



Office of Civil Rights

DISADVANTAGED BUSINESS ENTERPRISE TRIENNIAL GOAL FOR FEDERAL FISCAL YEARS 2023-2025



The Delaware Department of Transportation
Disadvantaged Business Enterprise
Overall Disadvantaged Business Enterprise Triennial Goal for
the Federal Highway Administration
Proposed
Federal Fiscal Years 2023–2025

Introduction

The Delaware Department of Transportation (“DelDOT”) submits this report on its Disadvantaged Business Enterprise (“DBE”) triennial goal and the methodology used to calculate that goal to the United States Department of Transportation (“USDOT”) Federal Highway Administration (“FHWA”) for review in accordance with Title 49 Code of Federal Regulations Part 26 (“Part 26”), §26.45, as amended by Docket No. OST-2010-0021.

This submission covers Federal Fiscal Years (“FFY”) 2023-2025 and supports an overall DBE goal of 14.19%. DelDOT expects to satisfy its overall goal by combining a 12.27% race-conscious component with a 1.92% race-neutral component.

DelDOT’s goal setting methodology consists of two steps: (1) Establishing the base figure for the relative availability of DBEs, and (2) Adjusting the base figure to reflect available data.

As required by Part 26, §26.45 (b), 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 (relative availability of DBEs). This goal submission also provides the portion of the overall DBE goal to be achieved through neutral means.

DelDOT commissioned an availability study from Colette Holt & Associates (“CHA”) to determine the base figure of DBE availability and examine data relevant to whether to adjust the base figure. Attachment B. These data and results are discussed below.

Step One Base Figure

The Final Contract Data File (“FCDF”) provided to CHA for analysis contained a total award amount of \$767,555,719, representing 529 contracts to primes and 908 associated subcontracts. The FCDF was used to determine the geographic and product markets for the analyses, to estimate the utilization of DBEs on those contracts, and to calculate DBE availability in DelDOT’s marketplace.

A legally defensible disparity study must determine, empirically, the industries that represent the agency’s product or industry market. This is also a requirement under Part 26 official institutional guidance.¹ The accepted approach is to analyze those detailed industries, as defined by six-digit

¹ [https://www.transportation.gov/sites/dot.gov/files/docs/Tips for Goal-Setting in the DBE Program](https://www.transportation.gov/sites/dot.gov/files/docs/Tips%20for%20Goal-Setting%20in%20the%20DBE%20Program); see

North American Industry Classification System (“NAICS”) codes² that make up at least 75% of the prime contract and subcontract payments for the study period.³ The determination of DeIDOT’s product and geographic market required three steps:

1. Development of the FCDF to determine the product market. Table 1 presents these results.
2. Identification of the geographic market.
3. Determination of the product market constrained by the geographic parameters. Table 2 presents these results.

DeIDOT’s Unconstrained Product Markets for FHWA Funded Contracts

Tables 1 and 2 present the NAICS codes used to define the product market for DeIDOT’s FHWA funded contracts. Table 1 presents each NAICS code with its share of the total contract dollar value. The NAICS codes are presented in the order of the code with the largest share to the code with the smallest share.

Table 1
Industry Percentage Distribution of
Delaware Department of Transportation Contracts by Dollars

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	74.8%	74.8%
237990	Other Heavy and Civil Engineering Construction	9.7%	84.5%
561990	All Other Support Services	2.8%	87.4%
238120	Structural Steel and Precast Concrete Contractors	2.3%	89.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	91.7%
238910	Site Preparation Contractors	1.5%	93.2%
541330	Engineering Services	0.9%	94.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.9%	95.0%
236220	Commercial and Institutional Building Construction	0.6%	95.7%
541690	Other Scientific and Technical Consulting Services	0.6%	96.3%
238990	All Other Specialty Trade Contractors	0.5%	96.8%
238320	Painting and Wall Covering Contractors	0.5%	97.3%
238110	Poured Concrete Foundation and Structure Contractors	0.3%	97.6%

also 49 C.F.R. §26.45.

² www.census.gov/eos/www/naics.

³ Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program, Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, at 50-51 (National Disparity Study Guidelines).

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
484220	Specialized Freight (except Used Goods) Trucking, Local	0.3%	98.0%
332312	Fabricated Structural Metal Manufacturing	0.3%	98.3%
423390	Other Construction Material Merchant Wholesalers	0.2%	98.5%
541370	Surveying and Mapping (except Geophysical) Services	0.2%	98.7%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.2%	98.9%
561730	Landscaping Services	0.2%	99.0%
237110	Water and Sewer Line and Related Structures Construction	0.1%	99.2%
237120	Oil and Gas Pipeline and Related Structures Construction	0.1%	99.2%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.1%	99.3%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.1%	99.4%
541990	All Other Professional, Scientific, and Technical Services	0.1%	99.5%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.1%	99.5%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.1%	99.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.04%	99.6%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.04%	99.6%
237130	Power and Communication Line and Related Structures Construction	0.04%	99.7%
238190	Other Foundation, Structure, and Building Exterior Contractors	0.04%	99.7%
238160	Roofing Contractors	0.03%	99.8%
238140	Masonry Contractors	0.03%	99.8%
339950	Sign Manufacturing	0.03%	99.8%
561320	Temporary Help Services	0.03%	99.9%
488410	Motor Vehicle Towing	0.03%	99.9%
541620	Environmental Consulting Services	0.02%	99.9%
213111	Drilling Oil and Gas Wells	0.02%	99.9%
562910	Remediation Services	0.02%	99.9%
488490	Other Support Activities for Road Transportation	0.02%	99.96%
423840	Industrial Supplies Merchant Wholesalers	0.01%	99.97%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.01%	99.98%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
541611	Administrative Management and General Management Consulting Services	0.01%	99.99%
238130	Framing Contractors	0.005%	99.99%
424710	Petroleum Bulk Stations and Terminals	0.003%	99.99%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	0.002%	99.995%
444220	Nursery, Garden Center, and Farm Supply Stores	0.002%	99.997%
561410	Document Preparation Services	0.001%	99.999%
238150	Glass and Glazing Contractors	0.001%	100.00%
TOTAL		100.0%	

Source: CHA analysis of Delaware Department of Transportation data

DeIDOT's Relevant Geographic Market Area for FHWA Funded Contracts

Requirements by both the courts and Part 26⁴ limit the reach of DeIDOT's race- and gender-conscious contracting program to its geographic market area.⁵ While this may be the state's jurisdictional boundaries, this element of the analysis must be empirically established.⁶

To determine the geographic market area, we applied the standard of identifying the firm location that account for close to 75% of contract and subcontract dollar payments in the FCDF.⁷ Firm location was determined by zip code and aggregated into counties as the geographic unit. Usually, the 75% guideline results in a set of contiguous counties and this makes it easy to identify a compact spatial boundary for the geographic market. Only 55.9% of the DeIDOT contract dollars were awarded to Delaware based firms, perhaps because of the small size of the state. Three additional counties – one each in Maryland, Pennsylvania, and New Jersey – captured an additional 24.5% of the contract dollars. In each of these counties, one firm working in one NAICS code received all or the vast majority of the dollars spent in that county. Beyond these firms, DeIDOT does not do significant contracting in these counties. Because of the absence of significant procurement in these three counties, these counties are outliers and were not included in DeIDOT's geographic market. For purposes of this analysis, the state of Delaware was determined to be the geographic market.

