

CHAPTER 10.

Program Measures

The Los Angeles County Metropolitan Transportation Authority (Metro) uses a combination of *race- and gender-neutral measures* and *race- and gender-conscious measures* to encourage the participation of minority- and woman-owned businesses in its contracting. Metro uses those measures as part of its compliance with the United States Department of Transportation’s (USDOT) Federal Disadvantaged Business Enterprise (DBE) Program. Race- and gender-neutral measures are measures that are designed to encourage the participation of all businesses—or, all small businesses—in an entity’s contracting. Participation in such measures is not limited to minority- and woman-owned businesses or to certified MBEs, WBEs, or DBEs. In contrast, race- and gender-conscious measures are measures that are designed to specifically encourage the participation of minority- and woman-owned businesses in an entity’s contracting (e.g., using DBE or MBE/WBE goals on individual contracts).

As part of meeting the *narrow tailoring* requirement of the strict scrutiny standard of constitutional review, agencies that comply with or implement minority- and woman-owned business programs—including the USDOT’s Federal DBE Program—must meet the maximum feasible portion of overall annual minority- and woman-owned business participation goals through the use of race- and gender-neutral measures (for details, see Chapter 2 and Appendix B).¹ If an agency cannot meet its overall minority- or woman-owned business participation goals through the use of race- and gender-neutral measures alone, then it can consider using race- and gender-conscious measures.

As part of the Federal DBE Program, an agency must determine whether it can meet its overall DBE goal solely through race- and gender-neutral measures or whether race- and gender-conscious measures—such as DBE contract goals—are also needed. As part of doing so, an agency must project the portion of its overall DBE goal that it expects to meet through race- and gender-neutral measures and what portion it expects to meet through race- and gender-conscious measures. USDOT offers guidance concerning how an agency should project the portion of its overall DBE goal that it will meet through race- and gender-neutral and race- and gender-conscious measures including the following:

- “USDOT Questions and Answers about 49 CFR Part 26,” which addresses factors for federal aid recipients to consider when projecting the portions of their overall DBE goals that they will meet through the use of race- and gender-neutral measures;²

¹ 49 CFR Section 26.51.

² <http://www.dotcr.ost.dot.gov/Documents/Dbe/49CFRPART26.doc>

- USDOT’s “Tips for Goal-Setting,” which suggests factors for federal aid recipients to consider when making such projections;³
- Federal Highway Administration (FHWA) template, which describes how the agency considers approving DBE goal and methodology submissions includes a section on projecting the percentage of overall DBE goals to be met through race- and gender neutral and race- and gender-conscious measures. Figure 10-1 presents an excerpt from that template.

Figure 10-1.
Excerpt from Explanation of Approval of [State] DBE Goal Setting Process for FY [Year]

You must also explain the basis for the State’s race-neutral/race-conscious division and why it is the agency’s best estimate of the maximum amount of participation that can be achieved through race-neutral means. There are a variety of types of information that can be relied upon when determining a recipient’s race-neutral/race-conscious division. Appropriate information should give a sound analysis of the recipient’s market, the race-neutral measures it employs and information on contracting in the recipient’s contracting area. Information that could be relied on includes: the extent of participation of DBEs in the recipient’s contracts that do not have contract goals; past prime contractors’ achievements; excess DBE achievements over past goals; how many DBE primes have participated in the state’s programs in the past; or information about state, local or private contracting in similar areas that do not use contracting goals and how many minority and women’s businesses participate in programs without goals.

Based on 49 Code of Federal Regulations (CFR) Part 26 and the resources above, general areas of questions that transportation agencies might ask related to making any projections include:

- A. Is there evidence of discrimination within the local transportation contracting marketplace for any racial/ethnic or gender groups?
- B. What has been the agency’s past experience in meeting its overall DBE goal?
- C. What has DBE participation been when the agency did not use race- or gender-conscious measures?⁴
- D. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

Chapter 10 is organized around each of those general areas of questions.

