

**BALTIMORE METROPOLITAN PLANNING ORGANIZATION**

**BALTIMORE REGIONAL TRANSPORTATION BOARD**

**RESOLUTION #18-14**

**ADOPTING FOR THE BALTIMORE METROPOLITAN COUNCIL WHEN PURSUING CONTRACTS  
PURSUANT TO THE UNIFIED PLANNING WORK PROGRAM - THE FISCAL YEAR 2019  
GOAL FOR DISADVANTAGED BUSINESS ENTERPRISE ACTIVITIES**

**WHEREAS**, the Baltimore Regional Transportation Board (BRTB) is the designated Metropolitan Planning Organization for the Baltimore region, encompassing the Baltimore Urbanized Area, and includes official representatives from the cities of Annapolis and Baltimore, the counties of Anne Arundel, Baltimore, Carroll, Harford, Howard, and Queen Anne's as well as representatives of the Maryland Department of Transportation, the Maryland Department of the Environment, the Maryland Department of Planning, the Maryland Transit Administration, and Harford Transit; and

**WHEREAS**, through Resolution #15-20, on January 27, 2015 the Baltimore Regional Transportation Board adopted a Disadvantaged Business Enterprise Program and Policy Statement for the process when using federal funds to implement certain transportation activities in the Unified Planning Work Program. Per this resolution, the Board is to set an overall Disadvantaged Business Enterprise participation goal for each fiscal year; and

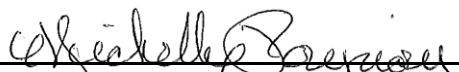
**WHEREAS**, the Baltimore Regional Transportation Board is using the goal of the Maryland Department of Transportation – Office of Planning as the primary recipient of U.S. Department of Transportation funds located in the same or a substantially similar market as the Baltimore Regional Transportation Board. Therefore, the Baltimore Regional Transportation Board has set a goal of thirty one and seven tenths percent (31.7%) Disadvantaged Business Enterprise participation through methodology described in 49 CFR § 26.45. (see Attachment 1)

**NOW, THEREFORE, BE IT RESOLVED** that the Baltimore Regional Transportation Board has set an overall goal of 31.7 percent Disadvantaged Business Enterprise participation for FY 2019.

**I HEREBY CERTIFY** that the Baltimore Regional Transportation Board as the Metropolitan Planning Organization for the Baltimore region approved the aforementioned resolution at its April 24, 2018 meeting.

4-24-18

Date

  
Michelle Pourciau, Chairman

Baltimore Regional Transportation Board

**MARYLAND DEPARTMENT OF  
TRANSPORTATION**

**Office of Planning**

**Disadvantaged Business Enterprise  
Overall Goal Methodology for  
Federal Fiscal Years 2017 through 2019**

**January 2018**

The Maryland Department of Transportation – Office of Planning (“MDOT”) determined the Disadvantaged Business Enterprise (“DBE”) participation goals for Federal Fiscal Years (“FFY”) 2017, 2018, and 2019 in accordance with the procedures specified in 49 C.F.R. § 26.45. Separate goals are also determined for each of MDOT’s United States Department of Transportation (“USDOT”) assisted transportation business units: the Maryland Transit Administration (MTA), Maryland State Highway Administration (SHA) and the Maryland Aviation Administration (MAA).

## **STEP 1: DETERMINE BASELINE AVAILABILITY**

In Step 1 of the goal-setting process, MDOT determined the baseline availability in accordance with 49 C.F.R. § 26.45(c)(3) using data derived from the 2013 *Disadvantaged Business Enterprise Disparity Study* (“NERA 2013 DBE Study” - Attachment 1), which examined USDOT-assisted transportation projects administered by the MTA, SHA, and MAA. The NERA 2013 DBE Study is a companion to a statewide disparity study, *Business Disparities in Maryland Market Area* (NERA 2017 Statewide Study – Attachment 2) completed in February 2017. The NERA 2017 Statewide Study addresses all areas of State contracting and is relevant to Step 2 of the federal goal-setting methodology. These are the most recent studies of State and USDOT-assisted contracting available for Maryland.<sup>1</sup> A new DBE study is underway, and expected to be finalized in time to be available for the next 3-year goal setting process.

Specifically, for Step 1, MDOT collected and analyzed the budgets for the Unified Planning Work Programs (UPWPs) of each of the Metropolitan Planning Organizations (MPOs). To determine the opportunities for DBE participation, MDOT established which activities or dollars would be used for in-house staff salaries and which would be performed through procurement contracts. Only the dollars for procurement activity were analyzed for the purposes of goal setting. After analyzing the descriptions of the type of work to be performed by the MPO’s the *services* market was the most analogous the type of work to be performed. Using the descriptions of work provided by the MPO’s, the procurement activity was assigned NAICS codes and the corresponding availability in Maryland’s marketplace was determined using the NERA 2013 DBE Study. MDOT then utilized FTA’s Weighted Base Figure worksheet to calculate Base Availability Figure of 40.8%. (Attachment 3 – FTA Worksheet).

In Step 2 of the goal-setting process, MDOT considered, in accordance with 49 C.F.R. § 26.45(d), whether an adjustment of the baseline availability figure was needed by evaluating past DBE participation, current disparity studies and other relevant evidence. After careful consideration of all available evidence and the underlying legal principles, MDOT determined there was a need to adjust the MDOT Step 1 baseline availability figure to ensure that the overall aspirational goal would remedy discrimination, limit the burden on non-program participants, and reflect MDOT’s anticipated contracting over the next three years. MDOT is adopting this measure as its Step 1 baseline availability for FFY 2017 through 2019.

