



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

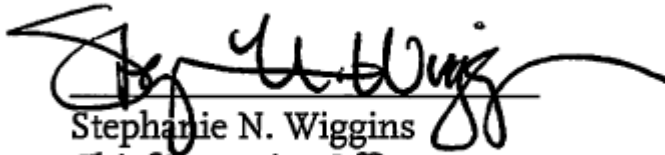
- Submit Overall DBE GGMR to FTA by the August 1, 2024, deadline.
- Overall DBE goal will be effective October 1, 2024, through September 30, 2027.

ATTACHMENTS

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

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ATTACHMENT A

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY
FOR FEDERAL TRANSPORTATION ADMINISTRATION-FUNDED
FEDERAL FISCAL YEARS 2025 THROUGH 2027**

In accordance with 49 Code of Federal Regulations (CFR) Part 26, the United States Department of Transportation's (USDOT's) "Tips for Goal-Setting," and other official USDOT guidance, the Los Angeles County Metropolitan Transportation Authority (Metro) proposes a new three-year overall Disadvantaged Business Enterprise (DBE) goal for the Federal Transit Administration (FTA)-funded projects it anticipates awarding in federal fiscal year (FFY) 2025 through FFY 2027, October 1, 2024 through September 30, 2027. To determine its new overall DBE goal, Metro followed the two-step goal-setting methodology set forth in 49 CFR Section 26.45. Based on a disparity study that BBC Research & Consulting (BBC) completed in December 2023 (referred to herein as the 2023 Metro Disparity Study) as well as on other relevant information, Metro proposes an overall DBE goal for FFY 2025 through FFY 2027 of **31 percent**, which represents an increase from the agency's current goal of 28.0 percent.

A. Determining a Base Figure – 49 CFR Section 26.45(c)

Metro began the process of determining its new overall DBE goal by establishing a *base figure* for the goal. Consistent with USDOT guidance, Metro established a base figure based on FTA-funded projects that the agency anticipates awarding in FFY 2025 through FFY 2027, October 1, 2024, through September 30, 2027. Metro projects that it anticipates awarding represent nearly \$4.7 billion worth of FTA-funded construction, professional services, and non-professional services and goods projects in FFY 2025 through FFY 2027. Metro also projected the amount of anticipated subcontracting associated with future projects based on information about similar projects that the agency previously awarded.

Metro evaluated each anticipated project and assigned it a specific work type (i.e., *subindustry*) based on its 2023 Metro Disparity Study. After assigning subindustries, Metro used data from a *custom census* availability analysis that BBC conducted as part of the 2023 Metro Disparity Study to determine the availability of relevant person of color (POC)- and woman-owned businesses for each anticipated prime contract and subcontract. For the purposes of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—POC- and woman-owned businesses that are DBE-certified or appear they could be DBE-certified based on revenue requirements described in 49 CFR Section 26.65—for the FTA-funded projects Metro awards.^{1,2}

1. Methodology for the availability analysis. The availability analysis focused on specific subindustries related to the types of FTA-funded projects Metro awarded between January 1, 2016, and December 31, 2021, which were a proxy for the FTA-funded projects the agency anticipates awarding in FFY 2025 through FFY 2027. Metro used a database of potentially available businesses that BBC

¹ "Woman-owned businesses" refers to white woman-owned businesses. Information and results for businesses owned by women of color are included along with those of businesses owned by men of color according to their corresponding racial/ethnic groups.

² Consistent with USDOT guidance, Metro considers any contract or procurement with at least \$1 of FTA funding as an *FTA-funded project* and includes the total value of those projects in its pool of total FTA-funded contracting dollars.

developed through surveys with business establishments that are located in Metro's relevant geographic market area (RGMA) and that work in relevant subindustries.³

a. Overview of availability surveys. As part of the 2023 Metro Disparity Study, BBC conducted telephone and online surveys with business owners and managers to identify businesses that are potentially available for Metro's FTA-assisted prime contracts and subcontracts.⁴ BBC began the availability survey process by collecting information from Dun & Bradstreet (D&B) Marketplace listings about all the businesses listed under 8-digit work specialization codes (as developed by D&B) that were most relevant to the subindustries that account for the vast majority of Metro's FTA-funded work and that had locations in the RGMA.

b. Information collected in availability surveys. The BBC study team conducted surveys with the owners or managers of the identified businesses to collect detailed information about each business, including:

