TECHNICAL ADVISORY COMMITTEE

DRAFT AGENDA

DATE: April 28, 2011
TIME: 9:00 a.m. – 12:00 p.m.
LOCATION: Imperial Irrigation District (IID)
Water Control Conference Room (WCC)
333 East Barioni Blvd.
Imperial, CA 92251

Chairperson: Veronica Atondo                        Vice-Chair: Joel Hamby

PUBLIC COMMENTS
Any member of the public may address the Committee for a period not to exceed three minutes on any item of interest not on the agenda within the jurisdiction of the Committee. The Committee will listen to all communication, but in compliance with the Brown Act, will not take any actions on items that are not on the agenda.

DISCUSSION/ACTION ITEMS

1.  Introductions

2.  Adoption of the minutes for February 24, 2011  
Requesting a motion to adopt  
ACTION
Page 3

3.  Imperial County Disadvantaged Business Enterprise (DBE) and Underutilized Disadvantaged Business Enterprise (UDBE) Program, Regional Base Figures for Federal Fiscal Year (FFY) 2011-12  
DISCUSSION
Page 6

4.  SCAG Updates / Announcements  
-Presented by Rosanna Bayon Moore  
DISCUSSION

**An External Team Building – Caltrans/Imperial County Workshop will be held immediately following the TAC meeting. See attached draft agenda.**  
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CITIES OF BRAWLEY, CALEXICO, CALIPATRIA, EL CENTRO, HOLTVILLE, IMPERIAL, WESTMORLAND, IMPERIAL IRRIGATION DISTRICT AND COUNTY OF IMPERIAL
5. Adjournment

Next Meeting of the ICTC Technical Advisory Committee (TAC) will be scheduled for May 26, 2011. For any questions or comments please call Cristi Lerma at (760) 592-4494 or email at cristilerma@imperialctc.org.
TECHNICAL ADVISORY COMMITTEE
DRAFT MINUTES

February 24, 2011

Present:

Ana Gutierrez       City of Brawley
Veronica Atondo (Chair)  City of Calexico
Bill Brunet       County of Imperial

Others:

Kathi Williams     ICTC
Cristi Lerma       ICTC
Sandi Flores       ICTC
Luis Medina        Caltrans
Nadine Martin      Caltrans
Rosanna Bayon Moore SCAG
Sam Corbett        Alta Planning

1. Call to order by Chairperson Veronica Atondo at 10:20 a.m. A quorum was not present. Introductions were made.

2. January 27, 2011 minutes were not adopted because a quorum was not present.

3. ICTC Staff Updates / Announcements

Ms. Williams had the following announcements and updates:

- The Short Range Transit Plan (SRTP) Consultants held a Kick-off meeting on Tuesday, February 22, 2011. ICTC staff referred AECOM consultants to staff from the Cities to assist in conceptual planning questions and data collection. AECOM staff is bilingual and are very excited to be working on this project.

- PMC Consultants Derrick Wong and Rick Williams visited our offices in the middle of February. If agencies are receiving TDA funds, the team will contact city staff and ask about the administrative process. They should have a draft report in April, the final in May and should be presented to the Commission in June for approval.

- The STIP consultant is working with ICTC Staff in completing paperwork for Transportation Enhancement (TE) Funds for projects in both the cities of Brawley and El Centro. A
Conference call is scheduled for Friday, February 25, 2011 to discuss completion and filing of proper documents and paperwork.

4. Caltrans Staff Updates / Announcements

Mr. Medina’s updates and announcements included:
- Mr. Medina provided information regarding the city obligation plans and provided a handout to all attendees. An update is due to Sacramento by April 1, 2011. There has been no update since December 2010. Mr. Medina suggested that if we can spread out obligations within the next 6 months that would be helpful. Caltrans has received only 3 obligation plans.
- As a reminder, RSTP and CMAQ funds needs to be obligated by the Federal Fiscal Year, which is in September. Mr. Brunet mentioned that the County should have an idea by next week as to their obligations.
- Ms. Martins stated that March 1st is the eligibility review for the Winterhaven & Arraz projects.
- Ms. Martins addressed the ICTC project of two (2) hybrid vehicles. Caltrans will look into the possible need for an audit. She believes any federal money needs an audit.
- Mr. Medina mentioned that Ms. Martins is organizing a retirement lunch on April 29th for Kathy Buell’s retirement.
- Mr. Medina stated that there are some delays in accounting, due to a switch to a more sophisticated program and the training associated with it. As a result Caltrans accounting is backlogged on processing finance letters and therefore invoices are being delayed. Holtville is high priority; they have two (2) projects on hold. Also, Imperial has an invoice on hold on one project. Caltrans will follow up with both those cities through email. Mr. Gojuangco has advised the accounting office to expedite payment to the three projects on high priority to keep those agencies from going on the inactive list.
- Caltrans will hold an External Relations meeting on March 24th, after the TAC meeting. Mr. Brunet suggested not holding the External Relations meeting on March 24th due to a possibility of low attendance because there is an event out of town that day for Public Works Management. Mr. Medina informed us that we might need to move the TAC meeting in March to the following Thursday; 2nd Thursday or 4th Thursday in April.
- Mr. Medina stated that the Safe Route to School program is coming in April. Caltrans staff is planning on providing a training session for the Safe Routes to School program, along with trainings on DBE and invoicing sometime thereafter.

