

**GATEWAY DEVELOPMENT  
COMMISSION**

**Proposed  
DBE Goal and Methodology**

**for**

**FFY 2024-2026  
Triennial Goal Period**

Gateway Development Commission

For:  
Federal Transit Administration  
Office of Civil Rights

November 17, 2023  
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## **1.0 EXECUTIVE SUMMARY**

The Gateway Development Commission (“GDC”) herein presents its Proposed Overall DBE Goal Methodology for Federal Fiscal Year (“FFY”) 2024-2026 to the Federal Transit Administration (“FTA”) for review and approval.

This Proposed Overall DBE Goal and Methodology for FFY 2024-2026 is 20.07%. GDC utilized the best available project scope and DBE and non-DBE availability, weighted by projected cost per scope for the seven contracts, including that of the Delivery Partner, that are planned to be awarded during the goal period.

The overall DBE goal is set at three-year (triennial) intervals, based on a schedule established by FTA. The FTA established GDC’s first triennial goal submission as FFY 2024-2026 (October 1, 2023 - September 30, 2026). The FTA authorized GDC to initiate the thirty-day (30-day) public comment and consultation period in November 2023.

The proposed goal was derived in the following manner:

- Identified the scopes of work for the seven packages and further grouped by North American Industry Classification System (“NAICS”) codes
- Considered the dollar values per scopes of work on each contract, by NAICS codes
- Identified the availability of DBEs and non-DBEs based on the scopes of work
- Used a weighted formula based on the FTA funds associated to the scopes of work and the relative availability of DBEs.

The 30-day public comment and consultation period will start November 17, 2023 through December 18, 2023. Although the 30-day period will begin in November, GDC initiated its first public consultation through an Industry Forum on February 2, 2023, and subsequent outreach events. The industry forums included comments on the DBE Program plan and DBE goal commitment. All public comments will be considered and addressed in the final DBE goal and methodology. GDC will determine the Race-neutral/Race-conscious percentage split of the overall DBE goal upon completion of the written and anecdotal public comment period.

Until the final DBE goal is adopted, GDC will continue to review the three-year procurement schedule and construction packages for any potential adjustments to the proposed overall DBE goal. The final FFY 2024-2026 Overall DBE Goal and Methodology will be submitted to FTA by December 29, 2023.

## **2.0 INTRODUCTION**

GDC is a public authority and government-sponsored authority created by the Gateway Development Commission Act (2019 NY Laws, ch.108) and (N.J.S.A. 32:36-1, et seq.) (referred to hereafter as the “GDC Act”) to facilitate the passenger rail transportation project (Gateway Program) between Penn Station New York, and Penn Station in Newark, New Jersey.

GDC was formed via parallel legislation in New York (“NY”) and New Jersey (“NJ”) in July 2019 to oversee and deliver the Gateway Program. GDC works closely with stakeholders, including the United States

Department of Transportation (“USDOT”), FTA, the States of New York and New Jersey, Amtrak, NJ TRANSIT, and the Port Authority of New York and New Jersey (“PANYNJ”), to advance this critical program.

## 2.1 Hudson Tunnel Project Overview

The purpose of the Hudson Tunnel Project (“HTP”) is to preserve the current functionality of Amtrak’s Northeast Corridor (“NEC”) service and NJ TRANSIT’s commuter passenger rail service between New Jersey and Penn Station New York (“PSNY”) by repairing the deteriorating North River Tunnel; and to strengthen the NEC’s resiliency to support reliable service by providing redundant capability under the Hudson River for Amtrak and NJ TRANSIT NEC trains between New Jersey and PSNY.

The HTP includes the development, design, and construction of a new two-tube tunnel connecting New York and New Jersey and certain ancillary facilities, the construction of the final segment of the concrete casing under western Hudson Yards in Manhattan, New York, the rehabilitation of the existing North River Tunnels, and certain projects necessary to connect such projects to the contiguous Amtrak NEC facilities. At the completion of the HTP, the NEC would have four tracks (two in the new Hudson River Tunnel and two in the North River Tunnel) between New Jersey and New York under the Hudson River.

The HTP will apply FTA financial assistance through the discretionary Section 5309 Capital Investment Grant (“CIG”) program, for New Starts, Small Starts, and Core Capacity Investments. FTA obligates discretionary Section 5309 grants for new fixed guideway projects or extensions to existing fixed guideway systems with a total estimated capital cost of \$300 million or more, or that are seeking \$100 million or more in Section 5309 CIG program funds. Federal funding assistance from the FTA in the form of a CIG New Starts grant is assumed in the financial plan for the HTP.

