

Council Meeting of
July 22, 2008

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

Members of the Council:

SUBJECT: Transit: Approve Adoption of Torrance Transit's Overall Annual Disadvantaged Business Goal for Federal Fiscal Year (FFY) 2008-2009.

Expenditure: N/A

RECOMMENDATION:

Recommendation of the Transit Director that City Council approve the Overall Annual Disadvantaged Business Enterprises (DBE) Goal of 2.5% for Federal Fiscal Year 2008-2009, for submission to the Federal Transit Administration (FTA).

FUNDING:

City Council approval of the established Overall Annual Disadvantaged Business Enterprise Goal for Federal Fiscal Year 2009 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, 2008 timeline, would jeopardize the Torrance Transit Systems' federal financial assistance.

BACKGROUND & ANALYSIS:

Transit is required to develop and submit an Overall Annual Goal for DBE participation on U.S. Department of Transportation Federal Transit Administration 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 Department has established an Overall Annual DBE Goal for Federal Fiscal Year 2009, to ensure full compliance with relevant regulatory requirements.

The Established Overall Annual DBE Goal of 2.5% for FFY 2008/09 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 Annual 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 2009. The Agency utilized the Caltrans Calcert Directory of Certified DBE firms and the 2001 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 Annual Goal for FFY 2009, staff will submit to FTA for their final review.

The Established Overall Annual Goal for Federal Fiscal Year 2009 will be updated annually, to maintain relevancy to local market conditions and factors impacting DBE availability.

Additionally, Public Outreach was initiated on July 3, 2008 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 following day.

Respectfully submitted,



Kim Turner
Transit Director

CONCUR:



LeRoy J. Jackson
City Manager

Attachments: A) FFY2008-2009 DBE Plan

TORRANCE TRANSIT

Torrance Transit System

Overall Annual Disadvantaged Business Enterprise Goal Methodology

for

FFY 2008/09

Submitted in fulfillment of:

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

<p>TORRANCE TRANSIT SYSTEM OVERALL ANNUAL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL AND METHODOLOGY FOR FEDERAL FISCAL YEAR (FFY) 2008/09 <i>(Covering the period of October 1, 2008 to September 30, 2009)</i></p>
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I. INTRODUCTION

Torrance Transit System (Torrance Transit) is required to develop and submit a Disadvantaged Business Enterprise (DBE) Overall Annual 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.

Accordingly, Torrance Transit hereby presents its Overall Annual DBE Goal Methodology for FFY 2008/09.

III. DOT-ASSISTED CONTRACTING PROGRAM FOR FFY 2008/09

Table 1 represents Torrance Transit's DOT-assisted contracting program that was considered in preparing its *Overall Annual DBE Goal-Setting Methodology*. The fiscal year's contracting program includes eight (8) DOT-(FTA) assisted projects, which were assessed in preparing the Torrance Transit's *Overall Annual DBE Goal-Setting Analysis*. All projects listed have viable contracting and subcontracting possibilities and are anticipated to be awarded with the given federal fiscal year 2008/09.

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
Purchase Engines & Transmissions	\$200,000.00	\$0.00	\$0.00	\$160,000.00
Preventative Maintenance	\$2,250,000.00	\$0.00	\$1,800,000.00	\$0.00
Transit Enhancements	\$60,000.00	\$48,000.00	\$0.00	\$0.00
Purchase Bus Tires	\$150,000.00	\$0.00	\$0	\$120,000.00
Maintenance/ Training Room Remodel	\$625,000.00	\$450,000.00	\$50,000.00	\$0.00
Computer Software & Hardware Upgrade	\$143,000.00	\$0.00	\$0.00	\$114,000.00
Service Vehicles (2)	\$100,000.00	\$0.00	\$0.00	\$80,000.00
Relief (5) Vehicles	\$150,000.00	\$0.00	\$0.00	\$120,000.00
TOTAL NON-EXEMPT	\$3,678,000.00	\$498,000.00	\$1,850,000.00	\$594,000.00

* Pursuant to 49 CFR Part 26.45 (e)(2) and 29 CFR Part 26.49 (a), contracts for the purchase of transit vehicles are excluded from recipients Overall Annual DBE Goal Setting consideration as these purchases are addressed under the Transit Vehicle Manufacturer (TVM) Provisions of the regulations. Accordingly, the “Bus Purchase Replacement (7)” Project noted in Table 1 (shaded in gray) has been excluded from this analysis.

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	237990	\$498,000.00	17%
Professional Services	811111	\$1,850,000.00	63%
Materials & Supplies	333618	\$594,000.00	20%
TOTAL		\$2,942,000.00	100%

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 2008/09 DOT-assisted contracting opportunities projected to be solicited; Torrance Transit followed one of the five prescribed federal goal-setting methodologies in accordance with the 49 CFR Part 26 regulations. This was accomplished by accessing the *California Unified Certification Program (CUCP) Directory of Certified DBE Firms* and the *2005 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.

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.

