



Agenda Item No. 1

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of June 12, 2009

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

Subject: **APPROVE THE FY 09/10 ANNUAL OVERALL DISADVANTAGED
BUSINESS ENTERPRISE GOAL FOR FEDERAL TRANSIT
ADMINISTRATION ASSISTED CONTRACTS**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve the following actions relative to the FY 09/10 annual overall Disadvantaged Business Enterprise (DBE) goal:

1. Establish a 3.4 percent proposed goal applicable to \$14,237,098 in contracts assisted by the Federal Transit Administration (FTA), in accordance with federal regulations governing the establishment of DBE goals, and authorize the General Manager to publish notice of the proposed goal in accordance with federal regulations;
2. Authorize the General Manager to formally adopt the FTA goal if no public comments are received that require further consideration or modifications of the proposed goal by the Board of Directors; and,
3. Authorize staff to submit the District's annual overall DBE goal for FTA-assisted contracting opportunities to FTA by August 1, 2009.

Summary

As a recipient of federal transportation funding, the District is required to have a diversity program for the participation of Disadvantaged Business Enterprises in District contracting opportunities. Each fiscal year the District analyzes anticipated FTA-funded projects for potential DBE participation, develops an annual overall DBE goal, publishes the goal to solicit input from the general public, and submits its final DBE Goal Analysis Report (referred to as the "goal methodology") to FTA. The Board of Directors is asked to approve each year's annual overall goal. Once submitted, FTA may review and suggest adjustments to the goal upon consultation with the District; however, FTA's prior concurrence with the goal is not required. The annual overall DBE goal complies with California Proposition 209, the 1996 California Civil Rights Initiative, in that it is only applicable to FTA-assisted contracts.

As part of the budget process, District staff develops a list of contracting opportunities that it anticipates will receive FTA funding during the upcoming fiscal year. Only contracts that are expected to be awarded are included in the annual overall goal. Prime and subcontracting opportunities are identified for each contract, and then staff matches those opportunities with the North American Industry Classification System (NAICS) codes that closely match the types of work (prime and sub) required for the contracts.

The steps taken in the development of the annual overall goal are in accordance with 49 Code of Federal Regulations Part 26, issued by the U.S. Department of Transportation (U.S. DOT). The regulations prescribe a two-step process. In Step 1, base figures are calculated to determine the relative availability of DBEs in the specific NAICS areas of expertise involved in the District's contracting activities. The District used the Census Bureau's 2006 County Business Patterns database to determine numbers of "all firms" in each NAICS category and the California Unified Certification Program (CUCP) DBE database to determine numbers of certified DBE firms. The equation to determine relative DBE availability is:

$$\text{DBE firms in a particular NAICS} / \text{All firms in a particular NAICS} \times 100 = \text{Relative DBE Availability}$$

Project managers determine the anticipated dollar amounts for each contract and its prime and subcontracting opportunities. These individual dollar amounts are divided by the total FTA funds to be expended, resulting in a "weighted" percentage of FTA dollars for each NAICS. The equation to determine Base Figure for each NAICS is:

$$\text{Weighted percentage of FTA funds} \times \text{Relative DBE Availability} = \text{Base Figure per NAICS}$$

These base figures for each NAICS are totaled, resulting in an annual overall base figure.

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. Such analysis could include actual DBE participation in the District's race/gender-neutral contracts in recent years or any other factors which could limit or expand the availability of DBEs to participate.

Staff determined an annual overall goal for 11 FTA-assisted contracts that are anticipated to be awarded in FY 09/10. Contracts are summarized in Attachment A, and a complete copy of the goal methodology is available for review in the Office of the District Secretary. Of the 11, one is a Bridge Division contract, one is Bus Division, six are Ferry Division contracts, and three are Marin Transit contracts. Marin Transit contracts have not been included in the District's annual goal before. However, the District will be passing through FTA funding to Marin Transit, which does not have its own approved DBE program. Therefore, the District was directed to include the three Marin Transit contracts in the District's goal.

