

Regional Transportation Authority – Chicago, Illinois
Disadvantaged Business Enterprise (DBE)
Goal Methodology
Federal Fiscal Years 2020-2022

I. Introduction

The Regional Transportation Authority-Chicago, Illinois (RTA) submits its three-year Disadvantaged Business Enterprise (DBE) overall goal for Federal Fiscal Years (FFYs) 2020-2022. Our methodology is in accordance with U.S. Department of Transportation Regulations at 49 C.F.R. § 26.45, the US Department of Transportation’s General Counsel’s *Tips for Goal-Setting* (USDOT Tips),¹ the appellate court’s decision in *Northern Contracting v. Illinois Department of Transportation*,² and the approach recommended by the National Academy of Sciences that is now the standard for designing legally defensible disparity studies for transportation agencies.³ This goal is based on projected contracting opportunities funded in whole or in part by the Federal Transit Administration (FTA). In addition, the goal is based on an Availability Study completed in October 2016 for the RTA and conducted by Colette Holt & Associates, an attorney and national expert on the DBE program with extensive experience in designing defensible DBE goals.

The regulations require that the overall goal be prepared using a two-step process. RTA must first determine a base figure for the relative availability of certified and non-certified minority and woman-owned business enterprises in the relevant market area (step 1). Next, RTA must examine all relevant evidence to determine what adjustment to the base figure, if any, is needed in order to arrive at an overall goal (step 2). The final adjusted figure is RTA’s overall goal and represents the proportion of federal transportation funding it expects to allocate to DBEs during the subsequent three FFYs. Once the adjusted overall goal is determined, RTA must estimate what portion of the goal will be met by race-neutral measures, and if necessary, what portion of the goal will be met by race-conscious contract goals.⁴

RTA’s proposed overall goal for the time period covered by FFYs 2020-2022 (October 1, 2019 through September 30, 2021) is 16.2%. Of the overall goal, 0.0% will be achieved through race-neutral measures and 16.2% will be achieved through race-conscious measures.

RTA expects to award approximately \$995,000 over this time period.

¹ United States Department of Transportation, “Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program”, <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

² 473 F.3d 715 (2007).

³ “Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program,” Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010.

⁴ 49 CFR §§26.51(f)(1), and §26.51(d).

Table 1
RTA FTA-Assisted Projects FFYs 2020-2022

RTA PROJECTS	FTA-FUNDED AMOUNT
Interagency Signage Expansion: Fabrication & Installation:	\$275,000
Engineering Activities (541330) 25%; Highway, Street, and Bridge Construction (237310) 75%	
Transit Oriented Development Projects:	\$720,000
Engineering Activities (541330) 70%; Other Activities Related to Real Estate (531390) 20 %; Public Relations Agencies (541820) 10%	
Total	\$995,000

Of these funds, RTA expects that \$143,620 will be expended with DBEs.

II. Overall DBE Goal Setting Methodology for Federal Fiscal Years 2020-2022

RTA’s overall goal was set based on the two-step process described in 49 C.F.R. §26.45. This process ensures that the goal derived by RTA as based on the availability of ready, willing, and able DBEs in RTA’s relevant market area.

A. Step One Base Figure Calculation

The first element in estimating DBE availability was to determine empirically the relevant geographic and industry market areas for RTA’s federally-assisted contracts. The Availability Study (attached as Exhibit A) determined RTA’s service area to be its market area.

While RTA’s market area has not changed, the types of contracts RTA anticipates awarding during FFYs 2020-2022 will be in industries that were not awarded during the Study period. We therefore requested the consultant to estimate DBE availability in our market area for five new North American Industry Classification System (“NAICS”) codes, using the availability methodology applied in the Study.