## 3.0 BACKGROUND

GDC is a first-time recipient of FTA grants that will be applied to construct the HTP. As a recipient of FTA grants, GDC must set an overall goal for Disadvantaged DBE participation in the FTA-assisted contracts. The DBE regulations at 49 Code of Federal Regulations (CFR) 26 Participation by Disadvantaged Business Enterprises established under §26.21 that FTA recipients receiving planning, capital and or operating assistance who will award prime contracts the cumulative total value of which exceeds \$250,000 in FTA funds in a FFY must administer a DBE program and establish an overall DBE goal. The overall DBE goal is set at three-year (triennial) intervals, based on a schedule established by FTA. The FTA established GDC’s first triennial goal submission as FFY 2024-2026 (October 1, 2023-September 30, 2026).

GDC anticipates awarding seven FTA financially assisted contracts during FFY 2024-2026. The seven contracts will compose the basis of the proposed overall DBE goal. The proposed contracts (packages) are:

**Delivery Partner** – A third-party contracted professional services staff augmentation to GDC. The Delivery Partner will assist GDC through all key aspects of project management through the life of the HTP.

**Package EA1 – Hudson River Ground Stabilization** – A design build contract for the fortification and stabilization of the river bottom on the NY side of the Hudson River. This work will create an improved condition in which to bore the new tunnel through the eastern portion of the Hudson River section of the project. The work will also comply with

all environmental regulations to ensure the protection of the river and be conducted only during specified time ranges to protect fish spawning and wildlife.

**Package 1A – Palisades Tunnel** – A design-bid-build contract for the construction of the tunneling and heavy civil work for the portion of the tunnel through the Palisades to the construction shaft in Hoboken, NJ.

**Package 1B – Manhattan Tunnel** – A design build contract is the design and construction of the tunneling and heavy civil work for the section of the tunnel going through the bulkhead of the West Side of Manhattan, under Hudson River Park and connecting to the new 12<sup>th</sup> Avenue construction shaft between West 30<sup>th</sup> Avenue and 29<sup>th</sup> Street.

**Package 1C – Hudson River Tunnel** – A design-bid-build contract on the construction of the tunneling and heavy civil work under the Hudson River from the new construction shaft in Hoboken, NJ, to the new construction shaft at 12<sup>th</sup> Avenue in Manhattan.

**Package 2 - Tunnel and Systems Fit-Out**– A design-bid-build contract on the fit-out for the Hudson River Tunnel, including (i) the internal concrete for the ventilation shafts, (ii) the concrete for the track bed, benches, and ventilation duct walls in the tunnels, (iii) fan plant building structures and fit-outs, (iv) traction power, communications and signal systems; and (v) track work along the entire alignment. Also includes A-Yard Work and 10<sup>th</sup> Avenue Cut and Cover Tunnel.

**Package 3 - New Jersey Surface Alignment** – A design build contract is the design and construction of the New Jersey surface alignment work, including retaining walls, embankments, bridges, and viaducts to support the track bed in New Jersey from the Portal to the Allied Interlocking east of the Secaucus Station.

Under FTA guidance, GDC shall submit the FFY 2024-2026 proposed overall triennial DBE goal to FTA, by December 29, 2023. The FTA further authorized GDC to engage in consultation with DBEs, minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and GDC's efforts to establish a level playing field for the participation of DBEs on the HTP. The 30-day public consultation period begins on November 17, 2023 and ends on December 18, 2023. The public consultation is intended to provide the public with the opportunity to comment on the proposed DBE goal and to obtain information sufficient to make an informed adjustment to the proposed overall DBE goal.

All public comments will be considered and addressed in the final overall DBE goal and methodology submission to FTA by December 29, 2023.

#### 4.0 FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2024-2026

**Table 1** represents the seven packages that are GDC's FTA financially-assisted contracting program for the next three years, which includes primary scope areas and corresponding values anticipated to be procured as a part of the HTP. The HTP project has viable subcontracting possibilities and corresponding availability of DBEs, a required criterion for Overall Goal consideration, and is anticipated to be awarded within the

respective goal period. GDC considered these scope areas in preparing its Proposed Overall DBE Goal-Setting Methodology.

#### **4.1. Scopes of Work and FTA Value for each Package**

##### ***Scopes of Work and FTA Value***

Delivery Partner \$135,187,841.51

The Delivery Partner will provide procurement support (including strategic advice and document development), innovation in project delivery, rigorous project management, maximization of cost savings opportunities, development and implementation of sustainable practices, and maximization of diversity and inclusion and participation of companies of all sizes. The Delivery Partner will be a source of sound professional project expertise, decision-making, and judgment in performing planning, design management, procurement, construction management, and oversight of commissioning services in connection with the HTP.

