



ADVISORY INFORMATION

Date:	April 13, 2010
Subject:	Metropolitan Council Disadvantaged Business Enterprise (DBE) Public Facilities Authority (PFA) Program 2010 – 2013 Goal
District(s), Member(s):	All
Policy/Legal Reference:	Code of Federal Regulations Chapter 40 Part 33
Staff Prepared/Presented:	Aaron Koski, Sr. EO Consultant Wanda Kirkpatrick, Director Equal Opportunity (651-602-1085)
Division/Department:	Office of Diversity and Equal Opportunity/Regional Administration

Proposed Action

That the Metropolitan Council approve the Disadvantaged Business Enterprise (DBE) Public Facilities Authority (PFA) Program 2010 - 2013 Goal for submittal to the U.S. Environmental Protection Agency (EPA). There are options the Council can choose from. The ODEO staff recommends the Council approve the Disadvantaged Business Enterprise Program goal of 10% female and 5% minority for submittal to the U.S. Environmental Protection Agency.

Background

Chapter 40 part 33 of the Code of Federal Regulations requires all agencies receiving funding from the US Environmental Protection Agency adhere to the new rule. This new rule has six substantive changes. Those changes involve: 1) Certification of minority and women-owned businesses; 2) the six good faith efforts; 3) contract administration requirements; 4) negotiation of fair share goals (goals); 5) recordkeeping and reporting requirements; and 6) new requirements for Tribal and insular area fair share (goal) negotiations. This action will involve the narrowly tailoring of the fair share goals (goals).

Rationale

In the past the Council accepted the goals the PFA provided to the EPA. These goals were calculated by using data from across the state of Minnesota. The new 40 part 33 brought the EPA’s DBE program in line with the US Supreme Court’s decision in Adarand Constructors, Inc. v. Peña, 515 U.S. 200 (1995). This rule sets forth a narrowly tailored EPA program. This means the Council must determine its goals based on demonstrable evidence of the number of certified DBE that are ready, willing and able to perform in the relevant geographic market. The relevant geographic market is the area of solicitation for the procurement as determined by the Council. The Council’s relevant geographic market is the seven-county area, not the entire state.

In June of 2009 the Council requested approval from EPA to negotiate its own DBE goals, use the DBEs certified by the Minnesota’s Unified Certification Program and use the DOT guideline in determining Good Faith Efforts of bidders on EPA funded projects, pursuant to 40 CFR part 33.401. On July 9, 2009 USEPA approved the Council request for all three items.

Staff will [present options](#) for the Council in choosing the new EPA goals. Each is set forth as options in 40 CFR 33. Once the Council approves an option it will be forwarded to USEPA with a request to approve the Council’s EPA DBE goals for 2010 - 2013. These

goals will be applied to all EPA assisted contracts that the Council executes for the next three years. This will be the first time the Council will be negotiating its DBE program goals with EPA.

Funding

The setting of the EPA DBE goal does not affect the ODEO budget.

Known Support / Opposition

Public Facilities Authority supports the Council negotiating its own goal.

Environmental Protection Agency supports the Council negotiating its own goal.