

Disadvantaged Business Enterprise Program and Triennial DBE Goal Setting Methodology and Rationale

Kenn Hardin

Senior Manager Civil Rights Division

RTD Small Business Office

August 14, 2013

Agenda

- **Introductions**
- **History/Background**
- **DBE Program Highlights**
- **DBE Program Objectives**
- **DBE Program Requirements**
- **Goal Setting Methodology and Rationale**
- **Proposed DBE Triennial Goal**
- **Questions and Answers**

History/Background

- **As a recipient of federal funds, RTD is required to have a DBE program for its federally-funded projects**
- **DBE Program only applies to federally-funded projects**

DBE Program Highlights

- **RTD's DBE Program conforms with regulations of the U.S. Department of Transportation (DOT), 49 C.F.R. Part 26**
- **Ensures the administration, monitoring and implementation requirements set forth in 49 C.F.R. Part 26**
- **Utilizes a Triennial DBE goal to achieve DBE participation for federally-funded projects**

DBE Program Objectives

- **Create “level playing field” for expected DBE participation**
- **Goals must be clearly tied to and narrowly tailored to local market**
- **Recipients can use Race Conscious contract-specific goals based on market area and the identified opportunities relevant to the specific projects as well as Race Neutral Techniques**
- **Quotas or set-asides are not allowed**

Triennial DBE Goal

- **The RTD Triennial DBE Goal will be established for heavy construction, equipment, materials and supplies, design and engineering projects for federal fiscal years (FFY) 2014-2016**
- **The DBE Program reporting period corresponds with the FFY (October 1 – September 30)**
- **A narrowly tailored contract-specific goal setting process will be used on a contract-by-contract basis**

Public Notice Process

- **Notice placed on RTD web site: July 26, 2013**
- **Formal Notice filed July 26, 2013**
- **Notification to Public (through local organizations and print media): July 26, 2013**
- **30-day Review Period with RTD:**
 - **July 26, 2013 – August 26, 2013**
- **45-day Comment Period to RTD and/or DOT:**
 - **July 26, 2013– September 11, 2013**
- **August 1st deadline for submitting DBE goal**

Triennial DBE Goal Setting Methodology

Factors Considered

- **Local market area for RTD and availability of DBEs currently working;**
- **DBEs capable of working who may not currently be certified in Colorado;**
- **Historical data on past participation of DBEs on similar RTD projects;**
- **DBE goals established by similarly-situated transit systems across the U.S.;**
- **The availability of ready, willing and able certified DBEs capable of participating by potential subcontracting elements;**

Factors Considered

- **The scopes of work required to be performed by the prime team or selected proposer;**
- **The subcontracting scopes and opportunities of work eligible to be subcontracted, including the budget, tasks and services needed to complete the procurement;**
- **The realistic assessment of available DBE firms to participate in the subcontracted activity for the procurement by NAICS code eligibility**

Establishing Triennial DBE Goal

- **Step One: DBE Base Figure**
 - Calculates relative availability of DBEs - establishing the “Base Figure”, based on projected NAICS
 - RTD utilized the Colorado UCP Directory and U.S. Census data, using same projected NAICS

Step One: DBE Base Figure Availability = 14.34%

NAICS Code	Description of Projected Awards	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
237	Heavy and civil engineering construction	67	387	0.1731
238	Specialty trade contractors	168	2030	0.0828
221	Utilities	71	102	0.6961
541	Professional, scientific, and technical services	222	1163	0.1909
Combined Totals		528	3682	0.1434 <i>Overall availability of DBEs</i>

- **Step One: DBE Base Figure (cont'd)**
 - Narrowly tailored availability data
 - Actual RTD DBE subcontractors or potential DBE subcontractors;
 - Review of applicable NAICS codes for similar types of projected subcontracting work for this period;
 - Weighted availability calculation.

Weighted Adjusted DBE Availability = 20.91%

NAICS Code	Description of Projected Awards	Weight	x	Availability	Weighted Base Figure
237	Heavy and civil engineering construction	0.60000	x	0.17313	0.1039
238	Specialty trade contractors	0.20000	x	0.08276	0.0166
221	Utilities	0.10000	x	0.69608	0.0696
541	Professional, scientific, and technical services	0.10000	x	0.19089	0.0191
				Total	0.2091
				Expressed as a % (*100)	20.91%

Adjustments to the Base Figure

- **Step Two**: Further adjustments to the DBE Base Figure
 - Adjust the base figure to account for other evidence, including local market conditions and types of work on federally-funded projects:
 - Number and percentage of DBE firms on RTD's Bidders' List;
 - The entry of certified DBE firms into the Denver area;
 - Actual participation of DBEs on RTD FasTracks' projects, and
 - Anticipated construction (including design and construction services) projects for Federal Fiscal Years (FFY) 2014-2016

After consideration of these factors, RTD chose not to make any adjustments to the Base Figure.

Estimated Race-Neutral and Race-Conscious Participation

- Under USDOT regulations, we must meet our DBE participation goal using narrowly tailored means that do not unduly burden non-DBEs.
- To fulfill this obligation, we are required to achieve our DBE participation goal to the greatest extent possible through the use of race-neutral means.
- Race-conscious means may be used only to the extent needed to meet whatever portion of the DBE participation goal cannot be met through race-neutral means.

Estimated Race-Neutral and Race-Conscious Participation

The race-neutral components of our DBE Program reflect our efforts to reach out and assist that are available to all businesses, including minority and women-owned businesses, in our service area. The race-neutral efforts include:

- An effective outreach program targeted at small businesses, including DBE firms;**
- Coordinated technical and financial assistance programs;**
- Monitoring mechanisms to collect program evaluation data;**
- Accounting for DBE participation obtained through subcontracting on a prime contract without DBE goals; and**
- Awards of prime contracts to DBEs.**

Race-Neutral v. Race-Conscious Participation

- We anticipate that overall 4.66% DBE participation can be achieved through race-neutral means, with the remaining level of the DBE participation (14.34%) goal being met through race-conscious means, such as contract goals.
- We believe the 14.34% Base Figure is more of an accurate reflection of DBE capacity.

Triennial DBE Goal

- In accordance with USDOT regulation 49 C.F.R. Part 26, the RTD has established a goal of awarding **19%** of the value of federally-funded contracts to DBEs during FFYs 2014-2016 (exclusive of FTA funds to be used for the purchase of transit vehicles).
- **14.34%** of the goal will be race conscious, and **4.66%** race neutral.
- RTD expects that DBEs and other small businesses will be awarded contracts and subcontracts valued in excess of \$108.6 million.

QUESTIONS AND ANSWER SESSION

Rules of Engagement

- Please submit your questions in writing
- Ask a question; we will only address questions and not engage in philosophical debates
- Participate, Be Respectful, Be Constructive
- We will limit discussion on an individual question to 2 minutes

Regional Transportation District (RTD)
Civil Rights Division
Disadvantaged Business Enterprise (DBE) Program
Triennial DBE Goal and Methodology
FFY 2014-2016

Public Participation Forum
August 14, 2013

AGENDA

- **Introductions**
- **History/Background**
- **DBE Program Highlights**
- **DBE Program Objectives**
- **DBE Program Requirements**
- **Goal Setting Methodology and Rationale**
- **Proposed DBE Triennial Goal**
- **Questions and Answers**

