



Agenda Item No. (4)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of February 26, 2021

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 (U.S. 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/SBE Program is to create a level playing field on which DBEs/SBEs can compete fairly for U.S. 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 do not exceed a maximum cap of \$26.29 million (or as adjusted for inflation by the Secretary of the U.S. Department of Transportation).

The information covered in this report is an annual update to the U.S. DOT DBE Program and summary of DBE participation in District contracts and procurements during the recently completed Federal Fiscal Year (FFY) 2019/2020, beginning on October 1, 2019, through September 30, 2020.

A. Federal Transit Administration (FTA) Update FFY 2019/2020

There are no new updates to the U.S. DOT DBE Program since the last revisions/modifications effective November 3, 2014.

B. Federal Highway Administration (FHWA) Update FFY 2019/2020

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 its 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 implementing 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. For FFY 2019/2020, the District did not award any new FHWA-assisted contracts or establish DBE contract-specific goals; however, the District did award Change Orders and Amendments to existing FHWA-assisted contracts.

Caltrans issued several Office Bulletins relative to its DBE Program that implements DBE contract goal calculation, Good Faith Efforts (GFE) review procedures and DBE running tally monitoring that tracks DBE subcontracting/material supply payments. In May 2020, Caltrans published a *Disadvantaged Business Enterprise (DBE) Evaluation Report* to evaluate selected agencies' compliance to with its DBE Program. The District was not among the agencies selected. The evaluation report identified key findings in the areas of nondiscrimination contract assurances, Disadvantaged Business Enterprise Liaison Officer, prompt payment, performance monitoring, DBE goal setting, GFE, and reconsideration hearing procedures. The report revealed an overall average compliance rate of 43%. In September 2020, Caltrans updated its Local Assistance Procedures Manual – Chapter 9, *Civil Rights and Disadvantaged Business Enterprise* and related Exhibits. The District has submitted to Caltrans an updated Exhibit 9-A, *DBE Implementation Agreement for Local Agencies* to comply with the updated manual and Exhibit. In addition, the District is scheduled to submit Exhibit 9-B, *Local Agency DBE Annual Submittal* to Caltrans on or before June 30, 2021, which identifies how the District will comply with Caltrans' DBE Program for the upcoming FFY 2021/2022.

In July 2020, Caltrans commissioned BBC Research & Consulting to conduct a disparity study in an effort to implement Caltrans' overall DBE goal for FFY 2021-2023. The study is expected to be complete by June 2021. Caltrans is scheduled to submit its next DBE goal for FFY 2023-2025 to FHWA by August 1, 2021.

C. 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 2019/2020, the District established four (4) SBE contract-specific goals for the following contracts:

| Contract No./Title | Established SBE Goal | SBE Commitment | DBE Participation |
|---|-----------------------------|-----------------------|--------------------------|
| 2019-F-026 , San Francisco Ferry Terminal Outer Berth Hydraulic Ramp Repairs | 3.5% | 9.2% | 0% |
| 2019-F-058 , Larkspur Ferry Service & Parking Expansion Environmental Clearance and Preliminary Design Study | 10% | 15.3% | 15.3% |
| 2020-BT-011 , Novato Bus Facility Underground Storage Tank Site Cleanup | 13% | 67.3% | 1.3% |
| 2020-F-035 , Corte Madera 4-Acre Tidal Marsh Restoration Project | 3.8% | 97% | 2.4% |

District staff will continue to utilize its SBE Program to foster DBE participation by analyzing all contracts with subcontracting opportunities and establishing SBE goals as appropriate.

D. Annual Progress Report on FFY 2019/2020 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 in the context of the three funding sources. The DBE achievement figures for FTA and FHWA tables are based on awards and commitments only. The figures for DBE participation in the District-wide table are based on actual DBE payments paid directly from the District and/or from the prime contractor/consultant.

Federal Transit Administration:

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| Applies to: | Contracts funded in whole or in part by FTA. |
| Goal: | 3.2% overall race-neutral goal for FFY 2019/2020. 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: | \$47,226,664*. *Funds include CARES Act fund |
| DBE Participation: | \$276,332 or 0.6%, thus falling short of the overall goal for the federal fiscal year. |

Federal Highway Administration:

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| 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 financial records of contract awards/commitments and/or Change Orders and Amendments. |

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| Actual FHWA Dollars Awarded: | \$841,328.80* * Dollar amount reflects Change Orders/Amendments Only |
| Awarded DBE Participation: | \$239,503 or 29% of the FHWA Dollars Awarded. |

District-wide:

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|--|---|------------------------------------|-------------|--|----------|----------------------------------|-----------|--|-----------|
| 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 DBE vendors, as well as prompt payments reported by prime contractors, that show actual payments to DBEs. | | | | | | | | |
| Total to DBEs: | <table> <tr> <td>DBE Prime, Minority-Owned Business</td><td>\$2,474,598</td></tr> <tr> <td>DBE Prime, Non-Minority Woman-Owned Business</td><td>\$65,216</td></tr> <tr> <td>DBE Sub, Minority-Owned Business</td><td>\$423,473</td></tr> <tr> <td>DBE Sub, Non-Minority Woman-Owned Business</td><td>\$571,115</td></tr> </table> | DBE Prime, Minority-Owned Business | \$2,474,598 | DBE Prime, Non-Minority Woman-Owned Business | \$65,216 | DBE Sub, Minority-Owned Business | \$423,473 | DBE Sub, Non-Minority Woman-Owned Business | \$571,115 |
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| DBE Sub, Minority-Owned Business | \$423,473 | | | | | | | | |
| DBE Sub, Non-Minority Woman-Owned Business | \$571,115 | | | | | | | | |
| DBE Participation: | \$3,534,402 | | | | | | | | |

E. FTA Shortfall Analysis for FFY 2019/2020

The District was able to obtain 0.6% of its overall DBE triennial goal of 3.2%, thus falling short for the FFY 2019/2020 reporting period. The District is expected to meet its overall FTA DBE goal of 3.2% each year of the FFY (2019/2020 – 2020/2022) triennial period for FTA-assisted 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 (Uniform Report). The District calculates DBE participation by dividing the FFY total DBE awards/commitments by the FFY total federal awards/commitments.

According to 49 C.F.R. Part 26, §26.47, 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. The District cannot be penalized, or found as being in noncompliance with this rule, if DBE participation falls short of the overall goal, unless the District has failed to administer its program in good faith.

The Novel Coronavirus (COVID-19) pandemic is one reason the District has fallen short of its overall DBE goal. In response to the pandemic, the District received \$51.5 million in *Coronavirus Aid, Relief, and Economic Security* (CARES) Act funds from FTA. A *Frequently Asked Questions from FTA Grantees Regarding Coronavirus Disease 2019 (COVID-19)* was published on FTA's website that included language of how grantees were to report CARES Act funds as it relates to its DBE Program. The language states, "A recipient with an existing DBE program should count CARES Act funds towards the DBE goal as it would all FTA funds." In June 2020, District staff reached out to FTA, Regional Operations, Office of Civil Rights, for clarity on this language and to confirm what activities used with CARES Act funds should be included on the next Uniform

Report due to FTA on December 1, 2020. District staff was instructed to report CARES Act funds at 100% used towards services or work that could be contracted or subcontracted. The District reported over \$43.8 million paid to Bus and Ferry operating vendors and \$236,030 paid to DBE vendors.

The second reason for the District's shortfall was a change in the funding source (from FTA-funded to District funded) for Contract No. 2019-F-058, *Larkspur Ferry Service & Parking Expansion Environmental Clearance and Preliminary Design Study* that was originally included in the District's overall FTA DBE goal. Thus, if the District was not required to include the CARES Act funds in its FTA Uniform Report, and if the District could have included DBE participation in the above-mentioned contract (as originally intended) the District would have achieved 6.5% DBE participation, exceeding its overall DBE goal by 3.3%.

As the District continues to experience the economic impacts of the COVID-19 pandemic, additional relief funds under the *Coronavirus Response and Relief Supplemental Appropriations Act of 2021* (CRRSAA) are anticipated to be received in the months of February and March 2021. Therefore, receipt and inclusion in DBE reporting of CRRSAA funds allocated to the District may yet again create a shortfall for FFY 2020/2021. However, the District is committed to meeting its established overall triennial goal with the absence of additional FTA funds not normally received.

The District will work towards the following actions in an effort to meet its overall DBE goal for the next fiscal year:

- (1) Evaluate procurement opportunities with DBE vendors related to supplies, work and services in response to the pandemic;
- (2) Stay on track with the award schedule for contracts outlined in the District's Goal Methodology for FFY 2020/2021 – 2021/2022;
- (3) Host several virtual "How to Do Business with the District" outreach events that highlight upcoming federal contracting opportunities;
- (4) Increase outreach and education efforts, such as special presentations, for contracts available to DBE prime contractors/consultants and/or contracts that offer subcontracting opportunities;
- (5) Host virtual Business Matchmaking and Networking events as an opportunity for DBEs to meet prime contractors/consultants that are awarded District contracts; and
- (6) Encourage DBE certification and interstate DBE certification to eligible small businesses by hosting several DBE certification webinars throughout the year.

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 the FTA upon request.

Fiscal Impact

There is no fiscal impact associated with this report.

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