

# REGIONAL TRANSIT ISSUE PAPER

Agenda Item No.	Board Meeting Date	Open/Closed Session	Information/Action Item	Issue Date
5	02/14/11	Open	Action	01/14/11

Subject: Publication of Public Notice of Proposed Overall Annual DBE Goal

## ISSUE

Whether or not to authorize publication of a Public Notice of proposed Overall Annual Goal for Sacramento Regional Transit District's (RT) Disadvantaged Business Enterprise (DBE) Program for the 2011 Federal Fiscal Year (October 1, 2010 through September 30, 2011).

## RECOMMENDED ACTION

Adopt Resolution No. 11-02-\_\_\_\_, Authorizing Publication of a Proposed Federal Fiscal Year 2011 Goal for RT's Disadvantaged Business Enterprise Program.

## FISCAL IMPACT

None.

## DISCUSSION

In accordance with Federal Transit Administration (FTA) regulations in 49 C.F.R. Part 26, RT's overall DBE goal for federally-funded projects must be reviewed annually and, if necessary, revised after performing the Overall Annual Goal Methodology to establish the goal.

RT's Overall Annual DBE Goal and Methodology conforms to the current DBE regulations, which became effective in March 1999 and require that the Overall Annual DBE Goal be established using a two-step process. Step 1 involves determining a Base Figure of available DBE firms in RT's relevant market ready, willing and able to participate in RT contracts. Step 2 requires establishment of a DBE goal based on the availability of DBE firms after adjusting the availability Base Figure to account for actual DBE utilization rates in RT contracts and other relevant factors. After the adjusted DBE goal is identified, RT must analyze what proportion of the DBE goal can be achieved using race-and-gender-neutral methods based on the level of utilization (under or over) of DBEs relative to their availability.

RT staff proposes an annual overall DBE goal of 12.7% for the 2011 Federal Fiscal Year (FFY) beginning on October 1, 2010 and ending on September 30, 2011. FTA requires that the Overall Annual Goal be submitted to FTA for approval prior to the beginning of the fiscal year to which the goal applies. The enclosed Overall Annual DBE Goal and Methodology report in Attachment 1 was submitted to the FTA on January 13, 2011.

## Methodology

RT adhered to the two-step goal-setting methodology described in 49 C.F.R. Section 26.41.

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Approved:

Presented:

FINAL 2/8/11

General Manager/CEO

Manager, Contracts & DBE

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Subject: Publication of Public Notice of Proposed Overall Annual DBE Goal

Staff reviewed RT's contracting activities and DBE utilization for the period July 2004 through September 2010. RT staff recommendations for DBE overall goal setting are based on a Step 1 determination of the availability of ready, willing and able DBEs in RT's market place (Base Figure of DBE availability). The Base Figure of available ready, willing and able DBE firms was derived using Caltrans' DBE Directory and Census Bureau data.

After determining a Base Figure of the relative availability of DBE firms in RT's market place, RT staff made a Step 2 adjustment to the Base Figure after analyzing DBE utilization rates for RT contracts from July 2004 through September 2010.

RT's FFY 2011 DBE goal setting was based on a DBE utilization analysis that found RT's utilization of DBE firms in the Construction category exceeded the proportion of DBE firms in the Construction category, and that RT significantly under-utilized DBE firms in the Materials and Supplies category.

### Race-and-Gender-Neutral vs. Race-and-Gender-Conscious Methods

On May 9, 2005, the Ninth Circuit Court of Appeals ruling in Western States and Paving Co. vs. Washington State Department of Transportation established evidentiary standards to constitutionally support the use of race-and-gender-conscious DBE goals on federal aid contracts. In response to the ruling, the FTA issued guidance for DBE goal setting that requires recipients to examine any current evidence of discrimination and its effects that meets the criteria established by the Ninth Circuit. If the recipient does not have sufficient evidence of discrimination or its effects, then the recipient must submit race-and-gender-neutral overall DBE goal.

RT does not have sufficient evidence of discrimination or its effects that would support adoption or implementation of a race-and-gender-conscious DBE goal; instead, RT is adopting a wholly race-and-gender-neutral DBE goal for FFY 2010. RT will take affirmative steps to attempt to achieve its DBE goal through the use of allowable race-and-gender-neutral measures.

RT will conduct a disparity study, or similar evidence-gathering effort, to determine the presence of discrimination or its effects on RT's contracting. RT plans to complete a disparity study, or similar evidence-gathering effort, by June 2012.