Package EA1 – Hudson River Ground Stabilization \$152,602,635.28

The Hudson River Ground Stabilization is a Design-Build contract on the fortification and stabilization of the river bottom on the New York side of the Hudson River. This work will create an improved condition in which to bore the new tunnel through the eastern portion of the Hudson River section of the project. Additional scopes of work include: site preparation, marine construction, surveying, inspection and testing, retaining walls, site utilities, and environmental engineering.

Package 1A – Palisades Tunnel \$739,150,850.80

The Palisades Tunnel is a Design-Bid-Build is the construction of the tunneling and heavy civil work for the portion of the tunnel through the Palisades to the construction shaft in Hoboken, New Jersey. Additional scopes of work include: site preparation, concrete, retaining walls, site utilities, testing laboratories, surveying, and engineering services.

Package 1B – Manhattan Tunnel \$621,410,713.53

The Manhattan Tunnel is a design and construction of the tunneling and heavy civil work for the section of the tunnel going through the bulkhead of the West Side of Manhattan, under Hudson River Park and connecting to the new 12<sup>th</sup> Avenue construction shaft between West 30<sup>th</sup> Avenue and 29<sup>th</sup> Street. Additional scopes of work include: underground tunneling, site utilities, utility relocation, engineering services, hazmat, contaminated soil removal/mitigation, and ground water treatments.

Package 1C – Hudson River Tunnel \$874,332,074.68

The Hudson River Tunnel is a design-bid-build contract on the construction of the tunneling and heavy civil work under the Hudson River from the new construction shaft in Hoboken, NJ, to the new construction shaft at 12<sup>th</sup> Avenue in Manhattan. Additional scopes of work include: underground

tunneling, site utilities, utility relocation, engineering services, hazmat, contaminated soil removal/mitigation, and ground water treatments.

**Package 2 - Tunnel and Systems Fit-Out \$1,378,009,625.39**

The Tunnel and Systems Fit-Out is a design-bid-build contract on the fit-out for the Hudson River Tunnel, including (i) the internal concrete for the ventilation shafts, (ii) the concrete for the track bed, benches, and ventilation duct walls in the tunnels, (iii) fan plant building structures and fit-outs, (iv) traction power, communications and signal systems; and (v) track work along the entire alignment. Also includes A-Yard Work and 10<sup>th</sup> Avenue Cut and Cover Tunnel. Additional scopes of work include: track: direct fixation and ballasted, support facilities, surface site preparation, and communications systems.

**Package 3 New Jersey Surface Alignment \$368,760,373.23**

The New Jersey Surface Alignment is a design build construction contract of the New Jersey surface alignment work, including retaining walls, embankments, bridges, and viaducts to support the track bed in New Jersey from the Portal to the Allied Interlocking east of the Secaucus Station. Additional scopes of work include: site utilities, utility relocation, environmental mitigation, demolition, clearing and earthwork.

<b>Total FTA value for seven packages</b>	<b>\$4,269,454,114.42</b>
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The triennial DBE goal for FFY 2024-2026 is based on the proposed level of \$4,269,454,114.42 in FTA financial assistance.

**5.0. GOAL METHODOLOGY**

GDC recognizes that the overall goal must be based on a methodology that demonstrates the evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing and able to participate on our FTA financially assisted contracts, hereafter, the “relative availability of DBEs.” The goal must reflect GDC’s determination of the level of DBE participation we would expect absent the effects of discrimination.

The 49 CFR §26.45 provides five example methodologies to determine the DBE base figure. The examples are: 1) Use DBE Directories and Census Bureau Data, 2) Use a bidders list, 3) Use data from a disparity study, 4) Use the goal of another USDOT recipient, and 5) Alternate methods.

As GDC is a first-time recipient of FTA financial assistance and the FFY 2024-2026 overall DBE goal is also the first triennial DBE goal submission for GDC, GDC considered the five approaches and determined the best justification to establish the DBE base figure is through the use of the DBE Directories and Census Bureau Data. The other approaches were not selected because GDC does not have past contract awards to establish a robust bidders list; GDC does not have a five year history of awarding contracts to complete a thorough disparity study; there is no USDOT recipient with the same or substantially similar infrastructure project like the HTP, and GDC does not have procurement history to consider an alternative method to establish the DBE base figure. An expansion on why the additional approaches were not selected are in the **Step 2: Adjusting the Weighted Base Figure** section of the document.

