

Council Meeting of
June 12, 2012

Honorable Mayor and Members
of the City Council
City Hall
Torrance, California

Members of the Council:

SUBJECT: Transit – Approve Transit Disadvantaged Business Enterprise Goal for Federal Fiscal Year 2013-2015.

RECOMMENDATION:

Recommendation of the Transit Director that City Council approve the Overall Disadvantaged Business Enterprises (DBE) Goal of 4% for FFY 2013-2015, for submission to the Federal Transit Administration (FTA).

FUNDING:

City Council approval of the established Overall DBE Goal for Federal Fiscal Year 2013-2015 is required to ensure compliance with Department of Transportation's (DOT) - FTA federal funding requirements, provisions and financial responsibilities. Failure to do so by the August 1, 2012 timeline would jeopardize the Torrance Transit Systems' federal financial assistance.

BACKGROUND & ANALYSIS:

Transit is required to develop and submit an Overall Goal for DBE participation on U.S. Department of Transportation - (FTA) assisted contracts, as a condition of federal financial assistance, pursuant to recently revised regulations set forth under Title 49 CFR Part 26; Participation by Disadvantaged Business Enterprises in Torrance Transit Systems' Programs. In accordance with these DBE regulations, the Transit has established an Overall DBE Goal for Federal Fiscal Year 2013-2015 to ensure full compliance with relevant regulatory requirements.

The Established Overall Annual DBE Goal of 4% for FFY 2013-2015 DOT- (FTA) assisted contracts addresses critical components and fulfills specific requirements for narrow tailoring in accordance with Title 49 CFR Part 26. Torrance Transit System's Established Overall DBE Goal was developed utilizing the federal prescribed two-step goal setting methodology. Step I included establishing a Base Figure utilizing quantifiable evidence to determine the relative availability of DBEs within specified industries identified as a part of the Agency's DOT- (FTA) assisted contracting projects anticipated to be awarded by the Torrance Transit System within FFY 2013-2015. The Agency utilized the Caltrans Calcert Directory of Certified DBE firms and the 2010 U.S.

Census Bureau County Business Patterns database to complete this step. Upon establishing the Base Figure, the Agency surveyed and assessed other known relevant evidence to determine what additional adjustments, if any, were needed to narrowly tailor the Base Figure to the Torrance Transit System's market area. Factors considered in the adjustment of the Base Figure included the historical and current capacity of DBEs measured by actual attainments on similar projects. Following the Council's approval of Established Overall Goal for FFY 2013-2015, staff will submit to FTA for their final review.

The Established DBE Annual Goal for Federal Fiscal Year 2013-2015 was once updated annually to maintain relevancy to local market conditions and factors impacting DBE availability. However, changes in Federal regulations and requirements now allows Transit to submit the goal once every three years, with annual updates and adjustments to the goal as necessary.

Additionally, Public Outreach was initiated on June 4, 2012 with a series of letters that included a copy of the proposed goal and goal setting methodology being sent to DBE community leaders. A Public Notice of the proposed goal was also published in two area publications (the Daily Breeze and La Opinion) the same day.

Respectfully submitted,



Kim Turner
Transit Director

CONCUR:



LeRoy J. Jackson
City Manager

Attachments: A) FFY2013-2015 DBE Plan

ATTACHMENT A

The logo for Torrance Transit features the words "TORRANCE" and "TRANSIT" in a bold, italicized, sans-serif font. A stylized, grey, curved shape resembling a wing or a transit line is positioned behind the text, extending from the top of "TORRANCE" and curving under "TRANSIT".

TORRANCE TRANSIT

Torrance Transit System

Proposed Overall Disadvantaged Business Enterprise Goal Methodology

for

FFY 2013/15

Submitted in fulfillment of:

*Section 1101 of the Transportation Equity Act for the 21st Century
Title 49 Code of Federal Regulations Part 26*

**TORRANCE TRANSIT SYSTEM
OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOAL AND METHODOLOGY
FOR
FEDERAL FISCAL YEARS (FFY) 2013/15
(Covering the period of October 1, 2012 to September 30, 2015)**

I. INTRODUCTION

Torrance Transit System (Torrance Transit) is required to develop and submit a Disadvantaged Business Enterprise (DBE) Overall Goal for DBE participation as a condition of receiving federal assistance, pursuant to Section 1101 of the Transportation Equity Act for the 21st Century; 49 CFR Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs”; and the Federal Transportation Administration (FTA) Master Agreement.