RT anticipates meeting the overall annual 12.7% goal for DBE participation using race-and-gender-neutral methods. Race and gender neutral methods will include making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work that might otherwise be performed by the prime contractor; and providing technical assistance and other support services to facilitate consideration of DBEs and other small businesses.

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### Public Participation in Setting Overall Annual DBE Goals

In accordance with the public participation requirements of 49 C.F.R. Part 26, RT staff will distribute the Annual Goal Setting document (Attachment 1) by direct mail to local business chambers, local business associations (both DBE and non-DBE), and minority and women's organizations and report to the Board the results of the public participation process.

## **ATTACHMENT 1**

## SACRAMENTO REGIONAL TRANSIT DISTRICT OVERALL ANNUAL DBE GOAL AND METHODOLOGY

### I. DOT-ASSISTED CONTRACTING PROGRAM FOR FFY 2011

The following represents the Sacramento Regional Transit District's (RT) projected Department of Transportation (DOT) funded contracts and expenditures by work category and corresponding North American Industry Classification System (NAICS) for Federal Fiscal Year (FFY) 2011:

WORK CATEGORY	NAICS CATEGORY	ESTIMATED DOLLAR VALUE	% OF FEDERAL FUNDING BY WORK CATEGORY
Construction	(23)	\$65,000,000	74.71%
Professional Services and Other Services	(51-56) (81)	\$12,000,000	13.79%
Materials and Supplies	(31-33) (42)	\$10,000,000	11.49%
TOTAL		\$87,000,000	100%

### II. GOAL METHODOLOGY

Staff reviewed RT's contracting activities and DBE utilization for the period July 2004 through September 2010 to make recommendations for Overall Annual DBE Goal for FFY 2011 in conformity with the goal-setting requirements specified in 49 C.F.R. Section 26.45. The rationale for reviewing RT's contracting activities and DBE utilization for this time period is in compliance with Section 26.45(d)(1)(i) of the DBE regulation.

RT's FTA-approved FFY 2010 DBE annual goal is 12.7%. RT anticipated meeting 100% of the overall annual 12.7% goal for DBE participation using race-and-gender-neutral methods. RT's FFY 2010 DBE goal setting was based on a DBE utilization analysis that found RT over-utilized DBE firms in the Construction and Services categories and significantly under-utilized DBE firms in the Materials and Supplies categories. RT achieved 6.72% overall DBE utilization in FFY 2010 between October 1, 2009 and ending September 30, 2010. All of the 6.72% overall DBE utilization in that period was achieved using race-and-gender-neutral methods

The following summarizes the findings and goal recommendations:

## **STEP 1: Determination of Base Figure for the Relative Availability of DBE Firms**

### **A. Determination of RT's Relevant Geographical Market Area**

To establish RT's Base Figure of the relative availability of DBEs in relation to all comparable firms available for RT's FFY 2011 DOT-assisted contracting program, both Census Bureau data and the Caltrans' DBE Directory were used (filtered to represent only DBE firms within RT's relevant geographical market area), as follows:

For the numerator: Caltrans' DBE Directory  
For the denominator: Census Bureau's Business Pattern Database (CBBP)

To derive the Base Figure for the relative availability of DBEs, the number of DBEs available in the Caltrans' DBE Directory (by NAICS Code), is divided by the number of all comparable CBBP firms (by NAICS Code) available. This ratio is multiplied by the projected FFY 2011 expenditures (by NAICS Code proportions). The resulting ratios are then summed.

Application of this formula yields the following baseline information:

$$\text{Base Figure} = \sum [(\% \text{Projected FFY 2011- Expenditures by NAICS Code}) \left( \frac{\text{Number of Ready, Willing, and Able DBEs by NAICS Code}}{\text{Number of All Ready, Willing, and Able Firms by NAICS Code}} \right)]$$

49 C.F.R. Part 26 requires that RT set goals consistent with its own contracting circumstances. To calculate availability, the relevant geographical market area must first be determined to set overall goals based on demonstrable evidence of the relative availability of ready, willing, and able DBEs in the areas from which RT primarily obtains firms. The relevant geographical market area is the area in which the substantial majority of the contractors and subcontractors with which RT does business are located and the area in which RT spends the majority of contracting dollars.

