



# Orange County Transportation Authority's

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## **Federal Transit Administration (FTA) - Overall DBE Goal Setting Methodology for FFY 2016/18 Goal Period**

*Submitted in fulfillment of:*

*Section 1101 of the Transportation Equity Act for the 21<sup>st</sup> Century  
49 Code of Federal Regulations Part 26  
and*

*Federal Register / Vol. 75, No. 22 [Docket No. OST-2010-0021]*

This analysis is prepared exclusively for OCTA; it is non-transferable and is not to be duplicated.

**ORANGE COUNTY TRANSPORTATION AUTHORITY (OCTA)  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
AMENDED PROPOSED OVERALL GOAL AND METHODOLOGY  
FOR  
Federal Fiscal Year (FFY) Period 2016/18  
(October 1, 2015 to September 30, 2018)**

## I. INTRODUCTION

The Orange County Transportation Authority (OCTA) is required to develop and submit a Disadvantaged Business Enterprise (DBE) Overall Goal for DBE participation as a condition of receiving federal assistance, pursuant Moving Ahead for Progress in the 21<sup>st</sup> Century; 49 CFR Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs” and the Federal Transportation Administration (FTA) Master Funding Agreement.

## II. BACKGROUND

Effective March 3, 2010, the United States Department of Transportation (“DOT”) issued a final rule affecting the implementation and management of the Department’s Disadvantaged Business Enterprise (“DBE”) program. The final rule, requires submission of a goal-setting methodology on a three-year cycle. Pursuant to this final rule, OCTA is still required to conduct an annual review to account for changes that may warrant an adjustment to the overall goal or make an adjustment based on changed circumstances (i.e. significant change in the legal standards governing the DBE program, new contracting opportunities presented by the availability of new or different grant opportunities, etc.) to ensure the goal and program as a whole are narrowly tailored throughout the goal period. Under the three-year schedule, OCTA’s DBE goal and methodology submission is due to FTA on August 1, 2015 for proposed FTA funded contracting activities for Federal Fiscal Years (FFY) 2016/18.

**OCTA herein presents its Proposed Overall DBE Goal Methodology for FFY 2016/18 goal period, which resulted in a 10% Overall DBE Goal.**

## III. FTA-ASSISTED CONTRACTING PROGRAM FOR FFY 2016/18

**Table 1** represents OCTA’s U.S. DOT-assisted (FTA) defined contracting program, which includes three (3) projects considered in preparing its **Proposed Overall DBE Goal-Setting Methodology**. Of the 3 projects, 2 have viable subcontracting possibilities and corresponding availability of DBEs, a required criterion for Overall Goal consideration, and are anticipated to be awarded within the respective goal period. The 2 projects include both Construction and Professional Services contracting opportunities:

**Table 1**

<b>PROJECT</b>	<b>Total Estimated Project Cost (Federal Share)</b>	<b>Estimated Federal Dollar Share of Construction</b>	<b>Estimated Federal Dollar Share of Professional Services</b>	<b>Estimated Federal Dollar Share of Materials &amp; Supplies</b>
Fullerton Stair Project	\$560,000.00	\$560,000.00	\$0.00	\$0.00
Laguna Niguel--San Juan Capistrano Passing Siding - Construction Management Services	\$150,000.00	\$0.00	\$150,000.00	\$0.00
Laguna Niguel--San Juan Capistrano Utility Relocation	\$2,024,000.00	\$0.00	\$0.00	\$0.00
<b>TOTAL</b>	<b>\$2,734,000.00</b>	<b>\$560,000.00</b>	<b>\$150,000.00</b>	<b>\$0.00</b>
<b>TOTAL (Without Exempted)</b>	<b>\$710,000.00</b>	<b>\$560,000.00</b>	<b>\$150,000.00</b>	<b>\$0.00</b>

\* The project (shaded in gray), was exempted from this FFY 2016/18 analysis due to the lack of viable subcontracting opportunities.

