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NEXTEA

THE NATIONAL ECONOMIC CROSSROADS TRANSPORTATION EFFICIENCY ACT

U. S. DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

DEPARTMENT OF TRANSPORTATION UNITED STATES OF AMERICA

MAY 29, 1997

MENDING IT, NOT ENDING IT: REINVENTING THE DEPARTMENT OF TRANSPORTATION'S DBE PROGRAM

Today's DBE Program

The Department of Transportation's Disadvantaged Business Enterprise (DBE) Program sets a national goal of awarding 10 percent of contracts under many highway, transit, and airport programs to DBE firms. DOT also provides contracting opportunities, technical assistance, bonds, and working capital loans to qualified small woman- and minority-owned firms working on federally-funded transportation projects.

Success Stories

Since President Clinton took office, $10.4 billion in federal highway and transit construction contracts alone have been awarded to DBE firms, an increase of nearly 30 percent over the previous four years, strengthening small businesses and supporting thousands of high-wage jobs.

- ✔ Faller, Davis & Associates (Tampa, Florida) has grown from two to 31 employees in a decade and now successfully competes as a prime contractor in open competition.
- ✔ Trawick and Associates (Bethesda, Maryland) developed Houston's innovative Operation Respond, which links railroads transporting hazardous materials with emergency services.
- ✔ Under the DBE program, Tony's Cement Works (Lincoln, Nebraska) has grown from a single worker and $50,000 of work annually to 55 employees and $5 million of work.
- ✔ Scientex Corporation (Arlington, Virginia) created the SAFETYNET system for trucks and is the prime contractor for Maryland's work zone traffic safety control system.

Continuing Challenges

Although minorities are 20 percent of our population, minority-owned businesses make up barely a tenth of all U.S. firms, and those businesses take in only 6 percent of all business receipts. These firms still face obstacles such as lack of access to capital, and we need to sustain our commitment to providing greater opportunities for them.

We also have to ensure that these programs are fair and meet the 1995 Supreme Court mandate *(Adarand v. Peña)* that affirmative action programs be "narrowly tailored" to redress discrimination. We also want DBE programs, like all of government's operations, to be as effective as possible, and achieve their results without burdening small businesses or taxpayers.

Meeting the Challenge: Enact NEXTEA

- NEXTEA, the National Economic Crossroads Transportation Efficiency Act, is President Clinton's $175 billion proposal to reauthorize DBE and the federal highway and transit investment programs which are due to expire in late 1997. NEXTEA would authorize the DBE program from 1998 through 2003 and continue the current DBE statutory provisions, without change.

- Under NEXTEA's proposed higher funding levels, woman- and minority-owned businesses could receive $20 billion in highway and transit contract awards over the next six years

Meeting the Challenge: Ensure Fairness

DOT is proposing DBE regulatory changes in view of the 1995 Supreme Court decision in *Adarand v. Peña* requiring that affirmative action programs be "narrowly tailored" to redress discrimination. The proposed regulatory changes include:

- Requiring recipients to give priority to race-neutral measures, such as technical assistance, over race-conscious measures, such as contract goals.
- Ensuring that the program's goals are waranted to break down discriminatory barriers by determining what DBE participation levels could be if a level playing field truly existed.
- Mandating that federal grant recipients take good-faith efforts seriously -- no quotas.
- Minimizing adverse effects on other parties (e.g., addressing unintended overconcentrations of DBEs in certain types of work).
- Increasing flexibility to federal grant recipients implementing DBE programs.

Meeting the Challenge: Ensure Effectiveness

As part of the President's and Vice President Gores's efforts to reinvent government to make it work better and cost less, the proposed regulatory changes also would improve the DBE program's effectiveness. The proposed measures include:

- Establishing one-stop shopping for DBE certifications in each state.
- Clarifying DBE certification standards and procedures.
- Helping small businesses solve problems such as late payments from contractors.
- Authorizing measures to assist DBE firms, such as business development and mentoring programs.

TRANSPORTATION DBE SUCCESS STORIES

Since President Clinton took office, $10.4 billion in federal highway and transit construction contracts alone have been awarded to Disadvantaged Business Enterprise (DBE) firms, an increase of nearly 30 percent over the previous four years, strengthening small businesses and supporting thousands of high-wage jobs. The Department of Transportation also provides contracting opportunities for woman- and minority-owned businesses.

