

**The Delaware Department of Transportation**  
**Disadvantaged Business Enterprise**  
**Goal Setting Methodology and **Proposed Overall DBE Goal****  
**FFY 2020–2022**

**Introduction**

The Delaware Department of Transportation (DelDOT) hereby submits its proposed annual, overall Disadvantaged Business Enterprise (DBE) goal and goal-setting methodology for federal fiscal years 2020 through 2022 (i.e., October 1, 2019- September 30, 2022) to the Federal Highway Administration (FHWA) pursuant to 49 CFR Part 26, section 26.45. The proposed goal may be refined before formal submission to FHWA in August 2019 after review of public input about the goal.

The overall DBE goal is based on demonstrable evidence of ready, willing and able DBEs relative to all businesses currently ready, willing and able to participate on DelDOT’s FHWA-assisted contracts. DelDOT proposes an overall DBE goal of 13.40% for FHWA-assisted contracts for FFYs 2020–2022. This proposed goal reflects no upward or downward adjustment of the base figure of 13.40%.

This report also provides information regarding the portion of the overall DBE goal to be achieved through neutral means. DelDOT estimates 3.44% of the overall goal can be achieved through race- and gender-neutral (RN) participation. The remaining portions of those overall DBE goals will need to be met through use of race- and gender-conscious (RC) contract goals.

Keen Independent Research LLC, national experts on availability analyses and setting overall DBE goals, assisted in the preparation of this proposed goal.

**I. Determining a Base Figure — Pursuant to 49 CFR Section 26.45(c)**

DelDOT began the process of determining its overall DBE goal by establishing a base figure for DBE participation in DelDOT’s FHWA-funded transportation contracts.

The availability analysis determined the percentage of DelDOT FHWA-funded contracts from October 2015 through September 2018 (i.e., FFY 16, FFY 17, and FFY 18) that might go to current or potential DBEs (defined on page 4) if they had the same chance of winning that work as any other available firm, after accounting for the type of work involved in those prime contracts and subcontracts. DelDOT used a dollar-weighted approach to determine this overall availability estimate.

One might expect current and potential DBEs to receive 13.40% of DelDOT FHWA-funded transportation contracts based on analysis of FHWA-funded contracts from October 2015 through September 2018 and current availability of firms to perform that work.

This section explains how the relative availability of current and potential DBEs was calculated.

### **Overview of DelDOT Transportation Contracts**

The study team determined an appropriate sample of FHWA-funded DelDOT contracts for the three most recently completed federal fiscal years, and from those contracts determined a relevant geographic market area and the 15 specific work types that were most relevant to DelDOT transportation contracting.

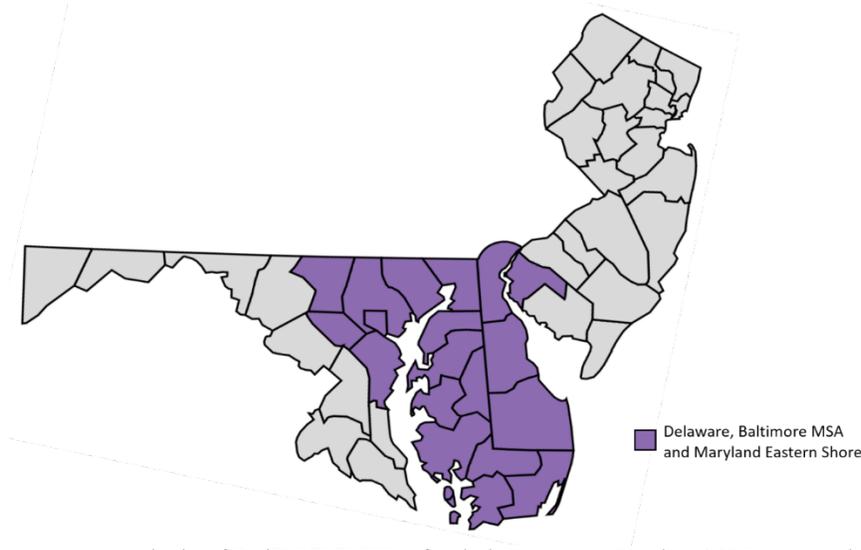
**Contract Data Sample.** Keen Independent Research (Keen Independent) compiled all DelDOT FHWA-funded contracts from October 2015 through September 2018. Within that set of contracts, Keen Independent examined in detail each prime contract with a total value over \$5 million. This sample totals about \$636 million, which represents over 72% of total contract dollars in the contract universe. There were 31 prime contracts and 262 subcontracts among contracts that were \$5 million or larger.

