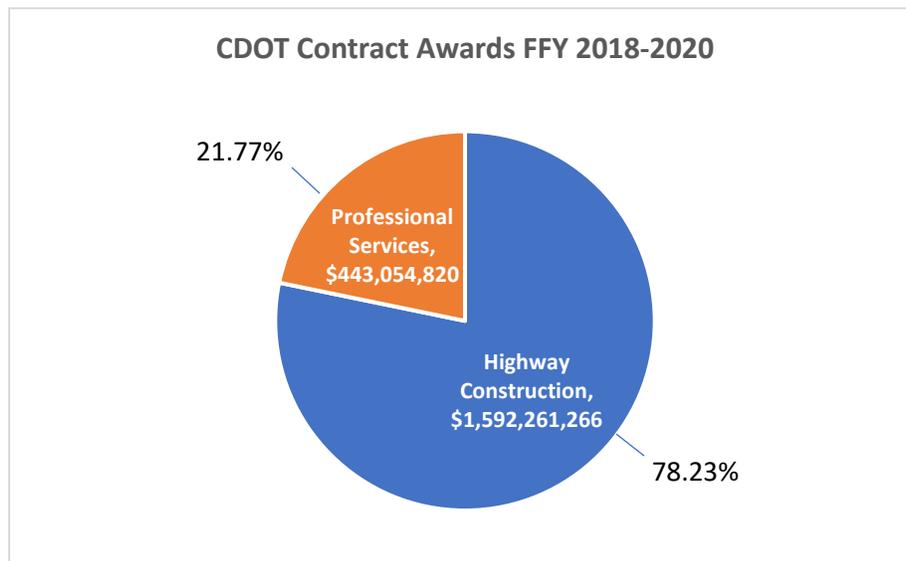
Construction

For construction contracts, CDOT assigned a NAICS code to individual bid items from all contracts awarded over the past three fiscal years, excluding Alternative Delivery projects which are included in the next section. This was done so the types of work contracted by CDOT could be correlated to the primary services provided by firms in the market area. It was also done so bid items could be grouped and weighted based upon how much was contracted in those NAICS as compared to the total contracted amount.

The total amount of construction dollars awarded during FFY 2018-2020 was \$1,595,357,421. However, CDOT identified one contract for \$3,096,156 for polystyrene foam that was used for an emergency bridge repair project. This type of contract is not likely to occur again in the next three fiscal years so it was excluded from the calculation. The remaining total for construction was \$1,592,261,266 which equates to 78.23% of total awarded dollars.

Professional Services

CDOT does not have the ability to track spending at the same level of detail for professional services contracts that it does for construction. Therefore, CDOT reviewed award information and project descriptions for professional services contracts and task orders during FFY 2018-2020 to identify the types of work that are most often utilized. Again, this excluded Alternative Delivery contracts. The total amount awarded was \$443,054,820 or 21.77% of the total.



STEP 1: BASE FIGURE CALCULATION

In accordance with Section F of the *USDOT Tips for Goal Setting*, CDOT conducted a weighted calculation of the opportunities in construction and professional services. The following formula was used to determine the relative availability of DBE firms and the base figure for DBE participation.

$$\text{DBE Firms} \div \text{All Available Firms} = \text{Relative Availability}$$

$$\text{Relative Availability} \times \text{Weight} = \text{Base Figure}$$

Construction Base Figure

Using data from the Census, UCP DBE Directory, and construction bid item totals for FFY 2018-2020, CDOT calculated the relative availability of DBE firms to perform work in NAICS relevant to construction contracts. Table 2 shows the base figure for construction contracts weighted by the percent of contracting dollars spent by NAICS.

Table 2. Construction Weighted Availability Calculation

NAICS	Description (abbreviated)	All CO Firms	CO DBE Firms	Relative Availability	FFY 2018 - 2020 Total	Weight	Base
212321	Sand and Gravel Mining	49	0	0.00%	\$2,100,970	0.13%	0.00000
236220	Building Construction	800	29	3.63%	\$354,558	0.02%	0.00001
237110	Water and Sewer Line	281	11	3.91%	\$29,427,534	1.85%	0.00072
237310	Highway/Street/Bridge Const.	225	41	18.22%	\$749,019,203	47.04%	0.08572
237990	Other Civil Eng. Const.	71	6	8.45%	\$34,648,844	2.18%	0.00184
238110	Concrete and Structures	577	15	2.60%	\$1,301,673	0.08%	0.00002
238120	Structural Steel and Precast	109	11	10.09%	\$97,188,008	6.10%	0.00616
238140	Masonry Contractors	460	8	1.74%	\$379,863	0.02%	0.00000
238190	Welding Contractors	202	9	4.46%	\$2,542,133	0.16%	0.00007
238210	Electrical Contractors	2006	37	1.84%	\$107,295,258	6.74%	0.00124
238320	Painting and Wall Coverings	1031	12	1.16%	\$2,573,852	0.16%	0.00002
238390	Other Building Finishing	198	3	1.52%	\$4,486,908	0.28%	0.00004
238910	Site Preparation Contractors	955	26	2.72%	\$132,871,260	8.34%	0.00227
238990	Asphalt, concrete, fencing	873	30	3.44%	\$39,137,466	2.46%	0.00084
324121	Asphalt manufacturing	10	0	0.00%	\$2,339,611	0.15%	0.00000
327320	Concrete manufacturing	112	4	3.57%	\$9,658,807	0.61%	0.00022
339950	Signs and signboards	141	5	3.55%	\$42,397	0.00%	0.00000
484220	Trucking	713	173	24.26%	\$3,565,710	0.22%	0.00054
488490	Sweeping	56	3	5.36%	\$3,077,527	0.19%	0.00010
541330	Engineering Services	2380	85	3.57%	\$597,811	0.04%	0.00001
541370	Surveying	269	12	4.46%	\$14,043,265	0.88%	0.00039
541380	Material Testing	177	13	7.34%	\$3,665,278	0.23%	0.00017
541620	Environmental Consulting	498	35	7.03%	\$1,686,431	0.11%	0.00007

