

Resolution 26/2011

**RESOLUTION TO ESTABLISH FY 2012 – FY 2014
DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL**

WHEREAS, the Ann Arbor Transportation Authority (AATA) is a recipient of US Department of Transportation (US DOT) funds for use in the operation of its transit system and to purchase goods, services, and equipment, and

WHEREAS, US DOT regulations require recipients of Federal funds to establish a Disadvantaged Business Enterprise (DBE) Program and to utilize procedures found in 49 CFR Part 26 of the DOT Regulations to establish goals within that Program for the participation of DBE's, now therefore

IT IS RESOLVED, that the DBE goal for the Ann Arbor Transportation Authority shall be 3.40% of DOT-assisted contracting opportunities for the fiscal years of 2012, 2013, and 2014, and

IT IS FURTHER RESOLVED, that AATA shall utilize 1.40% "race neutral" methods and 2.00% "race conscious" methods to reach or exceed that 3.40% DBE goal.

Jesse Bernstein, Chair

July 19, 2011

Charles Griffith, Secretary

July 19, 2011

Memo

To: PLANNING & DEVELOPMENT COMMITTEE
From: Ed Robertson
Date: 7/12/11
Subject: DBE Goals for FY 2012—FY 2014

Attached is a resolution establishing AATA's DBE Purchasing Goals for FY 2012 – FY 2014 at 3.40%.

In 2000, the USDOT mandated that DBE firms go through a stringent certification program. The USDOT also set forth specific guidelines (including formulas) that transit systems **must** use in the development of DBE purchasing goals so these goals can be “clearly defensible in federal courts against suits questioning the need and fairness of DBE programs”.

In 2002, FTA recipients in Michigan in cooperation with the Michigan DOT jointly created the Michigan Uniform Certification Program (MUCP) to certify DBE's and develop a State-Wide DBE Directory. DBE's certified by the MUCP are recognized throughout the state as eligible DBE's under this program. AATA utilizes this directory as a resource to locate certified DBE's. Potential DBE's are referred to one of the State Certifying Agencies.

The US DOT made another significant change to its DBE program last year by making DBE goals effective for a three year period. This will be AATA's first three-year goal (the goal is applied to each year of the three year period). The formula and procedure for setting those goals has not changed, only their duration.

AATA has experienced difficulty in the past in meeting its DBE goals due in part to:

- Most FTA dollars are used for new bus purchases, planning, preventative maintenance, and other activities that prevent those funds from becoming purchasing opportunities for certified DBE vendors.
- DBE's are reluctant to continue their certification as DBE's due to the onerous nature of the DBE system and because AATA has a policy of purchasing from otherwise qualified DBE whether or not they are certified.
- The national recession (which has hit the State of Michigan particularly hard) has resulted in the demise of many disadvantaged and non-disadvantaged small businesses who otherwise could be potential DBE bidders.

- The continuing recession has resulted in heightened competition between all vendors – making it increasingly difficult for DBE's to compete and win contract awards.
- The tightness of credit due to the recession's accompanying fiscal crisis has resulted in many small businesses no longer being able to get credit and therefore to function competitively.

AATA's efforts for FY 2012 – FY 2014 will concentrate on outreach to make DBE's aware of purchasing opportunities and will use coaching and counseling to urge certified DBE's to participate in bidding. In addition, AATA will use the race-conscious method of setting goals for DBE participation on specific contracts during the next three years. Utilizing the formulas mandated by the DOT, **the 3-year DBE goal for AATA has been calculated to be 3.40%.**

Fortunately, AATA is now entering a period when major construction projects will be scheduled, thus increasing the amount of DOT funds available for contracting opportunities. In anticipation of this contracting opportunity expansion, AATA has expanded its "purchasing area" to include both Oakland and Wayne Counties. This expansion both increases the number of potential DBE bidders for AATA's projects and raises (through the goal-setting formula) AATA's DBE goal for the next three years. To further complement this increased opportunity for DBE purchases, AATA will attempt to meet 2.00% of its total 3.40% goal using "race conscious" means. The remaining 1.40% will continue to utilize "race neutral" purchasing techniques.

Since no evidence of discrimination in purchasing exists in our area, AATA must (according to USDOT regulations) rely upon race-neutral and race-conscious methods to work toward its DBE goals. **Set-asides, quotas, or goals other than those resulting from using DOT formulas are prohibited under the DOT regulations** (except as a means of redress in proven cases of discrimination).

