

MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PROGRAM

FY 2009 GOAL METHODOLOGY

for

North Carolina Department of Transportation

Division of Highways

Raleigh, North Carolina

With Assistance From



Ken Weeden & Associates, Inc.

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Introduction

The purpose of annual goal setting for the North Carolina Department of Transportation's Division of Highways Minority and Women-Owned Business (M/WBE) Program is to help achieve a "level playing field" for M/WBE firms seeking to participate in State-funded highway contracts. In developing a local minority and women-owned business program which is narrowly-tailored and meets the test of strict scrutiny as described by the United States Supreme Court¹, the North Carolina Department of Transportation (NCDOT) will be following the guidelines and recommended format of United States Department of Transportation (USDOT) Disadvantaged Business Enterprise program regulations as described in 49 CFR Part 26 for goal setting. The final proposal of an overall annual goal for FY 2009 included the two-step goal setting process as described in those regulations.

The goal for minority-owned business enterprise participation (MBE) is: 6.6%
The goal for women-owned business enterprise participation (WBE) is: 4.7%.

Methodology – General Overview

Annual goal setting, according to USDOT regulations 49 CFR Part 26, should be a two-step process. The first step is to obtain or develop a baseline goal for the "relative availability" of ready, willing and able M/WBE firms in the market area, compared to all firms. The second step involves "adjusting" the baseline goal to reflect specific additional factors, which must be considered in refining the goal. This could include assessing current capacity, as indicated by looking at historic M/WBE participation rates for similar activities; examining information on statistical disparities between availability and utilization of M/WBE firms; and looking at statistical or otherwise quantifiable factors that reflect the impact of difficulties in obtaining bonding, capitalization, etc., consistent with elements outlined in the federal regulations (49 CFR Part 26). These steps are presented and explained in more detail below.

Methodology – Detailed Explanation

I. Step 1 – Baseline Goal

The first activity in establishing an annual goal is to examine the list of projected projects and/or activities proposed for federal funding in fiscal year 2009. The next action is to

¹ Adarand Constructors, Inc. v. Pena, 515 U.S. 200, 227 (1995).

develop a list of categories, or codes, such as the NAICS (North American Industrial Classification System) codes that correspond to the various types of federally funded projects proposed for FY 2009. NCDOT has an established listing by category of “Highway Work Codes”, which are similar to the NAICS codes. For purposes of the FY 2009 Division of Highways goal-setting methodology, the NCDOT Highway Work Codes will be primarily utilized. After the work category codes are determined, they are assigned a “value”, based on the actual percent dollar value to be spent in those codes relative to the total project cost. Then, an examination of the NCDOT Directory of Transportation firms takes place in order to determine “all firms” which are available to work in those designated codes. Next, in developing the “baseline” goal, a determination of the “relative availability” of ready, willing and able M/WBE firms in each of the same work codes is made. (For the purposes of this analysis, firms included in the North Carolina Department of Transportation Vendor database are considered ready, willing and able. These firms have either become pre-qualified to perform work, based on NCDOT standards, *or* became certified as a M/WBE with NCDOT.) Finally, a “weighted M/WBE value” for each of the work codes is determined based on the relative availability percent of M/WBEs times the relative percent of cost for each work code. The total of all of the “weighted” values is the initial, or “baseline” M/WBE goal, which is then subject to further adjustment, if necessary. Additional details regarding this process can be found below:

- a) *Normal Market Area.* The normal market area, or the area from which a substantial majority of the bidders come, is based on an analysis of past projects and discussions with NCDOT engineers. The normal market area for highway projects is based on where the substantial majority of contractors and subcontractors with which NCDOT Division of Highways contracts are located.² The normal market area for NCDOT is statewide since a majority of successful and unsuccessful bidders for NCDOT projects are located within the state. Therefore, the normal market area is the state of North Carolina.
- b) *Relevant NAICS or similar Work Code Analysis.* The list of proposed FY 2009 state funded projects all across the state was examined in order to determine the types of projects/ activities involved which could be grouped by relevant NAICS codes or similar work codes. NCDOT has a detailed set of “highway work codes” that are very similar to, if not more specific than, corresponding NAICS codes. These NCDOT highway work codes were selected for goals analysis purposes. The NCDOT Directory of

