



**Statewide Small Business Council
Meeting Minutes – March 18, 2011**

District 7 Headquarters
100 S. Main Street
Los Angeles, CA

Statewide Council Members Present

Chaudhary, Arvin	CELSOC
Chavez, Chris	HCSA
Chen, Lynn	CACP
Cunningham, Lee	CWOE
Dias, Juan (Alt.)	MABPA
Guerrero, Paul	CAL-SBE
Halm, Eric (Alt.)	AAAE, S. CA
Hassoun, Sam	GLA
Hernandez, Richard (Alt.)	SHPE
Hou, Johnathan	ABA
Hunsaker, Debbie	GFACC
Johnson, Bernard	SDRMSDC
Jordan, Fred	SFAACC
LaCome, Diana	NCA
Lau, Eddy	AAAE, SFO
Llewellyn, Rebecca	WCOE
Mallarapu, Shobha	NAWBO
Matu, Cassy	SACHCC
McGlover, Stephen	CCCC
Ortiz, Leonard	LBA
Patten, Ezekiel	BBA
Ulmer, William (Alt.)	SDVOB
Vargas, Jesus	SJCHCC

Caltrans Staff Present

Dougherty, Malcolm	Chief Deputy Director (Interim)
Fonseca, Olivia	Chair
Carlos Jr., Ramon	OBEO
Effinger, Robert	Construction Practices
Knox, Thomas	District 7
Miles, Michael	District 7
Negri, Francesca	DPAC
Philippon, Elizabeth	District 12
Robertson, Deborah	District 7
Skewis, Rose	OBEO
Sultan, Mohsen	Local Assistance

Guests

Butler, Jim	DGS
Carrera, Angel	DGS
Mammano, Vincent	FHWA

Public Participation

Pleasure, Dexter	Quick Wealth
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Note: some attendees did not sign in.

Welcome/Introduction/Opening Remarks

Olivia Fonseca, Deputy Director, Office of Business and Economic Opportunity, California Department of Transportation (Caltrans), Statewide Small Business Council (SBC) Chair called the meeting to order at 8:30 a.m. Chair Fonseca welcomed Statewide Small Business (SB) councilmembers, Caltrans staff, and guests; all were asked to introduce themselves. Chair Fonseca announced that District 7 staff were trying to activate the teleconference and introduced Mr. Michael Miles, Director, District 7, who welcomed all to District 7 headquarters.

Chair Fonseca introduced Mr. Malcolm Dougherty, Chief Deputy Director (Interim), Caltrans. Mr. Dougherty expressed his appreciation to the Statewide SBC, Department of General Services (DGS), Federal Highway Administration (FHWA), District 7 and Chair Fonseca for their participation to resolve issues that are inhibitions to SBs/DBEs doing business with Caltrans. Mr. Dougherty stated that Caltrans continues to maintain a healthy program with approximately \$10 billion in construction work and anticipates a similar size program next fiscal year. On the federal side, the last transportation bill has been extended to September. The federal Transportation and Infrastructure Committee proposes a transportation bill for the next six years equivalent to gas tax revenue, which is approximately \$220-240 billion over six years – the last transportation bill was \$279 billion over six years. The Administration proposes approximately \$556 billion for the transportation bill; so, one proposal doubles funding and the other reduces it slightly.

Chair Fonseca asked Mr. Vincent Mammano, FHWA, for remarks. Mr. Mammano mentioned that federal shut down is an issue; but, SAFETEA-LU has been extended to September. SAFETEA-LU is funded through the highway trust fund not the general fund, which means SAFETEA-LU projects will continue if the government is shut down. The new DBE regs are out, and FHWA is working with Caltrans to make sure that this information goes out to all including the locals. Mr. Mammano's supervisor, Mr. Butch Waidelech has been promoted to Director of Field Services and is moving to Utah on April 1. Mr. Bob Talley, a division administrator from Indiana, will be acting for Mr. Waidelech on a three-month, or possibly longer, rotation.