⁴ <https://www.transportation.gov/sites/dot.gov/files/2020-01/docr-20130625-002tipsforgoal-settingindbeprogram20141106.pdf>; see also Part 26, §26.45.

⁵ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the DOT DBE program).

⁶ *Concrete Works of Colorado, Inc., v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographical boundaries would ignore "economic reality").

⁷ National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> ("National Disparity Study Guidelines"), at p. 29.

DeIDOT's Utilization of DBEs on FHWA Funded Contracts

Having determined DeIDOT's product and geographic market area for FHWA funded contracts, the next step was to determine the dollar value of its utilization of DBEs⁸ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 25 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$428,862,101. Table 2 presents these data. We note that the contract dollar shares in Table 2 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability⁹ from unweighted availability, as discussed below.

Table 2
NAICS Code Distribution of Contract Dollars
in DeIDOT's Constrained Product Market

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$340,145,600	79.3%
237990	Other Heavy and Civil Engineering Construction	\$22,286,422	5.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$14,995,138	3.5%
561990	All Other Support Services	\$14,229,233	3.3%
238120	Structural Steel and Precast Concrete Contractors	\$10,370,803	2.4%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$5,315,243	1.2%
541330	Engineering Services	\$4,904,171	1.1%
238320	Painting and Wall Covering Contractors	\$3,609,054	0.8%
541690	Other Scientific and Technical Consulting Services	\$3,493,895	0.8%

⁸ For our analysis, the term "DBE" includes firms that are certified pursuant to 49 C.F.R. Part 26 and minority- and woman-owned firms that are not DBE certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of M/WBE availability calculation that casts a broader net.");

https://www.transportation.gov/sites/dot.gov/files/docs/Tips_for_Goal-Setting_in_DBE_Program_20141106.pdf.

⁹ See "Tips for Goal Setting in the Disadvantaged Business Enterprise Program" ("F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.") (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
238990	All Other Specialty Trade Contractors	\$3,311,109	0.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$1,828,242	0.4%
238910	Site Preparation Contractors	\$1,478,695	0.3%
541990	All Other Professional, Scientific, and Technical Services	\$491,893	0.1%
561730	Landscaping Services	\$428,516	0.1%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	\$398,955	0.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$332,857	0.1%
238160	Roofing Contractors	\$253,710	0.1%
238140	Masonry Contractors	\$246,929	0.1%
561320	Temporary Help Services	\$241,386	0.1%
213111	Drilling Oil and Gas Wells	\$151,189	0.04%
541620	Environmental Consulting Services	\$114,691	0.03%
423840	Industrial Supplies Merchant Wholesalers	\$105,897	0.02%
237110	Water and Sewer Line and Related Structures Construction	\$71,303	0.02%
238110	Poured Concrete Foundation and Structure Contractors	\$32,000	0.01%
541370	Surveying and Mapping (except Geophysical) Services	\$25,165	0.01%
TOTAL		\$428,862,101	100.0%

Source: CHA analysis of Delaware Department of Transportation data

Availability of DBEs in DeIDOT's FHA Funded Markets

The consultant next estimated the availability of disadvantaged, minority- and female-owned firms (collectively, "DBEs") in DeIDOT's market area. Availability estimates are also crucial for DeIDOT to set narrowly tailored contract goals on its federal aid contracts.

CHA applied the "custom census" approach with refinements to estimating availability. To conduct the Custom Census for this study, the consultant utilized three different databases:

1. The Final Contract Data File.
2. The Master D/M/WBE Directory compiled by CHA.
3. Dun & Bradstreet/Hoovers Database.

First, CHA eliminated any duplicate entries in the geographically constrained FCDF. Some firms received multiple contracts for work performed in the same NAICS codes. This list of unique firms comprised the first component of the availability determination.

To develop the Master Directory, CHA utilized the Delaware Unified Certification Program Directory. We limited the firms we used in our analysis to those operating within DeIDOT's product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-DBEs. Hoovers maintains a comprehensive, extensive, and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in DeIDOT's market area to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority-owned.¹⁰ However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on DeIDOT contracts.

Table 3
Distribution of the Delaware Department of Transportation's Spending by NAICS Code (the Weights)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
213111	Drilling Oil and Gas Wells	0.04%
237110	Water and Sewer Line and Related Structures Construction	0.02%
237310	Highway, Street, and Bridge Construction	79.3%
237990	Other Heavy and Civil Engineering Construction	5.2%
238110	Poured Concrete Foundation and Structure Contractors	0.01%
238120	Structural Steel and Precast Concrete Contractors	2.4%

¹⁰ The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238140	Masonry Contractors	0.1%
238160	Roofing Contractors	0.1%
238210	Electrical Contractors and Other Wiring Installation Contractors	3.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.1%
238320	Painting and Wall Covering Contractors	0.8%
238910	Site Preparation Contractors	0.3%
238990	All Other Specialty Trade Contractors	0.8%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.2%
423840	Industrial Supplies Merchant Wholesalers	0.02%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.4%
541330	Engineering Services	1.1%
541370	Surveying and Mapping (except Geophysical) Services	0.01%
541620	Environmental Consulting Services	0.03%
541690	Other Scientific and Technical Consulting Services	0.8%
541990	All Other Professional, Scientific, and Technical Services	0.1%
561320	Temporary Help Services	0.1%
561730	Landscaping Services	0.1%
561990	All Other Support Services	3.3%
TOTAL		100.0%

Source: CHA analysis of Delaware Department of Transportation data

Table 4 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs, weighted by DeIDOT's spending in its geographic and industry markets, is 16.9%. This is DeIDOT's step 1 base figure.

Table 4
Aggregated Weighted Availability for Delaware Department of Transportation Contracts

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
4.0%	2.9%	1.4%	0.0%	8.6%	16.9%	83.1%	100.0%

Source: CHA analysis of Delaware Department of Transportation data; Hoovers; CHA Master Directory

Step Two Adjustments to the Base Figure

In accordance with Part 26, §26.45, once DelDOT has calculated the base figure, it must examine all evidence available in its jurisdiction to determine if an adjustment is necessary to the base figure to reflect the level of DBE participation expected, absent the effects of discrimination. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on DelDOT’s federally assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from disparity studies conducted anywhere within DelDOT’s jurisdiction, to the extent not already accounted for in the base figure. If available, DelDOT must also consider available evidence from related fields that affect the opportunities for DBEs to form, grow, and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding, and insurance required to participate in the Program, and data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The DBE regulation cautions that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” §26.45(d)(3).

The 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 DOT funded contracts over the last five years (*i.e.*, the percentage of contract dollars going to DBEs). Table 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.