Table 1
DBE Availability – Federal Funds

NAICS	NAICS Code Label	Non-DBE	DBE	Total
237310	Highway, Street, and Bridge Construction	85.9%	14.1%	100.0%
339950	Sign Manufacturing	89.6%	10.4%	100.0%
531390	Other Activities Related to Real Estate	80.9%	19.1%	100.0%
541330	Engineering Services	85.8%	14.2%	100.0%
541820	Public Relations Agencies	81.3%	18.7%	100.0%

We next weighted these estimates by the expected distribution of NAICS codes by dollars for the upcoming projects:

DBE availability × NAICS dollar amount ÷ Total project doallars

- 541330: 14.2 × \$504,000 = \$71,568
- 531390: 19.1 × 144,000 = \$27,504
- 541820: 18.7 × \$72,000 = \$13,464
- 237310: 14.1 × \$68,750 = \$96,347
- 339950: 10.4 × \$206,250 = \$21,450

The result is a step one base figure of 14.3. percent.

B. Step Two, Consideration of Adjustments to the Step One Base Figure

Step 2 requires RTA to examine all evidence in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on RTA’s federally-assisted contracts, as measured by the volume of work DBEs have performed in recent years, and evidence from the availability/disparity study, to the extent not already accounted for in the base figure. RTA may also consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to, statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the Program, and data on employment, self-employment, education, training and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. The regulations caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.” § 26.45(d)(3). Each of these categories is discussed separately below.

1. Past DBE utilization

RTA considered the current capacity of certified DBEs to perform on its FTA-assisted contracts, measured by the volume of work certified DBEs have received in recent years. The contracts awarded from FFY 2016 through 2018 were in industries similar to those we expect to award in the future, such as engineering, installation, planning, training and marketing services. Therefore, it is appropriate to use past participation as a guide to a possible adjustment, as provided in 49 C.F.R. § 26.45(d)(1)(i). The median DBE participation for FFYs 2016 through 2018 is 18.1%.

Table 2
DBE Utilization for FFYs 2016-2018

FEDERAL FISCAL YEAR	OVERALL DBE UTILIZATION	RACE-NEUTRAL UTILIZATION	RACE-CONSCIOUS UTILIZATION
2016	9.4%	0%	9.4%
2017	18.1%	0%	18.1%
2018	34.4%	0%	34.4%

2. Additional Step 2 Evidence

While the study's evidence of economy-wide disparities⁵ might be used to make a step two adjustment, in our view, this does not provide evidence that is sufficiently directly related to an adjustment to reflect the level of participation that would be expected "but for" discrimination. Further, the law in the Seventh Circuit Court of Appeals is that affirmative action goals should reflect the "plausible lower bound estimate" of availability.

⁵ The study examined disparities in business receipts and in business formation and earnings. Minority and women-owned firms are significantly less profitable than similar nonminority or women-owned firms, and minorities and women earn substantially and significantly less from their labor than do their similarly situated nonminority male counterparts in RTA's market area. Barriers to equal access to business and human capital were also identified.

3. Base Figure Adjustment

RTA reviewed its expected available contracting opportunities for FFYs 2020 through 2022 and determined that federally-funded contracts for the upcoming triennial period are substantially similar to the recent past. Therefore, past participation is an appropriate adjustment factor. RTA therefore averaged the median past participation with the step 1 base figure estimate for an overall, annual goal of 16.2%.

Baseline DBE Availability:	14.3%
Median Past DBE Participation:	18.1%
Average:	16.2%

III. Projection of Race-Neutral versus Race-Conscious Goal Attainment

To estimate the portions of the goal to be met through race-neutral and race-conscious measures, RTA evaluated past race-neutral certified DBE participation as defined in § 26.51(a).

A. Race-Neutral versus Race-Conscious Projection

As detailed in Table 2, RTA has achieved its DBE participation through the use of race-conscious contract goals. Based upon the average of the race-neutral participation achieved from FFY 2016 through 2018, we project that we will achieve 0.00% DBE participation through race-neutral measures and 14.4% through race-conscious contract goals.

