

**Board Report**

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**EXECUTIVE MANAGEMENT COMMITTEE  
JUNE 20, 2018****SUBJECT: FEDERAL TRANSIT ADMINISTRATION  
DISADVANTAGED BUSINESS ENTERPRISE OVERALL  
GOAL****ACTION: RECOMMENDATION****RECOMMENDATION**

APPROVE 27% Disadvantaged Business Enterprise (DBE) overall goal for Federal Fiscal Years (FFY) 2019 - 2021 for contracts funded, in whole or in part with Federal Transit Administration (FTA) funds.

**ISSUE**

The United States Department of Transportation (USDOT) Disadvantaged Business Enterprise (DBE) Program regulations, 49 Code of Federal Regulations (CFR) Section 26.21, require 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 current FFY 2016 - 2018 three-year overall goal is 26%.

**DISCUSSION**

The Metro proposed DBE overall goal for FFY 2019 - 2021 is 27%, a 1% increase from the current goal. The proposed overall goal was established by using the two-step goal-setting methodology 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), the use of data from a disparity study (Study). Metro's 2017 Study conducted by BBC Research Consulting (BBC), analyzed prime contract and subcontract procurement data for a five-year period from January 11, 2011 through December 21, 2015.

The Study provided comprehensive analyses of DBE utilization, DBE availability and the extent to which race conscious remedial action can be applied to the DBE program. The draft Study report was released and made available to stakeholders (including the Transportation Business Advisory Council), contracting community and the general public for review and comment during a 45-day comment period from November 17, 2017 through January 2, 2018. Metro held three public hearings

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in December 2017 to present study findings and receive comments. Staff presented the final Study report at the February 2018 Executive Management and Audit Committee.

### Overall DBE Goal Calculation Methodology

In the proposed Overall DBE Goal Methodology Report FFY 2019 - 2021 (Goal Setting Report), found in Figure 1 of 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 Study calculated a weighted base enumerating availability in accordance with the proportion of contracts reviewed during the Study period. In its review of anticipated contracts Metro expects to award in the upcoming goal period, it was determined that such contracts are similar to the types, and size of contracts that were analyzed during the Study period. As such, staff recommends the Study base figure of 27%.

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. Additionally, anecdotal evidence collected during the performance of the Disparity Study was reviewed. After taking these factors into account, no adjustment to the base figure was made. The weighted base figure of 27% is recommended as the overall goal.

### 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, 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 with the exception of Subcontinent Asian American-owned businesses, exhibited disparity indices substantially below parity 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 and have accepted it as evidence of adverse conditions for M/WBEs. The Study shows disparity indices for groups on contracts with no goals as follows: Hispanic American (59), Black American (30), Non-Hispanic white women (37), Asian-Pacific American (73), Native American (52), and Subcontinent Asian American (161). The Study results support the continued use of DBE contract goals, narrowly tailored to those groups with substantial

disparity.

### Limited Application Waiver

The DBE Program 49 CFR § 26.47 requires that overall goals must provide for participation by all certified DBEs and must not be subdivided into group specific goals.

FTA guidance requires Metro to submit a waiver for approval to sub-divide (apply limited application) race conscious DBE contract goals. Metro intends to submit a limited waiver request to FTA to allow the agency to limit its use of race and gender-conscious measures (i.e., DBE contract goals) to those DBE groups for which compelling statistical evidence of discrimination—that is, substantial disparities. Based on results from the 2017 Metro Disparity Study, staff will request to limit its use of DBE contract goals to the following business groups: Black American-owned DBEs, Hispanic American-owned DBEs, Native American-owned DBEs, Asian Pacific American-owned DBEs, and woman-owned DBEs. Metro would not consider Subcontinent Asian American-owned DBEs as eligible for DBE contract goals at this time. The limited waiver is reviewed by FTA Headquarters and forwarded to the U.S. Department of Transportation (US DOT), Office of the Secretary for approval. If approved, staff will notify the Board and the contracting community of any change to the implementation of contract-specific goals.

### Public Participation

In accordance with the regulations, Metro staff conducted a consultation meeting at the May 3, 2018 TBAC meeting to present the proposed overall goal and goal methodology, and to seek comments from minority and woman-owned businesses. The DBE overall goal and goal methodology and presentation were posted on the Metro website May 11, 2018. A 30-day public comment period was conducted beginning May 11, 2018 and ended on June 11, 2018. Staff held public meetings on May 17, 2017 and on June 6, 2017 at Metro Headquarters. Staff also issued e-blasts to inform the business community of the public notice, public meetings and ways to submit written or verbal comments. As of the filing of this report, staff has received relatively few comments on the proposed goal. One representative of a DBE asked how this would impact goals on projects and expressed concern that contract goals are being met primarily through suppliers.

### 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	27%	FFY 2019 - 2021
New York City Transit	6%	FFY 2016 - 2018
San Francisco Municipal Railway	15%	FFY 2017 - 2019

Metropolitan Atlanta Rapid Transit Authority	16%	FFY 2018 - 2020
Denver Regional Transportation District	19%	FFY 2014 - 2016
Southeastern Pennsylvania Transportation Authority	15%	FFY 2018 - 2020
San Francisco Bay Area Rapid Transit	17%	FFY 2017 - 2019
Dallas Area Rapid Transit	25%	FFY 2017 - 2019
Caltrans	6.95%	FFY 2016 - 2019
Santa Clara Valley Transportation Authority	13%	FFY 2017 - 2019
Washington Metropolitan Area Transit Authority	22%	FFY 2017 - 2019
Metrolink	25%	FFY 2016 - 2018
Orange County Transportation Authority	10%	FFY 2016 - 2018
Maryland Transit Administration	30%	FFY 2017 - 2019

**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 FY18 budget for multiple capital and non-capital projects.

**ALTERNATIVES CONSIDERED**

The triennial overall DBE goal is a requirement under the DBE program and a condition of receiving FTA funds.