Table 5
Delaware Department of Transportation’s DBE Participation
Federal Fiscal Years 2018-2022

Participation Time Frame	Participation
DBE Participation FFY 2018	10.58%
DBE Participation FFY 2019	13.84%
DBE Participation FFY 2020	12.73%
DBE Participation FFY 2021	11.47%
DBE Participation FFY 2022	9.60%

The median past DBE participation for FFY 2020 through 2022 was 11.47%.

Evidence from Local Disparity Studies

No other local jurisdictions have conducted studies relevant to DelDOT's contracting activities. While the State of Delaware conducted a study within the last five years, it did not examine highway construction projects.¹¹ The City of Wilmington performed a study in 2021¹², and the City of New Castle performed a study in 2022¹³, but the cities' contracting market areas are quite different from DelDOT's, and the studies were not designed to conform to the requirements for a state department of transportation's DBE triennial goal development. Therefore, DelDOT did not rely on these reports and no adjustment was made.

Evidence from Related Fields

No relevant evidence was available regarding statistical disparities in the ability of DBEs to obtain the financing, bonding and insurance required to participate in the Program, or data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. Therefore, no adjustment was made.

Final DBE Goal Adjustment

To perform the final goal adjustment, DelDOT considered the current capacity of DBE firms to perform work in its market area, as measured by the amount of work performed by DBEs on FHWA assisted projects over the past five years. Following the USDOT's Office of Small and Disadvantaged Business Utilization's *Guidance on Tips for Goal-Setting in the Disadvantaged Business Enterprises ("DBE") Program*, DelDOT combined the step 1 base figure with its median past DBE participation for an average of 14.19% (step 1 base figure of 16.90% + median past participation of 11.47% = 28.37% ÷ 2 = 14.19%).

Race-Neutral/Race-Conscious Projections – 49 C.F.R. Section 26.51(d)

Part 26 requires that DelDOT must meet the maximum feasible portion of its overall goal by using race-neutral measures to facilitate DBE participation (see §26.51(a); see also §26.45(f)(3), and §26.51(c)). Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to DBEs.

The race-neutral attainment for the past five fiscal years is presented in Table-6 to determine the maximum race-neutral participation. DelDOT's median percentage on federal-aid contracts through race-neutral means for FFYs 2018-2022 was 1.92%.

¹¹ <https://mymarketplace.delaware.gov/results-de/documents/disparity-report-2022.pdf>. The Study included minority-, woman-, veteran, service disabled veteran- and individuals with disabilities-owned business enterprises. The Study analyzed contracts from the Division of Government Support Services, Office of Management and Budget, Department of Health & Social Services and Department of Corrections.

¹² <https://www.wilmingtonde.gov/home/showpublisheddocument/11324/638120533496600000>.

¹³ <https://www.newcastlede.gov/2338/Public-Works-Procurement-Disparity-Study>.

**Table-6
Race-Neutral and Race-Conscious Goal vs. Achievement**

Goals				Achievement		
Fiscal Year	Race-Neutral	Race-Conscious	Overall	Race-Neutral	Race-Conscious	Overall
2018	2.20%	%11.60	13.80%	3.95%	6.63%	10.58%
2019	2.20%	%11.60	13.80%	1.61%	12.23%	13.84%
2020	3.44%	%9.96	13.40%	1.92%	10.81%	12.73%
2021	3.44%	%9.96	13.40%	1.55%	9.92%	11.47%
2022	3.44%	%9.96	13.40%	2.43%	7.18%	9.61%

DeIDOT also considered the amount by which past goals were exceeded, as well as past history of inability to achieve goals, in determining the race-neutral and race-conscious proportion consistent with USDOT goal-setting tips. Specifically, USDOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years' goals that were not met or increasing the race-neutral portion to account for exceeding goals.¹⁴ Since DeIDOT exceeded its goal by only 0.04% in FY 2018, we will use the median race-neutral achievement of 1.92% as our measure. DeIDOT will establish race-conscious measures and contract goals to meet the balance of the overall goal (see §26.51(d)).

Race Neutral Measures Implemented by DeIDOT

DeIDOT encourages race-neutral DBE participation through various means, much of which revolves around supporting our DBEs that are actively engaged in highway construction. Some of the initiatives we are pursuing include growing the number of businesses that are certified with DeIDOT; providing opportunities for the DBEs to serve as prime on contracts; and training and business development support to grow and strengthen these small businesses to allow them to be competitive in this industry. The following are highlights of some of the measures that we have implemented, as well as those that are scheduled to be implemented:

¹⁴ Tips for Goal-Setting in the Disadvantaged Business Enterprise (“DBE”) Program: IV. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split; A. Consider the Amount by Which You Exceeded Your Goals in the Past. & F. Consider Past History of Inability to Achieve Goals. (<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>).

Equity In Infrastructure Program (EIP)- In anticipation of the \$1.2 trillion Infrastructure Investment and Jobs Act and to advance President Biden’s Justice40 Initiative and his Executive Order 13985 on Advancing Racial Equity and Support for Underserved Communities, Delaware is pledging to increase, by 2026, the share of federal contracts that go to small and disadvantaged businesses. Building capacity amongst minority owned businesses, while facilitating contracting opportunities that are attainable, will be our priority.

The EIP exists to build generational wealth and reduce the racial wealth gap by improving public infrastructure contracting practices to create more prime, joint venture, and equity contracting opportunities for Historically Underutilized Businesses (HUBs).

The following are examples of the pledge DeIDOT has made to in support of these goals.

- **Increasing the number, size and proportion of contracting opportunities going to HUBs;** DeIDOT intends to facilitate projects that provide DBEs opportunities and supports DeIDOT’s ADA Transition Plan. An example of this may include statewide sidewalk implementation/improvements projects.
- **Increasing the number, size and proportion of contracting opportunities going to HUBs as prime contractors;** DeIDOT believes this may be accomplished by “unbundling” some of our larger contracts and creating smaller contracting opportunities that can be spread amongst DBEs and smaller firms; thereby allowing them to act of as prime.
- **Streamlining the administration of contracting with HUBs... to improve payment time;** During this goal setting period, DeIDOT is proposing to reduce its current Prompt Payment requirement to 15 days instead of the current minimum 30 days that is outlined in the federal regulations. This will reduce the impacts/strain that is placed on our DBEs for whom payment times are critical to the success of their business.

The DBE Academy– Designed to deliver capacity-building, supportive services in the form of individualized technical assistance and group training/information sessions to DBE construction firms, the DBE Academy helps participating firms increase skills and capacity, improve operational performance, and obtain industry and government certifications that are necessary for their business.

Mentor-Protégé Program (MPP)- This initiative is scheduled to launch during this goal period and is intended to establish a link between businesses certified under the Delaware UCP, successful professional service providers, and general contractors who contract with DeIDOT on highway design/engineering and construction projects. The program is sponsored by DeIDOT in coordination with FHWA and is designed to build a more effective, competitive, and diverse pool of contractors capable of bidding on future projects. The purpose for the MPP) is to:

- Promote the development of business management and technical skills for certified DBEs to compete more successfully.

