

DRAFT
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY SUBMISSION
TO FTA FOR FEDERAL FISCAL YEARS 2025 THROUGH 2027
DRAFT FOR PUBLIC COMMENT NOVEMBER 2022

Introduction

The Arizona Department of Transportation (ADOT) hereby submits its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2025 through 2027 to the Federal Transit Administration (FTA) pursuant to [49 CFR Part 26, Section 26.45](#).

Based on the results of the 2022 Availability Study as well as the 2020 Disparity provided to FTA, ADOT proposes a 9.85% DBE goal for FFYs 2025 through 2027 for FTA-funded contracts. ADOT projects that it can accomplish this goal solely through race-neutral means (ADOT outreach, training and program efforts).

Step 1. Determining a Base Figure — Pursuant to 49 CFR Section 26.45(c)

ADOT began the process of determining its overall DBE goal by establishing a base figure. Consistent with USDOT regulations and guidance, ADOT developed availability data as part of a disparity study for FTA-funded contracts conducted by Keen Independent in the ADOT's 2022 Availability Study. Keen Independent also prepared the 2014 Availability Study, 2015 Disparity Study, 2017 Availability Study and 2020 Disparity Study for ADOT.

Projections of FTA-funded Contracts. Based on internal information and projections received from subrecipients in 2022, ADOT was able to identify FTA-funded contracting opportunities for FFY 2025 through FFY 2027. These projections include FTA-funded operations and maintenance as well as capital projects planned by subrecipients. ADOT assigned a NAICS code to specific components of the capital projects and also projected the types of spending expected for operations and maintenance contracts. Figure 1 on the next page shows the projected distribution of FTA-funded contract dollars and subcontracts by type of work using codes from the North American Industry Classification System (NAICS).

The right-hand column of Figure 1 shows the percentage of FTA-funded contract dollars projected for each type of work for the upcoming three federal fiscal years.

Figure 1. ADOT FTA-funded Future Contract Opportunities, FFY 2025–FFY 2027

NAICS	NAICS description	Dollars (\$1,000s)	Percent
Capital (facilities, shelters, sidewalks)			
236220	Commercial and institutional building construction	\$ 82	0.28 %
238210	Electrical contractors and other wiring installation contractors	834	2.81
238120	Structural steel and precast concrete contractors	1,499	5.04
238910	Site preparation contractors	151	0.51
561730	Landscaping services	423	1.42
238110	Poured concrete foundation and structure contractors	657	2.21
484110	General freight trucking, local	828	2.79
562910	Remediation services	24	0.08
237310	Highway, street, and bridge construction	10,574	35.57
		\$ 15,072	50.70 %
Operations and maintenance			
424710	Petroleum bulk stations and terminals	\$ 4,872	16.39 %
485113	Bus and other motor vehicle transit systems	4,176	14.05
532112	Passenger car leasing	3,696	12.43
541690	Other scientific and technical consulting services	1,062	3.57
541330	Engineering services	848	2.85
		\$ 14,654	49.30 %
		\$ 29,726	100.00 %

Source: ADOT future FTA-funded expenditures projections.

DBE Availability. Data about the availability of DBEs and total firms to perform the types of work shown in Figure 1 come from the 2022 Availability Study.

Based on analysis of FTA-funded contracts for October 2018 through September 2021, Keen Independent determined that Arizona should be selected as the relevant geographic market area for the availability study.

- About 86% of ADOT and local agency FTA-funded contract dollars from October 2018 through September 2021 went to firms with locations in Arizona.
- Therefore, the availability analysis examined firms with locations in Arizona. (The geographic market area for the availability analysis is identical to the 2014, 2015, 2017 and 2020 studies.)

Keen Independent focused its availability estimates on the types of work projected to be involved in FTA-funded contracts from FFY 2025 through FFY 2027 (see Figure 1, above).

Keen Independent then developed a master availability database (current and potential DBEs and non-DBEs) by contacting thousands of firms to collect information about their availability for ADOT contracts. The firms contacted for the database came from the following sources:

- Companies that had previously identified themselves to ADOT as interested in learning about future work by being prequalified for certain types of work or by being on bidding lists; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related subindustries in Arizona (D&B’s Hoover’s business establishment database). (D&B’s Hoover’s database is accepted as the most comprehensive and complete source of business listings in the nation.)