### 5.1 Step 1: Determination of a Base Figure (§26.45)<sup>1</sup>

An important factor in completing the **Step 1** DBE Base Figure process is for GDC to determine what percentage of DBEs are ready, willing, and able to compete for the types of work GDC is contracting out. This percentage is calculated by dividing the number of DBEs ready, willing, and able, by type of work; to the number of all firms (DBEs and non-DBEs) ready, willing, and able also by type of work, which will be released FFY 2024-2026. That is, the number of DBEs will be in the numerator, and the number of all firms (DBEs and non-DBEs) will be in the denominator.

Before the numerator and denominator were calculated, GDC's considered the geographic areas where the majority of the DBEs, contractors and subcontractors would come from to do business with GDC. GDC worked closely with its partners - Amtrak, NJ TRANSIT, and PANYNJ to determine, based on their experience, where the majority of DBEs, contractors and subcontractors come from for their capital projects. The responses were the geographic areas for DBEs and non-DBEs are the states of NY and NJ. With the HTP facilitating the passenger rail transportation project between Penn Station, Newark, NJ, and Penn Station, NY, and the partners information on where DBEs and non-DBEs come from, GDC defined the geographic area as the states of NY and NJ.

As a final consideration to establish a base figure, GDC identified the scopes of work for the seven packages grouped by NAICS code.

### 5.2. Establishing the DBE Numerator and DBE/Non-DBE Denominator

GDC used the NY, NJ and PANYNJ **Unified Certification Program Directories of Certified DBE Firms** and corresponding NAICS codes to establish the DBE numerator of available firms. GDC used the **2021 U.S. Census Bureau County Business Pattern ("CBP") Database** to identify the number of firms (DBE and non-DBE) within a corresponding NAICS code and market area to establish the denominator.

GDC's specified industries and types of businesses used to identify the numerator and denominator are presented in **Table 1**.

GDC made a concerted effort to ensure that the scope of businesses included in the numerator were as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to **Table 1**.

<b>For the numerator:</b>	<b>NY, NJ and PANYNJ DBE Directories of Certified Firms</b>
<b>For the denominator:</b>	<b>2021 – CBP database</b>

### 5.3 Determining the Weighted Factor on the Relative Availability of DBEs and Non-DBEs by NAICS

To determine the relative availability of DBEs, GDC divided the numerator<sup>2</sup> representing the ratio of ready, willing and able DBE firms, by NAICS code, by the denominator<sup>3</sup> representing all firms (DBE and Non-DBEs), available in each NAICS code, as shown below:

<sup>1</sup> §26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

<sup>2</sup> Numerator represents all DBE firms established within NY and NJ geographic area.

<sup>3</sup> Denominator represents all comparable available established firms within NY and NJ geographic area.

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms including DBEs}} = \frac{\text{Numerator}}{\text{Denominator}}$$

To help ensure the **Step 1** Base Figure is accurate as possible, GDC chose to apply an appropriate weighting percent for each NAICS code. To determine the appropriate weighting percent by NAICS, the estimated dollar value by NAICS was divided by the total estimated federal dollars for FFY 2024-2026. The weighting percent by NAICS was then multiplied by the DBE Availability % to determine the Base Figure % by NAICS, see below:

$$\text{Weight} \times \text{DBE Availability \%} = \text{Base Figure \% by NAICS}$$

Based on the above, the resulting **Step 1** Base Figure is **20.07%**. **Table 1** presents the total FTA dollars per NAICS code.

**Table 1**

**Total FTA Dollars (A): \$4,269,454,114.42**

NAICS Code	NAICS Description	B	C	D	E	F	G
		DBE Firms	All Firms	Availability (B/C)	Fed \$ Value	Weight (E/A)	Base Figure (D*F)
237110	Water and Sewer Line and Related Structures Construction	73	536	14%	\$ 31,446,483.76	0.74%	0.10%
237130	Power and Communication Line and Related Structures Construction	34	330	10%	\$ 75,635,275.48	1.77%	0.18%
237310	Highway, Street, and Bridge Construction	218	719	30%	\$ 76,633,315.63	1.79%	0.54%
237990	Other Heavy and Civil Engineering Construction	102	323	32%	\$ 1,477,990,469.61	34.62%	10.93%
238110	Poured Concrete Foundation and Structure Contractors	115	1104	10%	\$ 284,638,628.44	6.67%	0.69%
238120	Structural Steel and Precast Concrete Contractors	91	334	27%	\$ 91,255,355.54	2.14%	0.58%

