

**EXPLANATION FOR APPROVAL OF THE
WISCONSIN DEPARTMENT OF TRANSPORTATION
DBE PROGRAM GOAL SETTING PROCESS
FOR FEDERAL FISCAL YEARS 2015, 2016, AND 2017**

For Federal Fiscal Years (FFY) 2015, 2016, and 2017 the Wisconsin Department of Transportation (WisDOT) has established an overall goal of 14.13, which includes a 4.47% race-neutral projection and a 9.66% race-conscious projection. This document sets forth the Federal Highway Administration (FHWA) Wisconsin Division Office reasons for approving the WisDOT DBE goal methodology and the portion of the goal to be attained by race- and gender-neutral means for the applicable Federal Fiscal Years.

WisDOT is expected to make a good faith effort to meet its annual overall DBE goal each year during the three-year period. Any mid-cycle adjustment needed to reflect a substantial change in circumstances requires prior FHWA approval. The next regularly scheduled DBE goal submission by WisDOT will be due to FHWA August 1, 2017.

PART I. GOAL SETTING METHODOLOGY - SECTION 26.45

The regulations require recipients to set overall goals based on demonstrative evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts. WisDOT complied with this requirement in that WisDOT set its FFY 2015, 2016, and 2017 DBE goal based on the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on WisDOT FHWA-assisted contracts. Under their unique local program approach, WisDOT maintains administration and control of federally funded local program projects with the majority of the program funding expended through the state letting process. Therefore the data provided below does include data pertaining to local program DBE participation.

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

Under the regulations, a recipient must begin the process by determining the base figure for the relative availability of DBEs. Consistent with this requirement WisDOT obtained their Step One base figure by using the searchable Ready, Willing, and Able (RWA) Contractors/Bidders List (hereafter RWA Contractors List) that is available as a standard report in the in the WisDOT Civil Rights Compliance System (CRCS). The CRCS is a multi-function web-based system WisDOT developed, at substantial cost, under contract with a private firm. All contractors interested in doing business with WisDOT must register annually in CRCS. Registration is a simple process. Once registered the contractor becomes part of the CRCS Report titled "Bidders List" as well as the report titled "Ready, Willing and Able Contractors/Bidders List." Both

reports generate the same data. Both reports identify all firms interested in working on WisDOT contracts, regardless of whether the firm has actually performed work for WisDOT, and regardless of whether the firm has submitted a bid or quote to perform work for WisDOT. Both reports also utilize the CRCS approach of dividing all firms into the following six Business Types: Consultant, Constructor, Trucker, Supplier, Manufacturer, and Other Business Type. The category "Other Business Type" is provided for the use of other UCP Partners but does not represent some firms that may compete for work contracted by WisDOT using federal funds. Therefore this Business Type plus the Business Types of Consultant, Constructor, Trucker, Supplier, and Manufacturer do represent work likely to be contracted by WisDOT using federal funds. Therefore all six Business Types were selected and used. The FHWA Wisconsin Division Office cooperatively ran the WisDOT CRCS RWA Contractors/Bidders List on July 23, 2014 to determine the numerator and denominator for use by WisDOT in finalizing their submission.

1. Method Selected – WisDOT used the following methods to determine numerator and denominator:

(a) **Numerator** – In arriving at 568 ready, willing and able (RWA) DBE firms WisDOT used the report available for the searchable RWA Contractors List contained in the WisDOT CRCS. The WisDOT search and assessment included currently certified DBE firms as well as potential DBE firms. WisDOT used all six key CRCS Business Types: consultants, construction, trucker, supplier, manufacturer, and other. The Division Office has direct access to the CRCS and was able to perform this search on July 23, 2014 and confirmed the numerator number of 568.

(b) **Denominator** – In arriving at 4019 total RWA firms WisDOT used the same system (WisDOT CRCS RWA Contractors/Bidders List report), same work classes (consultants, construction, trucker, supplier, manufacturer, and other) that was used in determining the denominator. The only difference was that in addition to currently certified and potential DBE firms WisDOT also included nonDBE firms. Again, with direct access to the CRCS the Division Office was able to perform these searches and obtain the report from the CRCS that confirms the denominator number of 4019.