5. SCAG Updates / Announcements

Ms. Bayon Moore’s updates and announcements included:
- Ms. Bayon Moore stated that the tentative office move is scheduled for March 22, 2011. A large meeting space will be available for ICTC, SCAG, and IVEDC staff.
- The Countywide GIS Committee had a meeting chaired by the Assessor’s Office. SCAG is encouraging agencies to communicate in GIS format. The pilot program SCAG launched years back is now a permanent program for SCAG. Since the pilot program began there have been two updates to the GIS. Ms. Bayon Moore stated that SCAG has dollars for a new aerial with high resolution and staff is currently looking at ways to modify the scope for an RFP. If member agencies want the higher resolution GIS product, it will mean that only the urbanized areas will be GIS formatted. The Assessor’s Office is pushing for high resolution.
- Ms. Bayon Moore is scheduling meetings with local agencies to talk about the SCAG General Assembly that will take place the first week of May in La Quinta. SCAG will cover the registration and one night accommodations for one elected official for each city that wishes to attend.
- 2011 Compass Blueprint Recognition Awards will be presented in recognition of projects that demonstrate excellence and achievement in the four key elements of Compass Blueprint planning: Livability, Mobility, Prosperity and Sustainability. The deadline for nomination submission is: Tuesday, March 15, 2011 at 2:00 pm.
- The next scheduled training of the Tool Box Tuesday’s sessions will be on March 22 from 10:00 am – 1:00 pm. The topic will be Economic Development for Planners.
- For any questions on any of these announcements you can contact Ms. Bayon Moore at moorer@scag.ca.gov.

6. General Discussion

- Mr. Sam Corbett from Alta Planning & Design introduced himself to the group. Mr. Corbett was invited to attend the TAC meeting by Mr. Mark Baza to address possible data needs for an updated Master Bicycle Plan study his firm is conducting on the County’s master bicycle plan. Mr. Corbett explained that Bicycle Transportation Account (BTA) funds would be available for the County of Imperial when the study has concluded. According to Caltrans regulation each cities/counties Master Bicycle Plan must be updated every five years. Because of this, Imperial County has not been eligible to apply as of late.
- Mr. Corbett stated that his firm would like to review all City Bicycle Plans and develop a comprehensive, seamless network throughout the county. Ms. Bayon Moore stated that she can assist him in obtaining this data.
- Mr. Corbett is in the process of coordinating a public outreach workshop and is scheduled for April 18th. Some of the key aspects to be discussed are bike racks, end of trip facilities, surveys and a project website. Another round of public outreach will be done once the plans been drafted, possibly end of summer or early fall. The project website is http://www.imperialcountybicyclemasterplan.com
- Ms. Bayon Moore suggested that Mr. Corbett create a flyer to distribute at the Tour de Manure bike race scheduled to take place in El Centro on Saturday, February 26th.
- Mr. Brunet announced that Mr. Frank Fiorenza is leaving the County after 19 years of service, and is going to work for the IID.

7. The next meeting for the ICTC TAC was tentatively set for March 24, 2010 at the IID Water Control Conference Room at 10:00 a.m.

