Los Angeles County
Metropolitan Transportation
Authority
One Gateway Plaza
3rd Floor Board Room
Los Angeles, CA

Metro

Board Report

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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

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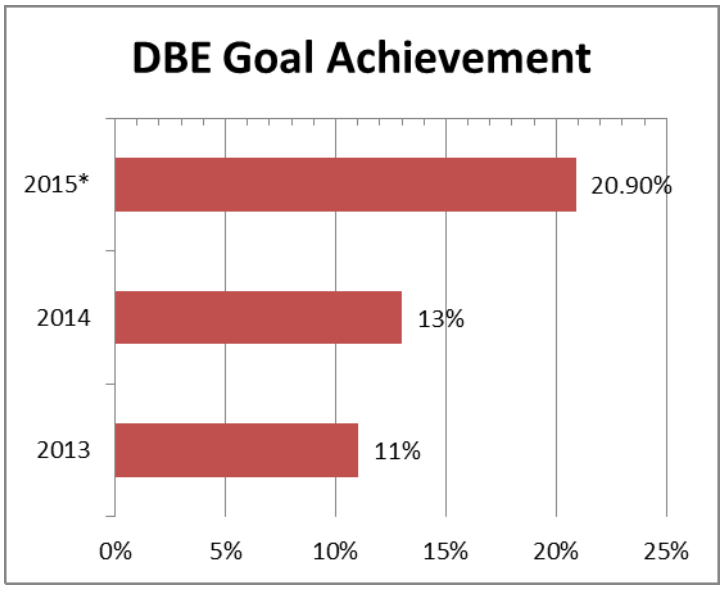
anticipated projects.

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 ~~S~~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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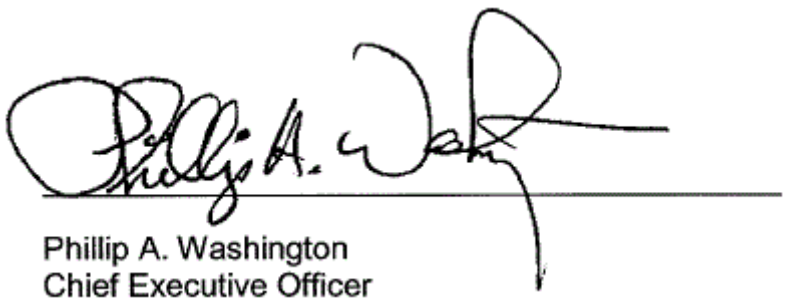

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DISADVANTAGED BUSINESS ENTERPRISE OVERALL GOAL AND GOAL SETTING METHODOLOGY REPORT

FEDERAL FISCAL YEARS 2016-2018

I. INTRODUCTION

The Disadvantaged Business Enterprise (DBE) overall goal setting methodology is a requirement set forth in the United States Department of Transportation (USDOT) DBE regulations, 49 CFR Part 26.45. The DBE regulations require USDOT recipients to set an overall triennial goal for DBE participation in their federally assisted projects.[1]

The regulations require that the overall goal be prepared using a two-step process. According to the *USDOT Tips for Goal Setting*[2] (*USDOT Tips*), approved by the General Counsel of the USDOT, the recipient must first determine a base figure for the relative availability of certified DBEs and potentially certified Minority and Woman-owned Business Enterprises, hereafter collectively referred to as Disadvantaged Business Enterprises (DBEs), in the relevant market area. Next, the recipient must examine all relevant evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at an overall goal. The final adjusted figure is the recipient's overall goal, and represents the proportion of federal transportation funding that the recipient is expected to allocate to DBEs during the subsequent three federal fiscal years (FFY). Once the adjusted overall goal is determined, the process requires considering what portion of the goal will be met by race- and gender-neutral measures.

If a recipient purports that it can meet its overall goal with race- and gender-neutral measures, those measures must be utilized. In contrast, if the recipient determines it cannot achieve the entire overall goal using only race- and gender-neutral measures, it must establish a race- and gender-conscious portion of the overall goal.[3]

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[1] Effective February 28, 2011, the USDOT amended the DBE regulations set forth in 49 CFR Part 26 as described in the Federal Register, Volume 76, Number 19 and Vol. 79 Thursday, No. 191 October 2, 2014 Part II Disadvantaged Business Enterprise: Program Implementation Modifications; 49 CFR Part 26 [Docket No. OST-2012-0147] IN 2105-AE08.

