

State of Hawaii

Department of Transportation

Highways Division

Disadvantaged Business Enterprise

FFY 2020 – 2022

Proposed Goal & Methodology

DRAFT FOR PUBLIC COMMENT

June 2019

Introduction

The Hawaii Department of Transportation hereby submits its proposed annual, overall Disadvantaged Business Enterprise goal for federal fiscal years 2020 through 2022 to the Federal Highway Administration pursuant to [49 CFR Part 26, section 26.45](#). It may be refined before formal submission to the Federal Highway Administration in August 2019 based on public input received.

Based on the results of a DBE Availability Study prepared in June 2019 by Keen Independent Research (Keen Independent), HDOT proposes a 25.60% DBE goal for FFYs 2020 through 2022 for FHWA-funded contracts. The overall goal is based on demonstrable evidence of ready, willing and able DBEs relative to all businesses currently ready, willing and able to participate on HDOT's FHWA-assisted contracts.

The 2019 Availability Study report provided information to HDOT as it considered (1) its overall DBE goal for FFY 2020 through FFY 2022 for FHWA-funded contracts and (2) its projection of the portion of its overall DBE goal to be achieved through neutral means. HDOT estimates 9.74% of the overall goal can be achieved through race- and gender-neutral (RN) participation on HDOT FHWA-assisted projects while the remaining 15.86% will need to be met through use of race- and gender-conscious (RC) contract goals.

The full Availability and Disparity Study report, to be produced in fall 2019, will have complete results about the use of minority- and women-owned firms, by racial, ethnic and gender group, in HDOT FHWA-funded transportation contracts.

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

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

The availability analysis determined the percentage of HDOT FHWA-funded contracts from July 2011 through June 2016 that might go to current or potential DBEs (defined on page 5) if they had the same chance of winning that work as any other available firm, after accounting for the type, size and location of those prime contracts and subcontracts. HDOT used a dollar-weighted approach to determine this overall availability estimate.

As presented in Chapter 4 of the Availability Study, one might expect current and potential DBEs to receive 46.46% of HDOT FHWA-funded transportation contracts based on analysis of FHWA-funded contracts from July 2011 through June 2016 and current availability of firms to perform that work.

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

Relevant Geographic Market Area and Types of Work. Based on analysis of FHWA-funded contracts for July 2011 through June 2016, Keen Independent determined that Hawaii should be selected as the relevant geographic market area for the availability study.

- About 95% of HDOT FHWA-funded contract dollars from July 2011 through June 2016 went to firms with locations in Hawaii. Therefore, the availability analysis examined firms with locations in Hawaii.
- Keen Independent also examined the types of work involved in FHWA-funded contracts from July 2011 through July 2016. There were 31 types of work that accounted for about 96% of FHWA-funded contract dollars. The availability analysis focused on firms performing these 31 types of work.

DBE Availability. As briefly set out below and explained in detail in Chapter 4 and Appendix D of the 2019 Availability Study report, Keen Independent compiled a master availability database and calculated the relative availability of current and potential DBEs on a dollar-weighted basis. This analysis produced an availability figure of 46.46% for HDOT's FHWA-funded transportation contracts.

Availability is expressed as the percentage of the associated contracting dollars that one might expect DBEs to receive based on various factors including the type of work involved, the location of the work and the size of the contract or subcontract, and then dollar-weighting results to prepare an overall availability estimate.

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

Master Availability Database. Keen Independent developed a master availability database (current and potential DBEs and non-DBEs) by contacting thousands of firms to collect information about availability for HDOT contracts. The firms contacted for the database came from sources including, but not limited to:

- Companies that had previously identified themselves to HDOT as interested in learning about future work by being prequalified for certain types of work or being on bidding lists; and
- Businesses that Dun & Bradstreet (D&B) identified in certain transportation contracting-related sub-industries in Hawaii (D&B's Hoover's business establishment database). (D&B's Hoover's database is accepted as the most comprehensive and complete source of business listings in the nation.)

Keen Independent completed surveys with 1,101 Hawaii businesses. After consolidating duplicate responses and removing companies that are no longer in business, not-for-profit, unable to perform highway-related work or uninterested in discussing availability for HDOT work, the final database contains 304 businesses, of which 174 (or 57%) were minority- or women-owned (MBE or WBE). (See Figure 1 below.)

Head Count DBE Availability. The 57% figure represents a simple “head count” of MBE and WBE firms and is only the initial stage of calculating the DBE availability base figure. The availability calculation is further refined by dollar-weighting and by removing any MBE or WBE firms that are ineligible to become DBE certified from the potential DBE count.

Figure 1. Availability “Head Count” of Transportation Construction and Engineering-related Businesses Included in 2019 Availability Study

Race/ethnicity and gender	Number of firms	Percent of firms
African American-owned	5	1.6 %
Asian Pacific American, Native Hawaiian or Pacific Islander-owned	126	41.4
Hispanic American-owned	18	5.9
American Indian or Alaska Native-owned	2	0.7
Subcontinent Asian American-owned	10	3.3
Total MBE	161	53.0 %
WBE (white women-owned)	13	4.3
Total MBE/WBE	174	57.2 %
Total majority-owned firms	130	42.8
Total firms	304	100.0 %

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

Source: Keen Independent 2019 Availability Study (Chapter 4, page 8).