541690	Other Scientific Consulting	983	4	0.41%	\$865,286	0.05%	0.00000
541910	Public Information	388	64	16.49%	\$4,634,692	0.29%	0.00048
561320	Temporary Staffing	788	22	2.79%	\$379,361	0.02%	0.00001
561730	Landscaping Services	2261	19	0.84%	\$56,421,329	3.54%	0.00030
561990	Traffic Control/Utilities	255	30	11.76%	\$138,003,757	8.67%	0.01020
562991	Septic Tank Services	74	1	1.35%	\$1,302,196	0.08%	0.00001
Misc.	Miscellaneous	0	0	0	\$148,650,278	9.34%	0.00000
Total		16942	708*	4.18%	\$1,592,261,266	100.00%	11.15%

Professional Services Base Figure

Table 3 below shows relative availability of DBE firms with a primary NAICS used for professional services contracts. CDOT does not capture line-item details for these types of contracts but does have general descriptions of prime contracts and subcontracts. CDOT evaluated contracts awarded between FFY 2018-2020 and mapped the general descriptions to NAICS, similar to the process used for construction contracts.

Table 3: Professional Services Availability Calculation

NAICS	Description (abbreviated)	All CO Firms	CO DBE Firms	Relative Availability	FFY 2018 - 2020 Total	Weight	Base
541320	Landscape Architecture	214	24	11.21%	\$995,304	0.22%	0.00025
541330	Engineering Services	2380	85	3.57%	\$374,868,495	84.61%	0.03022
541370	Surveying	269	12	4.46%	\$14,294,708	3.23%	0.00144
541380	Material Testing	177	13	7.34%	\$23,460,950	5.30%	0.00389
541620	Environmental Consulting	498	35	7.03%	\$19,995,991	4.51%	0.00317
541910	Public Information	388	64	16.49%	\$2,584,034	0.58%	0.00096
541990	Traffic Control/Utilities	255	30	11.76%	\$6,855,339	1.55%	0.00182
		4181	263*	6.29%	\$443,054,820	100.00%	4.18%

***Note:** The total number of DBE firms located in Colorado with a primary NAICS relevant to CDOT is 732 (as indicated on page 5). The combined total for Construction and Professional Services shown in Tables 2 and 3 is 971. This total is higher because all categories, with the exception of 541320 Landscape Architecture, are used for both construction and professional services contracts and are included in the weighting for both.

Combined Base Figure

Tables 2 and 3 are separated into types of work for construction and professional services because they represent two separate data sets. However, the overall DBE goal is not separated according to the contracting method but is rather a calculation of all available DBEs compared to all available firms weighted by the amount of opportunities in each category. As shown in Table 4, combining the base figures and then weighting based upon the percent of dollars in each category compared to total contracted dollars resulted in a **combined base figure of 9.63%**.

Table 4: Combined Base Figure

Category	Weighted Availability	Forecasted % of Awards	Weighted Step 1 Base Figure
Highway Construction	11.15%	78.23%	8.72%
Professional Services	4.18%	21.77%	.91%
Combined Step 1 Base Figure			9.63%

Alternative Delivery Impact on Base Figure

In addition to traditional design-bid-build construction contracts and professional services contracts, CDOT uses Alternative Delivery (AD) project methods that include Design-Build (DB), Construction Manager/General Contractor (CM/GC), and Public Private Partnerships (P3). One such P3 is the \$1.17B Central 70 project which was awarded in fall 2017 and is about 70% complete. An independent DBE availability analysis was conducted for the project and DBE goals were set accordingly. Therefore, Central 70 DBE participation will not be counted toward CDOT’s overall annual DBE goal. No other future P3 projects are anticipated over the next three fiscal years. However, CDOT does anticipate using DB and CM/GC delivery methods for future projects.

