



June 10, 2005
(For Board: June 24, 2005)

**REPORT OF THE RULES, POLICY AND INDUSTRIAL
RELATIONS COMMITTEE/COMMITTEE OF THE WHOLE**

Honorable Board of Directors
Golden Gate Bridge, Highway
and Transportation District

Honorable Members:

A meeting of the Rules, Policy and Industrial Relations Committee/Committee of the Whole was held in the Board Room, Administration Building, Toll Plaza, San Francisco, California, on Friday, June 10, 2005, at 9:30 a.m., Acting Chair Murray presiding.

Committee Members Present (6): Vice Chair Murray; Directors Hernández, Martini McGoldrick and Pahre; President Middlebrook (Ex Officio)

Committee Members Absent (1): Chair Harrison

Other Directors Present (4): Directors Cochran, Eddie, Reilly and Sandoval

Committee of the Whole Members Present (10): Directors Cochran, Eddie, Hernández, Martini, McGoldrick, Murray, Pahre, Reilly and Sandoval; President Middlebrook

Committee of the Whole Members Absent (9): Directors Ammiano, Brown, Dufty, Kerns, Moylan, Shahum and Stroeh; First Vice President Harrison; Second Vice President Boro

Staff Present: General Manager Celia G. Kupersmith; District Engineer Denis J. Mulligan; Auditor-Controller Joseph M. Wire; Secretary of the District Janet S. Tarantino; Attorney David J. Miller; Deputy General Manager/Bridge Division Kary H. Witt; Deputy General Manager/Bus Division Susan C. Chiaroni; Deputy General Manager/Ferry Division James P. Swindler; Deputy General Manager/Administration and Development Teri W. Mantony; Procurement and Retail Operations Director Lori Murray; Information Systems Director Robert Haar; DBE Program Administrator Aida S. Caputo; Executive Assistant to the General Manager Amorette Ko; Assistant Clerk of the Board Patsy Whala

Visitors Present: None

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 2**

1. Approve Proposed FY 05/06 Annual Overall Disadvantaged Business Enterprise (DBE) Goals and Status Report on Overall Project DBE Goals for Golden Gate Bridge Seismic Retrofit Phase IIIA

In a memorandum to Committee, DBE Program Administrator Aida Caputo, Deputy General Manager/Administration and Development Teri Mantony and General Manager Celia Kupersmith described staff's recommendation relative to the proposed FY 05/06 annual overall Disadvantaged Business Enterprise (DBE) goals and provided the status of the overall project DBE goal for the Golden Gate Bridge Seismic Retrofit Project Phase IIIA. The report outlined the process used in determining the District's overall DBE goals, based on regulations prescribed by the U.S. Department of Transportation (U.S. DOT). The report detailed staff's methodology used in determining the overall DBE goals of 7% for Federal Transit Administration-assisted (FTA-assisted) and 2% for Federal Highway Administration-assisted (FHWA-assisted) contracts for approval.

The report stated that U.S. DOT regulations require that the maximum feasible portion of the annual overall DBE goals be met by using race/gender-neutral methods. To date, the District has met or exceeded its annual DBE goals utilizing race/gender-neutral means. In light of a recent decision by the U.S. Court of Appeals for the Ninth Circuit regarding the constitutionality of DBE programs (*Western States Paving Co. vs. Washington State Department of Transportation*), the permissibility of using race-conscious methods to achieve DBE participation is subject to question. Although the District does not propose to set any contract-specific DBE goals for new FY 05/06 contracts, staff recommends that clarification be obtained from the U.S. DOT regarding the methodology used for setting DBE annual overall goals before setting any contract-specific goals in the future. The report noted that the proposed annual overall DBE goals comply with California Proposition 209 in that they are only applicable to federally-assisted contracts.

