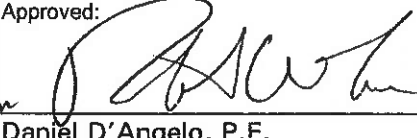


To: SUPERSEDED BY EI 10-036 EFFECTIVE 5/5/11		New York State Department of Transportation ENGINEERING INSTRUCTION	EI 10-021
Title: DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL SETTING GUIDANCE FOR FEDERALLY-AIDED CONSTRUCTION CONTRACTS			
Distribution: ☐ Manufacturers (18) ☒ Local Govt. (31) ☒ Agencies (32) ☒ Surveyors (33) ☒ Consultants (34) ☒ Contractors (39) ☐ _____ ()		Approved:  Daniel D'Angelo, P.E. Deputy Chief Engineer, Design Date: <u>7/2/10</u>	

ADMINISTRATIVE INFORMATION:

- This Engineering Instruction (EI) is effective beginning with projects submitted for the letting of January 6, 2011.
- This EI supersedes the portions of Highway Design Manual (HDM) Section 21.9.3.2.C pertaining to the assignment of DBE goals, and modifies the portion of EI 05-032 pertaining to the assignment of DBE goals. EI 05-032 will be completely superseded when either the companion EI issuing guidance on the setting of M/WBE goals (see last bullet under TECHNICAL INFORMATION) or the complete revision to HDM Chapter 21 (see bullet below) is issued, whichever comes first.
- The materials transmitted with this EI will be available on the Department's website and referenced in an upcoming complete revision to Chapter 21 of the HDM, which is expected to be circulated for Clearance Review in early summer 2010.

PURPOSE: The purpose of this EI is to issue updated procedural guidance on the setting of DBE goals and revised tables for selecting DBE Goals for Construction Contracts.

TECHNICAL INFORMATION: Primary changes to current procedural guidance on the setting of DBE goals include the following:

- Group Type descriptions have undergone modifications. The updated listing of nine Contract Group Types retains five of the Group Types from the former listing and adds four new types that more accurately reflect single work operation contracts, which contain fewer opportunities for subcontracting.
- The threshold for not requiring a DBE goal has been reduced from \$1 M to \$500,000 for certain Group Types.
- Certain Regions have been broken into Subsections (based on geographic distribution of DBE firms) in an effort to more accurately assign an appropriate DBE goal.
- Certain contracts (contracts greater than \$100 M, contracts not conforming to any of the nine Contract Group Types) may require the completion of an in-depth DBE goal analysis by the Region, to be submitted with the PS&E.
- An EI issuing updated guidance on the setting of M/WBE goals for 100% state-funded projects is forthcoming. The Contract Group Types for M/WBE goals will be in synch with the DBE Contract Group Types transmitted with this EI.

IMPLEMENTATION:

- Designers shall use the revised DBE goal setting guidance on all projects (both State- and Locally-administered) submitted for letting on or after January 6, 2011.

TRANSMITTED MATERIALS: Attached are the following documents:

- “Procedural Steps for Setting DBE Goals on Construction Contracts with Federal Aid”.
- Table of “Construction Contract Groups”.
- Table of “Region/County Breakdown for DBE Contract Goals”.
- Table of “DBE Goals for Construction Contracts”.

NYSDOT’s *2010 Disadvantaged Business Enterprise (DBE) Program Plan* will be available on the Department’s website at: <https://www.nysdot.gov/divisions/engineering/design/dqab/hdm/chapter-21>

BACKGROUND:

The Disadvantaged Business Enterprise (DBE) Program is administered by the Office of Civil Rights and is intended to facilitate DBE firm participation on construction contracts which are funded in whole or in part by federal aid. A DBE goal must be determined on every construction contract (both State- and Locally-administered) advertised for letting that utilizes federal aid administered by the FHWA. The Office of Civil Rights prepared the Department’s “2010 Disadvantaged Business Enterprise (DBE) Program Plan”. The procedural guidance transmitted with this EI is consistent with the 2010 DBE Program Plan and is intended to provide designers and construction contract administrators with a consistent and reasonable method for determining contract-level DBE goals that reflect the type of work, the geographic location, the size of the contract, and the availability of certified DBEs.

