

ALAMEDA-CONTRA COSTA TRANSIT DISTRICT



STAFF REPORT

MEETING DATE: 9/8/2021

Staff Report No. 21-396

TO: AC Transit Board of Directors
FROM: Michael A. Hursh, General Manager
SUBJECT: Small Local Business Contracting Goals

ACTION ITEM

RECOMMENDED ACTION(S):

Consider receiving a report on the District's efforts to increase contracting participation among small, local, women and minority-owned businesses and adopting small business and local business contracting goals equal to the District's current Federal Administration triennial Disadvantaged Business Enterprise goal. [Requested by Director Williams - 4/28/2021]

STRATEGIC IMPORTANCE:

Goal - Financial Stability and Resiliency
Initiative - Financial Efficiency and Revenue Maximization

BUDGETARY/FISCAL IMPACT:

There is no known budgetary or fiscal impact at this time.

BACKGROUND/RATIONALE:

As a recipient of DOT-assisted funding, the Federal Transit Administration (FTA) requires the District to adopt and implement a Disadvantaged Business Enterprise (DBE) Program and establish a three-year, triennial DBE goal. In addition, the District submits semi-annual reports to the FTA on the successes and challenges of meeting the established goal. The FTA's DBE Program was established to level the playing field and create a pathway in which DBE firms could fairly compete for DOT-assisted contracts.

DBE certification, among many other factors, requires that the business is at least fifty-one percent (51%) owned and controlled by one or more socially and economically disadvantaged individuals. The U.S. Department of Transportation ("DOT") presumes certain groups are disadvantaged, including women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian-Pacific Americans, or other minorities found to be disadvantaged by the U.S. Small Business Administration (SBA). Other individuals, such as persons with disabilities, may also be eligible if they establish their "social" and "economic" disadvantage and will be determined on a case-by-case basis (49 CFR Part 26).

Under the FTA's program, DBE contracting goals are solely established on federally funded contracts and may be race and gender-conscious or race and gender-neutral. Race and gender-conscious means incorporating

specific DBE goals into federally funded contracts. However, the District operates within a region that is currently legally prohibited from setting contract specific DBE goals unless an availability and disparity study has been completed and demonstrates a narrowly tailored disparity among DBE firm utilization. Therefore, the District utilizes race and gender-neutral methods such as establishing Small Business Enterprise (SBE) goals on contracts with federal funding.

California Law Limitations

The FTA's DBE program only applies to federally assisted contracts and does not allow for "local" or geographically based criteria. In November 1996, California voters passed Proposition 209 which prevents public agencies from using race or gender criteria when setting contracting goals, unless the contract is federally funded, in which case, the FTA's DBE Program preempts Prop 209. In 2020, Proposition 16 attempted to overturn Proposition 209, but the measure was unsuccessful, thus leaving Prop. 209 in place. However, Prop 209 does not prevent public agencies from setting small business and local business goals.

Contract Management and Data Collection

One of the challenges the District faces is the lack of a full scale, integrated contract management and payment tracking system. As documented in past Procurement Systems Reviews (PSRs) and FTA Triennial Review audits, the District doesn't have an integrated contract management system as part of the procurement process. This is currently being addressed with the development and implementation of new vendor/supplier registration portal and the supplier contracts module. These new modules provide visibility into the diversity of our procurement outreach and the effectiveness of the small business outreach.

As an interim to the integrated contract management system, staff has utilized a third-party online software as a service (SAS) platform, B2Gnow, to capture and monitor small business contracting and utilization. However, as B2Gnow is standalone system and not integrated with PeopleSoft, contracts must be manually entered and updated, which is a labor-intensive process. At present, the PeopleSoft module necessary for contract management of this scope is said to be about two years away, assuming funding is made available.

Contract data captured in the B2GNow system represents most federally funded contracts and any non-federally contracts that have an established small business goal. The data from B2GNow is utilized to prepare the FTA Semi-Annual DBE Report and is represented below in Tables 1 and 2.

Small Business Participation

On June 26, 2019, the Board adopted the District's current 10% DBE Goal for FTA-assisted contracts for the period of October 2019 through September 2022. The District is currently exceeding the established goal due to an aggressive use of SBE goals on contracting opportunities.

Tables 1 and 2 provide a comparative breakdown of small business participation on federally funded and non-federally funded contracts and subcontracts from October 2019 through March 2021.