Dollar-Weighted Availability. For each of the availability analyses prepared for the Availability Study, Keen Independent developed dollar-weighted availability benchmarks. This approach is consistent with USDOT’s “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program.”

To calculate dollar-weighted availability, Keen Independent determined the number of DBEs and the total number of firms available for each FHWA-funded contract in the five-year study period (July 2011 through June 2016). For some contracts, DBE availability could be 0% and in other contracts DBE availability could be 75% or more.

Keen Independent then dollar-weighted the availability results for each prime contract and subcontract based on the dollars of that prime contract or subcontract relative to the total dollars of FHWA-funded contracts in the study period. The method to determine the dollar-weights is described in detail in Chapter 4 — Section E, and Appendix D of the Availability Study.

Dollar-weighted availability is much more precise than a simple “head count” of businesses because it considers the following factors regarding available firms: (1) qualifications and interest in performing prime contracts and/or subcontracts, (2) type of work performed, (3) location of contracting opportunity, and (4) size of the contract or subcontract. Figure 2 below presents an example of an availability calculation.

Figure 2. Example of an Availability Calculation for an HDOT Subcontract

One of the subcontracts examined was for concrete flatwork (\$82,062) on an HDOT 2015 Federal Highway Administration-funded contract. To determine the number of MBE/WBEs and majority-owned firms available for that subcontract, the study team identified businesses in the availability database that:

- a. Were in business in 2015;
- b. Indicated that they performed concrete flatwork on transportation-related projects;
- c. Reported working or bidding on subcontracts in Hawaii in the past seven years;
- d. Reported bidding on work of similar or greater size in the past seven years;
- e. Reported ability to perform work on Maui; and
- f. Reported qualifications and interest in working as a subcontractor on local government transportation projects.

There were 13 businesses in the availability database that met those criteria. Of those businesses, 7 were MBEs or WBEs. Therefore, MBE/WBE availability for the subcontract was 54 percent (i.e., $7/13 = 53.8\%$).

The weight applied to this contract was $\$82,062 \div \$815 \text{ million} = 0.01\%$ (equal to its share of total FHWA-funded contract dollars for HDOT contracts).

Keen Independent repeated this process for each prime contract and subcontract.

Source: Keen Independent availability analysis.

As shown in Figure 3, the overall dollar-weighted MBE/WBE availability for HDOT FHWA-funded contracts is 52.97% for contracts during the five-year study period. The dollar-weighted result is somewhat lower than the headcount of available MBE/WBE firms (57%), because minority- and women-owned firms comprised a smaller portion of firms available for the largest highway construction prime contracts than for other prime contracts or subcontracts.

Figure 3. Overall Dollar-Weighted Availability Estimates for MBE/WBE group for HDOT FHWA-Funded Contracts, July 2011–June 2016

Race/ethnicity and gender	FHWA
African American-owned	0.65 %
Asian Pacific American, Native Hawaiian or Pacific Islander-owned	26.05
Hispanic American-owned	2.53
American Indian or Alaska Native-owned	2.74
Subcontinent Asian American-owned	6.20
Total MBE	38.17 %
WBE (white women-owned)	14.80
Total MBE/WBE	52.97 %

Source: Keen Independent 2019 Availability Study (Chapter 4, page 13).

Potential and Certified DBE Availability Adjustments. To determine the DBE base figure, which focuses on availability of currently-certified DBEs and firms that could be certified as DBEs, Keen Independent refined the 52.97% dollar-weighted availability figure by not counting any MBE or WBE firms as potential DBEs that appear to be ineligible for certification. There were two groups of MBE/WBEs that did not count as potential DBEs when calculating the base figure:

- MBE/WBEs that in recent years graduated from the DBE Program or had applied for DBE certification in Hawaii but were denied (based on information supplied by HDOT’s Office of Civil Rights).
- MBE/WBEs that reported annual revenue in the availability surveys that exceeded the revenue limits for DBE certification for their sub-industry over the most recent three years (at the time of the 2018 interview).

After subtracting the availability of these two categories of MBE/WBEs, the dollar-weighted availability for current and potential DBEs is 46.46%, or 6.51% lower than total MBE/WBE availability. This information is shown in Figure 4 below.

Figure 4. Overall Dollar-Weighted Availability Estimates for MBE/WBEs for HDOT FHWA-Funded Contracts, July 2011–June 2016

Calculation of base figure	FHWA
Total MBE/WBE	52.97 %
Less firms that graduated from the DBE Program or denied DBE certification in recent years or exceed revenue thresholds	6.51
Subtotal	46.46 %
Plus white male-owned DBEs	--
Current and potential DBEs	46.46 %

Source: Keen Independent 2019 Availability Study (Chapter 4, page 14).

Base Figure. The base figure representing potential and certified DBEs available for HDOT’s FHWA-funded contracts is 46.46%.