² “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”
(<http://osdbuweb.dot.gov/DBEProgram/tips.cfm>)



Transportation Firms (the directory) can also be sorted and queried by these highway work codes, as well as by NAICS codes. The highway work codes were deemed to be more project-specific.

- c) *Project Type Grouping.* Project activities with similar highway work codes were then grouped together, in order to get a picture of the relative percent or “weight” of those activities and costs relative to the total cost. The broad variety of FY 2009 proposed highway projects, although proposed for various locations across the State, encompasses virtually all of the NCDOT highway work codes. For purposes of this analysis, one large project was utilized, which also contained all of the relevant NCDOT highway work codes. This is explained below:
- d) *Weighting by Highway Work Codes.* In order to allocate project costs according to relevant major highway work codes, one widening project that was actually bid *and* which contained a “comprehensive” listing of activities, or “work codes”, was used as a project model. This project (widening) is representative of a majority of the projects that will be bid using state funding in 2009 in size, type and scope. This project was examined in detail in order to group together all of the work items and their estimated costs within the same highway codes. These figures were then compared to the total State spending budget for FY 2009. (Per NCDOT, this figure is estimated to be \$1,473,371,307.) Per the goal setting guidelines referenced in 49 CFR Part 26, the availability of M/WBE firms compared to all firms may be “weighted” according to the types of work which will be performed. This led to the *overall* derivation of the “percent” of total cost of these work items by the state highway work codes (Table 1). The percents of total cost by work codes were then allocated across the FY 2009 budget, in order to derive the estimated “weights.” This represents analysis of the availability of M/WBEs by the same highway work codes and allows the activity, by code, to be “weighted.” (It should be noted that neither engineering nor hauling is generally included in bid tabulations. Therefore, these figures had to be estimated based on their weight or values on a similar completed project and then added to the total budget.)



Table 1: NCDOT Highway Work Codes Type for FY 2009 Project

Highway/ NAICS Code	Trade Type	NAICS/ Highway Code Description	Estimated FY 2009 Budget	Estimated % of Budget Cost
Highway and Street Construction	Highway and Street Construction	234110/ 237110	\$75,166,551	5.1%
	Hauling	50, 55	\$37,157,745	2.5%
	Clearing and Grubbing	000200	\$105,373,972	7.2%
	Roadway Grading and Excavation	000225	\$166,238,019	11.3%
	Concrete Structures (Bridges and Box Culverts)	000420	\$12,784,841	0.9%
	Reinforcing Steel (Placing and Tying)	000425	\$4,746,790	0.3%
	Cement Treated Base Course	000540	\$4,426,114	0.3%
	Soil-Cement Base	000542	\$13,079,101	0.9%
	Milling Asphalt Pavements	000607	\$14,810,883	1.0%
	Asphalt Concrete Plant Mix Pavements	000610	\$414,988,349	28.2%
	Asphalt Concrete Plant Mix, Pavement Repair	000654	\$7,049,100	0.5%
	Asphalt Surface Treatment	000660	\$35,123,064	2.4%
	Construction Surveying	000801	\$13,172,453	0.9%
	Curb and Gutter/Shoulder Berm Gutter	000846	\$115,996,559	7.9%
	Guardrail Installation	000862	\$2,958,661	0.2%
	Permanent Signing	000900	\$3,232,044	0.2%
	Work Zone Signs	001110	\$35,553,857	2.4%
Pavement Markers	001205	\$17,930,938	1.2%	
Water/ Sewer Contractors	Subsurface Drainage Installation	000815	\$67,538,882	4.6%
	Water Installation	001510	\$92,202,526	6.3%
Landscaping Contractors	Temporary Silt Fence	001605	\$9,329,192	0.6%
	Seeding and Mulching	001660	\$9,559,392	0.6%
	Landscape Planting	001670	\$194,336	0.0%
Electrical Contractors	Signals & Traffic Management	001700	\$8,304,158	0.6%
	Electrical Contractors	235310/ 238210	\$13,353,680	0.9%
	Engineering & Professional Services		\$193,100,102	13.1%
			\$1,473,371,307	100.0%

