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April 4, 2022

SACOG FTA Disadvantaged Business Enterprise (DBE) Goal Methodology

Federal Fiscal Years 2022-2024

Introduction

The Sacramento Area Council of Governments (SACOG) herein sets forth its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2022-2024, pursuant to 49 CFR Part 26.

In setting our fiscal year 2022-2024 DBE goal, the Sacramento Area Council of Governments (SACOG) used a methodology that strives to achieve a "level playing field". This level playing field is defined as the amount of DBE participation we could realistically expect in the absence of discrimination.

Our goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs to participate on our DOT-assisted contracts. To set our overall goal we followed the steps outlined in 49 Code of Federal Regulations (CFR) Part 26, Section 26.45.

Overall Goal

SACOG's overall goal for the following time period 2022-2024 is **6.82%** of the Federal financial assistance we will expend in DOT-assisted contracts funded directly by the Federal Transit Administration (FTA). This is exclusive of FTA funds to be used for the purchase of transit vehicles.

\$1,999,470 is the dollar amount of DOT-assisted contracts that SACOG expects to award during Federal Fiscal Years 2022-2024. This means that SACOG has set a goal of expending \$ \$136,412 with DBEs during these fiscal years.

III. DOT-ASSISTED CONTRACTS FOR 2022-2024

Table 1, below, represents SACOG's DOT-assisted contracting program, which consists of projects considered in preparing this goal methodology. The projects, which include Professional Services contracting opportunities, are anticipated to be awarded during the first two years of the triennial period, as set forth in SACOG's adopted Overall Work Program (OWP). Information on contracts for the third year of the triennial period are not yet available, and therefore are not considered in this assessment. SACOG shall break down larger projects to allow for sub-contracting opportunities to the extent possible.

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Table 1 – Expected DOT-Funded Contracts

Project Year	Project No.	Project Name	NAICS Code	Percent DOT Funded	Total Estimated Cost
2022	SAC227	Regional Transit Network Plan - Surveying	541910 - Marketing Research and Public Opinion Polling	100% (ARPA funds no match required)	\$46,550
2022	SAC227	Regional Transit Network Plan	541690 - Transportation Studies – Other Scientific and Technical Consulting Services	100% (ARPA funds no match required)	\$650,000
2022	SAC215	Connect Card	541690 - Transportation Studies – Other Scientific and Technical Consulting Services	100% (TDC match)	\$52,000
2022	SAC117	Transit Asset Management (ThingTech)	541512 - Computer Systems Design Services	100% (TDC match)	\$53,640
2022	SAC208	REMIX	541511 - Custom Computer Programming Services	100% (TDC match)	\$80,000
FY 2021-22 Total					\$882,190
2023	SAC117	Transit Asset Management (ThingTech)	541512 - Computer Systems Design Services	100% (TDC match)	\$53,640

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Project Year	Project No.	Project Name	NAICS Code	Percent DOT Funded	Total Estimated Cost
2023	SAC208	REMIX	541511 - Custom Computer Programming Services	100% (TDC match)	\$80,000
2023	IN PROCESS	Regional Mobility Hub	541611 - Administrative Management and General Management Consulting Services	100% (TDC match)	\$250,000
2023	SAC227	Regional Transit Network Plan - Surveying	541910 - Marketing Research and Public Opinion Polling	100% (ARPA funds no match required)	\$50,000
2023	SAC227	Regional Transit Network Plan	541690 - Transportation Studies – Other Scientific and Technical Consulting Services	100% (ARPA funds no match required)	\$550,000
FY 2022-23 Total					\$983,640
2024	SAC117	Transit Asset Management (ThingTech)	541512 - Computer Systems Design Services	100% (TDC match)	\$53,640
2024	SAC208	REMIX	541511 - Custom Computer Programming Services	100% (TDC match)	\$80,000

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Project Year	Project No.	Project Name	NAICS Code	Percent DOT Funded	Total Estimated Cost
FY 2023-24 Total					\$133,640

Table 2, below, provides a summary of the categories of work with estimated cost breakdown for each category. Categories of work are groups utilizing comparable North American Industry Classification System (NAICS) codes for weighting the categories of work based on the engineer’s estimates.

