

**CITY OF PHOENIX  
FEDERAL AVIATION ADMINISTRATION (FAA) DBE PROGRAM  
FFY 2023-25 TRIENNIAL DBE UTILIZATION GOAL PROPOSAL**

**STATEMENT OF ANNUAL GOAL**

The City of Phoenix proposes a triennial DBE goal of **7.8 percent** for fiscal years 2023-25. The goal as stated is a percentage of all Federal Aviation Administration (FAA) funds that the City anticipates expending in the forthcoming fiscal years. The proposed 7.8 percent goal will be achieved entirely through race- and gender-neutral measures. A goal of 7.8 percent for DBE participation will be proposed for the time period of October 2023 through September 2025; the goal will be achieved on an annual basis for all construction-related contracts. If there are significant changes to the projected activity, including new unidentified projects the City will propose a new goal to the FAA.

**PROJECTED ACTIVITY**

The City has established the triennial goal pursuant to the regulatory requirements of 49 CFR Part 26.45, guidance provided by FAA staff, and the written guidance issued by USDOT in 2006 related to the Ninth Circuit Western States Paving case ruling. The proposed overall aspirational goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses recognized in the Relevant Market Area. Due to the lack of a disparity study, rather than employing contract-specific DBE goals, the city imposes small business outreach requirements on its contracts to foster small business and DBE participation.

During federal fiscal years 2023-25, the City anticipates receiving FAA financial assistance on seven major projects, with potentially twenty-four contracting opportunities, totaling \$143,401,209. FAA funding will constitute (75 percent) of the projected contracts. The proposed DBE goal represents \$11,185,204 (7.8 percent) of this FAA funding.

**PUBLIC NOTICE AND COMMENT**

In establishing its annual goal, the City considers input and recommendations received throughout the year from minority, woman, and general contractor groups, community organizations, and other officials or organizations. The City routinely meets with representatives of stakeholder and business advocacy organizations to obtain information and recommendations related to the participation of small and disadvantaged businesses in City procurement and contracting.

On June 3, 2022, a media advisory was released to inform the public of the proposed overall DBE Goal. Additionally, a public notice (**Exhibit A**) was published to inform the public of the proposed goal and to inform interested parties that all documentation and rationale are available for public review and inspection during normal business hours at the Equal Opportunity Department. The information is available for thirty (30) days following the date of the notice. The notice also informed the public that the City will accept comments on the goal for forty-five (45) days from the date of notice. The public notice was also advertised in Phoenix major newspapers as well as publications representing minority groups and business advocacy organizations.

On June 21, 2022, the proposed goal was announced at the Disadvantaged Business Enterprise (DBE) Program Public Forum, which included prime contractors, subcontractors, and consultants. During this public hearing, a request for comments regarding the goal proposal was issued to allow for public input before finalization. No comments were received refuting the methodology proposed by the City.

**METHODOLOGY**

The City's 2023-25 annual goal setting methodology is consistent with the requirements of 49 CFR Part 26, in particular Part 26.45 and goal setting methodology guidance provided by the FAA during the 12<sup>th</sup> Annual FAA National Civil Rights Training Conference for Airports August 24, 2021 and past AMAC Airport

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Business Diversity Conferences.

- Step One: Determine the *Relative Availability* of DBEs to perform the types of contracts (both prime contractors and subcontractors) that will be awarded during FFY 2023-25.
- Step Two: Adjust the *Relative Base Availability* in Step One to make the availability percentage as precise as possible, considering all relevant data available.
- Step Three: Calculate the race- and gender-neutral and race- and gender-conscious portions of the overall goal pursuant to 49 CFR Part 26.51.

**METHODOLOGY APPLICATION**

**Step One: Calculate the Relative Base Availability**

A. Relevant Market Area – The City has determined that the relevant market area for establishing the triennial 2023-25 DBE goal on FAA-assisted contracting is Maricopa County, Arizona. The determination of relevant market area is based on an analysis of the geographical location of prime contractors, by county, that have participated in FAA-assisted contracts during the period of October 2019 through June 2022. The analysis demonstrates that 16 contracts were awarded with 100 percent, of these being awarded to local Maricopa County prime contractors.

$$\frac{\text{\# of Contracts awarded to firms with significant presence in Maricopa County}}{\text{Total \# of Contracts awarded October 2019 – June 2022}} = \frac{16}{16} = 100\%$$

The City has utilized the “75 percent rule,” applied and generally accepted by courts in antitrust cases and disparity analysis in determining its local market area. This methodology and determination are also consistent with the findings of the City’s 1999 Second Generation Disparity Study and the 2005 Minority/Woman/Small Business Enterprise Program Update Study commissioned to study the local market relevant to the local M/W/SBE Program.