To ensure the final weighting of the base figure accurately represents these DB and CM/GC contracting opportunities, CDOT included the professional services and construction portions of the AD project budgets awarded over the past three fiscal years into the goal calculation. Because project selection is not determined until project goals are set, there is not a forecast of AD projects for FFY 2022-2024. However, CDOT believes the quantity and scope will be consistent with the past three fiscal years.

Budget data for AD contracts was obtained from the CDOT Alternative Delivery Program Branch and compared with project projections from the Project Management Office (PMO). Detailed bid items and subcontractor data is not available on alternative delivery contracts so NAICS cannot be assigned for weighting purposes. Therefore, CDOT used a calculation method based upon typical cost allocations for construction and professional services on these types of contracts.

Generally, CDOT allocates 22% of an AD project budget to construction engineering (CE) and indirect costs. Therefore, this amount was removed from the project budget available for DBEs. The remaining budget was divided into construction and professional services opportunities. Based upon historical data, CDOT expects AD contract expenditures to be approximately 90% for construction and 10% for design. A 90-10 percentage split was used to determine potential DBE opportunities on AD contracts. This calculation is shown in Table 5 on the next page.

The resulting funding amounts were then included in the final weighted calculation for the DBE goal. As shown in Table 6, **the combined base figure, including alternative delivery opportunities, is 9.82%.**

Table 5: Total Contracting Opportunities including Alternative Delivery (AD) Contracts

AD Total Budget (Excluding Central 70)		\$793,361,811
Remove CDOT CE & Indirect Costs	22%	<u>(\$174,539,598)</u>
Total AD Contracting Opportunities		\$618,822,213
AD Weighted Opportunities		
AD Construction	90%	\$556,939,991
AD Professional Services	10%	\$61,882,221
Construction Opportunities		
DBB Opportunities (Table 2)		\$1,592,261,266
AD Opportunities (Above)		<u>\$566,939,991</u>
Total		\$2,149,201,257
Professional Services		
DBB Opportunities (Table 3)		\$443,054,820
AD Opportunities (Above)		<u>\$61,882,221</u>
Total		\$504,937,041
Total Contracting Opportunities (DBB + AD)		\$2,654,138,299

Table 6: Combined Base Figure including Weighted Alternative Delivery Opportunities

Goal Dollars Calculation (\$ from Table 5 and % from Table 4)			
Construction Opportunities	\$2,149,201,257	11.15%	\$239,635,940
Professional Services	\$504,937,041	4.18%	\$21,106,368
Total Amount of Goal in Dollars			\$260,742,309
Base Figure Calculation			
Total Goal Dollars ÷ Total Opportunities			9.82%
(\$260,742,309) ÷ (\$2,654,138,299)			

STEP 2: ADJUSTMENTS TO THE BASE FIGURE

49 CFR Section 26.45 (d) identifies numerous examples of the various types of data that can be examined in order to adjust the Step 1 base figure to narrowly tailor the goals to the local market. Step 2 of the goal setting methodology is intended to adjust the base figure from Step 1 to reflect, as accurately as possible, the DBE participation CDOT would expect in the absence of discrimination. CDOT considered the following factors in order to determine whether an adjustment to the Step 2 base figure is appropriate for the CDOT FY 2022-2024 goal.

Professional Services Prequalification List

CDOT requires all consulting firms seeking work on CDOT professional services contracts to be prequalified and have a Master Price Agreement. The list of prequalified firms is a much more accurate representation of potential bidders than the Census and UCP Directory and is effectively a complete bidder’s list of professional services consultants.

As of May 3, 2021, there were 216 prequalified professional services consultants. Of those, 56 (25.93%) were DBE certified. Given the significant disparity between the base figure for professional services (4.18%) and the prequalified consultant listing, CDOT determined that the two data sets should be treated as equal weights in the calculation and averaged to determine a base figure for availability in professional services contracting, as shown in Table 7.

Table 7: Adjusted Base Figure for Availability in Professional Services

Professional Services: $25.93\% + 4.18\% = 30.11\%$
Average: $30.11\% \div 2 = 15.06\%$

In the past, CDOT did not have an accurate method of tracking and summarizing DBE participation on Professional Services contracts. In FFY 2021, CDOT began using B2GNow to automate several contract compliance tasks including tracking DBE participation by Master Contract and Task Order. For the first six months of FFY 2021, CDOT attained 21.26% DBE participation on federal-assisted professional services contracts, as shown in Table 8 below. This provides additional justification for the upward adjustment outlined in Table 7 above.

Table 8: DBE Participation on Professional Services Contracts in FFY 2021

FFY	Professional Services Contract Awards (Federal Dollars Only)	Total Awarded to DBEs (Federal Dollars Only)	DBE Participation Percentage
2021	\$4,669,838	\$992,692	21.26%

Adjusted Base Figure

CDOT then made an adjustment to the base figure by using the resulting 15.06% as the relative availability of professional services firms rather than 4.18% which was used in Step 1. **This adjustment resulted in an overall goal of 11.89%** as shown in Table 9 below.