The updated group type and goal tables were based upon:

1. Historical attainments of goals on contracts based upon the type of work.
2. Historical attainments of goals on contracts based upon the dollar size of the contract.
3. Historical attainments of goals on contracts based upon geographical location.
4. DBE availability changes due to historical changes in work code certifications and geographical distribution.

CONTACT: Questions on the methodology of setting DBE goals on **routine** contracts should be directed to Matt Bromirski of the Design Quality Assurance Bureau (DQAB) at (518) 485-0822 (email mbromirski@dot.state.ny.us). Questions pertaining to the determination of specific contract goals on **non-routine** type contracts (those contracts requiring an in-depth goal analysis in accordance with the “Procedural Steps for Setting DBE Goals”) should be directed to Warren Whitlock, Director, Office of Civil Rights at (518) 457-1129, or OCR-Public-Comments@dot.state.ny.us.

Procedural Steps for Setting DBE Goals on Construction Contracts with Federal Aid:

(Effective 1/6/11)

All referenced documents will be available on the Department's website at:
<https://www.nysdot.gov/divisions/engineering/design/dqab/hdm/chapter-21>

ROUTINE CONTRACTS - STANDARD PROCESS

1. Refer to the table of "Construction Contract Groups" to determine which Group Type # (1-9) applies to the contract. This determination is based on the primary work operations included in the contract (See columns headed "Contract Group Type", "Primary Work Operation Examples", and "Typical Project Purpose").
2. Next, refer to the table of "Region/County Breakdown for DBE Contract Goals" to determine the Regional Subsection that the contract is located within (Regions 3, 4, 6, 9, 10 & 11 do not have Subsections).
3. Next, refer to the table of "DBE Goals for Construction Contracts" to determine the appropriate DBE goal based upon the Group Type # and Regional Subsection (For contracts which include work in more than one Regional Subsection, DBE goals should be determined for each Subsection. The lower value DBE goal should be submitted with the PS&E for use on the contract.).
4. Please keep in mind the following:
 - Contracts of less than \$500,000 for Group Type #'s 1-5 are not required to have a DBE goal.
 - Contracts of less than \$1,000,000 for Group Type #'s 6-8 are not required to have a DBE goal.
 - Contracts included in Group Type #9 are not required to have a DBE goal due to the uncertainty of the scope, locations, and schedule of work at the time of bid.

For bid document production and bidding purposes, contracts meeting the above parameters will be considered to have a DBE goal of 0%.

5. IF the Region determines that a change in the goal (either an increase or a decrease) determined from following the standard process is appropriate, a D/M/WBE REQUEST FOR CHANGE IN GOAL form (HC-258) should be completed, signed, and submitted with the PS&E for review and approval by the Office of Construction and Office of Civil Rights.

NON-ROUTINE CONTRACTS - IN-DEPTH GOAL ANALYSIS PROCESS

Occasionally, what is referred to as an In-Depth Goal Analysis will be required to be prepared and submitted with the PS&E Transmittal, for review and approval by the Office of Civil Rights. The analysis should conclude in a resultant DBE goal. When either of the below conditions are met, the following process should be adhered to:

- Contracts of **greater than \$100,000,000;**
- Contracts which do not conform to the nine contract Group Types (for example, rest area contracts);
- In addition, the Office of Civil Rights and/or the Office of Construction reserve the right to request the Region initiate an In-Depth Goal Analysis on routine contracts.

The procedures for completing an in-depth DBE goal analysis are outlined below. They are also described in the "2010 DBE Program Plan", which is located on the website along with this procedure. The analysis, when required, is a Regional responsibility. It is expected that the Designer, Project Manager, and appropriate Construction staff, with assistance as necessary from the Office of Civil Rights, will complete the analysis in a collaborative effort. The Engineer's Estimate must be substantially complete prior to conducting the analysis.