Table 2 provides a summary of work grouped by two (2) primary categories: Construction & Professional Services, utilizing the North American Industry Classification System (NAICS) primary work categories. Table 2 also serves to identify the estimated Federal Dollar Share and the Percent of Federal funding, as follows:

**Table 2**

<b>CONTRACT CATEGORY</b>	<b>NAICS WORK CATEGORIES<sup>1</sup></b>	<b>ESTIMATED FEDERAL DOLLAR SHARE</b>	<b>% OF FEDERAL FUNDING (Rounded)</b>
<b>Construction</b>	237310	560,000.00	79%
<b>Professional Services</b>	541310	\$150,000.00	21%
<b>TOTAL</b>		<b>\$710,000.00</b>	100%

#### **IV. GOAL METHODOLOGY**

***Step 1: Determination of a Base Figure (26.45)<sup>2</sup>***

To establish OCTA’s Base Figure of the relative availability of DBEs to all comparable firms (DBE and Non-DBEs) available to propose on OCTA’s FFY 2016/18 FTA-assisted contracting opportunities projected to be solicited during the respective goal period, OCTA followed one of the five prescribed federal goal-setting methodologies in accordance with 49 CFR Part 26 regulations. This was accomplished by accessing the *California Unified Certification Program (CUCP) Directory of Certified*

<sup>1</sup> Refer to Attachments I and II for corresponding detail of all work trades grouped under the primary NAICS Codes.

<sup>2</sup> 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.

**DBE Firms** and the **2013 U.S. Census Bureau County Business Patterns (CBP) Database**. Comparisons were made within OCTA’s market area (defined as Orange, Los Angeles, Riverside and San Bernardino County) and by specified industries and types of businesses identified in Table 2. OCTA’s local market area represents where the substantial majority of OCTA’s contracting dollars are expended and/or where the substantial majority of contractors and subcontractors bids or quotes are received.

OCTA made a concerted effort to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator. For corresponding detail of all work category classifications grouped, refer to Table 3 below.

- ⇒ **For the numerator:** *California UCP DBE Database of Certified Firms*
- ⇒ **For the denominator:** *2013 U.S. Census Bureau’s Business Pattern Database (CBP)*

To determine the relative availability of DBEs, OCTA divided the numerator<sup>3</sup> representing the ratio of ready, willing and able DBE firms, by the denominator<sup>4</sup> representing all firms (DBE and Non-DBEs) available in each work category. Application of this formula yielded the following baseline information:

$$\frac{\text{Number of Ready, Willing and Able DBEs}}{\text{Number of All Available Firms (including DBEs and Non-DBEs)}} = \text{BASE FIGURE}$$

**Step 1: Base Figure (weighted by type of work to be performed and corresponding contracting dollars)**

**Table 3**

238120 Structural Steel and Precast Concrete Contractors	238190 Other Foundation, Structure and Building Exterior Contractors
Base Figure = $\left[ \frac{10.3\% \text{ (DBEs in NAICS 238120)}}{\text{(CBPs in NAICS 238120)}} \right]$	Base Figure = $\left[ \frac{49.7\% \text{ (DBEs in NAICS 238190)}}{\text{(CBPs in NAICS 238190)}} \right]$
Base Figure = $\left[ \frac{.103 \times 38}{169} \right]$	Base Figure = $\left[ \frac{.497 \times 8}{209} \right]$
Base Figure = .103 (0.22)	Base Figure = .497 (.04)
Base Figure= <b>.023</b>	Base Figure = <b>.019</b>
332323 Ornamental and Architectural Metal Work Manufacturing	237990 Other Heavy and Civil Engineering Construction

<sup>3</sup> Numerator represents all DBE firms established within OCTA’s market area.

<sup>4</sup> Denominator represents all comparable available established firms.

