



Board Report

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REVISED
EXECUTIVE MANAGEMENT COMMITTEE
JUNE 20, 2024

SUBJECT: FEDERAL TRANSIT ADMINISTRATION OVERALL DISADVANTAGED BUSINESS ENTERPRISE GOAL

ACTION: APPROVE RECOMMENDATION

RECOMMENDATION

CONSIDER:

- A. APPROVING 31% Overall Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Years (FFY) 2025 - 2027 for contracts funded, in whole or in part, with Federal Transit Administration (FTA) funds; and
- B. RECEIVING and FILING an update on the new modernized DBE Program certification and implementation requirements.

ISSUE

The United States Department of Transportation's (USDOT) Disadvantaged Business Enterprise (DBE) Program regulations (49 Code of Federal Regulations (CFR) Section 26.21) require FTA grantees who can reasonably anticipate awarding \$670,000 or more in prime contracts to submit an overall goal to FTA for the participation of DBE firms every three years.

USDOT issued its final ruling on the DBE program changes, effective May 9, 2024. The 2024 DBE program changes significantly modernize the DBE program rules to provide greater clarity and flexibility to DOT recipients and enhance the ability of DBEs to compete on a level playing field for federally funded contracting opportunities.

BACKGROUND

The Disadvantaged Business Enterprise (DBE) program is designed to remedy ongoing discrimination and the continuing effects of past discrimination in federally assisted contracting. The primary remedial goal and objective is to level the playing field by providing small businesses owned and controlled by socially and economically disadvantaged individuals a fair opportunity to compete for federally funded transportation contracts.

DISCUSSION

The proposed overall DBE goal of 31% for FFY 2025 - 2027 is a 3-percentage point increase from the current FFY 2022 - 2024 goal of 28%. The proposed overall goal was established by using the two-step goal-setting process prescribed in 49 CFR § 26.45. Metro's base figure for establishing the relative availability of DBEs follows the method suggested in 49 CFR § 26.45(c)(3) and the use of availability and disparity study data from Metro's 2023 disparity study (Study), posted at: <https://www.metro.net/about/metro-disparity-study/>.

Overall DBE Goal Calculation Methodology

Base Figure

The Overall DBE Goal and Goal Methodology Report (GGMR) FFY 2025 - 2027(Attachment A), Step 1 establishes a base figure of relative DBE availability. This was done by utilizing quantifiable evidence to determine the relative availability of minority and woman-owned businesses that are ready, willing, and able to perform transportation-related work. Metro expects to award nearly \$4.7 billion worth of FTA-assisted construction, professional services, and non-professional services and goods contracts in FFY 2025 through FFY 2027.

As part of its Step 1 analysis, Metro only counted the contract dollars on those mega projects that Metro expects to award during the new goal-setting period. Metro also projected the amount of anticipated subcontracting associated with future projects based on information from previously awarded similar Metro projects. Metro evaluated each anticipated project and assigned it a specific work type (i.e., *sub-industry*) based on the 2023 Disparity Study. For a full list of the work types included in the Step 1 analysis, see Appendix E of the 2023 Disparity Study report.

Metro used information from the Study to calculate a weighted base figure from the availability analysis in the disparity study and the anticipated contracts Metro expects to award in the upcoming goal period. As such, staff recommends the Study base figure of 25.5 percent, see Figure 1 of Attachment A.

A Step 2 Adjustment is to be considered once the base figure has been calculated. Step 2 of the process requires Metro to consider other known factors to determine what additional adjustments, if any, are needed. Metro considered the current capacity of DBEs to perform work on USDOT-assisted contracting, information related to employment, self-employment, education, training, and unions, any disparities in the ability of DBEs to get financing, bonding, and insurance, and other relevant data.

Metro made an upward adjustment that specifically accounts for barriers that people of color (POC) and woman-owned businesses face related to business ownership in the local marketplace. This factor has clear, direct, and quantifiable effect on the availability of minority- and woman-owned businesses for Metro work, and making an upward adjustment reflects Metro's commitment to remedying the continuing effects of past race- and gender-based discrimination in the marketplace. As such, the adjustment uses potential DBE availability that has been adjusted for disparities in business ownership rates. Doing so yields an overall DBE goal of 30.5 percent, rounded up to 31%.

