



February 12, 2025

To: Finance and Administration Committee
From: Darrell E. Johnson, Chief Executive Officer
Subject: Disadvantaged Business Enterprise Program Update

Overview

On April 9, 2024, the United States Department of Transportation issued a Final Rule that introduced significant amendments to Disadvantaged Business Enterprise Program regulations. As these changes are significant, the Orange County Transportation Authority must update its Disadvantaged Business Enterprise Program to align with the new regulations and submit it for approval by the Board of Directors.

Recommendation

Adopt the proposed revisions to the Orange County Transportation Authority's Disadvantaged Business Enterprise Program and direct staff to implement the recommended changes.

Background

The Orange County Transportation Authority (OCTA) is a direct recipient of federal transit funds from the United States Department of Transportation (U.S. DOT). As a condition of receiving these funds, OCTA is required to maintain a Disadvantaged Business Enterprise (DBE) Program in compliance with federal regulations outlined in Title 49 Code of Federal Regulations (CFR) Part 26 and related guidance.

On April 9, 2024, the U.S. DOT issued a Final Rule that introduced significant amendments to the DBE Program regulations. As the Final Rule constitutes a significant change to the DBE Program, agencies who receive federal funds are required to submit an updated DBE Program plan that conforms to the Final Rule for approval.

The updated program must incorporate substantial changes introduced by the Final Rule, including new provisions related to prompt payment, monitoring, counting DBE participation, reporting requirements, bidders list collection, active participants list collection, and revised program definitions. This update is critical to ensure compliance with federal regulations and continued eligibility for U.S. DOT funding. OCTA has long maintained a proactive approach in the implementation of its model DBE Program. This approach includes the development and implementation of mechanisms, including an electronic reporting and monitoring system, that positions OCTA to seamlessly and efficiently address the mandated changes to the DBE Program without a significant budgetary impact.

The updated DBE Program incorporates all mandated changes introduced by the Final Rule and complies with the requirements and obligations of the regulations set forth in Title 49 CFR Part 26. OCTA will bring the DBE Program back to the Board of Directors for approval in the event of subsequent changes or amendments to the DBE regulations that require significant modifications or changes to the implementation of OCTA's DBE Program.

Discussion

In response to the U.S. DOT Final Rule, OCTA has modified, updated, expanded and/or realigned its DBE Program to meet new regulatory requirements that direct recipient agencies must implement. These changes serve to address the new regulatory requirements and enhance program effectiveness, underscoring OCTA's commitment to uphold the U.S. DOT's DBE Program goals and objectives and foster opportunities for DBE participation in its federal-aided projects.

Key Program Modifications

To align with the Final Rule, the recommended updates to the DBE Program incorporate the following requirements:

- **Bidders List:** Bidders List modified to include the newly required collection of majority owner demographics. The Final Rule also imposes direct recipient agencies to enter the Bidders List data required to be collected into a centralized, searchable database as specified by the Federal Transit Administration (FTA). The Bidders List shall be collected from all bidders/proposers for OCTA's federally assisted contracts with their bids or initial proposal response.
- **State DBE Certification Criteria:** Program modified to include a link to the California Unified Certification Program (CUCP) to enable direct access to current DBE certification eligibility standards and requirements.

- **Pre-Award Commercially Useful Function (CUF) Validation:** Pre-award process shall include validation that proposed suppliers, manufacturers, and brokers meet CUF standards and DBE crediting eligibility requirements prior to contract award.
- **Transit Vehicle Manufacturer (TVM) Definition:** The definition of TVM was revised by U.S. DOT for clarity of application.
- **Decertification Adjustments:** DBE credit may be counted toward the contract-specific DBE goal and OCTA's overall DBE goal for work performed after a DBE's loss of certification post-award. If a DBE is decertified after a contract is awarded, its work may still count toward the project's DBE participation goals and OCTA's overall DBE goal, provided that specific conditions outlined in federal regulations are met. Previously, prime contractors could only receive DBE credit for the initial contract and any change orders or amendments executed before decertification. Under the Final Rule, a prime contractor may add work or extend an executed subcontract with a decertified firm only if they obtain prior, written consent from the recipient agency. If a DBE becomes ineligible due to a purchase by or merger with a non-DBE firm, its participation cannot be counted toward DBE contract goals or OCTA's overall DBE goal.

Program Expansion

To enhance accessibility and ensure compliance with the Final Rule, the DBE Program has been expanded in the following areas:

- **Expanded Definitions:** Updated to align with U.S. DOT definitions.
- **DBE Directory:** Program includes a link to expanded CUCP directory designed to improve prime contractors' accessibility to DBEs, including those in other states.
- **Post-Award Prompt Payment Monitoring:** Program implements enhanced and proactive monitoring mechanisms to ensure prime contractor compliance with prompt payment, including the release of retention to subcontractors.
- **Design-Build Provisions:** Inclusion of specific guidance for design-build projects.

Additional Updates

- Updated Policy Statement: Incorporates additional objectives delineated in the Final Rule.
- Subrecipient Procedures: Establishes consistent guidance for subrecipients on administrative and reporting requirements tied to federal assistance.

Program Realignment for Clarity and Organization

The DBE Program was realigned to improve implementation and efficiency, as follows:

- “Annual Review and Remedy Reports”: Moved from the “Administrative Requirements and Staffing” section to the “Record Keeping Requirements” section, as it encompasses data relevant to record keeping and reporting.
- “Overconcentration”: Moved from “Administrative Requirements and Staffing” to the “Goals, Good Faith Efforts, and Counting” section, as it is relevant to OCTA’s DBE goal setting process.
- “Authority Written Certification”: Including CUF validation and pre-contract close-out validations, moved from “Administrative Requirements and Staffing” to the “Post-Award Compliance and Enforcement Oversight” section as it is germane with the administration of compliance monitoring and enforcement.

These updates ensure OCTA's DBE Program meets federal requirements, expands opportunities for DBE participation, and improves accessibility for contractors and stakeholders. The updated program will be submitted to the FTA for review and approval before the March 1, 2025, deadline.

Summary

This report provides a high-level overview of the key changes the Orange County Transportation Authority must make to the Disadvantaged Business Enterprise Program. Staff recommends that the Board of Directors adopt the proposed revisions to ensure compliance with federal regulations and continued eligibility for U.S. DOT funding.

Attachment

- A. Orange County Transportation Authority Disadvantaged Business Enterprise (DBE) Program Manual, Redlined

Prepared by:



Pia Veasapen
Director, Contracts Administration and
Materials Management
(714) 560-5619

Approved by:



Andrew Oftelie
Chief Financial Officer,
Finance and Administration
(714) 560-5649