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**EXECUTIVE MANAGEMENT COMMITTEE
JUNE 21, 2001**

Metropolitan
Transportation
Authority

One Gateway Plaza
Los Angeles, CA
90012-2952

**SUBJECT: DISADVANTAGED BUSINESS ENTERPRISE (DBE)
ANNUAL GOAL**

ACTION: APPROVAL OF DBE ANNUAL GOAL

RECOMMENDATION

Approve and adopt 13% as the DBE Annual Goal for Federal Fiscal Year 2002 (FFY02).

ISSUE

In accordance with the Department of Transportation (DOT) requirements found at 49 Code of Federal Regulations (CFR) Part 26 and effective March 4, 1999, federal grantees are required to establish an overall annual goal on a fiscal year basis for the participation of DBEs in all contracts utilizing federal assistance. FTA administrators of the DBE Program, require grantees to submit their proposed DBE goal for annual review on or before August 1, 60 days prior to the expiration of the current goal period. MTA's current DBE goal will expire September 30, 2001. The recommended goal is subject to Board approval prior to submittal to FTA.

POLICY IMPLICATIONS

The DBE annual goal is expressed as the DBE percentage of the total amount of federal funds the MTA anticipates expending in the fiscal year. In Fiscal Year 2002 (FY02), the operating, capital and federally assisted portions of the MTA budget, total approximately \$440.7 million. 49 CFR Part 26.49 requires Transit Vehicle Manufacturers to report directly to FTA and to set their own goals based on the same principles followed by all federal recipients. Therefore, bus and rail purchases are not included in the goal calculation.

Recipients of DOT capital or operating assistance in excess of \$500,000, or planning assistance in excess of \$200,000, are required to adopt and implement a DBE Program and establish a DBE annual goal. The goal shall contain the elements set forth in 49 CFR, Part 26. MTA applications and funding agreements are approved contingent on DBE Program approval. These agreements are incorporated into and become part of the Federal Grant Agreement (FGA) and subsequent financial assistance agreements. A recipient's failure to adhere to the terms of the FGA may jeopardize federal funding.

GOAL SETTING METHODOLOGY APPLIED

Under FTA guidelines, a two step methodology is prescribed. Recipients are to establish a baseline figure from the relative availability of ready, willing and able DBEs in each relevant contracting market. The second step involves adjustments from the baseline figure, relying on an examination of additional evidence, past experience, local expertise and anticipated changes in DOT assisted contracting over the coming year.

An analysis of MTA's relevant contracting market revealed that MTA, as one of the largest transportation properties, solicits participation from contractors and subcontractors from Los Angeles, Orange, San Bernardino, Riverside, and Ventura counties. The relevant contracting market is used for both the numerator (DBEs) and denominator (all businesses) within the area from which the MTA draws the substantial majority of its contract competition.

The data source used for establishing availability of ready, willing and able firms was derived from the Caltrans database of certified DBE vendors. The DBEs identified within the relevant contracting market represent the numerator in the goal setting formula used to arrive at the base figure (Attachment #1). The denominator used in the formula was derived from the U.S. Census Bureau's County Business Pattern (CBP) database. The CBP was used to determine availability of all businesses within the North American Industry Classification System (NAICS) in which MTA contracts.

To calculate the 10.04% base figure shown in Attachment #1, the number of available DBEs was divided by the number of available businesses in the relevant contracting markets and weighted against the percentage of FY02 projected federal funds. MTA anticipates expending funds in the following five designated contracting categories: Construction, Professional Services, Materials/Supplies, Equipment and Other.

MTA expanded the formula used in the measurement of current availability to ensure that the overall goal truly and accurately reflects the level of DBE participation expected. The 10.04% base figure was adjusted in consideration of historical precedent of DBE goal achievement on MTA contracts and the forecast of FY02 projects with federal funds. Based on the data and analysis conducted by the MTA, staff proposes a 13% overall annual goal for FFY02. Total projected expenditures with contracting opportunities are approximately \$186.2 million.

ACHIEVING THE ANNUAL GOAL

DBE Program guidelines require recipients to meet their annual goal to the maximum extent feasible by implementing race neutral measures. Race conscious measures are applied as a safety net to be used when race neutral means are not effective achieving a level playing field for DBE participation.

The Department of Small Business Diversity and Labor Compliance's (SBD&LC) aggressive approach to establish DBE goals, where feasible, on a minimum of 75% of all procurements and implementation of race neutral measures will ensure DBE participation to the level proposed.

The proposed 13% annual goal is realistic, considering the award of professional service contracts to support current transportation studies, FY02 Capital Improvement Projects and construction activities on Eastside and Mid-City extension projects. Through continued outreach and implementation of race neutral measures, DBE firms can successfully compete for other smaller CIP contracts. The participation of these DBE firms achieved through race neutral measures will also be counted toward the DBE annual goal. SBD&LCs Outreach Unit functions as a critical link to the small business community, conducting targeted outreach on major procurements to stimulate DBE interest and increase DBE participation.