- Develop an effective method for engineering consultants, general contractors, and subcontractors to participate in the MPP. The Program will help certified DBEs to acquire greater access to business support systems that facilitate growth and development through guidance and technical support, as well as the benefit of the mentor's expertise and experience.

Statewide Networking Events- DelDOT is focused on providing opportunities for our small businesses to interact with larger primes that are Delaware based design and construction firms. We are providing networking opportunities for our DBEs across the state, which will center around "relationship building". These events will be held in each county and will lead up to our annual DBE & Small Business Development Summit.

DBE & Small Business Development Summit- The annual DBE Summit is expected to draw approximately 300 DBEs and prime contractors and consultants and will concentrate on providing coaching and educational opportunities for our DBEs all while encouraging networking and business development throughout the event.

The Summit seeks to increase exposure of DBEs to primes and have primes expand their subcontractor and subconsultant pool; promote new DelDOT programs/tools to support DBEs; help DBEs and primes remain compliant on DelDOT projects and overcome barriers/challenges to working together; share best practices for DBEs trying to do business with the State; promote current project opportunities; and provide networking opportunities for primes and DBE's.

Let's Talk DBE- These quarterly zoom sessions are hosted by the Office of Civil Rights - DBE Program and feature participation by DelDOT Cabinet Secretary and Deputy Secretary. These sessions serve as a platform for DBEs to express concerns, and share good news and ideas on ways that DelDOT can support them with increasing opportunities to work on state and federally funded projects. They also provide an opportunity for DelDOT to share what's trending in highway construction for Delaware.

DBE in the Spotlight – A monthly article that highlights a single DBE to showcase the business: who they are, what they do, and their business capacity. This article is shared on DelDOT's website, social media, and is also sent out through direct email to the entire DBE directory and all primes registered with DelDOT.

Final Adjusted Goal

Based on the results of the foregoing analysis, DelDOT proposes a 14.19% DBE goal on FHWA- funded contracts for FFYs 2023 through 2025. DelDOT estimates 1.92% can be achieved through race- and gender-neutral participation and that 12.27% will be achieved through the use of race- and gender-conscious contract goals.

Public Participation — 49 C.F.R. Section 26.45(g) and 26.15(b)(1)

In accordance with Part 26, §26.45(g)(1)(i), DelDOT conducted six (6) meetings during which it consulted with minority, woman's and general contractor groups, community

organizations, and other officials or organizations that could be expected to have information concerning the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and DeIDOT’s efforts to establish a level playing field for the participation of DBEs. The public comment period concerning DeIDOT’s proposed overall DBE goal will conclude on May 19, 2023.

The Table below shows the public meeting schedule. The public was invited to provide feedback in one of the following ways:

- In person at the meetings;
- Virtual Information Sessions;
- Via email at DOT.DelawareDBE@delaware.gov; or
- Through regular mail to DeIDOT Office of Civil Rights, 800 Bay Rd, Dover, DE 19901.

PUBLIC WORKSHOPS		
Monday, April 17, 2023	Tuesday, April 18, 2023	Wednesday, April 19, 2023
Dover Public Library Multipurpose Room A 15 Loockerman Plaza Dover DE 19901	DeIDOT Bear Office 1000 Acre Marsh Conference Room 250 Bear Christiana Road Bear, DE 19701	Georgetown Public Library Meeting Room B 123 West Pine Street Georgetown, DE 19947
Time: 11:00 a.m. – 1:00 p.m.	Time: 5:00 p.m. – 7:00 p.m.	Time: 11:00 a.m. – 1:00 p.m.
Virtual Information Session Time: 5:00 p.m. – 7:00 p.m.	Virtual Information Session Time: 11:00 a.m. – 1:00 p.m.	Virtual Information Session Time: 5:00pm – 7:00 p.m.

The public is invited to attend at any location. These locations are accessible to persons with disabilities. Any person that requires accommodations are requested to contact the Civil Rights Office at DeIDOT by phone (302-760-2035) or email (DOT.DelawareDBE@delaware.gov) at least one week in advance.

The Civil Rights Office will accept written comments on the proposed goal until the close of business on May 19, 2023. Comments should be addressed to Wendy Henry, Civil Rights Administrator.

Interested persons are invited to express their views in writing, giving reasons for support of, or opposition to, the proposed goal. Comments will be received during the workshop or can be mailed to DeIDOT, Civil Rights Office, P.O. Box 778, Dover, DE 19903.

Attachments:

Attachment A: Public Consultation Forum Invitees

The following minority, women's and general contractor groups, community organizations, and other officials and organizations were invited to attend public consultation meetings:

American Council of Engineering Companies
Associated Builders and Contractors, Inc.
Bethany-Fenwick Area Chamber of Commerce
Central Delaware Chamber of Commerce
Chamber of Commerce for Greater Milford
Delaware Black Chamber of Commerce
Delaware Contractors Association
Delaware Small Business Chamber
Delaware State Chamber of Commerce
DeIDOT Disadvantaged Business Enterprise Directory*
Greater Delmar Chamber of Commerce
Greater Georgetown Chamber of Commerce
Laurel Chamber of Commerce
Lewes Chamber of Commerce
Middletown Area Chamber of Commerce
Millsboro Chamber of Commerce
Milton Chamber of Commerce
New Castle County Chamber of Commerce
Office of Supplier Diversity
Rehoboth Beach/Dewey Beach CC
Selbyville Chamber of Commerce
The Western Sussex Chamber of Commerce

*This includes DBE and non-DBE firms (primes and subs) that do business with DeIDOT

Attachment B: Colette Holt & Associates 2023 Disadvantaged Business Enterprise Availability Report

I. Availability Analysis for the Delaware Department of Transportation

A. Contract Data Overview

We analyzed data for Delaware Department of Transportation’s (“DelDOT”) contracts for federal fiscal years 2019 through 2021. To conduct the analysis, we constructed all the fields necessary where they were missing in the contract records (e.g., industry type; zip codes; six-digit North American Industry Classification System (“NAICS”) codes of prime contractors and subcontractors; and Disadvantaged Business Enterprise (“DBE”) information, including payments, race, gender; etc.). Tables 4-1 and 4-2 provide data on the resulting Final Contract Data File (“FCDF”).

**Table 4-1
Final Contract Data File
Number of Contracts**

Contract Type	Total Contracts	Share of Total Contracts
Prime Contracts	529	36.8%
Subcontracts	908	63.2%
TOTAL	1,437	100.0%

Source: CHA analysis of Delaware Department of Transportation data

**Table 4-2
Final Contract Data File
Net Dollar Value of Contracts**

Business Type	Total Contract Dollars	Share of Total Contract Dollars
Prime Contracts	\$572,705,550	74.6%
Subcontracts	\$194,850,159	25.4%
TOTAL	\$767,555,709	100.0%

Source: CHA analysis of Delaware Department of Transportation data

The following sections present our analysis, which consisted of four steps:

1. The determination of the product and geographic markets for the analysis.
2. The estimation of the utilization of DBEs by DelDOT.
3. The calculation of the DBE unweighted and weighted availability in DelDOT’s marketplace.
4. The examination of concentration of contract dollars among DBE and non-DBE firms.