- Status as a private business (as opposed to a public agency or nonprofit organization);
- Status as a subsidiary or branch of another company;
- Primary lines of work;
- Interest in performing work for Metro or other local government agencies;
- Interest in performing work as a prime contractor, subcontractor, or both;
- Largest prime contract or subcontract the business is able to perform (to assess the *relative capacity* of each business);
- Ability to perform work in Los Angeles County;
- Company size in terms of revenues and number of employees; and
- Race/ethnicity and gender of the business' owner(s).

c. Potentially available businesses. BBC considered businesses to be potentially available for Metro's FTA-funded prime contracts or subcontracts if they reported possessing *all* the following characteristics, regardless of the race/ethnicity or gender of business owners:

- Being a private sector business (as opposed to a nonprofit organization);
- Having performed work relevant to Metro's FTA-funded contracting;
- Having bid on or performed public or private sector work in the past five years;
- Being interested in work for Metro or other local government agencies;⁵ and
- Having the ability to work in Los Angeles County.

³ The disparity study analyses indicated that Metro's RGMA is Los Angeles County.

⁴ BBC offered business representatives the option of completing surveys via fax or e-mail if they preferred not to complete surveys via telephone.

⁵ BBC gathered that information separately for prime contract and subcontract work.

BBC also considered the largest project each business is able to perform to determine if it is potentially available for specific projects Metro anticipates awarding in FFY 2025 through FFY 2027.

2. Steps to calculating availability. As part of the availability analysis, BBC collected and analyzed relevant information to develop dollar-weighted availability estimates to help Metro set its overall DBE goal. BBC used the availability database from the 2023 Metro Disparity Study to determine availability on the FTA-funded prime contracts and subcontracts that Metro anticipates awarding in FFY 2025 through FFY 2027. Dollar-weighted availability estimates represent the percentage of contracting dollars that one would expect Metro to award to potential DBEs based on their availability for the specific FTA-funded projects that Metro anticipates awarding in FFY 2025 through FFY 2027. Only a subset of businesses in the availability database was considered potentially available for any particular project based on the type, size, and work type of the opportunity. BBC identified the specific characteristics of each FTA-funded contract opportunity that Metro anticipates awarding in FFY 2025 through FFY 2027 and then, for the purposes of helping Metro establish a base figure, took the following steps to calculate the availability of potential DBEs for each contract element (i.e., prime contract or subcontract):

1. BBC identified businesses in the availability database that reported they:
 - Are interested in performing related work in that particular role (i.e., prime contract or subcontract) for that specific type of work for Metro or other local government agencies;
 - Can serve customers in Los Angeles County; and
 - Are able to perform work of that size.
2. BBC then counted the number of potential DBEs (by the race and gender of business owners) relative to all businesses in the availability database that met the above criteria.
3. BBC translated the numeric availability of potential DBEs for the contract element into proportional availability.

BBC repeated those steps for each FTA-funded contract opportunity that Metro anticipates awarding in FFY 2025 through FFY 2027. The firm then multiplied proportional availability for each contract element by the dollars associated with it, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of the overall availability of potential DBEs for the FTA-funded work Metro anticipates awarding in FFY 2025 through FFY 2027 as well as separate availability estimates for each relevant racial/ethnic and gender group.

Figure 1 presents detailed information about the base figure for Metro's overall DBE goal:

Column (a) presents the groups of potential DBEs that BBC considered as part of the base figure analysis;

Column (b) presents the availability percentage for each group for anticipated FTA-funded *construction* contract opportunities;

Column (c) presents the availability percentage for each group for anticipated FTA-funded *professional services* contract opportunities;

Column (d) presents the availability percentage for each group for anticipated FTA-funded *non-professional services and goods* contract opportunities; and

Column (e) presents the availability percentage for each group for *all* anticipated FTA-funded contract opportunities considered together (i.e., construction; professional services; and non-professional services and goods contracts).

As presented at the bottom of column (e), the availability analysis shows that potential DBEs could be considered available for 25.5 percent of the FTA-funded projects that Metro anticipates awarding in FFY 2025 through FFY 2027. Thus, Metro considers **25.5 percent as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 95.2 percent for construction contracts; 0.05 percent for professional services contracts; and 4.8 percent for non-professional services and goods contracts, based on the volume of FTA-funded project dollars that Metro anticipates awarding related to each industry in FFY 2025 through FFY 2027.