The report also stated that staff recommends publication of the proposed annual DBE goals, which reflects staff's determination of the level of DBEs ready, willing and able to participate in the District's U.S. DOT-assisted contracting activity for FY 05/06. The report noted that according to U.S. DOT regulations, the proposed annual DBE goals must be published for public inspection and comment to ensure public participation in the goal-setting process. To qualify for continued federal funding, the proposed goals must be submitted to FTA and the California Department of Transportation (Caltrans) on behalf of FHWA by August 1, 2005, at which time FTA and Caltrans may review and suggest adjustments; however, prior concurrence is not required.

The report further stated that the Board of Directors, by Resolution No. 2005-020 at its meeting of March 11, 2005, approved publication of the proposed overall project DBE goal for the Seismic Retrofit Project Phase IIIA. There were no public comments received by the deadline date of April 30, 2005, therefore the District has adopted the 12% goal, which is applicable to \$44,440,000 in FHWA-assisted contracts.

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 3**

The report also provided tables that depict the projected DBE participation for the District's FTA-assisted and FHWA-assisted contracts for FY 05/06. A copy of the report, including the attachments, is available in the Office of the District Secretary.

At the meeting, Aida Caputo summarized the staff report and stated that Caltrans, on behalf of FHWA, has approved the District's DBE project goal for the Seismic Retrofit Project Phase IIIA, confirming that the contents and elements of the District's goal information meet the DBE requirements.

Discussion ensued, including the following:

- Director Martini made the following comments and inquires:
 - He inquired as to whether DBE businesses have been able to flourish and expand as a result of being eligible for DBE programs. In response, Ms. Caputo stated that several companies can no longer be classified as disadvantaged due to the financial growth from the program.
 - He inquired whether remaining a DBE-eligible company is an incentive to businesses because once they succeed as a result of winning contracts, they may become ineligible for future DBE benefits. In response, Ms. Caputo stated that although businesses might wish to remain classified as DBE companies, the District commends these businesses when they "graduate" from the program.

- Acting Chair Murray made the following comments and inquiries:
 - She inquired as to whether DBE program criteria are keeping up with the costs of inflation with corresponding levels for qualification as a DBE company. In response, Ms. Caputo stated that the Small Business Administration (SBA) periodically reviews the criteria it uses to determine DBE eligibility. She further stated that there will be a public meeting this year to hear public comments on the evaluation of such criteria.
 - She suggested that the District should provide comments to the SBA that the criteria should be adjusted for geographic areas to take into consideration the high cost of living in the Bay Area.

- Director Sandoval inquired as to whether the District has had to change its policy regarding DBE requirements in the last year and if the Board has had thorough discussion in both open and closed session regarding this matter. In response, Mr. Miller stated that the Board has not needed to discuss DBE requirements in closed session, because there have been no challenges to the District's DBE policies. He noted that in the aftermath of Proposition 209, California law renders it impossible to use DBE goals for non-federally funded projects. He also stated that due to the capabilities of the DBE Program Administrator and the General Manager, this program continues to prosper even though the legal ground rules governing the program have been narrowed as a result of changes in both federal and state law.

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 4**

Staff recommended, and the Committee concurred by motion made and seconded by **Directors PAHRE/HERNÁNDEZ** to forward the following recommendation to the Board of Directors for its consideration:

RECOMMENDATION

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve the following actions relative to the FY 05/06 annual overall Disadvantaged Business Enterprise (DBE) goals:

- a. Establish a seven percent (7%) proposed goal applicable to \$2,616,349 in contracts assisted by the Federal Transit Administration (FTA) and authorize the General Manager to publish notice of the proposed goal in accordance with federal regulations;
- b. Establish a two percent (2%) proposed goal applicable to \$1,200,000 in contract assisted by the Federal Highway Administration (FHWA) and authorize the General Manager to publish notice of the proposed goal in accordance with federal regulations;
- c. Authorize the General Manager to formally adopt the FTA and FHWA goals if no public comments are received that require further consideration or modifications of the proposed goals by the Board; and
- d. Authorize staff to submit the District's annual overall DBE goals for federally-assisted contracting opportunities to FTA and the California Department of Transportation (Caltrans) on behalf of FHWA by August 1, 2005.

