

Attachment A

MTC

FY 2008 – 2009

ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL

DRAFT Report

June 25, 2008

I. INTRODUCTION

The Metropolitan Transportation Commission (MTC) hereby submits its FY 2008-2009 Disadvantaged Business Enterprises (DBE) Annual Anticipated DBE Participation Level Draft Report (“the AADPL Report”). This report was prepared in accordance with 49 CFR Part 26, Subpart C - Participation by DBEs in Department of Transportation (DOT) Financial Assistance Program, Goals (“the Regulations”) for the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) third party federally-funded contracts, and with the wholly race-neutral DBE program adopted by the California Department of Transportation (Caltrans) on May 1, 2006.

A. Summary of Availability Setting Analysis and Methodology

The proposed DBE availability is based on new contracting opportunities available in FY 2008-09. This methodology includes an assessment of: (1) the number, type, and total dollar value of all federally-assisted contracting opportunities; (2) a two-step process prescribed in the Regulations consisting, first, of development of a base figure indicating the availability of DBE contractors/subcontractors relative to all businesses that are ready, willing, and able to participate (referred to as “relative availability of DBEs”), followed by an adjustment of the base figure, based on regional circumstances, to develop an overall DBE availability for each funding source; and (3) a description of the use of race-neutral methods utilized to reach the availability level.

B. Summary of Overall Availability

In summary, the FY 2008-09 Overall Annual DBE Availability for new contracting opportunities:

Funding Source	New Federally-Funded Third Party Contracts	Overall Annual DBE Availability	Projected DBE Availability
MTC-FHWA	\$26,676,311	4.78%	4.78%
MTC/SAFE-FHWA	\$350,000	1.63%	1.63%
MTC – FTA	\$1,779,627	1.70%	1.70%

C. Federally-Assisted Contracting Opportunities

MTC’s new FY 2008-2009 contracting opportunities using MTC-FHWA, MTC/SAFE-FHWA, and MTC-FTA funds are included as Attachment A-1.

II. ESTABLISHMENT OF BASE FIGURES FOR RELATIVE AVAILABILITY OF DBE'S

A. Local Market Area

After examining relevant available evidence, MTC identified the local market area as: 1) the area where the substantial majority of the contractors and subcontractors with which MTC does business is located, and 2) the area in which MTC spends the substantial majority of its contracting dollars. The local market area is the 9-county Bay Area including Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano and Sonoma counties.

To determine the number of firms (both DBEs and non-DBEs), MTC included the number of firms included the Census Bureau's 2002 Economic Census Geographic Area Series for California using relevant NAICS Codes. To determine the relative availability of DBE firms, MTC utilized the official statewide DBE database from the California Uniform Certification Program (UCP) using the same NAICS codes and included DBE firms located or available to work within the local market.

B. Options for Determining Base Availability Figure.

Title 49 CFR Section 26.45 provides five options for determining the Base Figure or percentage of the overall federally-funded contracts that should go to DBEs if there was a level playing field: (1) use of DBE directories and Census Bureau data; (2) use of a bidders' list; (3) use of data from a disparity study; (4) use of the goal of a similar recipient; and (5) alternative methods based on demonstrable local market conditions.

(1) Use of DBE directories and Census Bureau data

On March 13, 2002, U.S. DOT approved the California Unified Certification Program (UCP). The UCP is the official statewide DBE database of firms certified to conduct business throughout California. The UCP provides the information necessary to determine the number of ready, willing, and able DBE firms that could potentially participate in upcoming contract opportunities. The U.S. Department of Commerce, Bureau of the Census, 2002 Economic Census Geographic Area Series for California information provides data necessary to determine the total number of all firms (DBEs and non-DBEs) ready, willing and able to bid on contracts.

(2) Use of a Bidders' List

The Regulations (Section 26.11) require the establishment of a Bidders' List that reflects the actual availability of DBEs based on their participation or attempted participation in previously awarded MTC contracts. The Bidders' List is a very focused measure of firms "ready, willing, and able" to bid on MTC projects (see Section 26.45(b) of the Regulations), in that it requires a demonstration of the firms' desire and ability to participate in the competitive selection process through submission of a proposal.