Figure 1.
Availability components of the base figure
(based on availability of potential DBEs for anticipated FTA-funded contracts)

a. Potential DBEs	Availability Percentage			
	b. Construction	c. Professional Services	Non-professional services and goods	e. Weighted Average
Asian Pacific American-owned	16.8 %	8.3 %	0.2 %	16.0 %
Black American-owned	2.8	13.5	0.2	2.7
Hispanic American-owned	3.7	21.1	1.4	3.6
Subcontinent Asian American-owned				
Native American-owned	0.1	0.0	0.0	0.1
Hispanic American-owned				
Subcontinent Asian American-owned	1.2	11.5	0.5	1.2
Native American-owned				
White woman-owned	2.0	10.3	0.3	2.0
Total potential DBEs	26.6 %	64.8 %	2.6 %	25.5 %
Industry weight	95.2 %	0.05 %	4.8 %	

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

Source: BBC availability analysis and Metro data.

B. Determining if an Adjustment is Needed – 49 CFR Section 26.45(d)

After establishing the base figure, Metro considered relevant information to determine whether any adjustment was needed to the base figure as part of determining the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, Metro evaluated information about:

- Current capacity of DBEs to perform agency work;
- Information related to employment, self-employment, education, training, and unions;
- Disparities in the ability of DBEs to access financing, bonding, or insurance; and
- Other relevant factors.⁶

1. Current capacity of DBEs to perform agency work. USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded projects as an

⁶ 49 CFR Section 26.45.

indication of the current capacity of DBEs to perform recent work in recent years. Figure 2 presents past DBE participation based on Metro’s Uniform Reports. Based on information from Metro’s Uniform Reports, the median participation of certified DBEs in the USDOT-funded projects Metro awarded in FFYs 2016 through 2023 was 19.2 percent. That information supports a downward adjustment to Metro’s base figure.

Figure 2.
Past DBE participation in
FTA-funded projects,
FFY 2016-2023

Source:
Metro’s Uniform Reports.

Federal Fiscal Year	DBE Attainment	Neutral Attainment	Conscious Attainment
2016	13.8%	1.7%	12.1%
2017	9.5%	0.9%	8.6%
2018	23.5%	3.6%	20.0%
2019	24.6%	1.0%	23.6%
2020	24.5%	4.9%	19.6%
2021	13.2%	3.3%	9.8%
2022	24.4%	3.1%	21.3%
2023	14.8%	5.4%	9.4%
Median past DBE participation	19.2%	3.2%	15.8%

2. Information related to employment, self-employment, education, training, and unions.

BBC’s analyses of barriers in the local marketplace indicate barriers that certain POC groups and women face related to human capital, financial capital, business ownership, and business success. Such barriers may decrease the availability of POC- and woman-owned businesses for the USDOT-funded projects Metro awards. For example, BBC used regression analyses to investigate whether race/ethnicity and gender are related to business ownership in relevant industries among workers in the Los Angeles marketplace, independent of various other personal characteristics, including familial status, education, and age (see Chapter 3 and Appendix C of the disparity study report). The regression analyses revealed that, even after accounting for various personal characteristics:

Black Americans, Hispanic Americans, Subcontinent Asian Americans, and women are significantly less likely than non-Hispanic whites and men to own construction businesses;

Asian Pacific Americans, Black Americans, Hispanic Americans, and Subcontinent Asian Americans are significantly less likely than non-Hispanic whites to own professional services businesses; and

Asian Pacific Americans, Black Americans, Hispanic Americans, Subcontinent Asian Americans, and women are significantly less likely than non-Hispanic whites and men to own non-professional services and goods businesses.

BBC then analyzed the specific impact that barriers to business ownership have on the base figure. That is, BBC estimated the availability of potential DBEs if POCs and women owned businesses at the same rate as non-Hispanic white men who shared similar personal characteristics. BBC took the following steps to complete the analysis:

1. BBC adjusted availability percentages for construction; professional services; and non-professional services and goods projects based on observed disparities in business ownership rates for POCs

and women. BBC only adjusted availability percentages for those groups that exhibited statistically significant disparities in business ownership rates compared to non-Hispanic whites and men.

2. BBC then combined adjusted availability percentages for construction projects; professional services projects; and non-professional services and goods projects in a dollar-weighted fashion.

