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March 4, 2009

Dear Transportation Construction Community:

The California Department of Transportation (Caltrans) has just received conditional approval from the Federal Highway Administration (FHWA) to immediately implement its Federal Fiscal Year (FFY) 2009 Disadvantaged Business Enterprise (DBE) Goal and Methodology. The 2009 Goal and Methodology provides for a 6.75 percent race-conscious goal and a 6.75 percent race-neutral goal for an overall 13.5 percent program goal.

With the recent enactment of the American Recovery and Reinvestment Act (ARRA) of 2009 and the increase in transportation contracting opportunities it will bring, the urgency for Caltrans to implement contract goals has heightened. The conditional approval requires Caltrans to submit to FHWA the additional requested information to support its decision to make no upward adjustment to the FFY 2009 goal. The conditional approval also requires Caltrans to submit monthly status reports on its use of contract goals beginning March 31, 2009.

FHWA has indicated that failure to implement the overall goal and contract goals could result in the imposition of sanctions authorized by 23 Code of Federal Regulation (CFR) section 1.36. Those sanctions may include withholding federal funds, withholding approval of projects, or other action FHWA deems appropriate under the circumstances.

By March 30, 2009, the Division of Engineering Services and the Division of Procurement and Contracts will begin including an appropriate DBE race-conscious goal to include African American, Asian-Pacific American, Women, and Native American businesses, in the advertised contracts for federally funded projects. These four groups together will be referred to as Underutilized Disadvantaged Business Enterprises (UDBEs). The race-conscious goal established for each contract will be based on the subcontracting opportunities it provides and the availability of UDBEs. At this time, Hispanic American and Subcontinent Asian American businesses are not included in the race-conscious portion of the program. However, use of these businesses does count toward meeting the race-neutral portion of the goal and the overall goal. I encourage continued use of these groups at current levels in order to avoid the necessity of adjusting the goals as time goes on.

Implementation of the race-conscious component of the DBE program applies to Local Agencies as subrecipients. Caltrans will advise regional and local partners to begin implementing DBE race-conscious goals on federally funded projects within 90 days.

Caltrans will continue its commitment to the application of race-neutral measures as before. They include, but are not limited to, providing technical assistance, one-on-one counseling, training, and direct referral of DBEs to prime contractors through the California Construction Contracting Program and the memorandum of understanding with the California Community Colleges Chancellor's Office. More information can be found on the Web site at http://www.buildcalifornia.org.

Caltrans will also implement its Communication Plan to advise the DBE firms, community organizations, industry/trade associations, and California Legislators that Caltrans has conditional approval to implement the race-conscious component of the overall DBE goal. To broaden business communication and outreach, the Caltrans' Office of Business and Economic Opportunity will have information and the schedule of public forums on its Web site at http://www.dot.ca.gov/hq/bep. In addition, Caltrans staff will work with business groups such as the City-County-State-Federal Cooperative Committee, Caltrans Statewide Small Business Council, Associated General Contractors of California, Engineering and Utility Contractors Associations, Southern California Contractors Association, and American Council of Engineering Companies on the implementation of their program revision.

I thank you for your patience and understanding during the last year while Caltrans operated under race-neutral measures. If you have any questions regarding this announced change in the DBE program, please contact Robert Padilla, Disparity Study Project Manager, at (916) 324-0552, or by e-mail at robert_padilla@dot.ca.gov.

Sincerely,

Will Kempton

WILL KEMPTON
Director

c: Walter Waidelich, Division Administrator, Federal Highway Administration
Rick Land, Chief Engineer, California Department of Transportation
Robert Padilla, Disparity Study Project Manager, California Department of Transportation