

Summary of Policy

The purpose of the Disadvantaged Business Enterprise (DBE) Program is to ensure non-discrimination on the basis of race, color, gender, religion, or national origin in the award and administration of federally funded contracts and create a level playing field on which DBEs can fairly compete. It is our policy to promote the utilization of DBEs. The DBE Program identifies eligible DBE firms that are ready, willing, and able to participate on Federal Transit Administration and Federal Highway Administration-assisted contracts. It also strives to eliminate other barriers that may prevent DBEs from doing business with the agency.

The annual percentage of DBE participation is determined by the number of available DBEs divided by the number of available businesses in the geographic procurement market and weighted against the percentage of federal funds projected for the fiscal year. To involve executive management in meeting the DBE Annual Goal, the Chief Executive Officer was directed by the Board to implement a Shared Responsibility Program. This program clearly defines executive management's commitment to the DBE program and the agency-wide goals and objectives.

In 2003, Caltrans, our authorized local Federal Highway Administrator, changed its procedure to not accept a combined annual DBE goal for highway and transit contracts. As a result, we are required to submit separate annual goals.

At its July 2005 regular meeting, the Board approved 8% as the Federal Transit Administration (FTA) DBE Annual Overall Program Goal and 8% as the Federal Highway Administration (FHWA) DBE Annual Overall Goal for Fiscal Year 2006.

Historical Perspective

The U.S. Department of Transportation's (USDOT) DBE program was created in 1983 during the Reagan administration. Critics of the program challenged its constitutionality on numerous occasions, leading ultimately to a Supreme Court decision in 1995 that held federal racial classifications must serve a compelling governmental interest and must be narrowly tailored to further that interest. Congress redrafted the legislation so that it promoted a level playing field without violating the U.S. Constitution. In January 1999, the Department issued a new final regulation to guide USDOT recipients in the administration of the DBE program. To become certified as a DBE under federal guidelines, a small business must be at least 51% owned, controlled, and managed by one or more socially and economically disadvantaged individuals. Federal regulations presume that the following groups are socially and economically disadvantaged: African Americans, Hispanic Americans, Portuguese Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans, women, and any other individuals found to be socially and economically disadvantaged by the Small Business Administration (SBA).

In August 1999, the Board adopted a motion to revise the DBE program so that it is clearly race neutral and will not be confused with a "set aside program." It created a "prompt payment and retention" requirement and a process for enforcing it. The Board also agreed to revise the Good Faith Effort criteria, which would increase points for attending pre-bid and pre-proposal meetings. Finally, it modified the DBE certification eligibility requirements.

Disadvantaged Business Enterprise

In October 1999, the Board adopted a motion to bolster efforts at identifying and assisting disadvantaged small businesses to become certified as Disadvantaged Business Enterprises (DBE) or Small Business Enterprises (SBE). The motion requires holding seminars that help small businesses understand how to negotiate the pre-qualification process and interpret relevant procurement documents. It also requires rotation of the DBE and SBE vendor solicitations to increase the number of businesses that can bid on projects.

In June 2002, the Board approved revisions to the DBE Program modeled on the USDOT sample program to improve flexibility and efficiency. The revised program includes an updated DBE Program Objectives/Policy Statement signed by the CEO, which affirms the commitment to implement the pertinent requirements of 49 CFR Part 26.

The agency has the authority to determine its organizational structure and to exercise the authorities and responsibilities necessary for the performance of its goals and objectives. The authority includes the discretion to exclude any contractor, who is debarred pursuant to the debarment procedure of the agency's Administrative Code Chapter 4 § 10 or suspended based upon the suspension procedure of the Administrative Code Chapter 4 § 10, or a contractor who appears on any suspended, excluded or debarment list by any local, state or federal government.

The FY06 budget comprises a total of \$20.3 million in new Department of Transportation-assisted contracts. Of this amount, the agency anticipates awarding \$12.7 million with potential DBE opportunities. The FY06 budget identifies twenty-five new capital projects, of which three or 12% are FTA-assisted, with the

remaining percentage state and locally funded.

In FY06, the agency anticipates awarding one contract with DBE opportunities in the amount of \$1.3 million in FHWA-assistance. This is a carryover contract that was not included in the FY05 annual goal but was not awarded. As such, no new FHWA-assisted contracts were identified in the FY06 budget.

Last Board Action

July 28, 2005 – Disadvantaged Business Enterprise Program

The Board approved on consent calendar:

- A. 8% as the Federal Transit Administration Disadvantaged Business Enterprise Annual Overall Goal for Federal Fiscal Year 2006; and
- B. 8% as the Federal Highway Administration Disadvantaged Business Enterprise Annual Overall Goal for Federal Fiscal Year 2006.

See Related

Administrative Code, Chapter 4 §10, Debarment & Suspension

[Small Business Enterprise](#)

[Small Business Technical Participation](#)

California Constitution Article 1 § 31

Code of Federal Regulation 49 Part 26

Public Utilities Code § 130051.19

Public Utilities Code § 130239

U.S. Department of Transportation