A. Is there evidence of discrimination within the local transportation contracting marketplace for any racial/ethnic or gender groups?

As presented in Chapter 3 as well as in Appendices C and D, BBC Research & Consulting (BBC) examined conditions in the Los Angeles County marketplace related to human capital, financial capital, business ownership, and the success of businesses. There is substantial quantitative evidence of disparities for minority- and woman-owned businesses overall and for specific groups concerning the above issues. Qualitative information also indicated evidence of discrimination affecting the local marketplace. However, some minority and woman business

³ <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>

⁴ To assess that question, USDOT guidance suggests evaluating (a) DBE participation as prime contractors if DBE contract goals did not affect utilization; (b) DBE participation as prime contractors and subcontractors for agency contracts without DBE goals; and (c) overall utilization for other state/ local or private sector contracting where contract goals were not used.

owners that the study team interviewed as part of the disparity study did not think that their businesses had been affected by any race- or gender-based discrimination. Metro should review the information about marketplace conditions presented in this report as well as other information it may have when considering the extent to which it can meet its overall DBE goal through race- and gender-neutral measures.

B. What has been the agency’s past experience in meeting its overall DBE goal?

Figure 10-2 presents the participation of certified DBEs in Metro’s FTA-funded contracts in recent years, as presented in Metro reports to USDOT. Based on information about awards and commitments to DBE-certified businesses, Metro has not met its overall DBE goal in recent years. In federal fiscal years (FFYs) 2010 through 2015, DBE awards and commitments on USDOT-funded contracts was below Metro’s overall DBE goal by an average of 11.4 percentage points. Metro applied race- and gender-conscious DBE contract goals to USDOT-funded transportation contracts during the latter half of the study period.

Figure 10-2.
Past certified DBE participation on USDOT-
funded contracts, FFY 2011-2015

Source:
 Commitments/Awards reported on Metro’s Uniform Reports of
 DBE Awards/Commitments and Payments.

FFY	DBE Attainment	Annual DBE Goal	Difference
2011	3.70 %	8.00 %	-4.30 %
2012	8.37	8.00	0.37
2013	0.51	26.00	-25.49
2014	22.41	26.00	-3.59
2015	2.23 %	26.00 %	-23.77 %

C. What has DBE participation been when the agency did not use race- or gender-conscious measures?

Metro applied race- and gender-conscious DBE contract goals to many FTA-funded transportation contracts and MBE/WBE goals to many local-funded contracts during the study period (January 1, 2011 through December 31, 2015). However, during half of the study period, the agency did not use race- or gender-conscious program measures on FTA-funded construction contracts. Figure 10-3 presents the participation of certified DBEs in those contracts. DBE participation in those contracts was 3.7 percent.

D. What is the extent and effectiveness of race- and gender-neutral measures that the agency could have in place for the next fiscal year?

When determining the extent to which Metro could meet its overall DBE goal through the use of race- and gender- neutral measures, the agency should review the neutral measures that it and other local organizations already have in place. Metro should also review measures that it has planned, or could consider, for future implementation. BBC reviewed race- and gender-neutral measures that Metro currently uses to encourage the participation of minority- and woman-owned businesses in its contracting. In addition, BBC reviewed race- and gender-neutral measures that other entities in Los Angeles County use.

Figure 10-3.
Certified DBE participation in USDOT-funded transportation contracts that did not include race- or gender-conscious measures

Note:

The study team analyzed 6,856 prime contracts and subcontracts.

Source:

BBC Research & Consulting from Metro contracting data.