B. Relative Availability – The City’s availability analyses have determined the Relative Availability of DBE to be 11.23 percent. The availability percentage is predicated on the degree to which ready, willing, and able DBEs exist in the relevant market area relative to all firms that could potentially perform on FAA-assisted contracts projected for award in FFY 2023-25.

The first step in conducting an availability analysis is to examine the contracts projected for award and to determine the trade or industry-specific work that will be available to be performed on those contracts. The City identified 7 projects anticipated for award by the FAA in FFY 2023-25 that include contracting and subcontracting opportunities in the areas of site preparation, grading, concrete breaking and cutting for demolition, asphalt paving, milling, sawing, cutting, potholing, water and sewer lines, utility line construction, underground utility locating, pavement marking, striping, concrete paving, Portland cement, aggregate base coarse, drainage system installation, electrical contracting, surveying, traffic and security control, dust control, environmental, sweeping, excavation, demolition, hauling, CA & I, Environmental Eng, design services, geotechnical testing labs, architecture, electrical engineering, engineering, and construction administration, just to name a few.

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Table 1 below identifies the applicable North American Industrial Classification System (NAICS) codes considered in making the determination of relative availability.

<b>TABLE 1</b>		
<b>FAA-ASSISTED PROJECTS ANTICIPATED FOR AWARD FFY 2023-25</b>		
<b>Project Description</b>	<b>Estimated Cost</b>	<b>NAICS CODES</b>
1. PSHIA West Air Cargo Reconstruction - Design, CA & I Services	\$1,535,640 (75% FAA Share)	237110 237130 237210
2. PSHIA West Air Cargo Reconstruction - Construction	\$2,947,687 (75% FAA Share)	237310 237990 238210 238910
3. PHX Crossfield Taxiway U Design & Construction Administration Services	\$40,770,975 (75% FAA Share)	238990 484110 484220
4. PHX T3 Outer Apron Construction	\$66,991,692 (75% FAA Share)	541330 541370 541380 541620
5. DVT Relocate Taxiway B and Connectors B6 & B9 - Construction	\$13,043,041 (75% FAA Share)	561439 561790 561990
6. DVT Relocate Taxiway B and Connectors B6 & B9 - Design	\$5,130,432 (75% FAA Share)	
7. DVT Taxiway D Phase II	\$5,407,500 (75% FAA Share)	
8. GYR Apron Rehabilitation Phase I Project - Design	\$3,772,763 (75% FAA Share)	
9. GYR New North Apron & Taxiway Connector Project	\$3,801,475 (75% FAA Share)	
<b>TOTAL</b>	<b>\$143,401,209</b>	

In making its assessment of DBE availability, the City compared DBE firms available to perform on the contracts projected for award relative to all firms that are “ready, willing, and able” to perform.

The City makes this analysis based on data from a variety of sources to ensure that the City's identification of availability is narrowly tailored and is an accurate reflection of the local marketplace. Data sources used in this process included:

- Historical plan holder and bidder lists
- Firms listed on the Arizona Board of Technical Registration
- Firms licensed by the Arizona Registrar of Contractors to perform commercial work in the scopes of

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work identified

- Arizona Unified Certification Program (AZUCP) Directory of DBE firms certified by members of the AZUCP in the applicable NAICS

Using information from the data sources listed above, the City found that the *Relative Availability* is **11.23** percent of all available firms that could potentially perform on contracts projected for award. The following formula was used to calculate the base relative availability:

$$\frac{\text{Number of DBE firms in relevant NAICS Codes}}{\text{Number of DBE + Non-DBE firms in relevant NAICS Codes}} = \text{Relative Availability}$$

$$\frac{802}{7,139} = 0.1123 \text{ (or 11.23\%)}$$

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*Weighted Base Availability* Calculation: The City further refined the Relative Availability by taking into consideration the scopes of work in relation to the total contract values. At the time of this analysis, calculations were based on projects for which detailed project specifications were available. The projects do have comparable scopes of work to the majority of the projects referenced.

