

Washington Metropolitan Area Transit Authority  
**Board Action/Information Summary**

<input checked="" type="radio"/> Action <input type="radio"/> Information	MEAD Number: 100768	Resolution: <input checked="" type="radio"/> Yes <input type="radio"/> No
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**TITLE:**

FY 2011 Annual DBE Program Goal

**PURPOSE:**

The purpose of this action is to seek approval of the proposed Annual Disadvantaged Business Enterprise (DBE) program goal for Federal Fiscal Year 2011 of 25% (19% race-conscious, 6% race-neutral).

**DESCRIPTION:**

The U.S. Department of Transportation (USDOT), under 49 CFR, Part 26, requires all recipients of federal funds to establish a DBE goal for participation on federally-funded contracts.

In compliance with the USDOT regulations and Board approval on May 26, 2010, Metro initiated a 45-day public comment period on the proposed federal fiscal year (FFY) 2011 DBE Goal, which included a series of emails, conference calls, web posts, a legal notice published in the Washington Post, and a public meeting held on June 30, 2010 from 10:00am to 3:00pm in the Jackson Graham Building. The public comment period ended on July 12, 2010. The public supports the proposed goal.

Pursuant to revised federal regulations, after this reporting period, DBE goals will be submitted triennially rather than annually. The next time Metro will be required to submit a goal to the FTA will be August 1, 2013.

**FUNDING IMPACT:**

No funding impact. The FTA requires a DBE goal as part of the certifications and assurances necessary to receive grant funding.

The 25% DBE goal will help support Metro's efforts to create a level playing field on which DBEs have the opportunity to participate in Metro's federally-assisted contracts, and to support Metro's policy of nondiscrimination and compliance with federal requirements.

Program Manager: Debra A. Farrar-Dyke

**RECOMMENDATION:**

Approval of the proposed Federal FY 2011 DBE Goal of 25%.

**SUBJECT: FY2011 DISADVANTAGED BUSINESS ENTERPRISE GOAL**

**2010-41**  
RESOLUTION  
OF THE  
BOARD OF DIRECTORS  
OF THE  
WASHINGTON METROPOLITAN AREA TRANSIT AUTHORITY

WHEREAS, The Washington Metropolitan Area Transit Authority (WMATA) is a recipient of federal assistance from the U.S. Department of Transportation (DOT) and the Federal Transit Administration (FTA); and

WHEREAS, It is the policy of WMATA that businesses owned and controlled by socially and economically disadvantaged individuals shall have the opportunity to participate in WMATA federally-assisted contracts; and

WHEREAS, Under DOT regulation 49 C.F.R. Part 26, as amended February 3, 2010, WMATA, as a recipient of federal financial assistance, is required to submit a revised Disadvantaged Business Enterprise (DBE) goal every three years on a schedule established by the FTA and that schedule requires WMATA to submit its 2011 federal fiscal year goal on August 1, 2010; and

WHEREAS, The DBE goal is required to be bifurcated between race-conscious and race-neutral measures; and

WHEREAS, In accordance with 49 C.F.R. Part 26.45 and Board of Directors approval, WMATA has provided for public participation in the goal-setting process by publishing notice of the proposed goal, providing a public comment period from May 28 to July 12, 2010, and holding a public meeting on June 30, 2010; now, therefore be it

*RESOLVED*, That the Board of Directors affirms the policy of nondiscrimination and compliance with federal requirements for engaging in affirmative action in contracting; and be it further

*RESOLVED*, That it is the policy of the Board of Directors that neither WMATA, nor any of its contractors or vendors, shall discriminate on the basis of race, color, national origin, sex or any other unlawful basis in the award and performance of contracts or subcontracts; and be it further

**Motioned by Mr. Zimmerman, seconded by Mrs. Hudgins**

**Ayes: 7 - Mr. Benjamin, Mrs. Hudgins, Mr. Albert, Ms. Hewlett, Mr. Zimmerman, Mr. Brown and Mr. Downey**

*RESOLVED*, That the Board of Directors adopts a final DBE goal of 25% for Federal Fiscal Year 2011 for implementation of the DOT regulations for federally-funded contracts, recognizing that the overall goal will be achieved through 19% race-conscious and 6% race-neutral measures and be established on a contract-by-contract basis; and be it further

*RESOLVED*, That the General Manager is hereby authorized to submit the foregoing goal to the FTA; and be it finally

*RESOLVED*, That this Resolution shall be effective immediately.

