



Agenda Item No. (4)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole  
Meeting of March 23, 2023

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) 2021/2022, beginning on October 1, 2021 through September 30, 2022.

**A. Federal Transit Administration (FTA) Update FFY 2021/2022**

On July 21, 2022, the Biden-Harris Administration and U.S. DOT issued a Notice of Proposed Rulemaking (NPRM) to modernize the Airport Concession DBE (ACDBE) and DBE program regulations. The intent of the NPRM is to optimize program performance, improve operational cohesiveness, and provide solutions for program deficiencies while maintaining the integrity of the program that is design to serve minority and women-owned businesses in federal contracting. Some of the proposed changes address the following:

- Expand recipient reporting requirements to U.S. DOT;
- Clarify ACDBE and DBE program definitions;
- Add, clarify, and align ACDBE program definitions with DBE program definitions;
- Reduce reporting requirements for smaller FTA recipients;
- Expand existing DBE directories to provide more information about DBE firms;
- Add DBE performance plan requirements for design-build projects;
- Limit total DBE supplier goal credit;
- Strengthen prompt payment monitoring and oversight requirements;
- Increase Personal Net Worth from \$1.32M to \$1.6M;
- Improve certification processes and requirements for certifying agencies and applicants;
- Clarify how to count DBE participation after decertification; and,
- Amend rules for appealing to U.S. DOT.

U.S. DOT invited comments to the NPRM from all interested parties to be received on September 19, 2022. Due to the significant amount of proposed changes, stakeholders pushed for additional time to respond to the NPRM. An extension was granted until October 31, 2022. Although the proposed changes are intended to improve the ACDBE/DBE program, the District found some concerns with these changes and submitted comments to U.S. DOT on October 28, 2022. The NPRM, Regulatory Impact Analysis, Comments, and other related information can be found at <https://www.transportation.gov/dbe-rulemaking>.

**B. Federal Highway Administration (FHWA) Update FFY 2021/2022**

As a subrecipient of FHWA funding through the California Department of Transportation (Caltrans), the District is required to follow Caltrans Local Assistance requirements when contracts will be assisted in whole or in part with FHWA funds. The Caltrans statewide DBE goal for FFY 2021/2022 is 22.2%, which is expected to be achieved in proportions of 3.9% race-neutral and 18.3% race-conscious. To assist Caltrans with meeting its statewide DBE goal, the District is required to establish DBE contract-specific goals on FHWA-assisted contracts. The following FHWA-assisted contract is the only FHWA-assisted contract awarded during FFY 2021/2022:

<b>Contract No./Title</b>	<b>Established DBE Goal</b>	<b>DBE Commitment</b>
<b>2021-B-073</b> , Golden Gate Bridge Physical Suicide Deterrent System and Wind Retrofit, Maintenance Traveler System Fabrication Shop Inspection Services	18%	18.96%

**C. Disadvantaged Business Enterprise Project Goal**

The District anticipates the addition of one or more new ferries to its fleet. In accordance with 49 C.F.R. Section 26.49, Transit Vehicle Manufacturers (TVMs) are required to establish annual overall DBE goals to be approved by FTA in order to bid or propose on FTA-assisted contracts. TVMs must implement all applicable requirements of 49 C.F.R. Part 26, except requirements relating to the Unified Certification Program or DBE certification procedures. In October 2014, modifications to the regulations included “ferries” in the TVM definition, as vehicles specifically built for public mass transportation. The District is required to verify that a bidder or proposer is listed on FTA’s eligible TVM list before awarding a contract to a TVM. Because there are no shipyards currently on FTA’s approved list of TVMs to meet these requirements, recipients may establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying with Section 26.49.

On January 7, 2022, the District received approval from FTA to establish a 1.55% DBE Project Goal for its new ferry build project. On March 7, 2022, the District issued a Request for Statement of Qualifications and Proposals (RFQ/RFP) No. 2022, F-012, *Engineering and Detailed Design Services for the Construction of a New Build Ferry*. These services will allow the District to support its mission statement and comply with the California Air Resource Board’s amendments to the Commercial Harbor Craft regulations.

