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Folder Title:
WTW [Welfare to Work] / DBE [Disadvantaged Business Enterprise]: NEXTEA [National Economic Crossroads Transportation Efficiency Act]: Oct. 1 [1997] Event

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Paving the Road to Equal Opportunity:
The Need for DOT's Disadvantaged Business Enterprise Program
October 1, 1997

Ensuring Equal Opportunities

- For over a decade, DOT's Disadvantaged Business Enterprise (DBE) Program has been providing equal opportunities for women and minorities competing for highway and transit contracts.

- Since its inception, the DBE program has significantly increased the percentage of women and minority-owned construction firms that are building our nation's highways. DBE participation has increased from 3.6% in 1980 to 14.8% in 1996.

- By reaching out to women and minority-owned firms and fostering business relationships, the program has countered the effects of discrimination and good old boy networks which have been road blocks for many firms.

- Unfortunately, discrimination in the construction industry and financial markets continues to prevent women and minority-owned firms from reaching their full potential. For example, white-owned construction firms receive 50 times as many loan dollars as black-owned firms with identical equity.

- As a result of continued discrimination, women and minority-owned firms remain underrepresented in the construction field, even today.

- Now is not the time to discontinue DOT's equal opportunity program. It is still essential in paving the road to equal opportunity for too many disadvantaged firms.

Rejecting Quotas

- The DBE program does not impose quotas or set-asides of any kind. It relies only on flexible goals. In fact, it was President Reagan who first signed the program into law.

- The statute simply sets a national goal: that 10% of highway and transit funds be used for services rendered by disadvantaged businesses. State and local governments then set their own goals based on the numbers of disadvantaged businesses in their local markets.

- The goals are flexible. For example, if a prime contractor cannot find a qualified disadvantaged business, the state can waive the goal entirely.

Mending...

- The Supreme Court, in Adarand, changed the affirmative action landscape, but did not say the DBE program was unconstitutional. In fact, by a vote of 7-2, the Court said that the federal government can still use affirmative action programs to combat the "lingering effects of racial discrimination."

- Simply put, Adarand requires that federal affirmative action programs must be "narrowly tailored" to meet a "compelling government interest."

- In the only ruling since the Supreme Court's decision, a trial court in Denver said Congress had sufficient evidence showing that there was a compelling need for the program.

- Although the lower court's ruling -- now on appeal -- claimed the program was not carried out in a "narrowly tailored" manner, the Department of Transportation has already proposed ways to mend it to ensure that it remains constitutional.

- Under the proposal, the program will require "race-neutral" measures, such as outreach and technical assistance, before "race-conscious" measures are used. And, it will stress that good faith efforts are all that is needed to meet the goals.

- The proposal will also ensure that any goals that are set properly reflect the percentage of qualified disadvantaged businesses available in a given market.

Not Ending...

- DOT's equal opportunity program benefits all Americans by promoting the formation of small businesses, creating new jobs, fostering economic growth and stimulating innovation.

- If Congress decides not to reauthorize the DBE program, it will create a major disruption in the national economy. Thousands of small businesses may go out of business, costing tens of thousands of jobs.

- In the past, when state or local governments cut similar DBE programs, opportunities for women and minority-owned firms dried up. Prime contractors, in effect, told disadvantaged business owners, "We'll call when we need a minority."

- By refusing to reauthorize the DBE program, Congress will be creating a huge pot hole in the road to equal opportunity.

MYTHS AND FACTS:
DOT's Disadvantaged Business Enterprise Program

MYTH: There is no longer a need for a DBE program.

FACT: Yes there is. Minority and women-owned businesses are still under-represented in the construction industry. Discrimination in both contracting and in access to capital in the financial markets continues to limit the ability of minority and women-owned firms to reach their full potential.

- Minorities make up 20% of the population, yet minority-owned firms represent only 9% of all construction firms and receive only about 5% of all construction receipts.
- Women own one third of all firms, yet get only 19% of the business receipts.
- White-owned construction firms receive 50 times more loan dollars than black-owned firms with identical equity.

MYTH: The DBE program is a quota program.

FACT: False. There are no quotas or set-asides of any kind imposed by DOT's DBE program. The 10% goal is a national target for DOT; state and local recipients of DOT funding set their own goals for DBE participation in construction projects based on the availability of disadvantaged businesses in their markets. There is never an absolute requirement that a goal be met and there are no adverse consequences if a state fails to meet its annual goal or a contractor fails to meet a goal after making good faith efforts.