Chair Fonseca stated that she would go off agenda and asked Mr. Scott Leslie, Program Director, Small Business Transportation Resource Center (SBTRC), to address their bonding program. Mr. Leslie briefly discussed the DOT bonding education program pilot project that was conducted in three cities last year and would be extended nationally beginning on Thursday, June 30, in Los Angeles, and meeting every Thursday for six weeks. SBTRC is also conducting a stakeholders meeting during the third week in May and invited all Statewide SBC members to the meeting. Chair Fonseca commented that the SBTRC newsletters are forwarded to council member's organizations, and they will continue to receive this information from OBEO.

Chair Fonseca noted that approval of the January Statewide SBC meeting minutes was not on the agenda and, since they were sent late, asked council members if they had ample time to review or was there a motion to defer their approval until the next meeting.

Motion to defer approval of January 21, 2011, meeting minutes by: Councilmember Lau

Second by: Councilmember Johnson

Approved by consensus.

Chair Fonseca recognized Councilmember Lau. Councilmember Lau commented that at the last meeting there was discussion with Mr. Lance Yokota, FHWA, regarding DBE reporting. Councilmember Lau recalls that not all close-out data was reported on the DBE report and raised the issue that presenting the contract award data is meaningless unless close-out data is included; and, at that time, Mr. Yokota expressed a preference of receiving tracking data similar to District 4. Councilmember Lau stated that he requested Mr. Yokota's comment be put on the minutes and would like to have the minutes revised to include the conversation with Mr. Yokota regarding DBE reporting.

- **Action Item:** Chair Fonseca will ask Mr. Yokota to confirm the data preference for the January minutes.

ITEM 1 – Mr. Jim Butler, Deputy Director, Procurement Division, Department of General Services

Chair Fonseca welcomed and thanked Mr. Butler for attending today’s meeting. Mr. Butler mentioned that he chairs a similar council at DGS and shares six members between the two councils. At their December meeting, council members met with a number of the advocates across the state to compile a list of recommendations to present to the incoming Governor of initiatives to pursue as it pertains to SB/DVBE contracting across the state. If anyone would like a copy, they will forward the information to Chair Fonseca to distribute to the council. Mr. Butler also attended the Commodities and Professional Services Committee meetings yesterday afternoon and discussed feedback received. Councilmembers had an opportunity to ask questions, and Mr. Butler answered accordingly. Chair Fonseca thanked Mr. Butler for his attendance.

ITEM 2 – Statewide Committee Reports

Committees met the night before and discussed 2010 Action Items; refer to Committee minutes for updates.

Commodities – Councilmember McGlover, Chair

- The Greater Los Angeles Construction Career Awareness Day at Los Angeles Trade-Technical College will be held on Thursday, April 7, 2011.

Construction – Councilmember LaCome, Chair

- **Action item:**
Mr. Dougherty to update committee re: Dispute Resolution Boards; he believes that Caltrans incorporated language regarding dispute resolution between primes and subs.
- Councilmember Camacho requested clarification regarding bonding requirements for task orders under \$25,000. Chair Fonseca read an email response from Ms. Louise Lozoya, DPAC, regarding payment and performance bonds: for on-call task order base contracts, public works, Caltrans only requires a Payment Bond if the task order is over \$25,000. There is no Performance Bond requirement. Our contracts stipulate bond requirements in Exhibit D. If you do not see this in the solicitation, please inquire about it during the Q&A period.

Action item:

- Mr. Dougherty will get clarification on bonding requirements for multi-year, multi-million dollar contracts and task orders within that contract – the “big” contract may require certain bonding.
- Councilmember Vargas suggested that outreach activities occur in advance of the RFQ and not during the short-list period where teams have already been formed.

Professional Services – Councilmember Lau, Chair

- Chair Fonseca addressed Councilmember Lau’s concern regarding NAICS/work codes. OBEO along with seven local agencies provide DBE certification determinations. Part of the certification process is to look at a firm’s NAICS: what work are they performing so that we can identify them in the directory as certified to perform these types of work. We are not alone in building the directory. Secondly, OBEO also has the responsibility during contract evaluation for construction contracts to look at the listed UDBE and ensure that they are certified for the work item they’ve been listed, which comes to the issue of commercially useful function (CUF) – are they performing the work or have the ability to perform the work that they are listed for and is that work a CUF for that service or contract. For professional services contracts, DBEs may have a NAICS code that says business consulting or inspection and will have a NAICS code that is generic. There are approximately 20,000 NAICS codes that define professional services. Chair Fonseca recognizes the need to do a better job defining the