Table 9: Adjusted Combined Base Figure

Goal Calculation (\$ from Table 5 and % from Table 4)			
Construction Opportunities	\$2,149,201,257	11.15%	\$239,635,940
Professional Services	\$504,937,041	15.06%	\$76,043,518
Total Amount of Goal in Dollars			\$315,679,459

Base Figure Calculation	
Total Goal Dollars ÷ Total Opportunities (\$315,679,459) ÷ (\$2,654,138,299)	11.89%

Historical DBE Participation

The *USDOT Tips for Goal-Setting* suggests evaluating past DBE participation as a factor for Step 2 adjustment. Table 10 represents DBE participation on CDOT construction contracts over the past five years compared to the DBE goal set for each year. The historical median over those years is 12.41%.

Table 10: DBE Participation on Past Construction Contracts

FFY	Annual DBE Goal	Actual DBE Achievement (Federal Dollars Only)
2016	12.15%	13.20%
2017	12.15%	11.10%
2018	11.55%	13.01%
2019	11.55%	12.41%
2020	11.55%	11.69%
Historical Median		12.41%

The *Tips* state “if your records suggest levels of past participation very similar to the number you calculated in Step 1, then it is not necessary to make any adjustment for past participation.” The Step 2 adjusted goal of 11.89% and the historical construction median of 12.41% are similar enough to not constitute another Step 2 adjustment.

Other Disparity Studies

2020 State of Colorado Disparity Study

As mentioned previously, a disparity study² was conducted in 2020 for the State of Colorado by Keen Independent Research. The study indicated that there is not a level playing field for minority- and women- owned businesses in the Colorado construction, construction-related professional services, other professional services, goods, other services, and brokerage and investment industries. The scope of the study was comprehensive and focused on businesses owned by people of color, women, persons with physical or mental disabilities, and members of the LGBT community. It analyzed nearly 22,000 state-funded contracts and subcontracts and 17,000 contractors in the Colorado market area.

Because the study was so comprehensive, it did not include a level of granularity required for the Overall Annual DBE Goal Methodology. The purpose was not primarily focused on highway construction and construction-related professional services. Therefore, the data in several contracting categories were combined such as highway construction and building construction. It also included only state-funded contracts which account for only a small percentage of CDOT construction and professional services contracts and are not representative of contracts eligible for the DBE program.

² 2020 State of Colorado Disparity Study: <https://osc.colorado.gov/spco/state-of-colorado-disparity-study>

Additionally, the disparity study data did not include whether a firm was DBE certified. CDOT conducted further review using the *Colorado UCP DBE Directory* and determined there were a total of 20 DBEs with a primary NAICS relevant to highway construction and professional services included in the study. CDOT's analysis of the UCP DBE Directory identified 732 DBEs with these primary NAICS. Therefore, CDOT chose to consider the complete pool of DBEs and the more precise bidder's list of CDOT prequalified professional services firms.

The study did demonstrate that disparities exist in State contracting. It found that minority- and woman-owned businesses experience barriers and unequal opportunities to; enter and advance as employees within certain industries, start and operate businesses, and obtain financing and bonding to start, operate, and expand their business. The study made a recommendation to the State to "establish policy and overall annual aspirational goals for eligible contracts" which supports the use of race-conscious goals by CDOT on federal-assisted contracts.

City and County of Denver 2018 Disparity Study

A disparity study³ was conducted by BBC Research & Consulting in 2018 pursuant to a city ordinance to evaluate every 5 years the utilization of minority and women-owned contractors in city procurement of construction, professional design, and goods and services. As with the State disparity study, this study showed that minorities, women, and minority- and woman-owned businesses face substantial barriers nationwide and in Denver. It also found disparities in contracting in all contracting categories. This again supports CDOT's use of race-conscious goals and race-neutral measures to level the playing field for DBE firms.

The City and County of Denver does not publish aspirational goals for the DBE program; however, federal regulations state the national aspirational goal for DBE participation is 10%, which DSBO has attained or exceeded. The City and County of Denver does set aspirational goals for Minority/Woman-owned Business Enterprises (M/WBEs). The Division of Small Business Opportunity 2018 Annual Report⁴ states the M/WBE aspirational goal for construction is 24% and professional services is 33%. Because these aspirational goals are set based upon availability of contractors in the Denver metro area and not statewide, CDOT concluded it is not an "apples to apples" comparison. The Denver metro area has the highest concentration of M/WBEs in the state which makes it reasonable to assume the availability of M/WBEs would be higher in that area than collectively across the state.

The study also considered the overall annual DBE goal for FAA-funded contracts awarded by Denver International Airport (DEN). The analysis indicated that potential DBEs might be expected to receive 16.2% of the City's FAA-funded prime and subcontract dollars. Because the study was geographically constrained to the Denver Metropolitan Statistical Area (MSA) and FAA-funded contracts and FHWA-funded contracts are substantially different, CDOT did not use this as a comparative factor for a Step 2 adjustment.