[2] United States Department of Transportation, *Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program*, U.S. DEPARTMENT OF TRANSPORTATION, May 15, 2015, http://www.osdbu.dot.gov/DBEProgram/tips.cfm.

[3] Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs, 49 CFR Part 26, §26.51(f)(1), §26.51(d).

Pursuant to *Western States Paving v. State of Washington*[4] *(Western States)*, recipients in the Ninth Circuit cannot consider the use of a race- or gender-conscious goal unless a finding of statistically significant disparity has been made for the ethnic and gender groups to be included in the race- or gender-conscious goal. The Ninth Circuit determined that statistical findings demonstrating a "small disparity" are insufficient probative value to meet the strict scrutiny standard. Citing *Croson*, the Court declared that an inference of discriminatory exclusion could arise where there is a statistically significant disparity between the number of qualified minority contractors willing and able to perform a particular service and the number of such contractors actually engaged by the locality or its prime contractors.

This *Overall DBE Goal Setting Report* is based upon the DBE regulations contained in 49 CFR Part 26.45, as amended, the decisions of the United States Federal Court, and the *USDOT Guidance Memorandum.*

II. PROPOSED OVERALL GOAL FOR FFY 2016-2018

Based on the requirements set forth in 49 CFR Part 26, *Western States* and the *USDOT's Guidance Memorandum*, Los Angeles County Metropolitan Transportation Authority (Metro) is submitting a goal for FFY 2016-2018. The recommended overall DBE goal for the period is 18%. The weighted figure of 18.42% was rounded down to 18%. The Federal Transit Administration (FTA) reporting period for the recommended overall goal will be October 1, 2016, to September 30, 2018.

III. OVERALL GOAL SETTING METHODOLOGY

The two-step goal setting process required by the regulations and the findings of *Western States* has been used to determine the recommended overall goal for FFY 2016-2018. The two steps for setting an overall goal are to:

- Establish a base figure for the relative availability of DBEs
- Determine the base figure adjustment, if necessary

The base figure is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all businesses ready, willing, and able to perform the recipient's anticipated FTA-assisted contracts.[5] The regulations present five options for establishing a base figure for relative availability of DBEs. The five options as set forth in the regulations are listed in Table 1.01.

Table 1.01: Methods to Determine Baseline Figure

[4] We*stern States Paving Co. v. United States & Washington State Department of Transportation*, 407 F. 3d 983 (9th Cir. 2005).

[5] United States Department of Transportation, *Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program*, U.S. DEPARTMENT OF TRANSPORTATION, May 15, 2015, http://www.osdbu.dot.gov/DBEProgram/tips.cfm.

Baseline Figure Method
Bidders List
DBE Directories and Census Data
Other Recipient's Base Figure
Disparity Study
Alternative Method

1. **Bidders List Method**

This method for calculating a base figure requires Metro to have a comprehensive bidders list with DBE prime contractors and subcontractors classified by industry in order to determine availability. This method limits DBE availability to the number of businesses that have directly participated in, or attempted to participate in, Metro's FTA-assisted contracts in the recent past. It does not include potential DBEs which have not bid on Metro's FTA-assisted contracts as either a prime contractor or subcontractor.

2. **DBE Directories and Census Data Method**

DBE directories of California USDOT recipients are consolidated into the California Unified Certification Program (CUCP) database. Using the CUCP database to determine DBE availability is limited to USDOT-certified businesses. However, to determine availability, *USDOT Tips* requires the inclusion of businesses that are not certified but are potential DBEs to determine availability. The Census Bureau's County Business Pattern (CBP) data is derived from businesses' federal income tax filings and, therefore, cannot address businesses' willingness to do business with Metro. Additionally, the CBP does not have the functionality to filter businesses that work exclusively in the private sector, or those which are not interested in contracting with Metro.