(3) Use of data from a disparity study

Caltrans has conducted a state-wide disparity study covering the contracting opportunities it funds, completed in June , 2007. The study has been submitted to FHWA for review and approval. Caltrans has instructed its subrecipients to continue to follow other means of determining availability, pending approval of its study by FHWA. A number of Bay Area transit operators are in the process of conducting disparity studies, as well.

(4) Use of the goal of another DOT recipient

MTC is not aware of any other DOT recipient whose functions and contracting opportunities permit an analogy in terms of relative availability of DBEs. MTC is the single metropolitan planning organization for the San Francisco Bay Area. No other Bay Area DOT recipient shares the blend of transportation planning, analysis, operations, and software and database contracts that are the bulk of MTC contracting opportunities.

(5) Other methods

MTC is not aware of other methods that could be used to make adjustments to the base figure in Step 2.

C. MTC-FHWA – Step 1 Base Figure

The Step 1 base figure was calculated using the following data:

1. DBE Directory and Census Bureau Data:

To determine the number of DBE firms, MTC reviewed the California UCP databases for currently certified DBE firms by NAICS code expertise. The number of firms was narrowed to include firms that are located and/or willing to do business within the 9-bay area county. All of the certified DBE firms in these classifications in the statewide database were considered, in determining the Step 1 Base Figure for DBE availability.

To determine the number of all firms (DBEs and non DBEs) in MTC's local market area that are ready, willing and able to bid on the two contracts, MTC reviewed the Census Bureau's 2002 Economic Census Geographic Area Series for California. These data were utilized because they closely matched the location of the firms that have previously conducted business with MTC. We note that Census Bureau statistics are not broken down by DBE sub-group, which was a requirement of the Ninth Circuit's order in *Western States Paving Co., Inc. v. Washington State Department of Transportation (WSDOT)*.

2. Step 1 Base Figure

Reviewing the sources under the viable methodologies indicated above, the Step 1 Base Figures are included as Attachment A-2.

III. Base Figure Adjustment – Step 2 and Overall Goal

Step 2 of the availability is to examine all evidence available in MTC and MTC SAFE jurisdictions to determine what adjustment, if any, is needed to the base figure to reflect actual DBE availability (Section 26.45(d)).

A. MTC FHWA, MTC FTA, and MTC-SAFE FHWA – Step 2 Adjustments to Base Figure and Overall Availability

MTC has determined that the Census data and UCP DBE database represent a realistic number of contractors that could potentially bid on these contracts.

The Step 2 Base Figure Adjustments results in an Overall Annual DBE Availability as follows:

	Total Federal Funding	Step 1 Base Figure	Step 2 Base Figure Adjustment	Projected DBE Availability	Overall Annual Availability
MTC-FHWA	\$26,140,311	4.78%	None	\$1,273,899	4.78%
MTC/SAFE-FHWA	\$350,000	1.63%	None	\$5,712	1.63%
MTC – FTA	\$1,779,627	1.70%	None	\$30,248	1.70%

IV. RACE-NEUTRAL PROJECTIONS

A. Summary of Race-Neutral Methods of Achieving DBE Participation

The Regulations require that the maximum feasible portion of the DBE overall availability be achieved by using race-neutral means (Section 26.51), and that MTC include a projection of the overall availability of DBE effort to be met through race-neutral means. Race-neutral means making efforts to ensure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work they might otherwise perform themselves; and providing technical assistance, communications programs and other support services to facilitate consideration of DBEs and other small businesses.

B. Race Neutral Methods of Overall Annual Goal Achievement

In the opinion of the U.S. Court of Appeals, Ninth Circuit for the *Western States Paving Co., Inc. v. Washington State Department of Transportation (WSDOT)* case, the court upheld the constitutionality of the DBE regulations, but found that the WSDOT program was not narrowly tailored to groups that have suffered discrimination and was therefore unconstitutional. Without supporting documentation, such as a disparity study, the court deemed that there was not conclusive evidence of discrimination to warrant contract specific goals. The regulations require that a U. S. Department of Transportation (DOT) recipient utilize contract-specific goals, only after it determines either that it cannot meet the overall annual DBE goal otherwise, or that there is documented evidence of a disparity between DBE availability and contracting dollars the recipient receives. Based on this guidance, MTC will utilize race-neutral methods of achieving DBE participation.