Table 2 – Expected DOT Contracts (by NAICS)

Project Year	Category of Work	NAICS Code	Estimated DOT Dollars by NAICS	Estimated DOT % by NAICS
2022	Custom Computer Programming Services	541511	\$80,000	100% (TDC match)
2022	Computer Systems Design Services	541512	\$53,640	100% (TDC match)
2022	Transportation Studies – Other Scientific and Technical Consulting Services	541690	\$702,000	100% (ARPA funds no match required)
2022	Marketing Research and Public Opinion Polling	541910	\$46,550	100% (ARPA funds no match required)
2023	Custom Computer Programming Services	541511	\$80,000	100% (TDC match)
2023	Computer Systems Design Services	541512	\$53,640	100% (TDC match)
2023	Administrative Management and General Management Consulting Services	541611	\$250,000	100% (TDC match)
2023	Transportation Studies – Other Scientific and Technical Consulting Services	541690	\$550,000	100% (ARPA funds no match required)
2023	Marketing Research and Public Opinion Polling	541910	\$50,000	100% (ARPA funds no match required)

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IV. Goal Methodology

STEP 1: Determine the Base Figure for the Relative Availability of DBEs (26.45)

The first step was to determine a base figure for the relative availability of DBEs available to propose on SACOG's DOT-assisted contracting opportunities projected to be solicited during the triennial goal period. SACOG followed the prescribed federal methodology to determine relative availability in our market. SACOG uses specific types of consultants, primarily transportation planning consultants. We also have a number of software-specific contracts we anticipate in this period.

SACOG's local market area consists of the geographic area in which a substantial majority of SACOG's contracting dollars are expended and/or where the substantial majority of contractor and subcontractor bids or proposals are located. Recent Bidder's List data demonstrates that approximately 56% of prime contractors bidding on SACOG contracts are from throughout the state of California, which is SACOG's established market area.

As shown in the Base Figure formula below, to determine the Base Figure, SACOG used a combination of data sources as permitted under Title 49 of the Code of Federal Regulations, Section 26.45, subsection (c)(2). Specifically, SACOG identified specific NAICS codes for anticipate work for the period of this goal.

The NAICS codes we used were:

- 541910 - Marketing Research and Public Opinion Polling
- 541690 - Transportation Studies – Other Scientific and Technical Consulting Services
- 541512 - Computer Systems Design Services
- 541511 - Custom Computer Programming Services
- 541611 - Administrative Management and General Management Consulting Services

Once the types of firms that would be performing work on DOT-assisted contracts was identified, SACOG then relied upon a database of DBE vendors that are registered with Caltrans ¹to determine firms that would be reasonable to assume are ready, willing, and able to perform the anticipated work (the numerator).

¹ Caltrans DBE System (<https://californiaucp.dbesystem.com/>)

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To establish the total number of firms ready, willing, and able to perform the anticipated work (the denominator), SACOG reviewed the Census Bureau Census County Business Patterns², all California for 2019.

The base figure for the relative availability of DBEs was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs} = 2,017}{\text{All firms ready, willing and able} = 37,768} = 5\%$$

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was: 5%.

SACOG further applied weighting as the next step as FTA guidance suggests, because the availability of DBEs varies by NAICS code, and the anticipated amount of funding for each type of work also varies.

Table 3 – Weighting of DBE by NAICS Code

NAICS Code	DBE Available	Total Available	% DBE	Total Contracts	% of Funds
541910 - Marketing Research and Public Opinion Polling	107	847	13%	\$96,550	5%
541690 - Transportation Studies – Other Scientific and Technical Consulting Services	358	4,802	7%	\$1,252,000	63%
541512 - Computer Systems Design Services	323	8,493	4%	\$160,920	8%
541511 - Custom Computer Programming Services	270	10,869	2%	\$240,000	12%
541611 - Administrative Management and General Management Consulting Services	959	12,757	8%	\$250,000	13%

² Census County Business Patterns, all California for 2019
(<https://data.census.gov/cedsci/table?q=CBP2019.CB1900CBP&g=0400000US06&n=541910&tid=CBP2019.CB1900CBP>)

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TOTALS	2,017	37,768		\$1,999,470	
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The difference with weighting applied is 6.82%.

Step 2:

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal. SACOG considered two primary factors as part of step two: past participation and evidence from other disparity studies in our market area.