Figure 3 presents the results of the analysis, which is referred to as a *but for* analysis, because it estimates the availability of potential DBEs but for the effects of past race- and gender-based barriers. The rows and columns of Figure 3 present the following information from the *but for* analysis:

- a. **Current availability.** Column (a) presents the availability of potential DBEs by group and industry. Each row presents the availability for each group for Metro's FTA-funded work. Before any adjustment, the availability of potential DBEs for the FTA-assisted contracts that Metro anticipates awarding in FFY 2025 through FFY 2027 is 25.5 percent, as shown in row (28) of column (a).
- b. **Disparity indices for self-employment.** For each group that is significantly less likely than non-Hispanic white men to own construction; professional services; and non-professional services and goods businesses, BBC estimated business ownership rates if those groups owned businesses at the same rate as non-Hispanic white men who share the same personal characteristics. BBC then calculated a business ownership disparity index for each group by dividing the observed business ownership rate by the simulated business ownership rate and then multiplying the result by 100. Values of less than 100 indicate that, in reality, the group is less likely to own businesses than what would be expected for non-Hispanic white men who share similar personal characteristics. Column (b) presents disparity indices related to self-employment for the different racial/ethnic and gender groups. For example, as shown in row (2) of column (b), Black Americans own construction businesses at 60 percent of the rate that one might expect based on the estimated business ownership rates of non-Hispanic white men who share similar personal characteristics.
- c. **Availability after initial adjustment.** Column (c) presents availability estimates by group and by industry after initially adjusting for statistically significant disparities in business ownership rates. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for business ownership in column (b) and then multiplying by 100. BBC only adjusted availability for those groups that are significantly less likely than similarly situated non-Hispanic white men to own businesses.
- d. **Availability after scaling to 100 percent.** Column (d) shows adjusted availability estimates that BBC rescaled so that the sum of the availability estimates equaled 100 percent for each industry. BBC rescaled the adjusted availability estimates by taking each group's adjusted availability estimate in column (c) and dividing it by the sum of availability estimates shown under "Total businesses" in column (c)—in row (9) for construction, in row (18) for professional services, and in row (27) for non-professional services and goods—and multiplying by 100. For example, the rescaled adjusted availability estimate for Black American-owned construction businesses shown in row (2) of column (d) was calculated in the following way: $(4.6\% \div 107.6\%) \times 100 = 4.3\%$.
- e. **Components of goal.** Column (e) shows the component of the total base figure attributed to the adjusted POC- and woman-owned availability for each industry. BBC calculated each component by taking the total availability estimate shown under "Potential DBEs" in column (d)—in row (7) for construction, in row (16) for professional services, and in row (25) for non-professional services and—and multiplying it by the proportion of total anticipated FTA-funded contract dollars for

which each industry accounts: 0.9515 for construction, 0.0005 for professional services, and 0.0480 for non-professional services and goods. For example, BBC used the 31.8 percent shown in row (7) of column (d) for construction and multiplied it by 0.95 for a result of 30.3 percent (see row (7) of column (e)). The values in column (e) were then summed to equal the base figure adjusted for barriers in business ownership—30.5 percent—as shown in the bottom row of column (e).

Figure 3.
Adjustment to base figure to account for disparities in business ownership rates

Industry and group		a. Current availability	b. Disparity index for business ownership	c. Availability after initial adjustment*	d. Availability after scaling to 100%	e. Components of base figure**
Construction						
(1)	Asian Pacific American	16.8 %	n/a	16.8 %	15.6 %	
(2)	Black American	2.8	60	4.6	4.3	
(3)	Hispanic American	3.7	75	4.9	4.5	
(4)	Native American	0.1	n/a	0.1	0.1	
(5)	Subcontinent Asian American	1.2	36	3.3	3.1	
(6)	White woman	2.0	46	4.5	4.1	
(7)	Potential DBEs	26.6 %	n/a	34.2 %	31.8 %	30.3 %
(8)	All other businesses ***	73.4	n/a	73.4	68.2	
(9)	Total	100.0 %	n/a	107.6 %	100.0 %	
Professional services						
(10)	Asian Pacific American	8.3 %	60	13.9 %	10.6 %	
(11)	Black American	13.5	77	17.6	13.5	
(12)	Hispanic American	21.1	67	31.5	24.1	
(13)	Native American	0.0	n/a	0.0	0.0	
(14)	Subcontinent Asian American	11.5	52	22.1	16.9	
(15)	White woman	10.3	n/a	10.3	7.9	
(16)	Potential DBEs	64.8 %	n/a	95.4 %	73.0 %	0.03 %
(17)	All other businesses	35.2	n/a	35.2	27.0	
(18)	Total	100.0 %	n/a	130.6 %	100.0 %	
Non-professional services and goods						
(19)	Asian Pacific American	0.2 %	70	0.3 %	0.3 %	
(20)	Black American	0.2	27	0.9	0.9	
(21)	Hispanic American	1.4	58	2.5	2.4	
(22)	Native American	0.0	n/a	0.0	0.0	
(23)	Subcontinent Asian American	0.5	41	1.2	1.2	
(24)	White woman	0.3	62	0.4	0.4	
(25)	Potential DBEs	2.6 %	n/a	5.3 %	5.2 %	0.25 %
(26)	All other businesses	97.4	n/a	97.4	94.8	
(27)	Total	100.0 %	n/a	102.7 %	100.0 %	
(28)	TOTAL	25.5 %	n/a		n/a	30.5 %

