

Council Meeting of
July 14, 2009

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

Members of the Council:

SUBJECT: Transit - Adoption of Torrance Transit's Overall Annual DBE Goal of 2% for Federal Fiscal Year (FFY) 2009/2010

Expenditure: N/A

RECOMMENDATION:

Recommendation of the Transit Director that City Council approve the Overall Annual Disadvantaged Business Enterprises (DBE) Goal of 2% for FFY 2009/2010, for submission to the Federal Transit Administration (FTA).

FUNDING:

City Council approval of the established Overall Annual DBE Goal for Federal Fiscal Year 2009/10 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, 2009 timeline, would jeopardize the Torrance Transit System's 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 - (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 System's Programs. In accordance with these DBE regulations, Transit has established an Overall Annual DBE Goal for Federal Fiscal Year 2009/10, to ensure full compliance with relevant regulatory requirements.

The Established Overall Annual DBE Goal of 2% for FFY 2009/10 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 2009/10. 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 2009/10, staff will submit to FTA for their final review.

The Established Overall Annual Goal for Federal Fiscal Year 2009/10 will be updated annually, to maintain relevancy to local market conditions and factors impacting DBE availability.

Additionally, Public Outreach was initiated on July 2, 2009 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

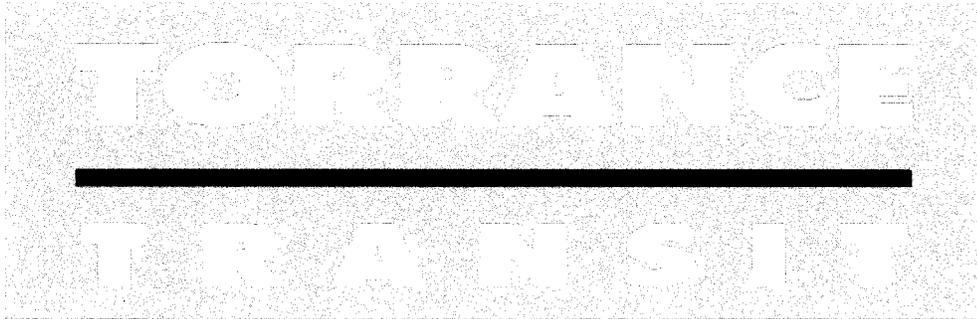
CONCUR:



for LeRoy J. Jackson
City Manager

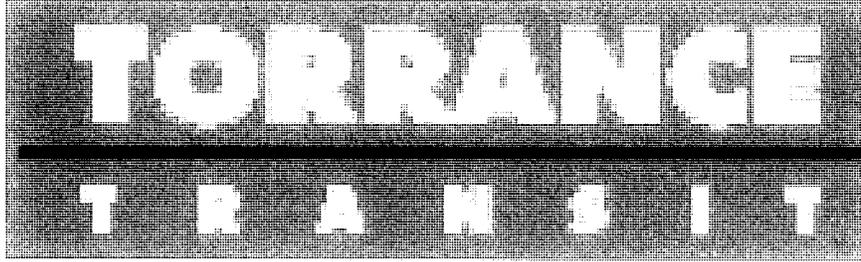
Attachments:

- A) FFY2009-2010 DBE Plan



**OVERALL ANNUAL
DISADVANTAGED BUSINESS
ENTERPRISE (DBE)
GOAL AND METHODOLOGY**

FEDERAL FISCAL YEAR (FFY) 2009/10
(Covering the period of October 1, 2009 to September 30, 2010)



Torrance Transit System

Proposed Overall Annual Disadvantaged Business Enterprise Goal Methodology

for

FFY 2009/10

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 ANNUAL DISADVANTAGED BUSINESS ENTERPRISE (DBE)
GOAL AND METHODOLOGY
FOR
FEDERAL FISCAL YEAR (FFY) 2009/10
(Covering the period of October 1, 2009 to September 30, 2010)**

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.

The Torrance Transit System will utilize the results of the Southern California Regional Disparity Study Consortium, which is expected to be finalized in November 2009, 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 Annual DBE Goal Methodology for FFY 2009/10.

III. DOT-ASSISTED CONTRACTING PROGRAM FOR FFY 2009/10

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 nine (10) DOT-(FTA) assisted projects, which include parts procurements, maintenance, transit enhancements, IT upgrades, and the purchase of service and relief vehicles, 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 2009/10, a required criterion for Overall Annual 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
Purchase Engines & Transmissions ¹	\$200,000	\$0.00	\$0.00	\$160,000.00
Preventative Maintenance ¹	\$2,250,000	\$0.00	\$1,800,000	\$0.00
Transit Enhancements ¹	\$60,000	\$48,000	\$0	\$0.00
Purchase Bus Tires ¹	\$150,000	\$0.00	\$0	\$120,000.00
Computer Software & Hardware Upgrade ¹	\$143,000	\$0.00	\$0	\$114,000.00
Bus Wash Repair/Replacement	\$150,000	\$0.00	\$45,000	\$75,000
Vacuum System Repair/Replacement	\$150,000	\$0.00	\$45,000	\$75,000
Service Vehicles (2) ¹	\$100,000	\$0.00	\$0.00	\$80,000
Relief (5) Vehicles ¹	\$150,000	\$0.00	\$0.00	\$120,000
AVL Installment and Web Development (Phase II)	\$500,000	\$0.00	\$400,000	\$0.00
TOTAL NON-EXEMPT	\$3,853,000	\$48,000	\$2,290,000	\$744,000

¹ These projects were included in the City's Overall Annual DBE Goal Analysis for FFY 2008/09, however these projects are not anticipated to be awarded until after September 30, 2009, therefore were included in this FFY

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 DATABASE	ESTIMATED FEDERAL DOLLAR SHARE	% OF FEDERAL FUNDING
Construction	237990	\$48,000.00	2%
Professional Services	811111	\$2,290,000.00	74%
Materials & Supplies	333618	\$744,000.00	24%
TOTAL		\$3,082,000.00	100%

IV. GOAL METHODOLOGY

Step 1: Determination of a Base Figure (26.45)³

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 2009/10 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

² Refer to Attachments I and II for corresponding detail of all work trades grouped under the primary NAICS Codes.