	Total	
	\$ in Thousand	Percent
DBEs		
Black American-owned	\$17,220	1.4 %
Asian Pacific American-owned	25,268	2.1
Subcontinent Asian American-owned	6,108	0.5
Hispanic American-owned	101,097	8.2
Native American-owned	6,647	0.5
White male-owned	0	0.0
White woman-owned	14,111	1.1
Total DBE	\$170,451	13.8 %

Metro’s race- and gender-neutral measures. Metro currently has a broad range of race- and gender-neutral measures in place to encourage the participation of all small businesses — including DBEs — in its transportation contracts. The agency plans on continuing the use of those measures in the future. Metro’s race- and gender-neutral efforts can be classified into four categories:

- Advocacy and outreach efforts;
- Technical assistance programs;
- Capital, bonding, and insurance assistance;
- Prompt payment policies; and
- Small business preference/set-aside.

Advocacy and outreach efforts. Metro participates in various advocacy and outreach efforts including hosting DBE workshops and using communications that are targeted specifically to disadvantaged businesses.

Communications. Metro communicates with DBEs through email, its Vendor Portal, and its DBE newsletter. Metro uses its Vendor Portal and its newsletter to announce contracting opportunities, special events, policy changes, and new DBE program measures.

Networking events and workshops. Metro hosts various events and workshops for DBEs. Some of those events include Meet the Prime, Meet the Project Managers and Buyers, Salute to Small Business Celebration, and other signature outreach events.

Capital, bonding, and insurance. Metro established a Commercial Insurance Broker Panel which assists businesses that are lacking the required insurance coverages. This panel is available to businesses and contractors through the Transportation Business Advisory Council (TBAC), small business outreach events, and Metro’s small business orientation classes.

Technical assistance programs. Metro provides an online business toolkit which includes web tutorials for DBEs that cover topics that include how to register as a vendor, the process of bidding on contracts with Metro, contract compliance reporting, certification, and more weekly webinars.

Prompt payment policies. Metro has policies in place to help ensure prompt payment to subcontractors. Prime contractors are required to pay their subcontractors within 7 days after receipt of payment from Metro.

Small business enterprise (SBE) program. In 1997, Metro started their SBE program to comply with California's Proposition 209, which prohibits explicit consideration of race or gender in the award of state and locally funded contracts.

Small Business Prime set-aside program. Metro's Small Business Prime set-aside program started in 2013 and enables small businesses to compete only against other small businesses for projects up to \$5 million, as well as informal projects under \$100,000. Only Metro-certified SBEs can participate in the program.

Figure 10-4 provides details of the many race- and gender-neutral programs offered by Metro.

