

**EXECUTIVE MANAGEMENT AND AUDIT COMMITTEE
NOVEMBER 15, 2007**

**SUBJECT: DEPARTMENT OF TRANSPORTATION OVERALL GOALS
AND SMALL BUSINESS PROGRAM GOAL**

**ACTION: APPROVE DEPARTMENT OF TRANSPORTATION OVERALL GOALS
AND SMALL BUSINESS PROGRAM GOAL**

RECOMMENDATION

- A. Approve 6% as the Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE) Overall Goal for Federal Fiscal Year 2008 (FFY08); and
- B. Approve 3% as the Federal Highway Administration (FHWA) Annual Anticipated DBE Participation Level (AADPL) for Federal Fiscal Year 2008; and
- C. Approve 15% Small Business Enterprise (SBE) Program Goal

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 the Federal Transit Administration (FTA) and Federal Highway Administration (FHWA) 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 are required to submit their FTA DBE overall goal by August 1. FHWA requires its recipients to submit its Annual Anticipated DBE Participation Level to Caltrans, the authorized FHWA local assistance agency, by June 1. Metro notified both FTA and FHWA of a request for extension to submit its respective FFY08 submittals by December 1, 2007. However, the approved FTA and FHWA overall goals will be retroactive to October 1, 2007 – September 30, 2008, following the Federal calendar.

The Small Business Enterprise Program was adopted by the Board in July 2004. The recommended SBE Program goal will provide a level playing field for SBEs to compete on Metro state and locally funded competitively negotiated contracts.

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 Metro's Fiscal Year 2008 (FY08) budget to determine the projected number of contracts, type of work, and dollar amounts of contracting opportunities that will be funded, in whole or in part, with FTA-assistance.

The list of projected FTA and FHWA assisted contracts with potential DBE opportunities is shown in Attachment 2.

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 Metro FTA- and FHWA-assisted contracts. Metro 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 Metro 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 Metro's geographic procurement market revealed that Metro solicits participation from eight counties, including Los Angeles, Orange, Riverside, San Bernardino, Ventura, Alameda, San Diego, Santa Clara. The geographic procurement market was used for both the numerator (DBEs) and denominator (all businesses) within the area from which Metro draws the substantial majority of its contract competition.

DBE Availability

Metro 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 Metro subcontracting opportunities. The total number of certified available DBE firms, totaling 1,958 (FTA) and 1,168 FHWA as shown in Attachment 1 was used in the goal setting formula used to arrive at the base figure.

Total Business Availability

Metro conducted a similar analysis to determine availability of all businesses within the same geographic market area. The U.S. Census Bureau 2005 County Business Pattern (CBP) was used to determine availability of all businesses within the NAICS categories in which Metro contracts. The denominator of 50,312 (FTA) and 31,249 (FHWA) 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 6.25% and FHWA 3.74% base figures shown in Attachment 1, the number of available DBEs per Work Category was divided by the number of all available all businesses in the geographic market and weighted against the percentage of FY08 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 was is needed to the base figure in order to arrive at the annual goal. Metro made no adjustments to the base figure. The FTA and FHWA base figures were rounded to the nearest percent resulting in 6% FTA and 4% FHWA overall participation.

OPTIONS

1. There is no viable option to FTA and FHWA DBE overall goals. In accordance with 49 CFR 26.21, FTA and FHWA grantees receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year must implement a DBE Program and establish an overall goal for DBE participation.
2. The Board has an option to not approve the recommended SBE Program goal. This option will adversely impact program administration and participation of SBEs. Therefore, staff does not recommend this option.

FINANCIAL IMPACT

Funding to support DBE and SBE Program staffing is included in the FY08 budget for multiple capital and non-capital projects. For activity that impacts capital projects, funding has been included in the life of project for each project.