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

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

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

Taking into account relevant information from the 2019 Availability Study, HDOT considered each of the factors below in determining whether or not to adjust the base figure.

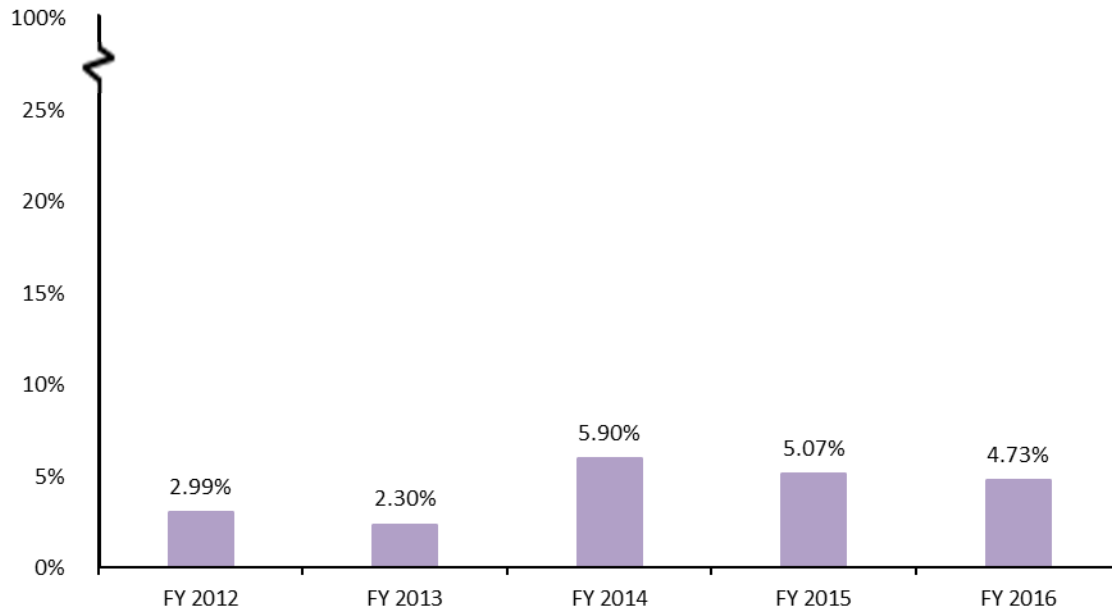
1. Current Capacity of DBEs to Perform Work, Measured by the Volume of Work DBEs Performed in Recent Years. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation on their USDOT-funded contracts in recent years (i.e., the percentage of contract dollars going to DBEs).

DBE Participation Based on HDOT Uniform Reports to FHWA. Based on commitments/awards data from HDOT Uniform Reports of DBE Awards or Commitments and Payments reported to the FHWA, the median DBE participation from FFY 2013–FFY 2018 is 6.11 percent.

DBE Participation Based on Keen Independent Utilization Analysis for FHWA-funded Contracts. Figure 5 presents information about part DBE participation based on Keen Independent Utilization Analysis. Keen Independent’s analysis identified a median DBE participation of 4.73 percent on FHWA-funded contracts from FY 2012 through FY 2016. This value would suggest a larger downward step 2 adjustment based on past DBE participation. The full Availability and Disparity Study report in fall 2019 will provide more results regarding MBE/WBE and DBE utilization.

At this point in time, HDOT chooses to use the median DBE participation estimated by Keen Independent to consider a step 2 adjustment (4.73%), but might refine this analysis once all results of the Availability and Disparity Study are released.

Figure 5. Keen Independent Analysis of Past DBE Participation on HDOT FHWA-funded Contracts, FY 2012–FY 2016



Source: Keen Independent 2019 Availability Study (Chapter 6, page 3).

2. Information Related to Employment, Self-employment, Education, Training and Unions.

Chapter 5 of the 2019 Availability Study summarizes information about conditions in the Hawaii transportation contracting industry for minorities, women and MBE/WBEs. Detailed quantitative analyses of marketplace conditions in Hawaii are presented in Appendices E through H.

Keen Independent’s analyses indicate that there are barriers that certain minority groups and women face related to entry and advancement in the Hawaii construction and engineering industries. Such barriers may affect the availability of MBE/WBEs to obtain and perform HDOT transportation contracts. There are also barriers to business ownership for those working in these industries.

It may not be possible to quantify all the cumulative effects that barriers may have had in depressing the availability of minority- and women-owned firms in the Hawaii transportation contracting industry, however, the effects of barriers in business ownership can be quantified, as explained below.

In the 2019 Availability Study, Keen Independent used regression analyses to investigate whether race, ethnicity and gender affected rates of business ownership among workers in the Hawaii construction and engineering industries.

- The regression analyses allowed the study team to examine those effects while statistically controlling for various personal characteristics including education and age (Appendix F of the Availability Study provides detailed results of the business ownership regression analyses). Those analyses revealed that Asian Pacific/Native Hawaiian and other minority groups as well as white women working in construction were less likely than non-minorities

and white men to own construction businesses, even after accounting for various race- and gender-neutral personal characteristics. Each of these disparities was statistically significant.¹

- In addition, there was a disparity in the business ownership rates for Asian Pacific Americans and Native Hawaiians working in the engineering industry.