The data from Table 1 (below) highlights a few disparities on the federally funded contracts (including subcontracting):

- SBE Only firms represent 10.34% of contracts awarded but only 4.84% of all contracting dollars.
- Minority-Owned firms represent 34.38% of contracts awarded but only 26.29% of all contracting

dollars.

- Hispanic American firms secured 8 of 10 minority-owned contracts, representing 27.59% of all contracts awarded. Unfortunately, these contracts only accounted for 12.68% of all contracting dollars (a nearly 15% negative disparity).
- Black American firms only secured 1 contract (this was an amendment to an existing contract as part of ongoing BRT outreach efforts). No new federal contracts have been awarded to Black American-owned firms.
- Asian-Pacific American firms also only secured 1 federally funded contract.

Table 1: Small Business Participation on Monitored Contracts with Federal Funding (October 2019 - March 2021)

Category	Total Contracts	Total Unique Firms	Total Awards (\$)	Total Contract (%)	Total Award (%)	Contract to Award Delta	DBE Goal Delta
All Monitored Contracts	29	28	\$9,046,262.77	100%	100%	N/A	N/A
DBE Firms	6	5	\$1,984,475.91	20.69%	21.94%	1.25%	11.94%
SBE Firms (non-DBE)	3	3	\$438,156.72	10.34%	4.84%	-5.50%	-5.16%
Minority-owned Firms	10	9	\$2,378,419.10	34.38%	26.29%	-8.19%	16.29%
Women-owned Firms	3	3	\$937,396.67	10.34%	10.36%	0.02%	0.36%
Local Firms (within District's Ward Boundaries)	5	5	\$1,349,156.27	17.24%	14.91%	-2.33%	4.91%
Minority-owned Firms							
<i>Black American</i>	1	1	\$832,683.47	3.45%	9.20%	5.76%	-0.80%
<i>Hispanic American</i>	8	7	\$1,147,135.54	27.59%	12.68%	-14.91%	2.68%
<i>Native American</i>	0	0	0	0	0	0	-10%
<i>Asian-Pacific American</i>	1	1	398,600.00	3.45%	4.41%	0.96%	-5.59%
<i>Subcontinent Asian American</i>	0	0	0	0	0	0	-10%
	10	9	\$2,378,419.01	34.48%	26.29%	-8.19%	16.29%

Data highlights from Table 2 (below) on the non-federally funded contracts (including subcontracting) include:

- DBE firms represent 36% of contracting opportunities awarded but only 15.70% of contracting dollars.
- SBE Only firms fared better, representing 20% of contracts awarded but less than 15% of all contracting dollars.
- Black American firms received no, non-federally funded, contracts during this period.
- Other minority-owned (54.79%), women-owned (44.16%), and local firms (55.93%) fared well in regard to contracts awarded and total contracting dollars.

Table 2: Small Business Participation on Monitored Contracts Without Federal Funding but with Small Business Goals

Category	Total Contracts	Total Unique Firms	Total Awards (\$)	Total Contract (%)	Total Award (%)	Contract to Award Delta	DBE Goal Delta
All Monitored Contracts	25	19	\$5,162,491.23	100%	100%	N/A	N/A
DBE Firms	9	5	\$810,699.85	36.00%	15.70%	-20.30%	5.70%
SBE Firms (non-DBE)	5	4	\$736,074.38	20.00%	14.26%	-5.74%	4.26%
Minority-owned Firms	11	5	\$2,828,629.85	44.00%	54.79%	10.79%	44.79%
Women-owned Firms	9	7	\$2,279,993.00	36.00%	44.16%	8.16%	34.16%
Local Firms (within District's Ward Boundaries)	12	5	\$2,887,581.85	48.00%	55.93%	7.93%	45.93%
Minority-owned Firms							
<i>Black American</i>	0	0	\$0	0.00%	0.00%	0.00%	-10.00%
<i>Hispanic American</i>	8	3	\$2,702,619.85	32.00%	52.35%	20.35%	42.35%
<i>Native American</i>	0	0	\$0	0.00%	0.00%	0.00%	-10.00%
<i>Asian-Pacific American</i>	2	1	\$96,430.00	8.00%	1.87%	-6.13%	-8.13%
<i>Subcontinent Asian American</i>	1	1	\$29,580.00	4.00%	0.57%	-3.43%	-9.43%
	11	5	\$2,828,629.85	44.00%	54.79%	10.79%	44.79%

Again, while the data in Tables 1 and 2 above illustrate a good amount of small business participation, it should be restated that this data is only for contracts that are monitored in the B2GNow system. The values can increase or decrease depending upon the data from all contracts awarded by the District.