Because SACOG did not have sufficient contract activity to establish a DBE goal for the period of 2019-2021. Therefore, insufficient data exists to adjust the base figure based on past participation.

SACOG reviewed and analyzed two disparity studies to determine the existence of statistical disparities in the ability of DBEs to obtain financing, bonding, and insurance and to better understand potential barriers between availability and utilization. Caltrans' most recent FTA Disparity Study covers the same market area as SACOG.

Sacramento Regional Transit District's Disparity Study for 2021-2023 covers a small number of counties within the state of California. These studies detail many barriers faced by DBEs in obtaining financing, bonding and insurance and analyze contracts. However because the contracts anticipated by SACOG are much more narrow and smaller in dollar value than those in either the Caltrans or SacRT study, SACOG has determined that this data is not sufficiently specific to SACOG to justify the use of Race-Conscious goals. However, this wealth of data does indicate that DBE availability and capacity would be greater in the absence of structural barriers to entry and participation.

SACOG acknowledges that the base figure determined in Step 1 reflects the amount of participation that DBEs would be expected to achieve in the absence of present and past effects of discrimination. Minority- and women-owned businesses experience barriers that place these businesses at a disadvantage for competing for federal contracting. However, the Caltrans Study acknowledges that much of the information examined in considering a Step 2 adjustment was not easily quantifiable.

Because SACOG does not have a sufficient statistical foundation on which to determine an appropriate adjustment for these factors, SACOG will not make any adjustment to the base figure to

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account for the continuing effects of past discrimination at this time. 49 CFR Part 26 states that there must be a rational relationship between the data used to make the adjustment and the actual numerical adjustment made. Thus, SACOG has not used this data to further adjust its FFY 2022-2024 base figure for its overall DBE goal.

Utilization of Race-Conscious and Race-Neutral Projections

In *Western States Paving Co. v. United States & Washington State Department of Transportation*, 407 F.3d 983 (9th Cir. 2005), the Ninth Circuit Court of Appeal held that the Department of Transportation's DBE Program (49 C.F.R. Part 26) and the authorizing statute in TEA 21 were constitutional and that the national DBE program was narrowly tailored with respect to the RC elements of the program. However, the court further held that, in order for a DBE program to be narrowly tailored, as applied at the state or local level, RC elements of the program must be limited to those parts of the country in which race-based measures are demonstrably needed, based upon adequate evidence of discrimination or its effects in the relevant contracting industry and with respect to the specific groups to which such RC elements are to be applied. Even when sufficient evidence of discrimination exists as to particular minority groups, a RC DBE program is only narrowly tailored, consistent with *Western States Paving Co.*, if its application is limited to those minority groups that have actually suffered discrimination. In response to the ruling, the FTA issued guidance for DBE goal setting that requires recipients to examine any evidence meeting the Ninth Circuit criteria of discrimination and its effects. If the recipient does not have sufficient evidence of discrimination or its effects meeting the Ninth Circuit standard, then the recipient must submit a RN overall DBE goal.

In 2019, Caltrans updated its FTA Disparity Study. SACOG has reviewed the updated study and determined that it does not provide a basis for establishing a RC goal for the following reasons:

1. The types of contracts awarded by Caltrans are not substantially similar to the contracts awarded by SACOG as set out in Step 1. The disparity study specified that, in the study period, 98% of the FTA contract dollars awarded by Caltrans and its subrecipients were for goods and services and 2% were for professional services. As noted above, the bulk of SACOG's FTA contract dollars are anticipated to be expended in professional services category.
1. The *Western States Paving Co.* decision requires that both the evidence of discrimination and the remedial measures be focused on individual sub-groups that have suffered discrimination. Unlike Caltrans, SACOG does not have adequate availability and utilization data for specific subgroups to establish the presence or absence of a statistically significant disparity.

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SacRT lacked adequate data to justify establishing a race or gender conscious DBE goal, and so that Disparity Study also did not provide a basis for establishing a race conscious DBE goal.

SACOG is adopting a wholly race neutral DBE goal for the three FFYs 2022-2024.

SACOG will take affirmative steps to achieve its DBE goal using RN measures, which will 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 that might otherwise be performed by the prime contractor;
- Participating in or sharing information about SACOG contracting opportunities in transportation planning industry-specific outreach events for small businesses; and
- Providing technical assistance and other support services to facilitate consideration of DBEs and other small businesses.