DEPARTMENT OF TRANSPORTATION
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December 30, 2005

Metropolitan Planning Organizations
Regional Transportation Planning Agencies
Local Transportation Commissions
League of California Cities
California State Association of Counties

Dear Executive Director:

The California Department of Transportation (Department) has had a successful Disadvantaged Business Enterprise (DBE) program for years and remains committed to the DBE program.

This letter is to advise you that the Department is required by a recent Ninth Circuit Court of Appeals decision to consider amending its current DBE program. In response to this court ruling, the Department has begun a 45-day public comment period during which it invites the submission of evidence and information that may support the use of mixed components of race-conscious and race-neutral measures to achieve the overall goal. The public notice was issued on December 21, 2005, and is available at the following website address: http://www.dot.ca.gov/hq/LocalPrograms/. After consideration of comments received during the 45-day public comment period, the Department will determine whether it is able to continue with any level of a race-conscious program this fiscal year or whether it is necessary to revise the goals to state that the specified level of DBE participation will be achieved solely by race-neutral measures. (Later changed to 90-day) public comment period

We want to inform you of how the reassessment of the Department's DBE program will affect local agencies using federal-aid funds.

1. During the 45-day public comment period, local agencies should continue to use their race-conscious program and goals.
2. If the Department determines that it must revise its DBE program to be solely race-neutral, the Department anticipates that:
   - All local agencies will be required to immediately adopt and follow the statewide DBE program prepared by the Department. Local agencies will not be permitted to have, or to continue with, their own separate DBE programs, unless it has been approved directly by a federal agency. Local agencies are not required to go through a 45-day public participation period to initiate this change.
   - Local agencies shall no longer advertise or award contracts containing DBE race-conscious contract goals.

- Contracts with DBE race-conscious contract goals that have been opened but not awarded must be re-advertised with race-neutral contract language. The use of contract change orders to eliminate the race-conscious specifications is not acceptable.
- Contracts that have been advertised, but bids not yet opened, may proceed with an addendum specifying the race-neutral contract language and deleting any race-conscious goals.
- Contracts that were already awarded and approved prior to the Department's change to a race-neutral program will continue to be administered under the specifications and practices in place at the time of award. This includes DBE participation and substitution requirements.
- Local agencies will be required to continue collecting and reporting DBE participation commitments and final utilization on all contracts. Updated reporting forms will be provided.

The Department will prepare guidance for local agencies in the event a race-neutral program is adopted. In addition, information is being developed for posting on a website which will provide quick links to Frequently Asked Questions, new guidance, and update samples of race-neutral boiler plate specifications for contract documents.

The Department is undertaking a Disparity Study to identify and define the existence and scope of discrimination in the transportation contracting industry in California. The results of the Disparity Study will help the Department determine what percent of California's statewide DBE goal may be attained by the use of race-conscious measures, such as individual contract goals, if appropriate.

We will keep you informed as information becomes available. If you have any questions, please contact your District Deputy Director for Planning or District Local Assistance Engineer.

Sincerely,

WILL KEMPTON
Director

c: Bruce Behrens, Chief Counsel
Mark DeSio, Deputy Director, External Affairs
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