

Overall Disadvantaged Business
Enterprise Triennial Goal for the
Federal Transit Administration

Capital Metropolitan
Transportation Agency

Federal Fiscal Years 2023-2025

I. Summary

The Capital Metropolitan Transportation Authority (“Cap Metro”), a public transportation provider located in Austin, Texas, submits this report on its Disadvantaged Business Enterprise (“DBE”) triennial goal and the methods used to calculate it, to the United States Department of Transportation’s (“USDOT” or “DOT”) Federal Transit Administration (“FTA”) for review in accordance with §26.45 of Title 49 C.F.R. Part 26 (“Part 26”) and USDOT guidance.¹ Since Cap Metro anticipates awarding prime contracts that equal or exceed the cumulative amount of \$250,000.00 in the forthcoming Federal Fiscal Years (“FFYs”), it must establish an overall triennial DBE goal for FTA assisted contracts.² This submission covers FFYs 2023-2025 and establishes an overall DBE goal of 22.5%. Cap Metro plans to achieve its goal using 10% race-neutral measures and a remainder of 12.5% race-conscious measures.

Cap Metro’s goal methodology follows Part 26’s two step goal setting process:

1. Establishing the base figure for the relative availability of DBEs to perform the work intended to be let within the local marketplace.
2. Adjusting the base figure as a result of available data.

Cap Metro commissioned an Availability Study (“Study”) from Colette Holt & Associates (“CHA”), a firm comprised of legal counsel and highly qualified social science research professionals, economists, and statistical analysts, attached as Exhibit A. As detailed below, CHA determined the base figure of availability and provided the most refined and best data relevant to determine whether to adjust the base figure. The data and results are discussed below.

For this goal submission, Cap Metro used data provided in the Availability Study performed by CHA. Under §26.45(c) of Part 26, an FTA recipient may use a “percentage figure derived from data in a valid, applicable disparity study” to establish its base figure under Step One. The Study analyzed Cap Metro’s FTA funded contracts.³ The highly detailed unweighted availability estimate serves as the starting point for setting narrowly tailored contract goals that reflect the percentage of available DBEs as a percentage of the total pool of available firms. The Study finds that minorities and women continue to suffer discriminatory barriers to full and fair access to, and participation in, contracts and associated subcontracts in Cap Metro’s market area.

Cap Metro anticipates that the types, sizes, and locations of FTA funded contracts that it expects to award in the future will be similar to the FTA funded contracts that it awarded during the disparity study period. It therefore is relying on the availability results of the Study.⁴

II. Step One Base Figure

Step One calls for the calculation of a base figure reflecting the relative availability of DBEs in Cap Metro’s local marketplace to perform the work intended to be awarded. This entails determining the percentage of DBEs, including potential DBEs, represented among all firms (DBEs and non-DBEs), that are ready, willing, and able to compete for Cap Metro’s FTA assisted contracts.

The Study analyzed Cap Metro FTA funded contracts for October 1, 2016, through June 30, 2021. The Study determined the agency’s geographic market area to be the three primary counties of the

¹ United States Department of Transportation, “Tips for Goal Setting in the Disadvantaged Business Enterprise (DBE) Program”, <http://www.osdbu.dot.gov/DBEProgram/tips.cfm>.

²49 C.F.R. §26.45.

³The Availability Study was conducted in conformance with the *Guidelines for Conducting a Disparity and Availability Study for the Federal DBE Program*, Transportation Research Board of the National Academy of Sciences, NCHRP Report, Issue No. 644, 2010, 50-51 (*National Disparity Study Guidelines*).

⁴The *DOT Tips* require that Cap Metro use the most refined and transparent data available in its marketplace and filter out businesses that are not relevant to calculations. The CHA Study contains refined quantitative and qualitative data analyzed by social science research professionals.

Austin metropolitan area: Travis, Hays, and Williamson. The agency utilized 32 NAICS codes in this geographic market.

The Study next estimated the availability of DBEs in Cap Metro’s market area. CHA applied the “custom census” approach, with refinements, to estimating availability. The overall, weighted DBE availability was determined to be 27.5%. Therefore, Cap Metro is using 27.5% as the base figure for its overall DBE goal.

Since the United States Congress has already determined that discrimination operates in the market for federally funded transportation-related contracts,⁵ local governments not subject to the jurisdiction of the Ninth Circuit Court of Appeals do not perform a disparity analysis on USDOT funded contracts. Under Part 26, all that is required is an availability analysis.⁶

III. Step Two Adjustments to the Step One Base Figure

Once the base figure has been calculated, Cap Metro must examine all of the evidence available in its jurisdiction to determine if an adjustment is necessary to reflect the level of DBE participation expected absent the effects of discrimination. DOT recipients are not required to make this adjustment. However, they are required to explain why an adjustment was not made.