Meeting adjourned at 11:30 a.m.
IMPERIAL COUNTY
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

REGIONAL BASE FIGURE
FISCAL YEAR 2011/2012

IMPERIAL COUNTY TRANSPORTATION COMMISSION
940 W. MAIN STREET, SUITE 208
EL CENTRO, CA 92243-2875
PHONE: (760) 482-4290
FAX: (760) 352-7876
Imperial County Transportation Commission
Disadvantaged Business Enterprise (DBE)
Regional Base Figure FY 2011-2012

The Imperial County Transportation Commission (ICTC) is committed to carrying out all of the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR 29 “Participation by Disadvantaged Business Enterprises in the Department of Transportation, and Federal Transit and Aviation Administration Programs”.
Step 1:

Calculation of the Base Figure to Establish Relative Availability of DBEs and UDBEs

The process of determining the base figure of relative availability of DBEs and UDBEs in the Imperial County region is intended to allow local jurisdictions and agencies to examine various sets of data relative to their contracting program and processes, with a particular focus on procurement needs. Table 1 and Attachment A represents the Imperial County region’s projected FHWA funded contracts and expenditures for fiscal year 2011/2012, based on the Southern California Association of Governments – Imperial County Local Highway Listing – Adopted 2011 Federal Transportation Improvement Program – Including Amendments 1-2 and 4-5 (February 22, 2011).

Table 1
FHWA Funded Contracts and Expenditures
Imperial Region, FY 2011/2012

<table>
<thead>
<tr>
<th>Work Category</th>
<th>Estimated Dollar Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>$ 1,900,000</td>
</tr>
<tr>
<td>Right of Way</td>
<td>$ 0</td>
</tr>
<tr>
<td>Construction</td>
<td>$ 6,059,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$ 7,959,000</strong></td>
</tr>
</tbody>
</table>

Using a local jurisdictions’ or regional geographic base determines the base figure of relative availability of DBEs and UDBEs. To arrive at the Imperial County regional base figure, the following resources were used:

1. The California Uniform Certification Program (CUCP) Database identifies year to date DBE and UDBEs firms ready willing and able to do business in Imperial County area. San Diego, Imperial and Riverside counties were used to arrive at our numerator. Using thirty-five percent (35%) of the San Diego and Riverside regions’ firms.

2. The 2008 Census Bureau's County Business Patterns – California (CBP) provides a list of all firms ready willing and able to do work in San Diego, Riverside, and Imperial County. The North American Industrial Classification System (NAICS) were used to identify work to correspond with CUCP’s work category codes. To arrive at our denominator that includes certified DBE, UDBE and non-DBE firms.
To arrive at the relative availability of DBEs and UDBEs, the number of DBEs and UDBEs available from the CUCP List of Certified DBEs was divided by the number of all comparable CBP firms available (Table 2 and Attachment B).

### Table 2
**Base Figure of Relative Availability of DBEs/UDBEs**
Imperial County, FY 2011/2012

<table>
<thead>
<tr>
<th>Class Description</th>
<th>Available Certified DBE Firms</th>
<th>Available Certified UDBE Firms</th>
<th>Number of Available CBP Businesses</th>
<th>Base Figure (Percentage of DBEs Available)</th>
<th>Base Figure (Percentage of UDBEs Available)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>111.75</td>
<td>13.85</td>
<td>3310.9</td>
<td>3.38%</td>
<td>0.40%</td>
</tr>
<tr>
<td>Right of Way</td>
<td>44.55</td>
<td>2.40</td>
<td>479.45</td>
<td>9.29%</td>
<td>0.50%</td>
</tr>
<tr>
<td>Construction</td>
<td>29.65</td>
<td>4.8</td>
<td>378.75</td>
<td>7.83%</td>
<td>1.30%</td>
</tr>
</tbody>
</table>
To derive factor weights, in terms of percentage of total funding, the estimated project expenditures for each NAICS work category were divided by the total estimated project expenditures for FY 2011/2012 (Table 3 and Attachment A).

<table>
<thead>
<tr>
<th>Work Category</th>
<th>Estimated Expenditure on Projects</th>
<th>Factor Weights (Percentage of Total Estimated Expenditure)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Preliminary Engineering</td>
<td>$ 1,900,000</td>
<td>24.0%</td>
</tr>
<tr>
<td>Right of Way</td>
<td>$ 0</td>
<td>0.0%</td>
</tr>
<tr>
<td>Construction</td>
<td>$ 6,059,000</td>
<td>76.0%</td>
</tr>
<tr>
<td>Total Expenditure</td>
<td>$ 7,959,000</td>
<td>100%</td>
</tr>
</tbody>
</table>

**DBEs**

To calculate the overall base figure of relative availability of DBEs in the Imperial region, the relative availability of DBEs for each SIC/NAICS work category was multiplied by the factor weight for each SIC/NAICS work category. These results were summed to give the overall base figure.

\[
\text{Base Figure} = \left( 0.240 \times \frac{111.75}{3310.9} \right) + \left( 0 \times \frac{44.55}{479.45} \right) + \left( 0.760 \times \frac{29.65}{378.75} \right)
\]

\[
\text{Base Figure} = \left( 0.008101 \right) + \left( 0 \right) + \left( 0.059496 \right)
\]

\[
\text{Base Figure} = 0.0675 \approx 6.75\%
\]