Race-Conscious Application

DBE contract-specific goals can be set higher or lower than the overall goal based on the scope of work of the contract and the identified subcontracting opportunities. Guidance issued by the USDOT

and FTA as a result of the decision of the Ninth Circuit Federal Court in the *Western States Paving Co., Inc. v. Washington State Department of Transportation* mandates that race-conscious measures used to remedy effects of discrimination must be “narrowly tailored” to those groups where there is sufficient demonstrable evidence of discrimination.

As such, federal recipients in the Ninth Circuit cannot consider the use of a race-conscious goal unless a finding of disparity has been made for the ethnic and gender groups to be included in the application. The Study found all groups showed substantial disparities on contracts without DBE goals.

A disparity index of 100 indicates parity between participation and the availability for a particular group for a specific set of contracts. A disparity less than 80 has been deemed by several courts to be a “substantial” disparity between participation and availability. The Study disparity indices showed substantial disparity for groups on contracts with no goals as follows: White Women (69), Asian-Pacific American (52), Hispanic American (48), Black American (42), Subcontinent Asian American (28), Native American (17), supporting the continued use of narrowly tailored DBE contract goals for all groups.

Public Participation

Public participation is a key component of Metro’s process for setting its overall DBE goal. The Overall DBE GGMR and Public Notice was posted on the Metro Vendor Portal on April 19, 2024. The 30-day Public Comment period began on April 19, 2024, and ended on May 20, 2024. As part of the public consultation, Metro presented the proposed Overall DBE GGMR at the Transportation Business Advisory Council (TBAC) General Meeting on May 2, 2024. Two public hearings were held, one in-person on May 3, 2024, with one attendee, and another virtually on May 6, 2024, with eight participants. Staff also issued e-blasts to inform POC- and woman-owned businesses, and the business community at large of the public notice, public meetings, and ways to submit written or verbal comments.

The public notice was also posted on Metro’s social media accounts, advertised in the following publications: Los Angeles Daily News, Los Angeles Times, L.A. Watts Times, L.A. Sentinel, Southwest Wave, *LA Opinion, India Post, Asbarez Daily Newspaper, Tho Luan News, *Asian Journal, *Chinese Daily/World, *Rafu Shimpo, *Korea Times, and the Saigon Times, and translated (*) in five different languages.

Metro received positive feedback during the public comment period. From the public consultation with TBAC, Metro received one general comment of support from the Chair. Overall, Metro received one written comment and two comments during the public hearings, all supportive of the goal and the DBE program. Metro responded to questions raised at each meeting and received all feedback for consideration to inform improvements to Metro’s DBE program. Based on a review of comments, Metro determined no quantitative evidence relevant to the determination of availability or utilization warranted a change to the overall DBE goal.

Comparison of Other Agency Overall Goals

Metro staff surveyed other transportation agencies to determine the level of overall goals in

comparison to Metro's Overall DBE Goal. The results are summarized below:

Agency Name	Overall DBE Goal	Goal Period
Los Angeles County Metropolitan Transportation Authority	31%	FFY 2025 - 2027
Maryland Transit Administration	30%	FFY 2023 - 2025
Dallas Area Rapid Transit	29%	FFY 2023 - 2025
Chicago Transit Authority	26%	FFY 2022 - 2024
Metropolitan Atlanta Rapid Transit Authority	24%	FFY 2024 - 2026
San Francisco Bay Area Rapid Transit	23%	FFY 2023 - 2025
San Francisco Municipal Railway	21%	FFY 2023 - 2025
Washington Metropolitan Area Transit Authority	21%	FFY 2023 - 2025
Denver Regional Transportation District	14.50%	FFY 2023 - 2025
Metrolink (SCRRA)	14%	FFY 2022 - 2024
Santa Clara Valley Transportation Authority	13%	FFY 2023 - 2025
Orange County Transportation Authority	11%	FFY 2022 - 2024
New York City Transit	7%	FFY 2022 - 2024
Caltrans	6.30%	FFY 2023 - 2025