In furtherance of DBE participation, Federal regulations mandate that it is the bidder's obligation to make Good Faith Efforts (GFE) to meet contract specific goals. The bidder must demonstrate these efforts in two ways. First, they can meet the goal, by documenting that they have obtained commitments for enough DBE participation to meet the goal. Second, even though they have not met the goal, they can document that they have made good faith efforts to do so. GFE is intended to ensure that bidders do not simply refuse to consider qualified, competent DBE subcontractors. MTA complies with the requirement to take GFE seriously by offering the required Administrative Reconsideration Hearing to bidders whose GFE is initially deemed non-responsive.

Under previous Board direction, SBD&LC initiated modifications to the procurement process to ensure outreach to a greater number and variety of DBE firms seeking to compete as primes in purchases below \$40,000. The need to increase outreach and include DBE businesses in small purchases remains paramount to achievement of the overall DBE goal.

Staff anticipates that the total number of firms determined available for DBE participation under the current DBE Program requirements will increase significantly following the scheduled implementation of the DOT Unified Certification Program (UCP). As a member of the California UCP, Los Angeles area cluster, MTA will benefit from an expanded relevant DBE market of certified firms. Currently, MTA is actively participating in local, collective efforts to ensure that DOT's mandate to fully implement the UCP is complied with by the March 2002 deadline.

OPTIONS

Under the Federal Grant Agreement (FGA), submittal of the annual DBE goal to FTA is a condition of continued funding.

FINANCIAL IMPACT

A recipient's failure to adhere to the terms of the FGA may jeopardize federal funding.

BACKGROUND

FTA approved the first MTA DBE Program in 1993, following the Rapid Transit District and Los Angeles County Transportation Commission merger. MTA's DBE Program includes a policy statement from the Chief Executive Officer, affirming MTA's commitment to carry out all of the DBE Program requirements found at 49 CFR Part 26. MTA policy ensures that DBEs have

an equal opportunity and level playing field to compete for and participate in its federally assisted contracts. FTA approved the current DBE annual goal, as submitted.

NEXT STEPS

The proposed FY02 DBE annual goal, if approved, will be published externally to elicit public comment prior to submittal to FTA. Comments on the proposed goal will also be requested from the Transportation Business Advisory Council (TBAC), legislated to provide MTA advice on small business matters. SBD&LC will disseminate information internally to increase staff awareness regarding the shared responsibility to support the DBE Program.

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Attachment



Linda B. Wright
Director Small Business Diversity and
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Allan G. Lipsky
Office of the Chief Executive Officer

The Office of Small Business Diversity and Labor Compliance
Attachment 1 - Formula For Calculating the DBE Annual Goal

METHODOLOGY:

$$\begin{aligned}
 \text{Base Figure} &= \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Construction} \\ \{50.46\% \} \quad \frac{\text{DBEs in WCC C99, V11 (N)}}{\text{CBPs in NAICS 23 (D)}} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{Professional Services} \\ \{33.87\% \} \quad \frac{\text{DBEs in WCC C87, V8, I17}}{\text{CBPs in NAICS 54}} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Materials/Supplies} \\ \{1.23\% \} \quad \frac{\text{DBEs in WCC F50, V10}}{\text{CBPs in NAICS 42}} \end{array} \right] \\
 &+ \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Equipment} \\ \{12.83\% \} \quad \frac{\text{DBEs in WCC D36, D37}}{\text{CBP in NAICS 33}} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Other} \\ \{1.61\% \} \quad \frac{\text{DBEs in WCC E48}}{\text{CBP in NAICS 48}} \end{array} \right] \times 100
 \end{aligned}$$

CALCULATION:

$$\begin{aligned}
 \text{Base Figure} &= \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Construction} \\ \{50.46\% \} \quad \frac{1454}{18,293} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Professional Services} \\ \{33.87\% \} \quad \frac{1,843}{40,195} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Materials/Supplies} \\ \{1.23\% \} \quad \frac{928}{20,241} \end{array} \right] \\
 &+ \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Equipment} \\ \{12.83\% \} \quad \frac{794}{2,803} \end{array} \right] + \left[\begin{array}{l} \text{Percentage of Total Federal Dollars} \\ \text{In Other} \\ \{1.61\% \} \quad \frac{569}{1,159} \end{array} \right] \times 100 \\
 & \qquad \qquad \qquad \text{Base Figure} \\
 & \qquad \qquad \qquad = 10.04\%
 \end{aligned}$$

Annual Goal Components

Annual Goal = **Base Figure** + **Adjusted Figure** (After utilizing historical precedent of DBE goal achievement on MTA contracts and forecast of FY02 projects)

Annual Goal = 10.4% + 3% = 13%

Annual Goal Includes **Race 10% Conscious (RC)** + **Race 3% Neutral (RN)**

(RC) DBE participation achieved through contract-specific goals

(RN) DBE participation achieved through outreach, technical assistance and procurement process modification

LEGEND	
N	Numerator
D	Denominator
CBP	County Business Pattern (Census)
DBE	Disadvantaged Business Enterprise
NAICS	North American Industry Classification System
WCC	Caltrans Work Category Codes