³ City and County of Denver 2018 Disparity Study:

<https://www.denvergov.org/content/dam/denvergov/Portals/690/DSBO/DS%20FULL%20REPORT%200410.pdf>

⁴ City and County of Denver Division of Small Business Opportunity 2018 Annual Report:

https://www.denvergov.org/content/dam/denvergov/Portals/690/Reports%20and%20Studies/DEDO_DSBOAnnualReportFINAL%20PRINT%20READY_093019.pdf

Future Contracting Opportunities

As noted earlier, CDOT anticipates that the work contracted over the next three fiscal years (FFY 2022-2024) will be similar in nature to that contracted over the past three years. Historical data shows that the types of work have remained consistent regardless of the project delivery method. However, the availability of funding and the sources of funding may impact the contracting opportunities in the future.

Impact of Pandemic

The arrival of COVID-19 in March 2020 and the subsequent quarantine and shut down of many businesses caused significant uncertainty in the industry. The State disparity study was being conducted during this time and noted that nearly all business owners they interviewed had been impacted by the COVID-19 pandemic. Many business owners reported they had seen contracts canceled or put on hold, supply chain limitations, and other unforeseen challenges. Some business owners reported downsizing or laying off staff to adapt to reductions in workload.

Additionally, CDOT experienced a significant reduction in gas tax revenue, as well as the State's Highway User Tax Fund, which is the primary source of transportation funding in Colorado. There were also delays in state funding allocations due to uncertainties in the state budget and the bond market. These factors caused CDOT to re-prioritize critical projects and delay the advertisement of some projects scheduled to release over the summer.

Despite these market conditions, construction remained "essential" and the end of the fiscal year saw CDOT contract award totals similar to previous fiscal years. Small businesses in the industry contracted and expanded to match the environment. Federal assistance programs such as the SBA Paycheck Protection Program (PPP) helped small businesses survive a year of uncertainty. Only 3 firms contacted for the State disparity study indicated that they were no longer in business due to the pandemic. This indicates that the pandemic did not adversely affect the future availability and ability of contractors in Colorado to deliver services and participate in CDOT contracts.

Funding Outlook

Over the last few years, the Colorado Legislature passed multiple bills (SB228, SB262, SB267) to assist with funding transportation in the state. In particular, SB267 will infuse approximately \$450 million per year toward CDOT project delivery in FY 2021 and FY 2022. According to the FFY 2022 – FFY 2025 STIP⁵, CDOT has currently programmed approximately \$820 million of projects in FY 2022 and FY 2023. This same level of contracting dollars is expected to continue in FFY 2024. In May, 2021, the Colorado Senate approved a \$5.3 billion transportation funding package and as of this writing, it is waiting for approval by the House. This is all in addition to a \$2 trillion proposal at the federal level which is targeting fixes to the nation's aging infrastructure.

Stimulus funds, transportation bills, grants, revenue from new transportation fees, and various local agency partnerships promise to deliver a robust CDOT contracting program over the next three fiscal years. CDOT expects that there will be a steady increase in funding rather than a potential post-pandemic decline which was predicted last year. This has raised concerns from industry that the large volume of work may potentially impact the availability of DBE firms that provide services in high-demand subcontracting categories such as geotechnical, concrete, traffic control, trucking, etc.

⁵ CDOT FFY 2022 – FFY 2025 Statewide Transportation Improvement Program (STIP):
<https://www.codot.gov/programs/planning/transportation-plans-and-studies/stip>

As evidenced by past fluctuations in CDOT’s contracting program, DBE firms have grown to meet demand and survived periods of slow-downs. **Section H** of the *USDOT Tips for Goal Setting* states; “It is never appropriate to adjust your measurements of relative DBE availability, either in Step One or in Step Two, solely because the size of your contracting program will change in the next fiscal year. For example, if you assume that non-DBEs will be able to expand to compete for large influx of new program dollars, you should make the same assumption about DBEs, absent specific evidence to the contrary.”

A review of past DBE participation showed there is not a direct correlation to the total amount of contract dollars awarded and the percentage of DBE participation. In fact, CDOT experienced greater DBE participation in years when there were more total federal-assisted contract dollars awarded. Table 11 shows that the highest DBE goal attainment was in FFY 2018 when the total federal-assisted contracting dollars was also the highest.

Table 11: Dollar Value of Past DBE Participation (Federal Dollars Only)

FFY	Construction Contract Awards (Federal Dollars Only)	DBE Participation (Federal Dollars Only)	DBE Participation Percentage
2018	\$366,647,893.00	\$47,717,947.00	13.01%
2019	\$358,532,618.02	\$44,501,370.00	12.41%
2020	\$307,039,293.70	\$35,908,196.23	11.69%

The resulting conclusion was that although the overall amount of federal contracting dollars may increase with the addition of stimulus funding and other sources, the ratios of the type of work to be performed will remain approximately the same. Rather than making adjustments to the base figure based upon potential scenarios, CDOT will re-evaluate DBE participation for federal-aid projects annually to determine whether market conditions warrant adjustments to the overall DBE goal, or individual race-conscious and race-neutral components.

