

Music City Star East Corridor Commuter Rail Project
Disadvantaged Business Enterprise Program
Fiscal Year 2007 / 2008 - Annual Goal

Submitted to the
Federal Transit Administration

Submitted by
Regional Transportation Authority



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PURPOSE

The Regional Transportation Authority (RTA) is a regional agency created by Tennessee state statute in 1988 to plan and develop a regional transit system to meet the growing commuter and travel demands of the greater Nashville region. The RTA is a nine-county regional agency. The nine member counties of the RTA are: Cheatham, Davidson, Dickson, Maury, Robertson, Rutherford, Sumner, Williamson, and Wilson. The RTA has received funding assistance from the Federal Transit Administration (FTA) to develop the first of several planned transit corridors, the Music City Star East Corridor Commuter Rail Project. As a condition of receiving this funding assistance, the RTA annually develops, per 49 CFR Part 26, an annual goal for the Disadvantaged Business Enterprise (DBE) Program. It should be noted that the RTA had no prior history tracking DBE participation until February 2001. This document presents the RTA annual DBE goal for fiscal year 2007 and provides a description of the methodology utilized to determine this figure. The RTA will submit its overall goal to FTA annually on or before August 1.

AMOUNT OF GOAL

49 CFR Parts 23 and 26 specify that the RTA, as an FTA recipient agency, must set an overall DBE goal for its DBE Program and prescribes various methods of calculating this goal. In accordance with this regulation, one method the RTA may use to calculate its DBE goal is to adopt a goal developed by another Department of Transportation (DOT) recipient so long as that agency procures from the same general area as the RTA. The RTA, which serves nine counties that encompass the greater Nashville area, has opted to base the methodology for development of the goal on that developed by the Tennessee Department of Transportation (TDOT). This is appropriate since the TDOT is a DOT recipient agency.

Utilizing the same methodology applied by TDOT, the RTA has determined that, based on planned expenditures on its FTA assisted projects in the market-place categories of operations and maintenance and marketing and public relations, and the availability of DBE firms, a DBE goal of 5.0% of the federal financial assistance expended in DOT-assisted contracts may be set for FFY 2008.

The RTA set a goal for FFY 2007 of 6.5% DBE utilization. The current utilization is 3.25%.

The RTA has experienced a reduction in DBE participation with the transition from design and construction to an operating agency. Expenditures on construction activities for FY 2006 - 7 were \$23,498,896 with utilization at 6.48%. The low percentage is the result of several factors, many being the lack of DBE firms with signal or bridge experience in the market.



Based on this experience, the RTA believes the 5.0% goal for FFY 2008 is reasonable and achievable. This will be race neutral.

“Race neutral” is defined as not having race or gender specific goals on projects, but counting all participation of DBE subcontractors utilized by contractors on projects. Additionally “race neutral” under the consultant program is defined as not assigning preference points on projects for prime consultants who were either DBEs or who utilized DBEs for a certain percentage of work but counting all participation of DBE prime consultants or DBE sub-consultants utilized on projects.

The new federal rules state: Subject to the approval of the USDOT, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

A presentation of the methodology utilized to determine the RTA FY 2008 DBE goal is provided in the following pages.

METHODOLOGY

The RTA uses the relative availability methodology. This methodology requires counting the number of DBE firms in the TDOT DBE certification list and dividing this number by the total number of available firms in relevant NAICS codes, including DBEs, derived from the US Census Bureau’s 1999 County Business Patterns database. The relative availability of DBEs in major NAICS groups was calculated and these percentages were weighted according to the likely amounts of DOT assisted contracts to equal the base figure for DBE participation.

Methodology for 2007:

Step 1 – Determination of the Base Figure

RTA uses TDOT data due to the fact that most of the contractors bidding on RTA work are from the contracting pool. RTA also uses TDOT as the certifying agency for DBEs. The TDOT measure of the available contractors in the state of Tennessee is a fair and accurate representation. TDOT has a listing of contractors in the state and surrounding areas that are qualified to do business. These contractors represent the contractors available for operating and maintaining a railroad and equipment and marketing and public relations. The RTA’s major source of contracts is the commuter rail service, which also pulls from the TDOT contractor list for these same types of firms.