Keen Independent completed surveys with 2,332 businesses. After consolidating duplicate responses and removing companies that are no longer in business, not-for-profit, unable to perform transportation-related work, not located in Arizona or not interested in discussing availability for ADOT work, the final database contained 503 businesses, of which 41 (about 8.2%) were DBEs, as shown in Figure 2. (Each firm in the final availability database expressed qualifications and interest in ADOT and/or local public agency work.) The 2022 Availability Study report explains the survey methodology in detail.

Figure 2. Availability “Head Count” of Businesses Included in 2022 Availability Study

	Number of firms	Percent of firms
DBEs	41	8.2 %
Non DBEs	462	91.8
Total	503	100.0 %

Source: Keen Independent Research 2022 Availability Study.

Relative Availability of DBEs by NAICS Code. Keen Independent identified the number of DBEs available for each of the NAICS codes shown in Figure 1. Figure 3 provides these results.

- The first column of data in Figure 3 presents the numbers of DBEs businesses in the final availability database for each type of work.
- After dividing the number of DBEs by total firms (column 2 of data), Figure 3 indicates the percentage of firms in each subindustry that are DBEs (column 3).

Keen Independent defined DBEs as those firms indicating qualifications and interest in ADOT work in the 2022 availability survey that were certified as DBEs in Arizona. The total number of firms by NAICS also was determined from the availability survey (firms indicating qualifications and interest in ADOT work). A firm is counted more than once in Figure 3 if it reported performing more than one type of work.

DBE availability was as low as 3.5% for some NAICS codes and was as high as 25% for other NAICS codes.

Figure 3. Number of DBEs and Total Businesses Included in the Availability Analysis for Selected NAICS Codes

NAICS	NAICS description	DBE firms	Total firms	Percentage of firms that are DBEs
Capital (facilities, shelters, sidewalks)				
236220	Commercial and institutional building construction	1	24	4.17 %
238210	Electrical contractors and other wiring installation contractors	6	92	6.52
238120	Structural steel and precast concrete contractors	2	38	5.26
238910	Site preparation contractors	6	97	6.19
561730	Landscaping services	4	61	6.56
238110	Poured concrete foundation and structure contractors	5	43	11.63
484110	General freight trucking, local	5	143	3.50
562910	Remediation services	4	59	6.78
237310	Highway, street, and bridge construction	7	73	9.59
Operations and maintenance				
424710	Petroleum bulk stations and terminals	1	9	11.11 %
485113	Bus and other motor vehicle transit systems	1	12	8.33
532112	Passenger car leasing	2	18	11.11
541690	Other scientific and technical consulting services	2	8	25.00
541330	Engineering services	13	159	8.18

Note: Some firms in the final availability database expressed qualifications for more than one type of work.

Source: Results from Keen Independent Research 2022 Availability Study.

Dollar-Weighted Availability. To calculate a base figure for the overall DBE goal, Keen Independent dollar-weighted the availability results for each NAICS code shown in Figure 3. This approach is consistent with USDOT’s “Wherever possible, use weighting” instructions concerning Step 1 calculations in “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.” Dollar-weighting is presented in Figure 4 and calculations are as follows.

- The first column of data in Figure 4 presents the percentage of total dollars of FTA-funded contracts in that NAICS code.
- The second column of data in Figure 4 shows the share of total firms in each NAICS codes that are DBEs.
- Keen Independent multiplied results in the first two columns to produce the dollar-weighted availability of DBEs (third column).

Base Figure. Keen Independent summed the weighted availability values for all NAICS codes studied (third column of data in Figure 4). This sum, 9.85%, is the base figure for ADOT’s DBE goal for FTA-funded contracts.

Dollar-weighted availability is more precise than a simple “head count” of businesses because it considers the specific type of work performed and the total dollars of spending for firms with those specializations.

