

Management Committee

For the Metropolitan Council meeting of July 26, 2017

Subject: Metropolitan Council Triennial FTA DBE Program Goal

Proposed Action

That the Metropolitan Council approve the Triennial FTA DBE Program Goal as recommended by staff.

Summary of Committee Discussion/Questions

Staff from the Council's Office of Equal Opportunity, Wanda Kirkpatrick (Director), Tracey Jackson (Manager of Small Business Programs), and Kevin Murphy (Program Technical Specialist) presented this business item and corresponding PowerPoint presentation that summarized the recommended FTA DBE program goal.

Motion by Rummel, seconded by Barber.

Councilmembers discussed the recommended DBE program goal:

- Councilmember Cunningham inquired about the data and methodology used in arriving at the proposed program goal and about the Council's past DBE program goals. Ms. Kirkpatrick stated the U.S. Census Bureau gathered the data staff used for preparing the recommendation and was current as of 2015. Mr. Murphy explained that the methodology used was described in the DBE regulations, with clear steps and analyses staff must follow. Finally, Ms. Jackson listed the last three DBE program goals: 15%, 15.5%, and 15%.
- Councilmember Cunningham began a discussion stating that he believed the Council should set a higher, more aggressive DBE program goal since the Council has had success in achieving these goals. Councilmember Rodriguez stated that she felt more comfortable setting a goal that she knew was achievable than a goal she didn't know the Council could meet. Council member Mellander noted that the Council's current goal of 15% is higher than the goal set by the Minnesota Department of Transportation, and that the Council has had more success in meeting its goal. Additional discussion continued about which agencies are appropriate comparisons for the Council.
- Discussion also included Ms. Kirkpatrick clarifying the role of the program goal compared to project specific DBE goals, stating that the program goal is a baseline that must be achieved at the end of the three-year period, while project specific goals can be set higher or lower than the program goal to account for the availability of DBEs. Ms. Kirkpatrick also distinguished between workforce participation goals and small business contracting goals, noting that the DBE program goal relates to inclusion of small businesses on projects and not to the participation of workers who are women or people of color. Staff and presentation materials also noted that failing to submit this DBE program goal to the FTA by August 1st could jeopardize federal funding for future capital projects, including Southwest LRT.

The motion passed with a 5-1 vote.

Management Committee

For the Management Committee meeting of July 12, 2017

For the Metropolitan Council meeting of July 26, 2017

Subject: Metropolitan Council Triennial FTA DBE Program Goal

District(s), Member(s): All

Policy/Legal Reference: United States Department of Transportation Disadvantaged Business Enterprise Program (49 C.F.R. 26; 26.45)

Staff Prepared/Presented: Wanda Kirkpatrick, Director, Office of Equal Opportunity, 651-602-1085; Aaron Koski, Assistant Director, Office of Equal Opportunity, 651-602-1426; Tracey Jackson, Manager of Small Business Programs, 612-349-7695

Division/Department: Office of Equal Opportunity/Regional Administration

Proposed Action

That the Metropolitan Council approve the Triennial FTA DBE Program Goal.

Background

The U.S. Department of Transportation requires that agencies like the Council administer a DBE program on projects receiving federal funding. The DBE regulations describe many requirements the Council must satisfy to remain eligible for future USDOT funding. One requirement is that the Council engage in an analysis of future transportation spending to set an overall triennial DBE program goal. This program goal helps the Council set subcontracting inclusion goals on specific transportation projects that receive USDOT funding.

The Council is recommending a 15% overall DBE goal for FY 2018-2020.

This item was presented as an Information Item at the July 10 Transportation Committee.

Rationale

Staff from the Office of Equal Opportunity followed a methodology described by the DBE regulations. To arrive at the recommended 15% DBE program goal, OEO staff:

1. Calculated the availability of DBE companies compared to all businesses in the Minneapolis – Saint Paul statistical area that can perform work typically used on projects that receive USDOT funds;
2. Estimated future Council spending on transportation projects;
3. Weighed this future spending with the availability of DBEs in the region; and
4. Adjusted these figures by considering the levels of past DBE participation on Council projects.

OEO staff met with the following partners to gain information on the health of DBEs in the region. Our staff spoke with representatives from:

Association of Women Contractors
National Association of Minority Contractors
Associated General Contractors
Metropolitan Economic Development Association

The Council held a public comment period from June 7 through July 7th to gather feedback on the proposed DBE program goal. As of June 21st, OEO has received 9 comments from the public, which include general statements of support (or lack of it) for the Met Council and the Southwest project, requests to increase or decrease the goal, and technical questions that OEO staff have answered.