The methods used are considered acceptable as they are based on demonstrable evidence of local market conditions and are reasonably designed to ultimately obtain a goal that is rationally related to the relative availability of DBEs in this market.

2. Description of Data Used – The WisDOT Civil Rights Compliance System is a web-based system created by WisDOT and a private contractor software firm. Under this eleven year effort WisDOT has developed a multifunctional tool for use in reporting payment, payroll and other applications such as automating the DBE certification process, 1391 reports, and annual DBE certifications. The tool is available for electronic searching of certified DBE firms and nonDBE firms. The system is currently fully functional on all new WisDOT federally funded projects. All firms interested in doing business with WisDOT must register on the system. All firms seeking registration are able to register on the system regardless of whether or not they actually submit bids to WisDOT. Therefore the CRCS does contain firms that are registered on the

system but that do not perform traditional highway construction related work. Therefore by using the RWA Contractor/Bidders list report WisDOT is able to use a reasonable method to obtain a goal that is rationally related to the relative availability of DBE and nonDBE firms in this particular market. Overall this database and the reports used are considered adequate to determine both the number of RWA DBEs contractors and the number of total RWA contractors interested in working for WisDOT.

WisDOT used the State of Wisconsin as the relevant market area. The Division Office confirmed that using all fifty states plus the District of Columbia results in a Step 1 calculation of 14.01% versus the 14.13% that results when using just Wisconsin based DBE and nonDBE firms. WisDOT reported that over 98% of Wisconsin Federally funded contracts and work orders are awarded to construction and consulting firms based in Wisconsin and this is consistent with Division Office experience. The Federal-aid highway program in Wisconsin is extremely dominated, both on the construction and the consulting side, by firms based in Wisconsin. Therefore, the decision by WisDOT to identify the relevant market area to be firms based in Wisconsin is rational and supportable.

3. Description of Calculation Performed

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base Figure} = \frac{\text{Ready, Willing, and Able DBEs} - 568}{\text{All Firms Ready, Willing and Able} - 4019} = 14.13\%$$

The calculations used numbers that were based on the best information available. Refinements to identify and use only ready, willing, and able firms were made to ensure that double counting did not occur. Weighting was not used in this submission. Weighting is recommended whenever possible in order to help ensure that the Step One Base Figure is as accurate as possible. WisDOT has not historically used weighting and therefore has not developed the system to accurately identify past participation by refined categories or to accurately project future work categories. The inability to accurately project future defined work categories for future Federally Funded project is also impacted by a FHWA Division Office led push for WisDOT to reduce the number of Federally Funded projects, and by the fact that the Wisconsin State legislature has not approved the Governor's effort to increase state bonding. The later impacts the types of projects that will receive Federal Funding, and thus the particular refined work categories. Instead, WisDOT has worked to identify underrepresented or low areas in regard to DBE availability, and then engaged in extensive proactive outreach to identify, certify, and train potential and current DBEs working in those areas so that WisDOT has generally proportional representation in all work areas, alleviating a significant part of the need for a weighting approach. While weighting availability based on expenditures in these categories is considered a best practice and

recommended by US DOT in the goal setting guidance, the action taken by WisDOT and explanation provided are acceptable. However the FHWA Wisconsin Division Office will work with WisDOT to create the capacity to engage in weighting for Step One.

4. Resulting Baseline Goal – The WisDOT resulting baseline goal is 14.13%

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

Once a base figure has been calculated, a State must examine all of the evidence available in its jurisdiction to determine if an adjustment is needed to the base figure to arrive at the overall goal. The result of the WisDOT review was that there was insufficient basis to justify a Step Two adjustment. This determination is reasonable and consistent with US DOT guidance.