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

To determine the relative availability of DBEs, Torrance Transit divided the numerator⁴ representing the ratio of ready, willing and able DBE firms, by the denominator⁵ 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 =	2 % $\frac{\text{(DBEs in NAICS 238390*)}}{\text{(CBP in NAICS 238390**)}}$	+ 74 % $\frac{\text{(DBEs in NAICS 811111*)}}{\text{(CBP in NAICS 811111**)}}$	+ 24% $\frac{\text{(DBEs in NAICS 333319*)}}{\text{(CBP in NAICS 333319**)}}$
Base Figure =	$\frac{.02 (41)}{214}$	+ $\frac{.74 (100)}{4,129}$	+ $\frac{.24 (15)}{1,727}$
Base Figure =	$.02 (.1916) + .74 (.0242) + .24(.0086)$		
Base Figure =	$(.0038) + (.0179) + (.0020)$		
Base Figure =	$(.0238) 100 = 2.38 = \mathbf{2\%}^{***}$		
*	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		

⁴ Numerator represents all applicable available DBE firms established within Torrance Transit's market area.

⁵ 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%

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 2009/10. Based on the historical attainments of the one (1) closed out project, Torrance Transit's past participation percentages is 2%, as reflected in the table above. Since the Past DBE Participation Attainments average was found to be in alignment with Torrance Transit's Step 1 Base Figure of **2%**, 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 year 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 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 includes only the County of Los Angeles. Additionally, the Study's contracting program focused on Federal Highway-assisted projects, while Torrance Transit's contracting program is mainly transit bus operation services.

Accordingly, as the Southern California Regional Consortium Disparity Study (for FTA-assisted Contracting Programs) is scheduled to be complete by November 2009, 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 make 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. 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 2% was not adjusted, resulting to Torrance Transit's Overall Annual DBE Goal of 2%.

V. RACE-NEUTRAL MEASURES

The Overall Annual DBE Goal for FFY 2009/10 for the Torrance Transit's DOT-assisted contracts is 2%. The Torrance Transit will strictly implement race-neutral measures to meet its Overall Annual 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 Annual DBE Goal for the FFY 2009/10 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 the Daily Breeze and La Opinion area publications on July 1 and 2, 2009. 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 ANNUAL DBE GOAL FOR FEDERAL FISCAL YEAR 2009/10

ATTACHMENT I

ESTABLISHMENT OF THE NUMERATOR:

OF ESTABLISHED 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

	BY CORRESPONDING ZIP CODES																
237990 Other Heavy and Civil Engineering Construction	5	1	0	0	1	4	3	1	1	0	0	4	1	0	7	0	28
238390 Other Building Finishing Contractors	5	0	0	1	1	2	3	0	0	0	0	1	0	0	0	0	13
	10	1	0	1	2	6	6	1	1	0	0	5	1	0	7	0	41

	BY CORRESPONDING ZIP CODES																
811111 Automotive Repair and Maintenance	1	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1
541310 Architectural, Engineering, and Related Services	19	8	1	2	0	0	0	1	3	0	1	0	0	1	0	0	36
541519 Software installation services, computer sales combined with installation, repair, or	13	8	1	0	1	2	3	5	2	0	3	3	0	12	0	54	
561621	2	0	0	1	0	0	0	1	0	0	0	2	0	0	3	0	9
	35	16	2	3	1	2	4	6	5	0	6	3	0	16	0	100	

	BY CORRESPONDING ZIP CODES																
333618 Other Engine Equipment Manufacturing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
336211 Other Electrical Component Manufacturing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
336399 All Other Motor Vehicle Parts Manufacturing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
333319 Other Commercial and Service Industry Machinery Manufacturing	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
423430 Computer Equipment and Software Merchant Wholesalers	2	3	0	0	0	2	1	0	1	0	0	1	1	0	4	0	15
441320 Tire Dealers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
441110 New Car Dealers	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
	2	3	0	0	0	2	1	0	1	0	0	1	1	0	4	0	15

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

TORRANCE TRANSIT
 OVERALL ANNUAL DBE GOAL FOR FEDERAL FISCAL YEAR 2009/10

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
237990	Other Heavy and Civil Engineering Construction	65	65
238390	Other Building Finishing Contractors	149	149
		214	214

Professional Services			
NAICS CODE	NAICS DESCRIPTION	Los Angeles County	Total
811111	Automotive Repair and Maintenance	2,528	2,528
541310	Architectural, Engineering, and Related Services	1,048	1,048
541519	Software installation services, computer	334	334
561621	Security alarm systems sales combined with installation, repair, or monitoring	219	219
		4,129	4,129

Materials & Supplies			
NAICS CODE	NAICS DESCRIPTION	Los Angeles County	Total
333618	Other Engine Equipment Manufacturing	17	17
336211	Other Electrical Component Manufacturing	27	27
336399	All Other Motor Vehicle Parts Manufacturing	58	58
333319	Other Commercial and Service Industry Machinery Manufacturing	50	50
423430	Computer Equipment and Software Merchant Wholesalers	597	597
441320	Tire Dealers	412	412
441110	New Car Dealers	566	566
		1,727	1,727

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