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

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:

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

(including DBEs and Non-DBEs)

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 =	$\left[\begin{array}{l} 17 \% \text{ (DBEs in NAICS 238390*)} \\ \text{(CBP in NAICS 238390**) } \end{array} \right]$	$\left[\begin{array}{l} 63 \% \text{ (DBEs in NAICS 811111*)} \\ \text{(CBP in NAICS 811111**) } \end{array} \right]$	$\left[\begin{array}{l} 20\% \text{ (DBEs in NAICS 333319*)} \\ \text{(CBP in NAICS 333319**) } \end{array} \right]$
Base Figure =	$\left[\begin{array}{l} .17 \text{ (35)} \\ 760 \end{array} \right]$	$\left[\begin{array}{l} + .63 \text{ (34)} \\ 3,539 \end{array} \right]$	$\left[\begin{array}{l} + .20 \text{ (0)} \\ 4,564 \end{array} \right]$
Base Figure =	$\left[\begin{array}{l} .17 \text{ (.0461)} + .63 \text{ (.0096)} + .20 \text{ (0)} \end{array} \right]$		
Base Figure =	$\left[\begin{array}{l} (.0078) + (.0061) + (0) \end{array} \right]$		
Base Figure =	$(.0139) 100 = 1.39 = 1\% \text{ ***}$		
*	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		

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

⁴ Denominator represents all comparable available established firms.

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.

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

The following table reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on DOT-assisted contracts awarded by Torrance Transit within the last three fiscal years:

Table 3

PROJECT	DBE CONTRACT GOAL	DBE GOAL COMMITMENT	DBE GOAL ATTAINMENT
Automatic Vehicle Locator	2 %	2%	2%
HVAC	2 %	2%	6%
MEDIAN DBE GOAL ATTAINMENT: $2\% + 6\% = 8\%$ / $2 = 4\%$			

Torrance Transit considered an adjustment to the Base Figure based on historical DBE goal attainments on similar contracts to those contracting opportunities identified and considered in the Overall Annual DBE Goal Analysis for this federal fiscal year 2008/09. Based on the historical attainments of the two (2) closed out projects, the Transit's past participation percentages range from 2% to 6%, with a Median Past Participation of 4%, as reflected in the table above. The Step One Base Figure (1%) was added to the Median Past Participation (4%) and divided by two (2) to calculate the adjusted Base Figure. The Adjusted Base Figure resulting from the application of this formula follows:

$$\frac{\text{Step I Base Figure (1\%)} + \text{Median Past Participation (4\%)}}{2} = \text{ADJUSTED BASE FIGURE}$$

Formula:

<i>Step I Base Figure</i>	1 %
<i>Median Past Participation</i>	+ 4 %
	$\frac{5 \% \div 2 = 2.5\%}{}$
<i>Adjusted Base Figure =</i>	<u>2.5%</u>

The formula resulted in an upward adjustment to the Base Figure from 1% to 2.5%.

B. TORRANCE TRANSIT 's Bidders List

Although Torrance Transit has established a Bidders List for former years' Federally-Aided projects, the scope of work anticipated to be awarded under the current fiscal year was not represented in the list, therefore an adjustment to the Base Figure 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 was conducted to determine the existence of discrimination or its effects within the state of California. Based on the review of the Disparity Study, the Study did not provide relevant data to Torrance Transit's contracting program and market area. The Study's market area included the entire state of California, while Torrance Transit's market area covers only the Los Angeles vicinity. Additionally, the Study's contracting program focused on Federal Highway-assisted projects, while Torrance Transit's contracting program is mainly transit bus operation services.

Additionally, Torrance Transit is aware that the Los Angeles County Metropolitan Transportation Authority is currently conducting a disparity study to assess the existence of discrimination or its effects in the corresponding marketplace for its FTA-assisted projects. The Southern California Regional Disparity Study is scheduled to be complete by July 2009. Upon completion of the Disparity Study, Torrance Transit will utilize all relevant Disparity Study results in its application of future goal setting analyses.

Absent the availability of Disparity and Availability Study conducted in conformance with the Ninth Circuit Court decision relative to its FTA-assisted projects, Torrance Transit did not consider an adjustment under this factor 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; Torrance Transit cannot compare other Agencies DBE Goals to make an adjustment. 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, an upward adjustment from the 1% Base Figure to 2.5% was determined based upon consideration of the Torrance Transit's past DBE goal participation attainments.

As such, Torrance Transit determined its Overall Annual DBE Goal to be 2.5% for FFY 2008/09. The Overall Annual DBE Goal is expressed as a percentage of all DOT-assisted funds that Torrance Transit will expend in the forthcoming fiscal year.

There are two (2) primary factors that lead to Torrance Transits low Overall Annual DBE Goal, as expressed in above, as follows: 1) the Bus Replacement Project due to the Transit Vehicle Manufacturer (TVM) Provisions, and 2) the limited amount of available firms identified by work category businesses within Torrance Transit's local market area results.

V. RACE-NEUTRAL MEASURES

The Overall Annual DBE Goal for FFY 2008/09 for the Torrance Transit's DOT-assisted contracts is 2.5%. The Torrance Transit will strictly implement race-neutral measures to meet its Overall Annual DBE Goal objectives, including but not limited to:

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- 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 Annual DBE Goal for the FFY 2008/09 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 Annual DBE goal in two area publications (the Daily Breeze and La Opinion) on July 4 and 7, 2008. Upon completion of the required Public Facilitation Process, any revisions to our proposed goal resulting from this process will be forwarded to your attention.