Reviewed as to form and legal sufficiency,



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Carol B. O'Keeffe  
General Counsel



# **REPORT**

## **Public Comment Period on Proposed WMATA Federal Fiscal Year (FFY) 2011 Annual Disadvantaged Business Enterprise (DBE) Goal**

**July 22, 2010**

**Washington Metropolitan Area Transit Authority**



## Executive Summary

In compliance with the Code of Federal Regulation (49 CFR 26) and Metro Board approval on May 28, 2010, Metro initiated a forty-five (45) day public comment period on the proposed FFY 2011 DBE Goal.

Outreach efforts for the Public Comment Period included:

- Disseminated the public notice beginning on May 28, 2010
- Advertised in the Washington Post the notification of the goal and public meeting
- Solicited public comments via email through our weekly email alerts
- Held a Public Meeting on June 30, 2010
- Public comment period ended on July 13, 2010

A total of twenty-three (23) people provided input on the goal, either by attending the public meeting or submitting their comments in writing (via email) or over the telephone. Nearly all of the responses came from firms within Metro's Transit Zone.

There was uniform support of the goal and methodology used by Metro to determine the goal. Of the respondents, five (5) individuals participated in the Public Meeting, and six (6) individuals provided written comments concerning Metro's DBE Program. An additional twelve (12) individuals contacted Metro via telephone to offer their support of the FFY 2011 Goal. In addition to support of the goal, the respondents' additional comments included:

- Greater access to small procurement opportunities (simplified acquisitions).
- Continued efforts by Metro and the DBE Program to help DBE firms become prime contractors.
- Greater access to bonds and loans (not simply bonding and lending seminars).



## Full Report

### I. Introduction

The following report is a summary of the comments received by Washington Metropolitan Area Transit Authority DBE/Contract Compliance staff in regards to the proposed FFY 2011 Annual DBE Goal. In addition, this report reflects written comments received by the various respondents e-mailed to Metro headquarters, and those received during the Public Meeting.

The purpose of the Public Comment Period and Meeting was twofold. First, the Public Comment Period satisfied the requirements of 49 CFR Part 26 that require a 45 day public comment period including a public meeting be held prior to implementing the new DBE goal. Secondly, the comment period allowed Metro to solicit and obtain public comment regarding Metro's DBE Program and what changes, if any, should be made to make the program more efficient and effective for Metro's certified DBEs.

Pursuant to the actions taken by the Board on May 28, 2010, Metro initiated its public comment period and solicited comments from stakeholders and other interested parties. This included a Public Meeting held on June 30, 2010 from 10:00am to 3:00pm held in the Jackson Graham Building.

Formal notice of the comment period was made via:

- A Press Release in May 2010;
- A series of weekly emails and faxes to Metro's certified DBEs and area business organizations and civic associations;
- An ad placed in the Washington Post.

*Copies of each are included as attachments in Part Two of this report.*

In addition, notice was posted on Metro's website and shared with numerous firms and entities through several outreach events participated by Metro DBE/Contract compliance Team.

Metro received comments, either through participation at the public meeting, orally, or in writing from twenty-three (23) people representing twenty-two (22) Metro Certified Disadvantaged Business Enterprises. Of these, five (5) people attended the public meeting, Six (6) comments were submitted in writing, and twelve (12) were submitted over the phone.



## II. Public Comment Participation

Of the twenty-three (23) comments provided seven (7) were from Maryland, six (6) were from the District of Columbia; five (5) were from Virginia; two (2) were from New York, and there was one respondent each from California, New Jersey, and Pennsylvania.

