

**Board Report**

File #: 2015-0895, **File Type:** Policy**Agenda Number:** 65.

**REVISED
EXECUTIVE MANAGEMENT COMMITTEE
JULY 16, 2015****SUBJECT: FEDERAL TRANSIT ADMINISTRATION DISADVANTAGED BUSINESS ENTERPRISE
OVERALL GOAL****ACTION: RECEIVE AND FILE****RECOMMENDATION**

EXECUTIVE MANAGEMENT COMMITTEE FORWARDED WITHOUT RECOMMENDATION receiving and filing the **Federal Fiscal Year 2016 through 2018 (FFY 2016 - 2018) 18% Federal Transit Administration (FTA) Disadvantaged Business Enterprise (DBE)** overall goal and goal methodology report.

ISSUE

The United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program regulations, 49 Code of Federal Regulations (CFR) Part 26.21, require Federal Transit Administration (FTA) grantees, who can reasonably anticipate awarding \$250,000 or more in prime contracts, to submit an overall goal to FTA for the participation of DBE firms every three years. The regulations applied to FTA grantees are also applied to grantees of the American Recovery and Reinvestment Act of 2009 (ARRA).

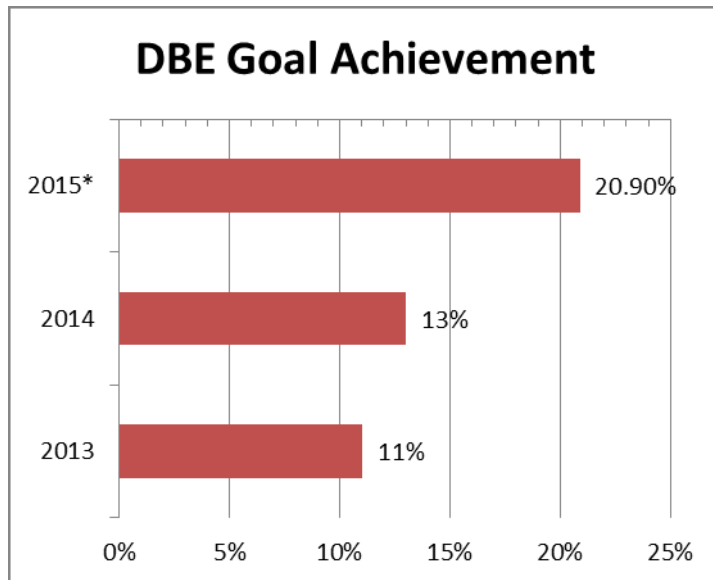
DISCUSSION

The Los Angeles County Metropolitan Transportation Authority's (Metro) proposed DBE overall goal for FFY 2016 - 2018 is 18%, a 9% decrease from the current goal. The current FFY 2013 - 2015 three-year overall goal is 27%. The decrease to the FFY 2016 - 2018 overall goal is a function of fewer contract dollars being awarded during the goal period. Only one megaproject, the Westside Purple Line Extension - Section 2, will be awarded during the goal period. In the current goal period three megaprojects were awarded: Crenshaw LAX, Regional Connector, and Westside Purple Line Extension - Section 1.

This difference in the awards is equivalent to \$3.5 billion. In addition to substantially fewer dollars, the anticipated projects for FFY 2016 - 2018 represent 10 fewer industry categories than anticipated in the FFY 2013 - 2015 goal period. This further reduces the availability of firms to perform Metro's

anticipated projects.

In its utilization reports submitted to FTA, Metro reported DBE goal achievement of 20.90% for FFY 2015, 13% for FFY 2014, and 11% for FFY 2013. FFY 2015 includes dollars reported from October 1, 2014 to March 31, 2015.



Metro proposes to achieve the 18% DBE overall goal through race- and gender-neutral (race-neutral) and race- and gender-conscious (race conscious) means. Of the 18% DBE overall goal, 2% shall be attained through race-neutral measures and 16% shall be achieved through race-conscious measures. Race conscious measures include setting individual contract goals based on subcontracting opportunities on FTA-funded contracts advertised during the goal period. DBE individual contract 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.

Overall DBE Goal Calculation Methodology

The proposed DBE overall goal was established using the two-step goal-setting methodology as set forth in 49 CFR Part 26.45 and was derived from the availability data compiled for the 2012 DBE Program Disparity Study (Study) conducted by Mason Tillman Associates, Ltd. (Mason Tillman). The Mason Tillman Study provided comprehensive analyses of DBE utilization, DBE availability and the extent to which race-conscious remedial action can be applied to Metro’s DBE program.