MYTH: The Supreme Court said the DBE program is unconstitutional.

FACT: Not true. The Supreme Court did not rule on the program itself. Instead, in Adarand, the Court established a new standard of review, called "strict scrutiny." By a 7-to-2 vote, the Court ruled that the federal government can still use affirmative action programs to combat the "lingering effects of racial discrimination."

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MYTH: The program must end because the District Court ruled it was not constitutional.

FACT: Not true. On remand, the Adarand district court accepted Congress' determination that there was a compelling need for the program, but decided that the program was not sufficiently narrow in its scope. That decision did not consider ways DOT has proposed to modify the program. The new proposal properly tailors the program and will require "race-neutral" measures, such as outreach and technical assistance, before "race-conscious" measures are used. And, it will stress that good faith efforts are all that is needed to meet the goals. It also will ensure that any goals that are set properly reflect the percentage of qualified disadvantaged businesses available in a given market.

MYTH: The DBE program leads to unqualified companies getting contracts.

FACT: False. If a prime contractor cannot find a qualified and competitive disadvantaged business for a project, it can still get the contract. The goal for the project can be waived because all that is required of the contractor is "good faith" efforts to find qualified DBEs.

MYTH: In construction, the lowest bidder always gets the subcontract.

FACT: Not true. Often subcontracting opportunities are dependent on established business relationships, preventing new women and minority-owned firms from getting the chance to compete for work. The DBE program promotes the kind of business relationships that women and minority-owned firms will need to compete on their own in the future.

MYTH: The DBE program drains the economy and adds to construction costs.

FACT: Not true. In fact, the DBE program helps the economy by promoting the formation of small businesses, creating new jobs, fostering economic growth and stimulating innovation. Because of the proliferation of small businesses, the program increases competition for contracts, sometimes reducing construction costs. In 1994, the GAO concluded that there was less than a 1% increase in construction costs due to the DBE program.

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MYTH: If a DBE is really qualified, it doesn't need the program to compete.

FACT: Even qualified DBEs often need the program just to get a chance to bid on a contract. For instance, in Louisiana, where there is no state DBE program, there are 165 qualified DBEs available for construction subcontracting. On federal-aid projects, where the DBE program ensures equal opportunity, those firms were able to prove their ability by getting 125 contracts (worth 5.3% of the federal-aid construction dollars). On state construction projects, those same firms were only given the opportunity to perform 12 contracts, worth only 0.2% of state highway construction dollars.

MYTH: The time has come to end DBE programs.

FACT: Unfortunately, when DBE programs end, many prime contractors return to the same exclusionary practices that denied women and minorities the chance to compete for business before the DBE program was created. In Michigan, in 1989, within 9 months of ending the state DBE program, minority-owned businesses were completely shut out of state highway construction projects, getting no contracts at all.

MYTH: The DBE program is just another liberal Democrat program.

FACT: Actually, although the DOT established similar equal opportunity programs in the 1970's, it was under the Reagan Administration that the disadvantaged business enterprise program was created in 1982 and expanded to include women-owned businesses in 1987.

Total Pages: ___

LRM ID: JAB299

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

Monday, September 29, 1997

LEGISLATIVE REFERRAL MEMORANDUM

TO: Legislative Liaison Officer - See Distribution below

FROM: James J. Jukes (for) Assistant Director for Legislative Reference
OMB CONTACT: James A. Brown
PHONE: (202)395-3473 FAX: (202)395-3109

SUBJECT: OMB Testimony on S1173 Intermodal Transportation Act of 1997 (Constitutionality of Disadvantaged Enterpreneur Program

DEADLINE: 4:00 p.m. TODAY Monday, September 29, 1997

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President. **Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.**

COMMENTS: This testimony must be delivered tomorrow. It is therefore essential that we hear from you no later than the deadline.

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RESPONSE TO
LEGISLATIVE REFERRAL
MEMORANDUM

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet. If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:
(1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
(2) sending us a memo or letter
Please include the LRM number shown above, and the subject shown below.