Included among the types of evidence that must be considered are the current capacity of DBEs to perform work on Cap Metro’s federally assisted contracts, as measured by the volume of work DBEs performed in recent years, and evidence from disparity studies conducted anywhere within Cap Metro’s jurisdiction, to the extent not already accounted for in the base figure. If available, Cap Metro also must consider available evidence from related fields that affect the opportunities for DBEs to form, grow and compete, including statistical disparities in the ability of DBEs to obtain the financing, bonding and insurance required to participate in the USDOT DBE Program, and data on employment, self-employment, education, training, and union apprenticeship programs, to the extent relevant to the opportunities for DBEs to perform in the Program. Part 26, §26.45(d)(3), and the *DOT Tips* caution that any adjustment to the base figure to account for the continuing effects of past discrimination or the effects of an ongoing DBE program must be based on “demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.”

A. Capital Metro’s Past DBE Utilization

As part of its Step Two analysis, Cap Metro considered the current capacity of DBEs to perform work on its FTA assisted projects, as measured by the amount of work performed by certified DBEs on FTA funded contracts over the past five years.

| FFY | DBE Goal Achieved |
|------|-------------------|
| 2017 | 9% |
| 2018 | 21% |
| 2019 | 15% |
| 2020 | 17% |
| 2021 | 25% |

⁵ As noted in the preamble to the 1999 rule (Part 26) which remains in effect (subject to updates and corrective amendments), Congress examined a record that included a range of studies, factual material, and extensive evidence of federal transportation discrimination and statistical disparity between the availability of woman-owned and minority-owned businesses in federal transportation contracting.

⁶ See <https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/western-states-paving-company-caseq-and-a>.

The Cap Metro median past DBE participation for FFY 2017 through 2021 is 17%.

B. Evidence from Local Disparity Studies

The only relevant disparity study performed since Cap Metro’s last triennial goal submission was conducted by CHA for the Texas Department of Transportation in 2019. CHA determined the availability of DBEs and minority- and woman-owned business enterprises (“M/WBEs”) to be 28.1% for contracts funded by the Federal Highway Administration. The Study also presented quantitative and qualitative data concerning the experiences of M/WBEs in obtaining FHWA assisted contracts and associated contracts, as well as evidence of disparities in opportunities throughout the wider Texas economy.

While relevant and probative to whether Cap Metro needs to continue to employ race-conscious measures to meet its DBE goal, as well as the types of supportive services and other approaches to level the playing field Cap Metro might consider, there is no methodology to apply the results of another study to adjust Cap Metro’s Step One base figure.

C. Step Two Base Figure Final Adjustment

Following the *DOT Tips*, Cap Metro combined the Step One base figure of 27.5% with its median past DBE participation of 17.0%, for an average of 22.5%. Cap Metro therefore proposes a triennial DBE goal of 22.5% for its FTA funded contracts.

IV. Race-Neutral Achievement on Capital Metro’s FTA Funded Contracts

Under §26.51(a), Cap Metro must meet the maximum feasible portion of its overall FTA goal by using race-neutral (“RN”) measures to facilitate DBE participation.⁷ The race-neutral attainment for the past five FFYs is presented in the following table to project the amount of RN participation it expects to achieve in the upcoming three FFYs. As suggested in the *DOT Tips*, Cap Metro used the median race-neutral achievement of 10% as its measure. Cap Metro will establish race-conscious measures and contract goals to meet the balance of the overall goal.⁸

| Fiscal Year | Race-Neutral Achievement | Race-Conscious Achievement | Overall DBE Participation |
|-------------|--------------------------|----------------------------|---------------------------|
| 2017 | 8% | 1% | 9% |
| 2018 | 14% | 7% | 21% |
| 2019 | 10% | 5% | 15% |
| 2020 | 10% | 7% | 17% |
| 2021 | 11% | 14% | 25% |

Cap Metro also considered the amount by which its past goals were exceeded, as well as any history of its inability to achieve the triennial goal, in determining the race-neutral and race-conscious

⁷Race-neutral measures benefit DBEs and other small businesses. Section 26.51(b) provides a non-exhaustive list of race-neutral means which include, but are not limited to, providing assistance in overcoming limitations such as the inability to obtain bonding or financing; providing technical assistance and other services; implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial capability for DBEs and other small businesses; ensuring distribution of the statewide DBE directory through print and electronic means to the widest, feasible universe of potential prime contractors; and establishing a program to assist new, start-up firms.

⁸49 C.F.R. §26.51(d).

proportion consistent with the *DOT Tips*. Specifically, the DOT recommends increasing the race-conscious portion of the annual goal to account for the proportion of previous years' goals that were not met or increasing the race-neutral portion to account for exceeding goals.⁹ Given that the agency exceeded its goals for some years but fell short for others, Cap Metro does not propose any further adjustment.

