



TURLOCK
TRANSIT

City of Turlock
DBE Program Goal Setting for
Federal Transit Administration (FTA) Assisted Contracts

Analysis and Methodology for
Federal Fiscal Years 2021 through Fiscal Year 2023

Introduction

The City of Turlock has prepared this FY 2021 –FY 2023 triennial overall Disadvantaged Business Enterprise (DBE) goal for projects assisted by the U.S. Department of Transportation (USDOT), Federal Transit Administration (FTA), in compliance with Code of Federal Regulations (CFR) Title 49--Transportation, Subtitle A--Office of the Secretary of Transportation, Part 26--Participation by Disadvantaged Business Enterprises in the Department of Transportation Financial Assistance Programs, Subpart C--Goals, Good Faith Efforts, and Counting, Section 26.45.

The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts. The program must be narrowly-tailored in accordance with applicable law.

Compliance with California Proposition 209

The triennial overall DBE goal complies with the California Civil Right Initiative, Proposition 2009, in that any continuing race-conscious measures for new contracts, or contracts in progress, apply only to U.S. DOT-assisted contracts.

The race-neutral elements of City of Turlock's DBE program are applicable to all third-party contracts, regardless of funding source, in a manner that is consistent with Proposition 209. By this means, the administration of City contracts to include the participation of DBEs on a nondiscriminatory basis is preserved.

Additional background on compliance standards

In May 2005, the Ninth Circuit Court of Appeals decided a case (Western States Paving Co. Inc. v. Washington State Department of Transportation) that has an impact on the goal-setting methodology of the City's DBE program. The Court ruled that the Washington State Department of Transportation (WSDOT) was applying its DBE program unconstitutionally because it did not have sufficient evidence of discrimination in its marketplace to justify its annual overall DBE goal.

The court concluded that the U.S. DOT DBE program was constitutional as written because it was a "narrowly tailored" means of remedying the effects of race and sex based discrimination within the transportation contracting industry. However, the Court held that WSDOT, in order to justify an annual DBE goal, needed to go beyond the requirements of the federal regulations and independently establish the existence of a racial/gender discrimination in the state's transportation contracting industry for each group included in its DBE program. The Court reviewed WSDOT's annual goal setting process, determined it was flawed and concluded that the WSDOT DBE program was unconstitutional.

In this court case, the majority opinion concluded that a disparity study or other documentation of discrimination in the contracting industry in the relevant geographical area for the groups covered by the DBE program should be the basis for an annual DBE goal rather than statistics based only on U.S. Census data. In response to this court ruling and further

guidance from the U.S. DOT, Caltrans and some of the transit agencies in the San Francisco Bay Area awarded consultant contracts for availability/ utilization studies.

In January 1989, the U.S. Supreme Court in *City of Richmond v. J. A. Croson Co.* set constitutional limits on the use of race-conscious programs by nonfederal entities. The court found that race-based preferences would be constitutionally valid only if there is evidence that discrimination in the marketplace has caused the underutilization of minority-owned firms and that race-based preferences are necessary to remedy that discrimination. In addition, the court held that race-conscious remedies must be narrowly tailored to remedy such discrimination.

A joint DBE Disparity Study was conducted by National Economic Research Associates, Inc. (NERA) in 1994 on behalf of the RTCC MAC agencies. It found disparities for each major race and gender group in each of the major industries examined in the RTCC member agency's geographical market. It also found that no minority and woman owned business enterprise group received its expected share of private-sector procurement dollars although these disparities vary greatly for each group across each agency.

Anecdotal evidence in the study provided additional support that marketplace discrimination in the greater San Francisco Bay Area limits the opportunities for minority and women owned businesses to obtain work. Evidence of discrimination was presented in various areas, including education, housing, banking, bonding, employment, and union apprenticeship programs, which have a negative effect on individuals who want to establish and expand their businesses. The DBE Disparity Study concluded that statistical and anecdotal findings strongly support the view that discrimination would lead to the underutilization of minority and women owned businesses by the RTCC agencies in the absence of their goal programs. Therefore, these goal-based programs are a reasonable remedy for ensuring that procurement spending is not used to help perpetuate discriminatory practices.