BREAKOUT OF RACE NEUTRAL / RACE CONSCIOUS PARTICIPATION

The federal regulations require CDOT to meet the maximum feasible portion of its overall goal by using race and gender-neutral means of facilitating DBE participation (see *CFR 49 Part 26.51(a)* and also *26.45(f)(3)* and *26.51(c)*). Race-neutral participation includes:

- DBEs who win prime contracts through customary competitive procurement procedures;
- DBEs who are awarded subcontracts on prime contracts that do not carry a DBE goal (0% assigned DBE goal); and
- DBEs who are awarded subcontracts in excess of the stated DBE project goal.

CDOT examined the race-neutral attainment for the past five federal fiscal years to determine the maximum feasible race-neutral participation. The median was used instead of the average to exclude outliers – that is, abnormally high or low numbers. Table 12 shows race-neutral achievement through prime contract awards to DBE firms. Table 13 shows race-neutral achievement through subcontract awards to DBE firms in excess of project goals or on projects without a DBE goal. Table 14 shows that **CDOT achieved a median of 3.47% of the goal over the past five years through race-neutral means.**

Table 12: Past DBE Prime Construction Awards

FFY	Total Award Amount (Federal Dollars Only)	DBE Prime Award Amount (Race Neutral)	% of Total Award Amount
2016	\$492,941,677	\$4,069,862	.83%
2017	\$347,835,005	\$2,045,779	.59%
2018	\$366,647,893.00	\$0.00	0.00%
2019	\$358,532,618.02	\$0.00	0.00%
2020	\$307,039,293.70	\$260,000.00	0.08%

Table 13: Past DBE Race Neutral Construction Subcontract Amounts

FFY	Total Award Amount (Federal Dollars Only)	DBE Sub Award Amount (Race Neutral)	% of Total Award Amount
2016	\$492,941,677	\$21,171,784	4.29%
2017	\$347,835,005	\$10,026,279	2.88%
2018	\$366,647,893.00	\$7,598,638.00	2.07%
2019	\$358,532,618.02	\$9,172,742.00	2.56%
2020	\$307,039,293.70	\$14,757,954.96	4.81%

Table 14: Combined Past Race Neutral Participation

FFY	Race Neutral Attainment (Federal Dollars Only)
2016	5.12%
2017	3.47%
2018	2.07%
2019	2.56%
2020	4.89%
Median	3.47%

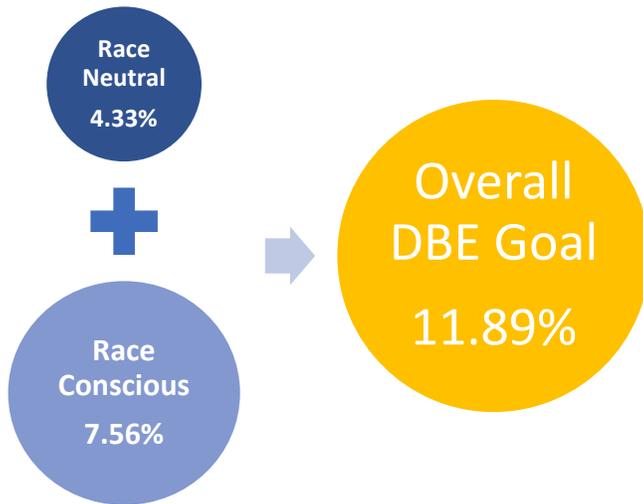
CDOT also considered the amount by which past goals were exceeded, as well as past history of inability to achieve goals in determining the race-neutral and race-conscious proportion consistent with *USDOT Tips for Goal Setting*. Specifically, USDOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years’ goals that was not met or increasing the race-neutral portion to account for exceeding goals. Table 15 shows that **CDOT has consistently exceeded the goal and has a median of .86% of participation in excess of the goal.**

Table 15: Past DBE Goal Attainment

FFY	Annual DBE Goal	Actual DBE Achievement (Federal Dollars Only)	Difference
2016	12.15%	13.20%	1.05%
2017	12.15%	11.10%	-1.05%
2018	11.55%	13.01%	1.46%
2019	11.55%	12.41%	.86%
2020	11.55%	11.69%	.14%
Historical Median		12.41%	.86%

Race-Neutral and Race-Conscious DBE Goals

CDOT is confident that it will be able to achieve a portion of DBE participation through race-neutral means based upon historical trends and the successful implementation of various race-neutral program elements. To calculate the race-neutral portion, CDOT used the median race-neutral goal achieved over the past 5 years (3.47%) and added the median percentage in which the DBE goal was exceeded (.86%). This resulted in a race-neutral goal of 4.33%. The race-conscious goal was then set at 7.56% to total the overall annual goal of 11.89%.



The overall DBE goal is slightly more than in the past three years and the percentage allocated to race-neutral participation has been increased. CDOT aspires to create a balance between race-conscious goals and race-neutral means of achieving DBE participation on federal-assisted contracts. The race-neutral goal is considered a minimum and not the ceiling. CDOT will continue to actively increase the amount of race-neutral DBE participation and reduce the reliance on race-conscious goals to meet the overall goal.

