



CDOT'S FEDERAL FISCAL YEAR (FFY) 2010 OVERALL ANNUAL DBE GOAL

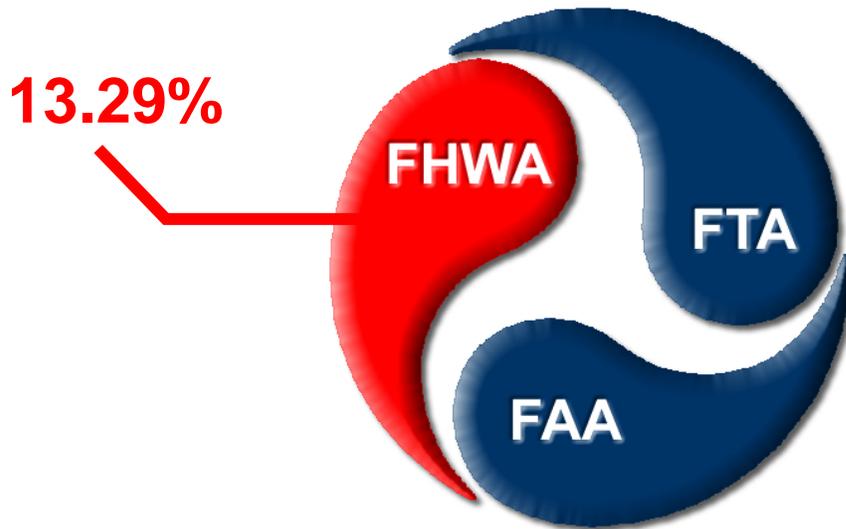


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BACKGROUND

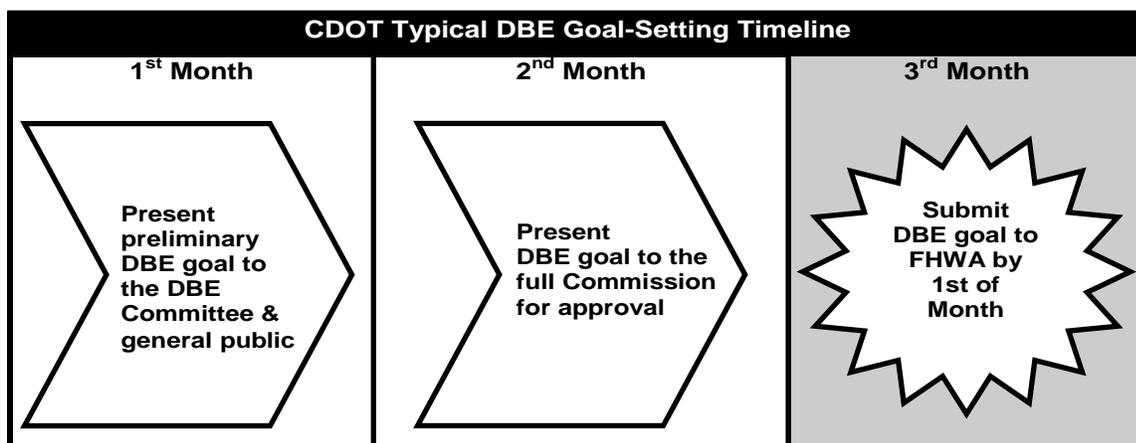
The Colorado Department of Transportation (CDOT) contracted with D. Wilson Consulting Group to perform a new statewide Disparity Study which was finalized in November 2009. One of the key deliverables in the Disparity Study contract provides CDOT with all the necessary information required for establishing an overall annual Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Year 2010 (FFY 2010). The Disparity Study overall goal recommendation follows the goal-setting methodology as outlined in the Federal Regulations (see 49 CFR Part 26). The study also provides CDOT with the best and most current data available to help ensure CDOT's DBE Program continues to be narrowly tailored to the unique characteristics present in the Colorado highway industry.

Due to the fact that the new Disparity Study results were not available until November 2009; CDOT submitted a letter to the Colorado Division of the Federal Highway Administration (FHWA) requesting an extension of its approved FFY 2009 DBE annual goal (12.80%). The purpose of this request was to allow CDOT adequate time to evaluate the Disparity Study FFY 2010 goal recommendation and to ensure a robust public participation effort was conducted on that recommendation. CDOT received a letter from the Colorado Division of FHWA approving its goal extension request on October 2, 2009 (see **Exhibit 1**).

At their December 17, 2009 meeting, the Colorado Transportation Commission passed a resolution (see **Exhibit 2**) setting a **13.29%** overall annual Disadvantaged Business Enterprise (DBE) goal on federal-funded highway construction and design contracts for FFY 2010.

CDOT established the **13.29%** overall annual DBE goal based upon the federally approved methodologies. After consideration of the issues described in the following sections, the FHWA is being asked to approve CDOT's **13.29%** overall annual goal for FFY 2010.

Figure 1: CDOT Goal-Setting Timeline



GOAL-SETTING METHODOLOGY

In setting the overall annual DBE goal for CDOT, the USDOT requires that the goal setting process begin with a base figure for the relative availability of DBEs. 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 USDOT-assisted contracts. In particular, recipients must follow the USDOT's two-step methodology for goal setting to determine the level of DBE participation they expect absent the effect of discrimination:

- **Step 1** – Compute base figure for relative availability of ready, willing, and able DBEs
- **Step 2** – Adjust the base figure to make it as precise as possible utilizing the guidelines established in 49 CFR Part 26.45 and the goal-setting tips published by the USDOT's Office of Small and Disadvantaged Business Utilization (OSDBU)

CDOT is also required to project the portions of the overall goal it expects to be met through race-neutral and race-conscious measures, respectively (see 49 CFR Part 26.51). Additionally, recipients must provide for public participation in the establishment of their overall goal as well as specify the relevant market area used for the calculation.