1. Contract-level DBE goals are computed by determining the total value of all pay items that could potentially be subcontracted to DBE's (as determined in the following steps), and dividing this value by the total contract amount. **All pay items**, including proprietary items, sole source items, incentives/disincentives, mobilization, fixed price and price adjustment items shall be included in the total contract amount used.
2. The "Primary Work Operations" of a contract consists of those pay items which are integral and inseparable to safely and effectively construct what the Region judges to be the primary feature(s) of the project. Therefore, these pay items would not be considered for subcontracting, since construction by a separate workforce might adversely affect the quality of work, worker and/or public safety, or the contract schedule. (See columns headed "PRIMARY WORK OPERATION EXAMPLES" and "WORK TYPES NOT GENERALLY CONSIDERED IN DBE GOAL SETTING" on the table of "Construction Contract Groups" for examples of Primary Work Operations for different Group Type #'s).
3. The "Secondary Work Operations" of a contract consists of those pay items which could be considered for subcontracting, including to DBE's. Secondary Work Operations can be constructed as a separate work operation without adversely affecting the quality of work, worker and/or public safety, or the contract schedule. (See column headed SECONDARY WORK OPERATIONS – POTENTIALLY COULD BE SUBCONTRACTED" on the table of "Construction Contract Groups" for examples of Secondary Work Operations for different Group Type #'s). Individual secondary work operations which are valued at less than \$10,000 should not be considered in DBE goal setting since associated overhead and mobilization costs for small operations result in little or no profit.

4. The pay items that could be considered for subcontracting shall then be checked against the available pool of DBE's who perform that type of work. Availability of DBE's can be determined at the New York State Unified Certification Program Directory website at <http://biznet.nysucp.net>. Click the "Search by NYSDOT Work Code" button. The pay items considered for subcontracting will generally have a NYSDOT Work Code corresponding to the 3-digit root of the NYSDOT pay item number.
5. A separate search must be conducted for each 3-digit root number amongst the pay items being considered for subcontracting. Prior to viewing the results for each 3-digit root number, a geographical area must also be selected. The recommended method is to select the county and/or Region within which the contract work is assigned. Adjoining counties in adjacent Regions should also be considered. It is not unreasonable to assume a DBE may be willing to travel a distance of 75-300 miles to perform the work. This is based upon their limitations of material deliveries, requirements for mobilization of heavy equipment, or whether a significant number of employees would be in overnight travel status. Refer to Section 3.2.1.E of the 2010 DBE Program Plan for further guidance.
6. The pay items which are considered for subcontracting and have one or more certified DBE's available to perform the work within a reasonable distance from the contract location shall be summed and then divided by the total contract amount to establish the recommended contract goal. The goal should not be greater than the closest applicable goal found on the table of "DBE Goals for Construction Contracts".