Those providing comments were from the following jurisdictions:

- California - 1 respondent or 3.6% of the total
- District of Columbia - 6 respondents or 14.5% of the total
- Maryland - 7 respondents or 45.8% of the total
- New Jersey - 1 respondent or 3.6% of the total
- New York - 2 respondents or 3.6% of the total
- Pennsylvania - 1 respondent or 4.8% of the total
- Virginia - 5 respondents or 16.9% of the total

There was unanimous support of the 25% Goal and the following:

- 19% of Goal to Be Achieved by setting project-specific goals for DBEs
- 6% of Goal to be Achieved through other means, including:
  - Encouraging the use of DBEs on Authority projects, without the use of project-specific goals.
  - Supporting efforts to assist DBEs become prime contractors on Authority Projects.
  - Continued participation in various business development and outreach programs geared towards enhancing the capacity of the Authority's DBEs to participate in Metro contracts.

### **Additional Comments:**

Several respondents provided specific comments regarding the FFY 2011 DBE Goal. The following is a synopsis of those comments.

#### ➤ **ARRA Projects**

One (1) respondent commented that Metro should set aside any remaining projects funded by the American Reinvestment and Recovery Act for DBE firms.



The same respondent also suggested that Metro should establish a set aside program specifically for DBEs, or to encourage the FTA to allow for such set asides.

➤ **Bidding with Metro**

One (1) firm commented that although they appreciated the efforts to inform them of procurement opportunities, they would still like more face time with the Project Managers to better understand what the procurement need is, and how to better submit bids to Metro.

The commenter also requests more information/training on making proposals to Metro.

➤ **Contract Unbundling**

Two (2) respondents commented on the need for Metro to adopt procurement policies and practices that will lead to better contract unbundling. This includes the 66 signatories on the letter from Haris Design & Construction

➤ **DBE Certification**

One (1) respondent commented that although they appreciate the new streamlined process for inter-agency certification, they still would like to see an eventual national reciprocity for certification. Further, they suggest that the Metro region further develop its Modified certification program to include full reciprocity between the MOU partners.

➤ **Establishing Higher Project Specific Goals**

One (1) respondent indicated that Metro should look to raising project specific goals, and to scrutinize any bidding prime more for failing to achieve these goals.

➤ **Improvements to the Certification Process**

Two (2) respondents commented that the certification process remains too cumbersome and time consuming that it remains an obstacle for firms seeking certification or even re-certification.

➤ **Non-Federal Funded Projects**

Two (2) respondents commented that they appreciated Metro's advocacy of them for non-federal funded projects, but would like more done in this area. Their primary focus was in IT related contracts.

One (1) responded commented that Metro should adopt a reporting requirement for non-federal funded contracts similar to those required under the DBE Program.



➤ **Promotion of DBE Firms as Prime Contractors**

Three (3) firms commented that they would like Metro to continue its efforts to promote DBEs as primes particularly in IT and construction related projects. Respondents also commented that they would like to see Metro expand its business development efforts to support more A/E opportunities and reduce the number of “design build contracts” which inherently prohibit DBEs from participating.

➤ **Simplified Acquisitions**

Four (4) firms commented that often times the procurements are too large for them to secure bonding and as a result do not pursue them. Accordingly, they would like to have greater access and information on Metro’s smaller purchases including those procured through the Simplified Acquisitions Process. One of the responses also indicated that although they have registered through the electronic system, they would like to have more information on the types of goods procured through Simplified Acquisitions and how to get advanced notice of the solicitations.

### **III. DBE/Contract Compliance Team Initiatives**

Metro understands that it cannot award contracts to contractors who do not bid. Of the approximate nine hundred firms (900) certified with Metro, (although significantly higher than previous years) a relatively small number of certified contractors bid on Metro opportunities, even in cases where efforts are made to notify of opportunities and provide assistance. Metro will continue working on addressing both real and perceived issues regarding contracting with its certified firms, including but not limited to: lack of bonding and capital, the perception that bidding primes efforts to use certified firms is still superficial, and the lack of certified contractors for a particular service need – particularly rail related contracts.

Metro’s DBE/Contract Compliance Office has developed a set of internal “best practices” commensurate with current regulations and Metro’s procurement policies to support the needs of the certified business community.