Disparity Study FFY 2010 DBE Goal Recommendation

The Federal Regulations governing the DBE Program provide a list of acceptable mechanisms for establishing an overall annual DBE goal (see 49 CFR Part 26.45). One of the most comprehensive methods listed is to use data from a recently conducted disparity study.

As previously mentioned, CDOT finalized its statewide Disparity Study report in November 2009 and has posted the results (report and appendices) online at <http://www.dot.state.co.us/EEO/index.htm>:

- **CDOT 2009 Disparity Study Final Report:**
http://www.dot.state.co.us/EEO/Documents/CDOT_2009_Disparity_Study.pdf
- **CDOT 2009 Disparity Study Appendices:**
<http://www.dot.state.co.us/EEO/Documents/CDOT%20Disparity%20Study%20Appendices.pdf>

In Chapter 8 (*Findings and Recommendations*) of the 2009 Disparity Study report is a *Recommended DBE Goal* section that begins on page 8-4. This section of the report provides the factual basis for establishing an overall annual DBE goal of 13.29% on federal-funded CDOT highway construction and design contracts for Federal Fiscal Year 2010 (FFY 2010). The state of Colorado was determined to be the relevant market area (see page 5-6 of the report).

CDOT has worked closely with the D. Wilson Consulting Group to help ensure the information contained in the goal-setting section of Chapter 8 is as accurate as possible. One area of the methodology that raised significant internal discussion was the use of M/W/DBE firms in determining availability and utilization instead of only certified DBE firms. On page 8-5 of the study, D. Wilson makes the following statement to help justify the inclusion of all M/W/DBE firms:



The use of only certified DBE firms would underestimate the number of the M/W/DBE firms because there is not an equal method of determining non-DBE firms. In order for the availability analysis to be equally applied to both DBE and non-DBE firms, we are including M/W/DBE firms in our analysis. The use of M/W/DBE firms is a standard practice in conducting disparity studies.

CDOT understands the need to expand the availability and utilization analysis contained in Disparity Studies to include all ready, willing and able minority and women-owned firms. However, CDOT is not permitted to report M/W/DBE participation to its federal partners when submitting the required DBE reports. Only certified DBE participation is allowed on the federally-required DBE reports.

This discussion reached its apex when reviewing the study's recommended race-neutral and race-conscious anticipated split for reaching an overall annual DBE goal of 13.29% for FFY 2010.

Race-Neutral DBE 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 (hereafter referred to as race-neutral). When a DBE is awarded a contract as the prime contractor/consultant or when contractors award subcontracts to DBEs on projects that have a 0% goal, or award subcontracts to DBEs which exceed the participation required by the project goal, this is recognized as race-neutral participation.

Due to the fact that the 2009 Disparity Study used a broader definition of available DBE firms which included all reported M/W/DBE firms, CDOT received several public comments (see Public Participation section below) expressing concerns on how the study calculated its recommended race-neutral (RN) projection of 11.06% and anticipated only needing 2.23% in race-conscious (RC) mechanisms to achieve the overall 13.29% goal. In general, the majority of the public comments were particularly concerned with the study's inclusion of non-DBE certified (i.e., M/WBE firms that aren't also DBE certified) prime contractor/consultant participation as a partial basis for projecting a similar level of race-neutral DBE participation in FFY 2010.

As part of CDOT's strategic plan for achieving its FFY 2010 overall goal of 13.29%, it will be conducting an extensive DBE certification outreach effort to ensure that all of the available M/WBE firms (as reported in the 2009 Disparity Study) receive technical assistance to get DBE certified where appropriate. That said, given that such an effort is likely to take at least six months or more to start yielding fruit in terms of additional certified DBE availability and utilization in Colorado, and that CDOT is only able to report certified DBE participation as race-neutral (i.e. certified DBE primes etc.), CDOT believes an adjustment to the study's recommended RN/RC split for FFY 2010 is warranted.



CDOT Adjustment to Anticipated Race-Neutral and Race-Conscious Division

CDOT has always considered the following factors in projecting the portion of its overall goal that it will be able to meet through race-neutral means:

- 1) Amount by Which Overall Goals Have Previously Been Exceeded
- 2) Past Participation by DBE Prime Contractors & Consultants
- 3) Past Participation by DBE Subcontractors and Subconsultants on Contracts without Goals

As a result of CDOT obtaining a portion of its past participation through the use of certified DBE primes, those attainments were considered race-neutral and were used as a basis for estimating a similar level of race-neutral participation in the next program year.

In addition to utilizing DBE primes, CDOT has also been able to achieve a portion of its past participation through the use of DBE subcontractors on contracts without DBE goals. Such attainments were also considered race-neutral and were used as an additional source for projecting a comparable level of race-neutral participation in the following year.