ANN ARBOR TRANSPORTATION AUTHORITY DISADVANTAGED BUSINESS ENTERPRISE PROGRAM GOALS FOR FY 2012--2014

FY 2012--2014 DBE GOAL SUMMARY:

The Ann Arbor Transportation Authority's (AATA) Disadvantaged Business Enterprise Program (DBE Program) goal for FY 2012--2014 is as follows:

DBE goal using race neutral means = *1.4% of DOT assisted contracts*
DBE goal using race conscious means = *2.0% of DOT assisted contracts*
TOTAL DBE GOAL = *3.4% of DOT assisted contracts*

STEP 1: BASE FIGURE CALCULATION

The following is a description of the method AATA used to calculate the base figure used in setting its DBE goal:

Step I of the goal-setting process is the establishment of a **Base Figure** for the relative availability of DBE's in the market area utilized by AATA. The Base Figure is calculated by first identifying those DBE's or potential DBE's in AATA's purchasing area who are available to bid or quote on upcoming DOT-assisted prime contracts or subcontracts. Following several years in which construction activity at AATA was practically non-existent, the coming years are poised to contain a number of major construction projects that should increase AATA's ability to attract DBE vendors. In order to increase the number of potential DBE bidders, and thereby increase the likelihood of meeting DBE purchasing goals, AATA has increased the size of its market area it will utilize during the next three years to include three additional counties (this market area expansion includes the two most populous counties in the Detroit Metro Area). These potential DBE's cumulatively become the numerator in the formula used to calculate the Base Figure.

Businesses that have bid, quoted, or expressed such an interest toward AATA contracts, plus potential new bidders recently identified, plus all potential DBE bidders are cumulatively considered to comprise AATA's **total potential bidders** for the coming year. These potential bidders become the denominator in the formula used to calculate the Base Figure.

The number of potential DBE bidders determined in this analysis is divided by the total number of all potential bidders. The resulting number is considered the

base figure for the relative availability of DBE's in AATA's market area. The result of this analysis is as follows:

$$\text{Base Figure} = \frac{\text{Potential DBEs in purchasing area}}{\text{Total potential bidders in purchasing area}} = \frac{85}{2,509} = 3.40\% \text{ (rounded to nearest .10\%)}$$

Two circumstances continue to influence the Base Figure for FY 2012--2014. First, the number of potential DBE vendors meeting the requirements of 49 CFR Part 26 continues to remain lower than hoped for (although the number did increase over the last goal setting period due to the expansion of AATA's DBE market area stemming from anticipated increase in construction activity).

Second, the total number of potential bidders for all contracts over the previous goal setting period increased, however, at a slower rate than the increase in DBE firms. Thus, the larger number of potential DBE's available to bid on AATA projects when compared to the total number of potential bidders on such projects still manages to translate into an increase in AATA's DBE Base Figure for FY 2012--2014. Even though the DBE Base Figure has increased, the resulting DBE goal continues to remain a small percentage of the total potential purchases expected to be made in AATA's marketing/purchasing area.

STEP 2: BASE FIGURE ADJUSTMENT

AATA analyzed its past DBE performance to see if a Base Figure adjustment was needed. Since the changes in the DBE program that resulted in stricter certification guidelines for DBE's, AATA has had difficulty meeting its annual DBE goals (with the exception of FY 2005 and FY 2006 when real progress was made toward reaching DBE goals). The poor state of Michigan's economy is considered one of the primary adversaries in reaching DBE goals, as the economic conditions have resulted in the loss of some DBE vendors while at the same time all vendors have, out of necessity, become more and more competitive. Progress toward meeting DBE goals is hoped to be made in FY 2012--2014.

Further complicating the matter is a recent review of all DBE certifications (made at the direction of the Michigan DOT). This review resulted in lowering the Base Figure when the Directory of Certified DBE's was purged of many previously identified DBE firms that no longer qualified or that no longer exist.

As has been previously stated, AATA anticipates considerable construction activity over the next three years that will provide the agency with increased purchasing opportunities to generate DBE contracts. To further assist in

increasing the probability that these new construction contracts will increase DBE participation, the agency has expanded the size of its purchasing area for purposes of the coming construction. This purchasing area expansion has increased the number of potential DBE bidders available for coming projects.