DISCUSSION

Breakout of Estimated Race-Neutral and Race-Conscious Participation

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

Race-Neutral Overall Goal

Effective October 1, 2006, Metro suspended the use of race-conscious (contract goals) and currently use race-neutral means as the primary method to achieve its DBE overall goal. The FTA and FHWA issued guidance to its affected grantees that must now comply with the Court's *Western States Paving Co.* decision. In compliance with this guidance, Metro examined the evidence of discrimination and its effects from available information on hand and evaluated if such evidence addressed the Court's decision. Staff determined that Metro may not have sufficient evidence of discrimination or its effects to meet the new evidentiary standard set by the Court to support the continued use of race-conscious goals as a means to achieve its overall goal.

In compliance with FTA guidance, Metro has completed the procurement process to engage a consultant to complete a disparity study. The study is expected to be completed in eighteen months. When complete, staff will review findings to determine if evidence of discrimination is found that would warrant a reinstatement of contract goals as a means to meet Metro's DBE overall goals.

Public Participation

In accordance with 49 CFR 26.45(g), Metro must provide for public participation when establishing its overall goal. The FTA overall goal must be made available for public inspection for a period of 30 days and made available for public comment for 45 days. Metro posted a notice announcing the recommended overall goal and methodology on Metro's Doing Business webpage and was distributed to the Transportation Business Advisory Council (TBAC) for public comment. The overall goal and methodology was also advertised November 2, 2007 – November 9, 2007, in the following minority and women focused media and general newspapers: LA Times, Daily News, La Opinion, Eastern Group Publications, Rafu Shimpo, Chinese Daily, LA Watts Times, Small Business Exchange, and the APTA Passenger Transport.

The public comment period began on November 2, 2007, and will end on December 17, 2007. DEOD will review comments received through the public participation process and if warranted, will notify the Board via Board Box of any amendments to the FTA goal.

NEXT STEPS

Following Board approval, the overall goal will be submitted to FTA and FHWA by December 1.


ATTACHMENT(S)

1. FFY08 FTA and FHWA Goal Methodology Calculation
2. FFY08 FTA and FHWA Projected Contracting Opportunities by SBU

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**Los Angeles County Metropolitan Transportation Authority
Attachment 1 – FFY2008 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 32, 54, 56 and 61	\$ 397,012	17.06%
B	Equipment	NAICS 23, 33 and 45	\$ 379,290	16.29%
C	Construction	NAICS 48, 53 and 56	\$ 860,860	36.98%
D	Materials/Supplies	NAICS 54	\$ 690,551	29.67%
		Total	\$ 2,327,713	100%

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

Base Figure = $(17.06\%) \frac{\text{DBEs in A}}{\text{Firms in A}} + (16.29\%) \frac{\text{DBEs in B}}{\text{Firms in B}} + (36.98\%) \frac{\text{DBEs in C}}{\text{Firms in C}} + (29.67\%) \frac{\text{DBEs in D}}{\text{Firms in D}}$

Base Figure = $(17.06\%) \frac{1,168}{31,249} + (16.29\%) \frac{38}{1,769} + (36.98\%) \frac{744}{17,229} + (29.76\%) \frac{8}{65}$

Base Figure = $(.1706)(.0374) + (.1629)(.0215) + (.3698)(.0432) + (.2976)(.1231)$

Base Figure = $.0064 + .0035 + .0160 + .0366 = .0625$

Base Figure = $.0625 \times 100 = 6.25$

Base Figure = 6%*

Annual Goal Components

Annual Goal = Base Figure + Adjusted Figure

Annual Goal = 6% + 0% = 6%

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

Race Neutral = 6% DBE participation achieved through race-neutral measures



LEGEND	
CBP	2005 County Business Pattern (Census)
DBE	Disadvantaged Business Enterprise
NAICS	North American Industry Classification System

*Base Figure was rounded to the nearest percent.