**NEXT STEPS**

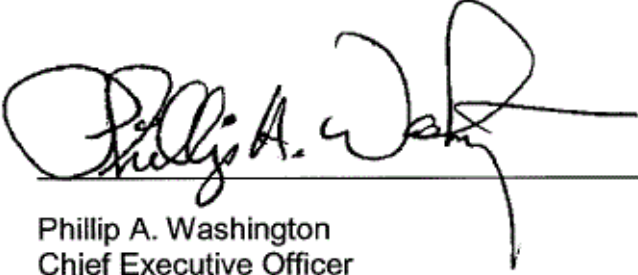
- Submit DBE overall goal and goal methodology and limited waiver request to FTA by August 1, 2018 deadline, in order to prevent any delay in the receipt of federal funds
- Overall DBE goal effective October 1, 2018 through September 30, 2021
- Notify the Board of US DOT, Office of Secretary approval or disapproval of limited waiver
- If limited waiver is approved, notify contracting community of changes to application of contract-specific goals

**ATTACHMENTS**

Attachment A - Overall DBE Goal Methodology Report FFY 2019 - 2021

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## **DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2019 THROUGH 2021**

The Los Angeles County Metropolitan Transportation Authority (Metro) revised its three-year overall Disadvantaged Business Enterprise (DBE) goal for federal fiscal years (FFYs) 2016 through 2018 to the Federal Transit Administration (FTA) on January 31, 2017. FTA subsequently approved Metro's goal of 26 percent. 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, Metro based its initial 2016-2018 goal and methodology on information collected from the 2012 LA Metro DBE Program Disparity Study. Metro also considered information from certification lists; trade and business associations; and various chambers of commerce.

In 2016, Metro commissioned BBC Research & Consulting (BBC) to conduct a disparity study related to the agency's implementation of the Federal DBE Program. BBC completed the study in March 2018 (referred to herein as the 2017 Metro Disparity Study). As part of the disparity study, BBC examined whether there are any disparities between:

- The percentage of contract dollars (including subcontract dollars) that Metro spent with minority- and woman-owned businesses during the study period (i.e., *utilization*); and
- The percentage of contract dollars that minority- and woman-owned businesses might be expected to receive based on their availability to perform specific types and sizes of Metro's prime contracts and subcontracts (i.e., *availability*).

The disparity study also examined other quantitative and qualitative information related to:

- The legal framework surrounding Metro's implementation of the Federal DBE Program;
- Local marketplace conditions for minority- and woman-owned businesses; and
- Contracting practices and business assistance programs that Metro or other entities in its marketplace currently have in place.

Based on disparity study results, federal guidance, and relevant case law, Metro proposes a new three-year overall DBE goal for FFYs 2019 through 2021. To determine its new overall DBE goal, Metro followed federal regulations including the two-step goal-setting methodology set forth in 49 CFR Part 26.45.

### **Step 1. 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. Consistent with USDOT guidance, Metro established a base figure based on data from a *custom census* availability analysis that BBC conducted as part of the 2017 Metro Disparity Study. For

the purposes of establishing a base figure, the availability analysis was limited to the availability of *potential DBEs*—minority- and woman-owned businesses that are currently DBE-certified or appear that they could be DBE-certified based on revenue requirements described in 49 CFR Part 26.65—for FTA-funded prime contracts and subcontracts that Metro awarded from January 1, 2011 through December 31, 2015 (referred to herein as the study period).<sup>1, 2</sup> Metro has determined that the mix of the types and sizes of transportation contracts that it anticipates awarding in FFYs 2019 through 2021 will be similar to the mix of types and sizes of transportation contracts that it awarded during the study period.

**Methodology for the availability analysis.** The availability analysis focused on specific work areas (i.e., *subindustries*) related to the types of FTA-funded contracts that Metro awarded during the study period. BBC identified specific subindustries—based on 8-digit Dun & Bradstreet (D&B) industry codes—for inclusion in the availability analysis and identified the geographic areas in which Metro awarded the vast majority of corresponding contract dollars (i.e., the relevant geographic market area). BBC based its determination of the relevant geographic market area on information about where the contractors that participated in Metro prime contracts and subcontracts during the study period were located. The analysis indicated that, during the study period, 74 percent of Metro’s transportation-related construction; professional services; and goods and other services contracting dollars went to businesses with locations in Los Angeles County, indicating that Los Angeles County should be considered the relevant geographic market area for the study.

**Overview of availability surveys.** The study team developed a database of potentially available businesses through surveys with local business establishments within relevant subindustries. The study team conducted telephone surveys with business owners and managers to identify businesses that are potentially available for Metro’s FTA-funded prime contracts and subcontracts.<sup>3</sup> BBC began the survey process by collecting information about business establishments from D&B Marketplace listings. BBC collected information about all business establishments listed under 8-digit work specialization codes (as developed by D&B) that were most related to the FTA-funded contracts that Metro awarded during the study period. BBC then contacted listed businesses to solicit their participation in availability telephone surveys.

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<sup>1</sup> Consistent with USDOT guidance, Metro considers any contract with at least \$1 of FTA funding as an “FTA-funded contract” and includes the total value of the contract in its pool of total FTA-funded contracting dollars.

