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Memorandum

TO: Administration Committee

DATE: April 1, 2009

FR: Executive Director

W. I. 1153

RE: FY 2008-09 Disadvantaged Business Enterprise (DBE) Program Update

This report summarizes significant changes to the statewide Disadvantaged Business Enterprise (DBE) Program effective June 2, 2009, and requests authorization for the Executive Director to (1) execute a new DBE Implementation Agreement for Local Agencies with Caltrans, and (2) implement measures to comply with the program changes.

DBE Program Update

In May, 2005, the U.S. Ninth Circuit Court of Appeals in Western States Paving Co., Inc. v. Washington State Department of Transportation (WSDOT) established new standards to justify the use of DBE goals in federally funded contracts. The court upheld the constitutionality of federal DBE regulations, but found that there was not conclusive evidence of discrimination to warrant contract-specific goals without supporting documentation such as a disparity study.

In May 2006, Caltrans implemented a statewide race-neutral DBE program pending the results of a more comprehensive disparity study. According to Caltrans, sub-recipients receiving federal funding from Caltrans (FHWA and FTA) could no longer have their own separate DBE program, unless approved directly by the US DOT. Because of the change to a race-neutral DBE Program, sub-recipients were also no longer allowed to stipulate contract goals for any federally funded agreements executed May 1, 2006 or thereafter. MTC staff, working with other transportation partner agencies, implemented a race-neutral DBE program, focusing on business outreach, networking events with prime contractors and agency procurement officers, a monthly newsletter that included upcoming procurement opportunities, and direct referral of DBEs to prime contractors. Staff also works with the MCAC Sub-committee on Contracting to identify ways to achieve greater participation of DBEs and local/small business participation in MTC contracts.

In June 2007, Caltrans finalized a state-wide disparity study that revealed statistically significant underutilization of four of the six DBE groups: 1) African Americans; 2) Asian Pacific Americans; 3) Native Americans; and 4) Women. Two of the six DBE groups were found to be at or near parity: Hispanic and Sub-continent Asian Males. The findings revealed that Caltrans should return to a race conscious program to address underutilization.

On February 25, 2009, FHWA approved a statewide DBE Goal for Federal Fiscal Year as follows:

13.5% Overall Goal

- 6.75% Race Neutral
- 6.75% Race Conscious/Contract Goals

Contract goals are limited to the four Underutilized Disadvantaged Business Enterprise (UDBEs) noted above.

On March 4, 2009, Caltrans notified local agencies of the following mandatory changes to the statewide DBE program:

- No later than June 2, 2009, MTC is required to execute the new Caltrans DBE Implementation Agreement for Local Agencies to establish race conscious means or contract goals for meeting the overall statewide annual DBE goal.

- After June 2, 2009, contracts that do not meet the new requirements will be ineligible for federal funding.

With the recent enactment of the American Recovery and Reinvestment Act (ARRA) of 2009 and the consequent increase in transportation contracting opportunities, there is an urgency for Caltrans and all sub-recipients to comply with the DBE program changes.

Staff recommends that the Administration Committee authorize the Executive Director to execute the implementation agreement and implement all changes necessary to comply with the new program.

Steve Heminger

SH: TG/DR
Attachment
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