**Relevant Geographic Market Area.** Based on this analysis of FHWA-funded contracts for October 2015 through September 2018, DelDOT determined that the following areas should be selected as the relevant geographic market area for the availability study:

- Delaware (Kent, New Castle and Sussex Counties);
- The Maryland Eastern Shore (Caroline, Cecil, Dorchester, Kent, Queen Anne's, Somerset, Talbot, Wicomico and Worcester counties in Maryland);
- The Baltimore Metropolitan Statistical Area (Maryland counties Anne Arundel, Baltimore City, Baltimore, Carroll, Harford and Howard); and
- Salem County, New Jersey.

Approximately 92% of all sample contract dollars went to firms with locations within the 19 contiguous counties of the relevant geographic market area. Figure 1 on the following page presents a map of the counties included in the study area.

**Figure 1. Map of the Relevant Geographic Market Area**



Source: Analysis of DelDOT FHWA-funded contracts, October 2015–September 2018.

**Types of Work Performed.** Keen Independent coded types of work involved in each of the 293 prime contracts and subcontracts (collectively referred to as “contract elements”) based upon data in DelDOT contract records and, as a supplement, information about the primary line of business of the firm performing the work.

As shown in Figure 2, road and bridge construction account for approximately 68.2% of the contract dollars studied, and architecture and engineering account for an additional 10.1% of the dollars analyzed. The “other” categories include work types that were present in the data but accounted for a small percentage of total contract dollars and were therefore integrated into a single, larger industry category (e.g., landscaping and related work was included in the “Other construction related work” category).

**Figure 2. DeIDOT FHWA-funded Transportation Prime Contract and Subcontract Dollars by Type of Work, October 2015–September 2018**

<b>Code</b>	<b>Description</b>	<b>Contract dollars in sample (1,000s)</b>	<b>Percent of dollars</b>
1611	General road construction and widening	\$ 322,451	50.7 %
1622	Bridge and elevated highway construction	111,181	17.5
1542	Non residential construction	9,237	1.5
1731	Electrical work including lighting and signals	15,399	2.4
1791	Structural steel work	9,398	1.5
1794	Excavation, site prep, grading and drainage	8,331	1.3
16110100	Installation of guardrails, fencing or signs	17,746	2.8
16110202	Portland cement concrete paving	13,666	2.1
17710200	Concrete flatwork (including sidewalk, curb and gutter)	12,447	2.0
17719900	Other concrete work	4,784	0.8
17210303	Striping or pavement marking	13,841	2.2
73899921	Temporary traffic control	4,983	0.8
42120000	Trucking and hauling	5,219	0.8
8711	Architecture and engineering	64,090	10.1
50320504	Asphalt, concrete and other paving materials	16,102	2.5
1799	Other construction related work	5,561	0.9
8999	Other professional services	518	0.1
5999	Other goods	1,114	0.2
	<b>Total contracts</b>	<b>\$ 636,067</b>	<b>100.0 %</b>

Note: Numbers rounded to nearest tenth of 1 percent. Percentages may not add to totals due to rounding.

Source: Keen Independent availability analysis.

### **DBE Availability**

To assist DeIDOT in establishing relative DBE availability, Keen Independent compiled data on potentially available firms and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an availability figure of 13.40% for DeIDOT’s FHWA-funded transportation contracts.

Availability is expressed as the percentage of the contract dollars that one might expect DBEs to receive based on the type of work involved and then dollar-weighting results to prepare an overall availability estimate.

In the base figure analysis, firms considered as DBEs were those businesses that were DBE-certified or appeared that they could be DBE-certified based on revenue criteria described in federal regulations under 49 CFR Section 26.65.