<sup>2</sup> BBC defined woman-owned businesses specifically as *non-Hispanic white woman-owned businesses*. BBC grouped minority woman-owned businesses with their corresponding minority groups (e.g., grouping Black American woman-owned businesses with all other Black American-owned businesses). For details about BBC’s definition of woman-owned businesses, see Chapter 1 of the disparity study report.

<sup>3</sup> The study team offered business representatives the option of completing surveys online or via fax or e-mail if they preferred not to complete surveys via telephone.

**Information collected in availability surveys.** The study team successfully conducted telephone surveys with the owners or managers of 2,734 business establishments. Survey questions addressed many topics about each organization 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 or as a subcontractor;
- Largest prime contract or subcontract bid on or performed in the previous five years;
- Year of establishment; and
- Race/ethnicity and gender of ownership.

Information about businesses that completed surveys was entered into an availability database that served as a basis for the availability analysis.

**Considering businesses as potentially available.** BBC considered businesses to be potentially available for Metro's FTA-funded prime contracts or subcontracts if they reported possessing *all* of the following characteristics:

- a. Being a private business (as opposed to a nonprofit organization);
- b. Having performed work relevant to Metro FTA-funded contracting;
- c. Having bid on or performed public or private sector prime contracts or subcontracts in the past five years; and
- d. Being interested in work for Metro.<sup>4</sup>

BBC also considered the following information to determine if businesses were potentially available for specific contracts that Metro awarded during the study period:

- e. The largest contract bid on or performed in the past (to inform an assessment of *relative capacity*); and
- f. The year the business was established.

**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. Dollar-weighted availability estimates represent the percentage of contracting dollars that potential DBEs would be expected to receive based on their availability for specific types and sizes of Metro's FTA-funded prime contracts and subcontracts. Only a subset of businesses in the availability database was considered potentially available for any

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<sup>4</sup> That information was gathered separately for prime contract and subcontract work.



particular prime contract or subcontract (referred to collectively as *contract elements*). BBC identified the specific characteristics of each prime contract and subcontract that the study team examined as part of the disparity study 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:

1. For each contract element, the study team identified businesses in the availability database that reported that they:
  - Are interested in performing transportation-related work in that particular role for that specific type of work (based on 8-digit D&B industry codes) for Metro;
  - Have bid on or performed work of that size; and
  - Were in business in the year that Metro awarded the contract.
2. The study team then counted the number of potential DBEs (by race/ethnicity and gender) relative to all businesses in the availability database that met the criteria specified in Step 1.
3. The study team translated the numeric availability of potential DBEs for the contract element into percentage availability.

BBC repeated those steps for each FTA-funded contract element that the study team examined as part of the disparity study. BBC multiplied the percentage availability for each contract element by the dollars associated with the contract element, 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 and estimates of availability by 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 FTA-funded *construction* contract elements;
- Column (c) presents the availability percentage for each group for FTA-funded *professional services* contract elements;
- Column (d) presents the availability percentage for each group for FTA-funded *goods and other services* contract elements; and
- Column (e) presents the availability percentage for each group for *all* FTA-funded contract elements considered together (i.e., construction; professional services; and goods and other services contracts).

As presented at the bottom of column (e), the availability analysis shows that potential DBEs could be considered available for 27.0 percent of Metro's FTA-funded prime contracts and subcontracts. Thus, Metro considers **27.0 percent as its base figure**. As presented in the last row of Figure 1, the overall base figure reflects a weight of 0.72 for construction contracts; 0.11 for professional services contracts; and 0.17 for goods and other services contracts based on the

volume of dollars of FTA-funded contracts that Metro awarded in each industry during the study period.

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

a. Potential DBEs	Availability Percentage			
	b. Construction	c. Professional Services	d. Goods and Other Services	e. Weighted Average
Black American owned	6.6 %	3.8 %	8.2 %	6.6 %
Asian Pacific American owned	1.3	3.0	1.6	1.5
Subcontinent Asian American owned	0.4	0.6	0.9	0.5
Hispanic American owned	14.4	3.6	23.1	14.7
Native American owned	0.1	0.0	2.5	0.5
White woman owned	0.6	2.8	14.5	3.2
<b>Total potential DBEs</b>	<b>23.3 %</b>	<b>13.7 %</b>	<b>50.9 %</b>	<b>27.0 %</b>
<b>Industry weight</b>	<b>72 %</b>	<b>11 %</b>	<b>17 %</b>	

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

Source: 2017 LA Metro Disparity Study.

## Step 2. 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 work on USDOT-assisted contracting as measured by the volume of work DBEs have performed in recent years;
- 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.<sup>5</sup>

**Current capacity of DBEs to perform work on USDOT-assisted contracting as measured by the volume of work DBEs have performed in recent years.** USDOT’s “Tips for Goal-Setting” suggests that agencies should examine data on past DBE participation in their USDOT-funded contracts in recent years. USDOT further suggests that agencies should choose the median level of annual DBE participation for those years as the measure of past participation:

*Your goal setting process will be more accurate if you use the median (instead of the average or mean) of your past participation to make your adjustment because*

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<sup>5</sup> 49 CFR Section 26.45.

*the process of determining the median excludes all outlier (abnormally high or abnormally low) past participation percentages.<sup>6</sup>*

Figure 2 presents past DBE participation based on Metro’s Uniform Reports of DBE Awards or Commitments and Payments as reported to FTA. According to the Uniform Reports, median DBE participation in FTA-funded contracts from FFYs 2011 through 2015 was 3.7 percent.