Base Figure = $\left( \frac{18.9\% \text{ (DBEs in NAICS 332323)}}{\text{(CBPs in NAICS 332323)}} \right)$ Base Figure = $\left( .189 \times \frac{15}{117} \right)$ Base Figure = .189 (.13) Base Figure= <b>.024</b>	Base Figure = $\left( \frac{5.3\% \text{ (DBEs in NAICS 237990)}}{\text{(CBPs in NAICS 237990)}} \right)$ Base Figure = $\left( .053 \times \frac{42}{132} \right)$ Base Figure = .053 (.32) Base Figure = <b>.017</b>
<b>541330 Engineering Services</b>	<b>541370 Surveying &amp; Mapping Services (except Geophysical)</b>
Base Figure = $\left( \frac{7.6\% \text{ (DBEs in NAICS 541330)}}{\text{(CBPs in NAICS 541330)}} \right)$ Base Figure = $\left( .076 \times \frac{363}{3037} \right)$ Base Figure = .076 (.12) Base Figure= <b>.009</b>	Base Figure = $\left( \frac{.6\% \text{ (DBEs in NAICS 541370)}}{\text{(CBPs in NAICS 541370)}} \right)$ Base Figure = $\left( .006 \times \frac{70}{172} \right)$ Base Figure = .006 (.41) Base Figure= <b>.003</b>
<b>541380 Testing Laboratories</b>	<b>541690 Other Scientific and Technical Consulting Services</b>
Base Figure = $\left( \frac{2.3\% \text{ (DBEs in NAICS 541380)}}{\text{(CBPs in NAICS 541380)}} \right)$ Base Figure = $\left( .023 \times \frac{69}{368} \right)$ Base Figure = .023 (.19) Base Figure= <b>.004</b>	Base Figure = $\left( \frac{5.3\% \text{ (DBEs in NAICS 541690)}}{\text{(CBPs in NAICS 541690)}} \right)$ Base Figure = $\left( .053 \times \frac{269}{3058} \right)$ Base Figure = .053 (.09) Base Figure= <b>.005</b>
<b>BASE FIGURE</b>	
Base Figure = 0.023 + 0.019 + 0.024 + 0.017 + 0.009 + 0.003 + 0.004 + 0.005 = 0.104 <b>Base Figure= (.104) 100 = 10.4 = <u>10%*</u></b>	

*\*Rounded to nearest whole number*

**Step 2: Adjusting the Base Figure**

Upon establishing the Base Figure, OCTA reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within OCTA's market area, in accordance with prescribed

narrow tailoring provisions set forth under 49 CFR Part 26.45 Step 2; DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included OCTA’s *Past DBE Goal Attainments, Bidders List, Disparity Studies, and Other Evidence*, as follows:

**B. Past DBE Goal Attainments**

The following table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts awarded by OCTA within the last three (3) Federal Fiscal Years:

**Table 4**

Year	Attainment
FFY 2012	7%
FFY 2013	5%
FFY 2014	3%
Median of Past Attainments = 3%, <u>5%</u> , 7% = 5% Median Past Participation	
*FFY 2015 still in progress as of the date of methodology preparation, so FFY 2012 was used in lieu of FFY 2015	

OCTA considered an adjustment to the Base Figure based on historical DBE goal attainments on DOT-assisted contracts completed within the past three FFYs (2012/14). However, based on OCTA’s review of the completed DOT-assisted contracts in the attainment period, it was found that the projects in the attainment period contained similarities to the projected Construction Management Contract and did not provide attainment data for projects containing work scopes similar to those identified for the Fullerton Stairs Contract. As the bulk of the federal dollar share (79%) is anticipated to be utilized on the Fullerton Stairs Contract, OCTA cannot assume that the Historical Median of Past Participation is an accurate reflection of DBE capacity in the primary types of work projected to be performed in the coming overall goal period. OCTA has therefore elected not to make any adjustment to Base Figure based on OCTA’s Historical Median of Past Participation.

**C. OCTA’s Bidders List**

OCTA considered an adjustment to the Base Figure based on its review of OCTA’s Bidders List compiled (from OCTA’s previously awarded DOT-assisted contracts.) The Bidders List was assessed to determine DBE Bidders in comparison to the total pool of Bidders (DBE and non-DBE). However, based on review of the compiled Bidder’s List for DOT-assisted contracts similar to the projects being let for FFYs 2016/18 period, OCTA found that the Bidder’s List only contained projects with similarities to the projected Construction Management Contract and did not provide an existing list of firms available to provide the work scopes similar to those identified for the projected Fullerton Stairs Contract.