Based upon this analysis, the conclusion was reached that there should be no adjustment to the Base Figure (at least for the coming year) arising from past DBE performances, however, the adjustment in the size of its marketing area should have an effect on AATA's future DBE performance that would be similar to that of expanding the Base Figure.

AATA also considered the lack of disparity studies for its market area in its goal setting process. AATA operates within a community that has long been recognized for its support of civil rights, equality, and fairness. As a result, there has been no apparent need or call from any parties for disparity studies in AATA's market area. Thus there was no disparity basis upon which to adjust the Base Figure.

As with the lack of disparity studies in its market area, there also are no known disparities pertaining to the inability of DBE's to get financing, bonding, or insurance within AATA's market area. Both private and public funding agencies are readily available to help finance DBE companies. Thus there was no basis in this area upon which to adjust the Base Figure.

Within AATA's market area, unemployment levels continue to remain low when compared to other labor markets in the State of Michigan. Recent unemployment rates for Ann Arbor stand at just over 6%, but that level remains much lower than other Michigan labor markets (approximately half the rate of the state as a whole). In addition, there exists within the market area a large number of colleges, universities, junior colleges, trade schools, and other such institutions providing education and training to all citizens to prepare them for work and/or business activity. For this reason, there is no basis to adjust the Base Figure due to education or training inequities.

Finally, there is no evidence of discrimination against DBE's, minorities, racial or ethnic groups, or any other classification of individuals within the AATA market area. The absence of discriminatory hurdles, barriers, or other impediments to DBE participation means that there is no basis from this area of concern upon which to adjust the Base Figure."

ANALYSIS OF FACTORS AFFECTING DBE PROGRAM:

AATA made an analysis of conditions affecting DBE's within its purchasing area and determined that there are currently no areas of concern resulting in the need for an adjustment to the base figure as calculated in Step I. There are, however,

some conditions that have heavily influenced AATA's DBE efforts:

- Previously certified DBE's, as well as new DBE's continue to be reluctant to certify under the terms and conditions of 49 CFR Part 26 of the regulations, or once certified, do not take the steps necessary to maintain that certification.
- The nationwide recession (which has hit the Michigan particularly hard) has resulted in the demise of many disadvantaged and non-disadvantaged businesses alike. Many small businesses have not survived the severity and the length of the downturn in the business cycle.
- The unavailability of credit due to the recession's accompanying fiscal crisis initially resulted in small businesses not being able to get credit and therefore to properly compete and function. The credit squeeze, however, has begun to ease and businesses once again have begun to access the financial markets.
- AATA has consistently used the vast majority of its DOT funds for capital purchases (primarily vehicles) or for employee labor costs associated with planning and vehicle maintenance. These are areas where the opportunity for DBE purchasing is non-existent or (in the case of vehicles) is passed through to bus manufacturers. For the immediate future, however, increased construction activity by AATA holds the promise of greatly increasing the agency's DBE performance.

With regard to the DBE certification issue, various reasons exist for the reluctance of DBE's to become or remain certified under the current DBE requirements of 49 CFR Part 26. Some DBE's may no longer qualify under the program's guidelines governing gross sales or personal net worth, or for a variety of other reasons have been purged from DBE directories by the Michigan Department of Transportation. Other DBE's feel the certification requirements of the program are too onerous or too intrusive to justify their completion when there is no automatic guarantee that AATA will purchase from them. (Failure or reluctance of a DBE to certify under DOT regulations has never prevented or limited AATA from making purchases from non-certified DBE's, however.)

The complexity of certification under 49 CFR Part 26, along with the fact that DBE certification is ***not*** a requirement to do business with AATA, has tended to suppress the certification of DBE's. AATA continues purchasing goods and services from vendors who were previously DBE certified but who may have chosen not to continue their certification under federal DBE guidelines. Therefore, there has been little impetus for suppliers and vendors to certify under the DBE guidelines. Unfortunately, even though AATA may be purchasing goods and services from vendors who otherwise could be certified as DBE's, these purchases cannot (under the guidelines of 49 CFR Part 26) be counted toward meeting annual DBE goals.