Contracts awarded during time period July 2004 through September 2010 were analyzed to determine RT's relevant geographical market area. The contracts were identified by dollar amount, prime contractor, prime contractor location (grouped by county), and subcontractor activity. RT's relevant market area was established by applying the 75% rule for relevant market area analysis that has been generally accepted in anti-trust cases. Based on this analysis, RT's relevant market area was determined to be:

- Construction: Sacramento County, CA; Alameda County, CA; San Francisco County, CA
- Services: Sacramento County, CA;
- Materials: Sacramento County, CA

The following table describes the ratio of DBE firms in RT's relevant market area as determined by analysis of Caltrans' DBE Directory and CBBP information.

**Ratio of DBE Firms  
In RT Relevant Market Area  
Based On Caltrans DBE Directory and CBBP**

CONSTRUCTION						
	DBE CLASSIFICATION		NON-DBE CLASSIFICATION		SUBTOTAL	
	#	%	#	%	#	%
TOTAL	510	8.51%	5,486	91.49%	5,996	42.28%

SERVICES						
	DBE CLASSIFICATION		NON-DBE CLASSIFICATION		SUBTOTAL	
	#	%	#	%	#	%
TOTAL	1,376	20.14%	5,456	79.86%	6,832	48.17%

MATERIALS AND SUPPLIES						
	DBE CLASSIFICATION		NON-DBE CLASSIFICATION		SUBTOTAL	
	#	%	#	%	#	%
TOTAL	266	19.63%	1,089	80.37%	1,355	9.55%

SUMMARY						
	DBE CLASSIFICATION		NON-DBE CLASSIFICATION		SUBTOTAL	
	#	%	#	%	#	%
TOTAL	2,152	15.17%	12,031	84.83%	14,183	100.0%

**Calculating the Base Figure**

The Base Figure resulting from the relevant market area DBE availability data is 11.5%. This percentage is obtained by multiplying the percentage of federal funding available for each category by the relative availability of DBEs in that category as follows:

	Construction	+	Services	+	Materials
Base Figure =	[(.75)(8.51%)]		[(.14)(20.15%)]		[(.11)(19.63%)]
Base Figure =	[0.064]		[0.028]		[0.023]
Base Figure =	.115 = 11.5%				

**STEP 2: Adjusting the Base Figure**

As required under Section 26.45 of 49 C.F.R. Part 26, available relevant evidence was reviewed to determine what additional adjustments to the Base Figure were needed to narrowly tailor the Base Figure to RT's marketplace. Factors considered in determining RT's expected DBE participation, absent discrimination, included the following:

## Current Capacity of DBEs Measured by Actual Attainments

The volume of work that DBEs performed in RT's DOT-assisted contracting program for the time period July 2004 through September 2010 was analyzed. The following table itemizes the findings by work categories.

Sacramento Regional Transit District  
Utilization of Prime Contractors and Subcontractors  
DBE Classification by Service Category  
For The Time Period July 2004 through September 2010

Work Category	Total Amount	DBE Amount	DBE Achieved
Construction	\$113,908,684	\$11,218,438	9.85%
Professional and Other Services	\$56,620,200	\$10,470,428	18.49%
Materials and Supplies	\$44,970,578	\$154,695	0.34%
Totals	\$215,499,462	\$21,843,561	10.14%

### Analysis Results; DBE Availability Ratios vs. Utilization Ratios

Once the utilization of DBE firms was determined, it was compared to the relative availability of DBE firms in the RT relevant market area. The analysis shows the percentage of contract dollars, percentage of relative availability of firms, and the disparity ratio that compares the two percentages. The percentage of contract dollars (utilization of firms) was divided by the percentage of relative availability of firms to create a Firm Disparity Ratio. A disparity ratio below 0.8 indicates a substantial level of disparity demonstrating adverse or disparate impact. The relative availability of DBE firms is adjusted only if the disparity ratio is below 0.8. A disparity ratio greater than 0.8 indicates that an adjustment of firm availability would not be needed.

The utilization analysis findings demonstrate that for RT's federally-funded contracts, DBE prime contractors and subcontractors obtained contracts representing 10.14% of all dollars. The utilization analysis found that DBE firms were over-utilized in the Construction category, and significantly under-utilized in the Materials and Supplies category. To account for significant disparity representing substantial under-utilization, the relative availability of DBE firms in the Materials and Supplies category was adjusted using the Firm Disparity Ratio to create an adjusted availability number on which to base the overall goal.