Based on the information presented in the report, it is proposed that the Imperial County’s Regional DBE Base Figure for federal FY 2011-2012 be established at 6.75%.
To calculate the overall base figure of relative availability of UDBEs in the Imperial region, the relative availability of UDBEs for each SIC/NAICS work category was multiplied by the factor weight for each SIC/NAICS work category. These results were summed to give the overall base figure.

\[
\text{Base Figure} = \left( \frac{0.240}{X} \times 13.85 \right) + \left( \frac{0.0}{X} \times 2.40 \right) + \left( \frac{0.760}{X} \times 4.80 \right)
\]

\[
\text{Base Figure} = \left( 0.001004 \right) + \left( 0 \right) + \left( 0.009632 \right)
\]

\[
\text{Base Figure} = 0.0106 \equiv 1.06\%
\]

Based on the information presented in the report, it is proposed that the County’s Regional UDBE Base Figure for federal FY 2011-2012 be established at 1.06%.

**Step 2:**

**Adjustment to the Base Figure**

The Cities of Brawley, Calexico, Calipatria, El Centro, Holtville, Imperial and Westmorland, and the County of Imperial will review and assess other known relevant evidence to determine what additional adjustments, if any, were needed to adapt the Base Figure to the three-county area marketplace.
## IMPERIAL COUNTY REGION
### Federally Funded Transportation Projects
#### Fiscal Year 2011 - 2012

<table>
<thead>
<tr>
<th>Agency</th>
<th>Project ID</th>
<th>Funding Source</th>
<th>Description</th>
<th>Federal Dollars</th>
<th>PE</th>
<th>CON</th>
<th>R-W</th>
<th>%</th>
</tr>
</thead>
<tbody>
<tr>
<td>Brawley</td>
<td>IMP080903</td>
<td>STP</td>
<td>Asphalt of River Dr.</td>
<td>$200,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Brawley</td>
<td>IMP071202</td>
<td>STP</td>
<td>In Brawley At Cattle Call Park, From</td>
<td>$725,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$925,000</td>
<td>12%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calexico</td>
<td>IMP090701</td>
<td>DEMO-</td>
<td>Develop Bicycle Paths and Public Park</td>
<td>$1,600,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calexico</td>
<td>IMP080904</td>
<td>STP</td>
<td>Seismic Bridge Evaluation Study</td>
<td>$200,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calexico</td>
<td>IMP091001</td>
<td>FFY 2009</td>
<td>Cesar Chavez Blvd/Calexico West POE</td>
<td>$2,850,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$4,650,000</td>
<td>58%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>El Centro</td>
<td>IMP080905</td>
<td>STP</td>
<td>Imperial Ave. Overlay with</td>
<td>$674,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$674,000</td>
<td>8%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holtville</td>
<td>IMP080906</td>
<td>STP</td>
<td>SR 115 and 5th Street Improvements</td>
<td>$300,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Holtville</td>
<td>IMP090501</td>
<td>DEMO-</td>
<td>Improve Bridge 58-7 on SR 115 that</td>
<td>$800,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$700,000</td>
<td></td>
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<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$1,100,000</td>
<td>14%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Imperial County</td>
<td>IMPL507</td>
<td>BRIDGE</td>
<td>Bridge Rehabilitation and Reconstruction</td>
<td>$310,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$310,000</td>
<td>4%</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Westmorland</td>
<td>IMP 090907</td>
<td>STP</td>
<td>North Center Street Pavement Rehabilitation</td>
<td>$300,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>$300,000</td>
<td>4%</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Dollars** $7,959,000

- **Preliminary Design** $1,900,000 24%
- **Right of Way** $0 0%
- **Construction** $6,059,000 76%

**TOTAL** $7,959,000 100%

*Based on the Southern California Association of Governments – Imperial County Local Highway Listing – Adopted 2011 Federal Transportation Improvement Program – Including Amendments 1-2 and 4-5 (February 22, 2011).*
# IMPERIAL COUNTY REGION