OEO staff hosted 2 open houses during the public comment period: one in Minneapolis on June 13 and a second in Saint Paul on June 20. A total of nine people attended the open houses. OEO staff received several questions during these open houses, including questions about the methodology used to arrive at a 15% program goal, general questions on how the Council administers its DBE program, clarifications about the ecosystem in the region for small business and certification programs, and questions about doing business with the Council.

The Council distributed notice of the public comment period and open houses through a variety of groups that included over 15,000 recipients.

Thrive Lens Analysis

The DBE program seeks to ensure nondiscrimination in how DOT funded projects are awarded and administered. The triennial DBE program goal methodology helps the Council implement a program that is narrowly tailored, while creating a level playing field and removing barriers for DBEs, as well as promoting their use on Council transportation projects.

This 15% recommendation reflects the level of DBE participation that the Council would expect absent the effects of discrimination in the region.

Overall, approval of the triennial DBE program goal advances equity and other Thrive outcomes. This approval helps ensure that the Council's DBE program remains in federal compliance, thereby retaining the Council's eligibility to receive future USDOT funding. In addition, this action supports the region's women and minority owned small business community by removing barriers which prevent subcontracting inclusion.

The Council doesn't envision any scenarios where Thrive outcomes would be compromised by approving the Council's triennial DBE program goal.

Funding

The Council's triennial DBE program goal and the implementation of the DBE program are achieved using general operating funds.

Known Support / Opposition

There is no known opposition to the proposed action.

The following is a summary of the method used to calculate the weighted relative availability and other values in the table.

I. Step One

The base figure was calculated using the relative availability of ready, willing and able (RWA) DBEs weighted by budget estimates and scopes of future projects.

The availability of RWA DBEs was determined by what percentage DBEs represent of all RWA in the Minneapolis-Saint Paul Metropolitan Statistical Area (MSA), as outlined by the Office of Management and Budget. The Minneapolis-Saint Paul MSA was chosen as the local market area for contractors and subcontractors for the Metropolitan Council because it represents the geographical area in which the majority of contractors are located. This area includes the seven counties under Metropolitan Council jurisdiction, as well as nine additional surrounding counties in Minnesota and western Wisconsin. Census data provides the overall pool of RWA firms in the Minneapolis-Saint Paul MSA by NAICS code. The DBE Directory can be used to find the pool of RWA DBEs in the Minneapolis-Saint Paul MSA by NAICS code, as well.

Budget estimates and scopes of future projects provide the breakdown of how funding will be allocated to different functions as determined by NAICS code. This provides a percentage of future funding that will be used on a project for individual NAICS codes.

By weighting the percentage of RWA DBEs and future spending estimates for each NAICS code, a more accurate measure for the actual relative availability of DBEs to perform future contracts. These calculations yield an unadjusted base figure of **11.7%**.

II. Step Two

DBE past participation can be used to adjust the base figure by averaging the unadjusted base figure with the median past participation rate. DBE participation in 2014, 2015 and 2016 was 26%, 14%, and 19%, respectively. To adjust for this past participation, the median of past participation, **19%**, can be averaged with the unadjusted base figure for an adjusted overall DBE triennial goal of **15 %**:

$$\frac{(11.7\% + 19\%)}{2} = 15\%$$

Figure I – Base Figure

The table below shows the projected future spending, availability of RWA DBEs and weighted availability for each NAICS code. The column for “Weighted Relative Availability” is the product of the columns for “Percentage of Future Spending” and “DBE Availability of RWA Firms.” The final unadjusted base figure, in the bottom right cell, is the sum of all values in the “Weighted Relative Availability” column.

