

**MPO**

**broward**

metropolitan planning organization

# **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

December 2011

**BROWARD METROPOLITAN PLANNING ORGANIZATION  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**POLICY STATEMENT**

**(a) Objectives/Policy Statement (§26.1, §26.23)**

The Broward Metropolitan Planning Organization (Broward MPO) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR, Part 26. The Broward MPO has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Broward MPO has signed an assurance that it will comply with 49 CFR, Part 26.

It is the policy of the Broward MPO to ensure that DBEs are defined in Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of USDOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Roger Del Rio has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. Other Broward MPO staff will assist the DBELO, as needed, with DBE requirements and compliance. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Broward MPO in its financial assistance agreements with the USDOT.

The Broward MPO has disseminated this policy statement to Broward MPO Executive Board and all components of our organization. The Broward MPO has published and distributed notice of this document and the DBE goal in general circulation publications and on the Broward MPO website.



\_\_\_\_\_  
Gregory Stuart  
Executive Director

12/12/2011  
\_\_\_\_\_  
Date

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## **SUBPART A - GENERAL REQUIREMENTS**

### **A-1 Definitions of Terms (§26.5)**

The terms used in this program have the meanings defined in 49 CFR, §26.5.

### **A-2 Nondiscrimination (§26.7)**

The Broward MPO will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR, Part 26 on the basis of race, color, sex, or national origin. In administering its DBE program, the Broward MPO will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

### **A-3 Record Keeping & Reporting (§26.11)**

#### **Bidders List**

The Broward MPO will create a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts in the State of Florida. The purpose of this requirement is to allow use of the bidders list approach to calculating the overall goal. The bidders list will include the name, address and DBE/non-DBE status.

The Broward MPO will collect this information by requiring prime bidders to report the names, addresses and possibly other information of DBE subcontractors prior to the Broward MPO's issuance of a solicitation and at the time of bid opening. For non-formal bids, such information will be required on the quotation.

#### **Payments to DBEs**

The Broward MPO will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Broward MPO or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

The Broward MPO will keep a running tally of actual payments to DBE firms for work committed to them at the time of the contract award. The Broward MPO will perform interim reviews of contract payments to DBEs and will monitor payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

#### **Reporting to USDOT**

The Broward MPO will report DBE participation to USDOT on a quarterly basis. These reports will reflect payments actually made to DBEs on USDOT-assisted contracts.

#### **A-4 Federal Financial Assistance Agreement (§26.13)**

The Broward MPO has signed the following assurance, applicable to all USDOT-assisted contracts and their administration and when the Broward MPO has subrecipients, this language will appear in financial assistance agreements with such subrecipients and will require their signature.

The Broward MPO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR, Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. The recipient's DBE Program, as required by 49 CFR, Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Broward MPO of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

The Broward MPO will ensure that the following clause is placed in every USDOT-assisted contract and subcontract.

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of USDOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **B-1 DBE Program Updates (§26.21)**

The Broward MPO will continue to carry out this program until all funds from USDOT financial assistance have been expended. The Broward MPO will provide to USDOT updates representing significant changes in the program.

### **B-2 DBE Liaison Officer (§26.25)**

The DBE Liaison Officer (DBELO) is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. To assist in the administration of the program the DBELO has access to Broward MPO staff. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT;
2. Reviews third party contracts and purchase requisitions for compliance with this program;
3. Set overall annual goals;
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner;
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress;
6. Analyzes the Broward MPO's progress toward attainment and identifies ways to improve progress;
7. Participates in pre-bid meetings;
8. Advises the Broward MPO Board on DBE matters and achievement;
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance;
10. Plans and participates in DBE training seminars;
11. Provides outreach to DBEs and community organizations to advise them of opportunities; and
12. Maintains the Broward MPO's updated directory on certified DBEs.

An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

### **B-3 DBE Financial Institutions (§26.27)**

It is the policy of the Broward MPO to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contract to make use of these institutions. The Broward MPO has currently not identified a local financial institution.

Information on the availability of such institutions can be obtained from the DBELO.