To adjust the 2009 Disparity Study’s recommended RN/RC projection of 11.06% (RN) and 2.23% (RC), CDOT reviewed the RN/RC forecasts it calculated over the same general time period as was covered by the study. CDOT closely evaluated and factored the 3 race-neutral elements as outlined above in each year’s projected race-neutral and race-conscious split. As a result of analyzing its FFY 2003 – 2008 overall annual DBE goal submittals, CDOT found that 16.07% was the median value for race-neutral percentage projections of overall annual DBE goals (see **Figure 2** below):

Figure 2: Median Race-Neutral Participation Projection

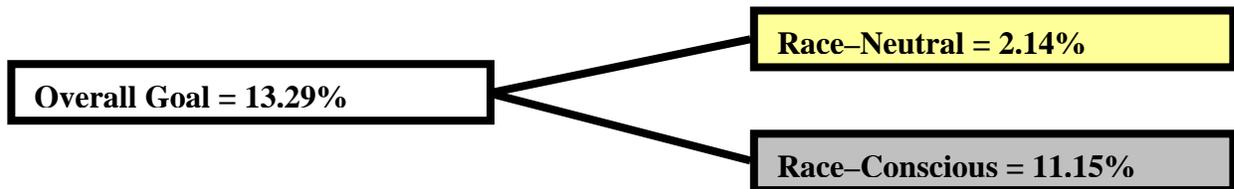
Federal Fiscal Year	Overall Annual DBE Goal	Race-Neutral (RN) Split	Race-Conscious (RC) Split	RN As % of Goal	RN Median As % of Goal
2003	10.93%	2.83%	8.10%	25.89%	16.07%
2004	12.99%	1.85%	11.14%	14.24%	
2005	11.79%	1.45%	10.34%	12.30%	
2006	12.19%	1.30%	10.89%	10.66%	
2007	13.76%	3.31%	10.45%	24.06%	
2008	12.80%	2.29%	10.51%	17.89%	



Applying the six-year median percentage value of 16.07% to the 13.29% overall DBE goal amount yields the following race-neutral projection for FFY 2010:

$$.1607 \times 13.29\% = \mathbf{2.14\%}$$
 race-neutral projection for FFY 2010

Thus, CDOT anticipates meeting the **13.29%** overall goal with **2.14%** race-neutral participation and achieving the remaining **11.15%** with race-conscious participation.



Public Participation (49 CFR Part 26.45 (g))

The regulation requires that the State must provide for public participation when establishing its overall goal. The following two general areas are specifically required:

1) Published Notice

- State the date the notice was published and the method used by the State to publish the notice.

2) Consultation & Public Comments

- Describe the consultation process the State used. If possible, list which minority, women's and general contractor groups, community organization and other officials or organizations took part in the consultation process.
- Summarize briefly the comments received through the public participation process, and explain any adjustments to the goal that the State made as a result of these comments.

Published Notice

CDOT's 2009 Disparity Study Report and associated appendices, which include its FFY 2010 overall annual DBE goal methodology, are posted on the CDOT website at:

<http://www.dot.state.co.us/EEO/index.htm>. This information was emailed to all firms on the CDOT Bidders Loop during (see <http://www.dot.state.co.us/EEO/Loop/>) requesting comment on the proposed goal. Public Notices (see **Exhibit 3**) were also placed in the Colorado publications listed below. CDOT used publications in the Denver metropolitan area as well as publications in other parts of Colorado, including the Western Slope and 4-Corners area:

- Trinidad Chronicle News
- Greeley Tribune
- Grand Junction Daily Sentinel
- Durango Herald
- Pueblo Chieftain
- Gazette Telegraph
- La Voz Hispana de Colorado
- Denver Weekly News
- Daily Journal
- El Seminario

Consultation & Public Comments

CDOT engages in year-round consultation by conducting a wide variety of outreach efforts. Each of the efforts outlined below (along with corresponding comments received) were designed to offer minority, women's and general contractor groups, community organization and other transportation industry stakeholders ongoing opportunities to dialogue directly with CDOT staff regarding its proposed overall DBE goal, ongoing project specific goals, as well as other DBE program related issues.

Industry Focus Groups

CDOT has instituted small business focus groups for both the highway construction and highway consultant industries. Each focus group is made up of several DBE firms and representatives from each contractor association and other industry stakeholders. CDOT meets with these focus groups to discuss current issues that are most pertinent to our DBE firms. Based upon the topic, CDOT engineers and contracting officers are brought in to provide subject matter expertise on specific issues.

The following industry related organizations have been invited to attend the focus group meetings. Each group was also contacted to comment directly on CDOT's proposed overall DBE goal (comment(s) included below if made):

- 1) Colorado Asian Chamber of Commerce
- 2) Colorado Contractors Association
- 3) Colorado Black Chamber of Commerce
- 4) African American Construction Council
- 5) Colorado Hispanic Chamber of Commerce
- 6) Rocky Mountain Indian Chamber of Commerce
- 7) Construction Development Center (CDC)
- 8) Division of Small Business Opportunity
- 9) Minority Business Office
- 10) Colorado Division of the Federal Highway Administration (FHWA)
- 11) Rocky Mountain Minority Supplier Development Council
- 12) Small Business Development Center
- 13) Hispanic Contractors of Colorado
- 14) Rocky Mountain Minority Contractors Association
- 15) American Council of Engineering Companies

Over the past few years, CDOT has used these focus groups as an opportunity to discuss our goal-setting process and communicate how to most effectively participate in our 2009 Disparity Study. Most of the comments and questions at the July 17, 2009 focus group were directed at our project specific goal setting process. Community stakeholders in attendance were primarily concerned with how contract specific DBE goals are set at CDOT and how CDOT can make this process as accurate (tied to DBE capacity concerns mostly from prime contracting community) and transparent as possible.