In the proposed *Overall Disadvantaged Business Goal Report FFY 2016 - 2018* (Goal Setting Report), which can be found in *Attachment A*, Step 1 includes establishing 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.

The calculation of available DBEs for the purposes of goal setting is derived from the pool of available businesses calculated by the Study. The contracts examined in the Study represented more industry categories by North American Industry Classification System (NAICS) codes than the contracts Metro anticipates awarding in FFY 2016 - 2018. The calculation of availability presented in the Goal Setting Report is limited to the businesses that have the same NAICS codes as the FFY 2016-2018 anticipated projects. This methodology, recommended by US Department of Transportation Tips For Goal Setting (USDOT Tips), was undertaken in order to ensure that the goals were predicated on the most relevant data. Utilizing this USDOT-recommended methodology, a relative base figure of 40.77% was calculated.

As further recommended by USDOT Tips, after a relative base figure of availability has been established, a weighted base figure may be calculated to further refine the availability number. Weighting ensures that the availability is as accurate as possible by enumerating availability in accordance with the proportion of anticipated dollars in each NAICS code. The weighted base figure is calculated by multiplying the percent of available businesses within each NAICS code by the percent of anticipated contract dollars in each NAICS code. The application of this USDOT-recommended methodology produced a weighted base figure of 18.42%.

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, to the base figure are needed. Factors considered in this review include past DBE participation and private sector discrimination. Business practices that are not subject to government requirements and are indicators of marketplace conditions which could affect the formation and growth of DBEs. Additionally, anecdotal evidence collected during the performance of the Disparity Study was reviewed. After taking these factors into account, no material adjustment to the base figure was made. The weighted base figure of 18.42% was rounded downward for an 18% DBE overall goal.

Race-Conscious and Race-Neutral Projections

In accordance with 49 CFR Part 26.35(f) (3), Metro is required to determine the portion of the overall goal that is projected to be met through race-neutral and through race-conscious measures.

A. Race-Neutral Projection

Metro must first meet the maximum feasible portion of the proposed 18% overall DBE goal by using race-neutral methods. Race-neutral measures are a means to obtain DBE participation when: (1) a DBE is awarded a prime contract through customary competitive procurement procedures; (2) a DBE is awarded a subcontract on a prime contract that does not have a DBE goal; (3) DBE participation on a prime contract exceeds the contract goal; and (4) a subcontract is awarded by a prime contractor that did not consider the firm's DBE status when making the award. Additional race-neutral measures are defined in *Section VI of Attachment 1*. The goal methodology shows Metro's median DBE participation (utilization) from FFY 2013 - FFY2015 was 2.23%. Therefore, Metro

projects that it will meet 2% of its overall goal through race-neutral measures.

B. Race-Conscious Projection

Metro proposes to meet the remaining 16% of the overall goal by utilizing race-conscious subcontract goals. 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, 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 disparity findings in Metro’s 2012 DBE Program Disparity Study documented a disparity for African Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and Hispanic Americans and Native Americans. Caucasian females were overutilized.

An updated analysis was conducted to determine the current utilization of Caucasian females since the race-conscious program was implemented in 2013 without Caucasian females. Unlike racial discrimination that is subject to strict scrutiny, gender discrimination is only subject to an intermediate scrutiny standard of review. Therefore, Caucasian females need only to be underutilized to be included in a gender-conscious remedy. Current data show that Caucasian female utilization is now considerably lower than documented in the Disparity Study, therefore, this gender group will now be included in the application of DBE contract goals during the FFY 2016 - 2018 goal period.

Public Participation

In accordance with the regulations, Metro must provide opportunity for public participation when establishing the DBE overall goal. The DBE overall goal and goal methodology was posted on the Metro website on June 19, 2015. The 30-day public comment and public inspection period commenced on June 19, 2015 and will conclude on July 20, 2015. Metro presented the Overall Goal to the Transportation Business Advisory Council at its July meeting. In addition, Metro held a public consultation meeting on July 8, 2015, at Metro Headquarters with DBE program stakeholders to receive comment and input on the goal and goal methodology.

NEXT STEPS


- Staff will submit DBE overall goal and goal methodology to FTA by August 1, 2015 deadline, in order to prevent any delay in the receipt of federal funds.
- Implement FFY 2016 - 2018 Overall DBE Goal effective October 1, 2015.

ATTACHMENTS

Attachment A - *Overall Disadvantaged Business Goal Report FFY 2016 - 2018*

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