Note: Numbers rounded to nearest tenth of 1%. Numbers may not add to totals due to rounding.

* Initial adjustment is calculated as current availability divided by the disparity index.

** Components of base figure calculated as value after adjustment and scaling to 100% multiplied by percentage of total FTA-funded contract dollars in that category (construction is 89.7%; professional services is 0.1%; non-professional services and goods is 10.3%).

*** All other businesses included businesses owned by non-Hispanic white men and POC- and woman-owned businesses that were not potential DBEs.

Source: BBC Research & Consulting and Metro data.

3. Any disparities in the ability of DBEs to get financing, bonding, or insurance. BBC's analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that POCs, women, and POC- and woman-owned businesses in the region do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men. Any barriers to obtaining financing, bonding, or insurance might limit opportunities for POCs and women to successfully form and operate businesses in the RGMA and would also place those businesses at a disadvantage in competing for Metro's USDOT-funded projects. Thus, those results also support an upward adjustment to Metro's base figure.

4. Other relevant data. The Federal DBE Program suggests that USDOT fund recipients also examine "other factors" when determining whether to make any adjustments to their base figures.⁷

a. Success of businesses. There is quantitative evidence that certain groups of POC- and woman-owned businesses are less successful in terms of business closures, business receipts, business owner earnings, and other metrics than businesses owned by non-Hispanic white men and face greater barriers in the marketplace, even after accounting for race- and gender-neutral factors (for details, see Chapter 3 and Appendix C of the disparity study report). Barriers in business success among POC- and woman-owned businesses can limit their growth, which may depress their availability for Metro's USDOT-funded work. There is also qualitative evidence of barriers to the success of POC- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects POC- and woman-owned businesses in the local contracting industry (for details, see Appendix D of the disparity study report). Thus, information about the success of businesses also supports an upward adjustment to Metro's base figure.

b. Evidence from disparity studies conducted within the jurisdiction. USDOT suggests that federal fund recipients also examine evidence from disparity studies conducted within their jurisdictions when determining whether to adjust their base figures. There have been several other disparity studies conducted for transportation agencies in California in recent years [e.g., the California Department of Transportation, the San Francisco Municipal Transportation Agency, and the San Diego Association of Governments]. However, those agencies' projects differ substantially in terms of size and type from the FTA-funded projects that Metro awards. Therefore, the results from other disparity studies are of limited use to Metro in determining whether to adjust its base figure.

5. Adjustment. Metro considered all of the above information regarding whether to make an adjustment to the base figure and has decided to make an upward adjustment to its base figure that specifically accounts for barriers that POCs and women face related to business ownership in the local marketplace. Metro has decided to base its adjustment specifically on that factor, because it has clear, direct, and quantifiable effects on the availability of POC- 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. Metro has decided to use potential DBE availability that has been adjusted for disparities in business ownership rates yielding a **new overall DBE goal of 31 percent, after rounding, for FFYs 2025, 2026, and 2027.**

⁷ 49 CFR Section 26.45.

