

PUERTO RICO HIGHWAY AND TRANSPORTATION AUTHORITY

Federal Fiscal Year - 2017/19 DBE UpDate Report

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Overall Goal

The Puerto Rico Highway and Transportation Authority-Department of Transportation and Public Works (PRHTA-DTPW) Disadvantaged Business Enterprise (DBE) Program has prepared this submission to the Federal Transit Authority (FTA) to describe the methodology used to establish the transit Disadvantaged Business Enterprise (DBE) goal mandated by regulation 49 CFR Part 26 for its federally assisted contracts. The FTA requires that any recipient of more than \$250,000 in FTA funds annually must have a DBE goal (excluding transit vehicle purchases), including those related to Tren Urbano and ATI bus services to develop an overall goal for contracts in a Federal Fiscal Year. The FTA recently shifted from a requirement to calculate annually the DBE goal to calculating it every three years. The overall goal projected has been established at **58%** using the methodology described in 49 CFR Part 26.

Methodology

In establishing the FTA goals for the PRHTA, it is required that the goal setting process begin with a base figure for the relative availability of DBEs. The goal is based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all business ready, willing and able to participate on USDOT-assisted contracts. The goal reflects the level of DBE participation expected absent of the effect of discrimination. The Puerto Rico Highway Authority (PRHTA) has chosen the bidder's list methodology to calculate its overall DBE annual goal and determine the relative availability of DBEs.

The normal market area is the Island of Puerto Rico and adjacent islands of Vieques and Culebra. Geographically, there are no boundaries established for firms to perform work, since firms can move easily from one extreme of the island to the other depending upon necessities and working conditions. Any firm may participate in federally funded construction/transportation projects as long as they comply with state and federal regulations. Since PRHTA future budgets are uncertain at this time due to possible service reductions, fare increases and staffing modifications, the type and the amount of contracted work may change in future years. PRHTA will adjust its DBE goal, if necessary, when future budgets are known.

Step One: Calculating Base Figure

The following is a brief analysis of PRHTA's federally assisted contract bidders' list or records which includes firms that have expressed an interest in participating (contracting opportunities created by DOT financial assistance programs), or have marketed, solicited and/or received contract/subcontract awards and purchases orders in which the total value is above \$250,000. In the DBE goal calculation all contracting opportunities were included, including those related to Tren Urbano system and the ATI bus services. Availability of DBEs is determined from the information supplied by all bidders on prime and consultants, subcontractors and suppliers from October 2013 to 2015. The base goal is to be further adjusted as appropriate to reflect

the recipient’s actual experience or other qualifying factors to narrowly tailor the goal to market conditions. We reviewed all goods and services in order to reassess the overall base figure of the relative availability of ready, willing and able DBEs within the PRHTA market. Available records for projects and /or procurements during FFY 2015 and up to September 2016 were also reviewed in order to reassess the overall base figure of the relative availability of ready, willing and able DBEs within our market.

During FFY 2013/15, we identified: (1) the type of projects where DBEs participated and (2) the number of DBE and Non-DBE firm available for inclusion in the baseline formula. There is no proposed estimated programmed information of spending for FFYs 17/19 as information provided by the Federal Coordination Office.

Table 1 reflects the approximately participation on FTA projects, professional services, vendors/suppliers during FFY2013/2015 in the calculation of the base line goal.

Table 1
Calculation of Base Line Overall Goal

FFY	DBE Firm	NON-DBE Firms	Total
2013	6	4	10
2014	8	3	11
2015	5	1	6
Total	19	8	27

The analysis shows that twenty-seven (27) federal assisted bids/RFP/contracts were awarded during fiscal years 2013-2015. We purged the list so as not to double count firms and came to the total amount as shown in Table 1. Therefore, the total number of all participating firms soliciting and/or received award/purchase orders for assisted contracts and /or subcontracts is twenty-seven (27). Of those, nineteen (19) are DBEs ready, willing and able actively pursuing contracting/subcontracting opportunities during the past fiscal year.

