

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 6/8/2022

Staff Report No. 22-241

TO: AC Transit Board of Directors

FROM: Michael A. Hursh, General Manager

SUBJECT: Disadvantaged Business Enterprise Goal for Fiscal Years 2023-2025

ACTION ITEM

RECOMMENDED ACTION(S):

Consider receiving preliminary status report on the District's proposed three-year Disadvantaged Business Enterprise (DBE) goal for Federal Fiscal Years (FFY) 2023 - 2025, and authorize staff to give public notice of the proposed goal for a 30-day comment period.

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency

Initiative - Financial Efficiency and Revenue Maximization

The Federal Transit Administration (FTA) has mandated that AC Transit, as a recipient of DOT-assisted funding, is required to adopt and implement a DBE program. Inclusive in the implementation is the requirement to analyze future contracting opportunities and new Triennial DBE Goal every three (3) years. Once concurred by the FTA, the District is required to provide periodic reporting to the FTA on the success and challenges of meeting established triennial DBE goals. Supporting this requirement ensures that the District remains eligible to receive FTA funding.

BUDGETARY/FISCAL IMPACT:

There is no budgetary or fiscal impact associated with this report.

BACKGROUND/RATIONALE:

Staff proposes a 2% DBE goal for the FFY 2023-2025 triennial period. FTA regulations mandate that prior to submission to the FTA, the proposed goal must be publicly posted for a minimum of 30-days to receive public feedback and comments.

Pursuant to 49 CFR 26.45, any Grantee that reasonably anticipates awarding (excluding transit vehicle purchases) more than \$250,000 in Federal Transit Administration (FTA) funds in prime contracts in a federal fiscal year is required to set an overall goal for DBE participation in FTA-assisted contracts.

Staff reviewed project and contracting opportunities, and funding strategies with Capital Projects, Information Technology, Planning, Maintenance, and Capital Planning and Grants Management departments. For the

three-year period between October 1, 2022, and September 30, 2025, approximately \$2.9 million in federally assisted contracting opportunities has been identified, excluding bus purchases. Based on one identified contracting opportunity, and utilizing the FTA prescribed calculating methodology, again, staff projects a 2% DBE goal for the upcoming triennial period.

FUNDING SOURCE	PROJECT	VALUE	PRIMARY NAICS
CMAQ	Division 4 Battery Electric Bus Infrastructure Project	\$2,915,000	331210 238210

Table 1: Federally-Assisted Contracting Opportunity to be Awarded After October 1, 2022.

Overview of Goal Methodology Process

- Staff met on multiple occasions with various departments to obtain a three-year projection of federal assisted contracting opportunities.
- Staff categorized the scope of work within the one contracting opportunity by the standard North American Industry Classification System (NAICS) Codes and established the estimated project cost and percentage of scope for each category of work.
- The regional availability of DBEs (California Department of Transportation) is calculated as a percentage of all regionally available firms in their respective categories via the U.S. Census. For this calculation, the regional contracting area was limited to the nine (9) Bay Area counties.

$$\frac{\text{DBEs per Project Type}}{\text{All Firms per Project Type}} = \text{Relative DBE \%}$$

- Lastly, Relative Weights are then calculated by multiplying the relative availability of DBEs by the percentage of work for each category of the scope of work.

The initial calculation resulted in a proposed 27.50% DBE goal. However, given the single identified contracting opportunity, low funding amount (\$2.9 million), and the District’s inability to set DBE goals within our contracting language due to the 9th Circuit requirement of a disparity study, staff took the additional step of restricting the firm availability criteria from those firms simply willing to do business in the nine (9) Bay Area counties, to those firms with a physical presence within this area. This step was taken for this type of work because the low dollar amounts of the contracts would make it unlikely that DBE businesses would travel long distances to perform this work. The FTA allows recipients to account for additional factors such as past participation, recent disparity studies, and regional industry or economic changes to further analyze and establish appropriate goals. These additional considerations reduced the proposed goal from 27.50% down to 1.6%, which is being rounded up to 2%.

Next steps are to post the proposed goal on the District's external facing website for a 30-day comment period. Staff will return to the Board on July 27, 2022, for final approval of the proposed FFY 2023-2025 DBE Goal prior to submitting to the FTA by August 1, 2022.

If approved by the FTA, the new DBE goal will be reviewed on a semi-annual basis for changes in funding and contracting opportunities. If staff finds that additional dollars have been identified as contracting opportunities, staff will revise the goal to include the additional projects.

ADVANTAGES/DISADVANTAGES:

The advantage of continuing with the recommended process and posting for the 30-day period is that this aligns the District with the regulation requirements of the FTA.

Staff has not identified any disadvantages with following the recommended actions.

ALTERNATIVES ANALYSIS:

An alternative to accepting staff recommendation of a proposed 2% DBE Triennial Goal would be to direct staff to submit the higher 27.50% proposed DBE Triennial Goal, without the consideration of travel distances and the low dollar amount of the contracting opportunity. This is not recommended because the District is unable to set DBE goals within the contract solicitations and would, assuredly, fall short of the proposed triennial goal for each semi-annual and annual reporting period. Should the District not meet the 27.50% DBE Triennial goal, staff would be required to submit a shortfall analysis for each year the goal is not met, which presumably would be all three years of the triennial period.

While the District has achieved substantial DBE participation on federally-assisted contracts in recent years (i.e. 2017-2018 (28%), 2018-2019 (23%), and 2019-2020 (20%)), in 2020-2021, the District's achievement was merely 3.6%. This decline was due in part to the COVID-19 pandemic, and a decrease in or shifting of spending of federal assistance funds. At the time of preparing this report, staff does not have clear visibility of the availability of future federal funding, nor which future contracting opportunities would receive the funding. However, staff will continue to work with internal departments to identify any new federally funding contracting opportunities, as well as leverage the District's 10% goal for Small Business Enterprise (SBE) participation on contracting opportunities.

Therefore, staff does not recommend this course of action, and asks the Board to accept the staff recommendation of the proposed 2% DBE Triennial Goal and authorize staff to move forward with the 30-day public posting period.

PRIOR RELEVANT BOARD ACTION/POLICIES:

Board Policy No. 460 Disadvantaged Business Enterprise (DBE)
SR22-239 Disadvantaged Business Enterprise Semi-Annual Payment Report
SR21-524 Disadvantaged Business Enterprise Semi-Annual Payment Report
SR19-199 Disadvantaged Business Enterprise Goal for Fiscal Years 2020-2022

ATTACHMENTS:

None

Prepared by:

Phillip Halley, Contracts Compliance Program Manager

Approved/Reviewed by:

Lynette Little, Director of Civil Rights & Compliance

Jill A. Sprague, General Counsel

Michael A. Hursh, General Manager