



Metro

Metropolitan Transportation Authority

One Gateway Plaza
Los Angeles, CA 90012-2952

213.922.2000 Tel
metro.net

33

**EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
NOVEMBER 19, 2009**

SUBJECT: DEPARTMENT OF TRANSPORTATION OVERALL GOALS

**ACTION: APPROVE DEPARTMENT OF TRANSPORTATION
OVERALL GOALS**

RECOMMENDATION

- A. Approve 8% as the Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) Overall Goal for Federal Fiscal Year 2010 (FFY10), and
- B. Approve 6% as the Federal Highway Administration (FHWA) Annual Anticipated DBE Participation Level (AADPL) for Federal Fiscal Year 2010 (FFY10).

ISSUE

In accordance with the Department of Transportation (DOT) Disadvantaged Business Enterprise Program requirements found in 49 Code of Federal Regulations (CFR) Part 26, grant recipients of Federal Transit Administration (FTA), Federal Highway Administration (FHWA) and the American Recovery and Reinvestment Act of 2009 (ARRA) assistance who reasonably anticipate awarding \$250,000 or more in prime contracts (excluding transit vehicle purchases) for the upcoming fiscal year, are required to develop an overall goal for the participation of DBEs in Federal-assisted contracts.

FTA recipients were required to submit their FTA DBE overall goal by August 1, 2008. FHWA requires its recipients to submit the Annual Anticipated DBE Participation Level to the California Department of Transportation (Caltrans), the authorized FHWA local assistance agency, by June 1, 2009. MTA notified both FTA and FHWA of a request for extension for annual submittals and was granted by both agencies to December 2009.

POLICY IMPLICATIONS

As part of the overall goal development process, recipients are required to review projected Federal-assisted dollars that are programmed to be expended in the upcoming fiscal year. The Diversity & Economic Opportunity Department (DEOD)

conducted a review of the Fiscal Year 2010 (FY10) budget to determine the type of projects, dollar amounts of contracting opportunities that will be funded, in whole or in part, with FTA-assistance.

The FY10 budget comprises a total of \$147 million* in new DOT-assisted contracts. Of this amount, \$100 million in FTA and \$47 million in FHWA contracting has been identified as having opportunities for DBE participation. The projected expenditures are shown below:

DOT Administration	DOT-Assisted Contract Dollars*	DOT-Assisted Contracts Dollars w/Contracting Opportunities
FTA	\$115,946,440	\$ 99,793,931
FHWA	\$ 67,642,000	\$ 47,085,040
TOTAL DOT	\$183,588,440	\$146,878,971

*Excludes transit vehicle manufacturer (TVM) purchases, Metro labor/overhead costs and other non-contractable items.

By way of comparison, the FY09 budget totaled \$125.1 million in new DOT-assisted contracts, with \$5.6 million FTA and \$119.1 million FHWA in projected contracting with potential DBE opportunities.

Overall Goal Methodology

The overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on MTA FTA- and FHWA-assisted contracts. MTA followed the two-step goal setting methodology prescribed in 49 CFR 26.45. The first step was to develop a base figure for the relative availability of DBEs. The relative availability of DBEs is the total number of ready, willing and able DBE firms divided by the total number of all firms for the types of contracts MTA anticipates awarding within its geographic procurement market. The second step required an examination of all evidence available in the market area to determine what adjustment, if any, was needed to the base figure to arrive at an overall goal.

Geographic Procurement Market

An analysis of the geographic procurement market revealed that MTA solicits participation from six counties, including Los Angeles, Orange, Riverside, San Bernardino, Ventura, and San Diego. The geographic procurement market was used for both the numerator (DBEs) and denominator (all businesses) within the area from which MTA draws the substantial majority of the contract competition.

DBE Availability

MTA conducted an analysis to determine the number of certified DBEs that were available to participate as contractors and subcontractors in the projected contracting opportunities. The data source used for establishing availability of ready, willing and able DBE firms was derived from the California Unified Certification Program (CUCP) database of certified firms. The certified firms identified as available to perform work in various North American Industry Classification System (NAICS) work categories were matched with potential subcontracting opportunities. The total number of certified available DBE firms, totaling 1,471 FTA and 367 FHWA as shown in Attachment 1, was used in the goal setting formula used to arrive at the base figure.

Total Business Availability

In addition, MTA conducted a similar analysis to determine availability of all businesses within the same geographic market area. The U.S. Census Bureau 2007 County Business Pattern (CBP) was used to determine availability of all businesses within the NAICS categories in which MTA contracts. The denominator of 34,573 FTA and 10,692 FHWA was used to arrive at the base figure, shown in Attachment 1, represents the total number of businesses available in the market area.