- ✔ Faller, Davis & Associates (Tampa, Florida), a woman-owned business, has grown from two to 31 employees in a decade and now successfully competes as a prime contractor in open competition.
- ✔ Trawick and Associates (Bethesda, Maryland), a woman-owned firm, specializes in complex communications and information systems. Trawick developed Houston's innovative Operation Respond, which links railroads transporting hazardous materials with emergency services
- ✔ Under the DBE program, Tony's Cement Works (Lincoln, Nebraska) began with sidewalk repairs and has expanded to do paving and structures. The firm has grown from a single worker and $50,000 of work annually to 55 employees and $5 million of work.
- ✔ Scientex Corporation (Arlington, Virginia) specializes in technology, including intelligent transportation systems. Scientex created the SAFETYNET system and is the prime contractor for Maryland's work zone traffic safety control system.
- ✔ Ocean Technical Services (New Orleans, Louisiana), founded in 1984, had expanded enough within 10 years to win a $5.6 million Coast Guard contract for the construction of 45 motor surfboats.
- ✔ Arora and Associates (Lawrenceville, New Jersey) provides consulting and engineering services, and by 1995 its operations had expanded to the point at which it "outgrew" the DBE program.
- ✔ Kuharchik Construction (Exeter, Pennsylvania), a woman-owned firm, carries out traffic signalization and highway lighting work, and has received six prime contractor awards from the Pennsylvania Department of Transportation.
- ✔ SMH Construction (Bradley, West Virginia), specializing in bridge construction and drainage structures, expanded from $354,000 in business a decade ago to $5 million last year, and the number of employees has grown from five to 40
- ✔ Linder Construction Company (Anchorage, Alaska), a woman-owned business, has grown from $300,000 in business in 1991 to $7 million today. Linder also prevented a fuel spill at a Coast Guard support center from contaminating an entire bay.

U.S. Department of Transportation

Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

The supplemental notice of proposed rulemaking (SNPRM) "Participation by Disadvantaged Business Enterprise in Department of Transportation Programs" will appear in Part IV of the Federal Register on May 30, 1997.

A copy of the notice can be obtained from the Superintendent of Documents on this date, from the DOT Office of Small and Disadvantaged Business Utilization (OSDBU) at (800) 532-1169 or from the "What's New" section of the Internet home page at http:\\osdbuweb.dot.gov.

For questions concerning Subpart G (airport concessions), contact David Micklin , FAA Office of Civil Rights, 800 Independence Avenue, SW, 20591, Room 1030, (202) 267-3270; or Kathleen Connon, FAA Office of Chief Counsel, same street address, Room 922-C, (202) 267-3473. For questions on other portions of the SNPRM, contact Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, S.W., Room 10424, Washington, D.C., 20590. Phone numbers (202) 366-9306 (voice); (202) 366-9313 (fax); 202-755-7687 (TDD).

DISADVANTAGED BUSINESS ENTERPRISE

DEPARTMENT OF TRANSPORTATION
SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

The Department of Transportation's disadvantaged business enterprise (DBE) program applies to contracting under Federal highway, transit, and airport grants. As part of the Administration's NEXTEA bill, we are proposing to reauthorize the DBE program without statutory change. The statutory provisions, which set a 10 percent national goal for the participation of DBEs in DOT-assisted contracting, are constitutional, good policy, and still necessary. At the same time, we are "mending" the operation of the program through proposed improvements in the rules that govern it.

The SNPRM will do two things: modify the program to respond to the "narrow tailoring" requirements of the Supreme Court's decision in Adarand v. Peña and reinvent its administration to increase effectiveness and reduce burdens.

Narrow Tailoring Proposals

- The SNPRM would require recipients to give priority to race-neutral measures, such as outreach and technical assistance, in meeting overall goals. Recipients must look to these approaches before using race-conscious measures, such as contract goals.

- The SNPRM would ensure that recipients' overall goals are warranted to break down discriminatory barriers to contracting opportunities for minority- and women-owned firms. Goals would be based on a determination of how much DBE participation there would be if there were truly a level playing field for DBEs. The SNPRM seeks comment on three mechanisms to achieve this result.

- The SNPRM would modify the good faith efforts provisions to make clear that recipients must award a contract to a bidder who documents adequate good faith efforts, even if the bidder doesn't fully meet a contract goal. The use of quotas is prohibited.

- The SNPRM would limit potential adverse effects of the program on other parties (e.g., by addressing any over-concentration of DBEs in certain types of work).

- The SNPRM would provide a mechanism to assist recipients in rebutting the presumption of disadvantage for a minority or woman who was, for example, too wealthy to participate in the program.

• The SNPRM would rovide for program waivers that will afford recipients increased flexibility in implementing the program.

Reinvention Proposals

• The SNPRM would reduce burdens on small business by adopting a "one-stop shopping" mechanism in each state for DBE certification.