NAICS Code	NAICS Description	B	C	D	E	F	G
		DBE Firms	All Firms	Availability (B/C)	Fed \$ Value	Weight (E/A)	Base Figure (D*F)
238190	Other Foundation, Structure, and Building Exterior Contractors	75	398	19%	\$ 10,211,035.41	0.24%	0.05%
238210	Electrical Contractors and Other Wiring Installation Contractors	126	7859	2%	\$ 210,592,233.28	4.93%	0.08%
238220	Plumbing, Heating, and Air-Conditioning Contractors	55	10420	1%	\$ 34,274,072.38	0.80%	0.00%
238290	Other Building Equipment Contractors	21	736	3%	\$ 176,953,513.39	4.14%	0.12%
238310	Drywall and Insulation Contractors	95	1642	6%	\$ 74,920,405.21	1.75%	0.10%
238390	Other Building Finishing Contractors	54	613	9%	\$ 2,039,205.51	0.05%	0.00%
238910	Site Preparation Contractors	148	2484	6%	\$ 219,776,882.43	5.15%	0.31%
238990	All Other Specialty Trade Contractors	146	2934	5%	\$ 66,233,911.75	1.55%	0.08%
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	39	594	7%	\$ 1,238,444.68	0.03%	0.00%
423990	Other Miscellaneous Durable Goods Merchant Wholesalers	37	494	7%	\$ 31,281,095.15	0.73%	0.05%
423320	Brick, Stone, and Related Construction	61	339	18%	\$ 228,385,995.63	5.35%	0.96%

NAICS Code	NAICS Description	B	C	D	E	F	G
		DBE Firms	All Firms	Availability (B/C)	Fed \$ Value	Weight (E/A)	Base Figure (D*F)
	Material Merchant Wholesalers						
423690	Other Electronic Parts and Equipment Merchant Wholesalers	27	1115	2%	\$ 89,231,063.22	2.09%	0.05%
484110	General Freight Trucking, Local	30	3350	1%	\$ 1,653,090.70	0.04%	0.00%
484220	Specialized Freight (except Used Goods) Trucking, Local	93	1670	6%	\$ 30,220,564.04	0.71%	0.04%
488210	Support Activities for Rail Transportation	19	53	36%	\$ 82,019,003.49	1.92%	0.69%
488490	Other Support Activities for Road Transportation	17	229	7%	\$ 609,184.06	0.01%	0.00%
524126	Direct Property and Casualty Insurance Carriers	6	890	1%	\$ 176,288,432.84	4.13%	0.03%
531210	Offices of Real Estate Agents and Brokers	7	8824	0%	\$ 233,930.83	0.01%	0.00%
532490	Other Commercial and Construction Machinery and Equipment	16	660	2%	\$ 2,541,632.05	0.06%	0.00%
541110	Legal Services	13	17019	0%	\$ 92,373,000.39	2.16%	0.00%
541330	Engineering Services	445	4024	11%	\$ 91,153,408.91	2.14%	0.24%
541360	Geophysical Surveying and Mapping Services	34	19	100%	\$ 120,125,489.81	2.81%	2.81%
541370	Surveying and Mapping (except Geophysical) Services	76	527	14%	\$ 1,023,277.61	0.02%	0.00%
541380	Testing Laboratories	60	540	11%	\$ 8,536,744.54	0.20%	0.02%

NAICS Code	NAICS Description	B	C	D	E	F	G
		DBE Firms	All Firms	Availability (B/C)	Fed \$ Value	Weight (E/A)	Base Figure (D*F)
541490	Other Specialized Design Services	32	656	5%	\$ 40,805,713.95	0.96%	0.05%
541511	Custom Computer Programming Services	221	6658	3%	\$ 352,144.23	0.01%	0.00%
541512	Computer Systems Design Services	326	5459	6%	\$ 120,624.64	0.00%	0.00%
541519	Other Computer Related Services	170	1209	14%	\$ 70,876.42	0.00%	0.00%
541611	Administrative Management and General Management Consulting Services	735	8409	9%	\$ 163,427,732.83	3.83%	0.33%
541614	Process, Physical Distribution, and Logistics Consulting Services	127	715	18%	\$ 49,460,424.83	1.16%	0.21%
541620	Environmental Consulting Services	19	868	2%	\$ 5,272,310.12	0.12%	0.00%
541690	Other Scientific and Technical Consulting Services	266	1849	14%	\$ 2,490,815.83	0.06%	0.01%
541990	All Other Professional, Scientific, and Technical Services	156	1962	8%	\$ 45,234,748.22	1.06%	0.08%
561110	Office Administrative Services	100	3463	3%	\$ 8,105,652.72	0.19%	0.01%
561410	Document Preparation Services	7	645	1%	\$ 46,858.74	0.00%	0.00%
561730	Landscaping Services	63	12352	1%	\$ 532,456.75	0.01%	0.00%
561990	All Other Support Services	42	1005	4%	\$ 882,218.78	0.02%	0.00%