II. BACKGROUND

Effective April 24, 2006, Torrance Transit implemented a wholly race-neutral Disadvantaged Business Enterprise (DBE) program in accordance with directives issued by the Department of Transportation. As a result of the Ninth Circuit U.S. Court of Appeals decision in the Western States Paving Co. v. United States & Washington State Department of Transportation, the Federal Transit Administration (FTA) issued a NOTICE (guidance) (Docket No. FTA-2006-24063) on March 23, 2006 stipulating a Notice of New Policy implementation and requests for comments to Public Transportation Providers regarding DOT’s DBE Program.

PERTINENT ASPECTS OF THE GUIDANCE (NOTICE):

- If a recipient does not currently have sufficient evidence of discrimination or its effects, then the recipient would submit an all race-neutral overall DBE goal for FFY 2007 and forward.
- The recipient submission shall include a statement concerning the absence of adequate evidence of discrimination and its effects and a description of plans to either conduct a disparity/availability study or other appropriate evidence gathering process to determine the existence of discrimination or its effects on the recipient’s marketplace.
- An action plan describing the study and timeline for its completion should also be included.
- Effective April 24, 2006, FTA recipients, are required to implement a race-neutral DBE Program to ensure compliance with the Ninth Circuit Court’s decision in the Western States v. United States & Washington State DOT ruling.
- Recipients will be required to continue to monitor, collect and report participation and utilization of DBEs on Federal-aid contracts.
- All DOT Federal-Aid procurements shall contain Race-Neutral DBE solicitation and contract language.

The Torrance Transit System will take into consideration the results of the Caltrans and Metro Disparity Studies, which are currently still in progress, to determine if disparity exists for any of the protected classes under 49 CFR part 26 and whether or not a transition to a Race-Conscious DBE Program is warranted.

Accordingly, Torrance Transit hereby presents its Overall DBE Goal Methodology for FFY 2013/15.

III. DOT-ASSISTED CONTRACTING PROGRAM FOR FFY 2013/15

Table 1 represents Torrance Transit's DOT-assisted contracting program that was considered in preparing its **Overall DBE Goal-Setting Methodology**. The fiscal years' contracting program includes seven (7) DOT-(FTA) assisted projects, which include parts procurements, security system purchases, preventative maintenance, refurbishments, shop retrofitting and the purchase of service and relief vehicles, which were assessed in preparing the Torrance Transit's **Overall DBE Goal-Setting Analysis**. All projects listed have viable contracting and subcontracting possibilities and are anticipated to be awarded with the given federal fiscal years 2013/15, a required criterion for Overall DBE goal preparation.

Table 1

PROJECT	Total Estimated Project Cost	Estimated Federal Dollar Share of Construction	Estimated Federal Dollar Share of Professional Services	Estimated Federal Dollar Share of Materials & Supplies
Automatic Vehicle Locator (AVL) System	\$2,000,000	\$0.00	\$0.00	\$2,000,000
Garage Hoist	\$150,000	\$50,000	\$0.00	\$100,000
Bus Refurbishment	\$100,000	\$0.00	\$100,000	\$0.00
Preventative Maintenance	\$2,250,000	\$0.00	\$2,250,000	\$0.00
CNG Shop Retrofit	\$937,000	\$200,000	\$737,000	\$0.00
Fall Restraint System	\$75,000	\$0.00	\$25,000	\$50,000.00
Bus Purchase (40' CNG, ADA Compliant Bus)	\$2,338,900	\$0.00	\$0.00	\$2,338,900
TOTAL NON-EXEMPT	\$7,850,900	\$350,000	\$3,162,000	\$4,338,900

Table 2 provides a summary of work grouped into one (3) primary categories: Construction, Professional Services and Materials and Supplies, utilizing the North American Industry Classification System (NAICS) work categories and comparable 2005 Census Business Patterns NAICS Work Codes. **Table 2** also serves to identify the estimated Federal Dollar Share and Percent of Federal Funding, as follows:

Table 2

CONTRACT CATEGORY	NAICS CUCP DATABASE¹	ESTIMATED FEDERAL DOLLAR SHARE	% OF FEDERAL FUNDING
Construction	238290	\$350,000.00	5%*
Professional Services	811111	\$3,162,000.00	38%*
Materials & Supplies	333618	\$4,338,900.00	57%*
TOTAL		\$7,850,900.00	100%

*Rounded to the nearest whole number

IV. GOAL METHODOLOGY

Step 1: Determination of a Base Figure (26.45)²

To establish Torrance Transit's Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) available to propose on Torrance Transit's FFY 2013/15 DOT-assisted contracting opportunities projected to be solicited; Torrance Transit followed one of the five prescribed federal goal-setting methodologies in accordance with Title 49 CFR Part 26 regulations. This was accomplished by accessing the *California Unified Certification Program (CUCP) Directory of Certified DBE Firms* and the *2006 U.S. Census Bureau County Business Patterns (CPB) Database*. Comparisons were made within Torrance Transit's market area (defined as Los Angeles County) and by specified industries and types of businesses identified in Table 2. Torrance Transit's local market area represents where the substantial majority of Torrance Transit's contracting dollars are expended and/or where the substantial majority of contractors and subcontractor's bids or quotes are received.

Torrance Transit made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to *Attachments I and II*.

- For the numerator: CUCP Directory of Certified DBE Firms
- For the denominator: Census Bureau's Business Pattern Database

¹ Refer to Attachments I and II for corresponding detail of all work trades grouped under the primary NAICS Codes.

² §26.45 represents Title 49 CFR Part 26 regulatory referenced section.

To determine the relative availability of DBEs, Torrance Transit divided the numerator³ representing the ratio of ready, willing and able DBE firms, by the denominator⁴ representing all firms (DBE and Non-DBEs) available in each work category. Application of this formula yielded the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (including DBEs and Non-DBEs)}} = \text{BASE FIGURE}$$

The Base Figure was further adjusted by weighting the relative availability of DBEs grouped within the primary work category. The Base Figure resulting from this weighted calculation is as follows:

Step 1: Base Figure: weighted by type of work to be performed and corresponding contracting dollars

	<u>Construction Services</u>	<u>Professional Services</u>	<u>Materials & Supplies</u>
Base Figure =	$4\% \left(\frac{\text{DBEs in NAICS 238290*}}{\text{CBP in NAICS 238290**}} \right)$	$38\% \left(\frac{\text{DBEs in NAICS 811111*}}{\text{CBP in NAICS 811111**}} \right)$	$57\% \left(\frac{\text{DBEs in NAICS 333618*}}{\text{CBP in NAICS 333618**}} \right)$
Base Figure =	$\left[\begin{array}{ccc} .05 \left(\frac{38}{304} \right) & + & .38 \left(\frac{262}{4,748} \right) & + & .57 \left(\frac{31}{1,117} \right) \end{array} \right]$		
Base Figure =	$\left[\begin{array}{ccc} .05 (.1250) & + & .38 (.0552) & + & .57 (.0277) \end{array} \right]$		
Base Figure =	$\left[\begin{array}{ccc} (.0063) & + & (.0210) & + & (.0158) \end{array} \right]$		
Base Figure =	$(.0430) 100 = 4.30 = 4\% \text{ ***}$		

* For additional NAICS Codes from the California Unified Certification Program DBE Directory, refer to Attachment I.

** For additional NAICS Codes from the U.S. Census Bureau County Business Patterns Database, refer to Attachment II.

*** Rounded to the nearest whole number

Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, Torrance Transit reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within Torrance Transit's market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR Part 26.45 Step II; DBE Goal Adjustment guidelines.

³ Numerator represents all applicable available DBE firms established within Torrance Transit's market area.

⁴ Denominator represents all comparable available established firms.

Evidence considered in making an adjustment to the Base Figure included Torrance Transit's *Past DBE Goal Attainments, Bidders List, Disparity Studies, and other Agencies' DBE Goals and Attainments within Torrance Transit's jurisdiction and Other Evidence*. A summary of these considered follows:

A. *Past DBE Goal Attainments*

Torrance Transit considered an adjustment to the Base Figure based on historical DBE goal attainments on similar contracts within the last three years to those contracting opportunities identified and considered in the Overall DBE Goal Analysis for this federal fiscal years 2013/15. Currently, Torrance Transit's does not have a past participation percentage attainment average, as no FTA-assisted contracts were completed within the last three fiscal years. Since no average past DBE participation attainment can currently be assessed, no adjustment to the Base Figure was made.