Source: NCDOT Bid Tabulations, NCDOT Tentative Letting List as of 7/2008, Compiled by Ken Weeden & Associates, Inc.

e) *Relative Availability of M/WBEs.* The relative availability of M/WBE firms was determined by comparing the number of M/WBE firms by relevant state highway work code categories, to the number of “all” firms in the same highway work code categories. First, the NCDOT listing of “all firms” was obtained from the agency’s vendor database of all firms who have been pre-qualified as primes, and/or approved as subcontractors. This database is essentially the agency’s bidders list and contains a substantial amount of information about each vendor, including work interest by highway work codes, M/WBE status, etc. A query of all M/WBE contractors was made from the same source and by the same highway work codes. Both the “numerator” and “denominator” were derived

from the same source. These listings are available online at <https://apps.dot.state.nc.us/vendor/directory/>. The relative availability of both minority and women-owned businesses is shown in Table 2.



Table 2: Relative Availability of Minority and Women-Owned Firms

Highway/ NAICS Code	Trade Type	NAICS/ Highway Code Description	Estimated FY 2009 Budget	Estimated % of Budget Cost
Highway and Street Construction	Highway and Street Construction	234110/ 237110	\$75,166,551	5.1%
	Hauling	50, 55	\$37,157,745	2.5%
	Clearing and Grubbing	000200	\$105,373,972	7.2%
	Roadway Grading and Excavation	000225	\$166,238,019	11.3%
	Concrete Structures (Bridges and Box Culverts)	000420	\$12,784,841	0.9%
	Reinforcing Steel (Placing and Tying)	000425	\$4,746,790	0.3%
	Cement Treated Base Course	000540	\$4,426,114	0.3%
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	Guardrail Installation	000862	\$2,958,661	0.2%
	Permanent Signing	000900	\$3,232,044	0.2%
	Work Zone Signs	001110	\$35,553,857	2.4%
Pavement Markers	001205	\$17,930,938	1.2%	
Water/ Sewer Contractors	Subsurface Drainage Installation	000815	\$67,538,882	4.6%
	Water Installation	001510	\$92,202,526	6.3%
Landscaping Contractors	Temporary Silt Fence	001605	\$9,329,192	0.6%
	Seeding and Mulching	001660	\$9,559,392	0.6%
	Landscape Planting	001670	\$194,336	0.0%
Electrical Contractors	Signals & Traffic Management	001700	\$8,304,158	0.6%
	Electrical Contractors	235310/ 238210	\$13,353,680	0.9%
	Engineering & Professional Services		\$193,100,102	13.1%
			\$1,473,371,307	100.0%

Source: NCDOT Vendor Directory (7/28/08), Compiled by Ken Weeden & Associates, Inc.

Note: Firms were grouped by type (i.e. highway construction, landscaping, water and sewer and electrical) so that they could be counted *once* for each of the major types, regardless of highway or NAICS code. This grouping includes relevant NAICS codes for each major type as well as the highway codes.

f) *Weighted Relative Availability.* The relative availability of M/WBE firms is then multiplied by the weighted value of each work type to determine the *weighted* availability of M/WBE firms. This weighted availability represents the Step 1 Goal.