TO: James A. Brown Phone: 395-3473 Fax: 395-3109
Office of Management and Budget
Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: ____________ (Date)

____________ (Name)

____________ (Agency)

____________ (Telephone)

The following is the reponse of our agency to your request for views on the above-captioned subject:

_____ Concur

_____ No Objection

_____ No Comment

_____ See proposed edits on pages _____

_____ Other: ____________

_____ FAX RETURN of ___ pages, attached to this reponse sheet

STATEMENT OF NANCY E. McFADDEN
GENERAL COUNSEL
U.S. DEPARTMENT OF TRANSPORTATION
before the
SUBCOMMITTEE ON CONSTITUTION, FEDERALISM, AND PROPERTY RIGHTS of the
U.S. SENATE COMMITTEE ON THE JUDICIARY
September 30, 1997

Mr. Chairman and Members of the Committee:

I welcome the opportunity to appear before the Subcommittee today to discuss the Department of Transportation's Disadvantaged Business Enterprise program for highway and transit projects. While this program was originally signed into law by President Reagan in January 1983 with bipartisan support, it remains highly beneficial to our nation today. The Disadvantaged Business Enterprise program -- also know as the DBE program -- has been critical in providing thousands of small businesses owned by women, minorities and other socially and economically disadvantaged individuals the opportunity to compete for a share of federally assisted transportation programs undertaken throughout the country.

Although you have given this hearing the title "Unconstitutional Set-Asides," the fact is that the Disadvantaged Business Enterprise program which I am here to discuss is neither unconstitutional nor is it a set-aside program. I am certain that neither President Reagan, nor President Bush, both of whom signed versions of this program into law, would have supported "unconstitutional set-asides."

On the first point, it is important to remember that the Supreme Court has never ruled that the Department of Transportation's DBE program is unconstitutional. What the Supreme Court held in Adarand v. Peña is that federal affirmative action programs must meet "strict scrutiny," that is, they must serve a "compelling governmental interest" and be "narrowly tailored." The Department's DBE program meets this standard today. Nevertheless, in response to the President's directive to "mend but not end" affirmative action and to the specific ruling of the Supreme Court, the Department has already proposed changes to the DBE program to improve it and to be absolutely certain that it responds to all of the Court's concerns.

Second, the Disadvantaged Business Enterprise program is not a set-aside program. Nor is it a quota program. This program does not set aside contracts or dollars for a specific set of businesses. Instead, the DBE program sets a national goal of 10 percent DBE participation. Each state or locality sets its own annual goal for Federal-aid contracts. No State or local government has ever been sanctioned under this program for not achieving its goal. Moreover, if a bidder is unable to meet a specific contract goal under the program, the recipient can waive the goal as long as the bidder shows that it has made a good-faith effort.

With that introduction, I would like to discuss the Department's program in more detail. My testimony will cover two areas: first I will discuss the current DBE program, and then I will discuss the Department's proposed changes to the program as outlined in our Supplemental Notice of Proposed Rule Making published in the Federal Register on May 30 of this year.

The current DBE program, as I mentioned, sets a national participation goal of 10 percent for disadvantaged business enterprises. Recipients then set their own goals for participation based on the numbers of disadvantaged businesses in their local markets and the demands of specific project contracts. These goal are flexible. If a state cannot achieve a 10 percent goal then the Secretary of Transportation can – and has – permitted a lower goal based on availability of DBE firms and opportunities for subcontractors. The Department works collaboratively with recipients to assist them in finding ways to make use of the skills of disadvantaged businesses. I repeat, the Department has never sanctioned any recipient for not achieving its program goal. Likewise, if a prime contractor, despite good-faith efforts, cannot fins a qualified disadvantaged business to meet a specific contract goal, then the state can waive the goal entirely.

The use of goals across the United States has had a tremendous, beneficial effect on the participation of disadvantaged businesses nationwide. Since the inception of the program, the participation rate of disadvantaged businesses in highway construction–by far the largest DOT DBE program–has grown from ___ percent in 1982 to 14.8 percent today. It is also important to note that women-owned businesses, made eligible for the program in 1987, now account for about 50% of the participation rate in highway DBE programs.

Despite these tremendous advances, a great deal of work remains to be done if the American construction industry is truly to become a level playing field. The sad fact is that discrimination still exists in the construction industry across the nation. This discrimination has been documented in scores of disparity studies that have been conducted by state and local governments across the United States. It has been illustrated in the personal testimony of hundreds of disadvantaged business enterprises in hearings before state, county and local governments in every corner of this nation – as well as in hearings before the Congress.

The continuing existence of the effects of discrimination is also apparent in those jurisdictions that acted to suspend or weaken their own DBE programs in the wake of Supreme Court's 1989 decision in Croson. An example is instructive. In Michigan, within nine months of ending the state DBE program, minority-owned businesses were completely shut out of state highway construction. They received no contracts at all. Participation by women-owned businesses also plummeted. By 1996, there was only the slightest rebound. DBE's received only 31 subcontracts worth 1.1% of state contracting dollars. Under the Federal-aid highway DBE program the same DBE's received 554 subcontracts worth 12.7% of the federal aid dollars. Clearly qualified DBE's were ready, willing, and able to perform the work, but without the state DBE program, they were denied the fair opportunity to compete for state contracts. Unfortunately, we have similar examples from many parts of the country.