**Head Count DBE Availability.** In order to develop a head count of DBEs as a percentage of available businesses doing relevant construction and professional services work with locations in the relevant geographic areas, Keen Independent used information found in Dun & Bradstreet (D&B).<sup>1</sup> D&B has a database of firms that indicates their location, the primary type of work they perform and whether they are minority- or women-owned. To conduct these analyses, Keen Independent identified:

- The total number of available businesses located in the relevant geographic market area within each type of work relevant to DelDOT’s FHWA-funded contracts; and
- The number of minority- and women-owned businesses (MBE/WBEs) meeting the same criteria based on ownership data from D&B and DBE certification directories.

**Potential DBE Availability Adjustments.** To determine the DBE base figure, which focuses on availability of currently-certified DBEs and firms that could be certified as DBEs, Keen Independent refined head count availability figure by not counting any MBE or WBE firms as potential DBEs that appeared to be ineligible for certification. There were two groups of MBE/WBEs that did not count as potential DBEs when calculating the base figure:

- MBE/WBEs that in recent years graduated from the DBE Program or had applied for DBE certification in Delaware but were denied (based on information in the DelDOT B2GNow database).
- MBE/WBEs that, according to D&B, earned annual revenue that exceeded the revenue limits for DBE certification for their subindustry.

This process was repeated for each subindustry studied as shown in Figure 3. The values in the “Code” column refer to D&B eight-digit industry codes, which were the level of detail required for this study. The first column of data in Figure 3 presents the numbers of MBE/WBE businesses found in D&B for each subindustry. After deducting graduated firms and other MBE/WBEs that should not be counted as potential DBEs (column 2), Figure 3 shows the number of current and potential DBEs (column 3). After dividing that number by total firms in that subindustry (column 4), Figure 3 indicates the percentage of firms in each subindustry that are current and potential DBEs.

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<sup>1</sup> 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.)

**Figure 3. Number of Businesses Included in the Availability Count that are Current or Potential DBEs within the Relevant Geographic Market Area**

Code	Description	Total MBE/WBEs	MBE/WBEs not counted as potential DBEs	Current and potential DBEs (adjusted)	Total firms	Adjusted current and potential DBEs (percent of total firms)
1611	General road construction and widening	43	3	40	438	9.1 %
1622	Bridge and elevated highway construction	5	0	5	21	23.8
1542	Non-residential construction	45	0	45	194	23.2
1731	Electrical work including lighting and signals	149	2	147	1,745	8.4
1791	Structural steel work	8	0	8	59	13.6
1794	Excavation, site prep, grading and drainage	47	0	47	490	9.6
16110100	Installation of guardrails, fencing or signs	15	0	15	121	12.4
16110202	Portland cement concrete paving	3	0	3	22	13.6
17210303	Striping or pavement marking	2	0	2	17	11.8
17710200	Concrete flatwork (including sidewalk, curb and gutter)	3	0	3	14	21.4
17719900	Other concrete work	56	1	55	480	11.5
73899921	Temporary traffic control	4	2	2	8	25.0
42120000	Trucking and hauling	177	0	177	2,090	8.5
8711	Architecture and engineering	349	11	338	1,890	17.9
50320504	Asphalt, concrete and other paving materials	7	0	7	111	6.3
1799	Other construction related work	557	8	549	5,699	9.6
8999	Other professional services	349	11	338	1,890	17.9
5999	Other goods	7	0	7	111	6.3

Note: Numbers rounded to nearest tenth of 1 percent. Percentages may not add to totals due to rounding.

Source: Keen Independent availability analysis.

**Dollar-Weighted Availability.** Keen Independent dollar-weighted the availability results for each subindustry shown in Figure 3. This approach is consistent with USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

To calculate dollar-weighted availability, Keen Independent determined the number of current and potential DBEs (third column of Figure 3) and the total number of firms available for each subindustry (fourth column of Figure 3), and then calculated DBEs as a percentage of total firms (fifth column of Figure 3). DBE availability was as low as 6% for some subindustries and exceeded 25% for other subindustries.

Keen Independent then dollar-weighted the availability results for each subindustry based on the dollars of that prime or subcontract relative to the total dollars of FHWA-funded contracts in the study period.

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.

**Base Figure.** Keen Independent then summed the weighted availability value for all contracts studied. Figure 4 below presents weighted availability figures by industry as well as the aggregate weighted availability percent for all industries. This number, 13.40%, is the base figure for DelDOT’s DBE goal for FHWA-funded contracts.

