

AGENDA: September 16, 2004

TO: Regional Transportation Commission - Transportation Policy Workshop

FROM: Linda Wilshusen, Executive Director

RE: Adoption of the FY 04/05 Disadvantaged Business Enterprise Program

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## **RECOMMENDATIONS**

Staff recommends that the Commission adopt the FY 2004/05 SCCRTC Disadvantaged Business Enterprise Program (DBE) with an overall annual goal of 14% DBE participation in federally funded contracts and use DBE conscious methods to meet that goal.

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## **BACKGROUND**

Since 1983, the U.S. Department of Transportation has required agencies which receive federal funds to implement a plan and establish a goal for Disadvantaged Business Enterprise (DBE) participation to ensure that small minority- and women-owned businesses are not disadvantaged by unlawful discrimination. Legislation requires agencies to annually establish unique goals for DBE participation in federally funded contracts and monitor these contracts for DBE compliance. Last year, the Commission adopted an overall annual goal of 14%, taking into consideration the number of DBEs in the Commission's consultant mailing list (14%), the percentage of DBEs firms that bid on the Highway 1 Widening/Carpool Lane project PA/ED contract (34%) as both prime and subcontractors, and the percentage of the work DBE firms constituted in bids on the Highway 1 Widening/Carpool Lane project (12%).

## **DISCUSSION**

The Commission did not have any new federally-funded consultant contracts last year and may have few, if any, new federally funded contracts during the 2004/05 federal fiscal year, beginning on October 1, 2004 and ending September 30, 2005. SCCRTC staff has worked with Caltrans to develop the draft Fiscal Year 2004/05 Disadvantaged Business Enterprise Program (available for review online at [www.sccrtc.org](http://www.sccrtc.org)). This year's plan, based on the Caltrans approved "boilerplate," incorporates current information on the availability of DBE firms to work on SCCRTC contracts.

### Methodology

SCCRTC is mandated to establish the overall goal based on a "bidders list." In the past, due to the small number of contractors that had ever bid on federally funded Commission contracts,

staff instead divided the number of DBE firms on SCCRTC's consultant mailing list by the total number of businesses in the mailing list. Last year, with the addition of over 30 consultants and subconsultants that bid on the PA/ED contract for the Highway 1 Widening/Carpool Lane project to the Commission's "bidders list," staff was able to use its bidders list to establish a Base Figure for relative DBE availability, 34%. Since no new federally-funded contracts were issued last year this Base Figure from a "bidders list" has not changed.

Since the base figure is significantly higher than that figure established in FY02/03 (9.6%), staff determined that adjustments to the Base Figure were needed. Staff then reviewed and assessed other known relevant evidence, described below, to determine what additional adjustments, if any, were needed to narrowly tailor the Base Figure to SCCRTC's marketplace:

1. Database of Interested Firms

This methodology, used by the Commission in the past, considers the number of DBE consultants among all consultants that have asked the SCCRTC to include them in our consultant mailing list. Application of this methodology shows that only 14% of available firms are DBEs. In FY02/03 this methodology was used and DBEs accounted for 9.6% of firms in the consultant database. That figure was similar to that found in past years using the CalCert database and Census Bureau County Business Pattern Database.

2. DBE Representation in Bid Proposals with Multiple Subconsultants—Current Capacity of DBEs:

Though DBEs constitute 34% of the consultant firms in the Commission's Bidders List, the majority of these firms were subs on a few bids with multiple subconsultants. Of the overall bids received for the PA/ED phase of the Highway 1 Widening/HOV project, DBEs constituted 12% of the work within the bid proposals.

After consider the above stated factors, especially the current capacity of DBEs based on the volume of work DBEs have performed, staff determined that 14% DBE participation is a reasonable goal for FFY04/05.

**Staff recommends that the Commission readopt an overall annual goal for 14% DBE participation for federally funded contracts during FFY04/05.**

Breakout of Estimated DBE-Neutral and DBE-Conscious Participation

The Commission is also required to determine what percentage of the 14% goal will be met using DBE-neutral and DBE-conscious methods. DBE-neutral methods include: making efforts to assure that bidding and contract requirements facilitate participation by DBEs and other small businesses; unbundling large contracts to make them more accessible to small businesses; encouraging prime contractors to subcontract portions of the work that they might otherwise perform themselves; listing contract opportunities on the internet; and providing technical assistance, and other support services to facilitate consideration of DBEs and other small businesses. DBE-conscious measures include establishing contract specific goals on contracts with subcontracting possibilities, when needed to meet the Commission's overall annual goal.

Since the SCCRTC only anticipates having few, if any, federally funded contracts this year, **for FY04/05 staff recommends that the Commission meet the goal using DBE conscious methods, as was done in years past.**

#### Changes From Last Year's Program

Staff recommends the Commission adopt the same goal that was adopted for FFY03/04. As such, there are very few changes from the adopted FFY03/04 program. The only significant change in the Draft FFY04/05 DBE Program is inclusion of Caltrans-mandated language in section XII: Required Contract Clauses.

#### Public Review of the Program

Staff sent the draft SCCRTC FY 04/05 Disadvantaged Business Enterprise (DBE) Program to Caltrans in July for review and comment. After Caltrans reviewed the program, staff released a public notice soliciting public comments on the draft program. Staff also sent public notices to local chambers of commerce, posted the Draft DBE Program on the Commission's website, and included public notices in local newspapers in July. No comments were received on the program.

### **SUMMARY**

SCCRTC will receive federal funding assistance from the U.S. Department of Transportation in FY04/05 and is required by federal law to implement a Disadvantaged Business Enterprise (DBE) Program to ensure that small minority- and women-owned businesses are not disadvantaged by unlawful discrimination in the issuance of federally-funded contracts. SCCRTC staff prepared and circulated notices about the draft DBE plan. No comments were received. **Staff recommends that the SCCRTC adopt the FY 2004/05 DBE Program** (available in full at [www.sccrtc.org](http://www.sccrtc.org) and summarized herein), which complies with federal regulations and is due to Caltrans this month.

Prepared by: Rachel Moriconi