OCTA’s Bidders List for projects with similar scopes to the projected Construction Management Project included 275 firms. Of the 275 firms, 72 were found to be DBEs which resulted in a DBE participation value of 26.1%.

As the projected Construction Management Contract represents 21% of the projected federal dollars share and the bulk of the dollars (79%) would be spent on the Fullerton Stairs Contract, OCTA cannot assume that the rates of DBE participation reflected on the compiled Bidder’s List are an accurate reflection of

DBE capacity in the primary types of work projected to be performed in the coming overall goal period. OCTA has therefore elected not to make any adjustment to Base Figure based on OCTA's compiled Bidders List to the upcoming DOT-assisted contracts. OCTA will continue to capture the required information from all bidders/proposers at the time of bid/proposal submission and will utilize such information in future Overall DBE Goal setting analyses, as applicable.

***D. Evidence from Disparity Studies***  
***Barriers to Entry: Employment, Self Employment, Education and Training, Business Ownership Rates and Access to Capital***

OCTA submitted a request (in accordance with 49 CFR 26.15) to implement a race-conscious goal based on its Disparity Study and apply race-conscious measures to its DBE program to the Department of Transportation in July of 2010.

OCTA reinstated race-conscious measures, coupled with race-neutral measures in April 2014 based on results received from the Southern California Regional Disparity Study, OCTA's analysis of its past utilization data and an examination of similar market area Disparity Studies.

OCTA will take these results and the forthcoming projects into consideration upon developing the breakout of Race-neutral/Race-Conscious measures in the implementation of OCTA's Overall Goal within Section V below.

***E. Other Evidence***

OCTA did not receive any anecdotal evidence nor is it aware of any other factors or adverse considerations that would have had a material affect on DBEs availability within OCTA's marketplace, or on DBEs' ability to participate (meeting bonding, insurance and financial requirements) in OCTA's FTA-assisted contracting programs at this time. However, as part of OCTA's 30 day period public facilitation process, it will request comments/input from industry groups both representing DBEs and non-DBEs to determine whether further consideration in making an adjustment is warranted. OCTA will consider all input received during the public comment period and determine if changes are required prior to finalizing the goal.

**The Overall DBE Goal for FFY 2016/18 goal period for OCTA's FTA-assisted contracts is 10%.**

The proposed goal further serves to identify the relative availability of DBEs based on evidence of ready, willing, and able DBEs to all comparable firms, which are known to be available to compete for and perform on OCTA's FTA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

**V. RACE-NEUTRAL/RACE-CONSCIOUS APPLICATION**

On April 8, 2014 OCTA received direction from FTA to implement a race-conscious element to their DBE Program based on the disparity study conducted by OCTA. OCTA reinstated race-conscious measures, coupled with race-neutral measures in April 2014 based on results received from the Southern California Regional Disparity Study, OCTA's analysis of its past utilization data and an examination of similar market area Disparity Studies.

**A. Consideration of the Amount by which OCTA has Exceeded Goals in the Past**

DOT has identified the amount a recipient has exceeded their overall goals in the past years as a useful tool in projecting the race/gender-neutral participation one can expect in future Federal Fiscal Years.

The following table below reflects the demonstrated capacity of DBEs on FTA-assisted contracts completed by OCTA within the last three (3) Federal Fiscal Years:

**Table 5**

FFY	RN/RC Application Period	Total Dollar Value Awarded to DBE Subcontractors	Reporting Period	Total Dollar Value of Awarded Contracts
2014	RC/RN	\$294,050	04/1/14-09/30/14	\$3,365,168
	RN	\$110,700	10/1/13-03/31/14	\$1,172,502
2013	RN	\$0.00	04/1/13-09/30/13	\$2,519,573
	RN	\$268,000	10/1/12-03/31/13	\$2,416,403
2012	RN	\$5,000.00	04/1/12-09/30/12	\$12,884,757
	RN	\$0	10/1/11-03/31/12	\$1,380,402
<b>Total:</b>		<b>\$677,750</b>		<b>\$23,738,805</b>
<b>% DBE Prime Participation</b>		Total Dollar Value Awarded to DBE Subs (\$677,750) / Total Dollar Value Awarded (\$23,738,805) = 2.86%		<b>3%*</b>

OCTA’s Historical Past Participation was 3% (illustrated in the table above), which did not exceed OCTA’s 8% Overall DBE Goal for FFYs 2013/15. As OCTA’s historical DBE Participation falls short of achieving the projected DBE goal valid during the attainment period, it is evident that race-conscious measures continue to be necessary to ensure OCTA’s success in meeting their proposed goal of 10% for FFY’s 2016/18.