**Figure 4. Overall Dollar-Weighted Availability Estimates for Current and Potential DBEs for DeIDOT FHWA-Funded Contracts by Type of Work, October 2015–September 2018**

<b>Code</b>	<b>Description</b>	<b>Current and potential DBEs (percent of firms in work type)</b>	<b>Percent of contract dollars</b>	<b>Weighted availability percent</b>
1611	General road construction and widening	9.1 %	50.7 %	4.63 %
1622	Bridge and elevated highway construction	23.8	17.5	4.16
1542	Non residential construction	23.2	1.5	0.34
1731	Electrical work including lighting and signals	8.4	2.4	0.20
1791	Structural steel work	13.6	1.5	0.20
1794	Excavation, site prep, grading and drainage	9.6	1.3	0.13
16110100	Installation of guardrails, fencing or signs	12.4	2.8	0.35
16110202	Portland cement concrete paving	13.6	2.1	0.29
17210303	Striping or pavement marking	11.8	2.2	0.26
17710200	Concrete flatwork (including sidewalk, curb and gutter)	21.4	2.0	0.42
17719900	Other concrete work	11.5	0.8	0.09
73899921	Temporary traffic control	25.0	0.8	0.20
42120000	Trucking and hauling	8.5	0.8	0.07
8711	Architecture and engineering	17.9	10.1	1.80
50320504	Asphalt, concrete and other paving materials	6.3	2.5	0.16
1799	Other construction related work	9.6	0.9	0.08
8999	Other professional services	17.9	0.1	0.01
5999	Other goods	6.3	0.2	0.01
	<b>Total</b>		<b>100.0 %</b>	<b>13.40 %</b>

Source: Keen Independent availability analysis.

## **II. Consideration of Possible Step-2 Adjustments — 49 CFR Section 26.45(d)**

In accordance with DBE Program regulations, after the base figure was calculated, DelDOT considered available evidence to determine whether or not the figure should be adjusted higher or lower than the base figure (a “step-2 adjustment”). The regulations indicate an agency must consider the following:

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

DelDOT considered each of these factors in determining whether or not to adjust the base figure. DelDOT’s most recent disparity study, from 2001, was determined to be too outdated to be used in analysis for the current goal-setting period. As such, Keen Independent instead used recent DelDOT Uniform Reports as well as the 2018 Maryland Department of Transportation (MDOT) Disparity Study to calculate potential step 2 adjustments.<sup>2</sup> Much of Maryland is included in the DelDOT relevant geographic market area; therefore, evidence from the state of Maryland is highly relevant to DelDOT as it sets DBE goals.

### **1. Current Capacity of DBEs to Perform Work, Measured by the Volume of Work DBEs Performed in Recent Years.**

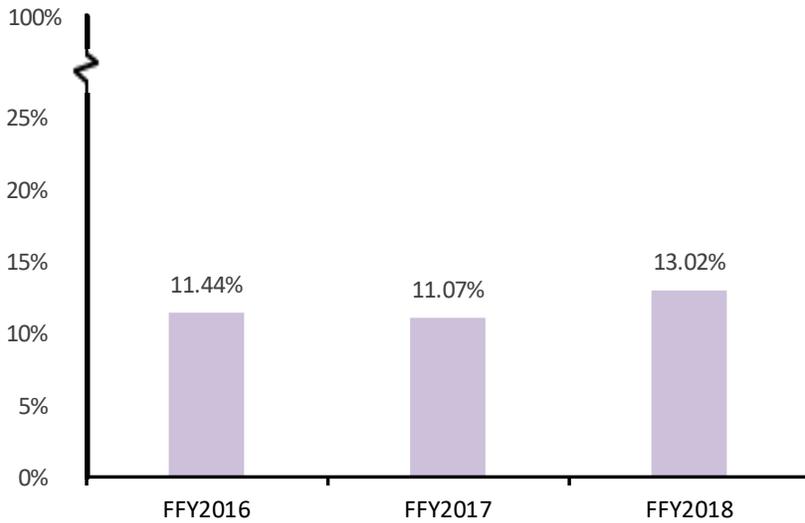
USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

**DBE Participation Based on DelDOT Uniform Reports to FHWA.** Figure 5 presents information about past DBE participation based on commitments/awards data from DelDOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA. The median DBE participation from FFY 2016–FFY 2018 is 11.44%.