This continuing tendency to look disadvantaged businesses out of the highway construction market is bad for our economy and bad for our nation. Secretary Slater and President Clinton agree: the Federal government must confront and work to eliminate such discriminatory results. Part of our response must be a continuation of the Department's DBE program.

In this context, the Adarand v. Peña decision, and the President's government-wide review of federal affirmative action programs, have provided us all with a welcome opportunity to reexamine and improve our DBE programs. And that is exactly what the Department of Transportation is doing. As I indicated earlier, in May of this year we issued a Supplemental Notice of Proposed Rulemaking that recommends changes in the administration of the current DBE program that we believe will improve the program and address any doubts as to its constitutionality. Specifically, the Supreme Court's opinion in Adarand has provided us with a new standard and thus more guidance than we had in the past to tailor our program to ensure that it is effective and fair. Our proposed rule responds point by point to the narrow tailoring standards set out by the Supreme Court. Specifically:

- The proposal would ensure that goals are set to reflect the percentage of qualified disadvantaged businesses available in a given market. The purpose of all goals will be to provide a level playing field, that is, a contracting program free from discrimination. The program would provide the same opportunity to DBE's that they would normally receive in the absence of discrimination -- no more, no less.

- "Race neutral" measures, such as outreach, training, and technical assistance, are heavily emphasized and must be used to achieve as much DBE participation as possible before any "race conscious" measures are used.

- Recipients are instructed to use race-conscious measures only to the extent, and for as long as, they are needed to achieve a level playing field.

- We reemphasize that "goals" are not absolute requirements but, by definition, are satisfied by good-faith efforts, and can not be operated as quotas. Our program will prohibit the use of set-asides except in the most egregious cases of discrimination.

- We provide much greater flexibility to recipients to tailor to local circumstances the way they achieve the objectives of the DBE program.

Given the general nature of the Supreme Court's opinion and the dearth of lower court decisions, it is clear that the law in the area of affirmative action is still evolving. However, the Court's pronouncement that all federal affirmative action programs must meet strict scrutiny standards makes clear that the DBE program must evolve to reflect the progress that we as a society make in eliminating current discrimination and the lingering effects of past discrimination. The DBE program included in S. 1173, which was reported in a bipartisan effort by the Environment and Public Works Committee, provides the flexibility necessary to allow the Department to adjust the program to respond to industry progress against discrimination, local market conditions, and changes in the national economy. I urge you support this provision.

This flexibility will not allow the Department to institute unconstitutional programs. Let me reemphasize: whether we are talking about the current program, or the improved DBE program set out in our proposed rule, certain fundamental facts remain the same:

- The DBE program is not a set-aside program. It does not set aside contracts solely for DBEs. Instead it urges recipients, and prime contractors, to make good-faith efforts to increase the participation of DBE's in the construction industry where they confront continuing discrimination.

- The DBE program is not a quota program. It is a goal program. It does not set inflexible quotas that states and local governments, and prime contractors must achieve regardless of local market conditions and the availability of qualified DBEs. Instead, the DBE program provides encouragement to program participants to level the playing field.

- The DBE program does not require that unqualified companies get work. The program requires that DBE's have a fair opportunity to compete for work, free from the effects of discrimination. If a DBE is not qualified to perform the work, it will not get a contract.

- The DBE program does not undermine the low-bid system. This program operated primarily in the subcontracting market where opportunities often depend upon established working relationships. This program is aimed at assisting prime contractors and DBEs to build the working relationships that will allow DBEs to prove themselves and compete on their own in the future.

We are gratified that the bipartisan leadership of both the House and the Senate authorizing committees most concerned with these programs has determined that continuing the DBE program, consistent with the Adarand ruling, is in the national interest. While these programs have already resulted in progress, the work to end discrimination in the highway construction industry is far from over. By re authorizing the DBE program, the Congress will ensure that the Department of Transportation can continue this important work. For this reason, I urge all of you to support the DBE provision contained in S. 1173 as reported by the Environment and Public Works Committee.

Thank you Mr. Chairman. This completes my prepared statement, and I would be pleased to respond to any questions the Committee may have.

