



Agenda Item No. 1

To: Rules, Policy and Industrial Relations Committee/Committee of the Whole Meeting of July 14, 2006

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

Subject: **APPROVE THE PROPOSED FY 06/07 ANNUAL OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE) GOAL FOR FTA-ASSISTED CONTRACTS AND UPDATE ON THE CALIFORNIA DEPARTMENT OF TRANSPORTATION'S NEW DBE PROGRAM GUIDELINES**

Recommendation

The Rules, Policy and Industrial Relations Committee recommends that the Board of Directors approve actions relative to the FY 06/07 annual overall Disadvantaged Business Enterprise (DBE) goal, as follows:

- (1) In accordance with federal regulations governing the establishment of DBE goals, establish a one percent (1%) proposed goal applicable to \$6,070,598 in contracts assisted by the Federal Transit Administration (FTA);
- (2) Authorize the General Manager to formally adopt the FTA goal if no public comments are received that require further consideration or modifications of the proposed goal by the Board; and,
- (3) Authorize staff to submit the District's annual overall DBE goal for federally-assisted contracting opportunities to FTA by August 1, 2006.

This matter will be presented to the Board of Directors at its July 14, 2006, meeting for appropriate action.

Summary

A. Approve Proposed FY 06/07 Annual Overall DBE Goal for FTA-Assisted Contracts

The steps taken in the development of the annual overall goal for FTA-assisted contracts are in accordance with 49 Code of Federal Regulations Part 26, issued by the U.S. Department of Transportation. The regulations prescribe a two-step process. In Step 1, base figures are calculated to determine the relative availability of DBEs in the areas of expertise involved in the District's expected contracting activities. The District used the California Unified Certification Program (CUCP) DBE database and the Census Bureau's 2003 County Business Pattern (CBP) database to

determine the base figures. In Step 2, an assessment of known relevant evidence available to the District is analyzed to determine what adjustments, if any, are needed to narrowly tailor the base figures to the District's marketplace. The District analyzed data on actual DBE participation in the District's race/gender-neutral contracts for comparable projects in recent years to adjust the base figures.

Eight FTA-assisted contracts were identified for FY 06/07. Staff determined an overall base figure of 15.43% for these contracts by identifying the North American Industry Classification System (NAICS) codes that closely match the types of work (prime and sub) required for the contracts and determining the DBE percentage for each identified NAICS code. The DBE percentage for each NAICS code was then weighted by multiplying the percentage of FTA funds to be expended for each NAICS code.

After closer examination, it was determined that although four of the eight contracts project DBE participation, 74% of the total FTA dollars will be expended on two contracts that have no projected DBE participation. Accordingly, further analysis of the FTA-assisted contracts for FY 06/07 indicates that a downward adjustment to 1.49% of the base figure is warranted. This overall adjustment is primarily due to the adjustment made to the individual base figures for the *Channel Dredging – Construction* contract and the *Replacement of Fareboxes* contract. In accordance with District goal-setting practices, this number rounds to 1%, the nearest whole number.

For the *Channel Dredging – Construction* contract, staff determined a 15.63% base figure. The District identified NAICS 237990: *Other Heavy and Civil Engineering Construction* as the code that closely matches the prime work required for this contract. However, the actual prime work for this contract is highly specialized. Comparable contracts awarded in recent past years show that the District was unable to achieve DBE participation for this specific type of contract, despite vigorous outreach efforts. Further, in reviewing all bids submitted for past similar contracts, it determined that no bids were ever received from DBE prime bidders. While two subcontracting opportunities were identified for this contract, the District determined that it would be difficult to obtain bids from DBEs to perform the subcontracting work. The two subcontracting opportunities identified for this contract are hydrographic surveying and tug boat service. For the hydrographic surveying, the District identified NAICS 541370: *Surveying and Mapping (except Geophysical) Services*. Although there are DBEs that can perform general surveying work, there are very limited DBEs that can specifically perform hydrographic surveying work. Even if the District did use the weighted DBE percentage for this work, the percentage determined was .34%, which would still round off to 0%. For the tug boat service, the District identified NAICS 532411: *Commercial Air, Rail, and Water Transportation Equipment*. The District determined that there are no DBEs in its local market area in this NAICS code. Since the 0% figure is more reflective of the DBE participation that could be attained for this contract, the base figure of 15.63% was adjusted to 0%.