**Action by the Board - Resolution
NON-CONSENT CALENDAR**

AYES (5): Vice Chair Murray; Directors Hernández, Martini and Pahre;
President Middlebrook (Ex Officio)
NOES (0): None
ABSENT (2): Director McGoldrick; Chair Harrison

2. Approve an Amendment to the Procurement Manual Relative to the Procurement Process for Professional Service Agreements Not Exceeding \$7,500

In a memorandum to Committee, Auditor-Controller Joseph Wire and General Manager Celia Kupersmith reported on staff's recommendation to approve an amendment to the *Procurement Manual* relative to Section III.C, *Simplified Negotiations for Service Contracts Not Exceeding \$20,000*, to authorize staff to retain professional services without obtaining competitive quotations, if the estimate does not exceed \$7,500.

The report stated that presently the District uses a simplified negotiations process to obtain professional services when the cost falls between the range of \$2,500 and \$20,000. A solicitation is issued, proposals are received and evaluated and the successful proposer is retained with an executed agreement. The current

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 5**

process has caused operational delays in procuring professional services that are small in scope and cost due to the requirement to obtain competitive quotations. It is anticipated that streamlining the procurement process will allow staff to perform the procurement functions in a more efficient and timely manner and will increase overall productivity and responsiveness.

The report also stated that the new procurement process will ensure fairness and accuracy due to the requirement that all pertinent details, such as description of services, estimated time of completion, fee structure and insurance requirements, are submitted in writing. Staff will prepare a standardized procurement form with the terms of the proposal, which will be approved by the appropriate District Officer or Deputy General Manager and sent to the Procurement Director for processing. A copy of the report is available in the office of the District Secretary.

At the meeting, Lori Murray summarized the staff report, stating that presently District staff is spending excessive time processing very small contracts and that this new procedure will streamline procurement for efficiency.

Discussion ensued, including the following:

- Director Hernández made the following comments and inquires:
 - She inquired as to whether there is a component in the procurement process that allows staff to evaluate the experience of the contractor. In response, Ms. Murray stated that in most cases staff has prior knowledge of the area of the contractor's expertise and that staff thoroughly evaluates the proposal received from the contractor.
 - She inquired as to how staff determined the amount of \$7,500 as the threshold. In response, Ms. Murray stated that staff canvassed other agencies and found them to have a range of \$2,500 to \$10,000 and staff concluded that \$7,500 was a reasonable amount.

- Director Pahre commended staff on their thorough research, stating that the District will clearly benefit from the proposed streamlining of the *Procurement Manual*.

[Note: With the arrival of Director McGoldrick, the Committee became a Committee of the Whole.]

Staff recommended, and the Committee concurred by motion made and seconded by **Directors PAHRE/MIDDLEBROOK** to forward the following recommendation to the Board of Directors for its consideration:

RECOMMENDATION

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve an amendment to the Procurement Manual relative to Section III., **SMALL PURCHASE PROCEDURES**, Subsection C., **Simplified Negotiations for Service Contracts Not Exceeding \$20,000**, authorizing District staff to retain professional services without obtaining competitive quotations, if the estimate does not exceed \$7,500, by replacing Subsection C. in its entirety, as outlined below:

III. SMALL PURCHASE PROCEDURES

C. Simplified Negotiations for Service Contracts Not Exceeding \$20,000

1. Professional Services Not Exceeding \$7,500. Professional services may be retained without obtaining competitive quotations, if the estimate does not exceed \$7,500. Work should not be arbitrarily segmented or split in order to avoid the requirements for competition.

When the Office of Primary Interest determines that a need exists for professional services not exceeding \$7,500, it will request that the Consultant submit in writing a brief proposal that includes (a) a description of the services to be provided; (b) an estimated schedule for completion; (c) fee structure, including a total all inclusive sum including hourly rates and expenses; and (d) indemnification and insurance requirements as prescribed by the District. (A separate description of the District's insurance and indemnification requirements is available to be used for this purpose).