A. The Delaware Department of Transportation’s Contract Markets

The federal courts¹, the DBE program regulations,² and the U.S. Department of Transportation’s Office Guidance³ require that a recipient narrowly tailor its implementation of the DBE program to its market area. A market has two dimensions: product and geography. This means the study must determine the products or industries which an agency purchases and the geographic location of the firms from which it purchases. These elements of the analysis must be empirically established.⁴ The accepted approach is to analyze those detailed industries, as defined by six-digit NAICS codes,⁵ that make up at least 75% of the prime contract and subcontract payments for the study period.⁶ The determination of DelDOT’s product and geographic market required three steps:

1. Development of the FCDF to determine the product market. Table 4-3 presents these results.
2. Identification of the geographic market.
3. Determination of the product market constrained by the geographic parameters. Table 4-4 presents these results.

1. Product Market for the Delaware Department of Transportation’s Contracts

To establish DelDOT’s product market, we developed the FCDF, which consisted of 48 NAICS codes, with a total contract dollar value of \$767,555,719. Table 4-3 presents each NAICS code with its share of the total contract dollar value. The NAICS codes are presented in the order of the code with the largest share to the code with the smallest share.

**Table 4-3
Industry Percentage Distribution of
Delaware Department of Transportation Contracts by Dollars**

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
237310	Highway, Street, and Bridge Construction	74.8%	74.8%
237990	Other Heavy and Civil Engineering Construction	9.7%	84.5%

¹ *City of Richmond v. J.A. Croson Co.*, 488 U.S. 469, 508 (1989) (Richmond was specifically faulted for including minority contractors from across the country in its program based on the national evidence that supported the USDOT M/WBE program).

² 49 C.F.R. §26.45(c).

³ <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise> (“D. Explain How You Determined Your Local Market Area... your local market area is the area in which the substantial majority of the contractors and subcontractors with which you do business are located and the area in which you spend the substantial majority of your contracting dollars.”).

⁴ *Concrete Works of Colorado, Inc. v. City and County of Denver*, 36 F.3d 1513, 1520 (10th Cir. 1994) (to confine data to strict geographic boundaries would ignore “economic reality”).

⁵ www.census.gov/eos/www/naics.

⁶ National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> (“National Disparity Study Guidelines”).

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
561990	All Other Support Services	2.8%	87.4%
238120	Structural Steel and Precast Concrete Contractors	2.3%	89.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	2.0%	91.7%
238910	Site Preparation Contractors	1.5%	93.2%
541330	Engineering Services	0.9%	94.1%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	0.9%	95.0%
236220	Commercial and Institutional Building Construction	0.6%	95.7%
541690	Other Scientific and Technical Consulting Services	0.6%	96.3%
238990	All Other Specialty Trade Contractors	0.5%	96.8%
238320	Painting and Wall Covering Contractors	0.5%	97.3%
238110	Poured Concrete Foundation and Structure Contractors	0.3%	97.6%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.3%	98.0%
332312	Fabricated Structural Metal Manufacturing	0.3%	98.3%
423390	Other Construction Material Merchant Wholesalers	0.2%	98.5%
541370	Surveying and Mapping (except Geophysical) Services	0.2%	98.7%
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing	0.2%	98.9%
561730	Landscaping Services	0.2%	99.0%
237110	Water and Sewer Line and Related Structures Construction	0.1%	99.2%
237120	Oil and Gas Pipeline and Related Structures Construction	0.1%	99.2%
423510	Metal Service Centers and Other Metal Merchant Wholesalers	0.1%	99.3%
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)	0.1%	99.4%
541990	All Other Professional, Scientific, and Technical Services	0.1%	99.5%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.1%	99.5%
424690	Other Chemical and Allied Products Merchant Wholesalers	0.1%	99.6%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.04%	99.6%
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	0.04%	99.6%
237130	Power and Communication Line and Related Structures Construction	0.04%	99.7%

NAICS	NAICS Code Description	Pct Contract Dollars	Cumulative Pct Contract Dollars
238190	Other Foundation, Structure, and Building Exterior Contractors	0.04%	99.7%
238160	Roofing Contractors	0.03%	99.8%
238140	Masonry Contractors	0.03%	99.8%
339950	Sign Manufacturing	0.03%	99.8%
561320	Temporary Help Services	0.03%	99.9%
488410	Motor Vehicle Towing	0.03%	99.9%
541620	Environmental Consulting Services	0.02%	99.9%
213111	Drilling Oil and Gas Wells	0.02%	99.9%
562910	Remediation Services	0.02%	99.9%
488490	Other Support Activities for Road Transportation	0.02%	99.96%
423840	Industrial Supplies Merchant Wholesalers	0.01%	99.97%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	0.01%	99.98%
541611	Administrative Management and General Management Consulting Services	0.01%	99.99%
238130	Framing Contractors	0.005%	99.99%
424710	Petroleum Bulk Stations and Terminals	0.003%	99.99%
532412	Construction, Mining, and Forestry Machinery and Equipment Rental and Leasing	0.002%	99.995%
444220	Nursery, Garden Center, and Farm Supply Stores	0.002%	99.997%
561410	Document Preparation Services	0.001%	99.999%
238150	Glass and Glazing Contractors	0.001%	100.00%
TOTAL		100.0%	

Source: CHA analysis of Delaware Department of Transportation data

2. Geographic Market for the Delaware Department of Transportation's Contracts

To determine the geographic market area, we applied the standard of identifying the firm locations that account for close to 75% of contract and subcontract dollar payments in the FCDF.⁷ Firm location was determined by zip code and aggregated into counties as the geographic unit. Usually, the 75% guideline results in a set of contiguous counties and this makes it easy to identify a compact spatial boundary for the geographic market. Only 55.9% of the DelDOT contract dollars were awarded to Delaware based firms, perhaps because of the small size of the state. Three additional counties – one each in Maryland, Pennsylvania, and New Jersey – captured an

⁷ National Academies of Sciences, Engineering, and Medicine 2010, *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*. Washington, DC: The National Academies Press. <https://doi.org/10.17226/14346> (“National Disparity Study Guidelines”), at p. 29.

additional 24.5% of the contract dollars. In each of these counties, one firm working in one NAICS code received all or the vast majority of the dollars spent in that county. Beyond these firms, DelDOT does not do significant contracting in these counties. Because of the absence of significant procurement in these three outlier counties, they were not included in DelDOT's geographic market. For purposes of this analysis, the state of Delaware was determined to be the geographic market.

B. The Delaware Department of Transportation's Utilization of DBEs in its Product and Geographic Market

Having determined DelDOT's product and geographic market area, the next step was to determine the dollar value of its utilization of DBEs⁸ as measured by net payments to prime firms and subcontractors and disaggregated by race and gender. There were 25 NAICS codes after constraining the FCDF by the geographic market; the dollar value of the contracts in these codes was \$428,862,101. Table 4-4 presents these data. We note that the contract dollar shares in Table 4-4 are equivalent to the weight of spending in each NAICS code. These data were used to calculate weighted availability⁹ from unweighted availability, as discussed below.