Figure 4. Dollar-Weighted Availability Estimates for DBEs for ADOT FTA-funded Future Contracts, FFY 2025–FFY 2027

NAICS	NAICS description	Percent of FTA-funded contract dollars	Percentage of firms that are DBEs	Weighted availability
Capital (facilities, shelters, sidewalks)				
236220	Commercial and institutional building construction	0.28 %	4.17 %	0.01 %
238210	Electrical contractors and other wiring installation contractors	2.81	6.52	0.18
238120	Structural steel and precast concrete contractors	5.04	5.26	0.27
238910	Site preparation contractors	0.51	6.19	0.03
561730	Landscaping services	1.42	6.56	0.09
238110	Poured concrete foundation and structure contractors	2.21	11.63	0.26
484110	General freight trucking, local	2.79	3.50	0.10
562910	Remediation services	0.08	6.78	0.01
237310	Highway, street, and bridge construction	35.57	9.59	3.41
	Capital expenditures	50.70 %		4.36 %
Operations and maintenance				
424710	Petroleum bulk stations and terminals	16.39 %	11.11 %	1.82 %
485113	Bus and other motor vehicle transit systems	14.05	8.33	1.17
532112	Passenger car leasing	12.43	11.11	1.38
541690	Commercial and institutional building construction	3.57	25.00	0.89
541330	Electrical contractors and other wiring installation contractors	2.85	8.18	0.23
	Operations and maintenance	49.30 %		5.50 %
	Total	100.00 %		9.85 %

Source: ADOT future expenditure projections and results from Keen Independent Research 2022 Availability Study.

Step 2. Determining if an Adjustment is Needed — 49 CFR Section 26.45(d)

Per the Federal DBE Program, ADOT considered potential step 2 adjustments to the base figure as part of determining its overall annual DBE goal for FTA-funded contracts. Federal regulations outline factors that an agency must consider when assessing whether to make any step 2 adjustments to its base figure:

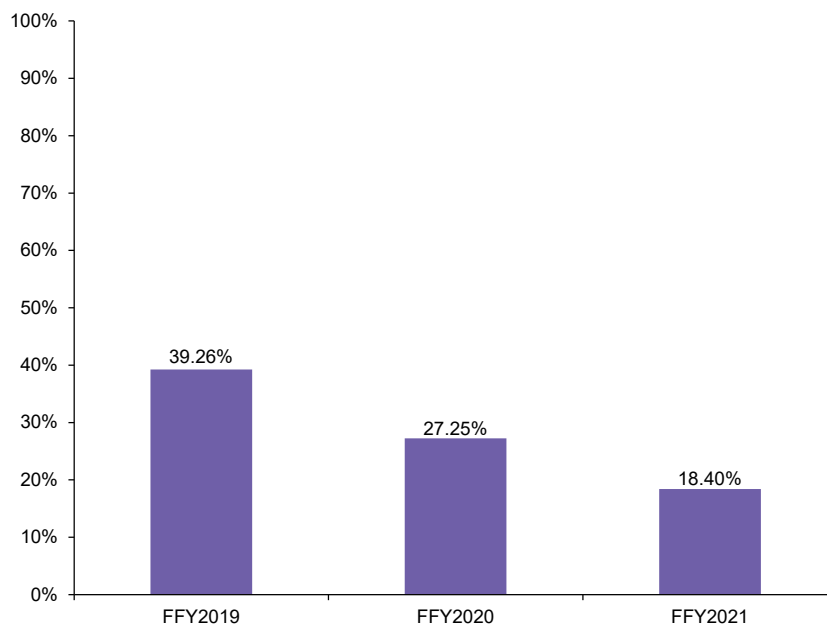
1. Current capacity of DBEs to perform work, as measured by the volume of work DBEs have performed in recent years;
2. Information related to employment, self-employment, education, training and unions;
3. Any disparities in the ability of DBEs to get financing, bonding and insurance; and
4. Other relevant factors.¹

Taking into account relevant information from the 2022 Availability Study, ADOT considered each of the factors listed above in determining whether or not to adjust the base figure.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs Have Performed in Recent Years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (the percentage of contract dollars going to DBEs). USDOT further suggests examining *median* DBE participation for several years as a measure of current capacity.

Figure 5 below shows DBE participation based on payments from ADOT Uniform Reports of DBE Awards or Commitments and Payments that ADOT submitted to FTA. Using the most recent three fiscal years of results, the median DBE participation from FFY 2019 through FFY 2021 is 27.25%. As this value is higher than the 9.85% base figure, it suggests a possible upward step 2 adjustment based on this factor.

Figure 5. DBE Participation on FTA-Funded Contracts Based on Payment Data in ADOT Uniform Reports to FTA, FFY 2019–FFY 2021



Source: ADOT Uniform Reports of DBE Award or Commitments and Payments.