The Office of Primary Intent must evaluate the proposed price and determine if it is fair and reasonable, and may negotiate final terms and conditions of the engagement with the proposer. Upon review and acceptance of the proposal, the Office of Primary Interest will submit a completed Requisition Form to the District Purchasing Office, which shall be signed by the responsible Deputy General Manager, or District Officer. The Consultant's written proposal shall be attached.

The Requisition Form will indicate that the Office of Primary Interest has determined that the scope of work is suitable for a noncompetitive approach and that the cost is fair and reasonable. The District Purchasing Office will process a purchase order to formalize the engagement.

2. Service Contracts Not Exceeding \$20,000. To retain professional services between \$7,500 to \$20,000, a simplified negotiations process may be used. This process may also be used to retain non-professional services, as an alternative to the Informal Bidding process described in Section III.B, when the cost does not exceed \$20,000. Generally, this process consists of the issuance of a written solicitation to prospective proposers describing the scope of services required, time frame, and deliverables. Formal advertising is not required. Selection is made based upon the proposer's qualifications and

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 7**

experience, timeliness, approach and, for non-architectural/engineering services, cost. (See Section V.N below for a discussion of architectural/engineering services.) The District may negotiate the terms and conditions of the engagement with the highest ranked proposer, or may award the contract without negotiations.

The District shall not arbitrarily split work so as to avoid the formal Request for Proposals process described in Chapter V below. Staff is encouraged to consider the Request for Proposals process to contract for on-call services for a specified duration.

a. Simplified Negotiations Process. The Office of Primary Interest shall initiate the simplified negotiations process by verifying with the Auditor-Controller that funds are available within the approved budget. The Office of Primary Interest shall prepare a Solicitation Letter describing the scope of services requested, time for completion, minimum qualifications, and selection criteria in relative order of importance, generally as contained in the sample form provided in the Procurement Forms Binder, and attach the Professional Services Agreement that will apply to the engagement also included in the Procurement Forms Binder.

The Office of Primary Interest, in consultation with the District's insurance advisor and Attorney, will determine what types and levels of insurance, if any, shall apply, taking into consideration the risk factors associated with the engagement. Typically the consultant shall be required to have a minimum of \$1,000,000 per occurrence general and automobile liability insurance, and may be required to maintain professional liability insurance.

The Office of Primary Interest shall make best efforts to obtain a minimum of three written proposals, utilizing names obtained from locator files, trade journals, trade sources and the DBE Vendor Lists. The Office of Primary Interest shall consult the DBE Program Administrator for names of potential DBE proposers. Written proposals shall be submitted within the time frame specified in the Solicitation Letter and shall describe the proposer's qualifications and experience, approach to the work, and cost proposal (for non-architectural/engineering contracts).

b. Simplified Negotiations Evaluation and Award. Proposals shall be evaluated by the Office of Primary Interest. The proposer that best meets the District's needs in accordance with the selection criteria identified in the Solicitation Letter shall be selected for award or for further negotiations as to the final scope of work and price, if necessary. Upon successful completion of negotiations, the Office of Primary Interest shall notify the DBE Program Administrator and the Auditor-Controller's office. The Professional Services Agreement shall be executed by the District's authorized representative and the consultant and retained by the Office of Primary Interest. Required insurance coverage shall be verified before the District issues the Notice to Proceed.

Action by the Board - Resolution
NON-CONSENT CALENDAR

**REPORT OF RULES, POLICY AND INDUSTRIAL RELATIONS COMMITTEE/
COMMITTEE OF THE WHOLE
JUNE 10, 2005/PAGE 8**

AYES (10): Directors Cochran, Eddie, Hernández, Martini, McGoldrick,
Murray, Pahre, Reilly and Sandoval; President Middlebrook

NOES (0): None

**[Note: This matter will be presented to the Board of Directors at its June 10,
2005, meeting for appropriate action.]**

3. Public Comment

There was no public comment.

4. Adjournment

All business having been concluded, the meeting was declared adjourned at
9:45 a.m.

Respectfully submitted,

Cynthia L. Murray, Acting Chair
Rules, Policy and Industrial Relations Committee

CLM:JST:PLW:plw