#### **B-4 Prompt Payment Mechanisms (§26.29)**

The Broward MPO will include the following clause in each USDOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contract receives from The Broward MPO. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Broward MPO. This clause applies to both DBE and non-DBE subcontracts.

#### **B-5 Directory (§26.29)**

The Broward MPO utilizes the Florida Department of Transportation (FDOT) DBE directory. The directory is available on-line at the following website: <https://www USDOT.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>

#### **B-6 Overconcentration (§26.33)**

Broward MPO has not identified that overconcentration exists in the types of work that DBEs perform. The Broward MPO will continue to monitor DBE participation and usage and will utilize appropriate measures designed to assist DBEs if any overconcentration areas are identified.

#### **B-7 Monitoring & Enforcement Mechanisms (§26.37)**

The Broward MPO will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR, Part 26:

1. Bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109;
2. Consider similar action under out own legal authorities, including responsibility determinations in future contracts;
3. Provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring payment records, including, employee payroll, supervision of employees, meeting attendance; and
4. Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

A list of contract remedies available to the Broward MPO is found in Subpart F of this program.

## **SUBPART C - GOALS, GOOD FAITH EFFORTS & COUNTING**

### **C-1 Quotas (§26.43)**

The Broward MPO does not use quotas in any way in the administration of this DBE program.

### **C-2 Overall Goal (§26.45)**

The Broward MPO will submit its overall goal to USDOT on August 1<sup>st</sup> of each year. Before establishing the overall three year goal, The Broward MPO will consult with the USDOT Office of Equal Opportunity to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the our efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the Broward MPO will publish a notice in newspapers, available minority-focused media, trade publications and the Broward MPO website to inform the public of the proposed overall goal and its rational are available for inspection during normal business hours at your principal office for 30 days following the date of the notice. The notice will inform the public that the Broward MPO will accept comments on the goal for 45 days from the date of the notice. Normally, the Broward MPO will issue this notice by June 1<sup>st</sup> of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The Broward MPO submission to USDOT will include a summary of information and comments received during this public participation process and our responses. The Broward MPO will begin using our overall goal on October 1<sup>st</sup> of each year, unless the Broward MPO has received other instructions from USDOT. If the Broward MPO establishes a goal on a project basis, the Broward MPO will begin using our goal by the time the first solicitation for a USDOT-assisted contract for a project is advertised.

A description of the two-step process to calculate the overall goal of 6.1% is found in Attachment 2 of this program.

### **C-3 Transit Vehicle Manufacturers Goals (§26.49)**

Broward MPO will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the Broward MPO may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

### **C-4 Breakout of Estimated Race-Neutral & Race-Conscious Participation (§26.51)**

Broward MPO will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The Broward MPO uses the following race-neutral means to increase DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE participation.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing.
3. Carrying out information and communication programs on contracting procedures and specific contract opportunities. These information and communication programs may include, but are not limited to:
  - a. Annually, the Broward MPO will provide all small businesses which have bid on contracts during the last fiscal year a summary on major policy manuals or important changes in contracting procedures;
  - b. The Broward MPO shall supply the same information to all firms applying for DBE certification;
  - c. The Broward MPO shall provide a summary of key DBE policies to persons responsible for contracting activities in the FDOT's Central Office and Districts; and
  - d. The Broward MPO shall provide DBEs with job listings and listings of the potential prime bidders.
4. Providing services to help DBEs improve long term development, increase opportunities to participate in a variety of kinds of planning work, handle increasingly significant projects and achieve eventual self-sufficiency. These services may include but are not limited to:
  - a. Providing semi-annual workshops for newly certified DBE businesses to explain Broward MPO business processes; and
  - b. Conducting conferences at least once a year in order to bring together DBEs and the Broward MPO's prime contractors.

In order to ensure that the Broward MPO's DBE program will be narrowly tailored to overcome the effects of discrimination, if the Broward MPO uses contract goals, the Broward MPO will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see §26.51(f)) and the Broward MPO will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The Broward MPO estimates that, in meeting our overall goal of 6.1%, the Broward MPO will obtain 1.5% from race-neutral participation and 4.6% through race-conscious measures; however, these percentages may vary during the establishment of each three (3) year goal.