The WisDOT effort included a review of each of the five factors included in the 2001 (posted in 2001 and edited in 2002) US DOT DBE goal setting tips. In regards to past performance the information indicates that the number calculated in Step One (14.13%) is sufficiently similar to the five year medium past performance figure (14.09%) such that an adjustment for past performance is not necessary. Furthermore, it is noted that a Step Two adjustment or weighting for past performance is not required by the current applicable US DOT DBE rules, and it is rational for a recipient to decide to not make an adjustment on the basis that the past participation has been very similar to the Step One Figure. In regards to statistical disparities in the ability of DBEs to get financing, bonding, and insurance there was no evidence available to suggest that an adjustment was necessary. A similar determination was made in regards to the factor of data on employment, self-employment, education and training, and union apprenticeship. Aside from the disparity study to be discussed, there was no evidence obtained pertaining to the factor of other data that would help to better measure the percentage of work that DBEs would be likely to obtain in the absence of discrimination. In large part the lack of evidence to suggest that an adjustment is necessary for these factors is due to the maturity of the DBE program in Wisconsin and specifically due to the significant effort that WisDOT has expended, under strong leadership, over the past nine years to promote and increase DBE certification and opportunity, especially in the area of the consulting program.

Under the US DOT goal setting tips WisDOT is required to consider the evidence from any disparity study that has been conducted in Wisconsin to include relevant studies commissioned by other contracting agencies. Research did not identify any disparity studies conducted in Wisconsin prior to the 2005 Ninth Circuit decision. Research did identify one disparity study conducted in Wisconsin after the 2005 Ninth Circuit decision. WisDOT determined that the evidence from that one disparity study did not suggest that a Step Two adjustment is necessary.

The one disparity study that was conducted in Wisconsin was conducted by the D. Wilson Consulting Group for the City of Milwaukee, with limited participation by the Milwaukee Metropolitan Sewage District (MMSD). The MMSD only participated in that part of the study which is called (in the study) the Anecdotal Analysis. This study will be referred to as the City of

Milwaukee Study.

The City of Milwaukee disparity study was conducted in 2011 to determine whether a disparity exists for minority and women owned Emerging Business Enterprises (EBEs) working on City of Milwaukee contracts for construction, professional services, and general goods and services. The study included four years of procurement activity from January 2005 through December 2008. The City of Milwaukee EBE program does not have the same requirements as the DBE program and therefore the City of Milwaukee EBE program does not contain the exact same firms as the federal DBE program. Furthermore the City of Milwaukee disparity study was limited to City of Milwaukee contracts as opposed to WisDOT contracts. Moreover the focus in the City of Milwaukee study was on a three county area in southeastern Wisconsin, which represents less than 5% of the total number of counties in the State of Wisconsin. The goods and services included in the City of Milwaukee study are not the same as the contracts that WisDOT obtains with federal funding. In addition, the professional services did not end up being included in the analysis because there was only one subcontract awarded during the study period, and that contract represented just 0.32 percent of the total contract dollars. For all of these reasons, the City of Milwaukee disparity study does not contain evidence that that would help to better measure the percentage of work that DBEs would be likely to obtain from federal funded Wisconsin contracts in the absence of discrimination.

However, it is noted that for City of Milwaukee construction contracts, the following types of EBEs were considered significantly underutilized: African American, Asian American, and Nonminority Women. Moreover, for City of Milwaukee goods and services contracts, the following types of EBEs were considered significantly underutilized: Native American, Hispanic American, and Nonminority Women (African American were considered underutilized but not significantly underutilized). These conclusions suggest a continuing need for the WisDOT DBE program, but again the overall evidence from the City of Milwaukee disparity study does not suggest that an adjustment is necessary.

PART II. PUBLIC PARTICIPATION SECTION 26.45g

The regulation requires that a State must provide for public participation when establishing its overall goal. The goal setting process used by WisDOT to establish their annual overall goal must include "consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations" which could be expected to have information concerning the availability of DBEs and non-DBEs. This consultation process must also be used to gather information concerning the effects of discrimination on opportunities for DBEs, if present, and to establish a level playing field for the participation of DBEs.

By definition, the process of consultation must involve scheduled face-to-face conference or meeting of some kind with individuals or groups of interested persons for the purpose of developing and/or assessing a proposed goal and methodology and seeking information or advice before a decision is made. Publication of the proposed goal to the general public is not

synonymous with, or a substitute for, consultation with interested or affected groups.

Therefore, WisDOT should identify groups within their contracting market that are likely to have information relevant to the goal setting process or that have a stake in the outcome of the process. Those groups should be contacted and invited to participate in a face-to-face exchange (which may occur at a public meeting) aimed at obtaining the kind of information set out in the regulation regarding establishing the overall DBE goal. Efforts should be made to engage in a dialogue with as many interested stakeholders as possible. An advisory committee may be one method of consultation (but not the exclusive method, since this could lead to a recipient talking only to the same people all the time).