¹ 49 CFR Section 26.45.

2. Information Related to Employment, Self-Employment, Education, Training and Unions. Chapter 4 of the 2020 Disparity Study report summarizes information about conditions in the Arizona transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Arizona are presented in Appendices E through H. Keen Independent’s analyses indicate barriers that certain minority groups and women face related to entry and advancement and business ownership in the Arizona construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform ADOT and local agency transportation contracts.

It may not be possible to quantify the cumulative effect that barriers in employment, education and training may have had in depressing the availability of minority- and women-owned firms in the Arizona transportation contracting industry. However, the effects of barriers in business ownership can be quantified, as explained below.

In the 2020 Disparity Study, the study team used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Arizona construction and engineering industries. The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the report provides detailed results of the business ownership regression analyses).²

- Those analyses revealed that African Americans, Asian Americans, Native Americans and white women working in construction were less likely than non-minorities and white men to own construction businesses, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.
- In addition, there were statistically significant disparities in firm ownership for other minorities and white women in the Arizona engineering industry.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if African Americans, Asian Americans, Hispanic Americans, Native Americans and white women owned businesses at the same rate as similarly situated non-minorities and white men. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

As the explanation of these calculations is somewhat complex, ADOT provides Figure 6 on the following page to document how the upward adjustment was determined. A detailed explanation of each portion of the calculation follows the figure.

Figure 6 calculates the impact on overall DBE availability, resulting in a possible upward adjustment of the base figure to 13.08%. The analysis included the same ADOT future contract opportunities that the study team analyzed to determine the base figure. Calculations are explained on the following page.

² The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois, and Minnesota.

Figure 6. Potential Step 2 Adjustment to ADOT’s Overall DBE Goal for FTA-funded Future Contract Opportunities Considering Disparities in the Rates of Business Ownership

DBEs	a. Weighted DBE availability	b. Disparity index for business ownership	c. Availability after initial adjustment *	d. Availability after scaling to 100%	e. Components of overall DBE availability**
Construction					
African American	1.00 %	61	1.64 %	1.57 %	
Asian American	0.00	65	0.00	0.00	
Native American	1.41	36	3.92	3.75	
Other minorities	3.62	n/a	3.62	3.47	
White women	2.56	69	3.72	3.56	
Minorities and women	8.59 %	n/a	12.89 %	12.36 %	6.27 %
All other businesses	91.41	n/a	91.41	87.64	
Total firms	100.00 %	n/a	104.30 %	100.00 %	
Engineering and other subindustries					
Hispanic American	5.24 %	n/a	5.24 %	5.08 %	
Other minorities	0.15	37	0.39	0.38	
White women	5.77	67	8.61	8.35	
Minorities and women	11.16 %	n/a	14.25 %	13.82 %	6.81 %
All other businesses	88.84	n/a	88.84	86.18	
Total firms	100.00 %	n/a	103.09 %	100.00 %	
DBEs	9.85 %	n/a	n/a		13.08 %
Difference from base figure					3.22 %

Note: Numbers may not add to 100.00% due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index for business ownership.

** Components of the goal were calculated as the value after adjustment and scaling to 100%, multiplied by the percentage of total FTA-funded contract dollars in each industry (construction = 51%, engineering and other subindustries = 49%).

Source: ADOT future expenditure projections and results from Keen Independent Research 2022 Availability Study.

The study team completed these “but for” analyses separately for construction and engineering/other subindustries contracts and then weighted the results based on the proportion of FTA-funded future contract opportunities dollars (i.e., a 51% weight for construction and a 49% weight for engineering/other subindustries). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses.

1. Current Availability. Column (a) presents the current availability of DBEs by group for construction, and engineering/other subindustries. Each row presents the percentage availability for minority- and women-owned DBEs. The current combined availability of DBEs for ADOT FTA-funded future contract opportunities is 9.85%, as shown in the bottom row of column (a).
2. Disparity Indices for Business Ownership. As presented in Appendix F of the 2020 Disparity Study report, African Americans, Asian Americans, Native Americans and white women were less likely to own construction firms than similarly situated non-minorities and white men. This difference was statistically significant for each of those groups.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), Native Americans own construction businesses at 36% of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F of the 2020 Disparity Study report explains how the study team calculated the disparity indices.