The relative availability of firms in the Materials and Supplies category was adjusted by multiplying it by the difference between 0.8 and the disparity ratio and adding that number to the relative availability number as follows:  $(266 \times [.80 - .02]) + 266 = 473$ .



The detail of the utilization analysis is shown on the following table:

**Sacramento Regional Transit District  
Utilization Analysis of Prime and Subcontractors  
Using Vendor Availability Data  
For The Time Period July 2004 through September 2010**

CONSTRUCTION							
DBE CLASSIFICATION	% CONTRACT DOLLARS	# FIRM AVAILABILITY	% FIRM AVAILABILITY	FIRM DISPARITY RATIO	UTILIZATION STATUS	ADJUSTED # FIRM AVAILABILITY	ADJUSTED % FIRM AVAILABILITY
DBE	9.85%	510	8.51%	1.16	OVER-UTILIZATION	N/A	N/A
NON-DBE	90.15%	5,486	91.49%	0.99	UNDER-UTILIZATION	N/A	N/A
TOTAL	100.00%	5,996	100.00%			N/A	N/A

SERVICES							
DBE CLASSIFICATION	% CONTRACT DOLLARS	# FIRM AVAILABILITY	% FIRM AVAILABILITY	FIRM DISPARITY RATIO	UTILIZATION STATUS	ADJUSTED # FIRM AVAILABILITY	ADJUSTED % FIRM AVAILABILITY
DBE	18.49%	1,376	20.14%	0.92	UNDER-UTILIZATION	N/A	N/A
NON-DBE	81.51%	5,456	79.86%	1.02	OVER-UTILIZATION	N/A	N/A
TOTAL	100.00%	6,832	100.00%			N/A	N/A

MATERIALS AND SUPPLIES							
DBE CLASSIFICATION	% CONTRACT DOLLARS	# FIRM AVAILABILITY	% FIRM AVAILABILITY	FIRM DISPARITY RATIO	UTILIZATION STATUS	ADJUSTED # FIRM AVAILABILITY	ADJUSTED % FIRM AVAILABILITY
DBE	0.34%	266	19.63%	0.02	UNDER UTILIZATION	473	30.3%
NON-DBE	99.66%	1,089	80.37%	1.24	OVER-UTILIZATION	1,089	69.7%
TOTAL	100.00%	1,355	100.00%			1,562	100.00%

**2011 - Overall DBE Goal for RT**

The following table presents the overall DBE goal for RT's federally-funded contracts and procurements for FFY 2011. With the adjustment made to the relative availability of DBE firms Base Figure of 11.5%, due to the finding of significant under-utilization of available DBE firms in the Materials and Supplies category, the resulting proposed overall DBE goal for FFY 2011 is 12.7%. The adjusted relative availability of DBE firms was derived by substituting the adjusted percentage of Materials and Supplies firm availability of 30.3% into the formula for calculating the Base Figure as follows:

	Construction	Services	Materials
Base Figure =	[(.75)(8.51%)]	+ [(0.14)(20.15%)]	+ [(0.11)(30.3%)]
Base Figure =	[0.064]	+ [0.028]	+ [0.035]
Base Figure =	.127 = 12.7%		

Sacramento Regional Transit System  
All Service Categories  
Recommended Neutral and Specific Goals by Race and Gender

SERVICE CATEGORY	DBE BASE FIGURE AVAILABILITY	ADJUSTED DBE AVAILABILITY	DBE UTILIZATION 7/1/04-9/30/10	RACE/GENDER CONSCIOUS GOAL	RACE/GENDER NEUTRAL GOAL	DBE GOAL
CONSTRUCTION	6.4%	6.4%	9.85%	0.00%	6.4%	6.4%
SERVICES	2.8%	2.8%	18.49%	0.00%	2.8%	2.8%
MATERIALS & SUPPLIES	2.3%	3.5%	0.34%	0.00%	3.5%	3.5%
OVERALL DBE	11.5%	12.7%	10.14%	00.0%	12.7%	12.7%