As a result of these ongoing discussions, CDOT updated and clarified its Good Faith Effort (GFE) specification, conducted an industry wide training on how DBE goal setting works at CDOT, and continued to make improvements to its Bidders List collection process (see <http://www.dot.state.co.us/EEO/DBEProgramPage.htm>).

CDOT also continues to implement an aggressive DBE outreach effort (including 1-on-1 outreach calls to hundreds of DBE firms based upon the unique opportunities available on each project) on its larger highway construction projects where prime contractors had historically struggled to achieve DBE contract goals.

Monthly Public DBE Committee Meetings

Under the direction of the Colorado Transportation Commission, CDOT holds a public DBE Committee meeting on a monthly basis. Each year CDOT's preliminary DBE goal for highway construction and design projects and the preliminary DBE goal for transit projects are presented at the DBE Committee meeting as part of CDOT's overall DBE goal setting process. At each of the monthly meetings, the public has the opportunity to submit both oral and written comments on the goal directly to the DBE Committee.

Over the past year, CDOT has received the following comments during its monthly DBE Committee meetings from industry stakeholders related to the DBE program:

- Concern from the prime contracting community about the aggressive timelines associated with ARRA projects and the impact that would have on the availability of ready, willing, and able DBE firms
- Concerns from smaller DBE firms that the types of projects (asphalt overlay etc.) selected for ARRA funding are very challenging to find many subcontracting opportunities on
- Industry concerns were raised on how exactly CDOT's GFE process works and how to remove some of the "subjectivity" – especially as this process relates to ARRA projects (see ARRA section for more outcomes on this discussion).
- See "Disparity Study Ongoing Outreach Efforts" below for further details on recent conversations dealing with the 2009 Disparity Study findings and the recommended FFY2010 overall annual DBE goal (at our 10/09 and 11/09 DBE Committee Meetings etc.)



ARRA Project Specific Outreach and Other Ongoing Efforts

CDOT hosted American Recovery and Reinvestment (ARRA) Project events and activities to engage our stakeholders in order to successfully get people back to work and create or save highway construction jobs.

- Community and stakeholder informational meeting to explain the ARRA program (DVD documenting this program complete with several interviews with of prime and DBE firms is available from CDOT upon request)
- Six Statewide Project Spotlighting events designed to
 - Ensure DBE projects goals were met
 - Provide detailed project information to the DBE community
 - Provide networking opportunities between prime contractors and DBEs
 - Provide employment information and opportunities
- Mandatory pre-bid outreach events for large projects
- Workshop specifically targeting Spanish speaking truckers
- Partnership with Colorado Workforce Centers to place the unemployed and underemployed in the highway construction industry
- Entry-level labor, trades and crafts training and job placement
- Subsequent meetings with minority and women business communities and highway industry partners to improve DBE program processes directly related to meeting DBE goals on ARRA projects including the Good Faith Efforts process and Project Specific Goal Setting process.
- Due to subsequent concerns raised within the contracting industry regarding the good faith effort process, CDOT and the FHWA division office extended the invitation to meet with DBEs, and one prime contractor who had GFE concerns to further discuss and evaluate the GFE process. This resulted in the decision to establish a special workgroup to review CDOT's GFE process. The workgroup was comprised of prime contractors, sub contractors, CDOT staff, members of the CDOT highway Commission and the FHWA division office. The result was a revision that was drafted that the division office and CDOT believe will enhance the GFE process.
- CDOT has continued partnering with this workgroup (and others) as part of its upcoming Disparity Study recommendations implementation effort (see "Disparity Study Ongoing Outreach Efforts" below)

CDOT continues to provide technical and supportive assistance to our DBE firms that are interested in bidding on ARRA projects. CDOT is working closely with the US DOT Short Term Lending institution located in Colorado, Solera Bank, to ensure that DBEs are aware of this program. CDOT is also partnering with the Small Business Transportation Resource Center (SBTRC) to ensure Colorado DBEs understand the new Bonding Assistance Reimbursable Fee program (BAP) and how they can access the ARRA appropriated funds (www.dot.gov/recovery/ost/osdbu/).

On Thursday, December 10, 2009, CDOT hosted another large ARRA project networking session for primes, potential subcontractors and DBE/ESB firms. This is an important and high-profile ARRA project happening in the Denver metro area. The DBE goal for the project is 13% and CDOT is confident that it can leverage its proven networking tools to help the prime contractors bidding on this project meet the goal.

CDOT/CCA Roundtables and Conferences

In partnership with the Colorado Contractors Associations (CCA), CDOT holds roundtable discussions in each of the 6 CDOT Regions with the prime contracting community as well as other industry stakeholders (meetings are open to the public and DBE firms are invited via the CDOT Bidders Loop as well as communications via CDOT's focus group meetings etc.). Roundtable agenda items over the past year have included the following DBE related topics:

