



Agenda Item No. (4)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole  
Meeting of February 28, 2020

From: Artemise Davenport, DBE Program Administrator  
Kellee J. Hopper, Deputy General Manager, Administration and Development  
Denis J. Mulligan, General Manager

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

### **Recommendation**

This report is to provide information only and does not require any action.

### **Summary**

In accordance with the U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) regulations, 49 Code of Federal Regulations (C.F.R.) Section 26.21, the Golden Gate Bridge, Highway and Transportation District (District) is required to have a DBE Program. As part of the DBE Program, the District is required to implement a Small Business Enterprise (SBE) element to foster small business concern participation (SBE Program). The purpose of the DBE Program and SBE Program is to create a level playing field on which DBEs/SBEs can compete fairly for DOT-assisted contracts by removing barriers to DBEs/SBEs and their participation in the bidding, award and administration of federally-funded contracts.

A DBE is defined as a for-profit small business concern that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. In the District's SBE Program, an SBE is defined by Small Business Administration (SBA) regulations, 13 C.F.R. Part 121, for the appropriate type(s) of work that a firm performs; and whose average annual gross receipts over the previous three years does not exceed a maximum cap of \$23.98 million (or as adjusted for inflation by the Secretary of U.S. DOT).

This report summarizes the participation of DBEs in District contracts and procurements during the recently completed Federal Fiscal Year (FFY) 2018/2019, beginning on October 1, 2018, through September 30, 2019.

#### **A. Federal Transit Administration (FTA) Update**

There are no new amendments to the DOT DBE regulations since the last revisions/modifications effective November 3, 2014.

**B. Federal Highway Administration (FHWA) Update**

The District is a subrecipient of FHWA funding through the California Department of Transportation (Caltrans), and follows Caltrans requirements when contracts will be assisted in whole or in part with FHWA funds. Caltrans used their 2016 Availability and Disparity Study, as amended in April 2017, to determine an overall DBE goal for FFY 2019-2021 of 17.6%. Caltrans projects it will meet its goal by 13.4% race-conscious measures and 4.2% race-neutral measures.

The District participates in achieving Caltrans' statewide DBE goal by setting contract-specific DBE goals on applicable FHWA-assisted contracts. The District awarded the following FHWA-assisted contracts in FFY 2018/2019:

CONTRACT NO./TITLE	ESTABLISHED DBE GOAL	DBE COMMITMENT
*2018-B-082, Temporary Structures Engineering Advisor Support Services for the Construction of the Golden Gate Bridge Physical Suicide Deterrent and Traveler Systems	0%	100%
2018-B-084, Golden Gate Bridge Physical Suicide Deterrent Field Inspection Support Services	15%	59%
2019-B-007, Golden Gate Bridge Physical Suicide Deterrent System, Maintenance Traveler System Fabrication Shop Inspection Services.	18%	18%

\*Contract reported in error on Annual Progress and Status Report for FFY 2017/2018.

**C. Status Report on Overall DBE Goal for Federal Fiscal Years 2019/2020 through 2021/2022**

By Resolution No. 2019-044, the Board of Directors approved a proposed overall DBE goal for a three-year period (FFY 2019/2020 through FFY 2021/2022) of 3.2% for contracts assisted by FTA. The District is expected to meet its goal each year of the triennial period.

On August 1, 2019, the District submitted its proposed DBE goal to FTA. On September 19, 2019, the District received an "In Review – Return to Grantee" letter from FTA regarding its DBE Goal Methodology step two adjustment. This letter asked the District to further explain its step two process for adjusting the base figure goal in step one of its DBE Goal Methodology. The District submitted a revised Goal Methodology to FTA on October 21, 2019. Favorably, FTA approved the District's Goal Methodology on November 25, 2019. The concurrence letter and revised Goal Methodology can be found on the District website under the *Diversity Program for Contracts* page.

**D. Status Report on Small Business Enterprise (SBE) Contract-Specific Goals**

The District's SBE Program applies to all District contracts, regardless of funding source, where race-neutral and gender-neutral methods are employed. During FFY 2018/2019, the District established two (2) SBE contract-specific goals for the following contracts:

CONTRACT NO./TITLE	ESTABLISHED SBE GOAL	SBE COMMITMENT
<b>2018-B-102</b> , Golden Gate Bridge Underwater Inspection Services	13.5%	30%
<b>2018-F-109</b> , Shipyard-Rebuild of the M.S. Sonoma	2.2%	0%

The District utilizes its SBE Program to foster DBE participation on applicable contracts. This effort has been successful; however, challenges remain evident on ferry contracts, which are allotted substantial FTA funds, due to the specialized nature of the marine industry and the lack of DBE firms ready, willing and able to perform this specialized work. Staff will continue to analyze all contracts with subcontracting opportunities that may be eligible for an SBE contract-specific goal.

**E. Updates to the DBE Program**

The District has improved the processes by which it complies with the prompt payment and monitoring requirements set forth in 49 C.F.R. Sections 26.29 and 26.37. In January 2019, the District launched a new automated system powered by B2GNow software that is designed to meet federal, state and local contract compliance requirements. The new system titled, “Diversity Compliance Management System,” tracks vendor payments and offers technologically advanced features that allow prime contractors and consultants to report real time prompt payment information and to submit contractors’ utilization reports, allow subcontractors to verify payments, and allow the District to track DBE and SBE contract goal progress and DBE, SBE, Minority Business Enterprise (MBE) and Women-Owned Business Enterprise (WBE) participation. The Diversity Compliance Management System also serves as an additional DBE/SBE directory.