The Broward MPO's estimated breakout of race-neutral or race-conscious DBE participation is based upon projected contracting opportunities for the fiscal year. The Broward MPO will adjust the estimated breakout of race-neutral or race-conscious participation as needed to reflect actual DBE participation and the Broward MPO will track and report race-neutral or race-conscious participation separately.

### **C-5 Contract Goals (§26.51)**

The Broward MPO will use contract goals to meet any portion of the overall goal the Broward MPO does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The Broward MPO will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. The Broward MPO need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

The Broward MPO will express our contract goals as a percentage of the total amount of a USDOT-assisted contract.

### **C-6 Good Faith Efforts Procedures (§26.53)**

#### Information to be Submitted

Broward MPO treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require each bidder/offeree to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

#### Demonstration of Good Faith Efforts

The obligation of the bidder/offeree is to make good faith efforts. The bidder/offeree can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO and the project manager are responsible for determining whether a bidder/offeree who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

The DBELO will ensure that all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before the Broward MPO commits to the performance of the contract by the bidder/offeree.

### Administrative Reconsideration

Within three (3) working days of being informed by the Broward MPO that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. A bidder/offeror should make this request in writing to the following reconsideration official: Deputy Executive Director, Broward MPO, Trade Centre South, 100 West Cypress Creek Rd., Suite 850, Ft. Lauderdale, FL 33309-2112. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The Broward MPO will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the USDOT.

### Good Faith Efforts When a DBE is Replaced on a Contract

The Broward MPO will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The Broward MPO will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, The Broward MPO will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Broward MPO Executive Director or his designee shall issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Executive Director or his designee may issue a termination for default proceeding.

### **C-7 Counting DBE Participation (§26.55)**

The Broward MPO will count DBE participation toward overall and contract goals as provided in 49 CFR, Part 26.55.

## **SUBPART D - CERTIFICATION STANDARDS**

### **D-1 Certification Process (§26.61-73)**

It is the policy of the Broward MPO to accept DBE certifications from agencies that have reviewed and certified the DBE firms in accordance with 49 CFR, Part 26. The Broward MPO is not a certifying agency and will utilize the Unified Certification Program (UCP). For information about the certification process or to apply for certification, firms should contact FDOT's Equal Opportunity Office (<http://www.dot.state.fl.us>).

### **D-2 Re-certification (§26.83)**

The re-certifications of firms as DBE's will be based on UCP standards and will be conducted by the certifying agency listed above.

### **D-3 De-certification (§26.87)**

The de-certification of firms as DBE's will be based on UCP standards and will be conducted by the certifying agency listed above.

### **D-4 Certification Appeals (§26.89)**

Any firm or complainant may appeal our decision in a certification matter to the certifying agency listed above.

## **SUBPART E - CERTIFICATION PROCEDURES**

### **E-1 Unified Certification Programs (§26.81)**

Broward MPO is not a member of a UCP at this time.

### **E-2 “No Change” Affidavits & Notices of Change (§26.83)**

The Broward MPO will require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR, Part 26 or of any material changes in the information provided.

The Broward MPO will also require all owners of all DBEs to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The affidavit should, at a minimum, include the following language:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR, Part 26. There have been no material changes in the information provided with [*name of DBE firm*]'s application for certification, except for any changes about which you have provided written notice to the Broward MPO under §26.83(j).

The Broward MPO requires DBEs to submit with the affidavit documentation of the DBE firm's size and gross receipts.

The Broward MPO will notify all currently certified DBE firms of these obligations in writing. This notification will inform DBE firms that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirements (e.g. personal net worth), the obligation to submit a notice of change applies.