• The SNPRM would clarify and make more explicit certification standards and procedures to bring certainty and predictability into a currently confusing system. This addresses one of the most common complaints of participants in the DBE program.

• The SNPRM would propose methods to solve problems faced by small businesses working in the program, like late payments from prime contractors.

• The SNPRM would authorize measures that recipients can take to assist DBEs, such as business development and mentor-protégé programs.

The Department is publishing the SNPRM in the Federal Register on Friday, May 30. There will be a 60-day comment period.

HOW DOES THE DOT SNPRM RESPOND TO ADARAND?

One of the most important purposes of the Department of Transportan's supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) program is to respond to the legal standards articulated by the Supreme Court in Adarand Constructors v. Peña.

Under Adarand, programs using racial/ethnic classifications, as the DBE program does, are reviewed under the "strict scrutiny" standard. This means that there must be a compelling government interest for such a program and that the program must be narrowly tailored to address the effects of discrimination.

The Department believes there is a compelling government interest in redressing discrimination in DOT-assisted contracting. These business opportunites exist in fields like constuction, where, according to Department of Commerce data, minority-owned businesses represent about 9 percent of all construction firms in the United States but receive only about 5 percent of the total business receipts in the field. The Department of Justice, in a May 23, 1996, notice, cited a wide variety of studies and other information about the effects of discrimination on small disadvantaged businesses. Congress has had information of this kind available to it as it authorized the DBE program in 1983, 1987, and 1981.

As part of the Administration's NEXTEA bill, we are proposing to reauthorize the DBE program, without statutory change. The statutory provisions, which set a 10 percent national goal for the participation of DBEs in DOT-assisted contracting, are constitutional, good policy, and still necessary. At the same time, we are proposing to revise the DBE program regulation.

The main purpose of Adarand-related changes in the DOT SNPRM is make modifications in the DBE regulation that respond positively to the elements of the narrow tailoring prong of the strict scrutiny test. The following chart displays how provisions of the SNPRM meet narrow tailoring requirements. Page numbers refer to the first regulatory text page concerning the issue in the typescript version of the SNPRM.

Narrow Tailoring Requirements	SNPRM Provisions
Use of race-neutral alternatives	Race-neutral measures have priority in meeting goals (p. 195)
Availability of waiver mechanisms	Exemptions and broader program waivers available. (p. 178) Waiver of race-conscious contract goals available on showing of good faith efforts (p. 201)

Use of factors other than race in determining program eligibility	Eligibility based on social and economic disadvantage; white males can become eligible if they show disadvantage on an individual basis. (p. 212)
Determination of goals by reference to the availability of qualified firms in the relevant industries	Proposed overall goal mechanisms all establish goals based on proportion of DBEs available in market. (p. 188)
Duration of the program and periodic review	Program periodically reviewed and reauthorized by Congress. Firms leave program if they grow too large. (p. 209)
Degree of burden caused by program	Diversification proposals address over-concentratration issue, reducing potential burden on non-DBE specialty subcontractors (p 185) Certification proposals reduce burdens on state and local governments and small firms. (p.225)
Other aspects of narrow tailoring	Variety of mechanisms available to achieve goals, from which recipients have flexibility to choose. (p. 194) Recipients can periodically review attainments to determine whether race-conscious meassures are still needed. (p. 198) Certification standards have been improved, with ownership and control tests more focused. (p 207) Presumption of social and economic disadvantage is reviewable and subject to challenge by third parties. (p. 210)

NEXTEA

THE NATIONAL ECONOMIC CROSSROADS TRANSPORTATION EFFICIENCY ACT

MOVING AMERICANS FROM WELFARE TO WORK

DEPARTMENT OF TRANSPORTATION
UNITED STATES OF AMERICA

MAY 20, 1997

MOVING AMERICANS FROM WELFARE TO WORK

PRESIDENT CLINTON'S PLAN TO IMPROVE ACCESS TO JOBS AND TRAINING

> "Each and every one of us has to fulfill our responsibility -- indeed, our moral obligation -- to make sure that people who now must work, *can* work."
>
> President Bill Clinton,
> State of the Union Address, February 4, 1997

To support his comprehensive welfare reform initiative, President Clinton proposes to build on existing transportation programs that use innovative strategies to help people make the transition to the working world.

One of the biggest barriers facing those moving from welfare rolls to payrolls is finding transportation to jobs, training, and support services such as day care. Two-thirds of new jobs are in the suburbs, but three of four welfare recipients live in rural areas or central cities. Few welfare recipients own cars, and public transit, which provides a crucial lifeline for many lower-income Americans, often provides inadequate connections to new employment opportunities in the suburbs far from where most welfare recipients live.