NAICS Code	NAICS Description	B	C	D	E	F	G
		DBE Firms	All Firms	Availability (B/C)	Fed \$ Value	Weight (E/A)	Base Figure (D*F)
562119	Other Waste Collection	25	116	22%	\$ 110,783,943.88	2.59%	0.56%
562211	Hazardous Waste Treatment and Disposal	5	41	12%	\$ 37,114,708.47	0.87%	0.11%
562910	Remediation Services	68	625	11%	\$ 15,046,406.42	0.35%	0.04%
611420	Computer/Software Training	56	150	37%	\$ 191,331.80	0.00%	0.00%
*Availability percentages that were over 100% were modified to reflect 100%.						<b>Total Base Figure:</b>	<b>20.07%</b>

**6.0 Determining the DBE Goal for FFY 2024 - 2026**

Centered on the base figure methodology, GDC has determined its proposed DBE goal for FFY 2024-2026 is **20.07%** for the seven FTA financially assisted contracts.

**6.1. Step 2: Adjusting the Base Figure**

Upon establishing the base figure, GDC reviewed and assessed other known information available in GDC’s geographic area to determine if additional information could increase the relative availability of DBEs within GDC’s geographic area, as prescribed by the narrow tailoring provisions set forth under §26.45(d) **Step 2: Adjusting the DBE Base Figure Goal.**

The information considered in making an adjustment to the Base Figure included GDC’s *Past DBE Goal Attainments*, were evidence from *Disparity Studies* conducted in GDC’s geographic area by other agencies, use of the *DBE goal from other USDOT recipients*, and *Alternate Methods – Outreach*. The additional considerations to adjust the Base Figure result are presented below.

**6.2. Past DBE Goal Attainment**

GDC is a first-time recipient of FTA Section 5309 CIG program financial assistance. The FTA 5309 financial assistance was committed on July 6, 2023. GDC does not have a history of establishing an overall DBE goal or awarding contracts with FTA financial assistance where DBE participation could be a factor for past attainment.

GDC researched past projects in the states of NY and NJ with USDOT financial assistance and, it was determined that there is no project like in scope or scale to the HTP infrastructure.

As GDC does not have past attainment data and could not identify a like project with relevant and viable DBE attainment data, GDC has elected not to apply past participation as an adjustment to the Base Figure.

In addition, the USDOT guidance on “Tips for Goal-Setting in the Disadvantaged Business Enterprise Program” states in pertinent part:

*“..an adjustment for past participation is not required if you are developing a DBE program for the first time and do not have any statistics on past DBE participation.”*

### 6.3 Evidence from DBE Disparity Studies

The purpose of a Disparity Study is to determine whether a government entity, either in the past or currently, engages in exclusionary practices in the solicitation and award of contracts to minority, and women-owned, and DBEs (MWDBEs). The primary goal of the study is to assess, quantify, and evaluate the prevalence, significance (degree and weight) and scope of discrimination by the government entity based on the availability of MWDBEs. The study, at minimum, includes the three most recent past years of MWDBE participation and with a statistical analysis to determine if disparities exist between the availability of MWDBEs and their utilization on FTA and non-FTA-funded contracts.

GDC does not meet the minimum requirement of having three years of contracting data to consider completing a disparity study.

GDC did not find it feasible to conduct an independent disparity study. However, it identified two disparity studies within the geographic areas and considered adopting them for the data points on relative DBE availability.

The first disparity study considered was the New York State MWDBE Disparity Study, completed in 2016, which included contracts and availability within one of GDC’s geographic areas – the State of New York. The New York State Disparity Study reviewed construction, construction-related and non-construction-related services and commodities contracts state-wide between the April 1, 2010, to March 31, 2015. The geographic area was limited to the borders of New York State. The New York State Disparity Study only included contracts with a value between \$50,000 and \$2,000,000. The study documented findings of statistically significant underutilization of ethnic and gender groups on the New York State’s prime and subcontracts which are the predicate for the race and gender-conscious contract goal setting recommendations. Although the study was completed 7 years ago, the data used to complete the study is between eight (8) and thirteen (13) years old. The State of New York City MWDBE programs continue to implement race-and-gender conscious measures to their contracting program, thus taking the positive steps to address disparities based on MWDBE availability.