Keen Independent analyzed the impact that barriers in business ownership would have on the base figure if Asian Pacific Americans, Native Hawaiians and white women owned businesses at the same rate as similarly-situated non-minorities and white men in those two industries. This type of inquiry is sometimes referred to as a “but for” analysis because it estimates the availability of MBE/WBEs *but for* the effects of race- and gender-based discrimination.

Figure 6 calculates the impact on overall MBE/WBE availability, resulting in a possible upward adjustment of the base figure to 71.42%. The analysis included the same contracts that the study team analyzed to determine the base figure (i.e., FHWA-funded construction and engineering prime contracts and subcontracts that HDOT awarded from July 2011 through June 2016). Calculations are explained below.

¹ The study team examined U.S. Census data on business ownership rates using methods similar to analyses examined in court cases involving state departments of transportation in California, Illinois and Minnesota.

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

	a.	b.	c.	d.	e.
Current and potential DBEs	Current availability	Disparity index for business ownership	Availability after initial adjustment*	Availability after scaling to 100%	Components of overall DBEs availability**
Construction					
Asian Pacific American, Native Hawaiian or Pacific Islander	17.35 %	30	57.84 %	31.04 %	
Other minorities	6.57	65	10.11	5.42	
White women	<u>19.01</u>	31	<u>61.33</u>	<u>32.91</u>	
Minorities and women	42.94 %	n/a	129.28 %	69.38 %	61.33 %
All other businesses	<u>57.06</u>	n/a	<u>57.06</u>	<u>30.62</u>	
Total firms	100.00 %	n/a	186.35 %	100.00 %	
Engineering and other subindustries					
Asian Pacific American, Native Hawaiian or Pacific Islander	63.98 %	38	168.36 %	82.37 %	
Other minorities	7.37	n/a	7.37	3.61	
White women	<u>1.97</u>	n/a	<u>1.97</u>	<u>0.96</u>	
Minorities and women	73.32 %	n/a	177.70 %	86.94 %	10.08 %
All other businesses	<u>26.68</u>	n/a	<u>26.68</u>	<u>13.06</u>	
Total firms	100.00 %	n/a	204.38 %	100.00 %	
Total for current and potential DBEs	46.46 %	n/a	n/a		71.42 %
Difference from base figure					24.96 %

Note: Numbers may not add to totals due to rounding.

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

** Components of goal calculated as value after adjustment and scaling to 100% multiplied by percentage of total FHWA-funded contract dollars in that category (construction = 88.4%, engineering = 11.6%).

Source: Keen Independent 2019 Availability Study (Chapter 6, page 5).

The study team completed these “but for” analyses separately for construction and engineering contracts and then weighted the results based on the proportion of FHWA-funded contract dollars that HDOT awarded for construction and engineering for July 2011 through June 2016 (i.e., an 88.4% weight for construction and 11.6% weight for engineering). The rows and columns of Figure 6 present the following information from Keen Independent’s “but for” analyses:

- a. Current Availability. Column (a) presents the current availability of MBE/WBEs by group for construction and for engineering and other subindustries. Each row presents the percentage availability for MBEs and WBEs. The current combined availability of MBE/WBEs for HDOT FHWA-funded transportation contracts for July 2011 through June 2016 is 46.46%, as shown in bottom row of column (a).
- b. Disparity Indices for Business Ownership. As presented in Appendix F, Asian Pacific Americans, Native Hawaiians and white women were significantly less likely to own construction firms than similarly-situated non-minorities and white men.

Keen Independent calculated simulated business ownership rates if those groups owned businesses at the same rate as non-minorities and white males who share similar personal characteristics. The study team then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the benchmark business ownership rate and then multiplying the result by 100.

Column (b) of Figure 6 presents disparity indices related to business ownership for the different racial/ethnic and gender groups. For example, as shown in column (b), Asian Pacific American, Native Hawaiian and Pacific Islanders own construction businesses at 30% of the rate that would be expected based on the simulated business ownership rates of white males who share similar personal characteristics. Appendix F explains how the study team calculated the disparity indices.

- c. Availability After Initial Adjustment. Column (c) presents availability estimates for MBEs and WBEs by industry after initially adjusting for statistically significant disparities in business ownership rates. The study team calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100.
- d. Availability After Scaling to 100%. Column (d) shows adjusted availability estimates that were re-scaled so that the sum of the availability estimates equals 100% for each industry. The study team re-scaled the adjusted availability estimates by taking each group’s adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under “Total firms” in column (c) — and multiplying by 100. For example, the re-scaled availability estimate for Asian Pacific American, Native Hawaiian or Pacific Islanders shown for construction was calculated in the following way: $(57.84\% \div 186.35\%) \times 100 = 31.04\%$.