The District announced its new Diversity Compliance Management System to its vendor community in November 2018. This announcement is also posted on the District website under the *Diversity Program for Contracts* page. Training for District staff and vendors is continuous and is accessible through the District’s portal at <http://ggbhtd.diversitycompliance.com>.

**F. Annual Progress Report on FFY 2018/2019 Diversity Program for Contracts**

The District tracks DBE participation in District purchasing and contracting in three different categories depending on the funding source (District funds, FTA funds and FHWA funds). The tables below summarize the District’s DBE achievements from the three funding sources. The DBE achievement figures for FTA and FHWA tables are based on awards and commitments. The figures for the Districtwide table are based on actual payments made to DBE firms directly from the District or from the prime contractor/consultant.

**Federal Transit Administration:**

Applies to:	Contracts funded in whole or in part by FTA.
Goal:	3.3% overall race-neutral goal for FFY 2018/2019. Goal is based on an analysis of the level of DBE participation that might, in the absence of discrimination, be achieved on FTA-funded contracts that are anticipated for award over a three- federal fiscal year period, in accordance with FTA directives.
Source of Data:	Uniform Report of DBE Awards or Commitments and Payments submitted to FTA on a semi-annual basis as prepared by the DBE Program Administrator.
Actual FTA Dollars Awarded:	\$22,736,954.
DBE Participation:	\$87,721 or 0.4%, thus falling short of the overall goal for the federal fiscal year.

**Federal Highway Administration:**

Applies to:	Awarded contracts funded in whole or in part by FHWA.
Goal:	With the approval of Caltrans Division of Local Assistance, District staff determines individual contract goals for each FHWA-assisted contract posted for bid.
Source of Data:	Staff records of contract awards/commitments and/or Change Orders and Amendments.
Actual FHWA Dollars Awarded:	\$3,326,200.
Awarded DBE Participation:	\$1,613,128 or 48.5% of the FHWA Dollars Actually Awarded.

**Districtwide:**

Applies to:	All District purchases and contracts, regardless of funding source, that are available to DBEs.	
Goal:	The District does not set an annual DBE participation goal for purchases and contracts, in light of Proposition 209 prohibiting preferences in public contracts based on race, national origin, or sex, and related judicial decisions.	
Source of Data:	The District's financial records for actual payments to vendors, as well as prompt payment reports submitted by prime contractors, that show actual payments to DBEs.	
Total to DBEs:	DBE Prime, Minority-Owned Business	\$2,765,204
	DBE Prime, Non-Minority Woman-Owned Business	\$20,295
	DBE Sub, Minority-Owned Business	\$504,747
	DBE Sub, Non-Minority Woman-Owned Business	\$186,606
	Total to DBEs	\$3,476,852
DBE Participation:	\$3,476,852.	

**G. FTA Shortfall Analysis**

The District is expected to meet its overall FTA DBE goal of 3.3% each year of the FFY 2016/2017 – 2018/2019) triennial period for FTA funded contracts. The federal portion of contracts that receive FTA funds are the only contracts reported to FTA on the Uniform Awards/Commitments and Payments report. The District calculates DBE participation by dividing the FFY total DBE awards/commitments by the FFY total federal awards/commitments. The District cannot be penalized or found non-compliant if DBE participation falls short of the overall DBE goal in any given year, unless the District failed to administer its DBE Program in good faith. According to DOT DBE regulations, if DBE participation is less than the overall goal applicable to that fiscal year, the District must analyze in detail the reasons for the shortfall in that fiscal year, and establish specific steps and milestones to correct problems identified in the District's analysis to enable the District to meet its overall DBE goal for the next fiscal year.

In analyzing the main contributing factors for the District's 2.9% shortfall, staff determined two high value marine contracts were awarded to non-DBE primes that were unable to obtain DBE participation for available subcontracting opportunities. Contract No. 2018-F-109, *Shipyard-Rebuild of the M.S. Sonoma* (federal share of \$15,159,072) and Contract No. 2019-F-038, *Scheduled Drydocking and Capital Improvements for MS Marin and MV Mendocino* (federal share of \$2,012,609) were awarded in the latter part of the final semi-annual reporting period, therefore mid-course adjustments to the DBE goal were not necessary, nor would such adjustments help the District meet its goal. The number of DBE firms able to perform the work on marine construction contracts is scarce both in California and in Washington State, and the District is not authorized to count participation by out-of-state DBEs towards its goal.

Another factor that contributed to the District's shortfall was the absence of new contracts awarded in the first half of the semi-annual period. The District only awarded change orders on existing contracts during this period. Lastly, in the second part of the semi-annual period, the District awarded sole source contracts with no available subcontracting opportunities.

To address the issues discussed above, the District will take the following corrective actions to meet its overall DBE goal the next fiscal year:

- (1) Stay on track with the award schedule outlined in the District's Goal Methodology for FFY 2019/2020 – 2021/2022;
- (2) Host several "How to Do Business with the District" outreach events that highlight upcoming federal contracting opportunities;
- (3) Increase outreach and education efforts, such as special presentations, for contracts available to DBE prime contractors/consultants or contracts that offer subcontracting opportunities;
- (4) Explore ways to achieve DBE participation on ferry contracts such as hosting a meet the primes events with shipbuilders; and
- (5) Encourage DBE certification to eligible small business firms that have worked on past District ferry contracts.

In accordance with federal DBE regulations, the District will retain a copy of the above shortfall analysis and corrective action plan on file for three years and make it available to FTA upon request.

**Fiscal Impact**

There is no fiscal impact associated with this report.