**III. UTILIZATION OF RACE AND GENDER NEUTRAL AND RACE AND GENDER CONSCIOUS METHODS**

In *Western States Paving Co. v. United States & Washington State Department of Transportation*, 407 F.3d 983 (9<sup>th</sup> Cir. 2005), the Ninth Circuit Court of Appeal held that the Department of Transportation's DBE Program (49 C.F.R. Part 26) and the authorizing statute in TEA 21 were constitutional and that the national DBE program was narrowly tailored with respect to the race-conscious elements of the program. However, the court further held that in order for a DBE program to be narrowly tailored, as applied at the state or local level, race-conscious elements of the program must be limited to those parts of the country in which race-based measures are demonstrably needed, based upon adequate evidence of discrimination or its effects in the relevant contracting industry and with respect to the specific groups to which such race-conscious elements are to be applied. In response to the ruling, the FTA issued guidance for DBE goal setting that requires recipients to examine any evidence meeting the Ninth Circuit criteria of discrimination and its effects. If the recipient does not have sufficient evidence of discrimination or its effects meeting the Ninth Circuit standard, then the recipient must submit a race-and-gender-neutral overall DBE goal.

RT does not have sufficient evidence of discrimination or its effects that would support adoption or implementation of a race or gender conscious DBE goal; instead, RT is adopting a wholly race-and-gender-neutral DBE goal for FFY 2011. RT will take affirmative steps to achieve its DBE goal through the use of race-and-gender-neutral measures.

RT will conduct a disparity study, or similar evidence gathering effort, to determine the presence of discrimination or its effects on RT's contracting. RT plans to complete a disparity study, or similar evidence gathering effort, by June 2012.

RT anticipates meeting the overall annual 12.7% goal for DBE participation using race and gender neutral methods. Race-and-gender-neutral methods will include making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work that might otherwise be performed by the prime contractor; and providing technical assistance and other support services to facilitate consideration of DBEs and other small businesses.

#### **IV. PUBLIC PARTICIPATION IN SETTING OVERALL ANNUAL DBE GOALS.**

In conformance with the public participation requirements of 49 C.F.R. Section 26.45, this goal analysis will be distributed for review to minority organizations, women's organizations, local business chambers, community organizations, and other U.S. DOT recipients. These entities are knowledgeable about the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on contracting opportunities for DBEs within the RT marketplace.

Additionally, RT will publish a Public Notice in general circulation media and media focused on women and minorities, announcing RT's proposed overall annual goal for the FFY 2011 contracts assisted by the FTA. The notice will inform the public that the proposed goals and their rationale are available for inspection at RT during normal business hours for 30 days following the date of the Public Notice and that RT will accept comments on the goals for 45 days from the date of the Public Notice. The required public participation provisions will be fully satisfied prior to submitting RT's DBE Program and Overall Annual DBE Goal for final review and approval.

RESOLUTION NO. 11-02-\_\_\_\_\_

Adopted by the Board of Directors of the Sacramento Regional Transit District on this date:

FEBRUARY 14, 2011

**AUTHORIZING PUBLICATION OF A PROPOSED FEDERAL FISCAL YEAR 2011  
GOAL FOR RT'S DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

WHEREAS, the participation goal established in Sacramento Regional Transit District's (RT) Disadvantaged Business Enterprise (DBE) Program is annually reviewed and revised, as appropriate, after taking into consideration: past participation levels, and the reasons therefore; contracting opportunities that will arise in the following federal fiscal year; and the availability of DBEs in the geographic areas in which RT generally seeks competitors for such contracting opportunities; and

WHEREAS, the updated Overall Annual DBE Goal must be submitted to the Federal Transit Administration of the United States Department of Transportation for approval; and

WHEREAS, RT staff prepared the Overall Annual DBE Goal for the 2011 Federal Fiscal Year pursuant to the methodology established in RT's adopted DBE Program and the regulations contained in 49 C.F.R. Part 26; and

WHEREAS, the Board desires to publish the Overall Annual DBE Goal to comply with the public participation requirements of 49 C.F.R. Part 26.

BE IT HEREBY RESOLVED BY THE BOARD OF DIRECTORS OF THE SACRAMENTO REGIONAL TRANSIT DISTRICT AS FOLLOWS:

THAT, the General Manager/CEO or his designee is hereby authorized and directed to publish a public notice of the proposed Overall Annual DBE Goal, to make available for 30 days following the date of the notice the methodology employed to establish the Overall Annual DBE Goal, and to accept public comments on the Overall Annual DBE Goal for 45 days from the date of the notice.

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DON NOTTOLI, Chair

A T T E S T:

MICHAEL R. WILEY, Secretary

By: \_\_\_\_\_  
Cindy Brooks, Assistant Secretary