Calculation and Adjustment of Base Figure

To calculate the 5% FTA and 6% FHWA base figures shown in Attachment 1, the number of available DBEs per Work Category was divided by the number of all available businesses in the geographic market and weighted against the percentage of FY09 projected FTA and FHWA funds. After calculating the base figure, the DBE capacity and historical annual goal attainment was examined to determine what adjustment, if any, is needed to the base figure in order to arrive at the annual goal.

An adjustment was made to the FTA base figures by reviewing the median past DBE FTA overall goal attainment over the last four years. This resulted in a FTA calculated average of 7.75%. This average capacity was added to the 5% FTA and base figures, and divided by two, resulting in an upward adjustment to the FTA base figure by 2.75%. There was no adjustment made to the FHWA AADPL.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

In accordance with 49 CFR 26.35(f) (3), MTA is required to break out the portion of the FTA and FHWA overall goal that MTA projects to meet through race-neutral and race-conscious means.

Effective October 1, 2006, MTA suspended the use of race-conscious (contract goals) following a 2006 ruling in the *Western States Paving Co. v. Washington State Department of Transportation* (9th Circuit Court of Appeals case), and subsequent

guidance received from the U.S. DOT, FTA and FHWA. This guidance directed federal recipients to implement a race-neutral DBE Program if they did not have sufficient evidence readily available to satisfy the new evidentiary standards established in this ruling, now required to support the use of contract goals in the implementation of the DBE Program. The primary method MTA will use to achieve its FTA overall goal is through the use of race-neutral measures, pending the completion of the MTA Disparity Study (Study) for FTA-assisted contracts. The final Study report is targeted for completion in December 2009. Staff will bring the final Study report before the Board for by February 2010.

Caltrans DBE Program

On FHWA-assisted contracts, MTA is required to comply with the Caltrans Local Assistance DBE Program. In June 2006, Caltrans conducted a Study to determine whether discrimination exists in its transportation contracting market. The Study was completed and accepted by Caltrans in July 2007. Results of the Study found disparity in four of the six disadvantaged groups: African American, Asian Pacific American, Native American, and Women. The Study identifies these groups as Underutilized Disadvantaged Business Enterprises (UDBEs). In April 2009, Caltrans received FHWA approval to implement a race-conscious program. As a result, Caltrans issued a directive informing local agencies, including MTA, of Caltrans' intent to transition to a race-conscious program to include the use of contract specific goals for UDBE participation and the reinstatement of Good Faith Efforts.

In compliance with this requirement, MTA has determined the breakout of race-conscious and race-neutral components for the recommended FHWA AADPL. To determine the race-conscious component projection of its AADPL, MTA refined the numerator to exclusively represent the ratio of ready, willing and able UDBE firms (African American, Asian Pacific American, Native American, and Women-owned firms) by using the NAICS within the MTA-defined market area, and divided this number by the denominator representing all firms (DBEs and non-DBEs) available by each work category within the defined market area.

OPTIONS

There is no viable option to FTA and FHWA DBE overall goals. In accordance with 49 CFR 26.21, FTA and FHWA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA or FHWA funds in a Federal fiscal year, must implement a DBE Program and establish an overall goal for DBE participation.

FINANCIAL IMPACT

Funding to support DBE Program staffing is included in the FY10 budget for multiple capital and non-capital projects. For activity that impacts capital projects, funding has been included in the life of project budget for each project.

DISCUSSION

Public Participation

In accordance with 49 CFR 26.45(g), MTA must provide for public participation when establishing the overall goal. The FTA overall goal must be made available for public inspection for a period of 30 days from October 26, 2009, through November 25, 2009, and made available for public comment for 45 days. A public notice was posted announcing the recommended overall goal and methodology on the MTA Doing Business webpage and was distributed to the Transportation Business Advisory Council for public comment. The overall goal and methodology was also advertised from October 26 through 29, 2009, in the following minority and women-focused media and general newspapers: L.A. Times, Daily News, La Opinion, Eastern Group Publications, Rafu Shimpo, Chinese Daily, L.A. Watts Times, Small Business Exchange, and APTA Passenger Transport.

The public comment period began on October 26, 2009, and will end on December 10, 2009. DEOD will review comments received through the public participation process and will report back to the Board via a Board Box, if a change to the overall goal is warranted.

NEXT STEPS

The recommended FFY10 DBE FTA overall goal and FHWA AADPL will be retroactive to October 1, 2009, and will be effective through September 30, 2010.

