



Agenda Item No. 4

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of September 12, 2008

From: Gail Jackson, DBE Program Administrator
Z. Wayne Johnson, Deputy General Manager, Administration
Celia G. Kupersmith, General Manager

Subject: **ANNUAL PROGRESS/STATUS REPORT AND UPDATE ON
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM**

Recommendation

This report is provided for informational purposes only and does not require any action.

Summary

This report summarizes the participation of Disadvantaged Business Enterprises (DBEs) in District contracts and procurements during the recently completed FY 07/08. Under regulations issued by the U.S. Department of Transportation, a DBE is a small business concern that is at least 51% owned and controlled by socially and economically disadvantaged individuals, which presumptively includes designated ethnic minorities and women. The District administers its program on a race neutral basis, in light of judicial decisions that have established parameters for DBE programs under federal and state constitutional law.

The District tracks DBE participation in District purchasing and contracting on several different levels. This is described in the District's Diversity Program for Contracts, a program that complies with federal regulations and which was formally adopted by the Board.

- First, the DBE office tracks Districtwide DBE participation on purchases and contracts *regardless of funding source*. The District does not set an annual DBE participation goal for purchases and contracts that are not funded with federal assistance. Staff analyzes the District's financial records for actual payments to vendors, as well as the "prompt payment reports" submitted by prime contractors that show actual payments to subcontractors, to determine the level of DBE participation achieved.
- Second, the DBE office separately tracks DBE participation on contracts funded in whole or in part by the Federal Transit Administration (FTA). In accordance with FTA regulations, the District analyzes the level of DBE participation that might, in the absence of discrimination, be anticipated on these contracts. This forms the basis for the establishment of an annual overall DBE participation goal for FTA assisted contracts. In July 2007, the Board approved a 4% annual overall DBE participation goal for ten FTA-assisted contracts anticipated for award during FY 07/08. A separate 1% project goal

was established for the multi-year Larkspur Ferry Terminal berth and channel dredging project. DBE achievement is based on a July 1, 2007, through June 30, 2008, fiscal year.

- Third, the DBE office separately tracks DBE participation on contracts funded in whole or in part by the Federal Highway Administration (FHWA). In accordance with directives from the California Department of Transportation subrecipients such as the District no longer adopt annual overall goals for FHWA-assisted contracts. Instead, the District provides Caltrans with an analysis of anticipated DBE participation in its FHWA assisted contracts for inclusion in Caltrans' statewide annual overall goal for FHWA-assisted projects. Accordingly, the Board no longer sets an annual overall DBE participation goal for FHWA-assisted contracts. However, the District did submit to Caltrans a FY 07/08 Annual Anticipated DBE Participation Level for five FHWA-assisted contracts of 4.6%. FHWA DBE achievement is based on an October 1, 2007, through September 30, 2008, fiscal year.

A. Annual Progress Report on Fiscal Year 2007/2008 Diversity Program for Contracts

Districtwide: Actual payments on Districtwide contracts and procurements, regardless of funding source, that were available to DBEs amounted to \$24,293,293. The total paid to 17 DBE prime contractors/consultants/suppliers and 9 DBE subcontractors/subconsultants/suppliers was \$959,615. This breaks down as follows:

DBE Prime, Minority-Owned Business	\$548,076
DBE Prime, Woman-Owned Business	\$59,255
DBE Sub, Minority-Owned Business	\$304,884
DBE Sub, Woman-Owned Business	\$47,400
Total DBE Payments	\$959,615

No annual overall DBE goal was established for Districtwide contracts and procurements. Nevertheless, Districtwide DBE participation achieved was 4%

Federal Transit Administration: The FTA annual overall DBE goal established for FY 07/08 was 4%, based on 10 contracts and an anticipated commitment of \$23,147,375 of FTA dollars. By the end of the fiscal year, FTA funds awarded/committed amounted to \$1,613,180. The total awarded/committed for DBE prime contracts and subcontracts was \$8,329. Based on awards/commitments, DBE participation achieved for FTA-assisted contracts was less than 1%. There is a discrepancy of over \$21 million in the amount actually committed versus the anticipated commitment used in establishing the goal due primarily to timing of contract awards. In fact, by the end of the fiscal year on July 1, 2008, only four of the smaller contracts included in the FY 07/08 goal had been awarded. All four were ferry-related, and anticipated DBE achievement on the four was 0%, as evaluated in the annual goal report.

Federal Highway Administration: Five FHWA-assisted contracts were awarded during this reporting period. The total FHWA funds awarded/committed for these five contracts amounted to \$94,770,672. Anticipated DBE participation is 6.13%.

B. Status Report on Annual Overall DBE Goal for the Current Fiscal Year 2008/09

By Resolution 2008-051, on June 13, 2008, the Board of Directors approved a proposed FY 08/09 annual overall DBE goal of 4.5% for contracts assisted by the Federal Transit Administration (FTA). 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. Notice of the proposed goal was published on June 13, 2008. The deadline for public comments was July 28, 2008, and no comments were received by the District. Therefore, the District has adopted a 4.5% goal applicable to \$32,123,000 for FTA assisted contracts

C. Status Report on Project Goals Set in Previous Years

In FY 03/04, with the approval of the FTA, the District began establishing DBE project goals for FTA-assisted contracts that are multi-year in duration, or that may include multiple contracts within a large project. These project goals are separate from the annual overall DBE goal. The purpose of separating multi-year projects from projects that would be completed within a year is to avoid reporting and attainment discrepancies. Three project goals were assigned in FY 03/04. Two have been completed and are summarized in the table below.

SUMMARY OF PROJECT GOALS COMPLETED			
Project	Established	Project DBE Goal	Project DBE Attainment
Larkspur Berth Dredging	FY 03/04	11%	8%
Particulate Traps on Buses	FY 03/04	0%	0%

D. Expanded Outreach

The District belongs to a committee formed by ten transit agencies in the San Francisco Bay Area called the Business Outreach Committee (BOC), which continues to explore race-neutral outreach practices in an effort to maximize race-neutral contracting opportunities for DBEs and small businesses, increase visibility of the DBE program, and encourage minority and women-owned businesses to become certified. To date, two issues of the BOC newsletter have been published and two outreach events held. The first outreach event focused on annual goal-setting. DBE officers and engineering and contracting staff from ten Bay Area transit agencies described upcoming FTA-assisted contracting opportunities, met with DBE vendors present, and solicited comment on proposed goals. At the second outreach event, held on July 23rd, representatives from 13 prime architectural and engineering firms presented summaries of their upcoming activities and enumerated the areas where they seek subcontractors. This was followed by one-on-one matchmaking with DBE vendors.

The BOC has established an annual calendar of quarterly newsletters and events.

Fiscal Impact

There is no fiscal impact associated with this informational report.