Arizona Department of Transportation

Intermodal Transportation Division

206 South Seventeenth Avenue Phoenix, Arizona 85007-3213

Janet Napolitano
Governor

Victor M. Mendez
Director

Sam Elters
State Engineer

May 15, 2006

INFORMATION BULLETIN NO. 06-03

TO: ADOT Project Managers/Monitors, Resident Engineers And Consultant Engineering Firms

FROM: Engineering Consultants Section

SUBJECT: Change in DBE commitment requirements

The following is provided to help clarify the recent changes to the DBE program.

In January, 2006, Engineering Consultants Section notified all ECS pre-qualified consultants via their e-mail distribution that DBE goals in our Statement of Qualification (SOQ) packages was removed until further notice. (See attached.)

Regardless of the recent changes to ADOT's DBE program, firms must continue working toward achieving their DBE commitment for current or pending ECS contracts that were selected with DBE goals. In addition, the Consultant must continue to submit the DBE Compliance Report to the Civil Rights Office by the 3rd Friday of each month.

ADOT is still required to demonstrate that it is working to meet its 10.5%. It is a violation of federal regulations to discriminate in the selection of sub-consultants or other team members. Although future contracts may not have points awarded to a firm to promote DBE participation, we hope that your firm will continue to support the DBE program.

If you should have any questions on the changes to the DBE program, please feel free to call Lisa Wormington at 602-712-7761. If you have questions regarding this bulletin, please call me at (602) 712-7720.

SUSAN TELLEZ
Contract Administrator

Arizona Department of Transportation

Civil Rights Office

MEMORANDUM

To: DBE Program Stakeholders	**Date:** January 23, 2006
From: Lisa Wormington, CR Administrator	**Subject:** DBE Program

In May of 2005, the 9th Circuit Court of Appeals issued its decision on the Western States Paving v. Washington State Department of Transportation case. In short the court found that the DBE program at the national level is constitutional. However, in order for states to have project goals (race conscious), the state has to be able to demonstrate evidence of discrimination and have goals only for those groups demonstrated to have suffered discrimination.

On December 21, 2005, USDOT and FHWA issued guidance to the states in the 9th Circuit Court. Arizona is one of those states. The guidance stipulated that we can only use project goals if we have evidence of discrimination. If we do not have this evidence, we must submit a wholly race neutral program. We also must commit to conduct the required analysis, a disparity study or availability analysis, to determine if discrimination is occurring and which specific groups are impacted. We are in the process of revising our DBE program document and our FY 2006 DBE Goal submittal to indicate that we have a race neutral program.

In response to this guidance, ADOT has stopped setting DBE contract goals on new projects. This does not affect projects that have been let with DBE goals. ADOT will continue to have an annual 10.5% DBE goal that we must work towards achieving. We are still required to track DBE participation and to monitor for commercially useful function. Prompt payment and return of retention requirements are still required. We have been working with other states that currently have totally race neutral programs to learn what they do to succeed.

ADOT plans to go forth and conduct an availability analysis to determine if discrimination is occurring and to gather evidence. We have been working with other western states for copies of their requests for proposals. We have contacted Nebraska and Minnesota DOT's for copies of their studies. Each of these studies was cited as adequate in the Western States decision.

We are asking for your support during this transitional time. We are putting together a team of DBE's and prime contractors and concerned organizations to assist in the development of a race neutral program for Arizona. Please ask your membership for volunteers. Please let me know if you would like to participate no later than February 3, 2006. My phone number is 602.712.7761. My email is lwormington@azdot.gov.

If you have any questions or would simply like to discuss this, feel free to contact me.

It is the policy of this company not to discriminate against any employee, or applicant for employment, because of race, color, religion, creed, national origin, sex, age, handicapped, or disabled veterans and Vietnam era veterans. Such actions shall include, but are not limited to: employment, upgrading, demotion, transfer, recruitment, or recruitment advertising; laying-off or termination; rates of pay or other compensation; and selection for training, and on-the-job training. Also, it is the policy to insure and maintain a working environment free of harassment, intimidation and coercion.

4.40 AFFIRMATIVE ACTION

CONSULTANT shall take the following affirmative action steps with respect to securing supplies, equipment or services under the terms of this CONTRACT:

1. Include qualified firms owned by socially and economically disadvantaged individuals on solicitation lists.

2. Assure that firms owned by socially and economically disadvantaged individuals are solicited whenever they are potential sources.

3. When economically feasible, dividing total requirements into smaller tasks or quantities so as to permit maximum participation by firms owned by socially and economically disadvantaged individuals.

4. Where the requirement permits, establishing delivery schedules which will encourage participation by firms owned by socially and economically disadvantaged individuals.

5. Use the services and assistance of the Small Business Administration, the Office of Minority Business Enterprise of the Department of Commerce and the Community Services Administration as required.

4.41 PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES

The CONSULTANT is required to adhere to the commitment made to participation by ADOT certified Disadvantaged Business Enterprises (DBE) as indicated in the firms Technical Proposal or subsequently agreed to by the STATE during negotiations. The STATE, at its discretion on a case by case basis, may waive the above limitations.

The CONSULTANT must submit the DBE Compliance Report to the Civil Rights Office by the 3rd Friday of each month. The report shall indicate the amount earned by and paid to each DBE working on the project for the preceding month.

4.42 ENVIRONMENTAL PROTECTION

(This clause is applicable if this contract exceeds $100,000.00. It applies to Federal Aid Contracts Only.)