**Table 4-4
NAICS Code Distribution of Contract Dollars
in the Constrained Product Market**

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
237310	Highway, Street, and Bridge Construction	\$340,145,600	79.3%
237990	Other Heavy and Civil Engineering Construction	\$22,286,422	5.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$14,995,138	3.5%
561990	All Other Support Services	\$14,229,233	3.3%
238120	Structural Steel and Precast Concrete Contractors	\$10,370,803	2.4%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	\$5,315,243	1.2%

⁸ For our analysis, the term "DBE" includes firms that are certified pursuant to 49 C.F.R. Part 26 and minority- and woman-owned firms that are not DBE certified. The inclusion of all minority- and female-owned businesses in the pool casts the broad net approved by the courts and that supports the remedial nature of these programs. See *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715, 723 (7th Cir. 2007) (The "remedial nature of the federal scheme militates in favor of a method of M/WBE availability calculation that casts a broader net.").

⁹ See "Tips for Goal Setting in the Disadvantaged Business Enterprise Program" ("F. Wherever Possible, Use Weighting. Weighting can help ensure that your Step One Base Figure is as accurate as possible. While weighting is not required by the rule, it will make your goal calculation more accurate. For instance, if 90% of your contract dollars will be spent on heavy construction and 10% on trucking, you should weight your calculation of the relative availability of firms by the same percentages.") (emphasis in the original), <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	NAICS Code Description	Total Contract Dollars	Pct Total Contract Dollars
541330	Engineering Services	\$4,904,171	1.1%
238320	Painting and Wall Covering Contractors	\$3,609,054	0.8%
541690	Other Scientific and Technical Consulting Services	\$3,493,895	0.8%
238990	All Other Specialty Trade Contractors	\$3,311,109	0.8%
484220	Specialized Freight (except Used Goods) Trucking, Local	\$1,828,242	0.4%
238910	Site Preparation Contractors	\$1,478,695	0.3%
541990	All Other Professional, Scientific, and Technical Services	\$491,893	0.1%
561730	Landscaping Services	\$428,516	0.1%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	\$398,955	0.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$332,857	0.1%
238160	Roofing Contractors	\$253,710	0.1%
238140	Masonry Contractors	\$246,929	0.1%
561320	Temporary Help Services	\$241,386	0.1%
213111	Drilling Oil and Gas Wells	\$151,189	0.04%
541620	Environmental Consulting Services	\$114,691	0.03%
423840	Industrial Supplies Merchant Wholesalers	\$105,897	0.02%
237110	Water and Sewer Line and Related Structures Construction	\$71,303	0.02%
238110	Poured Concrete Foundation and Structure Contractors	\$32,000	0.01%
541370	Surveying and Mapping (except Geophysical) Services	\$25,165	0.01%
TOTAL		\$428,862,101	100.0%

Source: CHA analysis of Delaware Department of Transportation data

C. The Delaware Department of Transportation’s Utilization of DBEs in its Product and Geographic Market

Tables 4-5 and 4-6 present data on DeIDOT’s DBE utilization, measured in contract dollars and percentage of contract dollars.

**Table 4-5
Distribution of Contract Dollars by Race and Gender
(total dollars)**

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
213111	\$0	\$0	\$0	\$0	\$151,189	\$151,189	\$0	\$151,189
237110	\$0	\$0	\$0	\$0	\$0	\$0	\$71,303	\$71,303
237310	\$0	\$7,550,089	\$607,797	\$0	\$3,873,457	\$12,031,344	\$328,114,264	\$340,145,607
237990	\$0	\$622,983	\$0	\$0	\$2,627,484	\$3,250,467	\$19,035,954	\$22,286,421
238110	\$0	\$0	\$0	\$0	\$0	\$0	\$32,000	\$32,000
238120	\$10,349,593	\$0	\$0	\$0	\$0	\$10,349,593	\$21,210	\$10,370,803
238140	\$0	\$0	\$0	\$0	\$0	\$0	\$246,929	\$246,929
238160	\$0	\$0	\$0	\$0	\$0	\$0	\$253,710	\$253,710
238210	\$1,541,817	\$0	\$0	\$0	\$2,794,385	\$4,336,202	\$10,658,936	\$14,995,138
238220	\$0	\$0	\$0	\$0	\$0	\$0	\$332,857	\$332,857
238320	\$0	\$0	\$0	\$0	\$3,609,054	\$3,609,054	\$0	\$3,609,054
238910	\$0	\$0	\$0	\$0	\$441,441	\$441,441	\$1,037,253	\$1,478,694
238990	\$0	\$335,078	\$0	\$0	\$346,581	\$681,659	\$2,629,450	\$3,311,109
423320	\$0	\$0	\$0	\$0	\$5,315,243	\$5,315,243	\$0	\$5,315,243
423840	\$105,897	\$0	\$0	\$0	\$0	\$105,897	\$0	\$105,897
424610	\$0	\$0	\$0	\$0	\$398,955	\$398,955	\$0	\$398,955
484220	\$450,235	\$1,034,667	\$0	\$0	\$333,889	\$1,818,791	\$9,450	\$1,828,241

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
541330	\$13,585	\$35,573	\$0	\$0	\$5,919	\$55,077	\$4,849,094	\$4,904,171
541370	\$0	\$0	\$0	\$0	\$25,165	\$25,165	\$0	\$25,165
541620	\$0	\$0	\$114,691	\$0	\$0	\$114,691	\$0	\$114,691
541690	\$0	\$0	\$0	\$0	\$0	\$0	\$3,493,895	\$3,493,895
541990	\$0	\$0	\$0	\$0	\$13,150	\$13,150	\$478,743	\$491,893
561320	\$0	\$0	\$0	\$0	\$0	\$0	\$241,386	\$241,386
561730	\$0	\$0	\$0	\$0	\$27,728	\$27,728	\$400,788	\$428,516
561990	\$3,958,737	\$0	\$0	\$93,288	\$9,674,358	\$13,726,382	\$502,850	\$14,229,233
Total	\$16,419,864	\$9,578,390	\$722,488	\$93,288	\$29,637,998	\$56,452,028	\$372,410,073	\$428,862,101

Source: CHA analysis of Delaware Department of Transportation data

Table 4-6
Percentage Distribution of Contract Dollars
by Race and Gender
(share of total dollars)

