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# **Executive Summary: Proposed EPA DBE Goals, Metropolitan Council FY 2024 - 2026**

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Executive Summary: 09/01/2023

## Summary

The Metropolitan Council is the regional policy-making body, planning agency, and provider of essential services in the seven-county Twin Cities metro area. On April 1, 2023, the Metropolitan Council contracted with the Roy Wilkins Center, Hubert H. Humphrey School of Public Affairs, to produce proposed Disadvantaged Business Enterprise (DBE) program goal goals for fiscal years 2024-2026 on its Environmental Protection Agency- (EPA) funded expenditures.

In 2009, the Metropolitan Council received authorization from the EPA to set goals in compliance with the federal regulations governing the *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* (hereafter referred to as “USDOT regulations”).<sup>1</sup> A unique challenge to applying the US-DOT methodologies for recommending DBE goals for EPA projects of the Metropolitan Council is that there are relatively few prime contracts and even fewer DBE prime contractors, making conventional modeling of the adjustment to base goals unreliable. Moreover, the same number of firms on some of the lists used to measure availability produces the problem of small sample bias.

There were 55 prime contracts for the six years of data used. Of that total, only one prime was awarded to a DBE for \$500,000 (or 0.1 percent of the total). During the same period, there were 477 subcontracts, totaling \$106,623,634.73, of which 279 were awarded to DBEs (58.5 percent), where DBE share of total subcontract dollars equaled \$37,538,337.85 (35.2 percent). The average DBE subcontract award equaled \$134,546.01, while the average non-DBE subcontract award equaled \$348,915.64. This means that while DBEs received the vast majority of subcontracts, the average size of non-DBE subcontracts was more than 2.5 times larger than the average size of DBE contracts -- contradictory measures of the success of DBEs in the EPA competition.

Moreover, using two conventional measures of availability adapted from DBE goal setting in FTA/FHWA setting—Bidders Lists and Vendors Lists— the research team uncovered uncharacteristically large DBE availability, far above current utilization. Three other measures of availability used in the analysis produce base goals on a smaller order of magnitude.<sup>2</sup>

Accordingly, the research team recommends that the Metropolitan Council focus on the availability rates from the three most reliable methods summarized in this report. The proposed EPA DBE goal for 2024-2026 is reported in Table 1. The base goal is 9.9%. An adjustment to the base goal due to prior unexplained gaps in contract and subcontract awards of 19.9% raises the base goal to an adjusted goal of 11.9%. The race-neutral portion of the adjusted DBE goal is 6.5% and the race-conscious portion is 5.4%.

**Table 1.** Proposed Metropolitan Council EPA DBE Goals FY 2024–2026

Type	3 Availability Methods <sup>a</sup>
<b>Base Goal</b>	9.9% <sup>b</sup>
<i>Discrimination Gap for Adjustment</i>	19.9%
<b>Adjusted Goal</b>	<b>11.9%</b>
<b>Race-Neutral (RN) Goal</b>	6.5%
<b>Race-Conscious (RC) Goal</b>	5.4%

Source: RWC analytical methods and data sources are fully detailed in the Technical Report and Appendices.

<sup>a</sup>DBE Method, Dun & Bradstreet, American Business Survey

<sup>b</sup>Weighted Average of Base Goals computed using the DBE Method, D&B, and the American Business Survey. See Table 4 for details.

<sup>1</sup> See next section “Background” for a summary of the legal history and the eventual dismissal of reporting requirements for DBE goals setting on EPA-funded projects.

<sup>2</sup> See Table 4B for Availability Rates and the Base Goal calculated using the DBE Method, the Dun & Bradstreet Method and the American Business Survey.

## Background

On July 9, 2009, the Metropolitan Council received authorization from the U.S. Environmental Protection Agency (EPA) to meet the requirements for disadvantaged business enterprises (DBEs) inclusion and participation in projects supported under EPA assistance agreements by mirroring the US Department of Transportation's DBE program requirements under 49 C.F.R. §26.45.<sup>3</sup> Although EPA suspended the requirement that financial assistance recipients negotiate fair share objectives for DBE participation in EPA-funded contracts in October 2019,<sup>4</sup> Metropolitan Council has continued to adopt procurement goals that promote greater inclusion and identification of DBE entities in the Twin Cities area.

