

Attachment A

MTC

FY 2007 – 2008

ANNUAL ANTICIPATED DBE PARTICIPATION LEVEL

DRAFT Report

August 2007

I. INTRODUCTION

The Metropolitan Transportation Commission (MTC) hereby submits its FY 2007-2008 Disadvantaged Business Enterprises (DBE) Annual Anticipated DBE Participation Level (“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 the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA) 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 2007-08. 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 2007-08 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	\$22,220,368	4.53%	\$1,007,628
MTC/SAFE-FHWA	\$0	0%	\$0
MTC – FTA	\$1,205,000	1.58%	\$19,095
MTC– FAA	\$600,000	4.94%	\$29,632
MTC - FEMA	\$2,000,000	5.43%	\$108,638

C. Federally-Assisted Contracting Opportunities

MTC’s new FY 2007-2008 contracting opportunities using MTC-FHWA, MTC/SAFE-FHWA, MTC-FTA, MTC-FEMA, and MTC-FAA funds are included as Attachment A-1.

II. ESTABLISHMENT OF BASE FIGURES FOR RELATIVE AVAILABILITY OF DBES

A. Local Market Area

Following the examination of the relevant available evidence, MTC identified the local market area as: 1) the area in which the substantial majority of the contractors and subcontractors with which MTC does business are 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.

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 were 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 has the official statewide DBE database of firms certified to conduct business throughout California. This database was utilized to determine the number of ready, willing and able DBE firms that could potentially participate in upcoming contract opportunities. To determine, the U.S. Department of Commerce, Bureau of the Census, 2002 Economic Census Geographic Area Series for California information was utilized 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 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. 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.

(3) Use of data from a disparity study

Caltrans awarded a contract for a statewide disparity study to BBC Research and Consulting of Denver, Colorado. On August 1, 2007, Caltrans posted the final report on its website and commenced a 45 day public comment period. Information from their Disparity Study was used to establish the State's overall 2008 Federal Fiscal Year goal of 13.5% DBE participation for FHWA-funded projects and 4 % for FTA-funded projects. As part of the submittal to FHWA, Caltrans is holding statewide Public Participation Forums for the next 45 days. The study is available on the Department's website at: <http://www.dot.ca.gov>. Several other agencies including BART, VTA, Alameda County, and the City and County of San Francisco are also conducting/completed disparity studies.

Since these studies are not final, MTC is not relying on applicable data from the studies to establish its Base Availability levels, which is consistent with Caltrans' guidance.

(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. vs. WSDOT (see Part IVB below for discussion).

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 Adjustments to Base Figure and Overall Goal

Step 2 of the availability is to examine all of the evidence available in the MTC and MTC SAFE jurisdictions to determine what adjustment, if any, is needed to the base figure in order to reflect actual DBE availability (Section 26.45(d)). MTC has determined that the Census data and Statewide DBE database represent a realistic number of contractors that could potentially bid on these contracts and that an adjustment of the base figures is not justified.

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	\$22,220,368	4.53%	None	\$1,007,628	4.53%
MTC/SAFE-FHWA	\$0	0%	None	\$0	0%
MTC – FTA	\$1,205,000	1.58%	None	\$19,095	1.58%
MTC– FAA	\$600,000	4.94%	None	\$29,632	4.94%
MTC – FEMA	\$2,000,000	5.43%	None	\$108,638	5.43%

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 include making efforts to assure 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 participate 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 the members of the Regional Transit Coordinating Council Minority Affairs Committee (RTCC MAC) conducted a public participation session on April 13, 2007 at the Metropolitan Transportation Commission (MTC) offices. The RTCC MAC 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) BART, Central Contra Costa Transit Authority (CCCTA), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SamTrans), Sacramento Regional Transit (SACRT), and Santa Clara Valley Transportation Authority (VTA). 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 provided a forum for these businesses and organizations to provide information about the availability of certified and potential DBEs willing and able to compete for DOT-assisted contracts, to discuss their concerns, and to provide their perspectives on how DOT recipients might more effectively administer their programs to improve DBE participation. The RTCC MAC and the other participating agencies mailed over 800 invitations to the public participation session to DBEs, minority and women businesses, community organizations, small business resources centers, and DOT grantees.

During the public participation session, MTC and other agencies discussed its respective DOT-assisted contracting opportunities projected for FY 2007-2008.

Individuals who addressed the RTCC MAC on behalf of the DBE community emphasized the need for more outreach to the DBE community and the need for notification about upcoming procurement activities. They requested agencies to closely monitor the performance of prime contractors, enforcing the prompt payment requirements and ensuring that the work committed to DBEs at contract award is actually performed by the DBEs, and expressed concern about the inability of DBEs to compete on large projects when there are no specific contract goals established, the “presumed” pre-selection of favored or preferred firms by agencies prior to the issuance of an IFB or RFP, and the difficulty in identifying and establishing a working relationship with the prime contractors bidding on federally funded projects.

These issues and suggestions will be reviewed by the RTCC MAC Committee.