We divided the number of DBE bidders for the past three FFY (ready, willing and able) by the number of all business relative to our overall bid tabulation) to derive a base figure for the overall annual DBE Goal participation.

$$\text{Base figure} = \frac{\text{Ready, willing and able DBEs (19)} \text{ (Numerator)}}{\text{All firms ready, willing and able (27)} \text{ (Denominator)}}$$

The information for DBE firm participation in the numerator came from the DBE Directory of certified firms. When we divided the numerator by the denominator (as shown above) the base figure for our overall goal was 70%.

19 DBEs = **70% Overall Base Goal**
27 participating firms

The information was provided from the Office of Federal Coordination, Alternate Concepts Inc. (ACI) & Tren Urbano Office consisting of information on DBE and non-DBE firms that bid/quote on, project contract award reports and information pertaining to DBE participation on federally assisted projects.

Step Two: Adjustment to the Base Figure

Based on past performance, PRHTA has analyzed data reflecting DBE participation on FTA funded projects in recent years. The data used to determine if the adjustment to the base figure was necessary was taken from contract copies on archives files, bidders' list consisting of information about all DBE and non-DBE firms that bid/quote on, project contract award reports and information pertaining to DBE participation on federally assisted projects (Office of Federal Coordination). The distribution of federally-aid construction projects that are put to bid is in accordance with the bid plans specified in the STIP (State Transportation Improvement Program), which outlines construction projects for the next five years in the local market. During this FFY '16, as information given by the Planning Office, only two (2) contracts has been awarded during past years. There are no major projects (as information provided from the Office of Federal Coordination) in the immediate forecast of federally assisted projects in which we can reasonable expect a significant increase in the level of subcontracting opportunities for DBEs. The Office of Tren Urbano has awarded small contracts to consultant and supplier/vendors who has helped the DBE participation during this period but the majority of the FTA federal assistance funds received was allocated for Tren Urbano expenditures for preventive maintenance. PRHTA has no relevant data from related fields that may affect the opportunities for DBEs to form, grow and compete on FTA-assisted contracts.

In evaluating the performance of the PRHTA FTA DBE Program, an analysis of actual goals attained was made from fiscal year 2011 through March 2015. DBE overall goal participation was analyzed for the past five year FY 2011-2015 (Table 2), to determine past median participation:

Table 2

FFY	Base Figure
2011	15%
2012	25%
2013	47%
2014	31%
2015	31%

Median: 15%

Base Line Goal: 47%

$(70 + 47 = 117 / 2 = \text{Adjusted Goal} = 58\%$

For Federal Fiscal Years '11 to 2015 DBE FTA contractors performed a past median participation of 47% of the federal-aid contracting work through race-neutral means. This average was obtained by adding together the Step One Base Line Goal percentage (70%) and the median participation percentage (47%) divided by 2 to obtain an adjustment of 58% for the Step One Base Figure past participation. The Department has no evidence of discrimination on the part of contractors and does have evidence of continuing good faith effort.

According to 49 CFR Part 26, step two of the calculation process; we should examine the evidence to determine if an adjustment is needed in the base figure to arrive at an overall goal. The analysis showed that a significant portion of this achievement was the result of a major participation of Tren Urbano DBE vendors/suppliers & contractors that was awarded a contract which contributed to the annual goal using race neutral means. We have good reason to believe that other DBE firms will be ready, willing and able to participate and achieve the expected overall goal of 58%. We have considered all evidence available in our jurisdiction to determine if such adjustment is necessary by using the past participation of DBEs performed in recent years. As a result, the PRHTA FTA overall goal for the FFY 2017-2019 will be 58%. The percentage establishes a reasonable goal to be attained in the projections of FTA projects for the next three years period and we have concluded that this percentage is adequate.

Disparity Studies

No disparity studies were found in Puerto Rico showing existence of past discrimination, or relevant to our goal setting process in our market area.

Race/ Gender-Neutral and Race/ Gender-Conscious Goal Split

Based upon the achievements for the last three federal fiscal years, PRHTA FTA projects that the 58% overall goal is 100% achieved through race gender-neutral means. Puerto Rico's unique situation (98.9% of the population as of 2000 census is Hispanic) almost all bidders and participants bidding in the agency are considered minority business enterprises. For that reason, after the review of the overall DBE participation, the PRHTA has elected to continue its policy of 100% race gender-neutral contracting methods as the result of attaining our DBE 58% goal for FFY 2017/19. Race gender-neutral subcontracting opportunities for DBE's participation has accomplished our expectancy in achieving our overall annual goal and continue using it unless and until overall goal is not met.