Paving the Road to Equal Opportunity:
The Need for DOT's Disadvantaged Business Enterprise Program
October 1, 1997

Ensuring Equal Opportunities

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- By reaching out to women and minority-owned firms and fostering business relationships, the program has countered the effects of discrimination and good old boy networks which have been road blocks for many firms.

- Unfortunately, discrimination in the construction industry and financial markets continues to prevent women and minority-owned firms from reaching their full potential. For example, white-owned construction firms receive 50 times as many loan dollars as black-owned firms with identical equity.

- As a result of continued discrimination, women and minority-owned firms remain underrepresented in the construction field, even today.

- Now is not the time to discontinue DOT's equal opportunity program. It is still essential in paving the road to equal opportunity for too many disadvantaged firms.

Rejecting Quotas

- The DBE program does not impose quotas or set-asides of any kind. It relies only on flexible goals. In fact, it was President Reagan who first signed the program into law.

- The statute simply sets a national goal: that 10% of highway and transit funds be used for services rendered by disadvantaged businesses. State and local governments then set their own goals based on the numbers of disadvantaged businesses in their local markets.

- The goals are flexible. For example, if a prime contractor cannot find a qualified disadvantaged business, the state can waive the goal entirely.

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DOT's Disadvantaged Business Enterprise Program

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FACT: Yes there is. Minority and women-owned businesses are still under-represented in the construction industry. Discrimination in both contracting and in access to capital in the financial markets continues to limit the ability of minority and women-owned firms to reach their full potential.

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- Simply put, Adarand requires that federal affirmative action programs must be "narrowly tailored" to meet a "compelling government interest."

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- The proposal will also ensure that any goals that are set properly reflect the percentage of qualified disadvantaged businesses available in a given market.

Not Ending...

- DOT's equal opportunity program benefits all Americans by promoting the formation of small businesses, creating new jobs, fostering economic growth and stimulating innovation.

- If Congress decides not to reauthorize the DBE program, it will create a major disruption in the national economy. Thousands of small businesses may go out of business, costing tens of thousands of jobs.

- In the past, when state or local governments cut similar DBE programs, opportunities for women and minority-owned firms dried up. Prime contractors, in effect, told disadvantaged business owners, "We'll call when we need a minority."

- By refusing to reauthorize the DBE program, Congress will be creating a huge pot hole in the road to equal opportunity.

MYTHS AND FACTS:
DOT's Disadvantaged Business Enterprise Program

MYTH: There is no longer a need for a DBE program.

FACT: Yes there is. Minority and women-owned businesses are still under-represented in the construction industry. Discrimination in both contracting and in access to capital in the financial markets continues to limit the ability of minority and women-owned firms to reach their full potential.

- Minorities make up 20% of the population, yet minority-owned firms represent only 9% of all construction firms and receive only about 5% of all construction receipts.
- Women own one third of all firms, yet get only 19% of the business receipts.
- White-owned construction firms receive 50 times more loan dollars than black-owned firms with identical equity.

MYTH: The DBE program is a quota program.

FACT: False. There are no quotas or set-asides of any kind imposed by DOT's DBE program. The 10% goal is a national target for DOT; state and local recipients of DOT funding set their own goals for DBE participation in construction projects based on the availability of disadvantaged businesses in their markets. There is never an absolute requirement that a goal be met and there are no adverse consequences if a state fails to meet its annual goal or a contractor fails to meet a goal after making good faith efforts.

MYTH: The Supreme Court said the DBE program is unconstitutional.

FACT: Not true. The Supreme Court did not rule on the program itself. Instead, in Adarand, the Court established a new standard of review, called "strict scrutiny." By a 7-to-2 vote, the Court ruled that the federal government can still use affirmative action programs to combat the "lingering effects of racial discrimination."

MYTH: Affirmative action programs can't be constitutional under strict scrutiny.

FACT: Not true. Many courts have upheld state and local race-based affirmative action programs, even under the strict scrutiny standard. The courts have recognized that discrimination still exists and affirmative action programs are often essential to remedy past discrimination and to break down continuing discriminatory barriers.

MYTH: The program must end because the District Court ruled it was not constitutional.

FACT: Not true. On remand, the Adarand district court accepted Congress' determination that there was a compelling need for the program, but decided that the program was not sufficiently narrow in its scope. That decision did not consider ways DOT has proposed to modify the program. The new proposal properly tailors the program and will require "race-neutral" measures, such as outreach and technical assistance, before "race-conscious" measures are used. And, it will stress that good faith efforts are all that is needed to meet the goals. It also will ensure that any goals that are set properly reflect the percentage of qualified disadvantaged businesses available in a given market.