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<sup>2</sup> See <http://www.mdot.maryland.gov/newMDOT/MBE/Documents/2018%20DBE%20Disparity%20Study%20Vol%201.pdf>

**Figure 5. DelDOT-Reported Past DBE Participation**



Source: Keen Independent analysis.

The median DBE participation for FHWA-funded contracts for the last three full fiscal years, 11.44%, indicates that DelDOT could make a downward step 2 adjustment based on this factor, as explained later in this document.

**2. Information Related to Employment, Self-employment, Education, Training and Unions.** Keen Independent reviewed the 2018 Maryland DOT Disparity Study to identify potential barriers to examine conditions in the transportation contracting industry for minorities, women and MBE/WBEs in the study area. Using data from the American Community Survey (ACS) Public Use Microdata Sample (PUMS) for 2010–2014, these analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement in the construction and engineering industries in the study area. Such barriers may affect the availability of MBE/WBEs to obtain and perform DOT transportation contracts. There are also barriers to business ownership for those working in these industries.

Analyses from the 2018 MDOT Disparity Study indicate that in each work type category studied (including construction as well as construction-related professional services), the percentage of businesses owned by minorities and women was lower than would be expected but for the effects of discrimination. The study determined that, overall, DBEs accounted for approximately 7.84% of businesses in the study area for work types studied; however, absent the effects of discrimination DBEs might be expected to account for 9.69% of those businesses. This means there is an estimated disparity index of 80.91 ( $7.84\% \div 9.69\% \times 100 = 80.91$ ).

Keen Independent calculated the impact of this disparity on overall MBE/WBE availability, resulting in possible upward adjustment of the base figure to 16.05%. This type of analysis 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. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded

construction and engineering prime contracts and subcontracts that DelDOT awarded from October 2015 through September 2018). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses:

- a. Current Availability. Column (a) presents the current availability of DBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for MBEs and WBEs. The current combined availability of MBE/WBEs for DelDOT FHWA-funded transportation contracts for October 2015 through September 2018 is 13.40%, as shown in bottom row of column (a).
- b. Disparity Indices for Business Ownership. As examined in the MDOT Disparity Study, minorities and women were significantly less likely to own firms in the industries studied than similarly-situated non-minorities and white men.

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 DBEs as a group. As shown in column (b), DBEs own businesses in MDOT study industries at 81% of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. This analysis can be found in the MDOT 2018 Disparity Study.

- c. 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. The calculation is  $13.40\% \div 81\% = 16.56\%$ .
- d. Availability After Scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimate equals 100%. The study team re-scaled the adjusted availability estimates by taking the DBE 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. The re-scaled availability estimate for DBEs was calculated in the following way:  $(16.56\% \div 103.16\%) \times 100 = 16.05\%$ .
- e. Components of Overall DBE Goal with Upward Adjustment. Column (e) calculates the difference between the “but for” DBE availability (16.05%) and the current availability (13.40%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 2.65 percentage points ( $16.05\% - 13.40\% = 2.65\%$ ).

**Figure 6. Potential Step 2 Adjustment Considering Disparities in Rates of Business Ownership**

	a.	b.	c.	d.	e.
Current and potential DBEs	Current availability	Disparity index for business ownership	Availability after initial adjustment*	Availability after scaling to 100%	Overall DBEs availability**
Minorities and women	13.40 %	81	16.56 %	16.05 %	16.05 %
All other businesses***	<u>86.60</u>	n/a	<u>86.60</u>	<u>83.95</u>	
<b>Total firms</b>	<b>100.00 %</b>	n/a	<b>103.16 %</b>	<b>100.00 %</b>	
<b>Total for current and potential DBEs</b>	<b>13.40 %</b>	n/a	n/a		<b>16.05 %</b>
<b>Difference from base figure</b>					<b>2.65 %</b>

\* Initial adjustment is calculated as current availability divided by the disparity index.

\*\* Calculated as value after adjustment and scaling to 100%

\*\*\* All other businesses include majority-owned business and MBE/WBEs that are not potential DBEs.