Race gender-conscious DBE participation will also remain at zero percent (0%) unless it is determined that race gender-neutral means are not effective in achieving the 58% overall annual goal. We will keep encouraging prime contractors to subcontract portions of work normally done by their own forces to do good faith efforts through the contract DBE Special Provision.

However, if after implementing race/gender-neutral contracting measures, the Agency determines that DBE utilization will fall substantially below the overall goal, then the PRHTA shall implement race gender-conscious measures to meet the overall goal. In order to ensure that our DBE program will be narrowly tailored to overcome the effect of discrimination, if

contract goals are used, we will adjust the estimated breakout of race gender-neutral and race gender-conscious participation as needed to reflect actual DBE participation in accordance with 49 CFR Part 26.51 (f).

Public Participation

During these past three years, eight (8) meetings were held to inform general public of FTA/FHWA federal funds availability in Puerto Rico and the process to be followed to participate of those funds. In these meetings, general information is given through power point presentations, informative material, and brochures are handed in with general information without limiting consultation to these persons or group; to obtain information concerning the availability of project financed with federal funds under sections #5303, 5309, 5310, and 5311. We have had a total of 786 attendees that participated in these meeting during the three year period. Last meeting was held during the month of July 2016. Also for the MPO's, we have two (2) technical sessions with a total of 186 persons participating during these federal fiscal year period which invites the general public and the mayors of these urbanized areas. The next meeting for MPO is programmed for the month of December 2016 and coming March 2017.

PRHTA participated for the past years in the Annual Business Matchmaking Event held at the Puerto Rico Engineers and Surveyors College hosted by Small Business Administration (SBA), SMBDC and various Federal Procurement Offices designed for all small and DBE firms to meet with representatives for federal and state contracting opportunities. We participated in workshops with SMDBC-DOT in PR to promote the DBE program, gave information on the public policy of the PRHTA for our overall goal, explained the certification process and encouraged contractors to be certified. Workshops were given to municipalities (Mayaguez, Ponce, Carolina) requesting information on DBE Program, its implementation and procedure for Step I & II, and reports.

A notice of the proposed overall goal is to be published informing the public of the DBE overall goal for FFY 2017/2019. It will be published in a local newspaper, such as El Vocero, El Nuevo Día, Primera Hora, in both languages. The addresses to which comments may be sent and where documents may be reviewed is included in the notice. The information will be available for inspection during normal business hours at the Civil Rights Office for 30 days following the date of notice, and informing the public that PRHTA will accept comments on the goals 45 days from the date of the notice. Currently, the publication of the public notice is standstill because we have to request the approval from the State Elections Commission due to Puerto Rico's general elections. As soon as they approve, it will be published and a copy will be remitted.

Contract Goals

Under 49 CFR Part 26, the principal race gender-conscious tool available for recipients is setting individual contract goals. Under these regulations, the PRHTA will not institute a race gender-conscious quota program for USDOT-assisted contracts because the majority of the population in the Island falls under the definition established in the regulation as Hispanics. Procedures to implement other corrective actions deemed appropriate to remediate instances of discrimination shall be established, as permitted by law. If the PRHTA has reason to believe it will not meet its

overall annual goal, contract specific goals may be established only on those DOT's federally assisted contract that may have subcontracting possibilities so that over the period to which the overall goal applies, it will cumulatively result in meeting any part of our overall goal to be met through the use of race gender-neutral means. Size of contract goals will be adapted to the circumstances of each such contract (i.e., type and location of work, availability of DBEs to perform the particular work). The PRHTA has examined all other information and additional evidence available in its jurisdiction and has determined that no further adjustment is needed to this overall goal. Moreover, the PRHTA's review of the current capacity of DBEs to perform work on future DOT assisted contracts as measured by the volume of work DBEs have performed in recent years has concluded that this capacity is adequate.

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