Table 3: Weighted Availability of M/WBE Firms – Step 1

Trade Type	Estimated % of Budget Cost	Relative Availability of MWBE Firms	Weighted Relative Availability of MWBE Firms
Highway and Street Construction	73.29%	20.21%	14.8%
Water/ Sewer Contractors	10.84%	30.00%	3.3%
Landscaping	1.30%	13.71%	0.2%
Electrical Contractors	1.47%	26.19%	0.4%
Engineering & Professional Services	13.11%	16.41%	2.2%
Step 1 Base Goal =			20.8%

Source: Compiled by Ken Weeden & Associates, Inc.

The overall Step 1 Goal for **MWBE Firms** is **20.8%**.

II. Step 2 – Adjustment to the Baseline Goal

In developing the M/WBE goal to model the Federal DBE program, the second step in goal setting is to “adjust” the base goal.

“...Additional evidence in the sponsor’s jurisdiction be considered to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal” (26:45(d)).³

The regulations further state that there are many types of evidence that must be considered when adjusting the base figure. These include:

- (i) *The current capacity of [M/WBEs] to perform work in your DOT-assisted contracting program, as measured by the volume of work [M/WBEs] have performed in recent years.*
- (ii) *Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure*

A. Current Capacity – Historical Achievement

The first adjustment factor mentioned in the DBE regulations is “current capacity”. The historic participation of M/WBEs is one indicator of current M/WBE capacity within NCDOT Division of Highways. Therefore, this is the first adjustment factor utilized in this methodology.

³ 49 CFR Part 26 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

The historical overall M/WBE goals accomplished by the Division of Highways for federal projects in recent years were examined relative to the above consideration. Information obtained from the Contractual Services Unit and prior annual goal documents for the reporting periods listed below was assessed. The table below describes the historic M/WBE participation for the NC Division of Highways highway projects from FY 2006 through FY 2008. (*This period represent the years in which project activity is similar to FY 2009 projects and in which the reporting was most standardized*).

Table 4: M/WBE Participation Rates

Fiscal Year	Total	MWBE	MWBE
		Participation (\$)	Participation (%)
2006	\$1,765,536,807	\$ 135,884,966	7.70%
2007	\$1,651,295,367	\$ 74,776,899	4.53%
2008	\$1,741,578,937	\$ 103,669,568	5.95%
Median			6.0%

Source: Report of M/WBE Participation, NCDOT;
Compiled by Ken Weeden & Associates, Inc.

The median historic accomplishment for the reporting periods is shown in the table above. The median historic attainment, which is an indication of “capacity” based on relatively recent performance, however, is lower than the Step 1 M/WBE base figure of **20.8%** which was derived using the methodology detailed above. It should be noted that the projects used to determine historical participation are substantially similar to the proposed FY 2009 activities. Therefore, the adjustment of the baseline goals is an average of the historic achievement and the Step 1 goals as indicated in the chart below.

	MWBE Goal
Step 1	20.8%
Adjustment	5.95%
Average	13.37%
Step 2 Goal	13.4%

The adjusted Step 2 goal is: 13.4%

B. Disparity Study

In 2003, the North Carolina Department of Transportation commissioned a “Second Generation Disparity Study” in order to examine the procurement of highway pre-



construction, construction, prime contracting, and sub contracting services for the period of July 1, 1998 through June 30, 2003. The primary objective of the study was to review the utilization of minority and non-minority women businesses in the procurement of those services compared to their availability and to provide or reinforce supportive evidence under the applicable legal standards for non-federal affirmative action programs. A further objective was to recommend programmatic remedies to address factors of identified underutilization. Since the results of a disparity study could be significant to the annual goal-setting process, the document was reviewed thoroughly, with the intent of looking for quantifiable “adjustment factors.” Below is a summary discussion of the Second Generation Disparity Study relative to the FY 2009 M/WBE Goal.