MTC will continue to utilize race-neutral methods to facilitate DBE participation by: 1) participating in DBE workshops and outreach efforts, 2) publishing all contracting opportunities on the MTC website (www.mtc.ca.gov), 3) mailing DBE's notices of procurements, 4) advertising as necessary in regional newspapers and publications targeted to minorities and women, 5) actively participating with other agencies in their DBE and minority outreach efforts, and 6) reviewing pending solicitations to determine the feasibility of breaking the proposed contract into smaller scopes of work aimed at providing more opportunities for minority, women, local and small business participation. The DBE Liaison Officer will also assist prospective contractors to identify DBE firms that are ready, willing, and able to subcontract.

V. PUBLIC PARTICIPATION PROCESS

Working in concert with the Alameda County Public Works Agency (ACPWA), and members of the Business Outreach Committee (BOC), a public participation session was held on April 23, 2008 at the Metropolitan Transportation Commission (MTC) offices. The BOC was formed in November 2007, with the mission to help disadvantaged business enterprises and other small and/or local companies to expand of their businesses by developing relationships with transit agency staffs and the contracting community of the San Francisco Bay Area. Its membership is comprised of Alameda–Contra County Transit District (AC Transit), Golden Gate Bridge, Highway & Transportation District (GGBH&TD), MTC, San Francisco Bay Area Rapid Transit District (BART), Central Contra Costa Transit Authority (CCCTA), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SamTrans), Alameda County Congestion Management Agency (ACCMA), Water Emergency Transportation Authority (WETA), and Santa Clara Valley Transportation Authority (VTA). The BOC and the other participating agencies sent 514 invitations to the public participation session to DBEs, minority and women businesses, community organizations, small business resources centers, and DOT grantees.

The session was conducted to obtain pertinent input from businesses and organizations that are most impacted by the Disadvantaged Business Enterprise (DBE) goals established for U.S. Department of Transportation (DOT)-assisted contracts. The session also provided information about the availability of certified and potential DBEs willing and able to compete for DOT-assisted contracts, to discuss their concerns, and perspectives on how DOT recipients might more effectively administer their programs to improve DBE participation. During the public participation session, MTC and other agencies discussed their respective DOT-assisted contracting opportunities projected for FY 2008-2009.

Of the more than 50 individuals who attended the meeting, many emphasized the need for more outreach to the DBE community and the need for notification about upcoming procurement activities. Other issues included:

- The request that agencies closely monitor the performance of prime contractors, to both enforce the prompt payment requirements and ensure that the work committed to DBEs at contract award is actually performed by the DBEs,

- Concern about the inability of DBEs to compete on large projects when no specific contract goals are established,
- The concern about “presumed” pre-selection of favored or preferred firms by agencies prior to the issuance of an IFB or RFP, and
- Difficulty in identifying and establishing a working relationship with the prime contractors bidding on federally funded projects.

Participants were advised that the BOC is currently addressing these issues by holding quarterly events (such as networking sessions, etc.), and issuing a quarterly newsletter with upcoming contracting opportunities, helpful hints on how to respond to bids, information on no-cost educational courses, and contact information for each agencies DBE Liaison and/or Contracts Administrator.

MTC has recently updated its website to include awarded contracts information, information on inclusion in MTC’s vendor database, and the BOC’s quarterly newsletter.

VI. OUTREACH EFFORTS

On December 12, 2007, MTC held a Procurement Workshop and Networking event. Based on feedback received from the attendees, the MTC website was updated to include information on awarded contracts including awardee and contract amount, and a downloadable version of the MTC Consultant Form. MTC plans to host more outreach events on-site.

Additionally, MTC staff participated in Congresswoman Ellen Tauscher’s Small Business Government Contracting Seminars on February 14, 2008 held at the Solano County Government Building in Fairfield, CA, and the April 3, 2008 Cal Mentor Annual Meeting hosted by Caltrans.

VII. NEXT STEPS

MTC working as a BOC member will continue to assist DBE, SBE, and WBE’s to find contracting opportunities. In an effort to achieve this goal the BOC has developed a brochure and a quarterly newsletter that both have information pertinent to DBE, SBE, and WBE firms. MTC takes the lead in producing the newsletter. The brochure, and 1st and 2nd issues of the newsletter are attached as Attachment B.