MYTH: The DBE program leads to unqualified companies getting contracts.

FACT: False. If a prime contractor cannot find a qualified and competitive disadvantaged business for a project, it can still get the contract. The goal for the project can be waived because all that is required of the contractor is "good faith" efforts to find qualified DBEs.

MYTH: In construction, the lowest bidder always gets the subcontract.

FACT: Not true. Often subcontracting opportunities are dependent on established business relationships, preventing new women and minority-owned firms from getting the chance to compete for work. The DBE program promotes the kind of business relationships that women and minority-owned firms will need to compete on their own in the future.

MYTH: The DBE program drains the economy and adds to construction costs.

FACT: Not true. In fact, the DBE program helps the economy by promoting the formation of small businesses, creating new jobs, fostering economic growth and stimulating innovation. Because of the proliferation of small businesses, the program increases competition for contracts, sometimes reducing construction costs. In 1994, the GAO concluded that there was less than a 1% increase in construction costs due to the DBE program.

MYTH: The DBE program doesn't work as an economic development program and is only an entitlement for subcontractors.

FACT: False. In FY96, approximately 18% of the federal-aid highway dollars spent with DBEs was for DBE prime contractors. At least 492 firms have grown from subcontractors to prime contractors after entering the DBE program.

MYTH: If a DBE is really qualified, it doesn't need the program to compete.

FACT: Even qualified DBEs often need the program just to get a chance to bid on a contract. For instance, in Louisiana, where there is no state DBE program, there are 165 qualified DBEs available for construction subcontracting. On federal-aid projects, where the DBE program ensures equal opportunity, those firms were able to prove their ability by getting 125 contracts (worth 5.3% of the federal-aid construction dollars). On state construction projects, those same firms were only given the opportunity to perform 12 contracts, worth only 0.2% of state highway construction dollars.

MYTH: The time has come to end DBE programs.

FACT: Unfortunately, when DBE programs end, many prime contractors return to the same exclusionary practices that denied women and minorities the chance to compete for business before the DBE program was created. In Michigan, in 1989, within 9 months of ending the state DBE program, minority-owned businesses were completely shut out of state highway construction projects, getting no contracts at all.

MYTH: The DBE program is just another liberal Democrat program.

FACT: Actually, although the DOT established similar equal opportunity programs in the 1970's, it was under the Reagan Administration that the disadvantaged business enterprise program was created in 1982 and expanded to include women-owned businesses in 1987.

Paving the Road to Equal Opportunity:
The Need for DOT's Disadvantaged Business Enterprise Program
October 1, 1997

Ensuring Equal Opportunities

- For over a decade, DOT's Disadvantaged Business Enterprise (DBE) Program has been providing equal opportunities for women and minorities competing for highway and transit contracts.

- Since its inception, the DBE program has significantly increased the percentage of women and minority-owned construction firms that are building our nation's highways. DBE participation has increased from 3.6% in 1980 to 14.8% in 1996.

- By reaching out to women and minority-owned firms and fostering business relationships, the program has countered the effects of discrimination and good old boy networks which have been road blocks for many firms.

- Unfortunately, discrimination in the construction industry and financial markets continues to prevent women and minority-owned firms from reaching their full potential. For example, white-owned construction firms receive 50 times as many loan dollars as black-owned firms with identical equity.

- As a result of continued discrimination, women and minority-owned firms remain underrepresented in the construction field, even today.

- Now is not the time to discontinue DOT's equal opportunity program. It is still essential in paving the road to equal opportunity for too many disadvantaged firms.

Rejecting Quotas

- The DBE program does not impose quotas or set-asides of any kind. It relies only on flexible goals. In fact, it was President Reagan who first signed the program into law.

- The statute simply sets a national goal: that 10% of highway and transit funds be used for services rendered by disadvantaged businesses. State and local governments then set their own goals based on the numbers of disadvantaged businesses in their local markets.

- The goals are flexible. For example, if a prime contractor cannot find a qualified disadvantaged business, the state can waive the goal entirely.

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Thank you, Secretary Slater, for your generous introduction, and also for your -- and your guests' -- encouraging cooperation with Congress, which looks ready to lead to a transportation bill that will accelerate the economic opportunities of all Americans, while still keeping true to the cause of a clean environment.