3. **Other Recipient's Base Figure Method**

This method uses the goal of another USDOT recipient as the base figure for relative availability. Metro can only use another recipient's goal if it is set in accordance with DBE regulations and performs similar contracting in a similar market area. This method presumes that there is another USDOT recipient which does the same or similar contracting in the same geographic market area. These conditions cannot be met in Metro's market area.

4. **Alternative Method**

Alternative methods may be used to determine a base figure for the overall goal. Any methodology used to determine a base figure must be based on demonstrable evidence of the local market conditions, and be designed to ultimately attain a goal that is related to the relative availability of DBEs and potential DBEs in the recipient's market area. The alternative method provides the most flexibility, but it is also subject to a higher level of scrutiny.

5. Disparity Study Method

The disparity study methodology is the most comprehensive method for identifying ready, willing, and able DBEs that provide goods and services for Metro's anticipated FTA-assisted projects. A disparity study identifies businesses that made bids to the agency as either a prime or subcontractor, and those that are interested in bidding. It enumerates DBEs that are bidders as well as willing and able businesses which have not bid. This method is also recommended by the *USDOT Guidance Memorandum* for recipients in the Ninth Circuit. The availability data derived from Metro's 2012 Disadvantaged Business Enterprise (DBE) Program Disparity Study was utilized in the goal setting process. The availability of businesses as enumerated in the 2012 DBE Program Disparity Study was augmented with current certification, trade and business association, and chambers of commerce lists.

IV. STEP ONE BASE FIGURE CALCULATION

A. Goal Setting Methodology

The initial phase of the Step One analysis requires the compilation of critical data regarding the recipient's procurement. The relevant data includes:

- Definition of the market area from an analysis of previous contract awards
- Identification of the anticipated federally assisted projects and their costs
- Classification of the anticipated federally assisted projects by North American Industry Classification System (NAICS) code
- Enumeration of qualified businesses in the market area that are willing and able to provide the goods or services Metro anticipates awarding
- Analyses of Metro's expenditures that were funded by federal dollars during the 2008-2011 study period

1. Definition of Metro's Relevant Market Area

The relevant market area in Metro's 2012 DBE Program Disparity Study was determined by the business location of prime contracts awarded during the January 1, 2008, to December 31, 2010 study period. A cluster analysis was prepared by business location and award amount to define the market area. All procurement with non-profits and other government agencies were excluded from the analysis. The analysis shows 71.86% of prime contract dollars were awarded to 107 businesses located in Los Angeles County, Metro's market area. The remaining 75 businesses, which represent 28.14% of contract dollars, were awarded in areas outside of Los Angeles County.[6] Table 1.02 presents the location of utilized businesses during the study period.

Table 1.02: Vendors Utilized During Study Period

[6] For complete market area information, see the *Chapter 5: Market Area Analysis* in the 2012 Disadvantaged Business Enterprise (DBE) Program Disparity Study Final Report. The market area distribution for all industries can be found on page 5-11 in Table 5.06.

Business Location	Total Businesses	Percentage of Contract Dollars
Los Angeles County	107	71.86%
Outside Los Angeles County	75	28.14%
TOTAL	**182**	**100.00%**

2. Identify Procurement Types by NAICS Codes

A six-digit NAICS code was assigned to each of the anticipated federally funded projects in FFY 2016-2018. The NAICS codes were derived from the descriptions of the anticipated federally assisted projects. Table 1.04 below defines the NAICS codes by industry.

Table 1.03: FFY 2016-2018 Federally Assisted Projects by NAICS Code

NAICS Code	Industry	NAICS Code Description
238190	Construction	Other Foundation, Structure, and Building Exterior Contractors
237990		Other Heavy and Civil Engineering Construction
238990		All Other Specialty Trade Contractors
541330	Architecture and Engineering, Professional Services	Engineering Services
541370		Surveying and Mapping (except Geophysical) Services
541380		Testing Laboratories
541990		All Other Professional, Scientific, and Technical Services
423120	Goods and Other Services	Motor Vehicle Supplies and New Parts Merchant Wholesalers

3. **Identify Anticipated Federally Assisted Projects**

The federally assisted projects Metro anticipates awarding over the next three fiscal years were identified with the estimated cost of each project. Estimated project costs for the three-year projections were grouped by NAICS code based on individual project descriptions. Table 1.03 presents the anticipated FFY 2016-2018 projects with the estimated budget.