WisDOT satisfied and exceeded this requirement in that WisDOT utilized an inclusive and extensive consultation and public participation process in establishing its DBE goal. This is the third annual goal setting process in which WisDOT has conducted face-to-face open public meetings. From the prior experience WisDOT learned that some individuals desire a meeting after the proposed goal is established, while US DOT guidance is to hold the face-to-face public meetings prior to establishing the proposed goal. Therefore WisDOT has elected to satisfy both expectations by holding a combination of advisory meetings and open public meetings both before and after establishing the proposed goal. For this effort WisDOT has used a three part approach. The first method is consultation with the "regular" industry groups through the two primary DBE advisory committees which includes minority, women's and general contractor groups, community organizations, and other officials or organizations. The second method is a combination of open advertised face-to-face public meetings held expressly for the purpose of discussing the overall annual goal, supplemented by consultation during scheduled events to include the annual DBE conference and mega project outreach committees. The latter included minority, women's and general contractor groups, community organizations, and other officials or organizations as well as groups and individuals new to the WisDOT DBE program and to the WisDOT contracting process. The former, the open advertised face-to-face public meetings held expressly for the purpose of discussing the overall annual goal, brought in a variety of individuals and organizations who asked questions about the proposed annual goal and, since many were unfamiliar with the program, about the overall WisDOT DBE program. The third method is the traditional publication of the proposal annual goal, on the WisDOT website and in selected newspapers.

For clarity in understanding the WisDOT submission, it is important to understand that WisDOT has found it effective to manage their DBE program by dividing their overall annual goal into one WisDOT internal sub-goal for their construction program and one WisDOT internal sub-goal for their extensive \$200,000,000 consulting program, along with a third, less controversial and smaller sub-goal for the local let local program. WisDOT understands that the Department is responsible to FHWA for the single overall annual goal set forth in their submission. However, for administration, it is more effective for WisDOT to set and manage through these sub-goals, with their own race neutral and race conscious divisions. WisDOT uses this same process, with individual Step 1 calculations, when engaging in public outreach with the relevant DBE advisory committees for setting the targeted sub-goal for the state let construction program and for their consulting program. However for their open advertised face-to-face public meetings, for their

consultation during scheduled meetings and conferences, and for the public announcement WisDOT used only the proposal overall DBE goal.

A. Consultation – Two Primary DBE Advisory Committees – The WisDOT overall annual DBE goal for 2015, 2016, and 2017 was developed in consultation with two WisDOT committees that include very broad stakeholder representation.

(1). **Transportation Advisory Committee (TRANS-AC)**. TRANS-AC is a long-term permanent standing committee that advises WisDOT on DBE matters to include but not limited to overall annual DBE goals and program revisions, with a focus on the construction industry and operations. TRANS-AC members provide direct, immediate, and responsive industry and community feedback to WisDOT during each step of the goal setting process. In regards to meetings that included discussion related to goal setting consultation, the full TRANS-AC met in 2014 on February 26, April 23, and June 25. TRANS-AC membership includes minority, women's and general contractor groups, community organizations, and other officials or organizations. Specifically association membership includes the Wisconsin Transportation Builders Association (WTBA) which although it contains DBE members primarily represents the interests of nonDBE prime and subcontractor construction contracts; the National Association of Minority Contractors (NAMC) which represents DBE firms; the American Indian Chamber of Commerce of Wisconsin (AICCW) representing Native American stakeholders; the Milwaukee based African American Chamber of Commerce (AACC). Membership also includes specific individuals including those from women owned DBE firms; minority owned DBE firms, Native American owned DBE firms, and nonDBE construction firms. WisDOT rotates memberships in order to ensure that the Department is not just talking to the same people year after year. New individuals and groups, with fresh ideas and different concerns, are brought into TRANS-AC on a regular basis. Overall, the group represents a wide number of stakeholders in order to ensure that all stakeholders' views are well represented during discussions. Comments obtained from TRANS-CAC goal consultation discussions are included in the overall comments section below.