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
213111	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
237110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
237310	0.0%	2.2%	0.2%	0.0%	1.1%	3.5%	96.5%	100.0%
237990	0.0%	2.8%	0.0%	0.0%	11.8%	14.6%	85.4%	100.0%
238110	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238120	99.8%	0.0%	0.0%	0.0%	0.0%	99.8%	0.2%	100.0%
238140	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238160	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
238210	10.3%	0.0%	0.0%	0.0%	18.6%	28.9%	71.1%	100.0%
238220	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
238320	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
238910	0.0%	0.0%	0.0%	0.0%	29.9%	29.9%	70.1%	100.0%
238990	0.0%	10.1%	0.0%	0.0%	10.5%	20.6%	79.4%	100.0%
423320	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
423840	100.0%	0.0%	0.0%	0.0%	0.0%	100.0%	0.0%	100.0%
424610	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
484220	24.6%	56.6%	0.0%	0.0%	18.3%	99.5%	0.5%	100.0%
541330	0.3%	0.7%	0.0%	0.0%	0.1%	1.1%	98.9%	100.0%
541370	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%	0.0%	100.0%
541620	0.0%	0.0%	100.0%	0.0%	0.0%	100.0%	0.0%	100.0%
541690	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
541990	0.0%	0.0%	0.0%	0.0%	2.7%	2.7%	97.3%	100.0%
561320	0.0%	0.0%	0.0%	0.0%	0.0%	0.0%	100.0%	100.0%
561730	0.0%	0.0%	0.0%	0.0%	6.5%	6.5%	93.5%	100.0%
561990	27.8%	0.0%	0.0%	0.7%	68.0%	96.5%	3.5%	100.0%
Total	3.8%	2.2%	0.2%	0.0%	6.9%	13.2%	86.8%	100.0%

Source: CHA analysis of Delaware Department of Transportation data

D. The Availability of DBEs for Delaware Department of Transportation Contracts

1. The Methodological Framework

Estimates of the availability of DBEs in DeIDOT’s geographic and product market are a critical component of DeIDOT’s compliance with its constitutional and regulatory obligation to narrowly tailor its implementation of the DBE program.¹⁰ We applied the “custom census” approach, with refinements, to estimating availability, the first step in DBE triennial goal setting. The courts and the National Model Disparity Study Guidelines¹¹ have recognized this methodology as superior to the other methods for at least four reasons:

- First, it provides an internally consistent and rigorous “apples to apples” comparison between firms in the availability numerator and those in the denominator. Other approaches often have different definitions for the firms in the numerator (e.g., certified DBEs or firms that respond to a survey) and the denominator (e.g., registered vendors or the Census Bureau’s County Business Patterns data).
- Second, by examining a comprehensive group of firms, it “casts a broader net” beyond those known to the agency. As recognized by the courts, this comports with the remedial nature of contracting affirmative action programs by seeking to bring in businesses that have historically been excluded. Our methodology is less likely to be tainted by the effects of past and present discrimination than other methods, such as bidders’ lists, because it seeks out firms in DeIDOT’s market area that have not been able to access the agency’s opportunities.
- Third, this approach is less impacted by variables affected by discrimination. Factors such as firm age, size, qualifications, and experience are all elements of business success where discrimination would be manifested. Several courts have held that the results of discrimination – which impact factors affecting capacity – should not be the benchmark for a program designed to ameliorate the effects of discrimination. They have acknowledged that DBEs may be smaller, newer, and otherwise less competitive than non-DBEs because of the very discrimination sought to be remedied by race-conscious contracting programs. Racial and gender differences in these “capacity” factors are the outcomes of discrimination and it is therefore inappropriate as a matter of economics and statistics to use them as “control” variables in a disparity study.¹²
- Fourth, it has been upheld by every court that has reviewed it, including most recently in the successful defense of the Illinois State Toll Highway’s minority and woman-owned business program, for which we served as testifying experts.¹³

¹⁰ 49 C.F.R. §25.45(c).

¹¹ *National Disparity Study Guidelines*, pp.57-58. This was also the approach used in the successful defense of the Illinois Department of Transportation’s Disadvantaged Business Enterprise Program in the *Northern Contracting* case, discussed in Chapter II.

¹² For a detailed discussion of the role of capacity in disparity studies, see *the National Disparity Study Guidelines*, Appendix B, “Understanding Capacity.”

¹³ *Midwest Fence, Corp. v. U.S. Department of Transportation et al.*, 840 F.3d 932 (2016); see also *Northern Contracting, Inc. v. Illinois Department of Transportation*, 473 F.3d 715 (7th Cir. 2007), cert. denied, 137 S.Ct. 2292 (2017).

Using this framework, CHA utilized three databases to estimate availability:

1. The Final Contract Data File (FDCF).
2. The Master D/M/WBE Directory compiled by CHA.
3. Dun & Bradstreet/Hoovers Database.

First, we eliminated any duplicate entries in the geographically constrained FDCF. Some firms received multiple contracts for work performed in the same NAICS codes. This list of unique firms comprised the first component of the Study's availability determination.

To develop the Master Directory, we utilized the Delaware Unified Certification Program Directory. We limited the firms we used in our analysis to those operating within DelDOT's product market.

We next developed a custom database from Hoovers, a Dun & Bradstreet company, for minority- and woman-owned firms and non-DBEs. Hoovers maintains a comprehensive, extensive and regularly updated listing of all firms conducting business. The database includes a vast amount of information on each firm, including location and detailed industry codes, and is the broadest publicly available data source for firm information. We purchased the information from Hoovers for the firms in the NAICS codes located in DelDOT's market area to form our custom Dun & Bradstreet/Hoovers Database. In the initial download, the data from Hoovers simply identified a firm as being minority-owned.¹⁴ However, the company does keep detailed information on ethnicity (*i.e.*, is the minority firm owner Black, Hispanic, Asian, or Native American). We obtained this additional information from Hoovers by special request.

The Hoovers database is the most comprehensive list of minority-owned and woman-owned businesses available. It is developed from the efforts of a national firm whose business is collecting business information. Hoovers builds its database from over 250 sources, including information from government sources and various associations, and its own efforts. Hoovers conducts an audit of the preliminary database prior to the public release of the data. That audit must result in a minimum of 94% accuracy. Once published, Hoovers has an established protocol to regularly refresh its data. This protocol involves updating any third-party lists that were used and contacting a selection of firms via Hoover's own call centers.

We merged these three databases to form an accurate estimate of firms available to work on DelDOT contracts.

2. The Availability Data and Results

Tables 4-7 through 4-9 present data on:

- The unweighted availability percentages by race, gender and by NAICS codes for DelDOT's product market;
- The weights used to adjust the unweighted numbers;¹⁵ and
- The final estimates of the weighted averages of the individual six-digit NAICS availability estimates in DelDOT's market area.

¹⁴ The variable is labeled: "Is Minority Owned" and values for the variable can be either "1" (for yes) or blank.

¹⁵ These weights are equivalent to the share of contract dollars presented in the previous section.

We “weighted” the availability data for two reasons. First, the weighted availability represents the share of total possible contractors for each demographic group, weighted by the distribution of contract dollars across the NAICS codes in which DelDOT spends its dollars.

Second, weighting also reflects the importance of the availability of a demographic group in a particular NAICS code, that is, how important that NAICS code is to DelDOT’s contracting patterns.¹⁶ For example, in a hypothetical NAICS Code 123456, the total available firms are 100 and 60 of these firms are DBEs; hence, DBE availability would be 60%. However, if DelDOT spends only one percent of its contract dollars in this NAICS code, then this high availability would be offset by the low level of spending in that NAICS code. In contrast, if DelDOT spent 25% of its contract dollars in NAICS Code 123456, then the same availability would carry a greater weight. For an extended explanation of how unweighted and weighted availability are calculated, please see Appendix D.