Figure 10-4.
Examples of Metro race- and gender-neutral programs

Type	Program
Advocacy and outreach	Metro Vendor Portal is Metro's central web resource for small businesses to learn to work with Metro easily and efficiently. The portal gives vendors access to registering to work with Metro and allows vendors to sign up to automatically receive project RFPs/solicitations via email.
Advocacy and outreach	Metro Connect is Metro's small business resource that provides vendors with informative Tool Kit, certification information, networking events and workshops, and more. Vendors can also sign up for the MetroConnection newsletter which highlights SBE and DBE businesses, updates vendors on Metro events and bid opportunities, notifies vendor of policy changes, and other legislative news.
Advocacy and outreach	Metro hosts several networking events and workshops including: <ul style="list-style-type: none"> • <i>How to Do Business with Metro</i> which is a monthly workshop on qualification requirements and bidding processes; • The Transportation Business Advisory Council (TBAC) meets monthly at Metro headquarters and includes hosting guest speakers related to current and future contracting opportunities, and contracting-related legislation updates; • <i>Meet the Primes</i> is an annual networking event to connect small businesses with prime contractors; • <i>Meet the Project Managers and Buyers</i> is an annual networking event for small business owners to meet Metro Program Managers and staff; and • <i>Salute to Small Business Celebration</i>.
Advocacy and outreach	Metro 12-Month Look Ahead project list on the Vendor Portal identifies current and future bidding opportunities, includes info on type of work, general scope, estimated cost/range, industry specific needs, and DBE and SBE goals.
Capital, Bonding, and Insurance	Metro Commercial Insurance Broker Panel was established in 2009 to assist businesses lacking required insurance coverage. The panel provides proposals and insurance placement for contractors in order to assist them in meeting Metro's risk management requirements. The broker panel is disseminated to small businesses through the Transportation Business Advisory Council (TBAC), small business outreach events, Metro's small business orientation classes, and published on Metro's website.
Technical Assistance	Metro's Business Toolkit contains pre-recorded web tutorials on Metro vendor registration and the process of bidding on and fulfilling contracts with Metro. It also contains weekly live webinars for contractor and vendor training (i.e., contract compliance reporting, certification, utilization plan completion).
Mentor- Protégé	<p>Contracting Outreach and Mentoring Plan (COMP): Proposers bidding on contracts that are greater than \$25 million are required to submit proposals with an innovative DBE Contracting Outreach and Mentoring Plan (COMP). The Proposers' COMP approach will be evaluated as one element of the RFP evaluation criteria, and Metro will review/approve each COMP submittal for the awarded contract. The plans should include the proposers plan for mentoring subcontractors. The goal is for mentors to assist in the advancement of participating protégés, including measurable plans to grow and compete on a larger scale. Mentor Protégés are identified by Proposers/Bidders, not by Metro.</p> <p>DBE and SBE Tier Programs Proposers are required to identify strategies to create DBE/SBE subcontracting opportunities based on firm size or average annual gross receipts defined by tiered dollar thresholds (i.e. \$3K-\$500K, \$501K-\$1.0M, \$1.1M-\$5M, \$5.1M-\$10M and \$10.1M-\$23.98M). The purpose is to increase DBE/SBE participation by further levelling the playing field and making it easier for DBE/SBEs to compete with firms of a similar size. Proposers are expected to develop and include sub-contracting opportunities at those dollar threshold levels in the COMP approach submitted in their proposals.</p>

Within Los Angeles County, there are many organizations that offer race- and gender-neutral programs to LA business. Figure 10-5 highlights some of those organizations and programs.

Figure 10-5.
Examples of race- and gender-neutral programs offered by LA organizations

Type	Program
Advocacy and Outreach	LA Business Portal is a central web resource from the City of Los Angeles for small businesses looking to work with the City.
Capital, Bonding, and Insurance	LA Business Source Centers are community development finance institutions (CDFIs), or have a formal relationship with a CDFI that offer direct financial assistance for small businesses in addition to their SBE advocacy and technical support or services.
Capital, Bonding, and Insurance	City of Los Angeles Contractor Development and Bonding Program (CDABP) assists with obtaining or increasing bonding capacity, including: <ul style="list-style-type: none"> • Access to City of L.A. collateral support for bid, performance, and payment bonds for qualified contractors; • Contract review, project assessment, and field support for program bonded contracts; • Assistance with project risk identification and mitigation; • Third party funds administration; • Accounting cost subsidy for CPA prepared financial statements; and • Access to contract specific financing.
Capital, Bonding, and Insurance	State of California iBank has a "Just Start Loan Program" that is a state-funded small business microloan program. In the Los Angeles area, loans are financed through the Pacific Coast Regional Small Business Development Corporation and/or the Valley Small Business Development Corporation.
Capital, Bonding, and Insurance	Pacific Coast Regional (PCR) Small Business Development Corporation administers the Metro business Interruption Fund (BIF) for small business owners in LA area impacted by revenue loss due to Metro construction. PCR is a local guarantor for the California Small Business Loan Guarantee Program and a lender and guarantor of the SBA Community Advantage Loan Program.
Capital, Bonding, and Insurance	Valley Economic Development Corp (VEDC) is a non-profit small business lender headquartered in Sherman Oaks that provides loans and micro-financing options to small businesses, particularly those owned by women and minorities, that do not qualify for traditional financing.
Capital, Bonding, and Insurance	Business Resource Group (BRG) partners with Merriwether & Williams to provide financing and build financial capacity of diverse contractors seeking to do business with City of Los Angeles, Los Angeles World Airport, and Port of Los Angeles. Through the Contractors Bonding and Development Program, BRG supports the city of LA's commitment to deliver capital access and specialized assistance services for contractors seeking to expand vendor relationships with the city and its affiliated municipal agencies.
Capital, Bonding, and Insurance	Los Angeles Unified School District (LAUSD) Contractor BondWorks Program provides information and training to help DBEs and other small businesses with bonding and financing to support LAUSD projects.
Mentor-Protégé Programs	The Los Angeles chapter of the Service Corps of Retired Executives (SCORE LA) is a volunteer, non-profit organization that serves as a source of free small business advice for entrepreneurs. SCORE mentors, many of whom are business owners or hold leadership positions in successful companies, provide free and confidential business assistance to both prospective entrepreneurs and existing small business owners. The organization also conducts a variety of workshops at locations throughout the greater Los Angeles area that address many of the essential techniques necessary for establishing and managing a successful business.