**Figure 2.**  
**Past certified DBE participation in FTA-funded contracts, FFY 2011-2015**

FFY	DBE Attainment	Annual DBE Goal	Difference
2011	3.70 %	8.00 %	-4.30 %
2012	8.37	8.00	0.37
2013	0.51	26.00	-25.49
2014	22.41	26.00	-3.59
2015	2.23 %	26.00 %	-23.77 %

Source:  
Awards reported on Metro’s Uniform Reports of DBE Awards/Commitments and Payments.

The information about past DBE participation supports a downward adjustment to Metro’s base figure. If Metro were to use the approach that USDOT outlined in “Tips for Goals Setting” based on Uniform Reports of DBE Awards/Commitments and Payments, the overall goal would be the average of the 27.0 percent base figure and the 3.7 percent median past DBE participation, yielding a potential overall DBE goal of 15.4 percent. BBC’s analysis of DBE participation in FTA-funded contracts in the Metro Disparity Study indicated DBE participation (15.1%) that is also lower than the base figure. If Metro were to adjust its base figure based on the DBE participation information from the disparity study, the overall goal would be the average of the 27.0 percent base figure and the 15.1 percent DBE participation, yielding a potential overall DBE goal of 21.1 percent.

**Any disparities in the ability of DBEs to get financing, bonding, and insurance.** BBC’s analysis of access to financing, bonding, and insurance also revealed quantitative and qualitative evidence that minorities; women; and minority- and woman-owned businesses in Los Angeles County do not have the same access to those business inputs as non-Hispanic white men and businesses owned by non-Hispanic white men (for details, see Chapter 3 and Appendices C and D of the disparity study report). Any barriers to obtaining financing, bonding, and insurance might limit opportunities for minorities and women to successfully form and operate businesses in the Los Angeles County contracting marketplace. Any barriers that minority- and woman-owned businesses face in obtaining financing, bonding, and insurance would place those businesses at a disadvantage in competing for Metro’s FTA-funded prime contracts and subcontracts. Thus, information from the disparity study about financing, bonding, and insurance supports an upward adjustment to Metro’s base figure.

**Information related to employment, self-employment, education, training, and unions.** BBC used regression analyses to investigate whether race/ethnicity or gender affects

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<sup>6</sup> Section III (A)(5)(a) in USDOT’s “Tips for Goal-Setting in the Federal Disadvantaged Enterprise (DBE) Program.” <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

rates of self-employment among workers in the local transportation-related construction; professional services; and goods and other services industries. The regression analyses allowed BBC to examine those effects while statistically controlling for various race- and gender-neutral characteristics of workers including education and age (for details, see Chapter 3 and Appendix C of the disparity study report). The regression analyses revealed that, even after accounting for various race- and gender-neutral characteristics:

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

Thus, information about business ownership also supports an upward adjustment to Metro's base figure.

BBC analyzed the specific impact that barriers to self-employment have on the base figure. BBC estimated the availability of potential DBEs if minorities and women owned businesses at the same rate as non-Hispanic white men who shared similar race- and gender-neutral characteristics. BBC took the following steps to complete the analysis:

1. BBC made adjustments to availability percentages for construction; professional services; and goods and other services contracts based on observed disparities in self-employment rates for minorities and women. BBC only made adjustments for those groups that exhibited statistically significant disparities in self-employment rates compared to non-Hispanic whites and men.
2. BBC then combined adjusted availability percentages for construction contracts; professional services contracts; and goods and other services contracts 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 continuing effects of past race- and gender-based discrimination. The rows and columns of Figure 3 present the following information from the *but for* analysis:

**Figure 3.**  
**Adjustment to base figure to account for disparities in self-employment 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**
<b>Construction</b>					
(1) Black American	6.6 %	70	9.5 %	9.0 %	
(2) Asian Pacific American	1.3	n/a	1.3	1.2	
(3) Subcontinent Asian American	0.4	n/a	0.4	0.4	
(4) Hispanic American	14.4	88	16.3	15.5	
(5) Native American	0.1	n/a	0.1	0.1	
(6) White woman	<u>0.6</u>	<u>44</u>	<u>1.4</u>	<u>1.3</u>	
(7) Potential DBEs	23.3 %	n/a	28.9 %	27.4 %	19.6 %
(8) All other businesses ***	<u>76.7</u>	<u>n/a</u>	<u>76.7</u>	<u>72.6</u>	
(9) <b>Total</b>	<b>100.0 %</b>	n/a	<b>105.6 %</b>	<b>100.0 %</b>	
<b>Professional services</b>					
(10) Black American	3.8 %	57	6.6 %	6.4 %	
(11) Asian Pacific American	3.0	n/a	3.0	2.9	
(12) Subcontinent Asian American	0.6	n/a	0.6	0.5	
(13) Hispanic American	3.6	n/a	3.6	3.5	
(14) Native American	0.0	n/a	0.0	0.0	
(15) White woman	<u>2.8</u>	<u>87</u>	<u>3.2</u>	<u>3.1</u>	
(16) Potential DBEs	13.7 %	n/a	17.0 %	16.5 %	1.8 %
(17) All other businesses	<u>86.3</u>	<u>n/a</u>	<u>86.3</u>	<u>83.5</u>	
(18) <b>Total</b>	<b>100.0 %</b>	n/a	<b>103.3 %</b>	<b>100.0 %</b>	
<b>Goods and other services</b>					
(19) Black American	8.2 %	35	23.5 %	18.8 %	
(20) Asian Pacific American	1.6	88	1.8	1.4	
(21) Subcontinent Asian American	0.9	53	1.7	1.4	
(22) Hispanic American	23.1	73	31.7	25.4	
(23) Native American	2.5	n/a	2.5	2.0	
(24) White woman	<u>14.5</u>	<u>n/a</u>	<u>14.5</u>	<u>11.6</u>	
(25) Potential DBEs	50.9 %	n/a	75.7 %	60.7 %	10.4 %
(26) All other businesses	<u>49.1</u>	<u>n/a</u>	<u>49.1</u>	<u>39.3</u>	
(27) <b>Total</b>	<b>100.0 %</b>	n/a	<b>124.8 %</b>	<b>100.0 %</b>	
(28) <b>TOTAL</b>	<b>27.0 %</b>	n/a		n/a	<b>31.9 %</b>