- e. Components of Overall DBE Goal with Upward Adjustment. Column (e) of Figure 6 shows the component of the total base figure attributed to the adjusted MBE and WBE availability for construction versus engineering and other subindustries. The study team calculated each component by taking the total availability estimate shown in column (d) for construction and for engineering/other — and multiplying it by the proportion of total FHWA-funded contract dollars in each industry (i.e., 88.4% for construction and 11.6% for engineering). For example, the study team used the 69.38% shown for MBE/WBE availability for construction firms in column (d) and multiplied it by 88.4% for a result of 61.33%. A similar weighting of MBE/WBE availability for engineering/other produced a value of 10.08%.

The values in column (e) were then summed to equal the overall base figure adjusted for barriers in business ownership, which is 71.42% as shown in the bottom of column (e).

Finally, Keen Independent calculated the difference between the “but for” MBE/WBE availability (71.42%) and the current availability (46.46%) to calculate the potential upward adjustment. This difference, and potential upward adjustment, is 24.96 percentage points (71.42% - 46.46% = 24.96%).

3. Any Disparities in the Ability of DBEs to Secure Financing, Bonding and Insurance. Analysis of access to financing and bonding revealed quantitative and qualitative evidence of disadvantages for minorities, women and MBE/WBEs.

- Any barriers to obtaining financing and bonding might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in the Hawaii marketplace.
- If MBE/WBEs face barriers in obtaining financing and bonding, it would also place those businesses at a disadvantage in obtaining and performing HDOT construction and engineering prime contracts and subcontracts.

Note that financing and bonding are closely linked, as discussed in Chapter 5 and Appendix J of the Availability Study.

There is also evidence that some firms cannot bid on certain public sector projects because they cannot afford the levels of insurance required by the agency.

4. Other Factors. The Federal DBE Program suggests that federal aid recipients also examine “other factors” when determining whether to make any step 2 adjustments to their base figure.²

² 49 CFR Section 26.45.

Success in the Hawaii Marketplace. Among the “other factors” examined in this study was the success of MBE/WBEs relative to majority-owned businesses in the Hawaii marketplace. There is quantitative evidence that certain groups of MBE/WBEs are less successful than majority-owned firms, and face greater barriers in the marketplace, even after considering neutral factors. Chapter 5 summarizes that evidence and Appendix H presents supporting quantitative analyses.

There is also qualitative evidence of barriers to the success of minority- and women-owned businesses, as summarized in Appendix J of the Availability Study. Some of this qualitative information suggests that discrimination on the basis of race, ethnicity and gender affects minority- and women-owned firms in the Hawaii transportation contracting industry.

There is not a straightforward way to project the number of MBE/WBEs available for HDOT work but for the effects of these other factors.

Summary of Approaches for Making Step 2 Adjustments. Quantification of potential downward or upward step 2 adjustments is summarized below.

1. Current Capacity of DBEs to Perform Work, as Measured by the Volume of Work DBEs Have Performed in Recent Years. Analysis of this factor might indicate a downward step 2 adjustment if HDOT analyzed its estimates of past DBE participation from FY 2012 through FY 2016. Based on Keen Independent’s analysis, the median DBE participation on FHWA-funded contracts was 4.73% for fiscal years 2012–2016.

USDOT “Tips for Goal-Setting” suggests taking one-half of the difference between the base figure and evidence of current capacity as one approach to calculate the step 2 adjustment for that factor.

The difference between the 46.46% base figure (calculated in Chapter 4) and 4.73% DBE participation is 41.73 percentage points ($46.46\% - 4.73\% = 41.73\%$). One-half of this difference is a downward adjustment of 20.87 percentage points ($41.73\% \div 2 = 20.87\%$). The goal would then be calculated as follows: $46.46\% - 20.87\% = 25.60\%$.

2. Information Related to Employment, Self-employment, Education, Training and Unions. The study team was not able to quantify all of the information regarding barriers to entry for MBE/WBEs. Quantification of the business ownership factor indicates an upward step 2 adjustment of 24.96 percentage points to reflect the “but-for” analyses of business ownership rates presented in Figure 7. If HDOT made this adjustment, the overall DBE goal for FHWA-funded contracts would be 71.42% ($46.46\% + 24.96\% = 71.42\%$). Figure 7 shows these calculations.

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

Step 2 adjustment component	Value	Explanation
Lower range of overall DBE goal		
Base figure	46.46 %	From base figure analysis
Evidence of current capacity	- 4.73	Past DBE participation (Keen Independent)
Difference	41.73 %	
	÷ 2	Reduce by one-half
Adjustment	20.87 %	Downward adjustment for current capacity
Base figure	46.46 %	From base figure analysis
Adjustment for current capacity	- 20.87	Downward step 2 adjustment
Overall DBE goal	25.60 %	Lower range of DBE goal
Upper range of overall DBE goal		
Base figure	46.46 %	From base figure analysis
Adjustment for "but for" factors	+ 24.96	"But for" step 2 adjustment for business ownership
Overall DBE goal	71.42 %	Upper range of DBE goal

Note: Numbers may not add to totals due to rounding.