3. Availability after Initial Adjustment. Column (c) presents availability estimates for DBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
4. Availability after Scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100% for each industry. The study team re-scaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total firms" in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for Native Americans shown for construction was calculated in the following way: $(3.92\% \div 104.30\%) \times 100 = 3.75\%$.
5. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 6 shows the components of the total base figure attributed to the adjusted MBE and WBE availability for construction and engineering/other subindustries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and engineering/other subindustries — and multiplying it by the proportion of total FTA-funded future contract dollars in each industry (i.e., 51% for construction and 49% for engineering and other subindustries). For example, the study team used the 12.36% shown for DBE availability for construction firms in column (d) and multiplied it by 51% for a result of 6.27%. A similar weighting of DBE availability for engineering and other subindustries produced a value of 6.81%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 13.08% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the "but for" DBE availability (13.08%) and the current availability (9.85%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 3.22 percentage points ($13.08\% - 9.85\% = 3.22\%$).

3. Any Disparities in the Ability of DBEs to Get Financing, Bonding and Insurance. Analysis of access to financing and bonding in the 2020 Disparity Study revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Arizona marketplace.
- Any barriers that MBE/WBEs face in obtaining financing and bonding would also place those businesses at a disadvantage in obtaining ADOT and local agency construction and engineering prime contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Chapter 4 and Appendix J of the 2020 Disparity Study.

There was also evidence in the 2020 Disparity Study that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency. This barrier appears to affect small businesses, which might disproportionately impact minority- and women-owned firms. Additionally, MBEs and WBEs were somewhat more likely to report that insurance requirements on contracts were a barrier to bidding.

The information about financing, bonding and insurance supports an upward step 2 adjustment in ADOT’s overall annual goal for DBE participation in FTA-funded contracts.

4. Other Factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.³

Among the “other factors” ADOT examined was the information in the 2020 Disparity Study about the comparative success of MBE/WBEs and majority-owned businesses in the Arizona marketplace. There was quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. There was also qualitative evidence of barriers to the success of minority- and women-owned businesses. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affected minority- and women-owned firms in the Arizona transportation contracting industry.

There is no straightforward way to project the number of MBE/WBEs available for ADOT work but for the effects of these other factors.

³ 49 CFR Section 26.45.

Summary of Approaches for Making Step 2 Adjustments. Quantification of potential step 2 adjustments is summarized below.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs have Performed in Recent Years. Analysis of this factor might indicate an upward step 2 adjustment if ADOT analyzed its estimates of past DBE participation (based on payments) — for recent years, the median DBE participation on FTA-funded contracts based on payments was 27.25% (from Figure 5).

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor. Keen Independent calculated the median past participation following the USDOT “Tips for Goal-Setting.”

The difference between the 9.85% base figure and 27.25% DBE participation is 17.40 percentage points (27.25% - 9.85% = 17.40%). One-half of this difference is an upward adjustment of 8.70 percentage points (17.40% ÷ 2 = 8.70%). The goal would then be calculated as follows: 9.85% + 8.70% = 18.55%. (These calculations are presented in Figure 7.)

2. Information Related to Employment, Self-Employment, Education, Training and Unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 3.22 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If ADOT made this adjustment, the overall DBE goal for FTA-funded contracts would be 13.08% (9.85% + 3.22% = 13.08%, which is rounded to the nearest percentage point.). Figure 7 summarizes these calculations.

Figure 7. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-funded Contracts, FFY 2025–FFY 2027

Step 2 adjustment component	Value	Explanation
Potential upward adjustment for demonstrated capacity		
Evidence of current capacity	27.25 %	Past DBE participation
Base figure	- 9.85	From base figure analysis
Difference	17.40 %	
	÷ 2	Reduce by one-half
Adjustment	8.70 %	Upward adjustment for current capacity
Base figure	9.85 %	From base figure analysis
Adjustment for current capacity	+ 8.70	Upward step 2 adjustment
Overall DBE goal	18.55 %	Upward adjustment for demonstrated
Potential upward adjustment for disparity in business ownership		
Base figure	9.85 %	From base figure analysis
Adjustment for "but for" factors	+ 3.22	"But for" step 2 adjustment for business
Overall DBE goal	13.08 %	Upward adjustment of DBE goal for business
Potential upward adjustment for demonstrated capacity and disparity in business ownership		
Base figure	9.85 %	From base figure analysis
Adjustment for current capacity	8.70	Adjustment for current capacity
Adjustment for "but for" factors	+ 3.22	"But for" step 2 adjustment for business
Overall DBE goal	21.77 %	Upward adjustment of DBE goal for business

Source: ADOT future expenditure projections and results from Keen Independent Research 2022 Availability Study.