## Availability of DBE, UDBE and non DBE Firms by Industrial Classification

### Step 1 of Base Figure

<table>
<thead>
<tr>
<th>Description</th>
<th>DBE Firms</th>
<th>UDBEs</th>
<th>All Firms (DBE &amp; non-DBE Firms)</th>
<th>Percent of Availability DBE</th>
<th>Percent of Availability UDBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Computer System Design and Related Services</td>
<td>10.75</td>
<td>4.8</td>
<td>723.95</td>
<td>1.48%</td>
<td>0.66%</td>
</tr>
<tr>
<td>Architectural Engineering &amp; Services</td>
<td>10.4</td>
<td>0</td>
<td>627</td>
<td>1.66%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Research and Develop in the Physical, Engineering, and Sciences</td>
<td>3.4</td>
<td>0</td>
<td>229.7</td>
<td>1.48%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Environmental Engineer</td>
<td>17.3</td>
<td>0</td>
<td>444.55</td>
<td>3.89%</td>
<td>0.00%</td>
</tr>
<tr>
<td>Other Scientific and Technical Consulting Services</td>
<td>28.9</td>
<td>2.8</td>
<td>465.35</td>
<td>6.21%</td>
<td>0.60%</td>
</tr>
<tr>
<td>All Other Pro, Scientific, and Tech. Services</td>
<td>30</td>
<td>5.2</td>
<td>112.80</td>
<td>26.60%</td>
<td>4.61%</td>
</tr>
<tr>
<td>Testing Laboratories</td>
<td>11</td>
<td>1.05</td>
<td>664.95</td>
<td>1.65%</td>
<td>0.16%</td>
</tr>
<tr>
<td>Management Consulting Services</td>
<td>11</td>
<td>1.05</td>
<td>664.95</td>
<td>1.65%</td>
<td>0.16%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>111.75</strong></td>
<td><strong>13.85</strong></td>
<td><strong>3310.9</strong></td>
<td><strong>3.38%</strong></td>
<td><strong>0.40%</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Description</th>
<th>DBE Firms</th>
<th>UDBEs</th>
<th>All Firms (DBE &amp; non-DBE Firms)</th>
<th>Percent of Availability DBE</th>
<th>Percent of Availability UDBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>Right of Way Engineer</td>
<td>19.05</td>
<td>0</td>
<td>444.55</td>
<td>4.29%</td>
<td>0%</td>
</tr>
<tr>
<td>Mapping Services &amp; Surveyor</td>
<td>25.5</td>
<td>2.4</td>
<td>34.9</td>
<td>73.07%</td>
<td>2.4%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>44.55</strong></td>
<td><strong>2.4</strong></td>
<td><strong>479.45</strong></td>
<td><strong>9.29%</strong></td>
<td><strong>0.5%</strong></td>
</tr>
</tbody>
</table>
### CONSTRUCTION

<table>
<thead>
<tr>
<th>CALTRA Codes</th>
<th>CENS Codes</th>
<th>Description</th>
<th>DBE Firms</th>
<th>UDBEs</th>
<th>All Firms (DBE &amp; non-DBE Firms)</th>
<th>Percent of Availability DBE</th>
<th>Percent of Availability UDBE</th>
</tr>
</thead>
<tbody>
<tr>
<td>C8770</td>
<td>237310</td>
<td>Highway, Street, and Bridge Construction</td>
<td>14.2</td>
<td>1.05</td>
<td>48.45</td>
<td>29.31%</td>
<td>2.17%</td>
</tr>
<tr>
<td>C8790</td>
<td>237990</td>
<td>Other Heavy &amp; Civil Engineering Construction</td>
<td>13.75</td>
<td>2.4</td>
<td>29.55</td>
<td>46.53%</td>
<td>8.12%</td>
</tr>
<tr>
<td>C9801</td>
<td>238990</td>
<td>All Other Specialty Trade Contractors</td>
<td>0</td>
<td>0</td>
<td>246.1</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
<tr>
<td>F5510</td>
<td>423110</td>
<td>Automotive and Other Motor Vehicle Merchant</td>
<td>1.7</td>
<td>1.35</td>
<td>35.1</td>
<td>4.84%</td>
<td>3.85%</td>
</tr>
<tr>
<td>D3790</td>
<td>423440</td>
<td>Other Commercial Equipment Merchant</td>
<td>0</td>
<td>0</td>
<td>19.55</td>
<td>0.00%</td>
<td>0.00%</td>
</tr>
</tbody>
</table>

|                   |            | **Total**                                        |           |       | 378.75                          | **7.83%**                  | **1.3%**                    |

Average Percent of Availability: 7.83% DBE, 1.3% UDBE
March 30, 2011

To: ALL CITIES AND COUNTIES IN CALIFORNIA
METROPOLITAN PLANNING ORGANIZATIONS
REGIONAL TRANSPORTATION PLANNING AGENCIES

Dear Directors:

Subject: Disadvantaged Business Enterprise Program

On March 23, 2011, United States District Judge John A. Mendez of the Eastern District Federal Court in Sacramento, California, ruled that the California Department of Transportation’s (Caltrans) Disadvantaged Business Enterprise (DBE) Program was “clearly constitutional” and denied a request by Plaintiff Associated General Contractors, San Diego Chapter, that the Caltrans DBE Program be declared unconstitutional and halted.