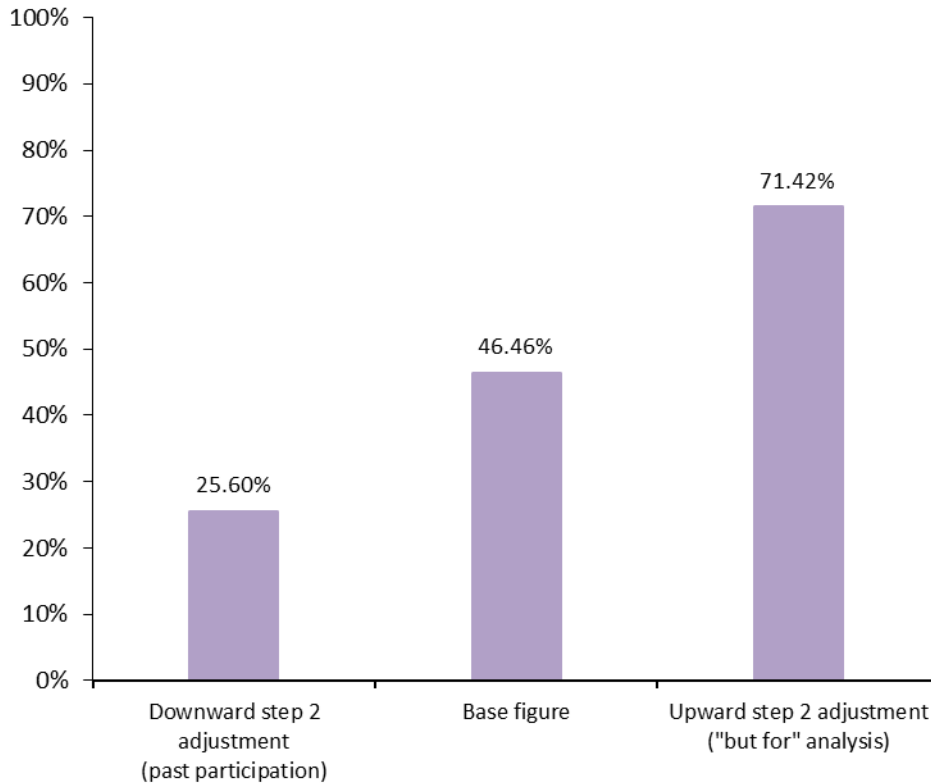
Source: Keen Independent 2019 Availability Study (Chapter 6, page 8).

3. Any Disparities in the Ability of DBEs to Get Financing, Bonding and Insurance. Analysis of financing, bonding and insurance indicates that an upward adjustment is appropriate. However, impact of these factors on availability could not be quantified.

4. Other Factors. Impact of the many barriers to success of MBE/WBEs in Hawaii could not be specifically quantified. However, the evidence supports an upward adjustment.

HDOT considered the above information when determining whether to make a downward, upward or no step 2 adjustment when establishing its overall DBE goal. If HDOT made a downward step 2 adjustment reflecting current capacity to perform work, its overall DBE goal for FHWA-funded contracts would be 25.60%. If HDOT decides to not make a downward adjustment and instead makes an upward adjustment that reflects analyses of business ownership rates, its overall DBE goal would be 71.42%. Figure 8 below summarizes this information.

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



Source: Keen Independent 2019 Availability Study (Chapter 6, page 9).

Adjustments Summary. HDOT proposes a downward adjustment to 25.60%, which is calculated by averaging the base figure (46.46%) with past participation of certified DBEs over the disparity study period (4.73%), rounded to the nearest hundredth. HDOT proposes this downward adjustment based on the following rationale:

- The proposed goal of 25.60% is significantly greater than the median past DBE participation of 4.73%.
- In FFYs 2013 through 2016, HDOT fell short of its DBE goal (29.05%) by more than 20 percentage points each fiscal year; this indicates that an upward-adjusted goal of 71.42% (or perhaps even a base-figure goal of 46.46%) on HDOT projects might not be realistically achievable. In HDOT's 2016 shortfall analysis, HDOT reported that several factors might cause the shortfall, including an outdated Disparity Study, lack of inability of DBEs to obtain bonding and geographic challenges. The HDOT FFY 2017–2019 Proposed Goal and Methodology document demonstrated that geographic challenges might be the most difficult barrier for Hawaii DBEs to overcome.³

³ See <https://hidot.hawaii.gov/administration/files/2016/05/HWYGoalMethodology17-19.pdf>

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

To comply with the Federal DBE Program, HDOT must meet the maximum feasible portion of its overall DBE goal using race- and gender-neutral measures.⁴ Race- and gender-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to MBE/WBEs or DBEs. HDOT has considered whether it can meet its overall DBE goal solely through neutral means or whether race- and gender-conscious measures — such as DBE contract goals — are also needed. As part of doing so, HDOT has projected the portion of its overall DBE goals that it expects to meet (a) through race- and gender-neutral means, and (b) through race- and gender-conscious programs (if any).

USDOT offers guidance concerning how transportation agencies should project the portions of their overall DBE goals that will be met through race- and gender-neutral and race- and gender-conscious measures, including the following:

- USDOT Questions and Answers about 49 CFR Part 26 addresses factors for federal aid recipients to consider when projecting the portion of their overall DBE goals that they will meet through race- and gender-neutral means.⁵
- USDOT “Tips for Goal-Setting” also suggests factors for federal aid recipients to consider when making such projections.⁶
- An FHWA template for how it considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through neutral and conscious means. An excerpt from that template is provided in Figure 9.

