



Agenda Item No. (3)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of May 20, 2022

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

Subject: **APPROVE FEDERAL FISCAL YEARS 2022/2023 THROUGH 2024/2025 OVERALL DISADVANTAGED BUSINESS ENTERPRISE GOAL ON FEDERAL TRANSIT ADMINISTRATION ASSISTED PROJECTS**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve the following actions relative to the Federal Transit Administration (FTA) Federal Fiscal Year (FFY) 2022/2023 through 2024/2025 Overall Triennial Disadvantaged Business Enterprise (DBE) goal:

1. Establish an overall proposed 1.4% Race-Neutral DBE goal applicable to \$21,320,000 in anticipated contracts assisted by FTA for the three forthcoming FFY;
2. Authorize the General Manager to publish a Notice of the proposed goal on the Golden Gate Bridge, Highway and Transportation District's official website, in accordance with federal regulations governing the establishment of overall DBE goals;
3. Authorize the General Manager to adopt the overall DBE goal if no further consideration or modifications to the proposed goal are warranted; and,
4. Authorize staff to submit the District's overall DBE goal for FTA-assisted contracting opportunities to FTA by August 1, 2022.

This matter will be presented to the Board of Directors at its May 20, 2022, meeting for appropriate action.

Summary

As a recipient of federal transportation funding administered by FTA, the Golden Gate Bridge, Highway and Transportation District (District) is required to have a diversity program for the participation of Disadvantaged Business Enterprises and Small Business Enterprises (SBEs) in federally-assisted District contracting and procurement activities. Pursuant to [Title 49 Code of Federal Regulations \(C.F.R.\) Part 26 §26.45](#), the District is required to develop an overall triennial DBE goal for prime contracts the District anticipates awarding in a federal fiscal year that exceed \$250,000 (excluding transit vehicle purchases). The District is required to submit its overall DBE goal methodology to FTA by August 1, 2022.

In order to establish the overall triennial DBE goal, the DBE Program Administrator held several meetings with Capital and Grants, Engineering, Procurement, and project managers from Bus, Bridge, District, and Ferry divisions to identify future projects for which staff anticipate the District will receive FTA funding during FFY 2023-2025. Staff identified eight (8) ferry projects totaling \$21,320,000 in FTA dollars that fit this criterion. The contracts are identified in **Attachment A**. Based on the relative availability of DBE participation and the capacity at which DBEs may be able to perform work on these ferry projects, staff recommends establishing a **1.4% Race-Neutral overall DBE goal**.

Staff determined the proposed overall DBE goal by way of a two-step process in accordance with federal regulations. Step One is to determine the Base Figure of relative availability of “ready, willing, and able” DBEs in the District’s geographic market area in all work categories for each project by using the North American Industry Classification System (NAICS) codes. There are several data sources that may be used to calculate relative DBE availability such as the DBE directory and Census Bureau data, a bidder’s list, data from a disparity study, the goal of another DOT recipient or other alternative methods based on demonstrable evidence of local market conditions in the District’s market area. The data source the District used for this calculation is the California Unified Certification Program DBE directory (old and new), to determine the number of “ready, willing, and able” DBEs and the 2019 U.S. Census Bureau’s County Business Patterns data table to determine the number of “all firms” including DBEs. The District’s Step One Base Figure goal is 20.9%.

Step Two in the overall goal setting process is to examine all evidence available in the District’s jurisdiction to determine what adjustments to the Step One Base Figure are necessary, if any. In accordance with the U.S. Department of Transportation (DOT) [*Tips for Goal Setting in the Disadvantaged Business Enterprise \(DBE\) Program*](#), updated December 22, 2014, adjustments to the Step One Base Figure are acceptable after considering several factors such as past participation, evidence from disparity studies conducted in the District’s market area, statistical disparities in the ability of DBE to access financing, bonding, and insurance, and any other data that would help closely measure the percentage of work DBEs would likely be able to obtain in the absence of discrimination.

