

Public Notice

The California Department of Transportation (Department) is required by a recent Ninth Circuit Court of Appeals ruling to consider amending its Disadvantaged Business Enterprise (DBE) program goals for all federally funded contracts. The Ninth Circuit Court of Appeals decision, Western States Paving Co. Inc v. Washington Department of Transportation et al., has established new evidentiary standards necessary to constitutionally support the use of race-conscious DBE goals such as those currently used by the Department. The decision is binding on the states within its jurisdiction, including California.

This notice initiates a 45-day public comment period during which the Department is considering the amendment of the DBE program goals submitted to the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) in August 2005. In August 2005, these goals were established at 12 percent for FHWA and 4 percent for FTA. Under current practices, these goals are to be achieved exclusively through race-conscious measures, such as setting individual contract goals.

The Department is also considering the revision of its DBE program goals for the remainder of the Federal fiscal year to 10. 5 percent for FHWA and 4 percent for FTA due to changes in census data and the availability of DBE resources statewide. For a copy of the proposed goals and methodology, contact the Department at the toll free number (866) 810-6346 or (916) 324-8400 or by e-mail: smallbusinessadvocate@dot.ca.gov

In accordance with 49 CFR Part 26.45(g), the Department invites maximum public participation and solicits comments regarding the proposed changes in the administration of the DBE program. Further, the Department 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. With respect to proposed changes in the DBE participation percentages, the goal and its rationale are available for inspection during normal business hours, 8 a.m. – 5 p.m., Monday through Friday, at 1823 14th Street, Sacramento, California for 45 days following the date of this notice. Written comments on these proposals are to be addressed to the DBE Program Manager, California Department of Transportation, Office of Civil Rights, 1823 14th Street, Sacramento, CA 95814. The Department will accept comments until 4 p.m. on February 3, 2006.

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.

Further, in accordance with 49 CFR Part 26.45(g)(1), the Department will also be consulting during this period with minority, women's and general contractor groups, community organizations and other organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses and the effects of discrimination on opportunities for DBEs in the California transportation contracting industry.