CONSTRUCTION CONTRACT GROUPS

GROUP TYPE #	CONTRACT GROUP TYPE	PRIMARY WORK OPERATION EXAMPLES (See Note 1)	SECONDARY WORK OPERATIONS — POTENTIALLY COULD BE SUBCONTRACTED (See Note 2)	TYPICAL PROJECT PURPOSE Additional Description of Type of Work	WORK TYPES NOT GENERALLY CONSIDERED IN DBE GOAL SETTING
1	New Highway Construction or Full Depth Reconstruction	Subbase and Pavement Construction or Full-Depth Reconstruction, (curb to curb or shoulder to shoulder)	Closed Drainage, Curb, Sidewalk, Driveways, Guiderail, Trenching, Fence, Signs, Landscaping, Work Zone Traffic Control, Pavement Markings, Signals	New Construction of, or Full Depth Reconstruction of Highway or City Street	Specification Series: 200s, 300s, 400s or 501-503
2	Highway Improvements including Multicourse Pavement Overlays	Pavement Resurfacing & Shoulder or Curb Reconstruction along with Work Zone Traffic Control	Pavement Markings, Misc. Drainage or Utility Structure Adjustments, Signs, Curb, Sidewalk Ramps, Pavement Milling	Known as Mill & Fill or Highway Rehabilitation to Improve Structural Integrity and Rideability of Roadway, Could Include Shoulder Boxout	Specification Series: 300s, 400s or 501-503
3	Non-Highway Resurfacing - Bike Paths, Park-N-Ride Lots, etc.	Asphalt or Cement Concrete Installations Other than Highways	Pavement Markings, Signs, Curb, Landscaping, Shelters	New Construction of, or Reconstruction of a Bike or Pedestrian Path, or a Park-N-Ride Lot	Specification Series: 200s, 300s, 400s
4	New or Replacement Bridge, Major Bridge Rehabilitation or Large Culvert Replacement	Primary Structural Members of Bridge Substructure and Superstructure, Bearings on Major Bridges	Bridge: Reinforcing Steel, Joint Systems, Bridge Rail, Concrete Traffic Barrier, Longitudinal Sawcut Grooving, Approaches, Curb, Sidewalk, Guiderail, Signs, Landscaping, Work Zone Traffic Control, Pavement Markings, Soil Erosion Control	New Construction of, or Major Reconstruction or Replacement of a Bridge or Large Culvert and its Approaches	Specification Series: 555, 557, 563, 564
5	Minor Bridge Rehab (Assumes Little or No Approach Work)	Repairs to Primary Support Members, Bridge Deck, Spalling Concrete	Joint Systems, Bridge Rail, Concrete Traffic Barrier, Longitudinal Sawcut Grooving, Soil Removal or Placement	Primarily Intended to Repair/Partially Replace Bridge Structural or Load Bearing Members, or Element Specific Type Work	Specification Series: 555, 557, 563, 564
6	Earth Movement - Slope, Rock, Watercourse or Open Drainage Regrading	Stream, River or Open Drainage Channel Grading; Wetland, Pond or Recharge Basin Construction; Slope or Rock Cut Stabilization; and Scour Repair	Work Zone Traffic Control, Soil Erosion Control; Installation of Stone Fill or Rip-Rap; and Minor Roadway Repairs	Primarily Intended to Address Redirection of a Water Channel, Stabilizing Erosion, Scour or Sloughing Issues, and Creating/Repairing Open Drainage Channels or Wetland Areas	Specification Series: 200s, excluding 209
7	Material Installations - Single Course Overlay, Guiderail, Sidewalks, Landscaping, Signs, Signals and Rail Work, Culvert Repair/Replace	Single Course Pavement Overlays, Guiderail, Signs, Sign Structures, Signals, Landscaping, Crack Sealing, Noise Walls, Small Culvert or Closed Drainage, ITS, Lighting, Sidewalks, Railroad Crossing, or Siding Installation, & Utility Relocations	Work Zone Traffic Control, any Work Types Other than the Primary Work Operation such as restoration of disturbed areas or pavement milling.	Primarily Intended to Address Specific Infrastructure Deficiencies, Substandard Appendages, Deteriorating Materials, and Special Issues Involved With Working on Railroads	Work Types of the Primary Work Operation; Work Which Will be Performed by Railroad Union Labor
8	Specialized Services - Bridge Painting & Washing, Pavement Markings, Culvert Cleaning, Sweeping, Moving, Crack Sealing, etc.	Culvert Cleaning, Tree Trimming/Removal, Structure Removal and Disposal, Bridge Painting or Washing, Landscaping Maintenance, Facility or Systems Maintenance	Work Zone Traffic Control, any Work Types Other than the Primary Work Operation such as restoration of disturbed areas	Primarily Intended to Address Specific Environment Needs, or Augment Routine Preventive Maintenance of Facilities and Public Right-of-Way	Work Types of the Primary Work Operation
9	Special Contracting Procedures - Emergency Standby, Where & When, or Job Order Contracts	Contracts Where Locations and Schedules are Not Determined Until After Award	Not Determinable Prior to Bidding	Contracts Which Do Not Have Detailed Scopes or Locations of Work, Nor Have Known Schedules	Not Applicable

NOTES:

- 1) Primary Work Operations of a contract consists of those pay items which are integral and inseparable to safety and effectively construct what the Region judges to be the primary feature(s) of the project. Therefore, these pay items would not be considered for subcontracting, since construction by a separate workforce might adversely affect the quality of work, worker and/or public safety, or the contract schedule.
- 2) Secondary Work Operations of a contract consists of those pay items which could be considered for subcontracting. Secondary Work Operations can be constructed as a separate work operation without adversely affecting the quality of work, worker and/or public safety, or the contract schedule.
- 3) Work on railroads is usually handled by one of two ways. One way is that funding can be channeled by a grant directly to the railroad and the work is completed by railroad union labor which precludes the use of a DBE goal. The second way is that work can be contracted out to bid through either the Department, Municipality or Railroad; in this case a DBE goal should be required.