FTA-Assisted Contracting Program for (FTA) FFY 2021-23

The City of Turlock anticipates three (3) federally funded projects being allocated through the FTA during the 2021-23 federal fiscal years. Turlock Transit is the recipient of Federal Transit Administration's (FTA) Section 5307 annual apportionment to the Turlock Urbanized Area. The funds are generally used for operational costs. Bus Operations and Professional Support; Operations Center construction; and Facility Support Services Materials & Equipment have been included in this DBE Goal methodology.

The following projects will be assisted with FTA funds through existing and/or anticipated federal grant awards. The source of funding for the following contracts: FTA Section 5307 annual apportionment to the Stanislaus Council of Governments (StanCOG). Turlock Transit receives an annual apportionment from StanCOG based on performance data submitted to the National Transit Database annual reports.

Table 1 represents the FTA-assisted contracting opportunities considered in the preparation this goal methodology. The projects anticipated for award during the triennial period.

TABLE 1

Transit Projects	Est. Federal Funds	Federal Fund Source
Operations Center Construction	\$5,120,000	FTA – Section 5307
Facility Support Services Materials & Equipment	\$2,370,000	FTA – Section 5307/5339
Bus Operation and Professional Services	\$5,250,000	FTA – Section 5307
Total FTA-Assisted contracts:	\$12,740,000	FTA – Section 5307

Table 2 below provides a summary of the categories of work with estimated cost breakdown for each. Categories of work are groups utilizing comparable NAICS codes for purposes of weighting the categories of work based on the engineer’s estimates.

TABLE 2

Category of Work	NAICS Code	Est. Cost	NAICS %
Commercial Construction	236220	\$3,958,251	0.3107
Steel and Concrete	238120	\$357,627	0.0281
Electrical	238210	\$534,993	0.0420
Plumbing HVAC	238220	\$149,419	0.0117
Post Construction Cleaning	238990	\$27,206	0.0021
Interior Design	541410	\$92,503	0.0073
Operating Assistance	485113	\$5,250,000	0.4121
Facility Support Services Materials & Equipment	236220	\$2,370,000	0.1860
TOTAL		\$12,740,000	100.00%

Goal Setting Methodology
OVERALL GOAL

Base Line

In accordance with 49 Code of Federal Regulations (CFR) part 26.45 the following goal was established. The process used to determine this goal as stated in 49 CFR 26 is as follows:

Step One: Base Figure - Determine the weight of each type of work by NAICS Code

The City of Turlock does not have any subrecipients. To establish the Base Figure of the relative availability of DBE firms in relation to all comparable firms available for Turlock FFY 2021-23 FTA funded program, the City has elected to use the California Unified Certification Program (CUCP) of certified firms within our market area for calculating the numerator and the Census Bureau’s Business Pattern Database (CBP) that perform work within the same North American industry Classification System (NAICS) Codes within the same geographical market area to calculate the denominator. Turlock will use the California Department of Transportation (Caltrans) District 10 boundary as its market area for DBE goal determination. This district serves the communities of Alpine, Amador, Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne counties.

INITIAL BASE FIGURE

Work Category	DBEs	All Firms	Initial Base Figure
Commercial Construction	4	141	0.028
Steel and Concrete	8	34	0.235
Electrical	5	220	0.023
Plumbing HVAC	1	396	0.003
Post Construction Cleaning	3	155	0.019
Interior Design	0	5	0.000
Security System	1	22	0.045
Bus Rehab	0	1	0.000
Advertising	4	25	0.160
Operating Assistance	0	33	0.000

Following the USDOT DBE formula below, the Base Figure is derived by dividing the number of ready, willing, and able DBE firms identified for each work category by the number of all firms identified for each corresponding work category (relative availability), weighting the relative availability for each work category by the corresponding work category weight from Table 2 (weighted ratio), and adding the weighted ratio figures together.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{\text{Number of All Ready, Willing and Able Firms}} \times \text{weight} \times 100$$

- For the numerator: CUCP DBE Database of Certified Firms
- For the denominator: 2018 U.S. Census Bureau’s Business Patterns Database

The result of the Weighted Base Figure calculation is shown in Table 3 as follows:

TABLE 3

Work Category	Category Weight	DBEs	All Firms	Weighted Ratio
Commercial Construction	0.3107	4	109	0.012
Steel and Concrete	0.0281	8	82	0.003
Electrical	0.0420	5	73	0.003
Plumbing HVAC	0.0117	1	25	0.001
Post Construction Cleaning	0.0021	3	139	0.001
Interior Design	0.0073	0	51	0.000
Operating Assistance	0.4121	0	33	0.000
Facility and Support Equipment	0.1860	0	17	0.000
Base Figure (Sum of Weighted Ratios all Work Categories)				2.00%

This Base Figure of 2.49 percent represents all available DBE firms in the City's market area as certified by the CUCP.

Step Two: Adjusting the Base Figure

Following the establishment of the Base Figure, the City reviewed and assessed other evidence that could potentially affect the relative availability of DBEs within the market area. An adjustment of the base figure considered DBE participation in the prior triennial term in accordance with the provisions set forth under 49 CFR Part 26.45.

Past DBE Goal Attainment

Historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform. Thus, MTD calculated past DBE participation attainments for the three prior federal fiscal years:

FEDERAL FISCAL YEAR	FTA DBE PARTICIPATION %
2018	5.19%
2019	4.75%
2020	5.47%
Median DBE Participation for the Last Three (3) Years	5.19%

The City of Turlock continues to believe that the Base Figure of 2.0 percent is achievable with an enhanced effort to encourage DBE firms to become certified by the CUCP and bid on transit projects. Thus, the City believes that it would be appropriate to revise the Base Figure based on past DBE goal attainment.

The median established for the past three years is higher than the Base Figure derived from Step 1; therefore, an adjustment to the Base Figure based on past DBE goal attainments. The adjustment is calculated by averaging the Base Figure with the median DBE Past Attainment, as shown below.

Base Figure A (Table 3)	2.00%
Median DBE Attainment B (Table 4)	5.19%
Adjusted Base Figure [(A+B)/2]	3.60%

Step Three: Race-Conscious & Race-Neutral Projections

The City of Turlock DBE goal attainment data, which equals a 5.19% mean for the past three years, demonstrates that the City is able to meet the DBE goal through race neutral means. The City intends to continue to use race-neutral methods to meet the overall DBE goal of 3.60% for FFY 2021-2023 in accordance with Title 49 CFR Part 26.51.

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
DBE Adjusted Base Figure	3.60%
Race-Conscious Component	0.00%
Race-Neutral Component	3.60%

Overall Resultant Goal Adjustment

The Base Figure reflects the absence of certified DBEs in the trades in our market area. Considering all information available specific to FTA projects, **the City of Turlock concludes the DBE neutral goal of 3.60% and race conscious goal of 0.00% for a proposed Overall DBE Goal 3.60% for FTA funded projects. The City of Turlock shall provide this goal on all contracts or agreements with other consultants/contractors for its Annual Anticipated DBE Participation Level (AADPL) for Federal fiscal years 2021-23.**

Public Participation efforts and DBE Goal Notices

The advertised DBE Goal notice informed the public that the proposed goal and rationale were available for inspection at City hall during normal business hours and also available through the Turlock Transit website for 45 days following the date of the Public Notice. Turlock Transit encourages DBE participation in all procurements. This is stated on our website along with notices of DBE Goal methodology and advertisement for contracting opportunities. Our website also offers an opportunity for the public to submit comments at any time to Turlock Transit regarding transit services and programs.

Solicitation notifications for all procurements are emailed or faxed to vendors listed on the City's contractor and pre-bid attendance file, Turlock Transit's bidders list and procurement master list. Turlock Transit has also sought public participation from community organizations through public meetings and public planning documents comment periods on up-coming projects.

Turlock Transit staff attended and provided DBE Goal notice the Stanislaus Council of Governments' regional Hispanic Leadership Council (HLC). DBE procurement materials are commonly translated into Spanish to actively engage and involve residents who often do not participate in formal public comment meetings and city government events.

Fostering Small Business Participation

The City of Turlock has implemented several strategies to foster small business participation in its contracting process. These include the following:

- In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of

the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

- On larger prime contracts encouraging the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current City contractors or past regional area contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE certification.