One mechanism is through CDOT’s race-neutral Emerging Small Business (ESB) program. CDOT is currently developing program enhancements that will support, and hopefully increase, DBE prime

contractor participation and reverse the downward trend in race-neutral participation encountered in 2018 and 2019 (see Table 14) primarily due to a lack of DBE prime contracts (see Table 12). Details about the ESB program are provided in the next section.

As new programming is implemented, CDOT will monitor and adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation. On a quarterly basis, CDOT will:

- Separately track and report race-neutral and race conscious participation.
- Maintain data on DBE achievements in those contracts with and without contract goals, respectively.
- Consolidate data for an annual goal review and adjustment, if necessary.

Race-Neutral Methods

It is the goal of CDOT to meet the maximum feasible portion of its DBE goals by using race-neutral means of facilitating DBE participation. The ongoing initiatives described below seek to reduce discriminatory barriers, increase capacity and level the playing field for the participation of DBEs and other small contractors. They are also designed to assist CDOT in increasing race-neutral participation on its contracts.

Marketing and Outreach

The pandemic created a significant shift in how outreach activities were conducted during 2020. A quick pivot to online events and networking ensured that CDOT continued to regularly engage the small businesses community. The success of many of these activities has encouraged a hybrid approach of both virtual and in-person outreach in the future. CDOT intends to continue providing and participating in the following:

- **Virtual and in-person statewide conferences**, seminars, and community outreach activities for the purpose of informing potential contractors of CDOT contracting procedures, DBE and ESB certifications, and available business opportunities.
- **CDOT major project outreach events** and other “meet-and-greet” events to bring prime contractors together with DBE firms prior to proposals.
- **Monthly member meetings and events** hosted by stakeholder partner associations including; Colorado Contractor’s Association, Associated General Contractors of Colorado, American Council of Engineering Companies, Hispanic Contractors of Colorado, Conference of Minority Transportation Officials, the Women’s Transportation Seminar, USDOT’s Small Business Transportation Resource Center, Rocky Mountain Minority Supplier Diversity Council, Colorado Minority Business Office, Colorado Black Chamber of Commerce, Procurement Technical Assistance Center, Denver Small Business Office, and others who help promote CDOT contracting opportunities and relevant certifications.
- **Quarterly Small Business Collaborative Forums** in separate tracks for construction and professional services to discuss relevant small business topics and address issues raised by the small business community, industry stakeholders, and prime contractors.
- **Quarterly CDOT Transportation Commission Small Business Committee.**

- **Special programs** such as the U.S. DOT Bonding Education Program, HCC Contractor Academy Scaling Program, The Opportunity Council Pitch Competition, and the Denver Metro Chamber of Commerce Transportation Trout Tank.
- **The Unified Certification Program committee** to maintain the accuracy of the DBE directory as the single source for identifying DBEs currently certified in Colorado (www.coloradodbe.org).
- **Monthly email newsletters** and special announcements that include information about upcoming contracting opportunities, industry events, workshops and training, specification changes, and a list of newly certified DBE and ESB firms.
- **Free custom Bid Matching System** that delivers weekly emails to opt-in subscribers with any newly advertised construction projects that have bid items in their relevant NAICS.
- **Active outreach on a regular basis** to ensure a level playing field for DBEs including transparency about CDOT's DBE and ESB Programs and requirements, prompt payment clauses for subcontractors, restricted projects, mentor-protégé programs, and other support services.

Emerging Small Business Program

CDOT's Emerging Small Business Program (ESB) is a race-neutral program designed to aid small businesses in obtaining work on CDOT's highway construction and design projects. Many of the small firms participating in the ESB Program are also certified DBEs. The following program elements have been successfully implemented:

- **Increased Size Standard** – On May 20, 2021, the Colorado Transportation Commission approved several administrative and programmatic changes to the ESB program. The most substantive change was increasing the size standard for eligibility. As of July 15, 2021, the ESB program will include an SBE Level which will allow small businesses with revenues up to the SBA small business size standard to participate in the ESB program. Previously the program size standard that was 50% of the SBA size standard in the firm's primary NAICS. The maximum cap will also be increased to the same dollar threshold as the DBE program cap. This better aligns the ESB program with the DBE program and encourages race-neutral participation. The additional SBE Level will provide opportunities for larger DBE firms to take advantage of various ESB program benefits, including support for prime contracting.
- **ESB Restricted Projects** – Under the ESB Program rules, construction and professional services projects under \$1 million may be restricted for award to an ESB firm. This limits competition to small businesses and facilitates DBE growth into prime contractor and consultant roles. CDOT currently evaluates \$1 million Non-Project Specific (NPS) contract tiers for ESB awards. CDOT also evaluates smaller specialized construction contracts and is considering formalizing a process to evaluate all projects less than \$1 million in construction cost.
- **Tracking & Enforcement Mechanisms** – In 2015, CDOT adopted the B2GNow system which has enabled more effective tracking and enforcement of DBE and ESB commitments, as well as prompt payment compliance. Automated DBE tracking was implemented in FFY 2021 for Professional Services Master Contracts and Task Orders.
- **Mentor-Protégé Program** – CDOT successfully relaunched the Mentor-Protégé program in 2018 and 16 teams have participated over the past 3 years. The program has been very successful in

helping to grow small and disadvantaged businesses by increasing capacity, capabilities, and contracts with CDOT.