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

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

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

⁴ 49 CFR Section 26.51.

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

⁶ 49 CFR Section 26.51.

Based on 49 CFR Part 26 and the resources above, HDOT considered the following questions:

1. Is there evidence of discrimination within the local transportation contracting marketplace for any racial, ethnic or gender groups?
2. What has been the agency's past experience in meeting its overall DBE goal?
3. What has DBE participation been when the agency did not use race- or gender-conscious measures?⁷
4. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

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

1. Is There Evidence of Discrimination within the Local Transportation Contracting Marketplace for any Racial, Ethnic or Gender Groups? The 2019 Availability Study considered conditions in the local marketplace to address this question. Quantitative and qualitative information is summarized below.

Marketplace Conditions. As discussed in Chapter 5, Keen Independent examined conditions in the Hawaii marketplace, including:

- Entry and advancement;
- Business ownership;
- Access to capital, bonding and insurance; and
- Success of businesses.

There was quantitative evidence of disparities in outcomes for minority- and women-owned firms in general and for certain MBE/WBE groups concerning the above issues. Qualitative information indicated some evidence that discrimination may have been a factor in these outcomes.

HDOT reviewed the information about marketplace conditions presented in Chapter 5 and Appendices E through J of the Availability Study, as well as other information, when considering the extent to which it can meet its overall DBE goal through neutral measures.

Summary. The combined information from the marketplace and the disparity analysis indicates evidence of different outcomes for each group of minority-owned firms included in the Federal DBE Program: African American-; Hispanic American-; Asian Pacific American, Native Hawaiian and Pacific Islander-; Subcontinent Asian American-; and American Indian or Alaska Native-owned firms. There is also evidence that there is not a level playing field for women and women-owned firms in the Hawaii marketplace.

⁷ USDOT guidance suggests evaluating (a) certain DBE participation as prime contractors if the DBE contract goals did not affect utilization, (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals, and (c) overall utilization for other state, local or private contracting where contract goals are not used.

2. What has been the Agency’s Past Experience in Meeting its Overall DBE Goal? DBE participation based on DBE commitments/awards on FHWA-funded contracts was considerably below HDOT’s overall DBE goal for FFY 2013 through FFY 2018, as shown in Figure 10 below.

Figure 10. HDOT Overall DBE Goal and Reported DBE Participation on FHWA-funded Contracts, FFY 2013 through FFY 2018

Federal fiscal year	DBE goal	DBE commitments/ awards	Difference from DBE goal
2013	53.43 %	5.90 %	-47.53 %
2014	53.43	1.30	-52.13
2015	53.43	6.33	-47.10
2016	53.43	8.88	-44.55
2017	29.05	3.85	-25.20
2018	29.05	7.43	-21.62

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

The Keen Independent analysis of DBE utilization on FHWA-funded contracts from July 2011 through June 2016 indicated annual DBE participation from 2.30% to 5.90% over this time period, also substantially below HDOT’s overall DBE goal. Figure 5 provides these results.

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

Uniform Reports of DBE Awards/Commitments and Payments submitted to FHWA for FFY 2013 through FFY 2018 indicate a median race-neutral participation of 0.16%.⁸ Figure 11 presents these results.

⁸ 0.32% is the halfway point between the two “middle” pair of values for annual Race-neutral DBE commitments/awards: 0.02% in FFY 2018 and 0.58% in FFY 2016.

Figure 11. HDOT-reported Race-neutral and Race-conscious DBE Participation on FHWA-funded Contracts for FFY 2013–FFY 2018

Federal fiscal year	DBE commitments/awards		
	Total	Race-neutral	Race-conscious
2013	5.90 %	0.06 %	5.84 %
2014	1.30	0.51	0.79
2015	6.33	0.26	6.07
2016	8.88	0.58	8.30
2017	3.85	0.03	3.82
2018	7.43	0.02	7.41

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

Keen Independent also analyzed DBE participation on HDOT’s FHWA-funded contracts without DBE contract goals. HDOT achieved a median DBE participation of 9.74% for FY 2012 through FY 2016 on FHWA-funded contracts without goals, as discussed in Chapter 6 of the Availability Study.

4. What is the Extent and Effectiveness of Race- and Gender-neutral Measures that the Agency Could Have in Place for the Next Fiscal Year? When determining the extent to which it could meet its overall DBE goal through the use of neutral measures, HDOT reviewed the race- and gender-neutral measures that it and other organizations have in place, and those it has planned or might consider for future implementation.

HDOT has extensive efforts to assist DBEs and other small businesses through technical assistance and other means. There are many programs outside HDOT that also assist these businesses. Appendix H of the 2019 Availability Study report includes examples of these programs. HDOT and other agency business assistance will continue in the future.