The Department of Transportation entered into an agreement with the North Carolina Institute of Minority Economic Development (NCIMED) to be the contract administrator, and to provide oversight for the study. NCIMED then contracted with MGT of America, Inc., which conducted statistical analysis of the disparity study. (This was a “Second Generation” disparity study, as the first disparity study for the North Carolina Department of Transportation was conducted in the 1990s.)

The Study examined several of NCDOT’s Minority and Women-Owned Business Enterprise (M/WBE) participation and support services programs, focusing on the participation of these firms in NCDOT’s construction and pre-construction procurements, in order to determine the levels of either underutilization or over utilization. M/WBE participation was examined under several business procurement categories.

After detailed analyses of M/WBE participation rates, compared to availability, in the above categories for work procured by the outlying State Division offices, and those procured by the Central Headquarters office for 1998-2003, the disparity study concluded that:

“...M/WBE utilization by NCDOT was low during the study period...depending on the contract category...” (MGT of America, Inc., p. 8-5).



The study further concluded that substantial disparity exists for most of the specified underutilized groups, i.e., African-Americans, Native Americans, and Hispanic Americans, in all divisionally-let prime contracting.

In addition to making several programmatic recommendations aimed at closing the identified disparity, i.e. the underutilization, the Study, in Exhibit 9-2, contained a summary table with recommended race and gender specific percentage participation goals for each of the above business categories, based on the study’s assessment of availability. For example, under “Construction/Prime/Division Let”, there are specific and separate recommended goals for African Americans, Hispanic Americans, Asian Americans, Native Americans, and non-minority Women. Under the federal DBE program guidelines, all of these groups could potentially come under one heading, i.e., “DBE”.

A summary table showing a composite of the study’s recommended goals was developed to obtain the “median” composite recommended goal. Note that the median composite goal shows goals for both Prime Contractors and Sub Contractors, even though the Division of Highways deals directly only with Primes, and indirectly with subcontractors. (Subcontractors receive work from primes). This composite goal, which considers all DBE’s, is shown below:

Table 5: Composite Utilization Goals by Prime Contractor Procurement Category from Second Generation Disparity Study

Type of Procurement/ Business Category for all M/WBEs combined	Composite Recommended Participation Goal
1. Construction-Prime - <i>Division Let</i>	11.7
2. Construction-Subcontractor - <i>Division Let</i>	10.1
3. Construction-Prime - <i>Centrally Let</i>	8.3
4. Construction-Subcontractor - <i>Centrally Let</i>	24.0
5. Pre-Construction – Primes	15.9
6. Pre-Construction – Subcontractor	15.4
Median Composite Disparity Goal:	13.55

Source: NC Department of Transportation Second Generation Disparity Study Final Report, p. 9-2; Composite analysis by Ken Weeden & Associates, Inc.

The median composite disparity goal is 13.55%, which is more than the initial adjusted calculated goal of 13.2%. However, this goal also requires some adjustment: the information for the DBE data base had a total of 1,006 DBE firms which were used for the availability and utilization analysis. After the study, however, the NCDOT “purged”



the system of “bad files” so that in reality, there were only 682 DBE firms in the database. NCDOT believes that it is appropriate to use the differential factor between 1,006 and 682 ($682/1,006 = .678$), to adjust the Disparity Study composite goal downward accordingly. Therefore the adjusted composite goal should actually be; $13.6 \times .678 = 9.22\%$.

Therefore, this adjustment will be based on an average of this figure (9.22%) and the adjusted goal (13.4%) for an overall adjusted goal of 11.3%.

Note: NCDOT has recently (July 2008) commissioned a disparity study. This study should be completed in 2009 and can be utilized in the 2010 goal development process. The 2009 Disparity Study will focus on the availability and utilization of disadvantaged minority-owned (MBE) and women-owned (WBE) business enterprises in the State program, as well as disadvantaged business enterprises (M/WBE) in the Federal program, and examine relevant evidence of the effects of race-based or gender-based discrimination upon the utilization of such business enterprises in contracts for planning, design, pre-construction, construction, alteration, and maintenance of all transportation systems within NCDOT. These systems include highways, bridges, rail, ferry, airports, facilities and public transit, and in the procurement of materials for these projects.