Staff followed the formula for calculating historical median past participation outlined in U.S. DOT guidelines for goal setting, and arrived at a 10.7% goal. However, after considering past participation for FFYs 2018, 2019, and 2021, staff determined the contracts are not similar enough to the contracts included in the proposed overall DBE goal. Therefore, an adjustment to the Step One Base Figure based on past participation is not an accurate reflection of DBEs available to perform work.

Staff then considered other relevant information regarding the Step One Base Figure breakdown per individual contract for relative DBE availability. The Gangways and Piers – Sausalito Construction project is the only contract that has a high percentage of relative DBE availability for prime work. This project is estimated at \$17.6 million in FTA funds. Due to the specialized nature and size of the project, the bonding and financial requirements will likely limit prospective prime contractors to firms that exceed the DBE size standards. Engineering staff and the DBE Program Administrator determined adjustments to the prime work and a few subcontracting work areas are necessary to measure DBE participation on this project.

Before adjusting the prime and subcontracting areas of the Gangways and Piers – Sausalito Construction project, Engineering staff researched DBE firms certified in NAICS code 237990, *Other Heavy and Civil Engineering* to perform as a prime and as a subcontractor for pile driving, and NAICS code 238120, *Structural Steel and Precast Concrete Contractors* to perform as a subcontractor for pre-cast concrete. The DBE Office also contacted DBE firms via electronic mail to give a description of the project and to inquire about the firms’ capabilities to perform as primes or subcontractors. After consultation with Engineering staff, the Step One Base Figure was adjusted to reflect the assessment of DBE availability and capacity solely on selected subcontracting opportunities, excluding the prime work and subcontracting for pile driving and pre-cast concrete opportunities. The Step Two adjustment resulted in a proposed overall DBE goal of 1.4%.

Race/Gender-Neutral Measure to Achieve District Goals

U.S. DOT Regulations require that the maximum feasible portion of the annual overall DBE goals be achieved using race-neutral means. Race neutral efforts are programs and other initiatives that assist small businesses in general and are not limited to minority- or women-owned firms. Overall, the District has had success in meeting DBE participation goals on FTA-assisted contracts using race-neutral measures; however, the COVID-19 pandemic severely impacted the District’s ability to achieve or exceed DBE participation goals in recent years. Below is a snapshot of the District’s DBE goals and achievements from 2000 to current:

Fiscal Year	Overall DBE Goal	Achievement	% of Goal Achieved
2000-2001	7%	8%	114%
2001-2002	8%	10%	125%
2002-2003	3%	4%	133%
2003-2004	4%	6%	150%
2004-2005	5%	8%	160%
2005-2006	7%	7%	100%
2006-2007	1%	1%	100%
2007-2008	4%	.5%	12%
2008-2009	4.5%	.3%	7%
2009-2010	3.4%	8.4%	247%
2010-2011*	3.1%	1.9%	61%
2011-2012	3.1%	5.9%	190%
2012-2013	3.1%	4.9%	158%
2013-2014	5.9%	11.4%	193%
2014-2015*	5.9%	.4%	7%
2015-2016*	5.9%	1.1%	19%
2016-2017	3.3%	5.4%	167%
2017-2018	3.3%	5.3%	161%
2018-2019*	3.3%	0.4%	12%
2019-2020*	3.2%	0.6%	19%
2020-2021*	3.2%	1.4%	44%

* Shortfall Analysis and Corrective Action plan completed.

Should the District wish to consider implementing a race-conscious program, certain steps would have to be taken such as the completion of a disparity study to justify race-conscious elements of its DBE program.