On July 23, 2008, the BOC will hold a networking event for Architectural and Engineering (A&E) firms. This event will facilitate the introduction to and matchmaking of SBE, DBE and WBE architectural, engineering, and related businesses with prime A&E firms who propose and perform major transportation projects in Northern California.

**ATTACHMENT-1
FY 2008-2009 CONTRACTING OPPORTUNITIES**

FHWA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Bike Trip Planner (Phase 2)	Collect, organize and disseminate bike trip information for bike riders in the Bay Area through 511 [®] /511.org [®] .	FHWA	\$158,000
Technical Support for Web-based Projects	Consulting service to help MTC with its process of building an LRS system for the bay area.	FHWA	\$56,478
Ridesharing Program Operations	A comprehensive program designed to facilitate the use of carpools and vanpools by Bay Area travelers.	FHWA	\$2,700,000
Capital phase II (Design, Build, Maintain)	Capital phase II (Design, Build, Maintain) for the TransLink [®] program.	FHWA	\$2,200,000
Congestion Monitoring	Collect and analyze congestion data on Bay Area freeways	FHWA	\$226,000
ITS Architecture	Information systems architecture.	FHWA	\$313,800
Regional Operations Program Marketing, Web Communications	Marketing and customer communication activities, and maintain and host Agency program Web sites.	FHWA	\$1,374,000
Traveler Information System	Project management, project control, facility leasing, reporting and administrative support for TravInfo [®] .	FHWA	\$5,363,000
P-TAP Projects	Pavement management technical assistance program to assist jurisdictions with implementation & maintenance of an effective management system.	FHWA	\$800,000
TETAP	Traffic Engineering Technical Assistance Program for technical assistance for a broad range of projects aimed at improving safety and mobility along arterials in the Bay Area and promoting collaboration across agency & modal boundaries.	FHWA	\$233,000
Regional Signal Timing Program	Update and implement timing plans for traffic signal systems, and perform before-and-after studies.	FHWA	\$1,054,000
511 [®] Driving Times Retrieval Function for SOS Data	Evaluate ways to improve effectiveness of 511 drive times to use for estimating State of the System point-to-point travel times.	FHWA	\$212,000
Regional HOT Lanes Study, Phase 3	Study High Occupancy Travel (HOT) Lane feasibility and implementation in the San Francisco Bay Area.	FHWA	\$390,000
Corridor Analysis Study	Assistance in evaluating existing performance problems on freeways and major arterials, performing traffic analyses, and developing and assessing short-term and long-term solutions to mitigate traffic congestion on major corridors in the Bay Area.	FHWA	\$500,000
Dublin Center to-to-Center	Upgrade existing centers with current software, bring fiber optic ring into operations, train staff on operations and maintenance, and on-call software maintenance.	FHWA	\$800,000
Ramp Metering ALA/SC	Implement ramp metering on southbound SCI-880, ramp meters at three Alameda County interchanges (Grant Line Road, N. Flynn Road, and Portola Avenue), and design and construction of permanent ramp meters at Grant Line Road and North Flynn Road.	FHWA	\$2,485,033
Transit Priority Measures Study	Evaluate effectiveness of various transit priority measures (e.g. bulbouts, signal pre-emption).	FHWA	\$320,000
Transportation Impact of	Bay Area Household Travel Survey on the impact of Transit	FHWA	\$340,000

TODs - Bay Area Household Travel Survey	Oriented Development (TOD)		
Transit Accessible Locations Social Service/Health Care & Transit Coordination	Consultant services for the Lifeline project.	FHWA	\$226,000
Climate Protection Campaign Free Transit	Outreach, education, and marketing for the Climate Protection Campaign.	FHWA	\$6,800,000
Climate Change Coordinator	Consultant services to oversee the Climate Protection Campaign Free Transit project.	FHWA	\$125,000
Total FHWA:			\$26,676,311

FHWA MTC-SAFE – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Performance Monitoring Data Collection	Collect congestion data on Bay Area freeways to report on most congested locations	FHWA	\$250,000
Regional Emergency Management Safety/Security Plan	Development of a Regional Transportation Emergency Operations Plan.	FHWA	\$100,000
Total FHWA MTC-SAFE:			\$350,000