By Resolution No. 2022-070, the Board approved the award of Contract No. 2022-F-012, *Engineering and Detailed Design Services for the Construction of a New Build Ferry* to Aurora Marine Design of San Diego, CA, a Small Business Enterprise that was able to obtain 1.67% DBE participation. Because the DBE Project Goal of 1.55% applies to all contracts associated with the new build ferry project, including the construction phase, staff will determine if the project goal has been met once all contracts have been awarded. Total DBE attainment will be determined at the completion of the project. District staff is expected to complete FTA Uniform Reports each June 1<sup>st</sup> and December 1<sup>st</sup> until the completion of the project.

**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 2021/2022, the District established three (3) SBE contract-specific goals for the following contracts:

<b>Contract No./Title</b>	<b>Established SBE Goal</b>	<b>SBE Commitment</b>	<b>DBE Participation</b>
<b>2021-B-052</b> , Golden Gate Bridge Toll Plaza Administration Building Elevator Repairs and Improvements	13%	48.1%	0%
<b>2021-BT-075</b> , Santa Rosa Bus Facility Resurfacing Project	24%	10.2%	10.2%
<b>2022-F-083</b> , Larkspur Ferry Terminal Berths and Channel Maintenance Dredging	2.1%	13.8%	0%

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.

**E. Annual Progress Report on FFY 2021/2022 Diversity Program for Contracts**

Staff 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, including any value Change Orders for additional scopes of work on existing contracts. 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:**

Applies to:	Contracts funded in whole or in part by FTA.
Goal:	3.2% overall race-neutral goal for FFY 2021/2022. 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:	\$14,705,381.
DBE Participation:	\$121,255 or 0.8%, 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. Value Change Orders/Amendments are considered new awards.
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.
Actual FHWA Dollars Awarded:	\$4,574,635.
Awarded DBE Participation:	\$1,604,269 or 35% of the FHWA Dollars Awarded.

**District-wide:**

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:	DBE Prime, Minority and Women-Owned Businesses	\$3,709,843
	DBE Sub, Minority and Women-Owned Businesses	\$589,188
DBE Participation:		\$4,299,031

***F. FTA Shortfall Analysis for FFY 2021/2022***

The District was able to obtain 0.8% DBE participation of its 3.2% overall DBE goal for FFY 2021/2022. According to 49 C.F.R. Part 26, §26.47, if DBE participation is less than the overall goal applicable to that fiscal year, staff must analyze in detail the reasons for the difference between the overall DBE goal and the awards and commitments in that fiscal year. The two primary reasons for the District’s DBE shortfall are (1) the type of contracts let, and (2) the availability of DBEs, as further explained below.

In FFY 2021/2022, the District awarded six (6) new ferry contracts in the amount of over \$13M and awarded over \$310K in Change Orders on existing ferry contracts with zero DBE participation. Historically, DBE participation and availability in the marine industry has been a major challenge due to specialized work, licenses/certifications, and insurance and bonding requirements. Some prime contractors may require subcontractors to carry United States Longshore & Harbor (USL&H) Workers’ Compensation insurance to perform work on shipyards or over/near navigable waterways. It is likely that there is no impetus for DBE firms to acquire marine insurance to perform as subcontractors in common areas such as marine electrical, painting, welding, plumbing, flooring, carpentry, etc. Bonding requirements are even more challenging for DBE firms to perform as prime contractors.

In order to address these issues, District staff along with the San Francisco Water Emergency Transportation Authority (WETA) staff continue to work diligently to offer informative sessions with shipyards, marine contractors, and insurance companies to address some of the barriers in the marine industry.

The District’s overall DBE goal for the next FFY is 1.4% which includes all ferry contracts. Staff will work towards the following actions to gain interests in the marine industry:

- (1) Host several virtual “How to Do Business with the District” outreach events that highlight upcoming federal contracting opportunities;
- (2) Partner with WETA and other ferry operators around the country to offer informative sessions with shipyards, marine contractors, and insurance companies;
- (3) Host Business Matchmaking and Networking events as an opportunity for DBEs to meet prime contractors/consultants that are awarded District contracts; and,
- (4) Host DBE Certification workshops to encourage DBE certification and interstate DBE certification to eligible small businesses.

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.