3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment might be appropriate. However, impact of these factors on availability could not be quantified in the 2022 Availability Study.

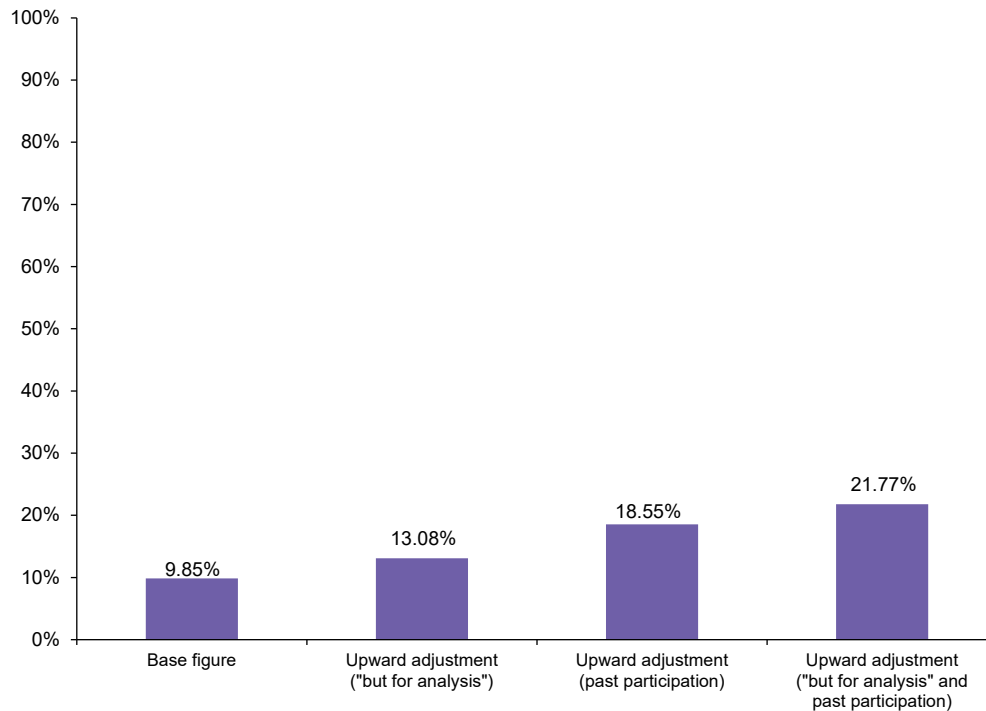
4. Other Factors. Impact of the barriers to success of MBE/WBEs in Arizona could not be quantified in the 2022 Availability Study. However, evidence supports an upward adjustment.

Summary. ADOT considered whether or not to make a step 2 adjustment when determining its overall DBE goal.

- Adjustment for past DBE participation. If ADOT makes an upward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FTA-funded contracts would be 18.55%.
- Adjustment for disparity in business ownership. If ADOT instead makes an upward adjustment based on estimated MBE/WBE availability but for the effects of race- and gender-based discrimination, its DBE goal would be 13.08%.
- Combined step 2 adjustment. ADOT also considered adjusting the base figure using both demonstrated DBE capacity and disparity in business ownership. The overall DBE goal would then be 21.77%, calculated as follows: $9.85\% + 8.70\% + 3.22\% = 21.77\%$. These calculations are presented in the bottom portion of Figure 7 on the previous page.

Figure 8 presents a summary of potential step 2 adjustments which ADOT considered.

Figure 8. Potential Step 2 Adjustments to ADOT’s Overall DBE Goal for FTA-funded Contracts



Source: Keen Independent Research using 2022 Availability Study results.

Adjustments Summary. For FTA-funded contracts from FFY 2025 through FFY 2027, ADOT proposes utilizing the base figure, for an overall DBE goal of 9.85%. This goal is in the range of its current goal of 14.51 percent for FTA-funded contracts.