## **SUBPART F - COMPLIANCE AND ENFORCEMENT**

### **F-1 Confidentiality (§26.109)**

The Broward MPO will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Broward MPO will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

### **F-2 Consequences of Non-compliance**

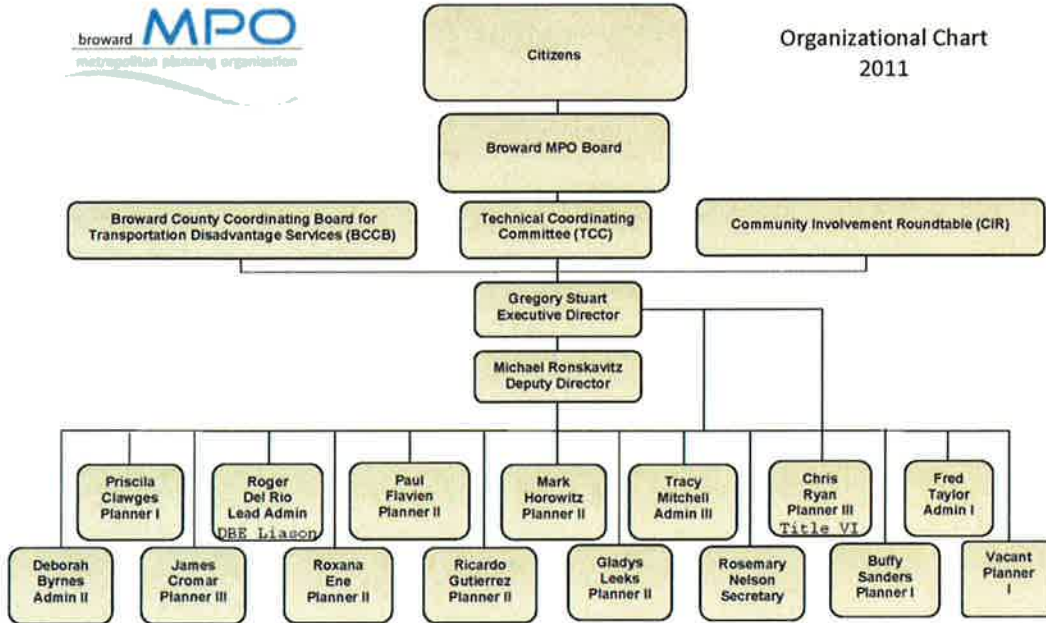
In the event of a contractor's failure or refusal to comply with the terms of this program, as it is set forth in such contractor's contract with the Broward MPO, the Deputy Executive Director will issue an order to:

1. Withholding of payments to the contractor under the contract until the contractor complies; and/or
2. Cancellation, termination or suspension of the contract, in whole or in part.

**ATTACHMENT 1 - BROWARD MPO ORGANIZATIONAL CHART**



**Organizational Chart  
2011**



\*staff shown in alphabetical order by last name

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[www.browardMPO.org](http://www.browardMPO.org)

For complaints, questions or concerns about civil rights or nondiscrimination, or for special requests under the American with Disabilities Act, please contact: Christopher Ryan, Public Information Officer/Title VI Coordinator at (954) 876-0036 or [ryan@crownatbrowardmpo.org](mailto:ryan@crownatbrowardmpo.org)

## ATTACHMENT 2 - OVERALL GOAL CALCULATION

In accordance with §26.45, the Broward MPO uses a two-step process to calculate its DBE program goal. The following is a summary of the method used to calculate this goal.

### **Step 1: §26.45(c)**

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

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

The data source or demonstrable evidence used to derive the numerator was:

Total number of certified DBEs in the Unified Certification Program (UCP) directory within Broward County with the North American Industry Classification (NAICS) that covers the available contracting opportunities during the goal period.

The data source or demonstrable evidence used to derive the denominator was:

All available firms derived from the latest available U.S. Census Bureau's County Business Patterns (CBP) for the same area using the same NAICS codes.

### **Step 2: §26.45(d)**

After calculating a base goal percentage of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation, the Broward MPO would expect in the absence of discrimination, the Broward MPO will adjust the base figure by adding the historical median of actual DBE achievements over the preceding three (3) years to the result of Step 1 and then divide by two (2).

The reason the Broward MPO adjusts the figure using this data to more accurately reflect the DBE participation the Broward MPO could expect in the absence of discrimination.