To calculate the weighted availability for each NAICS code, we first determined the unweighted availability for each demographic group in each NAICS code, presented in Table 4-7. In the previous example, the unweighted availability for DBEs in NAICS Code 123456 is 60%. We then multiplied the unweighted availability by the share of DelDOT’s spending in that NAICS code, presented in Table 4-8. This share is the *weight*. Using the previous example, where DelDOT spending in NAICS Code 123456 was one percent, the component of DBE weighted availability for NAICS Code 123456 would be 0.006: 60% multiplied by one percent. We say “the component of DBE weighted availability for NAICS Code 123456” because this process is repeated for each NAICS code and then the components are summed to generate an overall weighted availability estimate. The results of this calculation are presented in Table 4-9.

Table 4-7
Unweighted DBE Availability for Delaware Department of Transportation Contracts

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
213111	0.0%	0.0%	0.0%	0.0%	25.0%	25.0%	75.0%	100.0%
237110	2.8%	1.4%	1.4%	0.0%	11.1%	16.7%	83.3%	100.0%
237310	3.7%	3.2%	1.4%	0.0%	8.8%	17.1%	82.9%	100.0%
237990	0.0%	1.7%	1.7%	0.0%	13.8%	17.2%	82.8%	100.0%
238110	2.2%	2.2%	0.7%	0.0%	1.4%	6.5%	93.5%	100.0%
238120	27.8%	5.6%	5.6%	0.0%	5.6%	44.4%	55.6%	100.0%
238140	2.4%	1.8%	0.6%	0.0%	2.4%	7.2%	92.8%	100.0%
238160	1.1%	0.0%	0.6%	0.0%	3.4%	5.1%	94.9%	100.0%
238210	2.7%	0.0%	0.2%	0.2%	5.4%	8.4%	91.6%	100.0%
238220	0.8%	0.4%	0.1%	0.0%	3.3%	4.6%	95.4%	100.0%
238320	1.9%	0.0%	0.4%	0.0%	3.9%	6.2%	93.8%	100.0%

¹⁶ <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

NAICS	Black	Hispanic	Asian	Native American	White Woman	DBE	Non-DBE	Total
238910	4.5%	0.0%	0.8%	0.0%	17.3%	22.6%	77.4%	100.0%
238990	1.1%	0.8%	0.4%	0.1%	2.1%	4.5%	95.5%	100.0%
423320	3.3%	1.7%	0.0%	0.0%	10.0%	15.0%	85.0%	100.0%
423840	4.3%	0.0%	2.1%	0.0%	6.4%	12.8%	87.2%	100.0%
424610	0.0%	0.0%	0.0%	0.0%	11.1%	11.1%	88.9%	100.0%
484220	22.1%	7.4%	0.0%	0.0%	19.1%	48.5%	51.5%	100.0%
541330	2.6%	1.1%	2.8%	0.0%	5.0%	11.5%	88.5%	100.0%
541370	4.2%	2.8%	2.8%	0.0%	9.7%	19.4%	80.6%	100.0%
541620	0.0%	0.0%	4.1%	0.0%	4.1%	8.1%	91.9%	100.0%
541690	2.6%	0.0%	0.4%	0.4%	5.5%	8.9%	91.1%	100.0%
541990	1.9%	0.0%	0.3%	0.0%	7.2%	9.4%	90.6%	100.0%
561320	4.2%	1.0%	3.1%	0.0%	11.5%	19.8%	80.2%	100.0%
561730	0.7%	0.3%	0.0%	0.0%	3.2%	4.2%	95.8%	100.0%
561990	2.9%	0.2%	0.5%	0.0%	4.2%	7.8%	92.2%	100.0%
Total	2.4%	0.5%	0.7%	0.0%	4.8%	8.4%	91.6%	100.0%

Source: CHA analysis of Delaware Department of Transportation data; Hoovers; CHA Master Directory

These unweighted estimates can be used by DeIDOT as the starting point for setting narrowly tailored DBE contract goals. The agency uses the B2Gnow[®] electronic data collection and monitoring system, and the goal setting module has been designed specifically to interface with our study methodology and results.

Table 4-8
Distribution of the Delaware Department of Transportation’s Spending by NAICS Code (the Weights)

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
213111	Drilling Oil and Gas Wells	0.04%
237110	Water and Sewer Line and Related Structures Construction	0.02%
237310	Highway, Street, and Bridge Construction	79.3%
237990	Other Heavy and Civil Engineering Construction	5.2%
238110	Poured Concrete Foundation and Structure Contractors	0.01%
238120	Structural Steel and Precast Concrete Contractors	2.4%
238140	Masonry Contractors	0.1%
238160	Roofing Contractors	0.1%

NAICS	NAICS Code Description	WEIGHT (Pct Share of Total Sector Dollars)
238210	Electrical Contractors and Other Wiring Installation Contractors	3.5%
238220	Plumbing, Heating, and Air-Conditioning Contractors	0.1%
238320	Painting and Wall Covering Contractors	0.8%
238910	Site Preparation Contractors	0.3%
238990	All Other Specialty Trade Contractors	0.8%
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers	1.2%
423840	Industrial Supplies Merchant Wholesalers	0.02%
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers	0.1%
484220	Specialized Freight (except Used Goods) Trucking, Local	0.4%
541330	Engineering Services	1.1%
541370	Surveying and Mapping (except Geophysical) Services	0.01%
541620	Environmental Consulting Services	0.03%
541690	Other Scientific and Technical Consulting Services	0.8%
541990	All Other Professional, Scientific, and Technical Services	0.1%
561320	Temporary Help Services	0.1%
561730	Landscaping Services	0.1%
561990	All Other Support Services	3.3%
TOTAL		100.0%

Source: CHA analysis of Delaware Department of Transportation data

Table 4-9 presents the weighted availability results for each of the racial and gender categories. The aggregated availability of DBEs, weighted by DeIDOT's spending in its geographic and industry markets, is 16.9%.

Table 4-9
Aggregated Weighted Availability for Delaware Department of Transportation Contracts

Black	Hispanic	Asian	Native American	White Women	DBE	Non-DBE	Total
4.0%	2.9%	1.4%	0.0%	8.6%	16.9%	83.1%	100.0%

Source: CHA analysis of Delaware Department of Transportation data; Hoovers; CHA Master Directory

E. Conclusion

This Report examined DeIDOT's utilization of M/WBEs compared to non-M/WBEs; provided estimates of the availability of M/WBEs and non-M/WBEs to perform the types of goods and services utilized by DeIDOT in its geographic market area. Because Congress has already determined that discrimination operates in the market for federally funded transportation contracts, recipients located outside the Ninth Circuit Court of Appeals need not perform a disparity analysis on USDOT-funded contracts. Under 49 C.F.R. Part 26, all that is required is an availability analysis.¹⁷

¹⁷ See <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/western-states-paving-company-case-g-and-a>.