(2). **Transportation Consultant Advisory Committee (TRANS-CAC)**. Based on the success of TRANS-AC, and in recognition of the growing success of DBE consulting firms and the growing size of the WisDOT consulting program, in 2005 WisDOT established TRANS-CAC to focus on issues in the consulting industry and on increasing participation in the significant WisDOT consulting program. In contrast to TRANS-AC, which meets as one group, WisDOT has determined that TRANS-CAC is more effective in obtaining open conversations by having the DBEs meet one month, the prime consultants the next month, and then the full group the following month. However, WisDOT also conducted TRANS-AC meetings specifically on the goal setting process. In regards to meetings that included discussion related to goal setting consultation, as a full group TRANS-CAC met in 2013 on October 2 and November 21, and in 2014 on February 18, June 10, and June 24. TRANS-CAC is comprised of individual DBE and nonDBE consulting firms along with representatives from the American Council of Engineering Companies of Wisconsin (ACEC), the National Association of Minority Contractors (NAMC), WisDOT, and FHWA. It is noted that ACEC itself is comprised of DBE and nonDBE firms, and that individuals from DBE firms are active in the organization's leadership. Similar to TRANS-AC, WisDOT continually reviews and adjusts the membership on TRANS-CAC in order to

ensure that different views and perspectives are brought to the table. Comments obtained from TRANS-CAC goal consultation discussions are included in the overall comments section below.

B. Consultation - Advertised Public Face-To-Face Meetings – Consistent with the US DOT guidance to not just rely on consultation with normal industry groups and representatives, WisDOT elected to advertise and hold five open public face-to-face meetings. These public informational meetings were advertised in newspapers and through a variety of stakeholder methods, to include flyers given to community and industry groups, in addition to being handed out at major project meetings and other opportunities. One meeting was held on January 10, 2014 in conjunction with the Annual WisDOT DBE conference in the southeastern part of the state, where the majority of the DBE contractors are located. One meeting was held on June 24th, again in the southeastern part of the state, in conjunction with the Zoo Interchange Stakeholder Committee. WisDOT establishes advisory committees for certain mega projects. These committees include very broad stakeholder representation, to include individuals, elected officials and/or their representatives, community groups, industry representatives, individual DBE owners, labor representatives, and other community stakeholders. These mega project committees do also include the associations that participate in TRANS-AC and TRANS-CAC (WTBA, NAMC, ACEC, AICCW, and AACC). However the outreach committees also include individual DBE and nonDBE firms, Tribal Government representatives, local community groups, and local and state elected officials. They are normally dominated by individuals that are not familiar with WisDOT contracting procedures and programs. Moreover, they are usually chaired by a local elected official. The third meeting was held on June 26, 2014 for the Coalition of Ethnically Diverse Chambers of Commerce. This was the first time meeting with this group for purposes of setting the DBE annual goal. The fourth meeting was held on July 9, 2014 as part of the Highway 41 mega project. The Highway 41 mega project runs near Tribal reservation land and the project has been very successful in reaching out to Tribal businesses, Governments, and community members. The final public meeting was held on July 18, 2014 in the southwest part of the state in conjunction with the Highway I-39/90 Comments obtained from participants at the public face-to-face meetings are included in the overall comments section below.

C. Published Notice - The required public notice was published on the WisDOT's website and in four general or specialty publications: The Wisconsin State Journal (the official state publication newspaper and the main newspaper in Madison, the State Capital); News from Indian Country (an independent, Indian-owned, reservation based statewide newspaper with distribution to all eleven Federally recognized Tribes in Wisconsin); The Capital Times (a newspaper published in Madison, Wisconsin by The Capital Times Company, primarily distributed in a 19-county region in south-central Wisconsin, and VOZ Latina (a multi-cultural community newspaper published in Spanish and English and distributed primarily in the Madison area with an estimated readership of 20,000) . The proposed goals were also advertised through the industry consultation groups, and through the mega project advisory notices and minutes, and thus through them to both the "regular" stakeholders and to independent citizens and community groups participating in these WisDOT outreach efforts. The public comment period closed July 21, 2014. WisDOT did not receive comments as a result of the required public notice. WisDOT did receive comments through the face-to-face meetings and through the stakeholder commitment engagements.