As you are aware, Caltrans and local agencies receiving federal-aid from Federal Highway Administration (FHWA) must implement a DBE Program as a condition of receiving federal transportation funding annually. The DBE Program ensures a level playing field for disadvantaged and small businesses competing for public contracts.

In 2005, the Ninth Circuit Court of Appeals handed down a decision that provided new guidance to States on implementation of DBE Programs (Western States Paving vs. Washington State Department of Transportation). In accord with Ninth Circuit and FHWA direction, Caltrans conducted a Disparity Study (Study) to identify the existence and scope of discrimination, if any, in the highway transportation contracting industry in California. Local agencies contributed to the collection of data for the Study. The Study was completed in 2007 and identified significant disparities in the amount of contract dollars awarded to African American, Asian Pacific American, Native American and women-owned firms. To address those disparities, Caltrans proposed the use of certain measures in its contracting programs to remedy the situation. FHWA concurred in the findings and, in February 2009, approved Caltrans’ proposal to use both race-neutral and race-conscious means to address the situation.

The DBE Program as submitted to the FHWA includes an overall goal of 13.5 percent for DBE involvement. Race-conscious measures used in the program continue to be focused on those groups identified by race, ethnicity and gender where the Study provided evidence of disparate treatment.
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All DBEs and small businesses in California can be reassured that the DBE Program is resilient. Caltrans is currently advertising a Request for Proposal to update the 2007 Disparity Study. Once again, we will be calling local agencies to assist Caltrans in providing the required DBE Program utilization and availability data.

Your commitment to continue the mission to ensure the DBE Program is fair, equitable and constitutional is very much appreciated.

If you have any questions, please contact Mr. Tom Hicks, Disparity Study Coordinator, Office of Business and Economic Opportunity (OBEO), via telephone at (916) 445-0442 or via e-mail at tom_hicks@dot.ca.gov.

Sincerely,

[Signature]
CINDY McKIM
Director

c: Olivia Fonseca, Deputy Director, OBEO
    Martin Tuttle, Deputy Director, Planning and Modal Programs
    Denix Anbiah, Chief, Division of Local Assistance
    Tom Hicks, Disparity Study Coordinator, OBEO
## Revisions/Clarifications

### §26.5 What do the terms used in this part mean?
- Amends §26.5 by adding a definition to read as follows: "Home State" means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

### §26.11 What records do recipients keep and report?
- Amends §26.11 by adding a paragraph regarding the Uniform Report of DBE Awards or Commitments and Payments report with semi-annual due dates of:
  - June 1st
  - December 1st

### §26.31 What information must you include in your DBE directory?
- Revises §26.31 and the DBE directory requirements:
  - The address, phone number, and the type(s) of work the firm has been certified to perform as a DBE must be included in the listing.
  - Additionally, each type of work that a firm is eligible to be certified for must be listed using the most specific NAICS codes available.

### §26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- Revises §26.37 (b) for monitoring and enforcement to include:
  - A mechanism to ensure that work committed to DBEs at contract award is actually being performed by the DBEs to which the work was committed.
  - Written certification that the contracting records have been reviewed and the work sites have been monitored. Note: this may be done in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

### §26.39 Fostering small business participation.
- Adds §26.39 to subpart B:
  - In order to promote small business participation, include to the DBE program a contracting requirement that will assist small business competition, eliminate any obstacles, including unnecessary bundling of contract requirements that may prevent their participation as prime contractors or as subcontractors.
  - The following may be included, but not limited to:
    - Establish a race-neutral small business set-aside for prime contracts under a stated amount (e.g., $1 million).
    - For design-build or large contracts, require bidders to specify elements of the...
contract or specific subcontracts that a small business, including DBEs, can perform.
- For contracts that do not have DBE goals, require the prime contractor to provide subcontracting opportunities.
- Identify other ways for small businesses, including DBEs, to compete for and to perform prime contracts.
- In order to meet the portion of the overall race-neutral goal, ensure that small businesses, including DBEs, can perform on a reasonable number of prime contracts.