The introduction of the Michigan Unified Certification Program for Disadvantaged Business Enterprises has not greatly expanded the number of certified DBE vendors in AATA's marketing/purchasing area. A larger pool of DBE certified vendors would be expected to produce increased competition between certified and un-certified DBE's, and hopefully would result in two positive outcomes:

- 1) more uncertified DBE vendors would choose to become certified in order to increase their AATA business; and
- 2) an overall increase in available DBE certified vendors would enable AATA to purchase more goods and services from DBE certified businesses.

Neither of these improvements has thus far materialized to the extent desired.

Another important issue pertains to the limited amount of DOT funds exposed to DBE's for participation. Only a small fraction of the DOT funds received by AATA have thus far been used:

- 1) to purchase capital goods other than vehicles, or
- 2) for construction projects.

During the coming three year period, however, there is expected to be a marked increase in construction activity by AATA, thus increasing the likelihood of DBE participation in those projects.

No known statistical or anecdotal evidence of over-utilization or under-utilization of disadvantaged businesses exists within the AATA purchasing area.

Because minority and women owned vendors exist on AATA's General Bidder's List who have thus far not certified themselves as DBE's under the regulations, AATA will intensify its outreach efforts to certify these DBE vendors under 49 CFR Part 26, and will continue efforts to get new DBE vendors to certify under the regulations as a means to address the concerns described above.

FY 2012–2014 ANTICIPATED USE OF DOT GRANT FUNDS:

DOT grant funds for **FY 2012** are anticipated to be as follows:

<u>PROJECT</u>	<u>TOTAL COST</u>	<u>FEDERAL SHARE</u>
Expand Bus Storage Facility	2,404,000	1,923,200
Purchase Vans for Vanpools	625,000	500,000
Computer Hardware/Software	120,000	96,000
Purchase Non-Revenue Vehicles	100,000	80,000
Strategic Plan Development	230,000	184,000
TOTAL	\$ 3,479,000	\$ 2,783,200

DOT grant funds for **FY 2013** are anticipated to be as follows:

<u>PROJECT</u>	<u>TOTAL COST</u>	<u>FEDERAL SHARE</u>
Downtown Transit Center	\$ 5,500,000	\$ 4,400,000
Purchase Vans for Vanpools	625,000	500,000
Computer Hardware/Software	120,000	96,000
Passenger Area Facilities	50,000	-0-
TOTAL	\$ 6,295,000	\$ 4,996,000

DOT grant funds for **FY 2014** are anticipated to be as follows:

<u>PROJECT</u>	<u>TOTAL COST</u>	<u>FEDERAL SHARE</u>
Purchase Vans for Vanpools	625,000	500,000
Computer Hardware/Software	120,000	96,000
Purchase Non-Revenue Vehicles	90,000	72,000
Passenger Area Facilities	130,000	-0-
TOTAL	\$ 915,000	\$ 668,000

DOT GRANT FUNDS FOR THE ENTIRE DBE GOAL PERIOD OF FY 2012 – FY 2014:

<u>PROJECT</u>	<u>TOTAL COST</u>	<u>FEDERAL SHARE</u>
Downtown Transit Center	\$ 5,500,000	\$ 4,400,000
Expand Bus Storage Facility	2,404,000	1,923,200
Purchase Vans for Vanpools	1,875,000	1,500,000
Computer Hardware/Software	360,000	288,000
Purchase Non-Revenue Vehicles	190,000	152,000
Passenger Area Facilities	130,000	-0-
Strategic Plan Development	230,000	184,000
TOTAL	\$ 10,689,000	\$ 8,447,200

DISTRIBUTION AND NOTIFICATION OF DBE GOALS:

AATA will publish a notice of its proposed overall DBE goal in local newspapers and national trade journals. This notice will inform the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal offices at 2700 South Industrial Highway, Ann Arbor, Michigan 48130, for 30 days following the date of the notice, and informing the public that AATA and DOT will accept comments on the goals for 45 days from the date of the notice.

AATA has also contacted minority, women and general contractor groups, community organizations, and others who are expected to have information on the availability of disadvantaged and non-disadvantaged businesses. This contact included an explanation of the US DOT Disadvantaged Business Enterprise Program along with specific instructions on how minority and women owned businesses could apply for certification under this program. All potential DBE's are urged to contact either AATA or one of the agencies throughout the state that have been designated to certify businesses under the Michigan Unified Certification Program for Disadvantaged Business Enterprises.