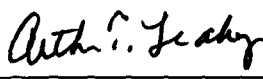
ATTACHMENT

1. FFY10 FTA and FHWA Goal Methodology Calculation

Prepared by: Tashai R. Smith, Contract Compliance Manager, DEOD
Linda B. Wright, Deputy Executive Officer, DEOD



Lorraine Mitchell
Chief Administrative Services Officer



Arthur T. Leahy
Chief Executive Officer

Los Angeles County Metropolitan Transportation Authority
Attachment 1 – FFY2010 Methodology for Calculating FTA Annual DBE Goal

Goal Methodology

Work Category	Description of Work	NAICS	Projected FTA \$ with contracting opportunities in each category	Weighted % of FTA Funding by Work Category
A	Professional Services	NAICS 54	\$ 32,927,675	33.00%
B	Construction	NAICS 23	\$ 50,171,079	50.27%
C	Materials/Supplies	NAICS 42	\$ 16,695,177	16.73%
Total			\$ 99,793,931	100%

Base Figure = $\frac{\text{Number of Ready, Willing, and Able DBEs (NAICS)}}{\text{Number of All Ready, Willing, and Able Firms (CBP)}}$

Base Figure = $(33.00\%) \frac{\text{DBEs in A}}{\text{Firms in A}} + (50.27\%) \frac{\text{DBEs in B}}{\text{Firms in B}} + (16.73\%) \frac{\text{DBEs in C}}{\text{Firms in C}}$

Base Figure = $(33.00\%) \frac{1,100}{13,679} + (50.27\%) \frac{301}{10,735} + (16.73\%) \frac{70}{2,159}$

Base Figure = $(.3300)(.0804) + (.5027)(.0280) + (.1673)(.0324)$

Base Figure = $.0265 + .0141 + .0054 = .0460$

Base Figure = $.0460 \times 100 = 4.60$

Base Figure = 5%*

Annual Goal Components

Annual Goal = Base Figure + Adjusted Figure

Annual Goal = 5% + 2.75% = 7.75% = 8%*

Race Conscious = 0% DBE participation achieved through contract-specific goals

Race Neutral = 8% DBE participation achieved through race-neutral measures

LEGEND	
CBP	2007 County Business Pattern (Census)
DBE	Disadvantaged Business Enterprise
NAICS	North American Industry Classification System

* Rounded to the nearest percent.



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Attachment 1 – FFY2010 Methodology for Calculating FHWA AADPL**

Goal Methodology

Work Category	Description of Work	NAICS	Projected FHWA \$ with contracting opportunities in each category	Weighted % of FHWA Funding by Work Category
A	Professional Services	NAICS 54	\$ 9,761,400	20.73%
B	Construction	NAICS 23	\$ 37,323,640	79.27%
Total			\$ 47,085,040	100%

Base Figure = Number of Ready, Willing, and Able DBEs (NAICS)
Number of All Ready, Willing, and Able Firms (CBP)

$$\text{AADPL} = \frac{(20.73\% \text{ DBEs in A})}{\text{All Firms in A}} + \frac{(79.27\% \text{ DBEs in B})}{\text{All Firms in B}} \times 100$$

$$\text{AADPL} = \frac{(20.73\% \cdot 232)}{4302} + \frac{(79.27\% \cdot 367)}{6390} \times 100$$

$$\text{AADPL} = (.2073)(.0504) + (.7930)(.0575) \times 100 = .0112 + .0456 \times 100 = 5.68\% \text{ or } 6\%^*$$

Race Conscious = $\frac{(20.73\% \text{ UDDBEs in A})}{\text{All Firms in A}} + \frac{(79.27\% \text{ UDDBEs in B})}{\text{All Firms in B}}$

$$\text{Race Conscious} = \frac{(20.73\% \cdot 130)}{4302} + \frac{(79.27\% \cdot 168)}{6390} \times 100$$

$$\text{Race Conscious} = (.2073)(.0303) + (.7930)(.0263) \times 100 = .0063 + .0209 \times 100 = 2.72 \text{ or } 3\%^*$$

Race Neutral = AADPL – Race Conscious Portion

$$\text{Race Neutral} = 6\% - 3\% = 3\%$$

AADPL = 6% Anticipated DBE Participation Level

Race Conscious = 3% UDBE participation achieved through contract-specific goals

Race Neutral = 3% UDBE participation achieved through race-neutral measures

LEGEND	
CBP	2007 County Business Pattern (Census)
DBE	Disadvantaged Business Enterprise
NAICS	Underutilized Disadvantaged Business Enterprise
UDBE	North American Industry Classification System

* Rounded to the nearest percent.



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