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 potential step-2 adjustment were calculated as the value after adjustment and scaling to 100 percent, multiplied by the percentage of total FTA-funded contract dollars in each industry (construction = 0.72, professional services = 0.11, and goods and other services= 0.17).

\*\*\* All other businesses included majority-owned businesses and minority- and woman-owned businesses that were not potential DBEs.

Source: BBC Research & Consulting and Metro data.

**a. Current availability.** Column (a) presents the current availability of potential DBEs by group and by industry. Each row presents the availability for each group. Before any adjustment, the availability of potential DBEs for Metro’s FTA-funded construction; professional

services; and goods and other services contracts that the agency awarded during the study period is 27.0 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; or goods and other services businesses, BBC estimated business ownership rates if those groups owned businesses at the same rate as non-Hispanic white men who share the same race- and gender-neutral characteristics. BBC then calculated a self-employment disparity index for each group by dividing the observed self-employment rate by the estimated self-employment 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 the same race- and gender-neutral characteristics.

To simulate business ownership rates if minorities and women owned businesses at the same rate as non-Hispanic white men in a particular industry, BBC took the following steps: 1) BBC performed a probit regression analysis predicting business ownership including only workers in the dataset who were non-Hispanic white men; and 2) BBC then used the coefficients from that model and the mean personal characteristics of individual minority groups (or non-Hispanic white women) working in the industry (i.e., personal characteristics, indicators of educational attainment, and indicators of personal financial resources and constraints) to simulate business ownership for each group that was significantly less likely than non-Hispanic white men to own construction; professional services; or goods and other services businesses.

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 (1) of column (b), Black Americans own construction businesses at 70 percent of the rate that one might expect based on the estimated self-employment 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 self-employment rates. BBC calculated those estimates by dividing the current availability in column (a) by the disparity index for self-employment in column (b) and then multiplying by 100. Note that BBC only made adjustments 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 goods and other services—and multiplying by 100. For example, the rescaled adjusted availability estimate for Black American-owned

construction businesses shown in row (1) of column (d) was calculated in the following way:  $(9.5 \% \div 105.6\%) \times 100 = 9.0\%$ .

- e. **Components of goal.** Column (e) shows the component of the total base figure attributed to the adjusted minority- 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 goods and other services—and multiplying it by the proportion of total FTA-funded contract dollars for which each industry accounts (i.e., 0.72 for construction, 0.11 for professional services, and 0.17 for goods and other services). That is, BBC used the 27.4 percent shown in row (7) of column (d) for construction and multiplied it by 0.72 for a result of 19.6 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—31.9 percent—as shown in the bottom row of column (e).

**Other relevant data.** The Federal DBE Program suggests that federal funding recipients also examine “other factors” when determining whether to make any adjustments to their base figures.<sup>7</sup>

**Success of businesses.** There is quantitative evidence that certain groups of minority- and woman-owned businesses are less successful 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). There is also qualitative evidence of barriers to the success of minority- and woman-owned businesses. Some of that information suggests that discrimination on the basis of race/ethnicity and gender adversely affects minority- 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.

**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 make adjustments to their base figures. There have been several other disparity studies conducted for state agencies in California in recent years (e.g., San Francisco Bay Area Rapid Transit District (BART), California Department of Transportation (Caltrans), San Diego Association of Governments (SANDAG)). However, those agencies’ contracts differ substantially in terms of size and type from the FTA-funded contracts that Metro awarded during the study period. In the case of BART, the methodology that was used is substantially more limited than the methodology that BBC used to conduct the 2017 LA Metro Disparity Study. Therefore, the results from other disparity studies are of limited use to Metro in determining whether to make an adjustment to its base figure.

**Adjustment.** Metro considered all of the above information in considering whether to make an adjustment to the base figure. Some of the data considered suggested an upward adjustment to the base figure while other data suggested a downward adjustment. Based on the evidence

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<sup>7</sup> 49 CFR Section 26.45.

above, Metro determined that no adjustment to the base figure was warranted. Metro proposes an **overall DBE goal of 27.0%** for FFYs 2019-2021.

### **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 27.0 percent overall DBE goal through the use of race- and gender-neutral measures. Metro used a broad range of race- and gender-neutral measures to encourage the participation of all small businesses — including DBEs — in its FTA-funded contracts in FFYs 2011-2015 and plans on continuing the use of those measures in the future. Metro’s race- and gender-neutral efforts can be classified into four categories:

- Advocacy and outreach efforts;
- Technical assistance programs;
- Capital, bonding, and insurance assistance;
- Prompt payment policies; and
- Small business preference/set-aside.

**Advocacy and outreach efforts.** Metro participates in various advocacy and outreach efforts including hosting DBE workshops and using communications that are targeted specifically to disadvantaged businesses.