V. Race-Neutral Measures Implemented by Capital Metro

Cap Metro encourages the fullest achievable race-neutral DBE participation and avails itself of an array of outreach, training, and assistance through its Office of Diversity. Cap Metro's Diversity Specialist initiates community outreach programs through agency sponsored workshops, meeting presentations, and participation in events and meetings that enhance utilization of DBEs and increase the visibility of its DBE program.

Cap Metro also takes effective actions through its small business enterprise ("SBE") Program.¹⁰ This Program is designed to create opportunities, require competitiveness, and assist SBEs in overcoming potential barriers to participating in contracting opportunities. Cap Metro has established a race-neutral small business set-aside for prime contracts above \$25,000 and under \$50,000. On prime contracts over \$50,000 which do not carry DBE contract goals, Cap Metro requires the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the contracted-for work. The SBE Program is administered broadly in an effort to provide full and fair opportunities for equal participation by small businesses, require competitiveness and assist SBEs in overcoming potential barriers to participation in Cap Metro contracting.

Cap Metro also develops new programs and maintains public relations with businesses and other agencies to increase participation with DBE businesses. Outreach and technical assistance are key to enhancing opportunities for small businesses.¹¹ Cap Metro's Business Center web site is used for outreach and upcoming events are posted on the website for easy access.

Cap Metro's DBE staff collaborates with the City of Austin's Small & Minority Resources Department, as well as the Texas Department of Transportation's Disadvantaged Business Enterprise and Small Business Enterprise Section to pool resources and conduct outreach and training.

During the 2021 calendar year, Cap Metro offered a variety of programs and events that impacted its DBE program significantly including:

- Multi-Ethnic Chamber Alliance events
- Project Connect Update
- Capital Metro's COVID-19 Response
- Upcoming Service Change/Challenges to returning "New Normal" (planning)
- Capital Metro's DEI Program and D/SBE Initiatives Capital Metro Public Safety Program
- Austin Insights
- City of Austin Small Business Contracting Forum
- Accelerate – D/SBE Networking
- WBC-Southwest Quarterly Outreach event
- Diversity Council - Diversity First Awards

⁹*DOT Tips*: IV. Calculating the Race/Gender-Neutral and Race/Gender-Conscious Split; A. Consider the Amount by Which You Exceeded Your Goals in the Past. & F. Consider Past History of Inability to Achieve Goals. (<http://www.dot.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>).

¹⁰ The Cap Metro SBE program applies to both federally and locally funded projects. The Cap Metro Office of Diversity staff assign small business goals to procurement opportunities as necessary to increase the level of small business participation across all Cap Metro projects.

¹¹ In determining whether a firm is eligible to compete as a small business, Cap Metro defines small business as any business whose annual gross income averaged the past five years does not exceed the Small Business Administration's size standards as set forth in 13 Code of Federal Regulations, part 121. The SBE element includes a race-neutral small business set-aside for prime contracts above \$25,000 and under \$50,000.00.

- D/SBE Outreach Event

2022 events have included Industry Day and the Annual Asian Pacific American Heritage Month Celebration.

VI. Public Participation: Review and Comment

In accordance with 49 C.F.R. §26.45(f), Cap Metro has published a notice dated June 17, 2022, announcing the proposed overall triennial goal for FFYs 2023 through 2025 on its web site. The proposed overall goal and methodology is available for inspection for 30 days following the date of Cap Metro's notice. Public comments will be accepted by Capital Metro until July 31, 2022, at DBEgoalFY2023-2025@capmetro.org.

In its notice, Cap Metro announced two virtual public consultation meetings for its Triennial Goal Submission of its DBE program goal. Cap Metro staff and its consultant, CHA, will conduct both virtual face-to-face consultations and outreach efforts with impacted stakeholders at prescribed time intervals on July 11, 2022. These meetings are intended to provide the opportunity for public consultation with minority, woman, and general contractor advocacy groups, community organizations, public officials, and all other interested parties. Participants will be able to contribute meaningful information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Cap Metro's efforts to establish a level playing field for the participation of DBEs. Cap Metro also designated a contact person if individuals have specific questions related to the goal submission. The Cap Metro meetings will conform and build upon the goal setting consulting process outlined in Cap Metro's approved DBE program document.

VII. Final Adjusted DBE Goal

The proposed DBE Goal for FFYs 2023-2025 is 22.5%. Cap Metro projects it will meet 12.5% of this goal through contract goals and 10% through race-neutral measures.

DBE participation for FTA funded projects will be evaluated annually to determine whether market conditions warrant adjustments to the overall DBE goal and/or individual race-neutral and race-conscious components.