



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

January 26, 2010

Mr. Gary Hannig
Secretary
Illinois Department of Transportation
2300 South Dirksen Parkway
Springfield, IL 62764

Dear Secretary Hannig:

I am responding to the request of the Illinois Department of Transportation (IDOT) for a waiver of the provisions of the U.S. Department of Transportation's disadvantaged business enterprise (DBE) regulation requiring the use of a single, unitary DBE goal. The IDOT has requested a waiver to establish separate contract goals on the Mississippi River Bridge (MRB) project for firms owned and controlled by members of minority groups (MBEs) and firms owned and controlled by non-minority women (WBEs).

The IDOT waiver request states that its purpose is "to address the perceived disparity between MBEs and WBEs in the award of transportation contracts." The long standing issue of the perceived disparity in the participation of MBE and WBE firms in the DBE program was carefully considered when the unitary goal was included in the current DBE rule. In adopting this requirement, the Department was guided by Congress's expression of intent with respect to the DBE program. Specifically, the conference report for the Surface Transportation and Uniform Relocation Assistance Act of 1987 declared that "the conferees intend that the Department of Transportation and the States no longer should require contractors . . . to meet separate goals for DBEs [previously defined to include only minority-owned and controlled businesses] and WBEs." (H. Rept. 100-27 (1987) at 148).

At the same time, the Department acknowledged that circumstances might arise in which waiving the single goal provisions could be necessary. The rule established a procedure for the Secretary of Transportation to grant waivers from most provisions of the DBE rule, including the unitary goal requirement. However, given that granting a waiver permitting separate MBE and WBE goals would require the Department to take an action inconsistent with the direction Congress established in enacting the statutes that authorized the program, any decision to grant such a waiver requires a high standard of evidence. The Department would have to receive robust and convincing evidence that it is essential to address an identified problem in order to achieve the objectives of the DBE program and that measures not requiring a waiver cannot effectively address the problem.

The Department's staff carefully examined the materials IDOT presented in support of its request, including IDOT's disparity study; exchanged correspondence with IDOT; and held lengthy conversations with IDOT officials. We appreciate the hard work that has gone into IDOT's presentation, and we commend IDOT's dedication to addressing constituents' concerns about inadequate utilization of minority contractors in its DBE program.

After a thorough and extensive review, the Department has determined that the materials presented by IDOT do not meet the standard of evidence we believe necessary to override our long-established rule. The IDOT's analysis, which among other things omitted consideration of prime contracting, disaggregation of contractors, and weighting, and which was insufficiently transparent about some of the underlying work, does not adequately identify and quantify the problem and its causes. In addition, IDOT's request and supporting materials did not adequately explain why other means to address any disparity affecting minority contractors that do not require a waiver could not be successfully employed on this project. For these reasons, the Department must deny your request for a waiver. The IDOT's DBE contract goals for the MRB project, therefore, must follow the requirements of 49 CFR Part 26 as written.

Evidence from other jurisdictions suggests that the objective of addressing any imbalance among different DBE subgroups may be successfully accomplished by means other than separate goals. For example, the use of partnerships among community organizations, local elected officials, trade unions, individual contractors, contractor associations, and various public agencies to identify common expectations for each project and establish common objectives around these expectations has, in some cases, addressed this issue. Carefully crafted incentive programs may also prove useful. We would be happy to share with you the ideas that we have learned from other jurisdictions that have grappled with similar issues.

The Department strongly supports efforts to ensure that Federal contract dollars are spent in a fair and equitable manner, and we are working constantly to ensure that our DBE program works in a way that ensures that the opportunities created by our investments are shared by all Americans. In this regard, I sent a letter to all 50 governors on December 7, 2009, urging them to actively promote efforts to provide disadvantaged businesses with a fair chance to participate in transportation projects. In this regard, I encourage you to take advantage of programs of the kind made available by the Department's Office of Small and Disadvantaged Business Utilization (OSDBU) that can help ensure inclusion of all DBE groups in States' programs. I would like to invite you and your staff to a Small Business Summit that OSDBU is sponsoring on March 24-25, 2010, in Washington D.C., which will devote considerable attention to DBE program matters.

I applaud your concern for equity and the efforts of you and your staff to address this issue. My Department is committed to helping create opportunities for DBE firms and all workers, and I look forward to working with you toward that goal.

If I can provide further information or assistance, please feel free to call me.

Sincerely yours

Ray LaHood