C. Race-/Gender-Neutral and Race/Gender-Conscious Split – 49 CFR Section 26.51 (c)

In accordance with federal regulations and USDOT guidance, Metro will attempt to meet the maximum feasible portion of its proposed 31 percent overall DBE goal through using race- and gender-neutral measures. Metro uses a broad range of such measures to encourage the participation of all small businesses—including DBEs—in its FTA-funded projects and plans on continuing to use those measures in the future. Metro considered the race- and gender-neutral program measures that it currently implements and its DBE participation as the result of those measures during FFY 2016 through FFY 2021. Based on Metro’s Uniform Reports, median DBE participation as the result of race- and gender-neutral efforts for FFY 2016 through FFY 2021 was 2.5 percent (see Figure 2). Based on that information, Metro projects that it will be able to meet 2.5 percent, **after rounding, 3.0 percent** of its proposed DBE goal for FFY 2025 through FFY 2027 through the use of race- and gender-neutral measures. Metro projects that it will meet the remainder of its proposed 31.0 percent overall DBE goal—**28.0 percent**—through the use of race- and gender-conscious measures (i.e., DBE contract goals).

Metro is prohibited from using race- and gender-conscious measures to award non-FTA funded projects due to Proposition 209. Metro used race- and gender-conscious DBE subcontracting goals on the FTA-funded projects it awarded during the study period to encourage the participation of DBEs in that work. The disparity study compared disparity analysis results between projects that Metro awarded with the use of FTA funding (i.e., goals projects) and projects that Metro awarded without the use of FTA funding (i.e., no goals projects). Examining disparities for no goals projects provides useful information about outcomes for POC- and woman-owned businesses on projects that Metro awarded in a race-neutral and gender-neutral environment and whether there is evidence that certain groups face any discrimination or barriers as part of Metro’s contracting.^{8, 9, 10} Figure 4 presents 2023 disparity analysis results separately for goals and no goals projects that Metro awarded during the study period. As shown in Figure 4, overall, POC- and woman-owned businesses exhibited substantial disparities for goals and no goals projects. Results for individual businesses groups indicated that:

All groups except white woman-owned businesses (disparity index of 132) and Black American-owned business (disparity index of 86) showed substantial disparities on goals projects.

All relevant business groups showed substantial disparities on no goals projects.

The results presented in Figure 4 indicate that Metro’s use of DBE goals is effective in encouraging the participation of POC- and woman-owned businesses in its FTA-funded projects. Moreover, those results indicate that when Metro does not use race- and gender-conscious measures, all relevant business groups suffer from substantial underutilization in Metro contracting.

⁸ *Associated General Contractors of America, San Diego Chapter, Inc. v. California Department of Transportation, et al.*, 713 F.3d 1187, 1192, 1196 (9th Cir. 2013).

⁹ *Concrete Works of Colorado, Inc. v. City and County of Denver*, 321 F.3d 950, 985, 987-88 (10th Cir. 2003), *cert. denied*, 540 U.S. 1027, 124 S. Ct. 556 (2003).

¹⁰ *H. B. Rowe Co., Inc. v. W. Lyndo Tippet, NCDOT, et al.*, 615 F.3d 233,246 (4th Cir. 2010).

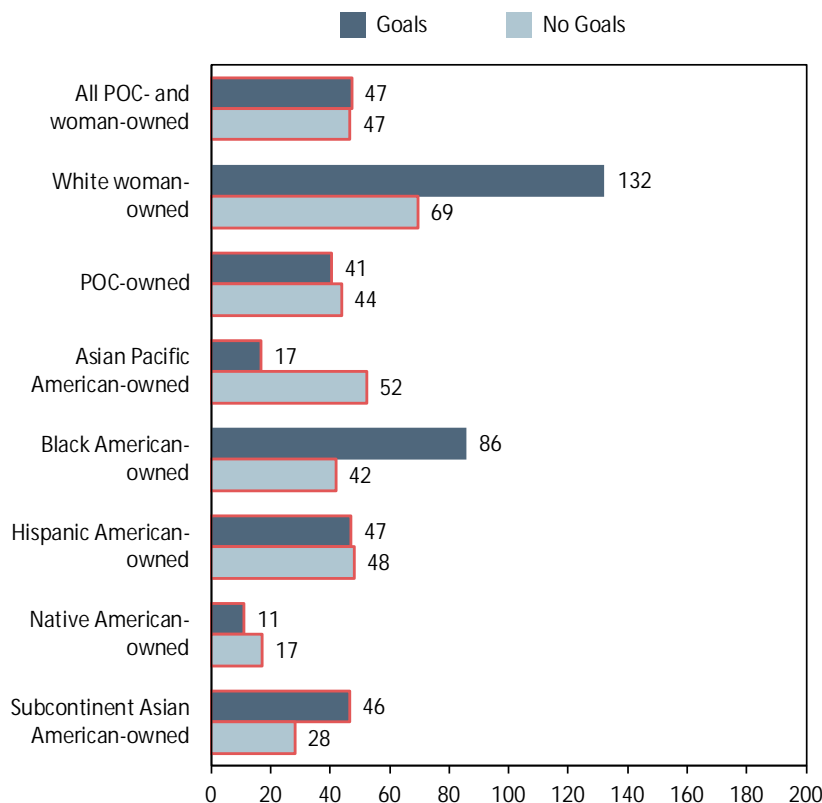
Figure 4.
Disparity analysis
results for goals and
non-goals projects

