



Board Policy No. 460

Disadvantaged Business Enterprise (DBE) Policy

ADOPTED: 07/1988

RECENT AMENDMENT: 9/27/2017

SEE ALSO: 466, 465

SUBJECT CATEGORY: SECTION 400, OPERATIONS

SUBSECTION: PROCUREMENT AND MATERIALS

CONTROL DEPARTMENT: COMPLIANCE & DIVERSITY

I. PURPOSE

The Alameda-Contra Costa Transit District ("District") is committed to a Program for the participation of Disadvantaged Business Enterprises ("DBEs") and Small Business Enterprises ("SBEs") in District contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, revised as of March 4, 2011, as may be amended ("Regulations"). It is the policy of the District to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of all contracts. It is the intention of the District to create a level playing field on which DBEs and SBEs can compete fairly for contracts and subcontracts relating to the District's construction, procurement and professional service activities.

The Board of Directors is responsible for establishing the DBE policy for the District. The General Manager of the District is responsible for ensuring adherence to this policy. The DBE Liaison Officer, in consultation with the all District departments, is responsible for the development, implementation and monitoring of the DBE Program in accordance with the District's nondiscrimination policy. It is the expectation of the Board of Directors and the General Manager that all District personnel shall adhere to the spirit, as well as the provisions of this Policy.

Federal Transit Administration (FTA) regulations and provisions for DBEs and SBEs shall apply to all federally funded District procurements.

The District, a recipient of federal financial assistance from the Federal Transit Administration ("FTA") of the U.S. Department of Transportation (DOT), is required to implement a DBE Program in accordance with 49 CFR Part 26, which is incorporated herein by reference. The Policy outlined herein applies to all federally funded contracts.

II. PERSONS AFFECTED

Certified Small Businesses and Disadvantaged Business Enterprises.

III. DEFINITIONS

The definitions below are in accordance with 49 CFR Part 26 or defined elsewhere in other federal regulations.

"Disadvantaged Business Enterprise (DBE)" means a DBE is a for-profit, small business concern; 1) that is at least fifty-one percent(51%) owned by one or more individuals who are both socially and

economically disadvantaged, or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more socially and economically disadvantaged individuals; and 2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and 3) certified through a statewide Unified Certification Program.

“Small Business Enterprise (SBE)” means a small business enterprise as defined by Section 3 of the Small Business Act and Small Business Administration regulations which define average national gross receipts, number of employees, and North American Industry Classification System (NAICS) standards as referenced in Regulation 13 CFR Part 121.

“Race-Neutral” means a procedure or program that is used to assist all small businesses. For the purposes of this Policy, race-neutral includes ethnic and gender neutrality.

“Race-Conscious” means a measure or program that is specifically focused on assisting only DBEs, including women-owned DBEs.

IV. POLICY

A. Policy Objectives

1. DBEs:
 - a. To help remove barriers to DBE participation in the bidding, award and administration of DOT-assisted contracts.
 - b. Assist DBEs to develop and compete successfully outside of the District’s Program.
 - c. Ensure the District’s Program is narrowly tailored in accordance with applicable laws.
 - d. Ensure that only DBEs meeting the eligibility requirements are permitted to participate as DBEs.
 - e. Identify business enterprises that are eligible as DBEs to provide the District with required goods, materials and services; and to develop good rapport with the owners, managers and sales’ representatives of those enterprises.
 - f. Develop communication programs and procedures which will acquaint prospective DBEs with the District's contract procedures, activities and requirements and allow DBEs to provide the District with feedback on existing barriers to participation and effective procedures to eliminate those barriers.
 - g. Increase Program awareness and effectiveness throughout the District, and coordinate efforts with District staff to provide greater contracting opportunities for DBEs.
2. SBEs:
 - a. Increase opportunities for contract awards to small businesses participating in District contract and procurement activities.
 - b. Promote the development of the small business community.

B. Small Business Element

In order to aid its DBE utilization efforts, the District will establish race, gender and local-neutral, per-contract SBE utilization goals on federally funded projects when practicable. The goal shall be established based on demonstrable evidence of the availability of ready, willing and able SBEs relative to all businesses ready, willing and able to participate on DOT-assisted contracts and expressed as a percentage of the anticipated value of the contract. The District will evaluate each procurement for SBE prime and subcontracting opportunities. A determination will be made for the availability of small businesses. The District will require all bidders to provide a list of the SBE subcontractors to be utilized to meet the SBE goal and will require good faith efforts documentation for bidders not meeting the SBE subcontract goal prior to award of contract. The District will require the successful prime contractor to provide quarterly reports of payments to SBE subcontractors, or on a more frequent basis as determined by the District's Contracts Compliance Department.