**Communications.** Metro communicates with DBEs through email, its Vendor Portal, and its DBE newsletter. Metro uses its Vendor Portal and its newsletter to announce contracting opportunities, special events, policy changes, and new DBE program measures.

**Networking events and workshops.** Metro hosts various events and workshops for DBEs. Some of those events include Meet the Prime, Meet the Project Managers and Buyers, Salute to Small Business Celebration, and other signature outreach events.

**Technical assistance programs.** Metro provides an online business toolkit which includes web tutorials for DBEs that cover topics that include how to register as a vendor, the process of bidding on contracts with Metro, contract compliance reporting, certification, and more weekly webinars.

**Capital, bonding, and insurance.** Metro established a Commercial Insurance Broker Panel which assists businesses that are lacking the required insurance coverages. This panel is available to businesses and contractors through the Transportation Business Advisory Council (TBAC), small business outreach events, and Metro’s small business orientation classes.

On March 1st, 2018, Metro launched a one-year pilot Contractor Development and Bonding Program (CDBP). The CDBP will assist Metro-certified Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE) and Disabled Veteran Business Enterprise (DVBE) firms secure sufficient bonding to work on Metro construction projects. The CDBP will provide



contractors and subcontractors that are looking to work on Metro projects, but are unable to secure the necessary bonding required to bid on public works projects, an avenue to secure the necessary bonding, thus increasing the participation of small/disadvantaged businesses on Metro projects.

A firm's participation in the CDBP will not only include assistance with obtaining or increasing bonding capacity and collateral support for bid, performance and payment bonds, but will include technical support, education, training, and contractor support. The maximum bond guarantee is up to \$250,000, or 40% of the value of the contract, whichever is less. The CDPB is managed by Metro's Diversity and Economic Opportunity Department and administered by Merriwether & Williams Insurance Services (MWIS).

**Prompt payment policies.** Metro has policies in place to help ensure prompt payment to subcontractors. Prime contractors are required to pay their subcontractors within 7 days after receipt of payment from Metro.

**Small business enterprise (SBE) program.** In 1997, Metro started their SBE program to comply with California's Proposition 209, which prohibits explicit consideration of race or gender in the award of state- and locally-funded contracts.

**Small Business Prime set-aside program.** Metro's Small Business Prime set-aside program started in 2013 and enables small businesses to compete only against other small businesses for projects up to \$5 million, as well as for informal projects under \$100,000. Only Metro-certified SBEs can participate in the program.

For additional details about Metro's race- and gender-neutral programs, see Figure 4, below.

**Figure 4.**  
**Examples of Metro race- and gender-neutral programs**

Type	Program
Advocacy and outreach	Metro Vendor Portal is Metro's central web resource for small businesses to learn to work with Metro easily and efficiently. The portal gives vendors access to registering to work with Metro and allows vendors to sign up to automatically receive project RFPs/solicitations via email.
Advocacy and outreach	Metro Connect is Metro's small business resource that provides vendors with informative Tool Kit, certification information, networking events and workshops, and more. Vendors can also sign up for the MetroConnection newsletter which highlights SBE and DBE businesses, updates vendors on Metro events and bid opportunities, notifies vendor of policy changes, and other legislative news.
Advocacy and outreach	Metro hosts several networking events and workshops including: <ul style="list-style-type: none"> <li>• <i>How to Do Business with Metro</i> which is a monthly workshop on qualification requirements and bidding processes;</li> <li>• The Transportation Business Advisory Council (TBAC) meets monthly at Metro headquarters and includes hosting guest speakers related to current and future contracting opportunities, and contracting-related legislation updates;</li> <li>• <i>Meet the Primes</i> is an annual networking event to connect small businesses with prime contractors;</li> <li>• <i>Meet the Project Managers and Buyers</i> is an annual networking event for small business owners to meet Metro Program Managers and staff; and</li> <li>• <i>Salute to Small Business Celebration</i>.</li> </ul>
Advocacy and outreach	Metro 12-Month Look Ahead project list on the Vendor Portal identifies current and future bidding opportunities, includes info on type of work, general scope, estimated cost/range, industry specific needs, and DBE and SBE goals.
Capital, Bonding, and Insurance	<p>Metro Commercial Insurance Broker Panel was established in 2009 to assist businesses lacking 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.</p> <p>On March 1st, 2018, Metro launched a one-year pilot Contractor Development and Bonding Program (CDBP). The CDBP will assist Metro-certified Small Business Enterprise (SBE), Disadvantaged Business Enterprise (DBE) and Disabled Veteran Business Enterprise (DVBE) firms secure sufficient bonding to work on Metro construction projects. The CDBP will provide contractors and subcontractors that are looking to work on Metro projects, but are unable to secure the necessary bonding required to bid on public works projects, an avenue to secure the necessary bonding, thus increasing the participation of small/disadvantaged businesses on Metro projects.</p> <p>A firm's participation in the CDBP will not only include assistance with obtaining or increasing bonding capacity and collateral support for bid, performance and payment bonds, but will include technical support, education, training, and contractor support. The maximum bond guarantee is up to \$250,000, or 40% of the value of the contract, whichever is less. The CDPB is managed by Metro's Diversity and Economic Opportunity Department and administered by Merriwether &amp; Williams Insurance Services (MWIS).</p>
Technical Assistance	Metro's Business Toolkit contains pre-recorded web tutorials on Metro vendor registration and the process of bidding on and fulfilling contracts with Metro. It also contains weekly live webinars for contractor and vendor training (i.e., contract compliance reporting, certification, utilization plan completion).
Mentor- Protégé	Contracting Outreach and Mentoring Plan (COMP): Proposers bidding on contracts that are greater than \$25 million are required to submit proposals with an innovative DBE Contracting Outreach and Mentoring Plan (COMP). The Proposers' COMP approach will be evaluated as one element of the RFP evaluation criteria, and Metro will review/approve each COMP submittal for the awarded contract. The plans should include the proposers plan for mentoring subcontractors. The goal is for mentors to assist in the advancement of participating protégés, including measurable plans to grow and compete on a larger scale. Mentor Protégés are identified by Proposers/Bidders, not by Metro.