The District continues to expand its race/gender-neutral efforts to introduce small businesses to District contracting and procurement opportunities. A *Guide for Doing Business* is published on the District's website as an effort to inform DBEs and all businesses how to do business with the District, including information about the District's procurement methods, vendor registration, and District staff contact information. The District's procurement portal allows vendors to register and build their firm's profile and to identify their firm as a certified DBE/SBE. District staff utilizes the procurement portal to seek DBE firms registered with applicable NAICS code(s) that match the solicitations. The District also utilizes its SBE program to set SBE contract-specific goals on FTA-assisted contracts to foster DBE and SBE participation. The District's SBE program has been successful in obtaining DBE/SBE participation on Bridge and Bus division construction and professional services contracts.

Another race/gender-neutral method to encourage DBE/SBE participation is extensive outreach. The District is an active participant in the Business Outreach Committee (BOC), a consortium of 26 Bay Area transit and transportation agencies with a goal to assist DBEs and small businesses to expand their business with agency members. Through the BOC, the District is able to publicize its contracting opportunities to a wide array of construction and engineering firms, as well as product suppliers and manufacturers; encourage vendor registration; coordinate DBE/SBE meet and greet sessions with the District's prime contractors/consultants and with District Engineering, Procurement, and Ferry staff; offer DBE/SBE certification workshops; and provide technical assistance trainings.

In addition to outreach events, the BOC issues a quarterly newsletter that lists upcoming contracting opportunities from various agencies, contact information, announcement of Bay Area public meetings and events and any other pertinent information to communicate to the DBE/SBE community. To date, forty-nine (49) issues are published and available on the BOC webpage at, <https://www.goldengate.org/district/doing-business/business-outreach-committee/>. The District will continue to publish its contracting opportunities in every newsletter issued.

To attract Architectural and Engineering firms, the District remains an active public agency member of Caltrans' Mentor Protégé program that meets quarterly. District staff presents on how to do business with the District and shares upcoming contracting opportunities and contact information.

Public Comment

In accordance with 49 C.F.R. Section 26.45(g)(1)(i), the District is required to consult with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts made to establish a level playing field for the participation of DBEs. The meeting is to be an interactive exchange with as many stakeholders as possible. On April 11, 2022 at 9:30 a.m., the BOC hosted a virtual Consultation meeting and held two separate Public Participation meetings on April 11, 2022 at 11:00 a.m., and April 26, 2022 at 10:00 a.m.

On March 8, 2022, an electronic invitation letter to Community Based Organizations for the consultation session were sent to 90 e-mails. On March 10, 2022, the invitation letter was also distributed via U.S. postal mail by BOC member agency Tri Delta Transit. Various trade groups, minority, women's and general contractor groups, community organizations, and technical resource groups from the San Francisco Bay Area were invited such as the African American, Asian, Black, Hispanic, Filipino, Japanese, American Indian Chambers of Commerce; the Bay Area Builders Exchange, the San Francisco Builders Exchange and the Sacramento Builders Exchange; the U.S. Small Business Administration; National Association of Women Business Owners San Francisco Bay Area Chapter and Silicon Valley Chapter; Marin Builders Association; Veterans Business Outreach Center; National Organization of Minority Architects San Francisco Chapter; Women in Consulting San Francisco Chapter; Department of General Services Office of Small Business Certification and Resources; National Association of Women in Construction; American Subcontractors Association; Minority Business Development Agency U.S. Department of Commerce; SCORE San Francisco Chapter; Small Business Development Centers; and Norcal Procurement Technical Assistance Center (PTAC).

Four organizations registered for the consultation session but only two organizations attended. Representatives from Norcal PTAC and the U.S. Small Business Administration provided comments and feedback. The presentation and recording of this session is available on the BOC webpage at, <https://www.goldengate.org/district/doing-business/business-outreach-committee/>.