D. Comments – WisDOT received comments through discussions conducted in association with their two regular industry advisory committees (TRANS-AC and TRANS-CAC) and through their face-to-face public meetings. The majority of the comments and questions concerned the implementation of the DBE program. However, WisDOT was able to steer the discussions to cover the issues required by US DOT regulations, to include but not limited to effective consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the success or failure of WisDOT efforts to establish a level playing field for the participation of DBEs. The consulting stakeholder committee comments were directed towards the proposed sub goal for consulting. However the nature of the comments are applicable to the overall goal and WisDOT took them into consideration for both purposes. The comments are further discussed below:

(1). Good faith waivers. There were questions on why and when project waivers are granted and how this impacts the overall goal achievement. WisDOT answered the questions and provided the requested information. There was no impact on the proposed overall annual goal.

(2). Project unbundling. There were questions on the decision process and comments on how to improve the effectiveness of unbundling contracts. WisDOT answered the questions and continues to adjust the process. WisDOT incorporated both the comments and the individuals raising the comments into their project unbundling and goal setting process. There was no impact on the proposed overall annual goal.

(3). Training and DBE support services. There were questions on the training and DBE support services available, and comments on the training needed by DBE firms to level the playing field. This included the need for loan/financing assistance. In response WisDOT has conducted training in conjunction with their mega project outreach efforts and adjusted their DBE support services program to assist in overcoming the impact of past discrimination and level the playing field for DBE firms. There was no impact on the proposed overall annual goal.

(4). Small Business Program Element. There were questions on, and comments for, the small business program element that WisDOT developed to satisfy the US DOT requirement. WisDOT addressed the questions and took the comments into consideration in determining the further implementation of their small business program element. There was no impact on the proposed overall annual goal.

(5). Individual Work Areas. There were a number of questions and comments on individual work areas, to include in particular trucking and consulting. There were also related questions concerning the counting of DBE participation, especially for suppliers. WisDOT answered the questions and will address the issues in the appropriate WisDOT industry committees. There was no impact on the proposed overall annual goal.

(6). Individual Projects. There were a number of questions and comments on individual projects,

to include questions on DBE credit and safety concerns. WisDOT provided appropriate answers and will address remaining project issues on a project level basis. There was no impact on the proposed overall annual goal.

(7). Certification. There were questions on the ability of individuals and populations, to include but not limited to the Hispanic community, to successfully complete the certification process. There were also related questions and concerns regarding the number of certified black female owned DBE firms, which is directly related to the certification process. In the past, for mega projects and otherwise, WisDOT has engaged in targeted outreach to the Hispanic community, the black community, the Tribal community, and other groups to encourage and assist these populations in the certification process. WisDOT provided appropriate answers and will address these concerns again during the process of reviewing and revising their certification process and their overall DBE program implementation consistent with adjustments caused by the new DBE rules. There was no impact on the proposed overall annual goal.

(8). Consulting program. There were extensive comments generated during the consultation with TRANS-CAC, the WisDOT DBE stakeholder group for the extensive WisDOT consulting program. The industry comments focused on the possibility that WisDOT may have generated too great of DBE participation in the consulting program, to the detriment of nonDBE firms. It is noted that the majority of the DBE consulting participation is race neutral, achieved by selection of DBE firms under the required Qualification Based Selection process. However the race conscious part of the program is still important, especially for use in promoting the use of DBE firms that are new to the WisDOT highway construction program. All comments received in this area were strongly considered by WisDOT, and WisDOT elected to go with a consulting program sub goal that was reflective of all comments; that was larger than the previous consulting sub goal consistent with the emerging number and capability of DBE firms, and that was reasonable and appropriate for the industry conditions. However, that actual Step One calculation used by WisDOT to determine their overall annual goal was based on the RWA Contractors list, not any of the stakeholder recommendations for the consulting program Step One goal discussion.

Overall this approach by WisDOT provided real opportunity for industry, community groups, and individuals to participate in the data review and discussion process used by WisDOT to determine their overall goals. WisDOT continues to increase the diversity of participation of committees, and to explore the most effective manner in which to engage in face-to-face meetings, in order to generate a robust and healthy discussion. Overall, WisDOT engaged in effective public outreach and reasonably considered the comments and questions received. The proposed WisDOT overall goal is consistent with these comments and concerns, and represents a reasonable basis for the WisDOT DBE program.