For the *Replacement of Fareboxes* contract, staff determined a 16.67% base figure. The District determined that the NAICS code in which this product belongs is NAICS 336322: *Motor Vehicle Electrical and Electronic Manufacturing*. However, this specific product is highly specialized. The District was able to identify only three companies that may be able to provide the type of farebox that the District is seeking. None of these three companies are certified DBEs. Additionally, since installation will be performed in-house, there are no subcontracting opportunities for this contract. Since the 0% figure is more reflective of the DBE participation that could be attained for this contract, the base figure of 16.67% was adjusted to 0%.

A table providing the adjusted availability figure for each FTA-assisted contract is provided as an

attachment.

The U.S. DOT regulations require that the maximum feasible portion of the annual overall DBE goal be met by using race/gender-neutral methods and in light of the recent U.S. Court of Appeals for the Ninth Circuit decision regarding the constitutionality of DBE programs (*Western States Paving Co. v. Washington State Department of Transportation*), the District does not propose to set contract-specific DBE goals on new contracts to be awarded in FY 06/07.

The proposed annual overall goal of 1% reflects staff's determination of the level of DBEs ready, willing and able to participate in the District's FTA-assisted contracting activity for FY 06/07. The regulations require the proposed goal to be published for public inspection and comment to ensure public participation in the goal-setting process. The regulations also require that the goal be submitted to FTA by August 1, 2006. FTA may review and suggest adjustments to the goal upon consultation with the District; however, prior concurrence with the goal is not required.

The annual overall DBE goal complies with the California Proposition 209, the 1996 California Civil Rights Initiative, in that they are only applicable to U.S. DOT-assisted contracts. No DBE goal will apply to contracts that are not federally-assisted.

B. Update on the California Department of Transportation's New DBE Program Guidelines

On behalf of the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans) oversees the DBE programs of subrecipients that receive FHWA funds, such as the District.

In response to the recent U.S. Court of Appeals for the Ninth Circuit decision, effective May 1, 2006, Caltrans implemented a DBE Race-Neutral Program and has promulgated recent guidelines to FHWA grantees. These guidelines provide that going forward subrecipients NOT adopt annual goals for federally-assisted contracts that Caltrans oversees on behalf of FHWA. Instead, subrecipients must agree to follow a race-neutral approach and provide Caltrans with estimates of anticipated DBE participation for inclusion in Caltrans' statewide annual overall goal for FHWA-assisted projects. For FHWA-assisted projects, subrecipients must include in the contract documents race-neutral boilerplate language issued by Caltrans and an analysis of subcontracting opportunities and projected DBE availability for the work.

Other than the Seismic Retrofit Phase IIIA contracts, for which a 12% overall project goal was established in 2005, the District does not anticipate awarding additional FHWA-assisted contracts in the upcoming federal fiscal year. It has advised Caltrans accordingly.

Fiscal Impact

There is no fiscal impact associated with this report. However, the District's FY 06/07 DBE goal for federally-assisted contracts must be submitted by August 1, 2006, to qualify for continued federal funding.

Attachment

FY 06/07 Annual Overall DBE Goal for FTA-Assisted Contracts

The adjusted availability figures were calculated into projected DBE participation dollars by taking the FTA dollars budgeted for each contract and multiplying it by the adjusted availability figures. 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%** annual overall goal.

ANNUAL OVERALL GOAL			
Contract	FTA \$ Budgeted	Adjusted Availability Figure	FTA \$ Projected For DBE
Merchant Road Improvements	\$283,000	10.1%	\$28,583
Santa Rosa Fuel Tanks Replacement	244,898	19.7%	48,245
Channel Dredging – Construction	2,481,200	0.0%	0
Employee Parking Fence & Lighting	16,000	17.8%	2,848
Main Engine Component Rehabilitation (Mendocino & Del Norte)	80,000	0.0%	0
Replacement of Fareboxes	2,000,000	0.0%	0
High-Speed Passenger Vessel – Design	600,000	0.0%	0
Bus Radio Communications Sys. Replacement Design	365,500	3.1%	11,331
Total	\$6,070,598		\$91,007
FTA \$ Projected for DBE	FTA \$ Budgeted	Annual Overall Goal	
\$91,007	\$6,070,598	÷	= 1%