



U.S. Department  
of Transportation  
**Federal Highway  
Administration**

**California Division**

June 15, 2012

650 Capitol Mall, Suite 4-100  
Sacramento, CA 95814  
(916) 498-5001  
(916) 498-5008 (fax)

In Reply Refer To:  
HDA-CA

Mr. Malcolm Dougherty  
Director  
California Department of Transportation  
1120 N Street  
Sacramento, CA 94273

Dear Mr. Dougherty:

This letter is in response to your June 5, 2012, letter received by our office requesting a written explanation that identifies specific evidence and methodology US DOT relied upon for the termination of your Disadvantaged Business Enterprise (DBE) program waiver.

As a preliminary matter, it is important to understand that a program waiver of the DBE rule is an exercise of discretion by the Secretary of Transportation that may be terminated by the Secretary. Since a waiver constitutes a departure from the generally applicable provisions of the DBE rule, the duration of the waiver should last no longer than needed. One of the criteria for granting a waiver, and continuing that waiver, is that the level of DBE participation continues to be consistent with the objectives of the program.

The California Department of Transportation's (Caltrans) former DBE waiver instructs you to provide the Federal Highway Administration (FHWA) with any data that would lead to a modification of the terms of the waiver (e.g., information suggesting that one of the groups not subject to the use of contract goals is underutilized). The DBE reports submitted by Caltrans to FHWA on DBE awards and commitments in the five years following the completion of your disparity study (FY 2007 through FY 2011) show a drop in the utilization of Hispanic-American and Subcontinent Asian-American-owned DBEs from 5.5 percent to a median 1.93 percent and from 0.5 percent to a median 0.25%, respectively, during the 5-year period. See attachment showing the DBE awards/commitments reported by Caltrans and the availability of DBE groups reported in Caltrans' disparity study. This clearly demonstrates that DBEs owned by these two groups are now underutilized in California and, consequently, there is no longer a need to waive the provision of the DBE rule that requires contract goals include all groups within the DBE community.

FHWA recognizes that the termination of the DBE program waiver requires Caltrans to make several substantive process changes. We have obtained approval from the Office of the Secretary to allow Caltrans some flexibility. Based on discussions with you on your implementation schedule, all Federal-aid contracts with DBE goals advertised by Caltrans after

the date of this letter must ensure the goals apply to all DBEs. Additionally, all Federal-aid local agency-administered contracts with DBE goals authorized after June 30, 2012, must ensure the goals apply to all DBEs. Including all DBEs in contract goals in the time provided in this letter is necessary to your good faith implementation of your DBE program.

Please do not hesitate to call if you have any further questions.

Sincerely,

A handwritten signature in blue ink, appearing to read "Vincent P. Mammano".

Vincent P. Mammano  
Division Administrator

Enclosure

cc: Robert Rivkin, General Counsel, US DOT

	Black	Hispanic	Native American	Subcont. Asian	Asian-Pacific	N-Minority Women	Other	DBE Total	Prime Contract Total
2007	\$3,108,194 0.16%	\$54,415,674 2.74%	\$2,320,207 0.12%	\$13,261,671 0.67%	\$17,044,106 0.86%	\$40,327,399 2.03%	\$880,000 0.04%	\$131,357,251 6.60%	\$1,988,967,734
2008	\$3,167,420 0.14%	\$44,559,257 1.93%	\$1,079,735 0.05%	\$8,594,195 0.37%	\$25,679,122 1.11%	\$21,708,373 0.94%	\$293,325 0.01%	\$105,081,427 4.56%	\$2,303,616,727
2009	\$6,190,538 0.19%	\$49,062,149 1.53%	\$3,469,377 0.11%	\$8,066,004 0.25%	\$5,516,893 0.17%	\$32,830,493 1.02%	\$3,370,250 0.10%	\$108,505,704 3.38%	\$3,211,577,389
2010	\$13,510,568 0.78%	\$39,982,610 2.30%	\$12,678,915 0.73%	\$2,736,179 0.16%	\$12,764,887 0.74%	\$47,768,833 2.75%	\$0 0.00%	\$129,441,992 7.45%	\$1,736,623,494
2011	\$27,558,537 0.98%	\$49,846,408 1.77%	\$11,625,669 0.41%	\$2,756,438 0.10%	\$32,411,265 1.15%	\$78,011,371 2.78%	\$0 0.00%	\$202,209,688 7.19%	\$2,811,174,040
2007-2011 Median	0.19%	1.93%	0.12%	0.25%	0.86%	2.03%			
Availability*	2.20%	4.90%	0.60%	0.40%	1.70%	3.60%			
UI	9%	39%	20%	63%	51%	56%			

\*California Department of Transportation, Availability and Disparity Study, July 29, 2007, Figure E-124.