Note:

Numbers rounded to nearest
tenth of 1 percent and thus may
not sum exactly to totals.

Source:

BBC disparity analysis.



D. Public Participation – 49 CFR Section 26.45(g)

Public participation is a key component of Metro’s process for setting its overall DBE goal. Metro made information about the proposed goal available to the public on its website and Vendor Portal on April 19, 2024 beginning a 30-day comment period that ended on May 20, 2024. Metro held two public hearings on May 3, 2024 (in-person) and May 5, 2024 (virtual). Metro will accept public comments for a 30-day period beginning April 19, 2024 and ending May 20, 2024. Additionally, as part of the public consultation, Metro presented the goal and goal methodology at the Transportation Business Advisory Council’s (TBAC) monthly meeting on May 2, 2024. Public comments were accepted via email at: LAMetroGandM@bbcresearch.com or GoalComment@metro.net; via U.S. Mail at Metro, Diversity & Economic Opportunity Department (DEOD), Attn: Public Comment Overall DBE Goal, One Gateway Plaza, 99-8-4, Los Angeles, CA 90012.

Metro issued a Public Notice in the following newspapers: 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. Metro also issued e-blasts to inform the business community of the public notice, public meetings, and ways to submit written or verbal comments.

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.



REVISED

FFY2025-2027 OVERALL DBE GOAL AND GOAL METHODOLOGY

*Executive Management Committee
Item #20*

RECOMMENDATIONS/BACKGROUND

- A. APPROVE proposed 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. RECEIVE and FILE an update on the new modernized DBE Program certification and implementation requirements.
-
- Metro is required to implement the DBE program and every three years, establish an overall goal for DBE participation, in accordance with 49 Code of Federal Regulations (CFR) Section 26.21).
 - Effective May 9, 2024, USDOT issued its final ruling modernizing the DBE program rules to provide greater clarity and flexibility and enhance the ability of DBEs to compete on a level playing field for federally funded contracting opportunities.

