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REGION 10 BULLETIN NO: 09-10

Subject: Economic Recovery Package DBE Question and Answers

Program Area: Civil Rights

Date: February 5, 2009

The following Disadvantaged Business Enterprises (DBE) Question and Answers pertaining to the economic recovery package represents the U.S. Department of Transportation's (DOT) official guidance and positions on the core DBE issues involved with the stimulus.

References: 49 CFR 26.45, 26.47, 26.51, 26.53

QUESTION

How should recipients administer their DBE programs in the context of the potentially large increases in funding that may become available as the result of the proposed economic recovery package?

ANSWER

The Department anticipates that the DBE program and regulations will apply to Federally-assisted contracts receiving funds from the proposed recovery package. All of a recipient's funds – whether derived from SAFETEA-LU or the recovery package – should be viewed as part of a single, combined funding base to which DBE goals apply.

Given the flexibility built into the DBE regulations, recipients can successfully administer their DBE programs under these rules in the context of funding increases provided by the recovery legislation. Particularly because a major purpose of the proposed legislation is to increase opportunities for businesses and workers in a challenging economic climate, the Department expects recipients to do so.

The Department is aware of concerns expressed by recipients that there may not be sufficient availability of certified DBEs to meet existing overall goals, as applied to recipients' expanded programs.

To help address such concerns, recipients should begin, as soon as possible, outreach to affected persons. This outreach should include dialogue with representatives of the contracting industry

and the DBE community to begin to understand recipient-specific issues. This outreach will allow recipients and DOT operating administrations to be better prepared to react to Congressional direction in new legislation.

Recipients should make use of race-neutral measures, such as small business programs, owner-provided insurance, technical and financial assistance, and unbundling of contracts to increase the ability and capacity of DBEs and other small businesses to perform contracts receiving recovery package funding. The DOT's Office of Small and Disadvantaged Business Utilization also operates a short-term lending program, which can help to increase DBE capacity.

Recipients should take steps to mobilize underutilized DBE capacity:

- Recipients should reach out to firms that may potentially be eligible for DBE certification, but are not yet part of the program, urging them to apply.
- Recipients should expedite the processing of applications for certification.
- In many cases, there are substantial numbers of certified firms that are seldom used on contracts. This can be an additional source of DBE capacity. Recipients should make vigorous efforts to work with such firms and prime contractors to take advantage of this resource.
- Recipients and prime contractors should be as inclusive as possible in utilizing all available DBE firms, not ruling certified firms out based on preconceptions about their competence to do a particular job.

Recipients should use existing regulatory tools to address concerns about capacity:

- Recipients can take the projected availability of DBEs for any particular contract into consideration in determining the contract goal for that contract. This is consistent with the existing regulation (see 49 CFR 26.51(e)(2)).
- If a bidder on a prime contract cannot find sufficient certified DBE participation to meet a contract goal (e.g., because all DBE capacity for the types of work involved is absorbed by other projects), the bidder can meet DBE requirements by documenting its good faith efforts to find DBE participation. This is also consistent with the existing regulation (see 49 CFR 26.53(a)(2)).
- The Department believes that modifications to overall goals will be needed rarely, if at all, to deal with administration of recovery package funds. It is important to remember that recipients are not penalized for failing to “hit the number” with respect to overall goals, as long as they are operating their programs in good faith (see 49 CFR 26.47). However, if a recipient believes it necessary to adjust an overall goal, it could propose such an adjustment to the relevant DOT operating administration. The requirements of 49 CFR 26.45 would apply to such an adjustment.

Recipients should communicate regularly with DOT agencies concerning operating their DBE programs in context of recovery package funding. If a recipient believes that it has problems or issues that are not addressed by the DOT regulations or program guidance, the recipient should contact the relevant operating administration to discuss the matter.

For further information, contact Region 10's Monica McCallum at (206) 220-4462 or email monica.mccallum@dot.gov.

Sincerely,

A handwritten signature in black ink, appearing to read "R.F. Krochalis".

for R.F. Krochalis
Regional Administrator