**B. Past Participation by DBE Prime Contractors**

DOT has identified that the amount of past participation obtained through the use of DBE primes should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period.

Therefore, OCTA considered the amount of past DBE participation (based on actual attainments) obtained through the use of DBE primes in FFYs 2012, 2013 and 2014 below:

**Table 6**

FFY	Total Dollar Value Completed by DBE Prime	Reporting Period	Total Dollar Value of Completed Contracts
2014	\$250,000.00	04/1/14-09/30/14	\$6,992,998
	\$0.00	10/1/13-03/31/14	\$1,746,871
2013	\$301,331.00	04/1/13-09/30/13	\$1,624,994
	\$0.00	10/1/12-03/31/13	\$4,477,855
2012	\$0.00	04/1/12-09/30/12	\$3,493,381
	\$0.00	10/1/11-03/31/12	\$12,231,511



Total:	\$551,331.00	\$30,567,610
% DBE Prime Participation	Total Dollar Value Completed by DBE Prime (\$551,331.00) / Total Dollar Value of Completed Contracts (\$30,567,610) = 1.8% DBE Prime Participation	2%*

\*Rounded to nearest whole number

Although 2% of the DBE participation during FFYs 2012 through 2014 was produced by the utilization of DBE primes, the three projects awarded to DBE primes included service and repair of video surveillance systems, joint sealant installation and marketing services, as opposed to the two projects considered in the upcoming overall goal period which include construction management services and stair replacement. As the participation of DBE primes during the reporting period was on projects not similar to the types of projects being procured in the upcoming overall goal period, a required criterion for consideration in utilizing DBE prime participation to validate race-neutral application, OCTA cannot assume that the rates of DBE participation reflected is an accurate reflection of DBE prime capacity in the primary types of work projected to be performed in the coming overall goal period.

Additionally, as the Fullerton Stairs Contract represents 79% of the projected federal dollars share in the upcoming goal period, it is unlikely that this contract will be awarded to a DBE prime.

### C. Consider Past Participation by DBE Subcontractors on Contracts without Goals

DOT has identified that the amount of past participation obtained through the use of DBE subcontractors on contracts without DBE goals should be considered achieved race/gender-neutrally and that those attainments can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period.

Therefore, OCTA considered the amount of past DBE subcontractor participation on contracts without DBE goals in FFYs 2012, 2013 and 2014 below:

**Table 7**

FFY	RN/RC Application Period	Total Dollar Value Awarded to DBE Subcontractors	Reporting Period	Total Dollar Value of Awarded Contracts
2014	RN*	\$237,550	04/1/14-09/30/14	\$2,990,168
	RN	\$110,700	10/1/13-03/31/14	\$1,172,502
2013	RN	\$0.00	04/1/13-09/30/13	\$2,519,573
	RN	\$268,000	10/1/12-03/31/13	\$2,416,403
2012	RN	\$5,000.00	04/1/12-09/30/12	\$12,884,757
	RN	\$0	10/1/11-03/31/12	\$1,380,402
Total:		\$621,250		\$23,363,805
% DBE Prime Participation		Total Dollar Value Awarded to DBE Subs (\$621,250) / Total Dollar Value Awarded (\$23,363,805) = 2.66%		3%*

\*The three (3) race-conscious projects during this period were excluded

A DBE participation value of 3% was derived by the utilization of DBE firms in the Race-Neutral (RN) periods above. As three years of DBE Participation data was reviewed OCTA can reasonably assume that the rates of DBE participation reflected is an accurate reflection of DBE capacity to perform race-

neutrally in the 2016/18 overall goal period and has applied this to the proposed DBE Goal to project the necessary race-conscious as illustrated below:

10% DBE Goal - 3% Past RN Participation = 7% RC Application
<b>DBE Goal: 10%</b>
<b>RN Application 3% / RC Application 7%</b>

**D. Past History of Inability to Achieve Goals**

DOT has identified the a recipient’s past inability to meet their goals in the past years as a powerful indicator that the recipient may be justified in applying race-/gender-conscious measures to achieve their goals in future Federal Fiscal Years.