Right now, we have a bill that protects the Disadvantaged Business Enterprise Program, includes far-sighted welfare-to-work provisions, and adds hundreds of millions of new dollars to help communities invest in cleaner methods of transportation.

But there is still some work to be done. The bill currently in the Senate safeguards the Disadvantaged Business Enterprise Program -- but only for highway projects. We want to extend it to the transit also -- while also defending it against people who strip it from the bill completely.

You've heard some of the irresponsible rhetoric raised against the DBE. You should also hear the testimony given by DOT General Counsel Nancy McFadden to the Senate yesterday.
She noted that nine months after the state of Michigan ended its DBE program, minority-owned businesses received no state contracts whatsoever! Meanwhile, those same minority contractors were receiving over 12% of the value of federal contracts.

That makes the point: Minority contractors were able and available, yet pushed away from the table. That is what the DBE is there to prevent. We have to fight to extend the DBE program to transit as well as highway, and make sure minority and women contractors have a fair chance to compete for federal contracts.

Another important issue -- and one for which Senator D'Amato's committee deserves credit -- is the generous provision of $100 million a year to help states and local communities move their people from welfare to work.

Welfare reform, if it's going to work, must work to remove the barriers that separate people from jobs. Lack of job skills and education is one, but physical distance is another. Today, only about 6 percent of those on welfare have cars. And in many big cities, half of the entry level jobs can't be reached by buses or trains.

We cannot be sincere in our efforts to move people from welfare to work, if we won't do what's necessary to transport them to work. This bill, as it stands, will do that. And I salute the Congress for its leadership on this issue.

Both houses of Congress also should be commended for a inspiring display of environmental leadership in this bill. Both houses have boosted funding for the

Congestion Mitigation Air Quality Program, which provides the funds many local government need to comply with the Clean Air act. Both houses have dramatically increased funding for the transportation enhancement program, which supports recreational trails, bike paths, and pedestrian walkways. Both houses have also come forward with generous investments in scencic byways and landscaping.
It is heartening to see what can happen with bipartisan leadership in Congress and cordial cooperation between Congress and the Executive. But -- as you know -- this war is not won. There are some powerful members of Congress who do not share our values, and who will use every trick and tactic to derail the important provisions I've just mentioned.

Don't let them do it. Stay tough, battle hard, and make sure our Congressional adversaries feel the heat of public opinion. You've got a couple hundred million on your side.

Thank you very much.

Gay L. Joshlyn 09/30/97 11:21:46 AM

Record Type: Record

To: Dorothy Robyn/OPD/EOP

cc:

Subject: NEXTEA Conf. Call

The number is 757-2104 and the code is 3939. I have confirmed Janno Lieber, Elisa Millsap, Diane Montgomery, Lee Ann Brackett, Eric Anderson (OVP), Bibb Hubbard, Mona from Lynn Cutler's office, Richard Hayes, John Horsley, and John Murchinson. Andy Blocker is out sicke today and Dan Tate will try to be on the call. I have left a message and paged Linda Lance.

Cynthia Rice — Barbara Leach

Tom Rosshirt 6-7173

[illegible]

Eileen Selden

David Thomas - VP Legis. Office

Heidi Kukas - VP Press

6-7099

Carrie Nuhn 366-5037

• Speakers

3. • Wayne Curry - County Exec., PG

1. • Gov. Bob Miller - D-NEV.

2. • Mayor ____

• Members:

- Mona will clear officials

- Slater - brief intro. remarks

- VP

- gov.

- mayor

- co. of

Get Tom language

Rallying call before Sen. floor vote

Emphasize program areas

- DBE program
- WTW
- MPOs
- CMAQ
- transit
- safety/seat belt

VP:

- DBE — program is constitutional — Senate shld not strike it
- WTW — applaud House; Senate Comm. for including WTW — $100 M/yr. — no cap on # of projects
- Environ. —
- 1. NEPA streamlining
2. CMAQ SOV eligibility
3. wetlands mit.
4. CAA amendments

Wed., Oct. 1 - ~~[illegible]~~ NEXTEA

Room 450 - 2:30 - 3:30

arrive at 1:45

- celebrating pres. priorities that have been retained
- highlight those that haven't or

• WTW
• DBE (but not in banking)
• enviro.
•

° safety

Counties ; Cities - leaving to 6 mo. bill + BESTEA

trying to get county, gov., city speaker

audience:

- 20-30% of audience : DBE as priority
- WTW transit, community action org's : WTW
- high tech / ind. groups : ITS
- MPOs :
- County / City / State - esp. from ISTEA works