The Public Participation meetings held on April 11 and April 26, 2022, were open to the public to receive comments and questions on the overall goal setting process, discuss the proposed projected DBE goals from each participating agency, share upcoming contracting opportunities and past DBE goals/attainments from various agencies, and to answer any other questions or concerns. The BOC distributed an electronic invitation and event flyer to approximately 9,354 businesses. The flyer was advertised in the Small Business Exchange on March 31, 2022 and April 7, 2022, and promoted on Norcal PTAC's event calendar and website at: <https://www.norcalptac.org/events/business-outreach-committee-boc-public-participation-meeting>. The Public Participation meeting on April 11, 2022 received 57 registrations from firms/agencies; however only 41 attended (21 firms from the public and 20 BOC member representatives). The Public Participation meeting held on April 26, 2022, received 37 registrations from firms/agencies; however, only 29 attended (10 firms from the public and 19 BOC member representatives).

The District did not receive direct comments from these meetings that would warrant adjustments to its proposed overall DBE goal.

To comply with 49 C.F.R. Section 26.45(g)(1)(ii), the District will advertise its proposed overall DBE goal accompanied by an electronic comment card on its official website. The District will publish its proposed goal in the Small Business Exchange publication as an additional source to inform the public of its proposed 1.4% overall triennial DBE goal. The Public Notice is provided as **Attachment B**.

The Metropolitan Transportation Commission and various other agencies are hosting another virtual Public Participation meeting scheduled on June 7, 2022 at 10:00 a.m., via Zoom. The District will participate in this event as another opportunity to present its proposed goal and receive

feedback/comments from stakeholders. The District will continue to announce its proposed overall DBE goal at various scheduled outreach events to consider any new information that could modify the proposed goal.

Fiscal Impact

There is no fiscal impact associated with this report. However, the District's proposed overall triennial DBE goal for FFY 2023-2025 for FTA-assisted contracts must be submitted to FTA by August 1, 2022, to qualify for continued federal funding.

Attachments: A. FFY 2022/2023 through 2024/2025 Overall Triennial DBE Goal for FTA-Assisted Contracts
B. Public Notice

Attachment A

FFY 2022/2023 through 2024/2025 Overall Triennial DBE Goal for FTA-Assisted Contracts

The availability figures determined for 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 **1.4%** overall triennial DBE goal.

Division	A. DESCRIPTION OF CONTRACT	B. FTA DOLLARS	C. DBE AVAILABILITY PER CONTRACT	FTA \$ Projected for DBEs
	Anticipated for award in FFY 2023 - 2025			
Ferry	Dry Docking and Capital Improvements for M.S. Marin (2024)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.S. San Francisco (2024)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.S. Sonoma (2024)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.V. Del Norte (2024)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.V. Golden Gate (2024)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.V. Mendocino (2022)	\$520,000	0.1%	\$520
Ferry	Dry Docking and Capital Improvements for M.V. Napa (2024)	\$520,000	0.1%	\$520
Ferry	Gangways & Piers Sausalito Construction	\$17,680,000	1.7%	\$300,560
	Total FTA Funds:	\$21,320,000		\$304,200
	Step Two Adjustment Overall DBE Goal:	1.43%		

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Attachment B

PUBLIC NOTICE

**GOLDEN GATE BRIDGE, HIGHWAY AND TRANSPORTATION DISTRICT
PROPOSED DISADVANTAGED BUSINESS ENTERPRISE TRIENNIAL GOAL FOR
FEDERAL FISCAL YEARS 2022/2023 THROUGH 2024/2025**

The Board of Directors of the Golden Gate Bridge, Highway and Transportation District announces a proposed 1.4% overall triennial goal for the participation of Disadvantaged Business Enterprises applicable to 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 October 1, 2022 and ending September 30, 2025.

Information on the development of the proposed goal and its rationale is available on the District's website at <https://www.goldengate.org/district/doing-business/dbe-sbe/>.

The District will accept comments on this proposed goal for thirty (30) days from the date of this Notice. Comments will be received electronically accessible at <https://forms.office.com/r/JfK9q8LaH5>. Information on the District's website is available in over 100 languages. If you need additional translation services, contact 415-455-2000.

/s/Amorette Ko-Wong, Secretary of the District. Dated: May 23, 2022

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