PART III. RACE AND GENDER – NEUTRAL AND CONSCIOUS MEASURES
SECTION 26.51

The regulations require that a State must meet the maximum feasible portion of its overall goal by using race and gender-neutral means of facilitating DBE participation. Consistent with this requirement WisDOT established the following projection.

A. Race-Neutral and Race-Conscious Projection. In meeting their overall FFY 2015, 2016, and 2017 goal of 14.13% WisDOT projects that it will obtain 9.66% through race-conscious means and 4.47% using race-neutral means. Taking into consideration their expected overall federal-aid highway program of \$606,000,000 the 4.47% race-neutral component would represent \$27,088,200 in race-neutral participation with a corresponding \$58,539,600 in race-conscious participation in each of Federal Fiscal Years 2015, 2016, and 2017. The 4.47% race-neutral projection is supported by quantifiable data to include both the low but consistent DBE race neutral participation in the WisDOT construction program and the extensive DBE race neutral participation in the \$200,000,000 WisDOT consultant program. The later participation based on the ability of DBE consulting firms to successfully compete for consulting contracts under the Qualification Based Selection process. Most importantly, the proposed 4.47% race neutral split represents the medium race neutral achievement over the prior five years. Consequently, FHWA approves a race-neutral projection of 4.47%.

B. Description of the Information Relied Upon. WisDOT's race-neutral projection of 4.47% was determined primarily based on the medium race neutral achievement (4.47%) over the previous five Federal Fiscal Years. WisDOT also considered the four factors set forth in the US DOT Goal Setting Tips, but determined that none of these established a basis to warrant an adjustment to the 4.47% figure. During this review WisDOT did not engage in any double counting and WisDOT did explain their past and future efforts to increase their ability to monitor DBE participation in order to determine their need to adjust their use of race conscious measures. The prior five year medium race-neutral achievement for WisDOT was 4.47% and was based on participation obtained through prime construction contracts let to DBEs; prime consultant contracts to DBEs; subcontracts to DBEs on contracts that did not have contract goals; and DBE participation in excess of a contract goal. This included participation from unbundled contract opportunities. WisDOT recognized that the projected 4.47% race-neutral estimate is higher than the prior year race neutral achievement of 3.52%. However an improvement by .95% points to a total 4.47% race-neutral achievement represents a realistic and supportable goal based on the historical medium average and the experience gained using various race-neutral means, the increased capacity created through the successful participation of DBE firms; the revised good faith guidance for prime contractors; the current and continuing WisDOT financial effort to sponsor DBE participation in the Bid Express Small Business Network; the prior WisDOT Native American capacity building effort; the increasing effective use of DBE/SS contracts to improve DBE efficiency; continued prime industry support of the DBE program; and the demonstrated ability of DBE consulting firms to obtain consultant prime contracts.

C. Description of the Types of Race-Neutral Measures Implemented by the State. In support of their DBE program, to include in particular their mega project experiences, WisDOT has gained knowledge and understanding in using an extensive array of race-neutral measures. In addition, it is noted that DBE consulting firms have been very successful in obtaining

WisDOT prime contracts. In order to obtain the maximum feasible portion of their overall participation WisDOT has participated in the following efforts:

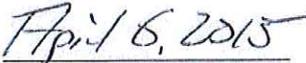
- (a). Unbundling large contracts into smaller accessible stand-alone contracts.
- (b). Providing assistance to DBEs and other small businesses to overcome limitations to bidding as a prime, to include obtaining bonding and financing.
- (c). Providing training to DBE and other small businesses on the bidding process, along with other technical assistance and services.
- (d). Carrying out information and communication programs to highlight specific contracting opportunities via a "Bull's Eye" marketing strategy that matched DBEs to potential contracting opportunities.

D. Description of the Types of Race-Conscious Measure the State Intends to Use. WisDOT will use contract goal as their race-conscious measure.

PART V. CONCLUSION

For the above reasons, WisDOT's goal setting methodology and race-neutral/race-conscious division for Federal Fiscal Year 2015, 2016, and 2017 is approved as adjusted.


Transportation Specialist


Date