- Disparity Study/Overall DBE Goal
 - CDOT staff provided clarification on how CDOT's annual DBE goal-setting process works and how the results of the ongoing disparity study would be incorporated into future submittals to US DOT
 - Prime contractors also had questions about how CDOT's DBE program could potentially be impacted by the Disparity Study in areas other than the recommended overall DBE goal. CDOT staff discussed the narrowly tailored requirement and how the Disparity Study results and recommendations could result in programmatic changes (e.g., a waiver for race-specific goal-setting, enhancements to race-neutral efforts and the CDOT Emerging Small Business program etc.)
- Project Specific Goal Setting
 - Comments (mostly from the prime contracting community) centered on a concern about there being enough DBE capacity in Colorado to meet some of the ARRA project DBE goals (especially given the aggressive award timelines and several similar projects hitting the street during the same period of time). CDOT staff worked with these prime contractors, CCA staff, and the DBE community to improve its Bidders List and also to initiate more aggressive and tailored outreach procedures designed to increase the effectiveness of primes in reaching the project specific goals (e.g., mandatory pre-bid networking sessions with DBEs, more active involvement of CDOT engineers, tailored phone calls from CDOT to DBEs with work codes matching project opportunities etc.)
- Local Agency Project GFEs
 - Prime contractors were concerned about Good Faith Efforts on Local Agency projects (tied to ARRA DBE capacity concerns mentioned above) and saw the need to better educate both the local agencies and the prime contracting community that all CDOT DBE specifications applied on these projects.

- CDOT staff has attended several local agency coordination and training meetings during the year to reinforce the required DBE program components and reporting requirements etc.

CDOT staff also participated in CCA's January 2009 Annual Conference by conducting a workshop on its GFE process. Again, the comments that were received were focused primarily on the potential impacts of the ongoing Disparity Study. Other comments focused on how primes didn't like the inherent subjectivity in the GFE process and encouraged CDOT to find a way to make the process as quantitative and objective as possible. Once again, concern was raised regarding DBE capacity on ARRA projects (same reasons as detailed above).

Conference of Minority Transportation Officials (COMTO)

CDOT is actively engaged with regularly scheduled COMTO meetings (usually one per month) in an effort to support its mission of training, education and professional development of minority transportation professionals.

Through these efforts, CDOT has been able to connect with several of our DBE firms that are also interested in bidding transit related projects as well as CDOT highway construction projects. Many of the questions we have received from DBE firms over the past year revolve around networking opportunities being made available on specific ARRA highway projects (see ARRA section).

Rocky Mountain Small and Disadvantaged Business Opportunity Council (SADBOC)

SADBOC is a non-political, nonprofit, informal, all volunteer council that works to enhance the marketability of small; small disadvantaged; veteran and disabled veteran-owned small business; hubzone small business; minority; and women business enterprises in the Rocky Mountain Region. CDOT staff have consistently supported and attended SADBOC's monthly and quarterly meetings (including economic empowerment events that occur as part of MED Week etc.). CDOT has not received any comments from firms about the DBE Program via this forum over the past few meetings.

Rocky Mountain Minority Contractors Association (RMMCA)

RMMCA attends the CDOT quarterly industry focus group and has been involved with providing input on outreach events tied to upcoming CDOT projects as well as providing feedback on CDOT highway specifications such as our updated GFE specification. CDOT also works closely with RMMCA to support its complimentary mission of increasing minority owned business participation in the horizontal construction industry. Specifically, CDOT attends monthly RMMCA planning meetings to offer support and resources. During recent meetings (May and June 2009), CDOT staff helped RMMCA identify some strategic partnering opportunities and has been instrumental in helping this organization develop a more focused strategy on implementing mentor-protégé concepts like job shadowing and small business cross training opportunities etc.



CDOT Construction Development Center (CDC)

CDOT also works closely with industry organizations to provide training and outreach for DBE (and potential DBE) firms through CDOT's Construction Development Center (CDC). Over the past year, CDOT has held over 60 individual "orientation" sessions with DBE firms on how to do work with CDOT. CDOT has also held several training sessions on the following topics: estimating, bonding, contract compliance/certified payroll, as well as legal/contract seminars. CDOT also continues to provide tailored 1-on-1 technical assistance to DBE firms actively trying to procure highway work.

Services are available to any certified Disadvantaged Business Enterprise (DBE). CDOT staff work with businesses to identify needs of each business and develop plans to assist the companies. Additional services include

- A construction projects plans room with plans available for overnight and weekend checkout
- Computer workstations with internet access
- Construction-oriented software
- A reference library with CDOT publications, industry newspapers and periodicals
- A Xerox 3001 Reprographic Machine and HP 500 Printer Plotter

2009 Disparity Study Ongoing Outreach Efforts

In addition to the extensive outreach efforts already accomplished as part of the CDOT 2009 Disparity Study (see CHAPTER 7.0 – Anecdotal Analysis of the 2009 Disparity Study Report), CDOT reviewed the information contained in the study and scheduled additional meetings to provide industry stakeholders with an additional opportunity to discuss the various recommendations as well as the overall DBE goal recommendation contained in the study. CDOT received the following comments on its FFY 2010 DBE goal methodology as part of this effort:

October 14, 2009 Public DBE Committee Meeting

- Center for Equal Opportunity made a presentation outlining the general findings and recommendations contained in the draft study
- Members of the CDOT Executive Management Team asked questions about race-neutral mechanisms CDOT could enhance (i.e., more outreach/networking events like the ones that have been effective for large projects and recent ARRA projects, unbundling projects where feasible, and restricted ESB projects etc.)
- The Disparity Study consultant (D. Wilson) fielded some questions on the methodology they employed to get the anecdotal information
- Committee members discussed the best way to get additional public comments on the FFY 2010 DBE goal