Metro considered the race- and gender-neutral program measures that it currently implements and its DBE participation as the result of those measures during FFYs 2011 through 2015. DBE participation as the result of race- and gender-neutral efforts for those five years was 13.8 percent (for details, see Chapter 10 and Appendix F of the disparity study report). Based on that information, Metro projects that it will be able to meet 13.8 percent of its proposed DBE goal for FFYs 2019-2021 through the use of race- and gender-neutral measures. Metro projects that it will meet the remainder of its proposed 27.0% overall DBE goal—13.2%—through the use of race- and gender-conscious measures (i.e., DBE contract goals). Figure 5 presents Metro’s proposed race- and gender-neutral and race- and gender-conscious split for its overall DBE goal.

**Figure 5.**  
**Race- and gender-neutral and**  
**race- and gender-conscious split**

Goal portion	Percent Allocation
Race- and gender-neutral	13.8 %
<u>Race- and gender-conscious</u>	<u>13.2</u>
<b>Overall DBE goal</b>	<b>27.0 %</b>

**Necessity of race conscious measures.** Metro used race- and gender-conscious DBE subcontracting goals on many contracts during the study period to encourage the participation of disadvantaged business enterprises. The 2017 LA Metro disparity study compared disparity analysis results between contracts that Metro awarded with the use of DBE subcontracting goals (goals contracts) and contracts that Metro awarded without the use of DBE subcontracting goals (no-goals contracts). Examining participation in no-goals contracts provides useful information about outcomes for minority-owned businesses and woman-owned businesses on contracts 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.<sup>8, 9, 10</sup>

Figure 6 presents disparity analysis results separately for goals contracts and no-goals contracts. As shown in Figure 6, overall, minority-owned businesses and woman-owned businesses showed better outcomes on goals contracts than on no-goals contracts. Whereas minority-owned businesses and woman-owned businesses showed a substantial disparity on no-goals contracts (disparity index of 53), they did not show a substantial disparity on goals contracts (disparity index of 96). Results for individual groups indicated that:

- Only Black American-owned business (disparity index of 64) showed substantial disparities on goals contracts.
- All groups except Subcontinent Asian American-owned businesses showed substantial disparities on no-goals contracts.

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<sup>8</sup> 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).

<sup>9</sup> 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).

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

**Figure 6.**  
**Disparity indices for goals**  
**and no-goals contracts**

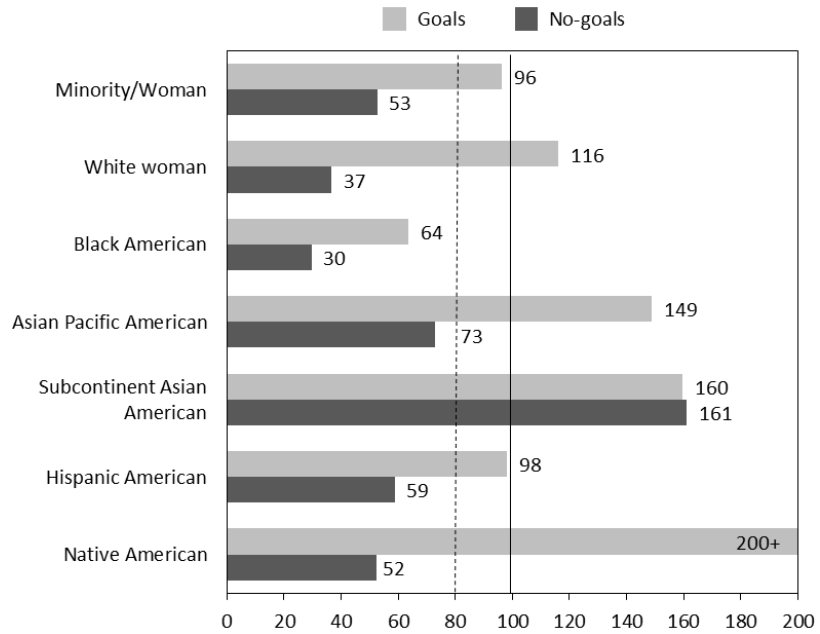
Note:

The study team analyzed 5,293 contract elements to which subcontracting goals applied. The study team analyzed 6,896 contract elements to which no subcontracting goals applied.

For more detail, see Figures F-14 and F-15 in Appendix F of the 2017 LA Metro Disparity Study.

Source:

2017 LA Metro Disparity Study.



The results presented in Figure 6 indicate that Metro’s use of DBE goals is effective in encouraging the participation of minority-owned businesses and woman-owned businesses in its contracts. Moreover, those results indicate that when Metro does not use race-conscious and gender-conscious measures, most relevant business groups suffer from substantial underutilization in Metro contracting.