SETTING OVERALL DBE GOAL

BASE FIGURE

- Information from Disparity Study
- Availability analysis
- Potential DBEs

STEP 2 ADJUSTMENT

- Current DBE capacity
- Marketplace barriers
- Other relevant factors



Metro

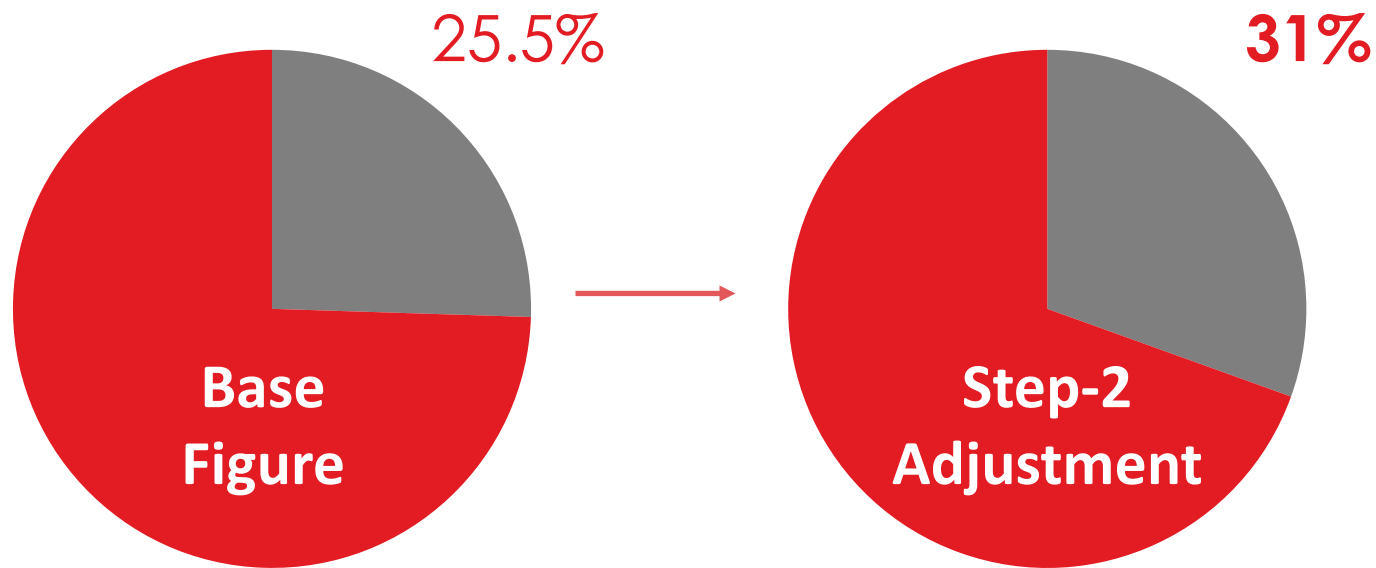
CALCULATING THE BASE FIGURE

Base figure is calculated using a dollar-weighted calculation by industry based on contracts expected for Metro during the next three Federal Fiscal Years

a. Potential DBEs	Availability Percentage			e. Weighted Average
	b. Construction	c. Professional Services	Non-professional services and goods	
Asian Pacific American-owned	16.8 %	8.3 %	0.2 %	16.0 %
Black American-owned	2.8	13.5	0.2	2.7
Hispanic American-owned	3.7	21.1	1.4	3.6
Subcontinent Asian American-owned				
Native American-owned	0.1	0.0	0.0	0.1
Hispanic American-owned				
Subcontinent Asian American-owned	1.2	11.5	0.5	1.2
Native American-owned				
White woman-owned	2.0	10.3	0.3	2.0
Total potential DBEs	26.6 %	64.8 %	2.6 %	25.5 %
Industry weight	95.2 %	0.05 %	4.8 %	

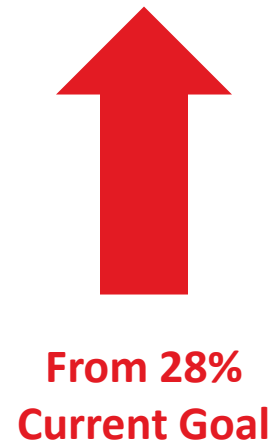
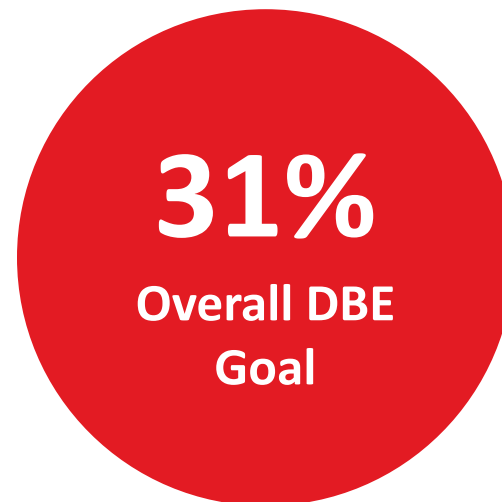
CALCULATING THE GOAL

Projected availability if minorities and women owned businesses at same rate as similarly situated white men—supports upward adjustment to base figure



CALCULATING THE GOAL

Given marketplace barriers, Metro determined that it was appropriate to adjust the base figure upward.



RACE-/GENDER-CONSCIOUS MEASURES

Substantial Disparities*

- Asian-Pacific American-owned businesses
- Black American-owned businesses
- Hispanic American-owned businesses
- Native American-owned businesses
- Subcontinent Asian American-owned businesses**
- White women-owned businesses

Next Steps:

- Upon Board Approval:
 - Submit proposed goal to FTA BY August 1, 2024
 - Overall DBE goal effective October 1, 2024

*Based on disparity analysis

**Subcontinent Asian Americans are persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka



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2024 DBE PROGRAM UPDATES

Key changes that modernized the DBE Program and improved certification include:

- 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.

The program changes were effective May 9, 2024, on Metro FTA and FHWA-funded contracts. Metro's SBE Program mirrors the DBE program and will be modified to align with the program changes by July 30, 2024.



Thank you



Metro