### §26.45 How do recipients set overall goals?
- Revises and adds to §26.45 once the percentage of overall goals has been established, it should be conveyed as follows:
  - In some cases, the FHWA, FTA or FAA may require the overall goal to be expressed as a percentage of funds for a specific grant, contract, or groups of contracts/grants. A project goal may be adjusted to reflect circumstances. If the overall goal is based on a contract or grant basis, it must be submitted for review. A description of the method used to establish the goal, including the base figure and calculations, and the portions of the overall goal expected to be met through race-neutral and race-conscious measures must be included in the submission for review.
    - A contract goal is an overall goal that must meet all the requirements pertaining to overall goals that cover the entire length of the project, should include a projection of the DBE anticipated participation during each fiscal year, and the funds for the contract goal are to be separated from the base of the overall goal.
  - If the overall goal is set on a fiscal year basis, it must be submitted to DOT by August 1st at three-year intervals. Although, the three-year goal may be adjusted to the period to which it applies. This adjustment must be submitted to the operating administration for review and approval, and it may be necessary to review the goal continually.

### §26.47 Can recipients be penalized for failing to meet overall goals?
- Adds to §26.47:
  - Pertaining to the Uniform Report, if the overall goals are less than what was committed, the following must be met:
    - Detailed reasoning for the difference between the overall goal set and the awards and commitments made.
    - Explanations on how to correct the problems in order to meet the goal for the next fiscal year.
    - Noncompliance occurs when the following is not met:
      - Analysis and corrective actions are not submitted in a timely manner.
      - FHWA, FTA, or FAA disapproves the analysis or corrective actions.
      - The corrective actions are not fully implemented.
If the reports states that current trends make it unlikely to achieve DBE awards and commitments, it may be required to modify the race-conscious/race-neutral measures.

§26.51 What means do recipients use to meet overall goals?

- Revises §26.51 to state:
  - (b) race-neutral means:
    - “Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses...”
  - (f) assurance that the DBE program is tailored to overcome discrimination:
    “If your approved projection...estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.”

§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

- Revise and add to §26.53 to state:
  - It is required that a prime contractor not terminate a DBE subcontractor listed without prior written consent. Including work that a prime contractor can perform with its own forces, or with a non-DBE firm, or another DBE firm.
  - Prior to the termination request, the prime contractor must notify the DBE, in writing, of the intent to terminate allowing for five days of response time in opposition of the rejection.
  - The prime contractor must have good cause in which to terminate the DBE firm. A good cause includes:
    - The DBE fails or refused to execute a written contract.
    - The DBE fails or refuses to perform the work consistent with normal industry standards.
    - The DBE fails or refuses to meet the prime contractor’s nondiscriminatory bond requirements.
    - The DBE becomes bankrupt or has credit unworthiness.
    - The DBE is ineligible to work because of suspension and debarment.
    - It has been determined that the DBE is not a responsible contractor.
    - The DBE voluntarily withdraws, with written notification, from the contract.
    - The DBE is ineligible to receive credit for the type of work required.
    - The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract.
  - Or other documented compelling reason.
§26.67 What rules determine social and economic disadvantage?

- Revise §26.67 (a)(2)(i) to read as follows:
  - “You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $1.32 million.”
- Revise §26.67 (iv) to read as follows:
  - “Notwithstanding any provision of Federal or state law, you must not release an individual’s personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter...” This information must be submitted to DOT in the event of a certification appeal proceeding.

§26.71 What rules govern determinations concerning control?

- Revise §26.67 (n) regarding control of DBE firms:
  - Certification must only be given for the specific types of work the DBE can perform.
  - To become certified for additional types of work, the DBE will need to demonstrate that the owners control the firm that performs that type of work. Although, the firm does not have to be recertified, only verification is necessary.
  - The works codes for the firm must be kept up-to-date and accurately reflect the work which the firm’s owners control. The DBE firm must provide detailed information to the certifying agency needed for the appropriate work codes to be applied.

§§26.73 What are other rules affecting certification?

- Revise §26.73 (b):
  - Certification must be based upon the evaluation of a firm on present circumstances.
  - A firm must not be denied certification based on the fact it is a new firm and has not completed contracts, obtained profits, or demonstrated success.
  - A firm is eligible for certification if it meets disadvantaged, size, ownership, and control requirements.

§26.81 What are the requirements for Unified Certification Programs?

- Amend §26.81 (g):
  - Remove the word “section” and add in its place the work “part”. Remove the period at the end of the last sentence and add the words “and shall revise the print version of the Directory at least once a year.”

§26.83 What procedures do recipients follow in making certification decisions?

