



Agenda Item No. (3)

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of February 27, 2025

From: Artemisé Davenport, Manager, DBE and Workforce Inclusion
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 \$30.72 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) 2023/2024, beginning on October 1, 2023 through September 30, 2024.

A. Federal Transit Administration (FTA) Update

On July 21, 2022, the Biden-Harris Administration and U.S. DOT (U.S. DOT) issued a Notice of Proposed Rulemaking (NPRM) to modernize the Disadvantaged Business Enterprise (DBE) program regulations. On April 9, 2024, U.S. DOT published the Final Rule in response to the NPRM. Tier I FTA recipients – those receiving more than \$670,000 in FTA assistance annually in third-party contracts (excluding transit vehicle purchases) – are required to submit their updated DBE program to FTA by March 1, 2025.

During FFY 2023/2024, the District was a Tier I FTA recipient. To comply with the revised requirements, the District updated its Diversity Program for Contracts, which includes the DBE and SBE programs, and submitted it to FTA on October 9, 2024. The District is currently awaiting approval.

FFY 2024/2025 will mark the last year of the District's Triennial DBE goal of 1.4%. The District is required to establish its next overall DBE goal for FFY 2025 – 2028 that begins on October 1, 2025 through September 30, 2028. The District must seek approval from its Board of Directors to establish a proposed overall DBE goal, complete the public participation process, and finally submit the proposed goal to FTA by August 1, 2025. District staff has begun the process of establishing its DBE Goal Methodology.

B. Federal Highway Administration (FHWA) Update

The District is a subrecipient of FHWA funding through the California Department of Transportation (Caltrans) and is mandated to adhere to Caltrans' Local Assistance requirements as outlined in the Local Assistance Procedures Manual (LAPM) whenever contracts are assisted in whole or in part with FHWA funds. For FFY 2023/2024, the statewide DBE goal was 22.2%, with 3.9% expected to be achieved through race-neutral measures and 18.3% through race-conscious efforts.

FFY 2023/2024 was the last year of the established 22.2% statewide overall DBE goal. Caltrans commissioned BBC Research & Consulting to conduct its disparity study to assess the participation of minority and women-owned businesses in local construction and professional services contracts awarded between January 1, 2020 – July 31, 2023. As a result of the study, Caltrans proposes to implement an overall DBE goal of 21.35% for FFY 2025 – 2027.

To support Caltrans in meeting its overall statewide DBE goal, the District is required to establish contract-specific DBE goals on FHWA-assisted contracts when there are enough subcontracting opportunities available. During FFY 2023/2024, the District awarded Contract No. 2023-B-015, *Golden Gate Bridge Seismic Retrofit Project, CMGC Preconstruction Services* and several change orders on existing contracts totaling \$10,732,542 in contract awards. DBE subcontractor awards amounted to \$1,020,336. District staff will continue to adhere to Caltrans' requirements as a subrecipient.

Caltrans Division of Local Assistance, Office of Guidance and Oversight, has updated the LAPM as of January 2025 and has issued several Office Bulletins in FFY 2023/2024 related to federal contract language and forms, none of which directly impact the DBE Program.

C. U.S. DOT Update

The U.S. DOT DBE program is currently facing legal challenges. In September 2024, the U.S. District Court for the Eastern District of Kentucky issued a preliminary injunction prohibiting U.S. DOT from applying the DBE program to contracts that plaintiffs, Mid-America Milling Company and Bagshaw Trucking, bid on in Kentucky and Indiana. In a motion filed in October 2024 for clarification of the preliminary injunction, the court expanded this injunction, extending its applicability to any state where the plaintiffs operate or plan to bid on contracts. This means that for any federally assisted contracts on which the plaintiffs intend to submit a quote, FHWA has advised that DBE goals must be set at zero percent. The plaintiffs identified 25 potential states where they plan to bid on federally funded state contracts; however, California was not included.

Currently, the preliminary injunction specifically applies to the plaintiffs who are non-DBE subcontractors. U.S. DOT issued a memorandum to State Departments of Transportation, offering guidance on how to implement the preliminary injunction for federally funded state contracts with DBE goals. The case is set for trial on January 26, 2026.

D. Disadvantaged Business Enterprise Project Goal

The District is in the process of purchasing one or more new ferries to add 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 to be eligible to bid or propose on FTA-assisted contracts. Currently, there are no shipyards on FTA's approved TVM list that meet this requirement. In such cases, 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 on Contract No. 2022, F-012, *Engineering and Detailed Design Services for the Construction of a New Build Ferry*. 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 committed to 1.67% of DBE participation.

The engineering & design phase of Contract No. 2022-F-012 is 80% complete. As of the time of this report, the DBE subconsultant is expected to begin its portion of work in the coming months. The DBE subconsultant is tasked with performing a Buy America compliance audit for the vessel design.

E. 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. The SBE Program has proven to be an effective method for fostering DBE participation. Subrecipients of FTA-assisted pass-through funds are expected to adhere to the District's Diversity Program for Contracts. Presently, the City of Sausalito is the only subrecipient of the District that has adopted the District's DBE/SBE Program. Participation of DBE firms sought through the award of the City of Sausalito FTA-assisted contracts may count towards the District's overall triennial DBE goal.

District staff will continue to utilize the race-gender neutral SBE Program to encourage DBE participation. Contract-specific SBE goals are established through a detailed analysis conducted in collaboration with project managers, which includes an assessment of subcontracting opportunities available for each project.

The District established four (4) SBE contract-specific goals, using various funding sources, on the following contracts:

Contract No./Title	Established SBE Goal	SBE Commitment	DBE Participation
City of Sausalito (Subrecipient), Ferry Landside Improvement Project	25.5%	89.7%	0%
2023-BT-072, San Rafael Parking Lot Improvements and Solar Panel Installation	22%	6.5%	3.7%
2023-F-073, San Francisco Ferry Terminal Physical Security Improvements	13%	52.7%	0%
2024-F-010, San Francisco Ferry Terminal West and East Berth Ramp	11.4%	0%	0%

F. Annual Progress Report on FFY 2023/2024 Diversity Program for Contracts

Staff monitors DBE participation in District purchasing and contracting in three different categories determined by the funding source: District funds, FTA funds, and FHWA funds. The tables presented below summarize the District's DBE achievements in the context of the three funding sources. The DBE achievement data for FTA and FHWA tables exclusively reflect awards and commitments, including any value change orders for additional scopes of work on existing contracts. Meanwhile, the data in the District-wide table represents actual DBE payments disbursed directly from the District and/or from prime contractors.

Federal Transit Administration:

Applies to:	Contracts funded in whole or in part by FTA.
Goal:	1.4% overall race-neutral goal for FFY 2023/2024. 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 Office.
Actual FTA Dollars Awarded:	\$11,436,459.
DBE Participation:	\$315,844 or 2.8%, thus exceeding 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:	\$10,732,542.
Awarded DBE Participation:	\$1,020,336 or 9.5% 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 court 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	\$2,496,794
	DBE Sub, Minority and Women-Owned Businesses	\$87,442
DBE Participation:		\$2,584,236

Fiscal Impact

There is no fiscal impact associated with this report.

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