Many factors affect the District's overall DBE goal:

- Numbers of DBEs working in specific work categories. In general, construction-related activities have greater numbers of DBE participants. In years such as this where few of the projects are construction, the overall goal tends to be lower.
- The number and dollar size of subcontracting opportunities. A project with a healthy amount of subcontracting is apt to have higher DBE availability.
- Decline in overall number of DBEs. Although the trend has shown signs of reversing, the number of certified DBEs has dropped significantly since all agencies returned to race-neutral contracting practices in 2005/2006. One example is NAICS 541330 Engineering Services, a specialty often needed for District projects. Between September 2008 and May 2009, the number of certified DBE firms in our market area dropped from 112 to 42.
- Specialization. Six of this year's projects are Ferry Division projects. The skills and equipment required for Ferry projects is often highly specialized with extremely limited potential for DBE participation. Often the largest dollar share, this year close to \$4 million, is expended in NAICS 336611, Ship Building and Repair. There are no DBEs in the state of California in this NAICS category. Even in some of the subcontracting opportunities which appear on the surface to be fairly general, such as electrical, contractors must often meet special license and insurance requirements, precluding DBE participation on Ferry projects.
- Certification status. Although on the surface it may appear that many small minority and women-owned firms are available to participate on District contracts, if they are not certified through the California Unified Certification Program, they are not factored into the District's annual overall goal for FTA-assisted projects purposes.

A summary of the base figure and adjustment determined follows.

Annual Overall Goal

Step 1: Staff determined an overall Step 1 base figure of 5.9 percent. Availability figures were then calculated into projected DBE participation dollars for each individual contract resulting in a 3.4 percent annual overall goal. Statistical analysis showed there was no DBE availability for six of the 11 contracts, and maximum availability on the others was 13.8 percent.

Step 2: After closer examination of the remaining five contracts, it was determined that adjustments to the contract goals were warranted for two projects, as follows:

Ferry Main Propulsion Component Replacement: Based on its degree of specialization, this contract has virtually no chance of DBE participation. The Ferry propulsion unit consists of a five- to six-foot stainless steel propeller. Although a search of DBE firms in NAICS 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing revealed five firms, further investigation determined that none of them had the capability to manufacture this product. The base figure for this contract was adjusted from 6.7 percent to none.

San Francisco Bus Facility: Staff factored in data on specialization and past participation in making a Step 2 adjustment for this project. The bulk of contract dollars will be expended on excavation and paving activities, which fall under NAICS 237310 Highway, Street and Bridge Construction. Since this work is specialized, the DBE office selected only firms with work codes for excavation and asphalt paving, resulting in 14 DBE firms qualified to accomplish this work rather than the original

48. Using the revised figures, staff adjusted the relative DBE availability for the prime work from 22.9 percent to 6.6 percent, and the contract total from 19.1 percent to 6.4 percent. A second adjustment was made for past participation. Two recent comparable contracts were found which achieved 7.7 percent and 6.4 percent DBE participation respectively. The median of these two contractors was factored in, resulting in an adjusted contract total of 6.9 percent.

U.S. DOT regulations require that the maximum feasible portion of the annual overall DBE goal be met by using race/gender-neutral methods. In an effort to “level the playing field” for DBE firms, over the past year and a half District staff has greatly expanded its efforts to introduce small businesses to District contracting and procurement opportunities. *A Guide for Small Businesses Interested in Doing Business with the Golden Gate Bridge, Highway and Transportation District* has been published on the District website. Individually, and as part of a Business Outreach Committee (BOC) comprised of 13 Bay Area transit and transportation agencies, the District has participated in outreach events with the primary purpose of introducing District opportunities to a wide array of construction and engineering firms, as well as product suppliers and manufacturers. The District has received very positive feedback from these activities. In order to encourage more firms to become certified DBEs, a series of certification workshops is taking place; the first was in April, with additional dates in June and July. The BOC is also producing a quarterly newsletter with contracting opportunities, tips for successful bids, contact information, etc.