The District shall set-aside selected federally funded procurements with anticipated dollar values up to \$300,000 for small business participation only. Small business set-asides shall not be implemented where the availability of small businesses is not abundant relative to the applicable North American Industry Classification System (NAICS) Code.

This District shall set-aside federally funded procurements with anticipated dollar values up to \$100,000 for construction projects and up to \$60,000 for non-construction projects to certified MSBEs provided that it is determined by the District's Contracts Compliance Office that availability of MSBEs is empirically demonstrated relative to the applicable NAICS Code and in such numbers to satisfy public procurement competition requirements.

C. DBE Participation Goals

The Contracts Compliance Officer, in his role as DBE Liaison Officer shall calculate, and the Board of Directors shall approve the District's three-year overall DBE goal (to be submitted to the FTA for final approval), for the participation of DBEs in all federally funded contracts. The overall goal shall be expressed as a percentage of the total amount of U.S. DOT funds the District anticipates spending during the relative 3-year reporting period. The District's overall goal will represent the amount of ready, willing and able DBEs available to participate in contracting opportunities and shall reflect the amount of DBE participation the District would expect absent the effects of discrimination. The District intends to meet the goal through race and gender-neutral means. The District shall use race and gender-conscious means only if authorization from the FTA is obtained.

1. Methodology For Setting DBE Participation Goals

In establishing the District's overall DBE goal, the DBE Liaison Officer, in consultation with the appropriate District departments, will conduct a thorough analysis of the projected number, types of work and dollar amounts of contracting opportunities that will be

funded, in whole or in part, by U.S. DOT federal financial assistance for the reporting period.

The overall goal shall be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on the District's DOT-assisted contracts.

D. Public Participation and Outreach Efforts

The District's activities managing public participation and outreach efforts are directed at assisting the District to solicit public input to set overall DBE participation targets and meet the District's overall DBE goal.

In establishing the overall DBE goal, the District will provide for public participation which shall include the following:

1. Prior to finalizing the Overall Goal Analysis Report, the District will invite the participation of U.S. DOT agencies; other U.S. DOT grantees, minority, women's and general contractor groups, community organizations, and/or 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 the District's efforts to establish a level playing field for the participation of DBEs.
2. The District will publish a tri-annual notice announcing its proposed overall goal, informing the public that the District's Overall Goal Analysis Report is available for inspection during normal business hours at the office of the DBE Liaison Officer for a period of thirty (30) days, and that the District and the U.S. DOT will accept comments on the proposed goal for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.
3. In conjunction with the District's activities to meet its overall DBE goal, the District will implement various public participation and outreach activities designed to broaden awareness of the District's DBE Program. The measures described in 49 CFR § 26.51, focusing on race and gender-neutral means will be actively pursued, and the District will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities.
4. Once established, the District's three-year overall DBE goal shall be reviewed on an annual basis and adjusted accordingly if circumstances deem such actions to be appropriate. Any proposed adjustments to the District's overall goal prior to the end of the three-year period shall be re-publicized, public comments re-solicited, and re-approved by the Board prior to implementation.

E. Transit Vehicle Manufacturers Certification

The District shall require and confirm that transit vehicle manufacturers certify that they have established an overall DBE participation goal that has been approved by the FTA before they can bid on District contracts pursuant to 49 CFR, 26.49.

F. Administrative Requirements

1. Business Development Programs

The District will provide race and gender-neutral efforts to promote small business enterprises, including DBEs, in District contracting opportunities through business development programs. The DBE Liaison Officer will participate in events for small businesses which may be coordinated with other U.S. DOT grantees, federal agencies, or local organizations, providing the opportunity to promote DBE and SBE programs. DBEs and SBEs will be invited to meet with the DBE Liaison Officer, Project Management and/or Purchasing Staff to learn about District contracting opportunities. At these events, information on DBE and SBE certification, DBE and SBE program requirements and procedures will be distributed to the DBE/SBE community explaining how to do business with the District.

2. Dissemination of Policy Statement

The District shall issue a signed and dated Policy Statement throughout the District which will be readily available to the business community, including DBEs, SBEs and non-DBEs/SBEs or who are ready, willing and able to compete on U.S. DOT-assisted contracts for the District.

3. Monitoring Actual DBE Participation

In accordance with regulatory guidelines, the DBE Liaison Officer shall monitor and track the actual DBE and/or SBE participation through contractor and subcontractor payment reports and conduct other appropriate monitoring to ensure that DBE participation is counted toward the District's overall DBE goal.

4. Reporting to U.S. DOT

The DBE Liaison Officer will provide DBE reports as required by U.S. DOT Regulations.

G. Prohibited Discrimination

The District shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex or national origin.

The District shall not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this program with respect to individuals of a particular race, color, sex or national origin.