The President's proposal for the National Economic Crossroads Transportation Efficiency Act (NEXTEA), which would authorize federal highway and transit programs from 1998 through 2003, includes several provisions to improve welfare recipients' access to jobs and training.

- **INVESTING $600 MILLION TO IMPROVE ACCESS TO JOBS AND TRAINING**

  NEXTEA includes a six-year, $600 million incentive grant program to support new transportation services to get people to where the jobs are, including flexible, innovative alternatives such as vanpools. Funding also would provide access to training and to support services such as day care at transit stations.

- **CREATING JOB-TRAINING OPPORTUNITIES IN TRANSPORTATION TECHNOLOGY AND CONSTRUCTION**

  Since transportation and construction jobs are among America's best-paying, we want to open opportunities in these fields to welfare recipients and other disadvantaged people. NEXTEA would increase incentives for states and localities to provide job training in conjunction with federally funded technology and construction projects, enable them to offer hiring preferences favoring welfare recipients and residents of Empowerment Zones and Enterprise Communities, and sustain the federal commitment to Disadvantaged Business Enterprise programs.

MOVING AMERICANS FROM WELFARE TO WORK

THE CHALLENGE

One of the biggest barriers facing those making the move from welfare rolls to payrolls is access to jobs, training, and support services such as day care. Two-thirds of new jobs are in the suburbs, but three of four welfare recipients live in rural areas or central cities. Their access to these jobs is limited: only one in 20 welfare recipients owns a car, and mass transit generally operates either within central cities or from suburbs into cities. Transit also often does not meet the needs of off-hour shift workers or those with small children who require day care. The studies below show the challenges faced by welfare recipients in three cities.

Cleveland

Cleveland's economy has been expanding, but that growth has been concentrated in the suburbs. A study by Case Western Reserve University (Contact: Neil Bania, 216-368-8670) showed that the entry-level jobs being generated cannot easily be reached by public transit. Fewer than half of entry-level jobs are accessible from central city neighborhoods within an 80-minute transit ride, leaving the other half essentially out of reach of Cleveland's welfare population.

Boston

A study prepared by the Volpe National Transportation Systems Center (Contact: Annalynn Lacombe, 617-494-2161) found that the highest growth in entry-level jobs was along Route 128, well outside of central Boston. Boston has an excellent transit system, with stations within a half-mile of 99 percent of the city's welfare recipients. Still, it does not provide needed connections to available jobs: only 43 percent of employers are also within a half-mile of transit lines. Moreover, 40 percent of all employers in high-growth areas can be reached only after a commute of more than two hours.

Atlanta

An ongoing Emory University study (Contact: Michael Rich, 404-727-7449) indicates that three of every four jobs in the Atlanta area are in the suburbs. Two-thirds of entry level jobs paying less than $15,000 annually are within a quarter-mile of a transit line; however, fewer than one of three entry-level jobs paying more than $15,000 annually -- those most likely to enable welfare recipients to become self-sufficient -- are located within the same distance from transit.

MOVING AMERICANS FROM WELFARE TO WORK

DETAILS OF THE PRESIDENT'S WELFARE TO WORK TRANSPORTATION PLAN

The President's proposal for the National Economic Crossroads Transportation Efficiency Act (NEXTEA), which would authorize federal highway and transit programs from 1998 through 2003, includes several provisions to improve access to jobs and training.

- **$600 million in new funds.** NEXTEA includes a six-year, $600 million incentive grant program to support welfare reform efforts. Funds are available to assist states, local governments, and private, nonprofit organizations to plan and implement new transportation services to link welfare recipients with jobs.

- **Targeted grants.** Grants would be targeted based on both the size of the welfare population and the area's willingness to address the transportation needs of welfare recipients through a comprehensive, strategic approach. Criteria include the severity of the welfare problem; the need for services to transport people to jobs, training, and support services; mechanisms to coordinate transportation and human resource services planning; and state and local shared financial commitment and coordination.

- **State and local partnerships.** Federal funds would provide 50 percent of the project costs, with grant recipients supplying the remaining 50 percent. Other federal funds could be used as part of the local match.

- **Broad eligibility.** Grants could be used for a wide range of purposes, including: operating and capital costs for services; coordination of transportation services; promotion of employer-provided transportation; and planning and developing support facilities, such as child care, at transit sites.

- **Federal technical assistance.** Federal funding would provide grant recipients with technical assistance to evaluate programs and to establish benchmarks for best practices.

