

**EXPLANATION FOR APPROVAL OF PUERTO RICO HIGHWAY
AND TRANSPORTATION (PRHTA) AUTHORITY
DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL
SETTING METHODOLOGY FOR FEDERAL FISCAL YEARS
(FFYs) 2021-2023**

The following establishes the Federal Highway Administration (FHWA) rationale for approving the PRHTA DBE goal setting methodology and process for FFYs 2021 - 2023. PRHTA expects to achieve a 18.25% overall goal during the three-year period and must make a good faith effort to do so. Any mid-cycle adjustment needed to reflect a substantial change in circumstances requires prior FHWA approval. PRHTA commits to regularly monitoring its progress in achieving the goal over the next three years. The next regularly scheduled DBE goal submission by PRHTA will be due to FHWA August 1, 2023.

Goal Setting Methodology – 49 CFR Part 26.45

The regulations require recipients to set an overall goal for DBE participation based upon ‘demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts’ (26.45(b)). PRHTA states that its primary market is defined as the normal area in which all DBE contractors, subcontractors, and non-DBE contractors and subcontractors inquire, show interest in and perform work on highway and bridge construction projects, namely on the main island of Puerto Rico and the adjacent islands of Vieques and Culebra. There are no boundaries established for firms to perform work and all parts of the islands are accessible to firms. The distribution of FHWA-assisted projects is in accordance with the State Transportation Improvement Program (STIP), which lists the construction projects for a five-year period in the market area. Any firm may participate on FHWA-assisted contracts providing they comply with applicable state and federal regulations.

A. Step One – Base Figure – Section 26.45(c)

The regulations require that the goal setting process begin with determining a base figure for the relative availability of DBEs. The regulations do not prescribe a particular methodology or approach, rather they provide a non-exhaustive list of examples, any one or combination of which may be used to establish the base figure.

- 1. Method Selected** – PRHTA established its base figure following the method described at 49 CFR 26.45(c)(2), using the bidders’ list available from FFYs 2016 – 2018¹ provided by the PRHTA Contracts Administration Office, including contract copies in file archives, bidders lists consisting of information on DBE and non-DBE firms, pre-bid meeting records, project contract award

¹ PRHTA remains reliant on spreadsheets and other project paper for DBE reporting. When the government of Puerto Rico ordered the state lockdown, the DBELO was unable to access the main building where project information is maintained. As such, PRHTA used the three available years asserting that it will include 2019 in its 2024-2026 goal setting calculations.

reports and information pertaining to DBE participation on FHWA-assisted projects. The list included firms that expressed an interest in bidding, actually submitted a bid, marketed themselves as available to bid, solicited their use for bids, received contract or subcontract awards, or received purchase orders in which the total value exceeded small purchase thresholds. PRHTA then reviewed the list for accuracy and completeness. Because PRHTA derives the majority of its DBE participation through subcontracting, it wanted to ensure that all DBE and non-DBE firms were included. The result was a total of **998** firms that submitted bids or quotes as either a prime or subcontractor during the three-year period. PRHTA then purged the list removing instances of double counting, resulting in **144** ready, willing and able firms. Of those, **24** were ready, willing and able DBE firms that actively pursued contracting or subcontracting opportunities during the period.²

2. **Step One Result** – PRHTA divided the number of DBE bidders (**24**) by the number of all businesses relative to the overall bid tabulation (**144**) to derive a base figure of **16.60%** for overall goal DBE participation, as represented by the following:

$$\frac{\text{Ready, willing and able DBES}}{\text{Ready, willing and able Firms}} = \frac{24}{144} = 16.60\%^3$$

B. Step Two – Adjustments – Section 26.45(d)

Upon establishing a base figure, 49 CFR Part 26 requires the examination of all available evidence to determine what adjustment if any, is needed to establish the overall goal.

1. **Past participation** – For PRHTA, the only evidence available for Step Two consideration was the volume of work performed by DBEs during FFYs 2016 – 2018. Puerto Rico remains in a state of economic hardship with no foreseeable increase in federally-assisted projects that would open opportunities for DBEs. PRHTA budget projections for the next three years is expected to be substantially the same, approximately \$149 million. No major projects are programmed.

PRHTA attained **25%** DBE participation in FY 2016, **19.9%** in FY 2017 and **18.3%** in FY 2018. The following table shows the summary of expenditures in FHWA-aid contracts awarded and the DBE expenditures.

FFY	DBE Goal	Total Dollars	Dollars to DBEs	DBE Participation
16	22%	\$34, 228, 538	\$9, 254, 878	25%

² PRHTA does not collect nor otherwise have access to sufficient data to weight participation for Step One.

³ Puerto Rico lost DBE and other small firms as a result of the 2017 Hurricanes Irma and Maria. These firms became inoperative due to lack of business or irreparably damaged equipment.