FTA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Transit Capital Inventory	Develop a Regional Transit Capital Inventory asset tool.	FTA	\$600,000
Implement Lifeline Program Community Based Plans	Transportation services for the Lifeline project.	FTA	\$1,179,627
Total FTA:			\$1,779,627

**ATTACHMENT A-2
STEP 1 BASE FIGURES**

MTC-FHWA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Bike Trip Planner (Phase 2)	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$158,000	\$7,301.13
Technical Support for Web-based Projects	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$56,478	\$2,609.83
Ridesharing Program Operations	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$1,620,000	\$74,859.65
Ridesharing Program Operations	54182--Public Relations Agencies	130	1,140	11.40%	\$1,080,000	\$123,157.89
Capital phase II (Design, Build, Maintain)	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$2,200,000	\$101,661.26
Congestion Monitoring	54161 -- Management Consulting Services	189	11,581	1.63%	\$226,000	\$3,688.28
ITS Architecture	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$313,800	\$14,500.59
Regional Operations Program Marketing, Web Comm.	541613 Marketing Consulting Services	91	3,284	2.77%	\$1,374,000	\$38,073.69
Traveler Information System	541512 Computer Systems Design & Related Services	242	5,237	4.62%	\$5,363,000	\$247,822.42
P-TAP Projects	54133 Engineering Services	355	7,735	4.59%	\$800,000	\$36,716.22
TETAP	54133 Engineering Services	355	7,735	4.59%	\$233,000	\$10,693.60
RSTP	54133 Engineering Services	355	7,735	4.59%	\$1,054,000	\$48,373.63
511 [®] Driving Times Retrieval Function for SOS Data	541614-Transportation Management Consulting Services	39	588	6.63%	\$212,000	\$14,061.22
Regional HOT Lanes Study, Phase 3	541614-Transportation Management Consulting Services	39	588	6.63%	\$390,000	\$25,867.35
Corridor Analysis Study	541614-Transportation Management Consulting Services	39	588	6.63%	\$500,000	\$33,163.27
Dublin Center to-to-Center	541614-Transportation Management Consulting Services	39	588	6.63%	\$800,000	\$53,061.22
Ramp Metering ALA/SC	541614-Transportation Management Consulting Services	39	588	6.63%	\$2,485,033	\$164,823.62
Transit Priority Measures Study	54161 -- Management Consulting Services	189	11,581	1.63%	\$320,000	\$5,222.35
Transportation Impact of TODs -Bay Area Household Travel Survey	541614-Transportation Management Consulting Services	39	588	6.63%	\$340,000	\$22,551.02
Transit Accessible Locations Social Service/Health Care & Transit Coordination	54161 -- Management Consulting Services	189	11,581	1.63%	\$226,000	\$3,688.28
Climate Protection Campaign Free Transit	541613 Marketing Consulting Services	91	3,284	2.77%	\$6,800,000	\$237,634.41
Climate Change Coordinator	541613 Marketing Consulting Services	91	3,284	2.77%	\$125,000	\$4,368.28
Total Projected FHWA:					\$26,676,311	\$1,273,899.21
Overall Availability:						4.78%

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MTC-SAFE-FHWA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Performance Monitoring Data Collection	54161 -- Management Consulting Services	189	11,581	1.63%	\$250,000.00	\$4,079.96
Regional Emergency Management Safety/Security Plan	54161 -- Management Consulting Services	189	11,581	1.63%	\$100,000.00	\$1,631.98
Total Projected MTC-SAFE FHWA:					\$350,000	\$5,711.94
Overall Availability:						1.63%

MTC-FTA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Implement Lifeline Program Community Base Plans	485113--Bus and Other Motor Vehicle Transit Systems	3	173	1.73%	\$1,179,627.30*	\$20,455.96
Transit Capital Inventory	54161 -- Management Consulting Services	189	11,581	1.63%	\$600,000.00	\$9,791.90
Total Projected FTA:					\$1,779,627.30	\$30,247.87
Overall Availability:						1.70%

*15% of JARC funds call for projects and non-profit consultant agreements, this is an estimate of what will go to subcontractors under these projects.

ATTACHMENT B
BOC BROCHURE AND NEWSLETTERS