Source: Keen Independent analysis and 2018 MDOT Disparity Study.

### **3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance.**

The 2018 MDOT Disparity Study analysis of financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and minority- and women-owned businesses. This would suggest an upward step 2 adjustment.

**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.<sup>3</sup>

Among the “other factors” examined in this study was the success of minority- and women-owned firms relative to majority-owned businesses in the DeIDOT marketplace. Based on the 2018 MDOT Disparity Study, there is quantitative evidence that certain groups of minority- and women-owned businesses are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors.

Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the transportation contracting industry in the study area. There is not a straightforward way to project the number of MBE/WBEs available for DeIDOT work but for the effects of these other factors. The evidence does support an upward step 2 adjustment.

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<sup>3</sup> 49 CFR Section 26.45.

**Summary of Approaches for Making Step 2 Adjustments.**

Quantification of potential downward or upward 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 past DBE participation indicates a downward step 2 adjustment—for the last three fiscal years (FFY 2016 through FFY 2018) the median DBE participation on FHWA-funded contracts was 11.44% based on Keen Independent’s analysis.

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. The difference between the 13.40% base figure (calculated earlier in this report) and 11.44% DBE participation is 1.96 percentage points (13.40% - 11.44% = 1.96%). One-half of this difference is a downward adjustment of 0.98 percentage points (1.96% ÷ 2 = 0.98%). The goal would then be calculated as follows: 13.40% - 0.98 % = 12.42%.

**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 2.65 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If DelDOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 16.05% (13.40% + 2.65% = 16.05%). Figure 7 shows these calculations.

**Figure 7. Step 2 Adjustment to Overall DBE Goal for FHWA-Funded Contracts, FFY 2020–FFY 2022**

Step 2 adjustment component	Value	Explanation
<b>Lower range of overall DBE goal</b>		
Base figure	13.40 %	From base figure analysis
Evidence of current capacity	- 11.44	Past DBE participation (Uniform DBE reports)
Difference	1.96 %	
	÷ 2	Reduce by one-half
Adjustment	0.98 %	Downward adjustment for current capacity
Base figure	13.40 %	From base figure analysis
Adjustment for current capacity	- 0.98	Downward step 2 adjustment
<b>Overall DBE goal</b>	<b>12.42 %</b>	Lower range of DBE goal
<b>Upper range of overall DBE goal</b>		
Base figure	13.40 %	From base figure analysis
Adjustment for "but for" factors	+ 2.65	"But for" step 2 adjustment for business ownership
<b>Overall DBE goal</b>	<b>16.05 %</b>	Upper range of DBE goal

Source: Keen Independent analysis.

**3. Any Disparities in the Ability of DBEs to Get Financing, Bonding and Insurance.**

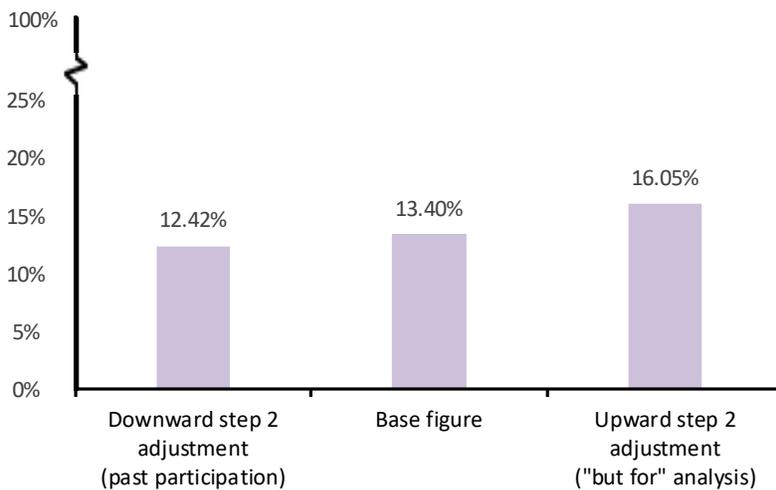
Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

**4. Other Factors.** Impact of the many barriers to success of MBE/WBEs in the study area

could not be specifically quantified. However, the evidence supports an upward adjustment.

Figure 8 summarizes the potential adjustments described in this section.