APPENDIX "A" of 2010 DBE Program Plan

DBE GOALS FOR CONSTRUCTION CONTRACTS (see Notes below)

Group Type #	Contract Group Type	REGION:																	
		Subsection:		1		2		3		4		5		6		7		8	
		South	North	South	North	All	All	South	North	All	All	South	North	All	All	West	East	South	North
1 ¹	New Highway Construction or Full-Depth Reconstruction	11%	9%	11%	9%	8%	9%	9%	9%	8%	9%	9%	11%	8%	8%	9%	9%	7%	9%
2 ¹	Highway Improvements including Multicourse Pavement Overlays	10%	8%	9%	7%	6%	8%	9%	7%	6%	8%	9%	11%	6%	6%	7%	7%	6%	7%
3 ¹	Non-Highway Resurfacing Bike Paths, Park-N-Ride Lots, etc.	5%	7%	9%	7%	6%	8%	7%	7%	6%	8%	7%	9%	6%	6%	7%	7%	6%	7%
4 ¹	New or Replacement Bridge, Major Bridge Rehabilitation or Large Culvert Replacement	10%	8%	9%	7%	10%	8%	9%	7%	10%	8%	9%	11%	7%	7%	7%	7%	8%	8%
5 ¹	Minor Bridge Rehab (Assumes Little or No Approach Work)	9%	7%	8%	6%	9%	7%	9%	6%	9%	7%	7%	9%	6%	6%	7%	7%	7%	7%
6 ²	Earth Movement - Slope, Rock, Watercourse or Open Drainage Work	5%	3%	5%	3%	5%	5%	5%	3%	5%	5%	3%	5%	3%	3%	5%	5%	5%	5%
7 ²	Material Installations - Single Course Overlay, Guide-rail, Sidewalks, Landscaping, Signs, Signals and Rail Work	5%	3%	5%	3%	3%	5%	3%	3%	3%	5%	3%	5%	3%	3%	5%	5%	3%	5%
8 ²	Specialized Services - Bridge Painting & Washing, Pavement Markings, Culvert Cleaning, etc.	3%	0%	3%	0%	3%	3%	3%	0%	3%	3%	0%	3%	0%	0%	3%	3%	3%	3%
9	Special Contracting Procedures - Emergency Standby, Where & When, or Job Order Contracts	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3	See Note #3

NOTES:

- 1) Contracts of less than \$500,000 for Group Type #'s 1-5 are not required to have a DBE goal.
- 2) Contracts of less than \$1,000,000 for Group Type #'s 6-8 are not required to have a DBE goal.
- 3) Contracts included in Group Type #9 are not required to have a DBE goal due to the uncertainty of the scope, locations, and schedule of work at the time of bid.
- 4) Contracts of greater than \$100,000,000 require an in-depth goal analysis to be submitted with the PS&E Transmittal, for review and approval by the Office of Civil Rights.
- 5) Contracts which do not conform to any of the nine Group Types require an in-depth DBE goal analysis to be submitted with the PS&E Transmittal, for review and approval by the Office of Civil Rights.

REGION/COUNTY BREAKDOWN FOR DBE CONTRACT GOALS

<u>Regional Subsection</u>	<u>Counties Included</u>
1 South	Albany, Schenectady, Rensselaer, Saratoga and Greene
1 North	Essex, Warren and Washington
2 South	Fulton, Montgomery, Oneida and Madison
2 North	Herkimer and Hamilton
3 All	Oswego, Onondaga, Cayuga, Seneca, Cortland and Tompkins
4 All	Orleans, Genesee, Wyoming, Monroe, Livingston, Wayne and Ontario
5 South	Chautauqua and Cattaraugus
5 North	Erie and Niagara
6 All	Allegany, Steuben, Yates, Schuyler and Chemung
7 West	Jefferson, Lewis, and St Lawrence
7 East	Franklin and Clinton
8 South	Westchester, Rockland, Orange and Putnam
8 North	Dutchess, Ulster and Columbia
9 All	Tioga, Broome, Chenango, Otsego, Schoharie, Delaware and Sullivan
10 All	Nassau and Suffolk
11 All	Bronx, New York, Richmond, Kings and Queens