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<sup>1</sup> Both studies were performed by NERA Economic Consulting (“NERA”).

## STEP 2: ADJUSTMENT METHODOLOGY FOR DBE GOALS

According to 49 C.F.R. Part 26, recipients of USDOT assistance must consider whether an adjustment to the baseline availability figure would be necessary to approximate the amount of DBE availability that would be expected in a race-neutral market. After careful consideration of all available evidence and the underlying legal principles, MDOT determined there was a need to adjust the MTA Step 1 baseline goal to ensure that the overall aspirational goal would remedy discrimination and limit the burden on non-program participants.

The overall goal required by Part 26 is a prospective goal and is to be based on evidence of the availability of DBEs. 49 C.F.R. §26.45(b). In Step 2, however, Part 26 requires that recipients consider the current capacity of DBEs to perform work in the DBE Program, as measured by past performance. 49 C.F.R. §26.45(d)(1)(i).

**Past Participation.** As shown below in Table 2, the Step 1 baseline availability figure of 40.8 percent is higher than the median DBE participation level of 22.5 % achieved between 2014 and 2017.

Despite ample statistical evidence that might support a goal of 40 percent or perhaps even higher, MDOT also seeks to ensure that the DBE program is very narrowly tailored so that it strictly limits the burden on non-program participants. Thus, MDOT's objective is to establish goals that are not only grounded in statistical data, but also reflect a balanced approach to both eliminating discrimination and being as fair as possible to all contractors that do business with MDOT. As such, averaging MDOT's Step 1 figure of 40.8 percent with the median past participation of 22.5 percent results in 31.7 percent.

**Table 2. DBE Participation in Previous Years.**

<i>Federal Fiscal Year</i>	<i>DBE Participation</i>
2014	20.8 %
2015	16.2 %
2016	37.3 %
2017	24.2 %
<b>FFY 14-17 Median Participation</b>	<b>22.5 %</b>

Therefore, a Step 2 adjustment will be made, and the final FFY 2017 through 2019 overall DBE goal for MDOT is 31.7 %.

**Estimate of Race-Neutral Participation.** MDOT will meet the maximum feasible portion of its overall aspirational goal through these race-neutral measures. As there was no formal overall DBE goal established for MDOT, to estimate the portions of the goal to be met through race-neutral measures, MDOT determined that it would be reasonable to utilize data from Maryland Transit Administration (MTA). As such, the most recent available data on past race-neutral DBE participation of the MTA was used to develop the race-neutral portion of the goal. MTA’s median race-neutral utilization of DBEs between FFY 2012 and FFY 2016 was 5.0 %.

**Table 3. MDOT-MTA’s Most Recent Race-Neutral DBE Utilization FFY 2012 - 2016**

<i>Federal Fiscal Year</i>	<i>Race-Neutral DBE Utilization</i>
2012	3.7%
2013	1.7%
2014	26.0%
2015	9.1%
2016	5.0%
<b>FFY 12-16 Median Race-Neutral Utilization</b>	<b>5.0%</b>

As both the DBE regulations and the underlying constitutional principles that apply to the DBE program, emphasize the use of race-neutral efforts to eliminate discrimination., MDOT will set a race-neutral goal of 5.0 % for the next three years

The differences between the race-neutral percentage and the Step 2 availability is the race conscious component of the DBE goal. The breakdown of race-conscious and race-neutral DBE goals appears below in Table 4.

**Table 4. FFY 2017-2019 Race-conscious and race neutral goals.**

<b>Race-conscious</b>	<b>Race-neutral</b>	<b>Total</b>
26.7 %	5.0 %	31.7 %

**PUBLIC PARTICIPATION**

MDOT satisfied the public consultation requirements of 49 C.F.R. § 26.45(g)(1) through a 2017 electronic survey and public consultation meetings that gave interested parties an opportunity to provide feedback on several areas including:

- DBE/non-DBE availability in the local market;

- Effects of discrimination on opportunities for DBEs; and
- Suggestions regarding information that should be considered when setting overall goals.

The feedback received from participants in the survey and during the sessions was similar. While most participants believed that the minority business program goals for the State program were sufficient, a few asserted that both the goals should be increased as a way to increase available contract opportunities. In both sessions, discussions focused on programmatic improvements and efficiencies that the stakeholders would like implemented. Suggestions included an expansion in the marketing of opportunities as a way to connect prime and subcontractor communities; diversifying and expanding subcontracting opportunities in industries outside of construction; creating additional classifications of economic standards in certain industries, which could allow for more prime contracting opportunities for those minority firms on the cusp of graduating from the program. MDOT took all responses and comments into consideration when finalizing the herein proposed DBE goal. Based on its review of this data, MDOT determined that there was no need to make any additional adjustments to the Step 2 goal set forth above.

Pursuant to 49 C.F.R. § 26.45(g)(ii), MDOT published a notice announcing the proposed overall goal before submitting to the Federal Transit Administration. The notice was posted on MDOT's official website. If the proposed goal changes following review by the operating administration, the revised goal will be posted on MDOT's official website.