Race-/Gender-Neutral and Race-/Gender-Conscious Split — 49 CFR Section 26.51(c)

To comply with the Federal DBE Program, ADOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.⁴ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. ADOT has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, ADOT has projected the portion of its overall DBE goals that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any). During the previous goal period ADOT operated an entirely race-neutral DBE program for its FTA-funded contracts.

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral, and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.⁵
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁶

Based on 49 CFR Part 26 and the resources above, ADOT considered the following questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency’s past experience in meeting its overall DBE goal?
3. What has DBE participation been when ADOT has not applied DBE contract goals (or other race-conscious remedies)?⁷
4. What is the extent and effectiveness of race- and gender-neutral measures that ADOT currently has in place and will put in place for the next fiscal year?

The balance of this section is organized around each of those general areas of questions.

⁴ 49 CFR Section 26.51.

⁵ See <https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20180425-001part26qa.pdf>

⁶ 49 CFR Section 26.51.

⁷ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

1. Is There Evidence Of Discrimination Within the Local Transportation Contracting Marketplace for Any Racial, Ethnic or Gender Groups? The 2020 Disparity Study provides results of the local marketplace research (summarized in Chapter 4) and analyses of MBE/WBE utilization and availability (see Chapters 5 and 6 of that report). This information is also summarized below.

Marketplace Conditions. As discussed in Chapter 4 of the 2020 Disparity Study, Keen Independent examined conditions in the Arizona marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes. Full results are presented in Chapter 4 and Appendices E through J of the 2020 Disparity Study.

Results of the Disparity Analysis for FTA-Funded Contracts in the 2020 Disparity Study. Chapter 6 of the 2020 Disparity Study report examines utilization and availability of minority- and women-owned firms in ADOT's FTA-funded contracts. About 30% of FTA-funded contract dollars went to minority- and women-owned firms combined, which was somewhat above the 23% that might be expected based on the availability analysis for MBE/WBEs for these contracts. Much of the utilization of MBEs and WBEs came from firms that appear that they could be certified as DBEs.

Utilization of white women-owned firms (25.1%) exceeded what might be expected from the availability analysis (12.0%).

Utilization of MBEs (4.5%) was substantially below what might be expected based on availability for this work (10.8%). There were substantial disparities between utilization and availability for each MBE group. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes (see 2020 Disparity Study).

Summary. ADOT reviewed the information about marketplace conditions presented in Chapter 4 and Appendices E through J of the 2020 Disparity Study, as well as other information it has, when considering the extent to which it can meet its overall DBE goal through neutral measures. The combined information from the marketplace analyses indicates evidence of unequal outcomes for minority- and women-owned firms. The disparity analysis for FTA-funded contracts showed relatively high overall utilization of minority- and women-owned firms (30%) but disparities between the utilization and availability of MBEs.

2. What has Been the Agency’s Past Experience in Meeting its Overall DBE Goal? Figure 9 shows results of ADOT’s Uniform Reports DBE Commitments/Awards and Payments to FTA for the most recent three completed fiscal years for which results have been reported. As presented in the far-right column of Figure 9, based on payments to DBEs, ADOT met its overall DBE goal in each of the five fiscal years examined.

ADOT also reported certified DBE participation based on DBE commitments/awards on FTA-funded contracts, as summarized in Figure 9. As shown, reported DBE participation based on DBE commitments/awards on FTA-funded contracts exceeded the DBE goal in 2019 and 2020, but was below the goal by about 8 percentage points in FFY 2021.

Please note that the sharp decline in share of commitments and awards going to DBEs in FFY 2021 can be attributed to a large award to a non-DBE firm.

Figure 9. ADOT Overall DBE Goal and Reported DBE Participation on FTA-funded Contracts, FFY 2019 through FFY 2021

Federal fiscal year	DBE goal	DBE commitments/awards	DBE payments	Difference from DBE goal	
				Awards	Payments
2019	11.00 %	27.61 %	39.26 %	16.61 %	28.26 %
2020	11.00	35.71	27.25	24.71	16.25
2021	11.00	2.82	18.40	-8.18	7.40

Source: ADOT Uniform Reports of DBE Awards/Commitments and Payments.