B. *TORRANCE TRANSIT 's Bidders List*

Although Torrance Transit has established a Bidders List for former years' Federally-Aided projects, the full scope of work anticipated to be awarded under the current fiscal years was not represented in this list, therefore an adjustment to the Base Figure based on this factor was not warranted. Torrance Transit will continue to capture such information from all bidders at the time of bid/proposal submission and will utilize such information in future goal-setting analyses.

C. *Evidence from Disparity Studies*

Torrance Transit considered the State of California Department of Transportation's (Caltrans) completed Disparity Study (Study). The Study has been initiated to determine the existence of discrimination or its effects within the state of California. Currently Caltrans Disparity Study is still in progress. Pending Caltrans Disparity Study completion Torrance Transit will review the results and assess the need for an adjustment to their base figure.

Additionally, Torrance Transit took into consideration Metro's Disparity Study due to the similarities in market area and contracting opportunities. Torrance Transit found that this disparity study would contain more relevant data to Torrance Transit's contracting program and market area. The Caltrans Study market area included the entire state of California, while the Metro Study focused on Los Angeles County as well as a few of the surrounding counties which is aligned with Torrance Transit's market area. Currently Metro's Disparity Study has been recently initiated and is still in progress. Pending Metro Disparity Study completion Torrance Transit will review the results and assess the need for an adjustment to their base figure. Although Torrance Transit did consider relevant Disparity Studies it did not make an adjustment to the base figure based on any Disparity Studies at this time.

D. *Other Agencies DBE Goals*

Torrance Transit surveyed other FTA-recipients (local agencies) within its jurisdiction, with similar contracting programs to assess their DBE goals and attainments toward making an adjustment. However, no other Agencies DBE Goals (with similar contracting programs) have been posted within Torrance Transit's jurisdiction at this time. As there are no other comparable DBE Goals available, the Torrance Transit will not make an adjustment based on this factor.

E. Other Evidence

Torrance Transit did not receive any anecdotal evidence nor is aware of any other factors or adverse considerations that would have had a material affect on DBEs availability within Torrance Transit's market place, or on DBEs ability to participate (meeting bonding, insurance and financial requirements) in Torrance Transit's FTA-assisted contracting programs. Therefore, no goal adjustment was made in consideration of this factor. However, Torrance Transit will continue to explore and consider all available evidence that would materially affect the opportunities for DBEs to form, grow, and compete in Torrance Transit's FTA-assisted contracting programs.

OVERALL RESULTANT GOAL ADJUSTMENTS:

After careful consideration of the above and other relevant factors, particularly, Torrance Transit's historical DBE attainments and its unique contracting program, the Base Figure of 4% was not adjusted, resulting to Torrance Transit's Overall DBE Goal of **4%**.

V. RACE-NEUTRAL MEASURES

The Overall DBE Goal for FFY 2013/15 for the Torrance Transit's DOT-assisted contracts is 4%. The Torrance Transit will strictly implement race-neutral measures to meet its Overall DBE Goal objectives, including but not limited to:

- Arranging timely solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBEs and other small business firms' participation.
- Unbundling large contracts to make them more accessible to small businesses, requiring or encouraging Service Providers to subcontract portions of work that they might otherwise perform with their own work forces.
- Providing information and communications programs on contracting procedures and specific contract opportunities.
- Providing assistance to interested DBEs in obtaining bonding, lines of credit, and/or insurance requirements.

VI. PUBLIC PARTICIPATION AND FACILITATION

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business chambers, and community organizations within Torrance Transit's market area will be provided an opportunity to review the goal analysis. Torrance Transit will prepare Outreach Consultation Letters advising the aforementioned business community of the proposed DBE goals analysis and its availability for review.

