



Agenda Item No. 1

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of June 10, 2005

From: Aida S. Caputo, DBE Program Administrator  
Teri W. Mantony, Deputy General Manager, Administration & Development  
Celia G. Kupersmith, General Manager

Subject: **APPROVE PROPOSED FY 05/06 ANNUAL OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOALS AND STATUS REPORT ON OVERALL PROJECT DBE GOAL FOR GOLDEN GATE BRIDGE SEISMIC RETROFIT PHASE IIIA**

**Recommendation**

**A. Approve Proposed FY 05/06 Annual Overall DBE Goals**

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

- (1) 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;
- (2) 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;
- (3) 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
- (4) 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.

**B. Status Report on Overall Project DBE Goal for Golden Gate Bridge Seismic Retrofit Phase IIIA**

This portion of the report is provided for informational purpose, and no action is required.

## **Summary**

### **A. Approve Proposed FY 05/06 Annual Overall DBE Goals**

The steps taken in the development of the annual overall goals are in accordance with 49 Code of Federal Regulations Part 26, issued by the U.S. Department of Transportation. The regulations prescribe a two-step process. In Step 1, base figures are calculated to determine the relative availability of DBEs in the specific areas of expertise involved in the District's expected contracting activities. The District used the Census Bureau's 2002 County Business Pattern database and the California Unified Certification Program (CUCP) DBE database to determine the base figures. In Step 2, an assessment of known relevant evidence available to the District is analyzed to determine what adjustments, if any, are needed to narrowly tailor the base figures to the District's marketplace. The District analyzed data on actual DBE participation in the District's race/gender-neutral contracts in recent years to adjust the base figures.

For FTA-assisted contracts, staff determined an overall Step 1 base figure of 7.3%. Further analysis indicates that no adjustment is required to the 7.3% base figure. While adjustments were made to a few of the contract classifications, the overall availability figure still resulted in 7%. Staff projects FTA-assisted contracts may be able to meet the DBE availability factor of 7%. A table providing the availability figure for each FTA-assisted contract is provided as Attachment A.

For an FHWA-assisted contract, staff determined an overall Step 1 base figure of 1.8%. Further analysis of the FHWA-assisted contract indicates that this figure should just be rounded to 2%, without further adjustment. Staff projects that the FHWA-assisted contract may be able to meet the DBE availability factor of 2%. A table providing the availability figure for this FHWA-assisted contract is provided as Attachment B.

The U.S. DOT regulations require that the maximum feasible portion of the annual overall DBE goals be met by using race/gender-neutral methods. Because of the emphasis placed on race/gender-neutral methods, the District does not propose to set contract-specific DBE goals on new contracts to be awarded in FY 05/06. To date, the District has met or exceeded its annual DBE goals using race neutral means. In light of a recent Ninth Circuit decision regarding the constitutionality of DBE programs (*Western States Paving Co. v. Washington State Department of Transportation*), the permissibility of using race conscious methods to achieve DBE participation is subject to question. The Attorney has recommended that clarification from the U.S. DOT be obtained regarding the impact of the case on the methodology used for setting DBE annual overall goals and that contract specific goals not be used in the interim.

The proposed annual overall goals, 7% for FTA-assisted contracts and 2% for an FHWA-assisted contract, reflect 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 regulations require the proposed goals to be published for public inspection and comment to ensure public participation in the goal-setting process. The regulations also require that the goals be submitted to FTA and Caltrans on behalf of FHWA by August 1, 2005. FTA and Caltrans may review and suggest adjustments to the goals upon consultation with the District; however, prior concurrence with the goals is not required.

The annual overall DBE goals comply with the California Proposition 209, the 1996 California Civil

Rights Initiative, in that they are only applicable to U.S. DOT-assisted contracts. No DBE goal will apply to contracts that are not federally-assisted.

**B. Status Report on Overall Project DBE Goal for Golden Gate Bridge  
Seismic Retrofit Phase IIIA**

By Resolution 2005-020, on March 11, 2005, the Board of Directors approved for publication a proposed Overall Project DBE Goal for the Golden Gate Bridge Seismic Retrofit Phase IIIA – North Anchorage Housing/North Pylon project assisted by FHWA. The Board authorized the General Manager to formally adopt the goal if no comments were received that required further consideration or modifications to the proposed goal.

The proposed 12% goal for this project was published in mid-March 2005. The deadline for public comments was April 30, 2005, and no comments were received by the District. Therefore, the District has adopted a 12% goal for the Golden Gate Bridge Seismic Retrofit Phase IIIA – North Anchorage Housing/North Pylon project. This goal is applicable to \$44,440,000 in contracts assisted by FHWA.

**Fiscal Impact**

There is no fiscal impact associated with this report. However, the District's proposed FY 05/06 DBE goals for federally-assisted contracts must be submitted by August 1, 2005, to qualify for continued federal funding.

Attachments

## FY 05/06 Annual Overall DBE Goal for FTA-Assisted Contracts

The availability figures determined for the FTA-assisted contracts were calculated into projected DBE participation dollars by taking the FTA dollars budgeted for each contract and multiplying it by the availability figures. The total of the projected DBE participation dollars was then divided by the total of the budgeted FTA dollars for all contracts, resulting in a 7% annual overall goal.

ANNUAL OVERALL GOAL				
NAICS	Contract	FTA \$ Budgeted	Availability Figures	FTA \$ Projected For DBE
237310	Toll Plaza Transfer Points/Pavement Rehabilitation	\$353,149	7.4%	\$26,133
237310	Merchant Road Improvements	216,800	7.4%	16,043
336399	Bike Racks on MCIs	192,000	0.0%	0
237120	Santa Rosa Fuel Tanks Replacement	240,000	1.5%	3,600
238990	Employee Parking Lot Security Gate	34,400	13.7%	4,713
541512	Bus Radio Communications Sys. & Fareboxes – Design	400,000	7.6%	30,400
541330	Concept Design for Change of Gangways & Piers	400,000	12.7%	50,800
541620	Channel Dredging – Design Services	640,000	9.8%	62,720
333618	Mendocino Spare Engine	140,000	0.0%	0
<b>Total</b>		<b>\$2,616,349</b>		<b>\$194,409</b>
<b>FTA \$ Projected for DBE</b>		<b>FTA \$ Budgeted</b>		<b>Annual Overall Goal</b>
<b>\$194,409</b>		÷	<b>\$2,616,349</b>	= <b>7%</b>

# FY 05/06 Annual Overall DBE Goal for FHWA-Assisted Contract

The District determined a 1.8% availability figure for the single FHWA-assisted contract. Since there is only one contract anticipated for award during FY 2006, the availability figure, rounded to 2%, will be used as the annual overall goal.

ANNUAL OVERALL GOAL				
NAICS	Project	FHWA \$ Budgeted	Availability Figure	FHWA \$ Projected For DBE
541310	Suicide Deterrent – Preliminary Investigation	\$1,200,000	1.8%	\$21,600
<b>Total</b>		<b>\$1,200,000</b>		<b>\$21,600</b>
<b>FHWA \$ Projected for DBE</b>		<b>FHWA \$ Budgeted</b>		<b>Annual Overall Goal</b>
\$21,600		÷ \$1,200,000		= 2%