Should HDOT Project that it Can Meet All of its Overall DBE Goal through Neutral Means? HDOT considered whether it can achieve 100% of its overall DBE goal through neutral means or whether race-conscious programs are needed. Such a determination depended in part on the level of the overall DBE goal. Since HDOT is proposing an overall DBE goal for FHWA-funded contracts of 25.60%, the evidence presented here and in the 2019 Availability Study indicates that HDOT might not meet its DBE goal solely through neutral means.

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

- There is information indicating disparities in outcomes for minorities and women and minority- and women-owned firms, and some qualitative evidence of discrimination within the Hawaii transportation contracting marketplace, as summarized in Chapter 5 of the Availability Study.

- Median annual DBE participation from FFY 2013 to FFY 2018 was 4.73 percent based on Keen Independent’s analysis. This level of participation is considerably below an overall DBE goal in the range of 25.60 percent.

Keen Independent’s analysis shows a median DBE participation in FHWA contracts without goals of 9.74 percent for FY 2012 through FY 2016. Based on the data above, HDOT proposes a race-neutral projection of 9.74 percentage points for its overall DBE goal for FFY 2020 through FFY 2022.

As noted below, HDOT projected a 0.26 percentage point neutral and 28.79 percentage point race-conscious split when it prepared its overall DBE goal of 29.05% for FFY 2017 through FFY 2019. The first column Figure 12 presents these projections.

The second column of numbers in Figure 12 is a projection using an overall DBE goal of 25.60 percent and a 9.74 percentage point projection for race-neutral participation for FFY 2020 through FFY 2022. The race-conscious portion of the goal is 15.86 percentage points (25.60% - 9.74% = 15.86%).

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

Component of overall DBE goal	FFY 2017-FFY 2019	FFY 2020-FFY 2022
Overall goal	29.05 %	25.60 %
Neutral projection	- 0.26	- 9.74
Race-conscious projection	28.79 %	15.86 %

Source: Keen Independent 2019 Availability Study (Chapter 6, page 14).

IV. Summary

Based on the results of the 2019 Availability Study summarized in this document, HDOT proposes a 25.60% DBE goal on FHWA-funded contracts for FFYs 2020 through 2022. HDOT estimates 15.86% will need to be met through the use of race- and gender-conscious (RC) contract goals and 9.74% of the overall goal can be achieved through race- and gender-neutral (RN) participation.

The full Availability and Disparity Study report will have complete results about the use of minority- and women-owned firms, by racial, ethnic and gender group, in HDOT FHWA-funded transportation contracts. The report is projected to be completed in fall 2019. HDOT might refine the analyses in this Goal and Methodology Document after receiving the Availability and Disparity Study report.

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

HDOT and Keen Independent implemented an extensive public participation process as part of the 2019 Availability Study and will continue to request public input regarding the Availability Study's findings as well as the FHWA DBE goal.

Opportunity to Comment. During the Availability Study, HDOT and the study team provided substantial opportunities for the public to provide information that might contribute to the Study's findings. These activities include:

- An External Stakeholder Group that met with HDOT and the study team at key junctures of the study process.
- A study website that posted information from the beginning of the study.
- A telephone hotline and dedicated email address for anyone wishing to comment.
- Opportunities for company owners and managers to provide information about their businesses and any perceived barriers in the marketplace. Keen Independent reached thousands of businesses through online surveys and telephone surveys conducted in 2018.
- In-depth personal interviews and focus groups with business owners, trade associations and others throughout the state.

Through these methods, Keen Independent reviewed input from more than 170 businesses and other groups across Hawaii, which is summarized in the 2019 Availability Study.

Public Comment Process for the 2019 Availability Study Report and HDOT DBE Goal.

Keen Independent published a draft Availability Study report for public comment. Public comments concerning the report as well as HDOT's proposed overall DBE goal will be made from late June to late July 2019. The public will be able to give feedback at the meetings listed below and provide written comments (a) in person at the meetings, (b) online at <https://www.keenindependent.com/hdotdisparitystudy2019>, (c) via email at HDOTdisparitystudy2019@keenindependent.com or (d) through regular mail to HDOT Office of Civil Rights, 200 Rodgers Boulevard, Honolulu, HI 96819.

HDOT will hold four public meetings concerning the study and HDOT's proposed DBE goal. All meetings will be held from 9 am to 11 am with the last part of each meeting reserved for a focus group discussion of marketplace conditions and the DBE Program. The dates and locations of the public meetings are provided in the table below.

Tuesday, July 9	Wednesday, July 10	Thursday, July 11	Friday, July 12
Oahu	Maui	Kauai	Hawaii Island
Daniel K. Inouye International Airport, Inter-island Terminal 7th floor, Conference room 400 Rodgers Boulevard Honolulu, HI 96819	Highways Division Maui District Office 650 Palapala Drive Kahului, HI 96732	Highways Division Kauai District Office 1720 Haleukana Street Lihue, HI 96766	Highways Division Hawaii District Office 50 Makaala Street Hilo, HI 96720

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

Notice of Proposed Goal. HDOT will publish a notice of its proposed overall goal on its [Office of Civil Rights](#) and [DBE Program](#) web pages and [DBE Disparity Study](#) website. The agency will also implement additional methods of publishing its proposed overall goal.