- Up the ante on envir. amendments in Senate bill

- STPP
  - 20 (WTW)
  - 10

- org'd labor - preserving worker protection

Program

- Rodney
- VP
-

- gov.
- mayor -
- county official
- Member - DBE ; WTW
  - Nadler
  - Waters
  - Moseley-Braun

[illegible]

John

~~Kerry~~ Carrie Mann

Katherine Hubbard
09/26/97 04:33:55 PM

Record Type: Record

To: Dorothy Robyn/OPD/EOP

cc: Richard L. Hayes/WHO/EOP, Mona G. Mohib/WHO/EOP, Lynn G. Cutler/WHO/EOP, Suzanne Dale/WHO/EOP

Subject: Re: NEXTEA event

I just heard from the VP's scheduling office that the VP has TENTATIVELY agreed to drop-by between 2:45 pm - 3:15pm. I will call DOT to let them know. We should have a final answer on Monday.

Insert on environment for VP remarks at ISTEA event October 1, 1997

As the President and I have repeatedly said, this may be the most important piece of environmental legislation considered by this Congress. As you all know, the original ISTEA bill enacted in 1991 was a breakthrough in transportation legislation. It recognized that flexibility in transportation planning is critical to sustainable development -- mobility and growth coupled with sustainable, environmentally sound communities.

The Administration's NEXTEA bill built on the success of ISTEA, and expanded upon those programs so important to environmentally sound growth -- the Congestion Mitigation and Air Quality, or CMAQ (C-MACK) program, providing funding to help communities meet the national standards for healthy air; as well as support for transit, railroads, bicycle and pedestrian travel and intermodal facilities.

We are pleased and gratified that both the Senate and the House have recognized the vital importance of these programs and the necessary flexible approach to transportation planning. Our challenge now is to maintain the progress that has been made so far, and to prevent any backsliding as these bills go to the floor and eventually to conference.

In particular, let me highlight a few of my concerns. The House bill currently would undercut the protections provided by the National Environmental Policy Act (NEPA) in ways that are unacceptable. The Administration is working hard to streamline the NEPA process, but we will insist that the essential protections provided by the Act are preserved. We are also informed that several amendments may be offered on the Senate floor that are similarly problematic [CK THIS W/ DOT] : one that would also undercut NEPA protections; one that undercuts the effectiveness of CMAQ by permitting its funding to go for the construction of single occupancy vehicle lanes in highways; and two that would undercut the public health protections provided by the new Clean Air Act standards recently issued by EPA.

In summary, environmental protection is a vital aspect of this bill. You and the Congress can be proud of the work done so far. But the job is not quite done.

Richard L. Hayes 09/30/97 06:04:06 PM

Record Type: Record

To: Thomas M. Rosshirt/OVP @ OVP

cc: Ananias Blocker III/WHO/EOP, Dorothy Robyn/OPD/EOP, Richard L. Hayes/WHO/EOP
Subject: VPOTUS NEXTEA remarks

I would recommend that the VP say something along the following lines. However, feel free to edit as you think appropriate. The stronger the VP's statement, the more appreciative audience will be. Moreover, since there will be a move in the Senate to strike the program, a strong statement will help tremendously in putting down this effort.

* The Disadvantaged Business Enterprise program -- also known as the DBE program -- has made the federally assisted transportation program fair place to do business by providing opportunities thousands of businesses owned by women, minorities and other disadvantaged individuals that might not otherwise have had a fair opportunity to compete. That is why the President included this program in his NEXTEA proposal that was submitted earlier this year and he and I both stand behind it.

* I applaud the bipartisan leadership of both the House and Senate authorizing committees for the work it has done thus far in reauthorizing the DBE program. In this regard, I encourage the Senate Banking committee to do likewise and include the program in the Transit portion of the reauthorization legislation, so that the Department of Transportation can continue it this highly effective program.

* To those who would take this opportunity to strike the DBE program because of a mistaken belief that the program is unconstitutional, we should be clear that this is not the case, and I urge you not to take this course. The Supreme Court in its Adarand decision did not say that the program is unconstitutional. In fact, no court has ever ruled this. The Department of Transportation's DBE program meets the standard set out by the court. Moreover, Secretary Slater has proposed changes to the program to improve it and to make absolutely sure that it responds to all of the Court's concerns. The DBE program has been of tremendous assistance in eliminating discrimination in highway construction and this Administration pledges to continue this effort with the successful reauthorization of he program.