Table 1.04: Anticipated Projects Estimated Contract Amount

NAICS Code	Industry	NAICS Code Description	Anticipated Amount
238190	Construction	Other Foundation, Structure, and Building Exterior Contractors	$12,810,000.00
237990		Other Heavy and Civil Engineering Construction	$1,608,000,000.00
238990		All Other Specialty Trade Contractors	$500,000.00
541330	Architecture and Engineering, Professional Services	Engineering Services	$174,601,033.00
541370		Surveying and Mapping (except Geophysical) Services	$10,000.00
541380		Testing Laboratories	$60,000.00
541990		All Other Professional, Scientific, and Technical Services	$20,000.00
423120	Goods and Other Services	Motor Vehicle Supplies and New Parts Merchant Wholesalers	$1,722,400.00
Total			**$1,797,723,433.00**

B. Base Figure Determination

The base figure is intended to be a measurement of the relative percentage of ready, willing, and able DBEs. The recipient is required to measure willing and able businesses in its marketplace, using the best available evidence, to derive a fair and accurate base figure that represents the percentage of available DBEs.

According to Section 26.45(c) and *USDOT Tips*, the overall goal must be based on demonstrable evidence of ready, willing, and able DBEs relative to all ready, willing, and able non-DBEs available to participate on Metro's FTA-assisted contracts.

The USDOT rules require the calculation of the base figure using the following formula:

$$\text{Step One Base Figure} = \frac{\text{Ready, willing and able DBEs}}{\text{All ready, willing and able businesses (Including DBEs and Non-DBEs)}}$$

The availability database compiled for Metro's 2012 DBE Program Disparity Study, which was augmented with updated certification and business directories, was used as the source to determine the availability of DBEs and non-DBEs. The availability database was populated using three sources which identified businesses in the market area that provide the goods and services that Metro procures. The first source was Metro's utilized businesses, the second source was local, state and federal government certification lists, and the third source was business associations' membership lists. Any business identified from more than one source was counted only once in an industry.

To enumerate a more refined accounting of availability, the database was then queried for businesses within the NAICS codes of the anticipated contracts only. Businesses that do not perform the types of work related to the anticipated contracts were excluded to ensure that the base figure did not overstate the number of available businesses. Table 1.05 below presents the relative availability by NAICS code for FFY 2016-2018. The percent of available businesses in each NAICS code reflects the portion of all available businesses in the market area. The relative availability of DBEs within the market area is 40.77%.[7]

Table 1.05: Relative Availability by NAICS Code for FFY 2016-2018

NAICS Code	Number of Available Businesses		Percent of Total Available Businesses	
	DBE	All	DBE	All
238190	167	466	4.97%	13.86%
237990	6	47	0.18%	1.40%
238990	238	604	7.08%	17.96%
541330	532	1176	15.82%	34.97%
541370	197	545	5.86%	16.21%
541380	176	453	5.23%	13.47%
541990	55	71	1.64%	2.11%
423120	0	1	0.00%	0.03%
TOTAL	1371	3363	40.77%	100.00%

C. Weighted Base Figure

Weighting is recommended in *USDOT Tips* to determine the overall goal. The first step is to calculate a weight for each NAICS code, which is the percentage of the estimated budget for FFY 2016-2018 anticipated contracts. The second step is to divide the number of DBEs by the total number of businesses in each NAICS code and multiply the result by the corresponding weight in order to calculate the weighted percentage of DBE

[7] The availability analysis for goal setting was predicated on businesses in the NAICS codes for anticipated projects only, whereas the 2012 Disadvantaged Business Enterprise (DBE) Program Disparity Study Final Report enumerates the availability of all businesses in the market area.

availability. Lastly, the weighted percentages in each NAICS code are combined to determine the weighted base figure. Table 1.06 presents the calculation of weighted availability. The weighted DBE availability is 18.42%.