As a part of this annual goal submission, AATA will forward a summary of information and comments received during all public participation processes, along with our responses, to the DOT within 30 days following the closing date for the submission of comments.

RACE NEUTRAL/RACE CONSCIOUS CONSIDERATIONS:

AATA historically used 100% race neutral means, but was consistently unable to reach DBE purchasing goals. In hopes of improving DBE participation, AATA incorporated both race neutral and race conscious means for the first time in its FY 2005 DBE goals. The split between race neutral and race conscious was equal because at that time AATA viewed both race neutral and race conscious means as equally important in their roles of helping reach DBE goals. Although the full DBE goals for FY 2005 were not met, the year was still encouraging because it produced positive DBE participation (although, not at the levels hoped for).

In recent years, AATA has almost evenly split its race neutral and race conscious goal efforts. Surprisingly, the positive results have not thus far come from the use of race conscious efforts, but rather from increased and more focused outreach efforts toward the DBE community (It may be argued that increased outreach efforts aimed at producing more DBE participation are a form of "race conscious" actions, making these efforts responsible for at least some of the positive results.)

Because of the way AATA uses federal funds, it has historically had limited contracting opportunities available for DBE participation. The majority of federal funds are normally used for bus purchases, preventative maintenance, and other purposes that do not lend themselves to DBE contracting opportunities.

This situation is expected to change somewhat during the next three years as AATA embarks upon several construction projects (such as re-building the Downtown Transit Center and expanding bus storage capacity of its maintenance facility). These projects will expand the previously limited DBE contracting opportunities for AATA. The use of race conscious goals for prime contractors and subcontractors on these projects should also help to expand DBE purchasing in these areas.

Although AATA will utilize race conscious goals in its construction contracts, it still intends to utilize a combination of race neutral and race conscious goals in its DBE program. The split between the two methods will continue to be kept near equal as they are seen as equally important means to reach DBE purchasing goals. As experience improves, the mix between the two means will be analyzed and adjustments to their mix may be made in order to increase DBE participation.

AATA intends to meet its FY 2012--2014 DBE goal by using a combination of race-neutral and race-conscious means. Race-neutral means will include actively facilitating DBE participation (i.e. outreach and technical assistance to DBE's when requested or required). Race-conscious means will include setting contract goals for DBE participation on major contracts that lend themselves to increased DBE participation (especially through subcontracting).

DBE PROGRAM PERFORMANCE:

The attainment of the FY 2012--2014 goals for DBE purchases is inherent in increasing the number of certified DBE vendors. As a part of determining the degree of race-neutral and race-conscious participation for FY 2012--2014, AATA reviewed its DBE Program performance during the last few fiscal years. The results of that review are as follows:

<u>FISCAL YEAR</u>	<u>DBE GOAL</u>	<u>ACTUAL DBE</u>
2005	3.6%	1.5%
2006	1.2%	2.0%
2007	1.05%	0.0%
2008	0.82%	0.0%
2009	0.79%	0.0%
2010	1.00%	0.0%
2011	1.00%	0.0% (as of 6/1/11)

No discrimination or historical bias against minority or women owned businesses exists in the Ann Arbor Area. In view of the absence of discrimination or bias, no set-asides are necessary or justified as a means to remedy past discrimination, however, the use of specific DBE contract goals (especially in the areas of construction contracts) will represent a race-conscious means to assist AATA in meeting its overall goals for FY 2012--2014.

AATA anticipates a number of construction projects during FY 2012—2014 that will offer the opportunity to expand its DBE purchases, particularly in the area of race-consciousness. Some of those projects include the re-building of the Blake Transit Center in downtown Ann Arbor, and the expansion of the bus storage facility at AATA's main headquarters. Other construction projects are under consideration for this same time period that will also expand AATA's ability to attract DBE contractors.

Although AATA has experienced difficulties convincing minority and women owned firms to attain and/or retain DBE certification since FY 2000, there exists no discrimination against these firms. AATA continues to purchase goods and services from them without regard to their DBE certification or lack of certification. Unfortunately, purchases from non-certified DBE vendors cannot be counted toward the attainment of AATA's DBE goals. AATA will utilize a combination of race-neutral and race-conscious means (including increased outreach and technical assistance along with individual contract goals for DBE subcontractors) to attain its DBE goals for FY 2012--2014.

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