November 5, 2009 Subcontractor Focus Group Meeting

- Hispanic Contractors of Colorado (HCC) would like CDOT to further investigate the concept of “restricted projects” for just Emerging Small Businesses (ESB) firms to bid on
- Discussed ideas on how “restricted” ESB projects could potentially benefit DBE firms (that are also ESB firms etc.) and how some of these ideas could be launched as a pilot program
- Larger Colorado DBE firm would like to see CDOT focus more on strengthening its ESB program.
 - This firm agreed with the Disparity Study findings that many of the DBE issues are small business issues and can be effectively addressed in a race-neutral manner.
- Several firms raised concerns over the low race-neutral projection in the 13.29% DBE goal recommendation contained in the 2009 Disparity Study (concerns raised over the use of M/W/DBE versus only certified firms)

November 6, 2009 Subconsultant Focus Group Meeting

- A DBE firm commented that CDOT needs to continue improving its monitoring and reporting systems for tracking subconsultant participation on CDOT contracts
- Several firms raised concerns over the low race-neutral projection in the 13.29% DBE goal recommendation contained in the 2009 Disparity Study (concerns raised over the use of M/W/DBE versus only certified firms)
- Another DBE firm suggested CDOT hold “Quarterly Info. Sessions” with the small business community to discuss what is happening in the planning process and what CDOT projects are likely to be coming down the pipeline in the near future
 - Same firm also suggested a greater marketing focus for DBE and ESB program benefits (leveraging social media tools, case studies, webinars and even some commercials where appropriate etc.).
 - This firm stated she wouldn’t be where she is today without the DBE Program and would be happy to share what she has learned with other firms.

November 12, 2009 “GFE Phase 2” Focus Group Meeting

- A Prime Contractor expressed an interest in, and support for, CDOT pursuing a contractor rating system similar to the one we discussed at a previous meeting being used in Florida
- Several firms raised concerns over the low race-neutral projection in the 13.29% DBE goal recommendation contained in the 2009 Disparity Study (concerns raised over the use of M/W/DBE versus only certified firms)
- African American Construction Council (AACC) made the following comments during the meeting (and afterword in writing):
 - African Americans should receive set asides to overcome the persistent exclusion of their businesses
 - African Americans should have a special mentor-protégé program for selected design-build projects

- Race sensitive goals should be increased significantly and goals should be increased to promote greater opportunities on CDOT work
- The (disparity) study methodology has no justifiable basis for determining the population of MBE/WBE companies in any market. There are hundreds of small MBE landscape and paving contractors that are not discoverable by any objective means that I know of.
- I would estimate that over 98% of state businesses are small businesses by SBA standards. The collective populations of minorities and women would probably account for well over 70% of the state's population. How is it that a community which represents less than 30% of the state's population can effectively garner over 85% of state highway business without a presumption of special treatment?
- I would increase the goal of RC-MBE goals to at least 20% in the Metropolitan area.
- Did the state study attempt to trace the reasons for the almost total exclusion of African American businesses from state highway work?

November 18, 2009 Public DBE Committee Meeting

Michael Watkins, Guild & Assocs.:

- Outreach events are “key” for his business success
- There were 3 projects he applied for and got 2

Helga Grunerud, Hispanic Chambers of Commerce:

- Concern over the Study’s recommended RN/RC split 2010 goals (not enough RC)
- Suggested looking at the City’s SBE program that specifies that only SBEs can bid on specific projects
- Recommended setting the maximum amount of \$750,000 for ESB specific projects
- Commented that the benefits of this approach include: SBEs only bid against other SBEs; they build relationships with the State and not always as subcontractors; they need to perform 30% of the work and utilize other SBEs on the larger projects and that the companies grow and learn to bid competitively
- Suggested a grading program for prime contractors like the one Florida is using

Robert Jackson, African American Construction Council:

- Suggested attitude changes among CDOT Commissioners, Executive Management and staff; otherwise, “Will be back to spinning wheels”
- Commented that African American (AA) contractors are underutilized because CDOT Regional Engineers and some particular staff members have not always cooperated with the AA contractors
- Said that unhealthy relationships develop between primes and AA businesses when goals aren’t being met

Jim Moody, CCA:

- Suggested clear rules on contract goals
- Commented that according to the disparity study results, contract goals are being met
- Questioned the historical data of the disparity study, “2.9% race-neutral calculations of part 5-10”
- Suggested bringing outreach meetings from regions 3, 4 and 5 to headquarters

Walter Jones, African American Construction Council:

- Commented that discrimination still exists in the industry
- Said that the building sector of the construction industry was much more amenable to working with minority contractors and that African Americans (AA) are totally excluded from highway work
- Suggested that AA should have set asides, narrowly tailored projects to create growth
- Suggested changing the culture within the highway department and the construction industry
- Suggested that there is no discussion about disparity that creates an exclusive club for a small number of people
- Commented that the highway department is manipulated by an industry that it is supposed to regulate
- Commented that there are barriers to entry and barriers to long term success and a hostile environment
- Said that CDOT can change and should change the means to contract, and force some mentor protégé relationships, so smaller companies do not get crushed in the process.
- Wants statistics for ARRA projects and AA participation