Table 1.06: Weighted Base Figure

NAICS Code	Percent of Firms		Anticipated Contract Amount	Weight	Percent of Weighted Firms	
	DBE	Non-DBE			DBE	Non-DBE
238190	0.358	0.642	$12,810,000	0.71%	0.26%	0.46%
237990	0.154	0.846	$1,608,000,000	89.45%	13.76%	75.69%
238990	0.389	0.611	$500,000	0.03%	0.01%	0.02%
541330	0.452	0.548	$174,601,033	9.71%	4.39%	5.32%
541370	0.361	0.639	$10,000	0.00%	0.00%	0.00%
541380	0.389	0.611	$60,000	0.00%	0.00%	0.00%
541990	0.775	0.225	$20,000	0.00%	0.00%	0.00%
423120	0.000	1.000	$1,722,400	0.10%	0.00%	0.10%
TOTAL			$1,797,723,433	100.00%	18.42%	81.58%

V. STEP TWO BASE FIGURE ADJUSTMENT

A. Considerations for Adjustments to the Base Figure

The Step Two base figure adjustment, as recommended in *USDOT Tips,* requires examining relevant and reliable data in the recipient's market area to determine if an adjustment to the base figure is warranted. The consideration of an adjustment is intended to account for any impact the relevant factors may have on DBEs' contracting opportunities with Metro. The following factors were considered for the Step Two adjustment:

- Past DBE participation
- Documented private-sector discrimination
- Anecdotal evidence from the Metro 2012 DBE Program Disparity Study

1. Past DBE Participation

DBE participation during FFY 2013-2015 was documented in Metro's FFY13 2nd Semi-Annual Report, FFY14 1st and 2nd Semi-Annual Reports, and FFY15 1st Semi-Annual Report. Table 1.07 details the median prime and subcontractor race- and gender-neutral and race- and gender-conscious DBE participation during FFY 2013-2015. The median figure is the center point among an ordered list of figures. Metro achieved 2.23% median prime and subcontractor race- and gender-neutral and race- and gender-conscious DBE utilization; the highest overall DBE utilization of 22.41% was achieved in FFY 2014.

Table 1.07: FFY 2013-2015 Median Past DBE Participation

FFY13	FFY14	FFY15

0.51%	22.41%	2.23%
Median DBE Participation 2.23%		

Table 1.08 details DBE utilization as a percent of all dollars during FFY 2013-2015.

Table 1.08: FFY 2013-2015 DBE Utilization

FFY	Total Dollars	Total Race-Conscious Dollars	Total Race-Neutral Dollars	DBE Utilization
2013	$ 28,541,837.00	$ -	$ 2,332,669.00	0.51%
2014	$ 349,839,369.00	$ 96,830,502.00	$ 6,019,377.00	22.41%
2015	$ 80,569,469.00	$ 7,168,806.00	$ 3,045,735.00	2.23%
Total	**$ 458,950,675.00**	**$ 103,999,308.00**	**$ 11,397,781.00**	

2. **Documented Private Sector Discrimination**

Private sector business practices, which are not subject to government requirements, are indicators of marketplace conditions which could affect the formation and growth of DBEs. *Concrete Works of Colorado v. City of Denver* [1] (*Concrete Works II*) set forth a framework for considering evidence of discrimination in private sector business practices. In accordance with *Concrete Works II*, three regression models were used to examine three outcome variables—business ownership rates, business earnings, and business loan approval. Each regression model compared minority males and females and Caucasian females to similarly situated non-minority males by controlling for race- and gender-neutral explanatory variables such as age, education, marital status, and access to capital. This adjustment factor was considered, however, no adjustment was made due to the various exemplary practices and support services Metro has implemented in order to decrease the barriers that DBEs confront when attempting to do business.

3. **Anecdotal Evidence from Metro's 2012 DBE Program Disparity Study**

In the anecdotal accounts from interviews conducted for Metro's 2012 DBE Program, Metro's Small Business Office was credited for providing valuable technical assistance services to DBEs. Many DBEs reported that Metro's DBE program was instrumental in building capacity for their businesses as well as aiding them in securing work from other public agencies. This adjustment factor was considered, however no adjustment was made because the anecdotal accounts were not quantifiable.

