



Agenda Item No. 1

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole
Meeting of October 14, 2005

From: Aida S. Caputo, DBE Program Administrator
Teri W. Mantony, Deputy General Manager/Administration and Development
Celia G. Kupersmith, General Manager

Subject: **PROGRESS REPORT ON FY 04/05 ANNUAL DIVERSITY PROGRAM
FOR CONTRACTS AND STATUS REPORT ON FY 05/06 ANNUAL
OVERALL DISADVANTAGED BUSINESS ENTERPRISE GOALS**

Recommendation

A. Annual Progress Report on Fiscal Year 2004/2005 Diversity Program for Contracts

This portion of the report is provided for informational purpose, and no action is required.

B. Status Report on Fiscal Year 2005/2006 Annual Overall Disadvantaged Business Enterprise Goals

This portion of the report is provided for informational purpose, and no action is required.

C. Update on Disadvantaged Business Enterprise Program

This portion of the report is provided for informational purpose, and no action is required.

Summary

A. Annual Progress Report on Fiscal Year 2004/2005 Diversity Program for Contracts

This report analyzes DBE awards/commitments and payments in contracts and procurements during FY 2004/2005. A DBE is a small business concern that is at least 51% owned and controlled by socially and economically disadvantaged individuals, historically ethnic minorities and women of any race.

Actual payments on Districtwide contracts and procurements, regardless of funding source, that were available to DBEs amounted to \$31,156,459. The total paid to 25 DBE prime contractors/consultants/suppliers and 10 DBE subcontractors/subconsultants/subsuppliers

was \$2,596,997. No annual overall DBE goal was established for Districtwide contracts and procurements. Nevertheless, Districtwide DBE participation achieved was 8%.

For Federal Transit Administration (FTA)-assisted contracts subject to the FTA annual overall DBE goal, the total FTA funds awarded during this reporting period amounted to \$1,250,166. The total awarded/committed for 5 DBE prime contracts and 2 DBE subcontracts was \$95,056, including \$11,357 to minority-owned firms and \$83,699 to non-minority, woman-owned firms. The FTA annual overall DBE goal is 5%; DBE participation anticipated for FTA-assisted contracts is 8%.

For Federal Highway Administration (FHWA)-assisted contracts, the District established a 12% overall project goal applicable to the Golden Gate Bridge Seismic Retrofit Phase IIIA – North Anchorage Housing/North Pylon project. Since this project contains contracts that have not yet been awarded, it would be premature to report on the anticipated DBE participation at this time.

B. Status Report on Fiscal Year 2005/2006 Annual Overall Disadvantaged Business Enterprise Goals

By Resolution 2005-057, on June 24, 2005, the Board of Directors approved for publication the proposed FY 2005/2006 annual overall DBE goals for contracts assisted by the U.S. Department of Transportation (U.S. DOT). The Board authorized the General Manager to formally adopt the goals if no comments were received that required further consideration or modifications to the proposed goals.

The proposed 7% goal for new contracts assisted by FTA and the proposed 2% goal for one new contract assisted by FHWA were published in late July. The deadline for public comments was September 7, 2005, and no comments were received by the District. Therefore, the District has adopted a 7% goal applicable to \$2,616,349 in contracts assisted by FTA and a 2% goal applicable to \$1,200,000 in a contract assisted by FHWA.

<i>SUMMARY</i>			
U.S. DOT Funding	FY 2004/2005 DBE Goal	Anticipated DBE Participation	FY 2005/2006 DBE Goal
FTA	5%	8%	7%
FHWA	12%	TBD	2%

C. Update on Disadvantaged Business Enterprise Program

In May 2005, the U.S. Court of Appeals for the Ninth Circuit made a decision in the case of *Western States Paving Co., Inc. v. Washington State Department of Transportation* (WSDOT), which may have an impact on the DBE Programs of other U.S. DOT recipients. While the Court upheld the constitutionality of the federal DBE regulations, it found WSDOT's application of the DBE Program unconstitutional, because it failed to demonstrate

that its program was “narrowly tailored” to remedy the effects of racial/gender discrimination.

According to the Court, WSDOT did not have sufficient evidence to justify its DBE goal. WSDOT presented statistical disparity between an 11.17% DBE availability and a 9% DBE utilization in past contracts as justification for its DBE goal. However, the Court determined that this statistical disparity presented by WSDOT was insignificant to suggest that this was as a result of discrimination. WSDOT needed to show that its program was narrowly tailored to groups that have suffered discrimination by providing evidence which suggested existence of racial/gender discrimination in Washington’s transportation contracting industry.

Since the issuance of the final DBE rule in February 1999, the District has relied upon race-neutral measures to meet its annual overall goals, making the District less likely to be challenged by unsuccessful bidders. The District will continue to use race-neutral measures to meet its annual overall goals and will closely monitor any guidance from the U.S. Department of Transportation that may be issued as a result of this recent court decision.

Fiscal Impact

There is no fiscal impact associated with this report.