**Figure 8. Potential Step 2 Adjustments to Overall DBE Goal for FHWA-Funded Contracts, FFY 2020–FFY 2022**



Source: Keen Independent analysis

**Proposed Overall DBE Goal.** DelDOT has elected to use the base figure. DelDOT’s proposed overall DBE goal for FHWA-funded contracts is 13.40%.

**III. Race-Neutral / Race-Conscious Projections – 49 CFR Section 26.51(d)**

To comply with the Federal DBE Program, DelDOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.<sup>4</sup> 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. DelDOT 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, DelDOT 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).

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<sup>4</sup> 49 CFR Section 26.51.

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.<sup>5</sup>
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.<sup>6</sup>
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 9.

**Figure 9. Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]**

You must also explain the basis for the State’s race-neutral/race-conscious division and why it is the State’s best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient's race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient’s market, the race-neutral measures it employs and information on contracting in the recipient’s contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient’s contracts that do not have contract goals; past prime contractors’ achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state’s programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women’s businesses participate in programs without goals.

Source: FHWA, Explanation for Approval of [State] DBE Program Goal Setting Process for FY [Year].  
[http://www.fhwa.dot.gov/civilrights/dbe\\_memo\\_a4.htm](http://www.fhwa.dot.gov/civilrights/dbe_memo_a4.htm)

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<sup>5</sup> See <http://www.dotcr.ost.dot.gov/Documents/Dbc/49CFRPART26.doc>

<sup>6</sup> 49 CFR Section 26.51.d

Based on 49 CFR Part 26 and the resources above, DelDOT 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 the agency did not use race- or gender-conscious measures?<sup>7</sup>
4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

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

**1. Is There Evidence of Discrimination within the Local Transportation Contracting Marketplace for any Racial, Ethnic or Gender Groups?** Using information in the 2018 MDOT Disparity Study, Keen Independent examined marketplace conditions in the DelDOT relevant geographic market area, 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.

DelDOT reviewed the information about marketplace conditions presented earlier in this report, as well as other information, when considering the extent to which it can meet its overall DBE goal through neutral measures.

Summary. The combined information from the marketplace and the disparity analysis indicates evidence that there is not a level playing field for minority- and women-owned firms in the DelDOT relevant geographic market area.

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<sup>7</sup> 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.

**2. What has been the Agency’s Past Experience in Meeting its Overall DBE Goal?**

DBE participation based on DBE commitments/awards on FHWA-funded contracts was below DelDOT’s overall DBE goal for FFY 2016 through FFY 2018, as shown in Figure 10 below.

**Figure 10. DelDOT Overall DBE Goal and Reported DBE Participation on FHWA-funded Contracts, FFY 2016 through FFY 2018**

Federal fiscal year	DBE goal	DBE commitments/ awards	Difference from DBE goal
2016	11.43 %	11.44 %	0.01 %
2017	13.80	11.07	-2.73
2018	13.80	13.02	-0.78

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

**3. What has DBE Participation Been when DelDOT has not Applied DBE Contract Goals (or Other Race-conscious Remedies)?** To assess race-neutral DBE participation, DelDOT examined recent race-neutral DBE participation in DelDOT Uniform Reports. Per USDOT instructions, DelDOT counts “neutral” participation as any prime contracts going to DBEs as well as subcontracts to DBEs beyond what was needed to meet DBE contract goals set for a project or that were otherwise awarded in a race-neutral manner.

Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for FFY 2016 through FFY 2018 indicate a median race-neutral participation of 3.44%. Figure 11 below presents these results.

**Figure 11. DelDOT-reported Race-neutral and Race-conscious DBE Participation on FHWA-funded Contracts for FFY 2016–FFY 2018**

Federal fiscal year	DBE commitments/awards		
	Total	Race-neutral	Race-conscious
2016	11.44 %	0.98 %	10.46 %
2017	11.07	3.44	7.63
2018	13.02	5.40	7.62

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

**4. What is the Extent and Effectiveness of Race- and Gender-neutral Measures that the Agency Could Have in Place for the Next Fiscal Year?** When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, DelDOT reviewed the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or might consider for future implementation. In 2012 DelDOT implemented the race- and gender-neutral Small Business Program with contract opportunities set aside exclusively for small

businesses. This program is intended to encourage small business participation and help ensure small businesses are given an equal opportunity to compete for DeIDOT projects. Other race-neutral measures employed by DeIDOT include:

- Encouraging prime contractors to hire subcontractors;
- Helping small businesses develop their capabilities and capacity;
- Providing technical assistance to DBEs and other businesses;
- Eliminating bonding requirements for all subcontractors; and
- Providing prompt payment monitoring for all subcontractors.