- Remove and reserve §26.83 (e).
- Revise §26.83 (h) regarding DBE certification:
  - A DBE will remain certified until its certification has been removed.
  - Currently certified DBEs are not required to reapply for certification. Although, a certification Review, including on-site reviews, three years from the date of the most
recent certification, or sooner if appropriate, may be conducted. If there are grounds questioning the firm’s eligibility, an unannounced on-site review may also be conducted.

- Add §26.83 (l) and (m):
  - As a recipient or certifying agency, each DBE applicant must be advised within 30 days whether the application is complete or what additional information is required.
  - If the DBE has withdrawn its application before a decision has been issued, the application can be resubmitted at any time.
  - A waiting period may not be applied, but the reapplication may be placed at the “end of the line” behind other applications. The only exception that can be placed is, if a firm has an established pattern of frequently withdrawing applications.

### §26.84 How do recipients process application submitted pursuant to the DOT/SBA MOU?
- Remove section 26.84.

### §26.85 Interstate certification
- Revise the entire §26.85 and apply this section regarding any DBE firm that is currently certified in its home state:
  - If a firm is certified in its home state (State A) and applies for certification in another state (State B), State B may certify the firm if the following is provided:
    - The firm must provide State B with a copy of its certification.
    - State B must confirm the firm has a current valid certification from State A.
  - If State B chooses not to accept State A’s certification, the DBE firm must provide the following to State B:
    - A complete copy of the application form, including all documents, and any other information that was submitted to State A.
    - Any notices or correspondence with State A.
    - Any notices or correspondence with states other than State A regarding certification in those states.
    - State B must be informed if the DBE firm has filed a certification appeal with DOT.
    - A sworn affidavit by the DBE firm’s owners affirming that all of the required information has been submitted and is complete. A copy must also be sent to State A.
    - If the on-site report from State A is over three years old, State B may require that the on-site report remains true and correct.
    - State B must contact State A within seven days to request a copy of the site visit report, any updates and the evaluation of the firm. State A must reply within seven days of receiving the request. Any failure to do with will result in noncompliance.
If State B has not received a copy of the onsite report from State A within 14 days of the request for it, State B must notify the DBE firm, within 30 days from the receipt of the application, the delay and reason for it.

State B must determine if there is good cause to believe if State A’s certification of the firm should not apply to State B by the following:

- Evidence that the certification was obtained by fraud.
- New information that was not available at the time of certification by State A that the firm is ineligible.
- State A’s certification was inconsistent with requirements.
- State law from State B requires a different result.
- The information provided from the DBE firm did not meet the requirements as stated by in this section.

State B must send to the applicant, within 60 days, a notification of certification with State B.

If State B has determined that the certification from State A is erroneous and the DBE’s application is denied, notification with the reasons of State B’s determination must be submitted to the applicant within 60 days. The following must be stated in the notification:

- Specific reasons why the firm does not meet the requirements and the opportunity to respond.
- The DBE firm may request to meet in person with State B to go over the reasons of denial. If so, it must take place within 30 days from the request.
- The DBE bears the burden of demonstrating that it does meet the requirements of State B.
- State B must issue a decision within 30 days of the meeting.
- This decision may be appealed by the DOT Office of Civil Rights.

If a firm’s application is denied for any reason, the DOT’s Ineligibility Determination Online Database must be updated with the following information:

- The name of the firm.
- The name(s) of the firm’s owner(s).
- The type and date of the action.

### §26.87 What procedures does a recipient use to remove a DBE’s eligibility?
- Remove and reserve §26.87 (h).

### §26.107 What enforcement actions apply to firms participating in the DBE program?
- Amend §26.107 (a) and (b):
  - Remove “49 CFR part 29” and add in its place “2 CFR parts 180 and 1200”.
AGENDA

Thursday, April 28, 2011

9:00 am – Noon

Welcome, Introductions & Opening Remarks

Imperial County Transportation Commission Updates

Local Assistance Updates

Status of Transportation Funding

Status of Projects
  Brawley Bypass
  I-8/Dogwood
  SR-98 West
  TEA Projects

Planning Updates
  Grants
  ICTC Model Update
  Development Review

Hot Topics
  Items Requested by TAC
  Local Jurisdiction Training Program
  VA Study
  PIDs

Regional Transportation Plan Update

Questions / Other Discussion

Next Meeting

Welcome, Introductions & Opening Remarks: Ross & Bill
Imperial County Transportation Commission Updates: Mark
Local Assistance Updates: Erwin & Luis
Status of Transportation Funding: Ross & Erwin
Status of Projects: Sam & Shawn
Planning Updates: Jacob & Bill
Hot Topics: per subject
Regional Transportation Plan Update: SCAG
Questions / Other Discussion: All
Next Meeting: Bill