<b>TABLE 2 WEIGHTED BASED FIGURE CALCULATION</b>							
<b>SCOPES OF WORK</b>	<b>NAICS</b>	<b>DBE</b>	<b>NON -DBE</b>	<b>UNIVERSE</b>	<b>\$ BY SCOPES</b>	<b>% OF TOTAL</b>	<b>WEIGHTED BASE</b>
Site preparation, grading, concrete breaking and cutting for demolition, trucking, water truck	238990 238910 561990	141	2001	2142	\$113,324,698	59.60%	4.20%
Asphalt paving, milling, sawing, cutting, striping potholing	237310 238890	84	369	453	\$8,639,842	4.54%	1.03%
Water and sewer line, related structures, utility line construction, pipe removal, quality control, PCCP reinforcing steel	238110 237110 561990 238120	105	180	285	\$9,645,700	5.07%	2.96%
CA & I, Environmental Eng, design services, geotechnical testing labs, architecture, electrical engineering	237310 541330 541380 541310	139	2006	2145	\$47,936,358	25.21%	1.75%
Electrical contractors, airfield electrical, airfield edge lighting, temporary electrical	238210	52	463	515	\$2,006,951	1.06%	0.12%
Surveying, landscaping, quality control	541370 561730	10	332	342	\$819,000	0.43%	0.01%
Dust control, environmental, excavation, sweeping, landscaping	562910 238910 238990 541380 541620 561790 237990	164	659	823	\$6,109,084	3.21%	0.80%
Hauling, trucking	484220 484110	76	248	324	\$1,603,629	0.84%	0.26%
Utility Locating	561990	31	79	110	\$70,000	0.04%	0.01%
<b>TOTAL</b>		<b>802</b>	<b>6337</b>	<b>7139</b>	<b>\$190,155,262</b>	<b>100%</b>	<b>11.14%</b>

**Step Two: Adjust the Relative Base Availability**

In accordance with regulatory requirements and USDOT guidance, the City considered multiple factors to determine if a need exists to adjust the *Relative Base Availability* to reflect other known factors in the relevant local market area. The factors considered by the City included:

- Use of a disparity ratio calculation to make a “but for” adjustment
- Historical utilization based on actual dollars paid to DBEs versus non-DBEs
- De-certification of DBEs participating on FAA contracts during the past three years

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- Types of contracts available for DBE participation to ensure that historical utilization is consistent with current availability
- Contracts to be awarded where no availability exists and no participation can be expected
- Availability of expansion capital and bonding to DBEs in the local market area
- Capacity issues/challenges for DBEs in the local market as indicated by anecdotal evidence and historical bidding trends

Disparity Ratio Calculation – A disparity ratio calculation is reflective of the historical under-utilization or over-utilization of DBEs. The use of a disparity ratio to adjust current DBE and non-DBE availability represents a “but for” adjustment that addresses the lasting effects of past discrimination and historical under-utilization. This calculation also addresses the anecdotal evidence presented by business owners related to continuing difficulties in obtaining capital and bonding in the local market. This information came to light as part of the City’s 2005 M/W/SBE Program Update Study. The City’s methodology for applying a disparity ratio adjustment to the base relative DBE availability was identified in the City’s 2012 DBE Program Plan and has been used in all subsequent annual goal setting processes. The process is as follows:

Evaluate the historic participation of DBE primes and subcontractors on FAA projects. The City reviewed payments made on FAA-assisted contracts completed during the period of October 2018 through June 2021. As reflected in *Table 3* below, the median past participation was calculated by comparing the total contract dollars paid to prime contractors in comparison to the dollars paid to DBE prime contractors and subcontractors. The calculation includes contracts with and without subcontracting activity. The median historical DBE utilization resulting from combining DBE prime and subcontracting dollars is 6.45 percent.

<b>TABLE 3</b>						
<b>HISTORICAL ANNUAL DBE PARTICIPATION</b>						
<b>CONTRACTS AWARDED DURING THE FEDERAL FISCAL YEAR</b>						
<b>PERIOD</b>	<b>DBE</b>		<b>NON-DBE</b>		<b>TOTAL</b>	
	<b>Dollars</b>	<b>%</b>	<b>Dollars</b>	<b>%</b>	<b>Dollars</b>	<b>%</b>
2018-19	\$643,802	4.10%	\$14,949,912	95.90%	\$15,593,714	100.00%
2019-20	\$3,519,571	6.45%	\$51,020,464	93.55%	\$54,540,035	100.00%
2020-21	\$4,173,426	33.77%	\$6,875,017	62.23%	\$11,048,443	100.00%

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Past Participation Adjustment – Based on the triennial goal setting methodology prescribed by the FAA, a determination was made to further tailor the current relative DBE availability by accounting for past participation. This was accomplished by averaging the 6.45 percent Median Past Participation with the 11.14 percent current Weighted Base Availability (from Table 2). This results in the Past Participation Adjusted Goal of 8.8 percent.

$$\frac{\text{Median Past Participation} + \text{Weighted Base Availability}}{2} = \frac{6.45\% + 11.14\%}{2} = \frac{17.59\%}{2} = 8.8\%$$

**Due to the inability of DBE firms acquiring bonding and insurance and passing the heightened security requirements at the airports, City of Phoenix adjusted the DBE triennial goal downward by 1% point to 7.8%**

**Step Three: Calculate Race- and Gender-Neutral and Race- and Gender-Conscious Split**

Beginning in October 2013, the City has been administering a race- and gender-neutral DBE Program for all FAA-assisted construction-related contracts. The City's administration of the federal DBE Program with race- and gender-neutral measures, in addition to the City's local SBE Program, provided the factual predicates that DBE firms continue to be competitive in the local marketplace and justified the discontinuation of goal-based measures.