B. Efforts to increase race-neutral participation

RTA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. To facilitate race-neutral participation, the RTA consistently conducts outreach to DBEs to provide information regarding opportunities to participate in RTA projects and procurements. Representatives from the RTA participate on committees of minority and female organizations and attend numerous events and programs to provide information about the RTA and to assist in identifying and utilizing DBEs, such as:

- Annual Chicago Business Opportunity Fair/Chicago Minority Supplier Development Council
- Annual Entrepreneurial Woman's Conference/Women's Business Development Council (WBDC)
- Annual Illinois Hispanic Chamber of Commerce Conference
- Annual Conference of Minority Transportation Officials - National Meeting and Training Conference
- Metra's Annual Vendor Fair
- Illinois Department of Transportation Annual DBE Conference

In addition, RTA staff is available to meet with DBEs and other small firms to assist them with how to do business with the agency, such as preparing bids and proposals to comply with the RTA's procurement requirements and processes. We also search the IL UCP and the RTA's Vendor Profile database to identify DBE prime firms and DBE subcontractors; answer questions of DBEs and provide DBE information to bidders/proposers during pre-proposal conferences; send solicitation information to DBEs based upon contacts obtained during outreach events; and participate in events to facilitate the development, growth, and sustainability of DBEs in contracting opportunities.

IV. Proof of Publication

The initial goal submittal Notice was posted on June 10, 2019 to the RTA's Official Internet Webpage. The proposed overall goal and its rationale were available for inspection on the RTA's website and during normal business hours at the RTA's offices for a 45-day comment period. The Notice contained the building and electronic mail addresses where comments could be sent.

V. Public Consultation

The RTA consulted with Colette Holt & Associates to determine the availability of stakeholder organizations in the RTA's service area. These stakeholder organizations would have an interest in participating in a scheduled exchange regarding preparation of the goal setting methodology. Forty-six organizations were identified: 51st Street Business Association, African American Contractors Association, Association of Asian Construction Enterprises, Austin African American Business Networking Association, Black Contractors Owners and Executives, Black Contractors United, Business Leadership Council, Center for Development Initiatives, Chatham Business Association, Chicago Minority Supplier Development Council, Inc., Chicago Chinatown Chamber of Commerce, Chicago Urban League, Chicago Women in Trades, Contractor Advisors Business Development Corp., Cosmopolitan Chamber of Commerce, Do For Self Community Development Co., Far South Community Development Corporation, Federation of Women Contractors, Fresh Start Home Community Development Corporation, Greater Englewood Community Development Corp., Greater Far South Halsted Chamber of Commerce, Greater Pilsen Economic Development Association, Greater Southwest Development Corporation, Hispanic American Construction Industry Association, Illinois Hispanic Chamber of Commerce, Illinois State Black Chamber of Commerce, JLM Business Development Center, Latin American Chamber of Commerce, LGBT Chamber of Commerce of Illinois, National Association of Women Business Owners, National Organization of Minority Engineers, NDIGO Foundation, Neighborhood Development Services, Public Narrative, Rainbow/PUSH Coalition, RTW Veteran Center, South Shore Chamber, Inc., St. Paul Church of God in Christ Community, Sustainable Options for Urban Living, Inc., The Monroe Foundation, Turn 2 Growth, Urban Broadcast Media, Inc., US Minority Contractors Association, Inc., Women Construction Owners & Executives, Women's Business Development Center, and Your Community Consultants Foundation.

Each of the organizations was invited to a consultative meeting to provide comments and input into the goal setting methodology. In addition, DBEs in the IL UCP under the NAICS codes listed in Table 1 DBE Availability-Federal Funds were also invited to the consultative meeting. The comments from the consultative meetings are attached.

If you have any questions or require additional information regarding this matter, please contact LaToya Redd at redl@rtachicago.org or (312) 913-3212.

- Exhibit A: RTA Availability Study
- Exhibit B: Copy of Post on Official RTA Internet Webpage re: the DBE Goal
- Exhibit C: List of Stakeholder Groups Consulted Regarding the DBE Goal
- Exhibit D: Copy of Meaningful Consultation Notices to Stakeholders
- Exhibit E: Comments from Stakeholders and Small Business Owners

cc: Nadine M. Lacombe, General Counsel