B. Adjustments to the Base Figure

As required by the *USDOT Tips*, the factors noted above were considered and no adjustments were made for the Step Two analysis. The weighted figure of 18.42% was rounded down to 18%.

FINAL OVERALL DBE GOAL

18%

[1] *Concrete Works of Colo., Inc. v. City of Denver*, 86 F. Supp. 2d 1042, 1073 (D. Colo. 2000); rev'd on other grounds, 321 F.3d 950 (10th Cir. 2003); *cert. denied*, 540 U.S. 1027 (2003).

VI. RACE- AND GENDER-NEUTRAL GOAL

A. Formulation of the Race- and Gender-Conscious/Neutral Portions of the Goal

The final requirement of the goal setting process, as noted in 49 CFR 26.51, is to determine the projected portion of the overall goal that will be achieved by race- and gender-neutral measures. The DBE regulations in 49 CFR 26.51 require that a recipient meet the maximum feasible portion of its overall goal by using race- and gender-neutral measures. Based on Metro's median past DBE participation, as documented in Table 1.09, it is expected that 2% of the 18% overall can be achieved using race- and gender-neutral measures. The remaining 16% will be met through race- and gender-conscious measures.

Table 1.09: Race and Gender-Neutral/Conscious Portions of the Goal

FFY	DBE Utilization
2013	0.51%
2014	22.41%
2015	2.23%

$$2\%\ Race\ Neutral + 16\%\ Race\ Conscious = ¿\ 18\%\ Overall\ DBE\ Goal$$

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 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.[2] Caucasian females were over utilized.

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 which 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. Since not including Caucasian females in the DBE goal, utilization is now considerably lower than in the 2012 DBE Program Disparity Study. Given the fact that Caucasian females are currently underutilized, this gender group will be included in the FFY 2016-2018 overall DBE goal.

B. Race and Gender-Neutral Initiatives

a) Small Business Prime

[2] For the complete disparity analysis findings, see *Chapter 9: Disparity Analysis* in the 2012 Disadvantaged Business Enterprise (DBE) Program Disparity Study Final Report.

Launched in June of 2014, this set-aside initiative reserves certain types of contracts for Small Business Enterprises (SBEs) qualified under the appropriate North American Industry Classification System codes. The program covers competitively negotiated contracts, sealed bids and public works that meet threshold criteria from $3,000 up to $5 million. Applicable procurements will be set aside for competition among SBEs when and if there is a competitive pool of three or more SBE firms available to perform the work. To date, SBE prime awards have increased 72% in FY15 from FY14.

b) Metro Connect

This site is designed to give small businesses a direct route to working and growing with Metro. The site gives access to tools and resources that are designed to support small business growth, such as networking events, an online Tool Kit, and certification information. Small business can also view current contracting opportunities, or visit the 12-Month Look Ahead page to see future opportunities. Metro Connect aims to increase the opportunity for small businesses through various efforts that provide greater access and transparency around the agency's procurement process and a direct route to Metro's small business programs.

c) Vendor Portal (Beta)

Metro's Vendor Portal is a "one-stop shop" with all the information and resources that make doing business with Metro easier and more efficient than ever.

The site includes online tools to:

- Access current & future metro business opportunities
- Learn about guidelines & qualification programs
- Complete online programs
- Complete online forms
- Access small business tools
- Learn about the latest procurement news & tips

d) Twelve Month Look-Ahead

The information listed on the twelve month look-ahead in the vendor portal is a preview of Metro's planned solicitations for the next twelve months. Newly designed in response to feedback from the business community, this web-based, single source of upcoming agency-wide procurement opportunities will enable businesses to better plan for pursuing bids. (The information is subject to change at any time without notice.)

e) Meet the Project Managers Networking/Relationship Building Event

Metro and the Transportation Business Advisory Council (see below) introduced this new networking opportunity in May of 2015. The event provides small businesses the opportunity to meet face-to-face with Project Managers (PMs) who oversee large and

small Metro projects, a vital link to working with Metro, given the vast number of projects that are in the works or being considered for future development. A listing of PMs and their areas of expertise is sent to all who register for this event.