- **Bond Guarantee Program** – CDOT launched a pilot program in 2019 to help small businesses obtain bonding or increase bonding limits to bid as a prime contractor on CDOT construction projects. CDOT is working with Lockton Companies, LLC to assist with qualifying small businesses and connecting with sureties using a CDOT partial guarantee.

Emerging Small Business Program Enhancements

CDOT is currently in the process of updating the ESB program to provide additional benefits to small businesses and increase race-neutral participation. A primary focus of these enhancements is to create more balance between race-conscious and race-neutral means of achieving overall DBE participation on CDOT federal-assisted contracts. Specifically, several program elements are being proposed to address the lack of DBE prime contractor participation over the past three fiscal years.

DBE Supportive Services: Connect2DOT

CDOT uses DBE supportive service funds for the Connect2DOT Program which is a cooperative agreement with the Colorado Small Business Development Center (SBDC) Network. The program offers technical assistance to DBEs in accordance with *23 CFR 230.204*. There are 12 SBDCs that offer program services across the state and approximately 220 business consultants available throughout the network. A complete description of the program can be found at www.connect2dot.org.

The program and partnership with the SBDC Network have been extremely successful over the past 9 years. Last fiscal year, the Connect2DOT program:

- Provided one-on-one consulting to 669 small businesses in the construction industry.
- Assisted 40 firms with obtaining DBE certification and 15 firms with ESB certification.
- Enabled small business to access to \$2.3 million in financing.
- Helped clients increase sales by \$20.27 million and create 72 new jobs.

Below is a list of some of the services provided to small businesses through the Connect2DOT program. Due to the pandemic, most of these were quickly converted from in-person to virtual programs.

- **LEADING EDGE™ for Transportation** – One of the premier offerings provided through Connect2DOT is the LEADING EDGE™ for Transportation program. The program is an intensive 9-week business planning course combined with individual consulting designed to develop leadership skills, facilitate key introductions with the business community, generate strategies for growth, and help DBEs perform successfully on CDOT projects. The course covers topics such as finance, marketing, business management, government contracting, bidding, workforce development, and more.
- **One-on-One Technical and Resource Assistance** – There are more than 220 business consultants in the SBDC Network and another 15 virtual Connect2DOT consultants that provide personalized consulting on topics such as business planning, accounting, HR, marketing, project take-offs, bidding/estimating, project management, bonding, equipment leasing, financial capacity, certifications, CDOT systems, and more. Small businesses have free, confidential, and unlimited access to the expertise of these consultants statewide.

- **Workshops and Education** – Connect2DOT hosts an average of 45 training classes each year virtually and at locations across the state. These workshops are free or low cost and provide instruction on a variety of technical topics geared toward construction or professional services contractors. In FFY 2021, CDOT grouped 55 classes into 11 Training Series and offered them live online and on-demand. The SBDC Network also hosts approximately 30 training classes every month on general business topics that are low cost and accessible to DBE and ESB firms.
- **Industry Events** – Typically, Connect2DOT has participated in more than 35 industry events each year targeted to small businesses. The 2020 pandemic scaled back the number of events available to attend and shifted most to a virtual format. Connect2DOT intends to continue participating in industry events, whether virtual or in-person. These outreach efforts help recruit new firms to fulfill project demands, as well as developing the skills of existing DBE firms.
- **Industry Partnerships** – Connect2DOT partners with industry organizations such as local and minority chambers, contracting associations, surety and insurance agents, small business lenders, workforce development centers, and support programs such as the USDOT West Central Small Business Transportation Resource Center (SBTRC), Procurement Technical Assistance Center (PTAC), and Colorado Minority Business Office (MBO). These partnerships ensure comprehensive support to help DBEs increase competitiveness, build capacity, and perform successfully as prime and subcontractors on CDOT projects.

PUBLIC PARTICIPATION & FEEDBACK

In accordance with *49 CFR 26.45*, CDOT reached out to industry stakeholders and minority group representatives to obtain feedback on the methodology and data being used to calculate the overall goal and evaluate barriers for DBEs.

CDOT published the overall goal on its website at <http://codot.gov/business/civilrights> on June 4, 2021 and directly notified relevant stakeholder groups and DBEs at association meetings and the CDOT Small Business Collaborative Forums. No substantive comments were received during the open comment period. This draft will also be presented for review and approval via resolution by CDOT's Transportation Commission.

Please contact the CDOT Civil Rights and Business Resource Center with any questions or comments regarding this methodology:

CDOT Civil Rights and Business Resource Center
2829 W. Howard Place, Suite 139
Denver, CO 80204
(303) 757-9234
dot_civilrights@state.co.us