**Los Angeles County Metropolitan Transportation Authority
Attachment 1 – FFY2008 Methodology for Calculating FHWA Annual DBE Goal**

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 32 AND 54	\$ 4,495,000	100%
		Total	\$ 4,495,000	100%

Goal Methodology

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

Base Figure = $(100\%) \frac{\text{DBEs in A}}{\text{Firms in A}}$

Base Figure = $(100\%) \frac{1,168}{31,249}$

Base Figure = $(100\%)(.0374) =$

Base Figure = 3.74

Base Figure = 4%*

Annual Goal Components

Annual Goal = Base Figure + Adjusted Figure

Annual Goal = 4% + 0% = 4%

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

Race Neutral = 4% DBE participation achieved through race-neutral measures



Metro

LEGEND	
CBP	2005 County Business Pattern (Census)
DBE	Disadvantaged Business Enterprise
NAICS	North American Industry Classification System

*Base Figure was rounded to the nearest percent.



**Los Angeles County Metropolitan Transportation Authority
Attachment 2 – FFY08 New DOT-Assisted Contracts by Strategic Business Unit**



Metro SBU	Project #	Project Name	Projected # of DOT-Assisted Contracts	Projected FTA \$ with Contracting Opportunities	Projected FHWA \$ with Contracting Opportunities
Administrative Services	300011	Bus Operations	3	\$3,794	\$0
Administrative Services Business Unit Total			3	\$3,794	\$0
Metro Bus Operations	202017	(BOS) - Division 7 Facility Improvement	1	\$628,800	\$0
	210095	Facilities	1	\$96,000	\$0
	210096	Installation of CCTVs at Bus Facilities	1	\$104,000	\$0
	300022	Rail Operations - Blue Line	2	\$14,652	\$0
	300033	Rail Operations - Green Line	2	\$10,863	\$0
	300044	Rail Operations - Red Line	1	\$948	\$0
	300055	Gold Line	2	\$16,385	\$0
	301008	Bus Maintenance - San Fernando Valley	1	\$662,426	\$0
	301012	Metro Orange Line	1	\$67,604	\$0
	303008	Bus Maintenance - Gateway Cities	5	\$5,460	\$0
Metro Bus Operations Business Unit Total			17	\$1,607,138	\$0
Metro Rail Operations	204084	Metro Subway Intrusion Monitoring System	1	\$107,200	\$0
	204085	Expansion of MRL Chemical Detection System	1	\$72,090	\$0
	300022	Rail Operations - Blue Line	1	\$9,994	\$0
	300033	Rail Operations - Green Line	1	\$12,418	\$0
	300044	Rail Operations - Red Line	1	\$85,327	\$0
	300055	Gold Line	1	\$10,244	\$0
Metro Bus Operations Business Unit Total			6	\$297,273	\$0
Countywide Planning & Dev	405520	I-710 EIR/EIS	2	\$0	\$1,295,000
	405548	Congestion Pricing	1	\$0	\$3,200,000
Countywide Planning & Dev Business Unit Total			3	\$0	\$4,495,000

Los Angeles County Metropolitan Transportation Authority
 Attachment 2 – FFY08 New DOT-Assisted Contracts by Strategic Business Unit



Metro

Metro SBU	Project #	Project Name	Projected # of DOT-Assisted Contracts	Projected FTA \$ with Contracting Opportunities	Projected FHWA \$ with Contracting Opportunities
Communications	300022	Rail Operations - Blue Line	8	\$48,969	\$0
	300033	Rail Operations - Green Line	4	\$48,292	\$0
	300044	Rail Operations - Red Line	3	\$50,817	\$0
	300055	Gold Line	5	\$53,930	\$0
	405547	Rideshare Services	11	\$217,500	\$0
Communications Business Unit Total			31	\$419,508	\$0
Construction Project Management Business Unit Total			0	\$0	\$0
Economic Development Business Unit Total			0	\$0	\$0
Management Audit Services Business Unit Total			0	\$0	\$0
Financial Services Business Unit Total			0	\$0	\$0
Agency-wide			Total DOT-Assisted	FTA-Assisted	FHWA-Assisted
Projected Number of DOT-Assisted Contracts with DBE Opportunities			60	57	3
Projected DOT-Assisted Contracting Dollars with DBE Opportunities			\$6,822,713	\$2,327,713	\$4,495,000