The second disparity study taken into consideration was the New York City Disparity Study, completed in 2018, it included construction, professional services and goods contracts between the years of July 1, 2006, to June 20, 2015. The geographic area was limited to New York City and the boroughs of Nassau, Putnam, Rockland, Suffolk and Westchester counties in New York, and Bergen, Hudson, and Passaic Counties in New Jersey. The disparity analysis results support the continuation of the New York City M/WBE program; and evidence for expansion of the M/WBE program. The study indicated that most racial/ethnic and gender groups showed disparities on contracts where race- and gender-conscious measures were not in place during the study period. As a result, the Disparity Study recommended the continuation of M/WBE contract goals. Although the study was completed five years ago, the data used to complete the study is between eight (8) to seventeen (17) years old. The New York City M/WBE programs continue to implement race-and-gender conscious measures to their contracting program, thus taking the positive steps to address disparities based on M/WBE availability.

GDC opted not to utilize the New York State and New York City disparity studies data on the relative availability of DBEs and project scopes because the statistical data on MWDBE availability is more than 10 years old and not statistically reflective on the current market conditions and project scopes under the HTP.

**6.4 DBE Goal from Other USDOT Recipients**

GDC considered the overall triennial DBE goal from four FTA-financial assistance recipients. The four recipients which are shown in **Table 2**.

**Table 2. FTA Recipients Triennial DBE Goals**

FTA Recipients			
Recipient	Geographic Area	Overall DBE Goal Race-Conscious (RC) Race-Neutral (RN)	Notes
PANYNJ - PATH	Five New York City boroughs and eight northern New Jersey counties	2023-2025 DBE Goal 19.3%	Planned FTA grant amount for triennial period \$263,595,000
New Jersey TRANSIT	State of New Jersey and the five lower counties of New York	2023-2025 DBE Goal 15.2%	Planned FTA grant amount for triennial period \$845,807,062
New York State Department of Transportation	New York State	2022-2024 DBE Goal 10.26%	Planned FTA grant amount for triennial period \$46,518,737
New York MTA (NYMTA)	New York City, Nassau, and Suffolk on Long Island and Dutchess, Sullivan, Orange, Putnam, Rockland, Ulster and Westchester counties	2020-2023 DBE Goal 20% (In process of updating DBE overall goal)	Planned FTA grant amount for triennial period: \$17,723,791,620  Includes over \$3 billion in rail cars and transit vehicles.

GDC chose not to adopt the overall DBE goal from the four FTA recipients as:

- The four FTA recipients geographic area for DBE availability were not the entire states of NY and NJ;
- The recipient’s scopes of work are primarily for transit maintenance, while GDC’s work is all new construction.

**6.5 Alternate Methods - DBE Outreach**

GDC held seven industry outreach events, from February 2023 to October 2023, with businesses interested in the HTP contracts. During the events, GDC received anecdotal comments from MWDBEs and non-MWDBEs that the construction packaging, size, and delivery methods undoubtedly present challenges for MWDBEs to bid as prime contractors and equally challenging to quote as a subcontractor without establishing an individual DBE contract goal for each contract and or require a DBE Performance Plan. The commenters suggested that to be a part of the HTP, GDC will need to apply race-conscious measures similar to those applied by NYMTA, PANYNJ and NJ TRANSIT for their construction projects.

**Table 3. GDC Industry Engagement Events - Summary for February to October 2023**

EVENT	DATE	DESCRIPTION
Industry Outreach Event	February 2, 2023	GDC's first in-person industry outreach event. The event included panels with federal government representatives and GDC's partners and had over 250 participants, including 48 from Disadvantaged Business Enterprises (DBEs).
Contract Packaging and DBE Networking Event	April 26, 2023	GDC's second in-person event, which included a networking session for DBEs and primes. The event included a panel of GDC staff and consultants where the updated contract packaging strategy was presented. Over 280 participants, including 50 from DBEs, attended.
Virtual Hudson River Ground Stabilization Request for Qualifications Session	June 21, 2023	As part of the Hudson River Ground Stabilization Request for Qualifications (RFQ) procurement process, GDC held a virtual information session and Questions and Answers (Q&A), which had over 180 participants, including 71 from DBEs.
Virtual Palisades Tunnel Request for Qualifications Session	July 13, 2023	As part of the Palisades Tunnel Request for Qualifications (RFQ) procurement process, GDC held a virtual information session and Q&A, which had over 240 participants, including 62 from DBEs.
Manhattan Tunnel Industry Day	July 25, 2023	GDC's third in-person industry outreach event, which included a networking session for DBEs and primes. The event included a panel of GDC staff who presented a HTP update as well as an in-depth presentation about the Manhattan Tunnel upcoming procurement. The event had 158 participants, including 50 from DBEs.