2024 DBE Program Updates

The DBE Program Final Rule changes offers a new modernized DBE Program geared towards improving certification and implementation requirements. The major objectives include improving provisions for the benefit of program participants, reducing burdens on firms and recipients, growing firm capacity and owner wealth, and improving program integrity, visibility, and data collected by the DOT. The DBE program updates impact both FTA-funded and FHWA-funded contracts going forward from the effective date.

Key changes made to the DBE program include several provisions that will have a direct impact on eligible firms and the contractors that hire them, such as:

- Streamlined the DBE certification and eligibility process, including expediting the inter-state certification process to less burdensome procedures.
- Adjusted the personal net worth (PNW) cap for inflation for small business owners from \$1.32M to \$2.047M, excluding retirement assets from the calculation. The DOT will make future adjustments to the PNW cap every three years.
- Formalized guidance establishing successful COVID-19 flexibilities such as virtual on-site visits, to conserve certification and firm resources.
- Modernized the rules for counting forty percent participation of DBE material suppliers by creating a new distributor category to address drop-shipped goods.
- Expanded reporting requirements to gain greater knowledge of DBE characteristics, bidding/solicitation practices and utilization and overall program impact.
- Clarified and reinforced how to count DBE participation after decertification or other loss of

eligibility.

- Strengthened monitoring and prompt payment requirements.

Metro presented the DBE program changes to TBAC during the May 2, 2024, monthly meeting, and also conducted two MetroConnect workshops on May 30, 2024, and June 25, 2024, to inform the small business and contracting communities of the new changes.

Metro's SBE Program mirrors the DBE program and will be modified to align with the 2024 DBE program changes by July 30, 2024.

DETERMINATION OF SAFETY IMPACT

This board action will not have an impact on safety standards for Metro.

FINANCIAL IMPACT

Funding to support the DBE Program is included in the FY25 budget for multiple capital and non-capital projects.

EQUITY PLATFORM

Metro establishes a triennial overall DBE goal for DBE participation of African Americans, Asian Pacific Americans, Native Americans, Hispanic Americans, Subcontinent Asian Americans, and Women owned firms. Outreach is paramount to maximize opportunities for small and disadvantaged businesses on Metro contracting. Outreach events like "How To Do Business With Metro" and "Meet the Primes," along with other contract-specific targeted workshops and events, not only provides training and relationship-building, but also leads to increased awareness of and participation in Metro contracting.

IMPLEMENTATION OF STRATEGIC PLAN GOALS

This report supports strategic plan Goal 5.5, "Expanding opportunities for businesses and external organizations to work with Metro."

ALTERNATIVES CONSIDERED

The triennial overall DBE goal is a requirement under the DBE program and a condition of receiving FTA funds, and as such, staff does not recommend an alternative.

NEXT STEPS

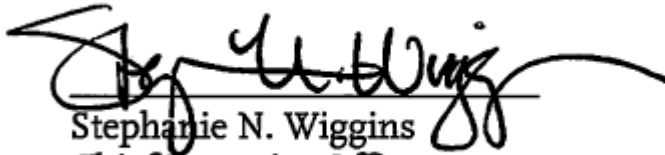
- Submit Overall DBE GGMR to FTA by the August 1, 2024, deadline.
- Overall DBE goal will be effective October 1, 2024, through September 30, 2027.

ATTACHMENTS

Attachment A - Overall DBE Goal and Goal Methodology Report FFY 2025 - 2027

Prepared by: Elke Campbell, Deputy Executive Officer, (213) 418-3081
Tashai R. Smith, Executive Officer, (213) 922-2128

Reviewed by: Sharon Gookin, Deputy Chief Executive Officer, (213) 418-3101



Stephanie N. Wiggins
Chief Executive Officer