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**ATTACHMENT-1
FY 2007-2008 CONTRACTING OPPORTUNITIES**

FHWA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
511 Marketing, Web & Communication Service	Marketing, customer communication activities, maintain and host MTC program web sites.	FHWA	\$930,000
Capital phase II (Design, Build, Maintain)	Capital phase II (Design, Build, Maintain) for the TransLink® program.	FHWA	\$4,199,000
Engineering and Technical Support, Card Distribution and Market Penetration	Engineering, technical support, card distribution and market penetration for the TransLink® program.	FHWA	\$683,000
Freeway Performance Initiative	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	\$1,000,000
Fremont Center 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	\$200,000
Information Technical System Architecture	Information systems architecture.	FHWA	\$313,868
P-Tap Projects	Pavement management technical assistance program to assist jurisdictions with implementation & maintenance of an effective management system.	FHWA	\$800,000
Regional Signal Timing Program	Update and implement timing plans for traffic signal systems, and perform before-and-after studies.	FHWA	\$2,000,000
Regional Transportation Emergency Management Plans After Action - 2007	Development of a Regional Transportation Emergency Operations Plan.	FHWA	\$562,950
Regional Trip Plan System, Transit Info Database	Collect, organize and disseminate schedule, route and fare information for the public transit providers in the Bay Area through 511/511.org.	FHWA	\$2,616,243

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Ridesharing Program Operations	A comprehensive program designed to facilitate the use of carpools and vanpools by Bay Area travelers.	FHWA	\$1,547,000
Technical Support for Web-based Projects	Consulting service to help MTC with its process of building an LRS system for the bay area.	FHWA	\$35,000
TETAP Consultants	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	\$425,000
Traffic Operations System Priority	Implementation of ramp metering and other system management projects.	FHWA	\$100,000
Traffic Operations System Sustainability	Consultant analysis of annual cost to operate and maintain existing and programmed Traffic Operations System.	FHWA	\$100,000
TransLink® Marketing	Marketing and customer communication activities, and maintain and host Agency program Web sites.	FHWA	\$803,175
Travel Model Spec and Training Study, Phase 2	Development of a new system of activity-based travel and demand forecasting models.	FHWA	\$250,000
Traveler Information System	Project management, project control, facility leasing, reporting and administrative support for TravInfo®.	FHWA	\$5,655,132
Total FHWA:			\$22,220,368

FTA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Regional Transit Demographic Study	Transit Passenger Survey for the purpose of collecting demographic and other information.	FTA	\$50,000
Transit Capital Inventory	Develop a Regional Transit Capital Inventory asset tool.	FTA	\$800,000
Transit Friendly Suburbs	Study of the challenge of providing auto alternatives in suburban settings by analyzing actual travel patterns in suburban developments through the collection of household travel surveys.	FTA	\$355,000
Total FTA:			\$1,205,000

FAA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Regional Airport System Update – Phase 2	Continued evaluation of work started in Phase 1 on Demand Management and New Air Traffic Control Technology, as well as examination of the potential for alternative airports to help address the Bay Area’s long-range aviation needs.	FAA	\$600,000
Total FAA:			\$600,000

FEMA – FUNDED PROJECTS			
Project	Description	Source	Total \$'s
Construction Project	Retrofit of the MTC offices located in the MetroCenter Building, 101 8th St, Oakland, CA.	FEMA	\$2,000,000
Total FEMA:			\$2,000,000

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

MTC-FHWA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
TETAP Consultants	54133 Engineering Services	382	7,735	4.94%	\$425,000	\$20,989
P-Tap Projects	54133 Engineering Services	382	7,735	4.94%	\$800,000	\$39,509
Freeway Performance Initiative	54133 Engineering Services	382	7,735	4.94%	\$1,000,000	\$49,386
Regional Signal Timing Program	54133 Engineering Services	382	7,735	4.94%	\$2,000,000	\$98,772
Capital phase II (Design, Build, Maintain)	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$4,199,000	\$206,863
Engineering and Technical Support Card Distribution & Market Penetration	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$683,000	\$33,648
TOS Sustainability	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$100,000	\$4,926
TOS Priority	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$100,000	\$4,926
Ridesharing Program Operations	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$1,547,000	\$76,213
Traveler Information System	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$5,655,132	\$278,599
Travel Model Spec and Training Study, Phase 2	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$250,000	\$12,316
Technical Support for Web-based Projects	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$35,000	\$1,724
Regional Trip Plan System, Transit Information Database	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$2,616,243	\$128,889
Information Technical System Architecture	541512- Computer Systems Design & Related Services	258	5,237	4.93%	\$313,868	\$15,463
TransLink® Marketing	541613 Marketing consulting services	18	2,604	0.69%	\$803,175	\$5,552
511 Marketing, Web & Communication Service	541613 Marketing consulting services	18	2,604	0.69%	\$930,000	\$6,429
Regional Transportation Emergency Management Plans After Action 2007	54161-Management Consulting Services	188	11,581	1.62%	\$562,950	\$9,139
Fremont Center to Center Project	541614-Transportation Management Consulting	42	588	7.14%	\$200,000	\$14,286
Total Projected FHWA:					\$22,220,368	\$1,007,628

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Overall Availability:	4.53%
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MTC-FTA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Transit Friendly Suburbs	54161-Management Consulting Services	188	11,581	1.62%	\$355,000	\$5,763
Transit Capital Inventory - Asset Tool	54161-Management Consulting Services	188	11,581	1.62%	\$800,000	\$12,987
Regional Transit Demographic Study	541613 Marketing Consulting Services	18	2,604	0.69%	\$50,000	\$346
Total Projected FTA:					\$1,205,000	\$19,095
Overall Availability:						1.58%

MTC-FAA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Regional Airport System Update, Phase 2	54133 Engineering Services	382	7,735	4.94%	\$600,000	\$29,632
Total Projected FAA:					\$600,000	\$29,632
Overall Availability:						4.94%

MTC-FEMA						
Project	NAICS/ Description	Total DBEs	Total All Firms	DBE Relative Availability	Projected Federal \$	Projected DBE \$
Construction/Retrofit of MetroCenter	236220 Commercial and Institutional Building Construction & 236210 Industrial Building Construction & 238190 Other Foundation, Structure, and Building Exterior Contractors	227	4,179	5.43%	\$2,000,000	\$108,638
Total Projected FEMA:					\$2,000,000	\$108,638
Overall Availability:						5.43%