Because of the emphasis placed on race/gender-neutral methods, the District does not propose to set contract-specific DBE goals on new FTA-assisted contracts to be awarded in FY 09/10. To date, with the exception of FY 07/08 (the most recent year for which final figures are available), the District has met or exceeded its annual DBE goals using race neutral means. FY 07/08 was an unusual case. The annual overall goal applied to 10 contracting opportunities anticipated for award, but only one of those contracts, the Fare Collection System, was awarded during the fiscal year. The remaining contracts were either postponed until the following fiscal year or later.

The proposed 3.4 percent annual overall goal for FTA-assisted contracts 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 09/10. The regulations require the proposed goal to be published for public inspection and comment to ensure public participation in the goal-setting process. (See Attachment B.) The regulations also require that the goal be submitted to FTA by August 1, 2009. FTA may review and suggest adjustments to the goal upon consultation with the District; however, FTA’s prior concurrence with the goal is not required.

Fiscal Impact

There is no fiscal impact associated with this report. However, the District's proposed FY 09/10 DBE goal for FTA-assisted contracts must be submitted by August 1, 2009, to qualify for continued federal funding.

Attachments

Attachment A

**FY 2009-2010 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 by the availability figure for each contract. 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 3.4% annual overall goal.

A. DESCRIPTION OF CONTRACT	B. FTA DOLLARS	C. DBE AVAILABILITY PER CONTRACT	D. FTA \$ PROJECTED FOR DBEs
Ferry Facility Improvements Concept and Design	\$2,800,000	2.2%	\$61,600
South Approach and Pier Security Improvements	\$2,400,000	8.6%	\$206,400
San Francisco Bus Facility	\$2,145,440	6.9%	\$148,035
Main Propulsion Component Replacement	\$62,370	0.0%	\$0
Rehab Ferryboat Chinook	\$5,183,188	0.0%	\$0
Replace Battery Backup System, Spaulding Vessels	\$136,000	0.0%	\$0
Install New Propulsion System, M.V. Del Norte	\$158,100	0.1%	\$158
Rehabilitate Larkspur Maintenance Facility	\$492,000	13.8%	\$67,896
Automated Vehicle Location Devices	\$250,000	0.0%	\$0
Data Management System	\$250,000	0.0%	\$0
Mobile Data Terminals	\$360,000	0.0%	\$0
TOTAL	\$14,237,098		\$484,089

FTA \$ PROJECTED FOR DBE	FTA \$ BUDGETED	ANNUAL OVERALL GOAL
\$484,089	\$14,237,098	3.4%

**NOTICE OF PROPOSED ANNUAL OVERALL
DISADVANTAGED BUSINESS ENTERPRISE GOALS
FOR FISCAL YEAR 2009-2010**

The Board of Directors of the Golden Gate Bridge, Highway and Transportation District announces a proposed 3.4% annual overall goal for the participation of Disadvantaged Business Enterprises in contracting opportunities that are budgeted to receive federal financial assistance from the U.S. Department of Transportation, as administered by the Federal Transit Administration, for the period beginning July 1, 2009, and ending June 30, 2010.

Information on the development of the proposed goal and its rationale is available for inspection from 8:30 a.m. to 4:00 p.m., Monday through Friday, at the DBE Program Office, District Administration Building North, 1011 Andersen Drive, #108, San Rafael, CA 94901-5381 for 30 days following the date of this notice. Comments will be accepted on the goals for 45 days from the date of this notice. Comments may be submitted to the DBE Program Administrator at the above-mentioned address, to the Regional Civil Rights Officer, Federal Transit Administration, Region IX, 201 Mission Street, Suite 2210, San Francisco, CA 94105 or to the Regional Civil Rights Officer, U.S. Department of Transportation, Federal Highway Administration, 980 – 9th Street, Suite 400, Sacramento, CA 95814.

/s/Janet S. Tarantino, Secretary of the District. Dated: June 12, 2009.