EVENT	DATE	DESCRIPTION
Virtual Manhattan Tunnel Request for Qualifications Session	October 6, 2023	As part of the Manhattan Tunnel Request for Qualifications (RFQ) procurement process, GDC held a virtual information session and Questions and Answers (Q&A), which had over 191 participants, including 46 from DBEs.
HTP Project Briefing and DBE Networking Session	October 25, 2023	GDC’s third in-person industry outreach event included a HTP briefing and a networking session for DBEs to meet the shortlisted firms from the Hudson River Ground Stabilization and Delivery Partner procurements. The event had 267 participants, including 68 from DBEs.

The anecdotal comments did not identify information that could be considered to adjust the base figure. However, the comments strongly suggest that DBEs need race-conscious measures, such as placing a DBE contract goal to participate on GDC’s packages.

**6.6 Adjustment to the DBE Base Figure**

Based on the best available data to establish the **Step 1** base figure, GDC’s proposed overall DBE goal for FFY 2024-2026 for FTA-assisted contracts is **20.07%**.

The **20.07%** DBE goal serves to identify the relative availability of DBEs based on the best available evidence from the **NY, NJ and PANYNJ DBE Directories** of ready, willing, and able DBEs to all comparable firms, from the **2021 - CBP Database** identified to be available to compete for and perform on GDC’s FTA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

**7.0 PUBLICATION, COMMENT AND PUBLIC CONSULTATION**

In accordance with 49 CFR §26.45(g), the proposed overall DBE goal requires the publication and public consultation with minority businesses, women businesses, local business chambers, government entities and community organizations within GDC’s geographic area to provide an opportunity to review GDC’s DBE goal analysis and provide input that may result in an adjustment to the final overall DBE goal.

The FTA authorized GDC to engage in the 30-day public comment period in November 2023. On November 17, 2023, the 30-day public notice was posted on GDC’s website, at: [www.gatewayprogram.org](http://www.gatewayprogram.org), to invite the business community to review and comment on the proposed overall DBE goal. The proposed DBE goal and methodology are also available for review at GDC’s offices at: Gateway Development Commission, 2 Penn Plaza East, 11th Floor, Newark, New Jersey 07105, and 120 Broadway – 10th Floor, New York, NY 10271. GDC will accept comments on the goal and methodology through December 18, 2023 via the email [DBE@gatewayprogram.org](mailto:DBE@gatewayprogram.org).

The public notice actions will include: 1) sending the public notice on the proposed goal and methodology to DBEs on the NY, NJ and PANYNJ DBE Directories, local/ethnic chambers of commerce and other

business/community organizations in GDC's geographic area; 2) information on how to access the goal and methodology for review, and how to submit comments, and 3) identify the date and time for a virtual public comment session.

The public comment session is designed to facilitate input from the contracting community, stakeholders, which include minority and women business groups, community organizations, trade associations and other officials or organizations that may have information concerning the availability of DBEs and comments on the proposed overall DBE goal and corresponding methodology. The virtual session will also enable GDC to provide an overview of the seven packages that compose the development of the overall DBE goal. GDC will conversely solicit comments from businesses who engage with GDC.

After completion of the public consultation process, GDC will review all comments and consider any feedback as a factor in making an adjustment to the overall DBE goal. The public consultation will also assist GDC in determining the Race-Neutral/Race Conscious percentage split of the overall DBE goal. The public comments will be summarized and included in the final DBE goal submission to FTA.

## **8.0 PROPOSED DBE GOAL FOR FFY 2024-2026**

The proposed DBE goal for FFY 2024-2026 is **20.07%**.

GDC will solicit and accept comments to the DBE goal and methodology during the planned 30-day public comment period ending December 18, 2023. The final DBE goal submission will include the public comments and will identify any adjustments made as a result of the public comment and consultation. Until the final DBE goal is adopted, GDC will continue to review the three-year procurement schedule and construction packages for any potential goal adjustments. GDC will submit the final FFY 2024-2026 Overall DBE Goal and Methodology to FTA, by December 29, 2023.