### Waiver Request

Several seminal court cases have indicated that, in order to implement the Federal DBE Program in a narrowly tailored manner, agencies should limit the use of race- and gender-conscious program measures to those groups “that have actually suffered discrimination” within their transportation contracting industries.<sup>11, 12</sup> Moreover, USDOT official guidance states that “even when discrimination is present in a state, a program is narrowly tailored only if its application is limited to those specific groups that have actually suffered discrimination or its effects.”<sup>13</sup> As provided in 49 CFR Part 26, such guidance is “valid, and express[es] the official positions and views of the Department of Transportation ... .”<sup>14</sup>

Results from the 2017 LA Metro Disparity Study indicated that most relevant business groups exhibited *substantial disparities*—that is, disparities whereby participation was less than 80 percent of availability—on key contract sets that the study team examined. However,

<sup>11</sup> *AGC, San Diego Chapter v. California DOT*, 713 F.3d 1187, 1191, 1199, 2013 WL 1607239 (9th Cir. April 16, 2013)

<sup>12</sup> *Western States Paving Co. v. Washington State DOT*, 407 F.3d 983, 997-98 (9th Cir. 2005), *cert. denied*, 546 U.S. 1170 (2006)

<sup>13</sup> United States Department of Transportation Official Questions and Answers (Q&A’s) Disadvantaged Business Enterprise Program Regulation (49 CFR 26), <http://www.dot.gov/osdbu/disadvantaged-business-enterprise/official-questions-and-answers-26>

<sup>14</sup> 49 CFR Section 26.9

Subcontract Asian American-owned businesses did not exhibit substantial disparities on key contract sets, including on no-goals contracts as presented above.

Metro intends to request a waiver that will allow the agency to limit its use of race- and gender-conscious measures (i.e., DBE contract goals) to those DBE groups for which compelling statistical evidence of discrimination—that is, substantial disparities between participation and availability on Metro’s transportation-related contracts—exists in the relevant geographic market area. Based on results from the 2017 Metro Disparity Study, Metro will request to limit its use of DBE contract goals to the following business groups: Black American-owned DBEs, Hispanic American-owned DBEs, Native American-owned DBEs, Asian Pacific American-owned DBEs, and woman-owned DBEs. Metro would not consider Subcontinent Asian American-owned DBEs as eligible for DBE contract goals at this time.

Once Metro receives approval for its waiver request, Metro will notify the contracting community of any change to the implementation of contract-specific goals. Metro will closely monitor the participation of Subcontinent Asian American-owned businesses in its transportation-related contracts. If the participation of Subcontinent Asian American-owned businesses decreases substantially, Metro will act immediately to withdraw the waiver.

### **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 through their website and had a 30-day comment period from May 11, 2018 through June 11, 2018. Additionally, Metro consulted with TBAC regarding the proposed goal on May 3, 2018 and will hold public hearings on May 17, 2018 and June 6, 2018 at Metro Headquarters. Comments on the goal methodology can also be submitted in writing by email [Goalcomment@metro.net](mailto:Goalcomment@metro.net); or by US mail or fax to: Los Angeles Metro, Diversity & Economic Opportunity Department, Mail Stop: 99-8-4, One Gateway Plaza, Los Angeles, CA 90012, Fax: (213) 92-2268.



# OVERALL DBE GOAL

*METRO BOARD  
JUNE 21, 2018*



**Metro**

## WHO MUST HAVE A DBE PROGRAM?

As a USDOT fund recipient, Metro is required to implement the DBE program. Every three years, Metro must set their overall goal for DBE participation.

Metro's proposed overall goal triennial period

- Federal Fiscal Year 2019 – 2021
- October 1, 2018 – September 30, 2021



**Metro**

# 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 awarded by Metro during the disparity study period (January 1, 2010 – December 31, 2015).

Potential DBEs	Availability Percentage			Weighted Average
	Construction	Professional Services	Goods and Other Services	
Black American owned	6.6 %	3.8 %	8.2 %	6.6 %
Asian Pacific American owned	1.3	3.0	1.6	1.5
Subcontinent Asian American owned	0.4	0.6	0.9	0.5
Hispanic American owned	14.4	3.6	23.1	14.7
Native American owned	0.1	0.0	2.5	0.5
White woman owned	0.6	2.8	14.5	3.2
<b>Total potential DBEs</b>	<b>23.3 %</b>	<b>13.7 %</b>	<b>50.9 %</b>	<b>27.0 %</b>
<b>Industry weight</b>	<b>72 %</b>	<b>11 %</b>	<b>17 %</b>	

## CALCULATING THE BASE FIGURE

Anticipated projects for fiscal years 2019-2021 in construction, professional services, and goods and other services are similar to the projects studied as part of the 2017 LA Metro Disparity Study. Metro determined that no adjustment to the base figure was warranted.



## RACE-/GENDER-CONSCIOUS MEASURES

### Substantial disparities\*

- African American-owned businesses
- Asian-Pacific American-owned businesses
- Hispanic American-owned businesses
- Native American-owned businesses
- White women-owned businesses

### No substantial disparities\*

- Subcontinent Asian American-owned businesses\*\*



**Metro**

\*Based on disparity analysis

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

## WAIVER FOR SUBCONTINENT ASIAN AMERICAN-OWNED BUSINESSES

Ineligible for race-/gender-conscious measures  
(contract goals)

But:

- Still included in DBE Program
- Utilization still counts toward overall DBE goal
- Still eligible for neutral program measures
- Minority women-owned businesses still eligible
- Metro will monitor utilization of all DBE groups

Medium Size Business Enterprise Program



**Metro**

The top portion of the image features a green circular area containing several white, three-dimensional, stylized letters that resemble the letters 'M' and 'A'. The letters are set against a background of concentric curved bands in orange and dark grey.

Thank you



Metro®