Torrance Transit will also issue a Public Notice in a general circulation media and in at least one other minority/trade focused media publishing Torrance Transit's proposed Race-Neutral Overall DBE Goal for the FFY 2013/15 DOT-assisted contracts. Such Notice will inform the public that the proposed goal and its rationale are available for inspection at Torrance Transit's principal office during normal business hours for 30 days following the date of the Public Notice and that Torrance Transit will accept comments on the goal analysis for 45 days from the date of the Public Notice. Additionally, Torrance Transit has published the Public Notice of the proposed Overall DBE goal in two area publications, the Daily Breeze and La Opinion, on June 4, 2012. Upon completion of the required Public Facilitation Process, any revisions to our proposed goal resulting from this process will be forwarded to your attention.

TORRANCE TRANSIT SYSTEM
OVERALL TRIENNIAL DBE GOAL FOR FEDERAL FISCAL YEAR 2013/15

ESTABLISHMENT OF THE NUMERATOR:

OF ESTABLISHED DBE FIRMS BY WORK CATEGORIES (CONSTRUCTION, PROFESSIONAL SERVICE AND MATERIALS & SUPPLIES) AND CORRESPONDING NAICS WITHIN TORRANCE TRANSIT'S MARK AREA (DEFINED AS LOS ANGELES COUNTY)¹

CONSTRUCTION:		
2005 NAICS	NAICS DESCRIPTION	LOS ANGELES TOTAL
238290	Motor vehicle garage and service station mechanical equipment (e.g., gasoline pumps, hoists) installation	17
238390	Other Building Finishing Contractors	21
TOTAL NO. OF ESTABLISHED DBE FIRMS		38

PROFESSIONAL SERVICES		
NAICS 2002	NAICS DESCRIPTION	LOS ANGELES TOTAL
811111	Automotive Repair and Maintenance	7
811121	Automotive Body, Paint, Interior and glass Repair and Maintenance	4
541310	Architectural, Engineering, and Related Services	97
541519	Software installation services, computer	154
TOTAL NO. OF ESTABLISHED DBE FIRMS		262

MATERIALS & SUPPLIES		
NAICS 2002	NAICS DESCRIPTION	LOS ANGELES TOTAL
333618	Other Engine Equipment Manufacturing	0
336399	All Other Motor Vehicle Parts Manufacturing	1
333319	Other Commercial and Service Industry Machinery Manufacturing	0
423430	Computer Equipment and Software Merchant Wholesalers	29
441110	New Car Dealers	1
TOTAL NO. OF ESTABLISHED DBE FIRMS		31

¹: DATA SOURCE: California UCP Directory of Certified DBE Firms.

TORRANCE TRANSIT SYSTEM
OVERALL TRIENNIAL DBE GOAL FOR FEDERAL FISCAL YEAR 2013/15

ESTABLISHMENT OF THE DENOMINATOR

OF ESTABLISHED DBE and Non-DBE FIRMS BY WORK CATEGORIES (CONSTRUCTION, PROFESSIONAL SERVICES AND MATERIALS & SUPPLIES) AND CORRESPONDING NAICS WITHIN TORRANCE TRANSIT'S MARKET AREA (DEFINED AS LOS ANGELES COUNTY)¹

Construction:			
NAICS CODE	NAICS DESCRIPTION	Los Angeles County	Total
238290	Motor vehicle garage and service station mechanical equipment (e.g., gasoline pumps, hoists) installation	154	154
238390	Other Building Finishing Contractors	150	150
TOTAL NUMBER OF ESTABLISHED FIRMS		304	304

Professional Services			
NAICS CODE	NAICS DESCRIPTION	Los Angeles County	Total
811111	Automotive Repair and Maintenance	2,258	2,258
811121	Automotive Body, Paint, Interior and glass Repair and Maintenance	1,151	1,151
541310	Architectural, Engineering, and Related Services	959	959
541519	Software installation services, computer	380	380
TOTAL NUMBER OF ESTABLISHED FIRMS		4,748	4,748

Materials & Supplies			
NAICS CODE	NAICS DESCRIPTION	Los Angeles County	Total
333618	Other Engine Equipment Manufacturing	14	14
336399	All Other Motor Vehicle Parts Manufacturing	55	55
333319	Other Commercial and Service Industry Machinery Manufacturing	43	43
423430	Computer Equipment and Software Merchant Wholesalers	545	545
441110	New Car Dealers	460	460
TOTAL NUMBER OF ESTABLISHED FIRMS		1,117	1,117

¹; DATA SOURCE: U.S. Census Bureau: County Business Patterns, NAICS Work Category Codes