December 16, 2009 Public DBE Committee Meeting

- The Committee was presented with the updated resolution for the 2010 annual DBE goal. Over the past three months, the DBE committee has held detailed discussions on the proposed goal and after further discussion, the DBE Committee agreed to move the Resolution forward to the full Commission, which has a recommended DBE goal for 2010 of 13.29%.
- The EO Center staff then presented a draft strategic plan that will be used to successfully achieve the 2010 DBE goals as well as to implement recommendations from the Disparity Study.
- Using the comments from Commissioners and others at the meeting, the EO Center staff will update the plan and provide the DBE committee with regular updates.
 - Specific comments were received about the potential impact (especially in the more rural areas of the state) in regards to moving forward on FHWA approval on a waiver to exclude non-minority women owned construction firms from counting toward project DBE goals (would still count toward the overall annual DBE goal as RN participation)
 - As CDOT moves forward on the waiver it will be working closely with stakeholders in those Regions to help them identify other ready, willing and able DBE firms etc.
 - Project DBE goals will always reflect the regional availability of ready and willing DBE firms based on the type of work being performed on the project
- There is an optimistic mood that CDOT will make positive strides during 2010 regarding its DBE and small business programs.
- The Committee will meet again in February and will provide the commission with what we hope is good progress toward achieving our goals.

Other Written Comments Received

Denver DBE consulting firm:

I would like to request that CDOT consider putting stronger 'race-conscious' component as part of their overall goal. As it stands, there a very few ethnic DE firms that are even doing much work on roadway highway projects in Colorado. Having a stronger race-conscious component would go a long way to increasing the available pool of DBE firms in the state. Many local firms are walking away from CDOT work because they feel the primes are allowed to operate in any manner they choose and it's just too much of a hassle.

Denver DBE engineering/construction management firm:

I quickly reviewed the results of the study and here is my conclusion. The definition of M/W/DBE (all minority or woman owned businesses whether or not they are certified as a DBE) should not be used to formulate goal settings for a RN/RC split. By definition, M/W/DBE's are not at parity with DBE's. As you are aware, DBE's have been certified to be socially and economically disadvantaged. The contracting dollar amounts procured by M/W/DBE's depicted in Section 5.3.1 speak for themselves. As I have stated in the past, the results of this report do not adequately reflect reality in the small business DBE community and must be highly scrutinized. As a result, I suggest a race conscious program be implemented with higher goal limits for fiscal year 2010. I also recommend funding an ESB program with contracting opportunities for M/W/DBE's with revised size standards to address Table ES-1 to include other M/W/DBE's (white males). I believe a quick solution to the current problem is a 13% race conscious DBE goal plus 7% ESB goal with revised size standards.

In regards to the methodology used to formulate this report I have the following question? How often has D. Wilson Consulting, LLC recommended a race conscious goal precedence for other disparity studies across our country?

Thank you again for providing the report for our comments.

Rocky Mountain Minority Contractors Association:

The recommended race neutral and race conscious split in the disparity study is not appropriate at this time, because of the existing negative and adverse environment. The split has the potential of increasing the disparity significantly, and stifling opportunities for certified DBE's. RMMCA recommends that CDOT keep the goals specifically race conscious.

RMMCA is ready to sit down with CDOT to develop programs and ideas.



Hispanic Contractors Association:

Representatives from Hispanic Contractors of Colorado have appreciated the opportunity to review the Draft CDOT Disparity Study Overview and we offer the following comments in the spirit of developing the best possible program:

- *Based on our experience tracking CDOT's goals history, we are mystified that the Disparity Study believes an 11.05% Race Neutral goal can be achieved. We believe this should be the Race Conscious goal.*
- *While the pool of potential DBEs may be optimistic, the reality is that many of them have had negative experiences with CDOT and have opted not to participate in a process that could put them out of business. All best practices marketing literature admonishes companies to carefully choose their business partners. HCC agrees and encourages its small contractors/professional services companies to heed that advice. Therefore, there must be accountability via data collection, reporting and to a high level, and follow-up if CDOT expects DBEs to participate. To that end, we strongly recommend that CDOT implement a program like Florida's Department of Transportation that grades prime contractors and prime professional services companies.*
- *We urge you to study Denver's SBE "Defined Selection Pool" program that sets projects aside for small business enterprises so they only bid against each other and also learn to work with the City as prime contractors. In addition, if projects are large enough, they must self perform 30% of the work and then also utilize other SBE companies. This prepares them to move beyond the SBE program. Can CDOT's ESB program do something similar?*
- *DBEs are facing significant challenges in the current banking environment. We urge CDOT to investigate opportunities for DBEs to obtain loans for mobilization costs and change orders – possibly a revolving fund. Denver explored a partnership with the Colorado Enterprise Fund, but the City was not able to fund its half of the obligation. To assist with insurance, explore products like OCIPs.*
- *We encourage CDOT to investigate implementation of a moratorium on companies that hire former CDOT employees. DBEs cannot afford this type of access.*
- *We are pleased to hear that CDOT is considering restructuring its (project specific) DBE goal setting process so that it is state focused rather than regional. We believe this would greatly enhance the ability to achieve state goals rather than the tunnel vision regional goals. A quarterly review of goals achievement, with an opportunity to adjust, also seems to be a positive step.*

Thank you for the opportunity to share our comments. We look forward to working with you to make CDOT the premier agency!!

EXHIBITS

Exhibit 1: FHWA Goal-Extension Approval Letter



U.S. Department
of Transportation
**Federal Highway
Administration**

**Colorado Federal Aid
Division**

12300 W. Dakota Avenue, Suite 180
Lakewood, CO 80228

October 2, 2009

Ms. Debra Gallegos, Manager
Center for Equal Opportunity
Colorado Department of Transportation
4201 E. Arkansas Avenue
Denver, Colorado 80222

RE: Letter Dated September 17, 2009

Dear Ms. Gallegos:

We have received your letter dated September 17, 2009 requesting an extension of the approved FY 2009 DBE annual goal to allow enough time to evaluate the new Statewide Disparity Study's DBE goal-setting data. We understand that the required public participation effort per 49 CFR Part 26.45 (g) must take place prior to final approval of this study.

