



Agenda Item No. 6

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole  
Meeting of November 13, 2009

From: Gail Jackson, DBE Program Administrator  
Z. Wayne Johnson, Deputy General Manager/Administration and Development  
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 08/09. 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 tracks DBE participation in District purchasing and contracting in three different categories depending on funding source [District funded, Federal Transit Administration (FTA) funded, or Federal Highway Administration (FHWA) funded]. 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 in October 2004.

#### **A. Annual Progress Report on Fiscal Year 2008/2009 Diversity Program for Contracts**

**Districtwide:** 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.

Actual payments on Districtwide contracts and procurements, regardless of funding source, that were available to DBEs amounted to \$25,445,848. The total paid to 20 DBE prime contractors/consultants/suppliers and 9 DBE subcontractors/subconsultants/suppliers was \$1,102,831. This breaks down as follows:

DBE Prime, Minority-Owned Business	\$247,565
DBE Prime, Non-Minority Woman-Owned Business	\$272,908
DBE Sub, Minority-Owned Business	\$536,431
DBE Sub, Non-Minority Woman-Owned Business	\$45,927
Total DBE Payments	\$1,102,831

No annual overall DBE goal was established for Districtwide contracts and procurements. Nevertheless, Districtwide DBE participation achieved was 4.3%

**Federal Transit Administration:** The DBE office separately tracks DBE participation on contracts funded in whole or in part by the 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 2008, the Board approved a 4.5% annual overall DBE participation goal for Fiscal Year 08/09. The race-neutral goal applied to 13 contracts and an anticipated commitment of \$23,147,375 of FTA dollars. DBE achievement is based on a July 1, 2008 through June 30, 2009 fiscal year.

By the end of the fiscal year, FTA funds awarded/committed amounted to \$6,547,853 (28% of the dollars anticipated for award), with \$93,491 committed for DBE prime contracts and subcontracts. Based on awards/commitments, DBE participation achieved for FTA-assisted contracts was 1.4%. While 13 contracts were included in the goal analysis, only 8 were awarded during the fiscal year. These 8 were primarily highly specialized purchases, particularly ferryboat equipment and ferry equipment installation services, only one contract with a reasonable expectation for DBE participation, Larkspur Ferry Terminal Parking and Access Improvements, was awarded. While the prime contractor achieved 7% DBE participation, this was a modest sized contract with \$1.3 million total dollars awarded to the prime, or approximately 20% of the total awarded/committed overall.

**Federal Highway Administration:** The DBE office separately tracks DBE participation on contracts funded in whole or in part by the 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 potential DBE participation in its FHWA assisted contracts for inclusion in Caltrans' statewide annual overall goal for FHWA-assisted projects. The District submitted to Caltrans a FY 08/09 Annual Anticipated DBE Participation Level of 8.5%.

FHWA DBE achievement is based on an October 1, 2008 through September 30, 2009, fiscal year. Three FHWA assisted contracts were awarded during this time frame. Two of the contracts were implemented under Caltrans' race-neutral guidelines. One was implemented using race-conscious directives that went into effect on June 2, 2009.

The total of contract dollars awarded was \$18,573,700, with \$5,546,500 committed to DBEs. Based on awards/commitments, DBE participation achieved for FHWA-assisted contracts was 30%.

**B. Status Report on Annual Overall DBE Goal for the Current Fiscal Year 09/10**

By Resolution 2009-055, on June 12, 2009, the Board of Directors approved a proposed FY 09/10 annual overall DBE goal of 3.4% 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 15 and June 22, 2009. The deadline for public comments was July 29, 2009, and no comments were received by the District. Therefore, the District has adopted a 3.4% goal applicable to \$14,237,098 for FTA assisted contracts

**C. Status Report on Project Goals Set in Previous Years**

In FY 03/04, with the approval of the Federal Transit Administration, 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 out such projects is to avoid reporting and attainment discrepancies. The third and final project goal assigned in FY 03/04 has been closed out and is summarized below. There were three contracts included in the project goal, engineering design, interior design, and construction. The smallest contract of the three, for interior design, was awarded to a DBE prime. Ferryboat building and repairs, which accounted for approximately 85% of this project, is a highly specialized field. There are no certified DBE primes to do this work, and subcontractors must hold special insurance certifications to work on water-related projects, placing severe limitations on DBE availability.

<b>SUMMARY OF PROJECT GOALS COMPLETED</b>			
<b>Project</b>	<b>Established</b>	<b>Project DBE Goal</b>	<b>Project DBE Attainment</b>
Spaulding Vessel Refurbishment	FY 03/04	3%	1%

***D. Expanded Outreach***

The District continues to participate in the Business Outreach Committee (BOC), a consortium of twelve transit and transportation agencies in the San Francisco Bay Area that collaborates 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. The BOC has established an annual calendar of newsletters and events. During the 08/09 fiscal year, three issues of the BOC newsletter were published and six outreach events held, including two DBE certification workshops, an architecture and engineering networking event, a public works/contractor /subcontractor networking event, a meet-the-agency-buyers opportunity, and our annual goal-setting event.

**Fiscal Impact**

There is no fiscal impact associated with this informational report.