There are many programs outside DeIDOT that also assist small businesses, including the Small Business Administration and the U.S. Department of Transportation Office of Small and Disadvantaged Business Utilization (ODSBU). DeIDOT and other agency business assistance will continue in the future.

**Should DeIDOT Project that it Can Meet All of its Overall DBE Goal through Neutral Means?** DeIDOT considered whether it can achieve 100% of its overall DBE goal through neutral means or whether race-conscious programs are needed. Such a determination depended in part on the level of the overall DBE goal. Since DeIDOT is proposing an overall DBE goal for FHWA-funded contracts of 13.40%, the evidence presented indicates that DeIDOT would not meet its DBE goal solely through neutral means.

DeIDOT considered the above information when reaching its decision on any use of race- and gender-conscious programs (such as DBE contract goals).

- There is information indicating disparities in outcomes for minorities and women and minority- and women-owned firms in Maryland (a large portion of the DeIDOT relevant geographic market area), and some qualitative evidence of discrimination within the DeIDOT transportation contracting marketplace, as detailed in the 2018 MDOT Disparity Study.
- Median annual DBE participation from FFY 2016 to FFY 2018 was 11.44% based on awards/commitments. This level of participation is below an overall DBE goal in the range of 13.40%.
- DeIDOT's median race-neutral participation has been 3.44% for FFY 2016 through FFY 2018.

Based on the data above, DeIDOT proposes a race-neutral projection of 3.44 percentage points for its overall DBE goal for FFY 2020 through FFY 2022.

As noted above, DeIDOT projected a 2.20 percentage point neutral and 11.60 percentage point race-conscious split when it prepared its overall DBE goal of 13.80% for FFY 2017 through FFY 2019. The first column Figure 12 presents these projections.

The second column of numbers in Figure 12 is a projection using the proposed overall DBE goal of 13.40 percent and a 3.44 percentage point projection for race-neutral participation for

FFY 2020 through FFY 2022. The race-conscious portion of the goal is 9.96 percentage points (13.40% - 3.44% = 9.96%).

**Figure 12. Current DelDOT Overall DBE Goal and Race-neutral and -conscious Projections for FHWA-funded Contracts for FFY 2020 through FFY 2022**

Component of overall DBE goal	FFY 2017- FFY 2019	FFY 2020- FFY 2022
Overall goal	13.80 %	13.40 %
Neutral projection	- 2.20	- 3.44
Race-conscious projection	11.60 %	9.96 %

Source: Keen Independent analysis.

**IV. Summary**

Based on the results in this document, DelDOT proposes a 13.40% DBE goal on FHWA-funded contracts for FFYs 2020 through 2022. DelDOT estimates 3.44% can be achieved through race- and gender-neutral participation and that 9.96% will need to be met through the use of race- and gender-conscious contract goals.

DelDOT may refine the analyses in this Goal and Methodology document after the public comment period.

**V. Public Participation — 49 CFR Section 26.45(g) and 26.15(b)(1)**

Public comments concerning DelDOT’s proposed overall DBE goal will be made from late June to late July 2019. DelDOT will hold public meetings concerning the proposed DBE goal. The public will be able to give feedback at the meetings and provide written comments:

- In person at the meetings;
- Via email at [DOT.DelawareDBE@delaware.gov](mailto:DOT.DelawareDBE@delaware.gov); or
- Through regular mail to DelDOT Office of Civil Rights, 800 Bay Rd, Dover, DE 19901.

DelDOT will review this information before formally submitting its proposed overall DBE goal calculation to FHWA in August 2019.

**Notice of Proposed Goal.** DelDOT will publish a notice of its proposed overall goal on its [DBE Program](#) web page. The agency will also implement additional methods of publishing its proposed overall goal.