Based on the well established value attributed to past CDOT disparity studies and their recognized use under 49 CFR 26.45 (c) (3), we hereby approve the requested extension until the new disparity study has been approved and accepted by CDOT. At that time CDOT should submit its FY 2010 DBE overall goal and methodology to the division office for legal sufficiency review by FHWA Chief Counsel and subsequent division office final approval of the overall FY 2010 DBE goal.

Sincerely,

For


Karla S. Petty, P.E.
Division Administrator

Cc:

Allen Masuda, Associate Administrator for Civil Rights
JoAnne Robinson, Office of Chief Counsel



Exhibit 2: Colorado Transportation Commission FFY 2010 DBE Goal Resolution

Resolution Number TC-1802

WHEREAS, on November 18, 2009, CDOT presented a preliminary Federal Fiscal Year 2010 DBE goal recommendation of 13.29% for federally funded construction and design contracting opportunities to the DBE Committee and general public; and

WHEREAS, the November 18, 2009 presentation provided the factual predicate required by the US DOT/FHWA in 49 CFR Part 26.45 for establishing Colorado's Disadvantaged Business Enterprise (DBE) program overall annual goal; and

WHEREAS, after reviewing all feedback and comments received by CDOT, no adjustments have been made to the initial 13.29% DBE goal recommendation; and

WHEREAS, federal court decisions require that DBE programs be narrowly tailored; and

WHEREAS, CDOT contracted with D. Wilson Consulting Group to conduct an updated Disparity Study which has been completed and submitted to CDOT; and

WHEREAS, the Disparity Study provides statistical and anecdotal data that CDOT can use to narrowly tailor Colorado's DBE program by addressing specific problems identified in the study; and

WHEREAS, the State of Colorado was found to be the relevant market area for DBEs participating in CDOT construction and design contracts in the disparity study; and

WHEREAS, DBEs in the relevant market area should benefit from CDOT's DBE Program; and

WHEREAS, the US DOT DBE Regulations require that the maximum feasible portion of the overall DBE goal be met by using race and gender neutral means; and

WHEREAS, the 13.29% annual aspirational goal for Federal Fiscal Year 2010 shall be implemented by the setting of goals for DBEs on construction projects and design contracts, based upon the type of work included in each project and the availability of DBEs capable of performing such work, and using the good faith efforts standard to justify award when the goal on

highway projects has not been met and by encouraging the use of other DBEs whenever possible; and

NOW THEREFORE BE IT RESOLVED, that the DBE program for CDOT shall be as follows:

- 1. CDOT will follow the procedures set forth in its US DOT/FHWA approved DBE Plan.**
- 2. CDOT shall strive for 13.29% DBE participation in its federally funded contracting opportunities for construction and design projects for FFY 2010.**
- 3. The 13.29% goal will be implemented by the setting of appropriate, narrowly tailored goals on projects depending on the availability of DBEs, according to recent CDOT findings, the disparity study and quarterly progress reports on the participation of each group in relation to its availability.**
- 4. CDOT shall strive to meet the 13.29% overall annual DBE goal with DBEs residing in the relevant market area.**
- 5. CDOT shall monitor participation of all DBEs in accord with their availability as demonstrated by recent CDOT findings and the disparity study.**
- 6. Based on public comment received by the Center for Equal Opportunity concerning the Disparity Study, the Center currently projects that it will meet 2.14% of the overall goal through race-neutral measures and 11.15% of the overall goal through race-conscious measures. These percentages will be adjusted quarterly in the discretion of the Center based on its monitoring of DBE participation.**
- 7. CDOT shall continue to monitor DBE participation in construction and design contracts each month, and shall report such participation to the Commission on a monthly basis so that the Commission can evaluate the status of all DBE goals and the need for any appropriate future changes to the DBE program.**
- 8. On a quarterly basis, after reviewing the DBE participation during the previous three months, the Commission shall direct CDOT staff to make any necessary changes to the DBE Program or the definition of DBEs for construction or design contracts.**

Exhibit 3: FFY 2010 DBE Goal Public Notice

LEGAL NOTICE

The Colorado Department of Transportation (CDOT) has established a preliminary overall annual 13.29 percentage goal for Disadvantaged Business Enterprise (DBE) participation in all highway contracting opportunities for construction and design projects for Federal Fiscal Year 2010.

The goal and a description of how it was established will be available for public inspection during normal business hours, at the CDOT Center for Equal Opportunity at 4201 East Arkansas Avenue, Room 200, Denver, CO 80222, for thirty (30) days following the date of this notice. The goal information is also available online at <http://www.dot.state.co.us/EEO/> in CDOT's 2009 Disparity Study Final Report.

Comments by the Public on this goal and on the methods used to establish the goal are invited for consideration by the Department. Comments will be accepted until January 29, 2010.

Comments may be sent to the Colorado Department of Transportation, Greg Diehl, DBE Program Manager, 4201 E. Arkansas Avenue, Denver, CO 80222, or to Karla Petty, Division Administrator, Federal Highway Administration, Colorado Division, 12300 West Dakota Avenue, Suite 180, Lakewood, Colorado 80228.