Pre-qualified DBE Firms on TDOT bidders list	Total TDOT Pre-qualified Firms on Bidders list	Relative Availability
231	5560	4.15%

Step 2 – Adjust the Base Figure

Guidance from the 49 CFR Parts 23 and 26 states to ensure they arrive at goals that truly and accurately reflect the participation they would expect absent the effects of discrimination, recipients must go beyond the formulaic measurement of current availability to account for other evidence of conditions affecting DBEs. To accomplish this second step, recipients must first survey their jurisdiction to determine what types of relevant evidence is available to them.

To arrive at the proposed goal, the proposed 5.0% was adjusted based on the following significant criteria:

- 1. Personal Net Worth** – The DBE owner (s) must have a PNW of \$750,000 or less in order to be considered economically disadvantaged. Company owners are allowed to deduct their primary residence and their business to calculate PNW. Consultants have two types of pre-qualification. Technical pre-qualification is required of all consultants in particular categories such as surveying or geotechnical engineering. The second type of pre-qualification is administrative which requires all companies with contracts over \$250,000 to be pre-qualified.
- 2. Over Concentration** – Another change which has the potential to impact the goal is the issue of over-concentration. Under the 49 CFR Part, when the Department determines the DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the Department must devise appropriate measures to address this over concentration. At this time, this issue has not been raised in the Department. However, since the Department has been put on notice regarding these areas, it is raised as a potential issue affecting the goal. Since an amount and potential remedies, if over-concentration is substantiated, are not available, the Department will not assign an estimate to this potential factor, but acknowledges that it will have impact.
- 3.** The RTA has experienced a significant reduction in DBE participation with the transition from the design and planning phase of the commuter rail project into construction.

The relevant evidence the RTA has to determine the DBE utilization is contracts that have been awarded. The main source of contracting opportunity the RTA has is the



commuter rail service and the on call marketing services contract. The Operations and maintenance contractor hires a DBE service to perform all of the train cleaning activities. The on call marketing services contract was awarded to a DBE firm. Based on this information and evidence, the RTA believes the goal for DBE participation for the FFY 2008 to be 5.0%. This is a reasonable and achievable goal for the agency as the commuter rail project moves into the operations phase.

The 5.0% goal for FFY 2007 is race neutral.

Race-Neutral Measures:

- a) The RTA will provide information on business opportunities for the DBE firms through the use of local newspaper and other media as well as the RTA website.
- b) The RTA will encourage the formation of joint ventures among DBE firms and between disadvantaged and non-disadvantaged firms that provide opportunity for DBE firms to gain experience.
- c) The RTA will consider establishing pro-rated and delivery schedules so as to minimize cash flow problems faced by small firms.
- d) The RTA will offer information on its organizational and contractual needs.
- e) The RTA will provide DBE firms with the opportunity to review and evaluate similar successful bid documents.
- f) The RTA will evaluate timing, contract size, and bid document complexity. Attention will be focused on minimizing unintended barriers to competition by DBE firms.
- g) The RTA will cooperate with financial institutions, insurance and bonding companies, and prime contractors in an effort to alleviate financial barriers to participation.
- h) The RTA will hold pre-bid and pre-proposal conferences on all major contracts to provide firms with the opportunity to have questions answered and to provide the Authority an opportunity to explain DBE requirements.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- DBE participation on a prime contract exceeding a contract goal;
- and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.



Public Participation

In an effort to establish a level playing field for the participation of DBEs on RTA projects, and in accordance with 49 CFR Part 26 § 26.41 (g), the RTA will provide for public participation prior to establishing and adopting the DBE goal. Additionally, the RTA will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations that may have a vested interest in the RTA Music City Star East Corridor Commuter Rail project.

A published notice announcing the RTA proposed overall goal will be made. The notice will inform the public that the proposed goal and its rationale are available for inspection at RTA headquarters for a 30-day period from the date of the notice, and furthermore informing the public that RTA will accept comments on the goals for 45-days from the date of the notice.

Upon consideration of all public comment, the RTA will adopt a final DBE goal figure for FFY 2008.

Conclusion

It is recommended that a DBE utilization goal of 5.0% for FFY 2008 be presented for public review for a period of 30 days. Public comment may be received up to 15 days beyond the review period. Upon consideration of any and all public comments regarding the goal, and potential adjustments to address items identified during this process, it is further recommended that this goal be adopted by the RTA.