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**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
IMPLEMENTATION OF RACE-NEUTRAL MEASURES
TO ACHIEVE ANNUAL DBE GOAL**

Dear Small Business and Contracting Community:

In May 2005, the United States Court of Appeals for the 9th Circuit (“Court”) issued its decision on the *Western States Paving Co. v. United States & Washington State Department of Transportation* case. In short, the Court found that the Disadvantaged Business Enterprise (DBE) Program is constitutional on its face. However, the Court also determined that in order for federal recipients to establish DBE race-conscious goals (“contract goals”), it must be able to demonstrate evidence of discrimination or its effects and establish goals only for those groups demonstrated to have suffered discrimination. This decision applies to nine western states in the Court’s jurisdiction which includes California.

In response to the Court decision, the Federal Transit Administration (FTA) issued guidance which requires affected recipient agencies to use race-neutral measures as the primary method to meet its annual DBE goal if it does not have adequate evidence of discrimination within its transportation contracting industry. Race-neutral measures must be used until sufficient evidence is obtained. Currently, Metro uses both race-neutral measures and contract goals to achieve its annual DBE goal established each year.

Metro has recently reviewed its DBE program and annual goal process and has determined that it does not have sufficient evidence of discrimination or its effects to support the continued use of DBE contract goals. Therefore, in response to this guidance, Metro will modify the means used to achieve DBE participation on its FTA-assisted contracts.

Metro to Use Race-Neutral Measures

Effective October 1, 2006, Metro will suspend the use of DBE contract goals and will only utilize race-neutral measures to meet its annual goal. Metro will establish “DBE Anticipated Levels of Participation” (DALP) to identify the DBE participation that can reasonably be expected, given the size, scope of work and the availability of certified DBE firms on a given federal-assisted contract. However, meeting the DALP will not be a matter of responsiveness or a condition of award. Notwithstanding, Metro will continue to include a list of certified DBE firms in its solicitation documents generated as part of the DALP process. Bidders will be encouraged to use this list to identify ready, willing, and able DBEs to participate on Metro contracts.

Metro will Continue to Implement DBE Program

As mentioned above, the DBE Program is constitutional. Therefore, in compliance with the DBE Program Final Rule, 49 Code of Federal Regulations (CFR), Part 26, Metro will continue to implement its DBE Program, certify eligible firms as DBEs, and track DBE participation on its FTA -assisted contracts in order to ascertain whether Metro's annual DBE goal is being achieved.

The suspension of DBE contract goals does not affect Metro contracts that will be or have been awarded prior to October 1, 2006. Metro contractors that have committed DBE participation on existing contracts must continue to achieve their commitments or demonstrate good faith efforts. Metro will continue to monitor DBE participation on existing contracts and those with DALP participation for compliance with all other DBE Program requirements which include, but are not limited to, commercial useful function, prompt payment, and return of retainage.

Metro to Conduct Disparity Study

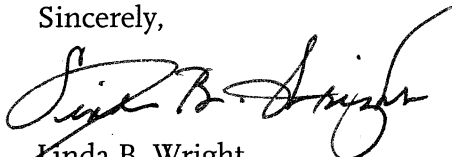
In response to FTA's guidance and to the Court's new evidentiary standards, Metro will begin the process to hire a consultant to conduct an independent disparity and availability study to determine if discrimination or its effects is present within Metro's contracting market. Metro anticipates that this study will take up to one year to complete. Upon completion of the study, Metro will evaluate the study results to establish the best path forward to achieve maximum DBE participation and to create a level playing field for DBEs to compete on Metro contracts.

FHWA Guidance

As you may know, in response to the Court's decision and under guidance issued by the Federal Highway Administration (FHWA), the California Department of Transportation (Caltrans) implemented a race-neutral DBE program effective May 1, 2006. Under this guidance, Metro is required to implement Caltrans' race-neutral program on its FHWA-assisted contracts. Caltrans has initiated its process to conduct a disparity study. Metro's FHWA-assisted contracts will follow Caltrans' race-neutral program until Caltrans completes its study and issues new requirements under its DBE program.

In closing, Metro thanks the small business and contracting community for your support during this interim period. Metro continues to strongly encourage the participation of DBE firms on Metro federal-assisted contracts.

Sincerely,



Linda B. Wright
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