These practices include:

#### **I. Project Specific Goal Setting**



At the beginning of each fiscal year and the initial planning phase for all appropriate federally funded contracts, the applicable offices will work with the DBE/Contract Compliance Team to review the procurement to evaluate potential contracting opportunities and determine an acceptable level of proposed DBE participation. Included in this evaluation, will be:

- A review of *all* the trades to be purchased and an initial identification of DBE firms able to supply goods and services.
- Identification of procurement areas that will not be eligible for “outreach” as a result of mitigating circumstances such as “National Buyer Programs” or other exigent issues.
- Identification of trades, based on available pool of targeted firms, which might be divided into smaller contract sizes to increase potential participation without increasing cost or jeopardizing quality.

## II. Procurement Outreach

The outreach efforts to the certified business community will increase and continue to be a priority. To support this concept, a separate outreach plan will be developed for all major projects and good faith efforts to achieve goals would be monitored for meeting individual contract goals.

Metro’s annual procurement forecast will be part of an on-going system to notify the certified business community of opportunities to bid or market. Additional outreach steps may include the use of fax and email alerts as well as smaller targeted outreach initiatives for trade specific opportunities.

The DBE/ Contract Compliance Team will actively solicit all known certified business enterprises capable of providing the product(s) or service(s) to be solicited. Metro’s database of certified business enterprises continues to serve as the primary resource for obtaining this information.

If there are no known certified businesses to provide specific product(s) or service(s), Metro and its contractors will work with the MOU partners to identify certified business enterprises.

In an effort to identify firms for certification, Metro will continue to develop and update its database of reputable businesses to qualify those firms that make good candidates for work with Metro. Further, we will continue to consult with other area and national certifying entities, state minority business organizations, and specific Associations/Organizations to identify qualified trade specific protected class firms to maximize participation on this Project.



The following sample list of Certifying Agencies as well as area and national organizations have been identified for support in identifying potential certified business enterprises:

#### Certifying Agencies

- D.C. Department of Transportation
- Maryland Department of Transportation
- Metropolitan Washington Airports Authority
- Virginia Department of Transportation

#### Area and National Organizations

- D.C. Chamber of Commerce
- District of Columbia Hispanic Chamber Of Commerce
- Greater Washington Board of Trade
- Hispanic Business Foundation of Maryland
- Maryland/D.C. Minority Supplier Development Council
- Minority Business Coalition
- National Association of Minority Contractors
- National Capital Minority Business Opportunity Committee

Metro’s DBE/Contract Compliance Team will continue to engage in various outreach initiatives to ensure greater DBE participation. Depending on the size and scope of work to be performed these initiatives may include:

- Expand outreach activities with a particular emphasis to identify and work with firms in trade areas that have historically been underutilized by Metro.
- Continue organizing workshops and seminars to certified businesses, providing networking opportunities and encouraging or requiring the development of other business relationships such as joint ventures, diversification, and expansion.
- Continue encouraging open communications with current Metro contractors to seek DBE certification as applicable.
- Continue organizing procurement “open houses” and provide opportunities to targeted certified firms to meet with buyers in need of their goods and/or services.
- Participating in “Information Forums” in addition to pre-proposal meetings to introduce the applicable project, Metro staff, and the prime contractor (if appropriate) to the certified business community and alert them of upcoming procurement opportunities.
- Communication with area and national business organizations to inform and encourage subcontractors to bid on large packages of work.



- A two-step alert process that will involve the use of procurement faxes and emails to alert small and disadvantaged contractors, subcontractors, professional service providers, vendors and suppliers of upcoming contract opportunities with follow up telephone calls to the certified business community to ensure they received the fax /email alert and encourage them to pursue the contracting opportunity.
- Assisting the GC and/or prime contractors in the development and implementation of joint ventures between certified business enterprises and non-certified business enterprise firms to promote increased contract participation with protected firms.

### **III. Training**

Contractor compliance training, for all tiered contractors on applicable Metro contracts, continues to be a vital task for the DBE Program. A formal compliance training process has been developed to provide necessary compliance information to key Metro project personnel, A/E/GCs and all tiered contractors and suppliers with:

- A Good Faith Efforts Checklist
- The Project's Contracting and Participation policy and goals;
- Project reporting, documentation, guidelines and
- Implementation strategies and expectations.

For specific contracts, this training includes developing a subcontractor training workbook for all project personnel, prime contractors and all sub-contractors. The workbook will include portions of the applicable CFRs, Metro's compliance requirements and other necessary documents (e.g. contractor tracking data input forms, etc.).