Therefore, this three-year goal is to be established in compliance with the federal regulations governing the *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs* (hereafter referred to as "USDOT regulations"). The USDOT regulations provide guidance to state and local grant recipients on how establish their annual DBE goal.

The current report uses this guidance and uses the best available data on contract awards, availability of DBEs in the relevant industries and geographic market areas to produce proposed base goals, any adjustments to the base goals, and estimation of the maximum portion of the adjusted goals that can be achieved through race-neutral means.

Between July 2015 and June 2022, Metropolitan Council issued 55 prime contracts totaling \$346,863,481.25. For these years the DBE share of prime contract awards was 1.8 percent, and its share of prime contract award dollars was 0.1 percent. The DBE share of subcontract awards was 58.5 percent, and the DBE share of subcontract dollars was 35.2 percent.

## Methodology

As a first step, the research team must determine availability rates in well-defined geographic market areas (GMAs). The second step is to produce any adjustments to the base DBE goal. A final step is to propose the maximum portion of the goal that can be achieved through race-neutral means.

### Geographic Market Area

The research team established four different geographic market areas (GMAs) displayed in Table 3. All four are political jurisdictions defined by different aggregations of counties within Minnesota. Almost all Metropolitan Council's contracts have been within Minnesota, including vendors from other states with only a branch office in Minnesota.

### Availability Analysis and Base Goal

In computing availability to determine a Base Goal, RWC used three different data bases and approaches (DBE Method, Dun & Bradstreet Method, and the Annual Business Survey). For each method, the weights used are based on the share of contract dollars awarded within the defined GMAs. The availability rates were appropriately weighted by Metropolitan Council's expenditure projections to produce a base goal. Each of these methods have

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<sup>3</sup> US Environmental Protection Agency (EPA), Region 5, Letter from Adrienne M. Callahan, Disadvantaged Business Coordinator to Wanda Kirkpatrick, Director, Office of Diversity and Equal Opportunity, Metropolitan Council, July 9, 2009.

<sup>4</sup> Effective October 1, 2019, EPA approved a Class Exception to 40 CFR Part 33, Subpart D that included a requirement that recipients of federal assistance agreements negotiate a fair share requirement objective for minority business enterprises and women-owned business enterprises.

advantages and disadvantages summarized in the Technical Report. Table 4 reports the details of the calculations of the base goals by GMA and method.

### **Adjusted Goal**

Regression analysis was used to estimate the percentage of the gap in contract awards between DBE and non-DBE prime and subcontractors that could not be explained by measured factors such as size, tenure, credit risk, year, location and industry. This unexplained gap is a proxy for the difference in outcomes due to unequal treatment of equally qualified DBEs and non-DBEs. The estimated adjustment factor equals 19.9 percent. This the adjusted goal is the base goal (9.9%) times the adjustment (1.199) or **11.9 percent**.

### **Race Neutral Portion of Base Goal**

The base goal is then partitioned between its race-conscious and race-neutral portion.<sup>5</sup> The methodology for computing the race-neutral portion of the DBE goal estimates the maximum share of the goal that can be achieved through race-neutral means. The logic of the analysis is that some share of previous DBE dollars awarded would have gone to DBEs without goals. The race-neutral analysis uses the best regression model that control for a list of relevant variables to predict DBE contract amounts with and without goals.<sup>6</sup>

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<sup>5</sup> Race-conscious and race-neutral portions of the goals are computed using a methodology upheld by the 3rd Circuit Federal Court in *GEOD v. New Jersey Transit* and published in the peer-reviewed journal *Applied Economics Letters*.

<sup>6</sup> Myers and Ha have pioneered the use of a detailed econometric procedure that maximizes the race-neutral component of the DBE goals.