f) Meet the Primes Network/Relationship Building Event

These events provide opportunities for small businesses to build relationships with large contractors that do business with Metro, and other agencies in the Southern California region. At these events, small businesses can share their products, services and professional expertise with approximately 20 large businesses, and with Metro personnel.

g) Meet the Buyers Network/Relationship Building Event

This event, conducted at least twice per year, provides an opportunity to meet in person with Metro's Contract Administrators and Buyers. DBEs and other small businesses can share their products and services with pertinent Metro staff. They can also receive information and assistance on registering as a vendor, certification as a DBE, completing prequalification requirements, enrolling in the Small Business Orientation sessions, and meeting key Metro personnel.

h) Monthly "How to Do Business with MTA" Workshops

The Small Business Orientation helps small and disadvantaged businesses understand how to do business with Metro. The orientation covers the requirements a business must meet in order to do business with Metro, the certifications that are required for certain programs or types of projects, the types of contracts Metro typically performs, where to find project solicitations, and how to obtain other information about Metro. Small business owners also meet procurement staff in their area of expertise to ask questions, as staff is available.

i) Small Business Enterprise Program

The Small Business Enterprise (SBE) Program was first adopted in 1997 and was designed to comply with California's Proposition 209, which prohibits explicit consideration of race or gender in the award of state and locally funded contracts. The 15 percent SBE utilization in federally assisted contracts was increased to 30 percent for fiscal years 2012 and 2013. The SBE Program applies a SBE subcontracting goal to competitively bid and negotiated contracts, and is identical in practice and scope to Metro's DBE program. Metro uses the California Unified Certification Program (CUCP) DBE application for the SBE program, as the requirements are similar, except for the necessity to establish the owner's social disadvantage for DBE Program eligibility. All businesses which received DBE certification are also certified as a SBE.[3]

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[3] 1 Los Angeles County Metropolitan Transportation Authority, Small Business Enterprise (SBE), http://www.metro.net/about/deod/sbe/

2 Los Angeles County Metropolitan Transportation Authority, Transportation Business Advisory Council (TBAC), http://www.metro.net/about/deod/tbac/

j) Shared Responsibility Program

In 2011, Metro launched a new Chief Executive Officer initiative agency-wide in order to engage departments at the highest level in increasing DBE participation. Metro has established an internal 20 percent small and disadvantaged business target for each department. This shared responsibility requires department executives to identify contracting opportunities within their respective departments for small business participation. Department year-end performance is tracked and reported to the Chief Executive Officer, and is included in executive performance reviews.

k) Transportation Business Advisory Council

Small Business owners and interested parties are welcomed and encouraged to attend the monthly Transportation Business Advisory Council (TBAC) meeting. TBAC meetings provide small businesses a forum to discuss topics and issues impacting business owners throughout the contracting community. Particularly, TBAC advocates for small business owners to have increased access to Metro's procurement process. TBAC meetings are beneficial for all business interests. The meetings feature: a monthly speaker series, Metro current and future contract opportunities, legislation updates, and current trends in transportation. TBAC is comprised of professional business associations representing an array of industries and trades. TBAC has been instrumental in working with the Diversity & Economic Opportunity Department to develop a successful path toward bridging relationships between small businesses and Metro.[4]

l) Unbundling Prime Contracts

Metro currently unbundles large contracts in order to facilitate the participation of DBE businesses. In addition to ongoing efforts, Metro will take additional affirmative steps to break up large contracts, when feasible, in order to increase small business contracting opportunities and participation.

m) Insurance Broker Panel

Metro has established a panel of commercial insurance brokers to assist businesses that lack required insurance coverage. The panel provides proposals and insurance placement for contractors in order to assist them in meeting Metro's risk management requirements. The broker panel is disseminated to small businesses through the Transportation Business Advisory Council (TBAC), small business outreach events, Metro's small business orientation classes and published on Metro's website.

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n) Attendance at Vendor Fairs/Business Networking Events

Metro representatives attend vendor fairs of other agencies to provide information on how to do business with Metro, and to provide information on upcoming contracting opportunities.

o) Memberships in Contracting Organizations

Metro is a member of various contracting organizations, and attends membership meetings and membership events to provide information on how to register as a Metro vendor and become SBE or DBE certified.