17	27%	\$45, 997, 079	\$8, 443, 618	19.9%
18	27%	\$194, 748, 375	\$38, 884, 078	18.3%

Arranging the participation values from low to high (**18.3%**, **19.9%** and **25%**), PRHTA took the middle percentage value of participation (**19.9%**), added it to the Step One result (**16.6%**) and then averaged the sum, arriving an adjusted figure of **18.25%**.

$$\frac{\text{Step One \%} + \text{Past Participation \%}}{2} = \frac{19.9\% + 16.6\%}{2} = \frac{36.5\%}{2} = \uparrow 18.25\%$$

PRHTA concluded that past participation coupled with the current economic realities on the island warranted taking the upward adjustment, particularly as the proposed goal is significantly lower than those in economically healthier years. The triennial goal for PRHTA for FFYs 2021-2023 is therefore **18.25%**.

2. **Other Evidence Considered** – PRHTA is aware of no other available existing evidence from related fields that affect the opportunities for DBEs to form, grow and compete. It has no disparity studies to consider and no credible evidence of discrimination on the part of contractors. However, PRHTA does press its case for recognizing market impacts in the wake of the 2018 hurricanes, 2019 earthquakes and the 2020 pandemic, all of which reduced business access to capital, burdened government budgets and impeded economic resurgence.

Public Participation – 49 CFR Part 26.45(g)

A. Public Notice

The regulations at Section (g)(2) require published notice announcing the proposed goal and its availability for review, allowing 30 days for inspection and 45 days for submission of comments. PRHTA published the notice of the proposed overall goal on May 29, 2020, specifying an open comment period of 45 days. Due to COVID-19, PRHTA advised the public that it could only access the goal by visiting <https://act.dtop.pr.gov/derechos civiles> or contacting the DBE Liaison Officer. The notice was posted to the PRHTA website as well as its social media outlets, in both English and Spanish, the predominant LEP language. All postings included the various ways for the public to review documents and where/how comments could be submitted.

B. Consultation

Prior to submitting the goal, PRHTA consulted the Minority Business Development Center (MBDC), the Small Business Administration (SBA), Southern Small Business Transportation Resources Center (SBTRC) and the Puerto Rico Chamber of Commerce (PRCC). In addition, PRHTA requested these external groups assist

with goal distribution by posting it to their respective websites and in other industry publications.

C. Consultation Summary

PRHTA received three (3) comments from two different Hispanic DBEs and, though it is working with both firms to address their concerns, the comments did not require a change in the methodology or goal. The first asked PRHTA to place more race conscious goals on design and professional services contracts. It also requested that PRHTA audit each project upon completion to ensure that the prime contractor met the goal. The second DBE recognized the hurricane impacts to the small business community but stated that, since its certification in 2017, the firm has yet to receive any invitation to bid. The firm cited recent and unsuccessful efforts to obtain a project RFP.

Race/Gender Neutral and Conscious Measures – 49 CFR Part 26.51

The regulations require that recipients meet the maximum feasible portion of the overall goal by using race/gender neutral means of facilitating participation. For reporting purposes, race/gender neutral DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract which a DBE obtains through the normal competitive procurement process and DBE participation through a subcontract on a prime contract that does not have a DBE goal.

Based upon DBE participation in past years, PRHTA projects that can reasonably achieve the **18.25%** goal through race/gender neutral means. The population of Puerto Rico remains almost entirely Hispanic (98.9%), and bidders and industry representatives are considered minority business enterprises. Therefore, PRHTA will attempt to attain the entire goal through race/gender neutral means. It will employ techniques including but not limited to:

- Making the DBE directory available to all potential prime contractors via PRHTA website
- Providing DBEs information on procurements and contracting schedules
- Providing copies of bidding tables low or no cost
- Placing monthly information of bid notices on the PRHTA website
- Continuously and broadly disseminating information on certification procedures, subcontracting, and bonding requirements

However, if at any point during the effective goal period PRHTA projects that it is unable to achieve the goal through race/gender neutral measures, or if participation falls substantially below the overall goal, PRHTA will begin applying race/gender conscious contract goals to FHWA-aid contracts. This is based on an average race conscious attainment of 5.3% in recent years, approximately 20% of the 27% goal. Subtracting 20% of the current proposed goal of 18.25% results in a 3.65% race/gender conscious and 14.60% race/gender neutral division.

To ensure that the DBE program is narrowly tailored, if and when contract goals are used, PRHTA will adjust them to the extent needed to reflect actual DBE participation. The PRHTA's review of the current capacity of DBEs to perform work on future FHWA-aid contracts (as measured by the volume of work DBEs have performed in recent years) suggests that this use of contracts goals should be effective, if necessary. The FHWA Division Office will monitor PRHTA's progress in meeting the goal over the next three years, and require PRHTA to adjust the proportion of race/gender conscious and neutral measures, if necessary. Procedures to implement other corrective actions deemed appropriate to remediate instances of discrimination will also be used, as permitted by law.

Conclusion

FHWA finds that PRHTA's process in establishing a **18.25%** overall for FFYs 2021 - 2023 is within the requirements of 49 CFR Part 26. As a result, the PRHTA goal methodology is approved.

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