## Summary Tables

**Table 2.** DBE Share of EPA Awarded Contract Amounts (2016-2022)

Type	N	Average Contract Amount	Total Contract Amount	Share
<b>Prime Contracts</b>				
DBE	1	\$500,000.00	\$500,000.00	0.1%
Non-DBE	54	\$6,414,138.54	\$346,363,481.25	99.9%
Total	55	\$6,306,608.75	\$346,863,481.25	100.0%
<b>Subcontracts</b>				
DBE	279	\$134,546.01	\$37,538,337.85	35.2%
Non-DBE	198	\$348,915.64	\$69,085,296.88	64.8%
Total	477	\$223,529.63	\$106,623,634.73	100.0%
<b>Both Prime and Subcontracts*</b>				
DBE	280	\$135,851.21	\$38,038,337.85	11.0%
FY 2016	45	\$83,330.72	\$3,749,882.59	14.2%
FY 2017	6	\$113,441.67	\$680,650.00	11.1%
FY 2018	39	\$198,543.68	\$7,743,203.43	13.8%
FY 2019	66	\$58,297.45	\$3,847,631.95	8.1%
FY 2020	45	\$157,002.74	\$7,065,123.38	9.6%
FY 2021	24	\$138,740.40	\$3,329,769.50	6.2%
FY 2022	33	\$229,329.61	\$7,567,877.00	16.0%
FY 2023	22	\$184,281.82	\$4,054,200.00	11.1%
Total	280	\$135,851.21	\$38,038,337.85	11.0%

Source: RWC analytical methods and data sources are fully detailed in the Technical Report and Appendices.

\* The denominator of the share is total prime awarded contract dollars.

**Table 3.** Metropolitan Council Geographic Market Areas (GMAs) for EPA DBE Goals (2016-2022)

Geographical Market Area	GMA	Prime Contracts only			Subcontracts only		
		N	Contract Amount	Share	N	Contract Amount	Share
Total		55	\$346,863,481.25	-	477	\$106,623,634.73	-
All counties in MN	GMA-1	52	\$346,241,881.25	99.82%	432	\$96,758,514.45	90.75%
MN 9 counties <sup>a</sup>	GMA-2	52	\$346,241,881.25	99.82%	369	\$80,297,417.54	75.31%
Twin Cities MSA (15 counties) <sup>b</sup>	GMA-3	47	\$238,547,718.96	68.77%	416	\$92,648,329.66	86.89%
MN 7 counties <sup>c</sup>	GMA-4	46	\$238,474,118.96	68.75%	364	\$77,327,058.47	72.52%

Source: RWC analytical methods and data sources are fully detailed in the Technical Report and Appendices.

<sup>a</sup> MN 7 counties plus Crow Wing and Meeker

<sup>b</sup> For primes, no contracts are awarded in 7 counties - Chisago, Issanti, Le Sueur, Mille Lacs, Sherburne and Wright in MN, and Pierce, WI. For subs, no contracts are awarded in 3 counties - Le Sueur and Mille Lacs in MN and Pierce, WI.

<sup>c</sup> Anoka, Carver, Dakota, Hennepin Ramsey, Scott, and Washington

**Table 4.** EPA Weighted Availability Rate<sup>a</sup> and Base Goal by Method

Method	GMA1	GMA2	GMA3	GMA4	Weighted average	Base Goal
<b>ABS List Method</b>	10.72%				10.72%	<b>9.94%</b>
<b>DBE List Method</b>	6.58%	13.31%	13.22%	13.92%	11.45%	
<b>Dun &amp; Bradstreet List Method</b>	6.19%	8.28%	7.86%	8.65%	7.65%	

Source: RWC analytical methods and data sources are fully detailed in the Technical Report and Appendices.

<sup>a</sup> Weighted by GMA’s contract amount

GMA1: State of Minnesota

GMA2: 9 Counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Crow Wing and Meeker)

GMA3: Twin Cities MSA (15 Counties: Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington, Isanti, Le Sueur, Mille Lacs, Sherburne, Wright, Chisago of MN; Pierce, St. Croix of WI)

GMA4: 7 Metro Counties (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, Washington)