Other Small Business Participation Tools

Board Policy 466: Small and Small Local Business Enterprise Policy outlines additional measures staff can take to increase small business participation in District contracting opportunities. These tools include small business set-asides, micro business set-asides, local business contracting goals, preference points, and discretionary spending priorities. Staff has successfully utilized small business set asides on construction contracts. However, without an adopted goal (or mandate) for small and local business participation, these opportunities often remain an afterthought instead of a priority during project development.

Many public agencies have local business goals, and the Alameda County Transportation Commission's Local Business Contract Equity (LCBE) Program is an example of a very robust program. The LBCE program applies specifically to Measure F - Alameda County Vehicle Registration Fee (VRF) and Measure B or Measure BB sales tax funded contracts and has a 60% goal on construction contracts and 70% for service contracts.

Recommendations

While District staff continue to enhance the procurement systems and integrate a contract management system fully capable of capturing data for small business participation analysis, it is recommended that the Board establish separate small business and local business goals which are equivalent to the current 10% DBE goal. While the 10% DBE is goal is geared toward federally funded contracts, the small business goal would be applicable to both federally funded and non-federally funded contracting opportunities and the local business goal would only be applicable to non-federally funded contracting opportunities. Doing so will establish 10% goals for DBEs, SBEs, and local businesses through the period of September 2022. When staff begins the

analytical process of establishing a new FTA triennial DBE goal, due August 1, 2022, staff will also conduct a similar analytical process to establish revised District-wide SBE and local business contracting goals. Consistent with current requirements, staff will return to the Board in July 2022 for adoption of any new or revised goals.

ADVANTAGES/DISADVANTAGES:

The advantages to establishing small business and local business goals is that staff would be able to actively pursue participation goals on federally funded and non-federally funded opportunities. Currently, SBE participation on federally funded opportunities occurs as a byproduct of not being able to directly establish DBE goals on contracts. Local business participation goals are not allowed on federally funded opportunities and are not currently sought on non-federally funded opportunities.

The sole disadvantage to establishing small and local business goals is that once they are established, any attempt to remove or eliminate the goals would be seen as unfriendly toward the small business and local community.

ALTERNATIVES ANALYSIS:

Staff considered three possible alternatives:

1. Do nothing and continue with the current practice. While the previous data shows that both small and local businesses have received contracting opportunities, local business participation was achieved by pure luck. Not establishing a separate local business goal means the District will continue to rely on an organic market to ensure that local businesses succeed in getting sufficient opportunities. Not establishing a separate small business goal means that any small business participation on District contracts will be tied to the District's FTA Triennial DBE goal. The current goal is 10% but could increase or decrease depending upon future federally funded contracting opportunities. There is no SBE goal on non-federally funded contracts and therefore no mechanism to ensure that District continues to advocate for and ensure small business participation on all District contracting opportunities.
2. Only set a local business contracting goal. Doing this would be a significant first step in garnering local business participation on the District's contracting opportunities. Unfortunately, local businesses come in all sizes and as mentioned in the first alternative, it still leaves absent any mechanism for ensuring small business participation on non-federally funded contracting opportunities.
3. Do nothing and request staff to conduct a full analysis of small and local business participation. As mentioned, the data in the above tables does not include all District contracts and purchase orders. Therefore, this, in essence, would be equivalent to conducting a disparity study similar to that performed to analyze DBE participation. The District does not have the staff resources to conduct the analysis and therefore it would be contracted out ensuring a time-consuming, labor extensive, and very costly process. What staff recommends is aligning both the small business and local business goals with the current DBE goal at 10%, and then going through the more manageable process of resetting the goals based on future opportunities in the same three year periods as the FTA DBE Triennial goal.

PRIOR RELEVANT BOARD ACTION/POLICIES:

SR19-199 Disadvantaged Business Enterprise (DBE) Goal for Fiscal Years 2020 - 2022

Board Policy 460: Disadvantaged Business Enterprise (DBE) Policy

Board Policy 466: Small and Small Local Business Enterprise Policy

ATTACHMENTS:

None.

Prepared by:

Phillip J. L. Halley, Acting Program Manager, Contracts Compliance

Approved/Reviewed by:

Lynette Little, Director of Civil Rights & Compliance

Jill A. Sprague, General Counsel