NAICS Code	Projected Future Spending	Percentage of Future Spending	DBE Availability of RWA Firms	Weighted Relative Availability
237110	\$282,656,516	10.7%	8.4%	0.9%
237310	\$304,648,284	11.5%	21.7%	2.5%
238110	\$20,036,166	0.8%	5.9%	0.0%
238120	\$250,178,063	9.4%	23.3%	2.2%
238140	\$7,109,565	0.3%	4.3%	0.0%
238190	\$11,103,638	0.4%	23.0%	0.1%
238210	\$385,717,596	14.5%	3.2%	0.5%
238220	\$45,559,416	1.7%	1.2%	0.0%
238290	\$61,886,002	2.3%	3.4%	0.1%
238310	\$62,557,432	2.4%	5.3%	0.1%
238320	\$852,986	0.0%	4.6%	0.0%
238350	\$10,295,055	0.4%	6.4%	0.0%
238390	\$1,500,403	0.1%	7.6%	0.0%
238910	\$38,431,716	1.4%	9.2%	0.1%
238990	\$11,929,679	0.4%	3.7%	0.0%
332323	\$111,952,459	4.2%	24.1%	1.0%
333922	\$1,356,062	0.1%	7.1%	0.0%
423310	\$119,237	0.0%	1.1%	0.0%
423320	\$1,930,220	0.1%	10.0%	0.0%
423610	\$350,050,081	13.2%	8.7%	1.2%
444190	\$2,098,280	0.1%	2.5%	0.0%
484220	\$200,353,878	7.6%	18.3%	1.4%
488510	\$37,208	0.0%	1.3%	0.0%
517919	\$1,817,927	0.1%	7.7%	0.0%
541310	\$32,577,982	1.2%	5.4%	0.1%
541320	\$3,289,241	0.1%	23.8%	0.0%
541330	\$369,417,428	13.9%	6.3%	0.9%
541340	\$450,000	0.0%	16.7%	0.0%
541360	\$3,951,384	0.1%	100.0%	0.1%
541370	\$36,184,884	1.4%	18.4%	0.3%
541380	\$4,277,344	0.2%	2.3%	0.0%
541490	\$675,000	0.0%	26.7%	0.0%
541611	\$19,405,805	0.7%	2.6%	0.0%
541614	\$5,456,082	0.2%	10.7%	0.0%
541820	\$12,179,099	0.5%	9.9%	0.0%
561730	\$932,698	0.0%	2.1%	0.0%
TOTAL	\$2,652,974,816	100%		11.7%

Appendix I – Weighting Relative Availability

The example below shows how weighting DBE relative availability by using its share of spending provides a more accurate base figure that can be used for goal setting.

Example

A project has a total budget of **\$10,000,000** with a scope of work split between two NAICS codes:

NAICS Code	Allocated Budget	Number of RWA DBEs	Number of RWA Firms	DBE Relative Availability
237310 - Highway, Street and Bridge Construction	\$8,000,000	23	106	21.7%
238910 - Site Preparation Contractors	\$2,000,000	35	382	9.2%

To calculate the relative availability of DBEs for this project, the number of RWA DBEs would be divided by the total number of RWA firms for those two NAICS codes:

$$\frac{23 \text{ DBEs in } 237310 + 35 \text{ DBEs in } 238910}{106 \text{ Firms in } 237310 + 382 \text{ Firms in } 238910} = \frac{58}{488} = \mathbf{11.9\%}$$

This would represent a base figure of **11.9%** that would be used for goal setting. However, this does not account for the fact that 80% of the project's budget is allocated to NAICS code 237310, which has a higher DBE relative availability.

In order to use the allocated budget as a weight for each NAICS code, the figure for each code's DBE relative availability would be multiplied by its share of the total budget:

$$\left(\frac{23 \text{ DBEs}}{106 \text{ Firms}} \times 80\% \text{ of budget}\right) + \left(\frac{35 \text{ DBEs}}{382 \text{ Firms}} \times 20\% \text{ of budget}\right) = (21.7\% \times 80\%) + (9.2\% \times 20\%) = \mathbf{19.2\%}$$

The weighted calculation yields a base figure of **19.2%**, a value closer to the 21.7% relative availability of the type of work that will receive a majority of the project's funding.

Metropolitan Council FTA DBE Three Year Goal



FTA DBE Program

- Federal program to create a level playing field for DBEs and ensure nondiscrimination in the awarding of contracts (49 CFR §26)
- Each recipient of USDOT funding is responsible for setting a overall program goal every three years
- Goal for FY 2015-2017 was 15%
 - 86 awarded contracts
 - Total value of awarded contracts was \$56,924,888

FTA DBE Program 3 Year Goal

- Goal methodology prescribed in 49 CFR §26.45 (c) & (d)
- Reflects level of DBE participation we would expect absent effects of discrimination
- Recommended 15% Goal for FY 2018 – 2020



Goal Calculation Methodology

Step One – Determining a Base Figure

- DBE Relative Availability is weighed by estimates of future spending
 - Takes into account what types of firms are typically used in projects assisted by USDOT funds

Step Two – Adjustments

- Levels of past DBE participation on Council projects

Determining Relative Availability

- Firms in MPLS-St. Paul Metropolitan Statistical Area
 - Ready, willing and able (RWA) DBEs: MNUCP DBE Directory
 - All RWA firms: US Census Bureau's *American FactFinder*
- Determined Relative Availability by individual six-digit NAICS code