The Study will examine several of the NCDOT's M/WBE, MBE and WBE participation and support services programs, focusing on the utilization of these firms in NCDOT's construction and pre-construction procurements to determine the levels of either under-utilization or over-utilization. The Study will cover all state transportation systems in the areas of preconstruction and construction services for the time period of July 1, 2003 through June 30, 2008.

This overall adjusted goal will be separated into two goals: one for minority-owned businesses and one for women-owned business. This division will be based on the ratio of minorities to women in the NCDOT Directory of Transportation Firms as described in the table below.



Number of Minority and Women-Owned Businesses			
	MBES	WBES	Totals
Number of Firms	381	268	649
Percent of Firms	58.7%	41.3%	100.00%

Source: NCDOT Vendor Directory (7/28/08),
Compiled by Ken Weeden & Associates, Inc.

The overall goal is divided as follows: ratio of minority-owned businesses (58.7%) multiplied by the overall goal (11.3%) is 6.6%.

The ratio of women-owned business (41.3%) multiplied by the overall goal (11.3%) is 4.7%

The minority-owned business (MBE) portion of the goal is 6.6%.

The women-owned business (WBE) portion of the goal is 4.7%.

C. Consultation

In following the DBE program guidelines for goal setting, NCDOT implemented a “consultation process” for FY 2009 M/WBE goal development.

NCDOT believes that this consultation is an important step in the goal-setting process. The consultation process began with a “Goals Methodology Scoping Session”, which was attended by representatives from a number of sections and divisions within NCDOT, including the Division of Civil Rights, Division of Contractual Services, Division of Aviation, and Division of Highways. During the scoping session, questions and discussions centered on whether there have been any changes in the database or other information on M/WBE/HUB availability or capacity since the previous year’s submission. Each agency had the opportunity to comment on their upcoming or anticipated projects as well as provide comments on the goals of the other agencies represented. This team held two (2) meetings to discuss the goal setting process and determined that a formal committee should be convened to obtain consult with a wide variety of additional agencies in the goal setting process.

NCDOT developed an “Advisory Committee” which serves to provide an opportunity for public participation in the goal setting process. The list below describes the agencies which were represented on the Advisory Committee.



Table 6: NCDOT M/WBE Goal Setting Advisory Committee

Organization	Division/ Representation
North Carolina Department of Transportation	Construction Services
North Carolina Department of Transportation	Office of Civil Rights
North Carolina Department of Transportation	Division of Aviation
North Carolina Department of Transportation	Public Transportation Division
North Carolina Department of Transportation	Division of Highways
Lanier Construction	Prime Contractor (M/WBE)
Sanford Contractors	Prime Contractor
Winston Salem University	HUB Committee
Intellus	Prime Contractor
Mulkey Engineering	Prime Contractor
North Carolina Institute of Minority Economic Development	
North Carolina Department of Administration	Office of Historically Underutilized Businesses
City of Asheville	
Raleigh Durham International Airport	
Asheville Regional Airport	
Asheville Transit System	
Hispanic Contractors Association	

Two (2) meetings were held with this group and the results of those meetings are detailed below:

During the first meeting on July 10, 2008, with the members of the Minority Contractors Expansion Council, participants were asked: 1) If the current goal setting process considered all reasonable factors necessary to develop a realistic goal and 2) If there were any studies or statistical reports that could impact the adjustment/ calculation of overall goals.