The following table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FTA-assisted contracts completed by OCTA within the last three (3) Federal Fiscal Years:

*Table 7*

Year	Attainment
FFY 2012	7%
FFY 2013	5%
FFY 2014	3%
Median of Past Attainments = 3%, <u>5%</u> , 7% = 5% Median Past Participation	
*FFY 2015 still in progress as of the date of methodology preparation, so FFY 2012 was used in lieu of FFY 2015	

OCTA’s historical DBE participation attainments produced a Past Median DBE Participation of 5%, representing a 3% shortfall from OCTA’s 8% Overall DBE Goal for FFYs 2013/15. Considering OCTA’s historical attainments fall short of achieving the projected DBE goal valid during the attainment period, it is evident that race-conscious measures continue to be necessary to ensure OCTA’s success in meeting their proposed goal of 10% for FFY’s 2016/18.

Although OCTA demonstrated tremendous efforts in increasing their race-neutral measures to meet the Overall goal of 8% in FFYs 2013/15, the use of race-conscious measures (initiated in April 2014) was a paramount factor in OCTA attaining the amount of DBE participation attainments it did. As the proposed goal for FFY’s 2016/18 is higher than the overall goal in the prior triennial period it is reasonable to assume that race-conscious measures will be necessary to enable OCTA to attain its proposed goal.

Consistent with the guidance provided and the reasons delineated above OCTA has found it advisable to implement the race-neutral/race-conscious breakout illustrated in Section V.C. to meet the proposed Overall DBE Goal (10%) in accordance with 49 CFR Part 26.51.

**E. Monitor DBE Participation to Determine Whether an Adjustment to the Use of Race/Gender-Conscious Measures is Necessary**

OCTA will continue to monitor its DBE participation during the overall goal period to determine whether

the application of OCTA's race-neutral/race-conscious measures to meet the proposed Overall DBE Goal (10%) remains on target. OCTA will adjust the application of race/gender-neutral and race/gender-conscious measures, as necessary to ensure OCTA meets the maximum feasible portion the overall goal by using race/gender-neutral means of facilitating DBE participation.

## **VI. PUBLIC PARTICIPATION AND FACILITATION**

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, local business chambers, and community organizations within OCTA's market area will be consulted and provided an opportunity to review the goal analysis and provide input. OCTA will prepare Outreach Consultation Letters advising the aforementioned business community of the proposed DBE goal analysis and its availability for review and comment.

OCTA will also issue a Public Notice in a general circulation media and in at least one other minority focused media publishing OCTA's Proposed Overall Goal for the FFY 2016/18 FTA-assisted contracts. Such Notice will inform the public that the proposed goal and rationale are available for inspection at OCTA's CAMMNET website for 30 days following the date of the Public Notice and that OCTA will accept comments on the goal analysis for 30 days from the date of the Public Notice. OCTA will give full consideration to all comments and input received as a part of this process and will assess its impact on the Proposed Overall DBE Goal.

Identified groups and organization solicited by OCTA will further be requested to participate in a public forum to discuss and share their valuable experience and input pertaining to effects of discrimination on opportunities for DBE's in OCTA's market area. OCTA will invite the public as well as identified minority, women's and general contractor groups and organizations within OCTA's market area to attend, in order to provide testimony and any additional information they may have. Additionally, OCTA consults and will continue to consult with minority groups and organizations year round via event attendance and partner vendor programs to solicit any input they have on DBE opportunities.

Any information received by these groups and organizations will be incorporated as a step 2 process of OCTA's goal development. If no impact and/or comments are received during the public participation process, the Goal will be considered final.