- **Enhanced on-the-job training.** Other provisions of NEXTEA allow states to reserve a certain of number training slots for welfare recipients; to include technology-training opportunities in connection with transportation-related technologies; and to increase funds available for DOT's On-the-Job Supportive Services Program.

- **Hiring preferences favoring welfare recipients and Employment Zone/Enterprise Community residents.** The $20 billion-per-year federal highway construction program would allow states to offer hiring preferences favoring welfare recipients and residents of Employment Zones or Enterprise Communities.

- **More funding for proven programs.** The President's 1998 budget seeks $10 million to expand HUD's successful Bridges to Work Program, which provides job placement and support services, as well as transportation to link city residents with jobs.

MOVING AMERICANS FROM WELFARE TO WORK

BENCHMARKS: TODAY'S SUCCESS STORIES

Federal Initiatives

- ✔ DOT's Joblinks program provides transportation and training in both urban and rural areas. Oregon's Glendale-Azalea School District uses Joblinks funds to transport the unemployed to training and jobs.

- ✔ DOT's Livable Communities program integrates transit with jobs, schools, and housing. In Corpus Christi, residents worked with local officials to develop three bus transfer centers and to improve pedestrian access to area amenities.

- ✔ DOT's On-the-Job Training (OJT) Program requires that federally funded highway projects provide apprenticeships and training positions in higher-paying transportation trades, such as carpentry, concrete finishing, and truck driving. These help women, minorities, and disadvantaged people move into America's vibrant construction industry.

- ✔ DOT's On-the-Job Training Supportive Services Program complements the OJT program by providing contractors, apprentices, and trainees with such services as recruitment, counseling and job placement, transportation, child care, and skills training. In addition, a highway construction project in Maine is using regular federal funding to provide day care for women workers making the transition from welfare.

- ✔ HUD's Bridges to Work Program connects inner-city residents with suburban employers through local partners who provide job placement, transportation, and support services. Demonstrations are underway in Baltimore, Chicago, Denver, Milwaukee, and St. Louis.

State and Local Initiatives

- ✔ St. Louis East-West Gateway Coordinating Council: 16 agencies coordinate to access jobs along the Metrolink rail line and to use vans and express buses that connect inner-city employees with suburban employers.

- ✔ Southeast Arkansas Transportation (SEAT): during off-hours, unused senior citizen service buses in rural Jefferson County transport welfare recipients to jobs and training.

- ✔ Baltimore, Maryland: vanpools link residents of disadvantaged central city neighborhoods to employers at and around Baltimore-Washington International Airport.

- ✔ The Transit Authority of River City, Louisville, Kentucky: new express bus service to the Bluegrass Industrial Park cut trip times from two hours to less than 40 minutes.

- ✔ Talahina, Oklahoma: the success of shuttles serving the graveyard shift at poultry processing plants in Fort Smith, Arkansas has served as a model for similar services to other employment centers in Oklahoma.

MOVING AMERICANS FROM WELFARE TO WORK

FEDERAL-NGA WELFARE TO WORK TRANSPORTATION INITIATIVE

- One of the biggest barriers facing those making the move from welfare rolls to payrolls is access to jobs, training, and support services such as day care. Two-thirds of new jobs are in the suburbs, but three of four welfare recipients live in rural areas or central cities. Their access to these jobs is limited: few welfare recipients own cars, and public transit, which provides a crucial lifeline for many lower-income Americans, often provides inadequate connections to new employment opportunities in the suburbs far from where most welfare recipients live.

- DOT is contributing $330,000 towards a partnership with the National Governors' Association (NGA). This will be used for grants to states to help them develop transportation strategies that support their welfare to work efforts. This partnership recognizes that those making the transition from welfare to work must largely depend on public transportation to reach jobs and other employment-support services, and that cooperation among federal, state, county, and local governments and the private sector is crucial.

- Participating states, led by their Governors' offices, are forming interagency task forces to coordinate transportation with welfare reform initiatives. The groups include state, county, and local human services agencies, along with local transportation providers, community human resource organizations, and private employers.

- State welfare to work transportation action plans will be completed during 1997. They are expected to emphasize coordinating existing public transportation, human services, and private programs that enable welfare recipients to get to where the jobs are.

- 24 states and one territory are participating: Alaska, Arkansas, Connecticut, Delaware, Illinois, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Mississippi, Missouri, Nebraska, New Jersey, North Carolina, Ohio, South Carolina, Tennessee, Texas, the Virgin Islands, Virginia, Washington, Wisconsin, and Wyoming.

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U.S. Department
of Transportation

NEXTEA

National Economic Crossroads Transportation Efficiency Act

Key Information

March 1997