3. What has DBE Participation Been When ADOT has Not Applied DBE Contract Goals (Or Other Race-Conscious Remedies)? For each of the fiscal years in the previous goal period, all DBE participation for FTA-funded contracts has been achieved without the application of DBE contract goals or other race-conscious programs. In fact, DBE participation was lower than the proposed goal of 9.85% in only one of the last three federal fiscal years through FFY 2021 for just one of the measures (DBE commitments/awards), as shown in Figure 9.

As presented in Chapter 6 of the 2020 Disparity Study report, Keen Independent utilization analysis of FTA-funded contracts during the study period also reported relatively high utilization of MBE/WBEs. The study team found that many of the MBE/WBEs receiving contract dollars could potentially meet criteria to be certified as DBEs but were not certified during the study period. If ADOT were to encourage these firms to become certified, a goal of 9.85% could be even more easily met.

4. What is the Extent and Effectiveness of Race- and Gender-Neutral Measures that ADOT Currently has in Place and Will Put in Place for the Upcoming Fiscal Years? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, ADOT reviewed the race- and gender-neutral measures that it and other organizations currently have in place, and those it has planned or could consider for future implementation. Keen Independent’s analysis of neutral remedies in Chapter 7 of the 2020 Disparity Study indicates that ADOT has implemented an extensive set of neutral measures.

Summary. ADOT proposes that it will attempt to achieve 100% of its overall DBE goal through neutral means.

- In each of the past three full fiscal years (based on payments data), ADOT has met its overall DBE goal for FTA-funded contracts solely using neutral means.
- ADOT has extensive neutral measures in place, and there are many small business assistance programs offered by other institutions in the state.

The second column of Figure 10 shows an overall DBE goal of 9.85% for FTA-funded contracts for FFY 2025 through FFY 2027 and a projection that all of it would be met through neutral means.

ADOT also projected it would meet all of its overall goal through neutral measures when it prepared its overall DBE goal of 14.51% for FFY 2022 through FFY 2024. The first column of Figure 10 presents these recent projections.

Figure 10. Current ADOT Overall DBE Goal and Projections of Race-Neutral Participation for FTA-funded Contracts for FFY 2025 through FFY 2027

Component of overall DBE goal	FFY 2022– FFY 2024	FFY 2025– FFY 2027
Overall goal	14.51 %	9.85 %
Neutral projection	- <u>14.51</u>	- <u>9.85</u>
Race-conscious projection	0.00 %	0.00 %

Source: Results from Keen Independent Research 2022 Availability Study (Summary Report, page 38).

Public Participation — 49 CFR Section 26.45(g)

As it did with its previous proposed overall DBE goal, ADOT is publishing its Proposed Preliminary Three-Year Overall DBE Goal & Methodology and the draft 2022 Availability Study report for public comment on the ADOT official website before submitting final versions of these documents to FTA. The public comment period for the draft report and ADOT's proposed overall DBE goal will be from Nov. 15, 2022, through Dec. 30, 2022.

ADOT will hold virtual public meetings to discuss and obtain verbal comments about the 2022 Availability Study and proposed DBE goals:

- From 12:00 to 1:00 p.m. on Wednesday, Nov. 30, 2022
Zoom link:
<https://tinyurl.com/ADOTNov30>
- From 5:00 to 6:00 p.m. on Thursday, Dec. 1, 2022
Zoom link:
<https://tinyurl.com/ADOTDec1>

Information about the webinars is available at <https://azdot.gov/business/business-engagement-and-compliance/2022-dbe-availability-study-0>. In addition, ADOT and Keen Independent are seeking written comments through any of the following means:

- At the virtual public meetings;
- At the BECO website <http://azdot.gov/business/business-engagement-and-compliance>
- Via email at ADOTAvailabilityStudy2022@keenindependent.com;
- Through regular mail at 1801 West Jefferson, Suite 101, Phoenix AZ 85007, Attention to: ADOT BECO;
or
- Via fax at 602-712-8429, Attention to: ADOT BECO.

The public is encouraged to comment on the size of the proposed overall DBE goals, the methodology used to develop the goals, the results of the 2022 Availability Study, as well as suggestions on how to improve contracting opportunities for DBEs and other small businesses, including what ADOT and the industry could do to enhance support of the Federal DBE Program.

ADOT will review this additional information before formally submitting its final proposed overall DBE goal calculation to FTA and incorporate any changes needed based on the comments. A summary of the comments will be provided in the final goal document.