Figure 10-5. (continued)

Examples of race- and gender-neutral programs offered by LA organizations

<p>Technical Assistance</p>	<p>The Los Angeles District Office (LADO) of the Small Business Administration (SBA) operates the Management and Technical Assistance Program for the greater Los Angeles, Santa Barbara, and Ventura County areas, and provides technical assistance via counseling resource partners, including an extensive network of three SCORE chapters, four Women Business Centers and nine Small Business Development Centers. Services available include:</p> <ul style="list-style-type: none"> • Free counseling, advice, and information on starting a business through SCORE; • Financial assistance for new or existing businesses through guaranteed loans made by area bank and non-bank lenders; • Free consulting services through the network of Small Business Development Centers. SBDCs also conduct training events throughout the district - some require a nominal registration fee; • Assistance to businesses owned and controlled by socially and economically disadvantaged individuals through the Minority Enterprise Development Program; • Women's Business Center (WBC) program - program partially funded by SBA to provide business training, counseling, coaching, mentoring, and other assistance geared toward women, particularly those who are socially and economically disadvantaged; • Special loan programs for businesses involved in international trade; • Guaranteed loans for credit-worthy veterans; • Encore Entrepreneurs program (for business-owners age 50 and older); • Young Entrepreneurs program (for young owners/student entrepreneurs); and • Office of Native American Affairs (ONAA) -- provides a network of training initiatives that include a Native Entrepreneurial Empowerment Workshop, a Native American 8(a) Business Development Workshop, a Money Smart Workshop, an Incubator Workshop, and the online tool, "Small Business Primer: Strategies for Growth."
<p>Technical Assistance</p>	<p>The Los Angeles Public Library offers a range of electronic and print resources to support small business owners and entrepreneurs, including access to free business online courses, marketing and industry research databases, and hosted workshops by small business support groups from the community (for example - 2014 workshop on "starting your own business by PACE [Pacific Asian consortium in Employment]).</p>
<p>Technical Assistance</p>	<p>The Los Angeles Unified School District (LAUSD) Small Business Boot Camp is an eight week program that provides small contractors with the tools necessary to improve their competitive capacity through a comprehensive, hands-on curriculum. At the conclusion of the eight-week program, graduating small contractors will be ready to bid on LAUSD contracts, and will be well-prepared to pursue contracts with other public agencies. The program has both short and long-term benefits for participating contractors and will serve to expand the District's pool of qualified contractors.</p>
<p>Technical Assistance</p>	<p>California's Small Business Development Center (CA SBDC) Network is one of the state's primary resource partners for small business development. The CA SBDC Network provides small businesses and entrepreneurs with confidential, no-cost, one-on-one advising, expert training and a wide business network. Small business owners access capital, develop business and financial models, create and implement marketing strategies, connect to global markets, and grow their business online with the CA SBDC.</p>