In general, no specific information was provided. However, the participants offered the following concerns:

- Whether the goal setting process takes into account the lack of M/WBE firms in certain areas of the state, specifically the Western portion of the state. One commenter also noted that historic participation in this area of the state should be considered.
- The availability of M/WBEs as described in the directory, compared to the actual availability on specific jobs. Due to the economic downturn, there may be changes in bidding patterns, bonding and insurance requirements, which may not be taken into account. This affects availability of firms.
- Due to a lack of resources in the M/WBE staff, outreach, marketing and networking with M/WBE firms is difficult. These things are also difficult due to high turnover in staffing and lack of training. For example, M/WBE staff must know the availability of M/WBEs in the region, how to access resources for M/WBE firms.

- There is a pool of firms which may be interested in performing work, but who have not been certified or do not have a pattern of bidding. These firms should be questioned to determine why they have not participated (bid or quoted). *Note: NCDOT completed a barrier study in 2006 to investigate the issues raised in this comment. NCDOT is currently conducting a disparity study which will also address these issues.*

During the second meeting of the advisory meeting, on August 14, 2008 the following concerns were raised:

- The M/WBE goal setting process does not take into account the professional services which may be described as “infrastructure” in highway projects. Specifically mentioned were the technological needs, including computer and communication devices. These are not line items in construction bid tabulations.
- Utilizing the M/WBE directory to determine relative availability assumes that every firm in the directory is “ready, willing, and able” to perform highway work for the North Carolina Department of Transportation. This may not be accurate, since the NCDOT is the central certifying agency for all firms in the State who wish to be certified as a M/WBE firm and perform work with *any* US-DOT funded agency (including municipalities, transit systems, etc.) Therefore, it is difficult to ascertain whether each firm listed is truly interested in contracting opportunities with NCDOT. Commenter noted that actual bidding history may be a better indicator of who is ready, willing and able.

It should be noted that though these consultations provided valuable input into the goal setting process, none of these comments could be utilized to adjust the goal.

III. Race Neutral/ Race Conscious Breakout

The North Carolina Department of Transportation seeks to meet the maximum feasible portion of its MBE and WBE goals through race-neutral participation. Consistent with the Federal regulations, “race-neutral” measures can be used to assist all small businesses. For the purposes of race-neutral includes gender neutrality. “Race-neutral [M/WBE] participation includes any time a [M/WBE] wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that

does not carry a [M/WBE] goal, or even if there is a [M/WBE] goal, wins a subcontract from a prime contractor that did not consider its [M/WBE] status in making the award...”.⁴ The participation levels of the NCDOT Small Business Program were utilized to determine which portion of the MBE and WBE goals could be met through race (gender) neutral measures. This program focuses on utilizing small businesses in NCDOT contracts without regard to race or gender. The table below describes the historic M/WBE participation for the in the small business from FY 2006 through FY 2008.

Table 7: M/WBE Participation Rates

Fiscal Year	Total	MBE Participation (\$)	WBE Participation (\$)	MBE Participation (%)	WBE Participation (%)
2006	\$1,765,536,807	\$ 766,999	\$ 935,061	0.0%	0.1%
2007	\$1,651,295,367	\$ 1,977,088	\$ 6,299,764	0.1%	0.4%
2008	\$1,741,578,937	\$ 1,300,898	\$ 3,358,778	0.1%	0.2%
Median				0.1%	0.2%

* Represents payments made in state-funded projects without MWBE goals.

Source: Report of M/WBE Participation, NCDOT; Compiled by Ken Weeden & Associates, Inc.

As indicated by the table above, the historic median participation of MBE firms in small business program contracts is 0.1%, and the historic median participation of WBE firms is 0.2%. This implies that without race conscious goals (i.e., contract goals), the MBE participation would be 6.5%, and the WBE participation would be 4.5%. This then, will become the *race neutral* portion of the goal; the remainder will be the *race conscious* portion.

The race conscious portion of the MBE goal is 6.5%, the race neutral portion is 0.1%.

The race conscious portion of the WBE goal is 4.5%, the race neutral portion is 0.2%.

⁴ 49 CFR Part 26 (http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)