The City also utilized information available regarding the degree to which prime contractors proposed and utilized DBE firms on projects where no DBE goals were established or required. The review of race- and gender-neutral attainment included DBE prime contractor participation as well as DBE subcontractor participation that occurred on the projects.

In *Western States Paving*, the Ninth Circuit Court noted, "while Washington DOT was not required to produce a separate factual predicate for a DBE program, it was still required to produce a factual predicate to justify race-conscious elements in the local implementation of its DBE program." In 2015, the Arizona Department of Transportation (ADOT) completed a Disadvantaged Business Enterprise Disparity Study to determine whether there was a compelling interest to justify a race- and gender-conscious disadvantaged business enterprise (DBE) program for ADOT. The consultant, Keen Independent Research, found that the State is near parity. Thus, ADOT is currently imposing RGN measures for its FTA- and FAA-assisted contracts.

Without a factual predicate to justify the application of race- and gender-conscious goals, and DBE participation near parity in the region, the City of Phoenix is proposing that the 7.8 percent triennial goal be achieved entirely through race- and gender-neutral measures.

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***EXHIBIT A***

**PUBLIC NOTICE OF CITY-PROPOSED FEDERAL AVIATION ADMINISTRATION (FAA)  
TRIENNIAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION GOAL**

The City of Phoenix, pursuant to 49 Code of Federal Regulations Part 26, hereby announces its Triennial Disadvantaged Business Enterprise (DBE) Goal for Federal Fiscal Years (FFY) 2023-25 for DBE participation in USDOT-funded construction projects and procurements as follows:

**FEDERAL AVIATION ADMINISTRATION  
DISADVANTAGED BUSINESS ENTERPRISE DBE GOAL FOR FFYs 2023-25  
7.8% (to be achieved through Race- & Gender-Neutral measures)**

The goal and rationale for the City's DBE Program Triennial Goal proposal are available for public review and inspection at the following contact point during normal business hours for 30 days following the date of this notice. Public comments will be accepted for a period of 45 days from the date of this notice.

**CONTACT:**

Donald N Mayes, Deputy Director  
City of Phoenix Equal Opportunity Department  
200 W. Washington, 15<sup>th</sup> Floor  
Phoenix, Arizona 85003  
Phone: (602) 262-7502  
TTY: (602) 534-1557 or use 7-1-1  
Fax: (602) 534-1124  
Email: [trevor.bui@phoenix.gov](mailto:trevor.bui@phoenix.gov)



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**MEDIA RELEASE  
(June 3, 2022)**

**Phoenix Proposes 7.8 Percent of FAA-Assisted Contracts to go to DBE Firms**

The city of Phoenix is soliciting feedback from community stakeholders on the triennial Disadvantaged Business Enterprise (DBE) goal that will be proposed to the Federal Aviation Administration (FAA) on August 1. A goal of 7.8 percent for DBE participation will be proposed for the time period of October 2023 to September 2025; the goal must be achieved on an annual basis for all construction-related contracts.

The DBE goal, which will be achieved through race- and gender-neutral measures, is established pursuant to 49 Code of Federal Regulations, Part 26.45 and FAA guidance. Due to the lack of a disparity study, rather than employing contract-specific DBE goals, the city imposes small business outreach requirements on its contracts to foster small business and DBE participation.

During federal fiscal years 2023-25, the city anticipates receiving FAA financial assistance on seven major projects with multiple contracting opportunities totaling \$190,155,262. FAA funding will constitute \$142,616,446 (75 percent) of the projected contracts. The proposed DBE goal represents \$11,124,082 (7.8 percent) of this FAA funding.

Details about the proposed DBE goal are available for public review and inspection at the city's Equal Opportunity Department, 200 W. Washington St., 15th floor, during normal business hours for 30 days following the date of this notice. Public comments will be received for a period of 45 days from the date of this notice. Based upon a review of comments received, the city reserves the right to adjust the proposed goal.

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A public forum for finalization of the proposed DBE goal will be held on Monday, June 13, from 2:30 - 4 p.m., at Phoenix Sky Harbor International Airport, Aviation Department Administration Building, 2485 E. Buckeye Road.

For more information about the DBE goal proposal or the public forum, call 602-262-7502/voice or 602-534-1557/TTY or e-mail [trevor.bui@phoenix.gov](mailto:trevor.bui@phoenix.gov).