Number of RWA DBEs for NAICS code (*MNUCP DBE Directory*)

Number of all RWA firms for NAICS code (*Census Bureau*)

Weighting Relative Availability

- Relative availability shows the raw percentage of RWA DBEs as part of the overall pool
- Relative availability can be weighted by total spending for a more accurate number for goal-setting



Base Figure

- Future spending estimates include:
 - 98 projects
 - 9 categories of projects
 - Work across 36 NAICS codes
- Using relative availability & percentage of future spending for each NAICS code, the weighted availability provides a base figure of **11.7%**

Weighted Base Figure

- Median past DBE participation from 2014-2016 was **19%**
- The adjusted base figure is the average of the base figure & median past participation:

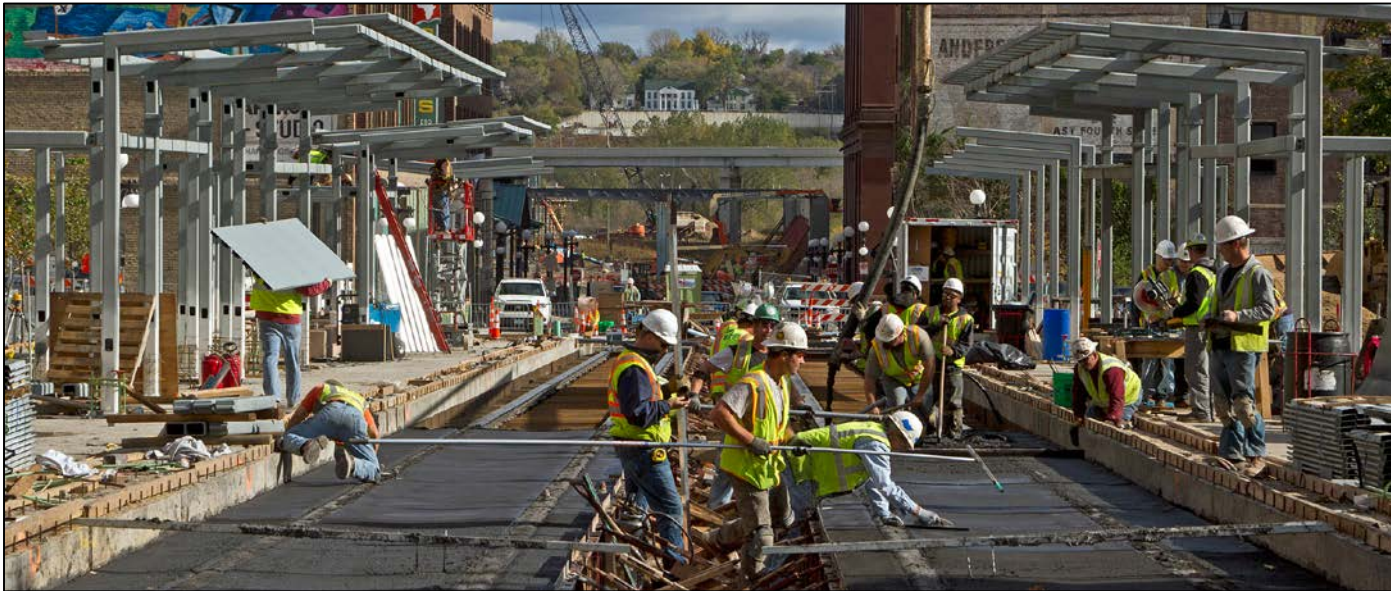
$$\text{Adjusted Base Figure} = \frac{11.7\% + 19\%}{2} \approx 15\%$$

Rationale

- Upcoming triennium is very difficult in comparison to previous years
 - SWLRT & BLRT construction
 - FY 2015-2017 had a total of **\$56,924,888** in awarded projects
 - FY 2018-2020 triennium projected to have contracts totaling **\$2,652,974,816**
- DBE pool is finite & there is concern that the DBE pool would be exhausted by larger projects

Recommendation

- The goal methodology prescribed by regulation calls for a 15% DBE goal for the years of FY 2018-2020



Next Steps

- 30 day Public Comment period from June 7th to July 7th
- Stakeholder input sessions
- Two open house events:
 - June 13th – UROC
 - June 20th – MLK Center
- Council Management and Transportation Committees
- Full Metropolitan Council Meeting
- Submission to FTA on August 1st