



Agenda Item No. (5)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of March 24, 2022

From: Artemisé 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 does not exceed a maximum cap of \$28.48 million (or as adjusted for inflation by the Secretary of U.S. DOT).

This report is an annual update of the DBE Program and summarizes the participation of DBEs in District contracts and procurements funded in whole or in part with Federal Transit Administration (FTA) funds during the recently completed Federal Fiscal Year (FFY) 2020/2021, beginning on October 1, 2020, through September 30, 2021.

A. Federal Transit Administration Update FFY 2020/2021

On December 14, 2020, the U.S. DOT issued a final rule to amend the small business size limit under the DBE Program to ensure small businesses may continue in the program after considering inflation. The final rule, effective January 13, 2021, increased the previous small business size limit, or gross receipts cap from \$23.98 million to \$26.29 million applicable to firms for the purposes of Federal Highway Administration (FHWA) and FTA-assisted work. No other additional guidance or amendments to the regulations have been issued during this reporting period. However, on March 1, 2022, the annual gross receipts size cap was adjusted again due to inflation to \$28.48 million, applicable to FHWA and FTA- assisted work.

B. Federal Highway Administration Update FFY 2020/2021

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’ overall DBE goal for FFY 2020-2021 is 17.6%; Caltrans projects it will meet this 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 did not award new FHWA-assisted contracts or establish DBE contract-specific goals during FFY 2020/2021. However, the District did award Change Orders and Amendments to existing FHWA-assisted contracts.

On July 30, 2021, BBC Research & Consulting completed Caltrans’ Availability and Disparity Study Report for 2021. Caltrans is expected to submit its next DBE goal methodology for FFY 2022-2024 to FHWA by August 1, 2021. Caltrans’ proposed DBE goal is 22.2%: 18.3% race-conscious; 3.9% race-neutral split.

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 2020/2021, the District established two (2) SBE contract-specific goals for the following contracts:

Contract No./Title	Established SBE Goal	SBE Commitment	DBE Participation
2021-F-018 , Larkspur Ferry Terminal Berth and Channel Maintenance Dredging Design, Pile Design and Permit Support Services	2.5%	59.5%	10%
2020-B-053 , Bridge Inspection Services	2%	2%	0.5%

The District utilizes its SBE Program to foster DBE participation (through race-neutral measures) on applicable contracts. Staff will continue to analyze all contracts with subcontracting opportunities that may be eligible for an SBE contract-specific goal.

D. Annual Progress Report on FFY 2020/2021 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 only 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:	3.2% overall race-neutral goal for FFY 2020/2021. 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:	\$8,809,375.
DBE Participation:	\$125,655 or 1.4%, 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 DBE 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.
Actual FHWA Dollars Awarded:	\$3,808,172* * Dollar amount reflects Change Orders/Amendments Only
Awarded DBE Participation:	\$2,489,238 or 65.37% 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 payments reported by prime contractors, that show actual payments to DBEs.								
Total to DBEs:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">DBE Prime, Minority-Owned Business</td> <td style="text-align: right;">\$2,587,933</td> </tr> <tr> <td>DBE Prime, Non-Minority Woman-Owned Business</td> <td style="text-align: right;">\$155,564</td> </tr> <tr> <td>DBE Sub, Minority-Owned Business</td> <td style="text-align: right;">\$31,389</td> </tr> <tr> <td>DBE Sub, Non-Minority Woman-Owned Business</td> <td style="text-align: right;">\$982</td> </tr> </table>	DBE Prime, Minority-Owned Business	\$2,587,933	DBE Prime, Non-Minority Woman-Owned Business	\$155,564	DBE Sub, Minority-Owned Business	\$31,389	DBE Sub, Non-Minority Woman-Owned Business	\$982
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DBE Participation:	\$2,775,868								

E. FTA Shortfall Analysis

The District obtained 1.4% of its overall DBE triennial goal of 3.2%, thus falling short for the FFY 2020/2021 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.

Pursuant 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 of the main reasons the District has fallen short of its overall DBE goal. The District continues to experience the economic impacts of the COVID-19 pandemic; therefore, additional relief funds under the Coronavirus Response and Relief Supplemental Appropriations Act of 2021 (CRRSAA) were received in February and March 2021. Although the District received a significant amount of FTA relief funds, only a small portion of the funds received was utilized with DBE firms, resulting in a reduced percentage of DBE participation.

Another main reason for the District's shortfall is the award of ferry contracts that receive little to no DBE participation due to a historic lack of DBE firms in the marine industry. The District awarded Contract No. 2020-F-047, *Ferry Fleet Scheduled Drydocking and Capital Improvements* (federal share of \$3,677,602) and one change order on an existing marine consultant contract (federal share of \$334,170) in the first half of the semi-annual period. DBE participation was not included in either contact award.

During the second half of the semi-annual period, the District awarded Contract No. 2021-F-018, *Larkspur Ferry Terminal Berth, and Channel Dredging and Pile Design and Permit Support Services* (federal share of \$505,546) that had a 2.5% Small Business Enterprise (SBE) goal established. The prime consultant was able to obtain 59.5% SBE participation, including 10% DBE participation. However, due to the additional FTA CRRSSA funds received, and a limited number of FTA-assisted contracts awarded, the District was not able to obtain enough DBE participation to meet the 3.2% overall DBE goal for FFY 2021/2022.

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

- (1) Increase outreach efforts to stay on track with the award schedule for contracts outlined in the District's Goal Methodology for FFY 2021/2022;

- (2) Evaluate procurement opportunities with DBE vendors related to supplies, work and services in response to the pandemic;
- (3) Increase partnerships with community-based organizations to target more DBE firms that may be interested in the District's contracting opportunities;
- (4) Host several virtual "How to Do Business with the District" outreach events that highlight upcoming federal contracting opportunities;
- (5) Host virtual "Meet and Greet" events to introduce District ferry staff to DBEs certified in North American Industry Classification System (NAICS) codes for marine construction/consultant contracts.
- (6) Host virtual Business Matchmaking and Networking events as an opportunity for DBEs to meet prime contractors/consultants that are awarded District contracts; and,
- (7) 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 its 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.

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