NAICS for DBEs not only in professional services but for construction and has spoken with staff to see how we can better define it either by the NAICS code or a description. In doing this, it not only helps OBEO staff, but all the local agencies who depend on that directory to review certification NAICS codes and apply it to the job that the DBE is listed for. Chair Fonseca also mentioned that Caltrans is disallowing UDBE credit for not performing a CUF. Mr. Dougherty stated that Caltrans is not receptive to Good Faith Efforts, and this message is getting out. In addition, he will get involved in the unbundling approach.

- Chair Fonseca noted that the new DBE rule clearly identifies that Caltrans, as administrators of the funds, needs to have certification at the end of the contract from the prime that they have in fact utilized their listed U/DBE. She and Ms. Francesca Negri, Chief, DPAC, have discussed this new rule and believe that it could be administered with the contract documents for professional services. There will be a requirement to complete a final U/DBE utilization form that requests who was listed at award and at conclusion including the dollar amounts. They have to certify through the process – this is part of the certification – that they finished their project with their listed U/DBEs. In addition, the contract manager will have a role in ensuring this involvement throughout the life of the contract. The final document will go to OBEO since we will track and report to FHWA.
- Councilmember Lau noted that District 4 provides quarterly reports that track DBE utilization in construction and A&E services and stressed the need to have timely reporting. Ms. Negri said that DPAC is working on documentation to implement a tracking process by April 1st that tracks both SB and DBE utilization. The process will be tied to invoicing; so, tracking SB/DBE utilization will happen as invoices are being paid and monitoring will occur throughout the life of the contract.
- Councilmember Guzman stated that he is concerned: our members go by the rules; go through the process; when anybody is breaking the rules, to him, it's not unacceptable. Caltrans is not following its own rules, to enforce its own rules. And, as a result, many of us have filed a federal complaint on Caltrans to the justice department; and, we are going to pursue that filing to make sure that the people in this council or in this organization are held accountable to that. So, we don't trust the process. Yes, you may have disqualified. We have seen no reports that you've done it. Until we start seeing that we don't believe it. Mr. Dougherty asked if Councilmember Guzman was referring to CUF. Chair Fonseca confirmed yes and that we have records disallowing the usage of DVBEs/UDBEs who are not performing a CUF.
- Councilmember Hou commented that a couple of years ago, an RFQ specifically identified that a DBE has to be certified under a specific NAICS code and recommends that this statement be included in future RFQs. Chair Fonseca agreed that Caltrans could note in the specs that the listed UDBE must be performing a CUF and list the acceptable NAICS codes.
- Councilmember Jordan expressed dissatisfaction with selection boards and feels an overhaul is necessary. Ms. Negri said that she will look into the selection process.
- Chair Fonseca addressed key pieces in CUF: is the DBE licensed to perform that work, do they manage, supervise and take risk of activities required to deliver the work to show that they're not just a pass through. They have to be involved. These are the key questions that are asked when looking at CUF requirements on several of our contracts. Chair Fonseca also thanked Councilmember Lau for being chair again this year.

Local Assistance – Councilmember Camacho, Chair

- Councilmember Camacho suggested the SB Advocate prepare a letter to be signed by the Governor of California and send this letter to every chief or executive officer of local agencies encouraging them to do their utmost to pursue the intent of Congress that is to comply with the CFR.

ITEM 3 – District Updates

District 7 (Los Angeles) – Michael Miles, District 7 Director

Total expenditures to date is \$48.6 million: \$21.1 million to SBEs for an overall average of 44 percent; \$6.5 million to UDBEs for an average of 13 percent; \$16.7 million to DBEs for an average of 34 percent; \$51,000 to DVBEs. District 7 continues to work with prime contractors to make sure that SBs are utilized; unbundles projects so that SBs have a better opportunity to bid; and, from our emergency contracts, continue to press our people to use SBs when we can and feels that District 7 has been very successful utilizing SBs in our emergency contracts.

- Councilmember Vargas requested that District 7's SBE utilization report be clarified. Mr. Miles commented that they will clarify and try to make the chart easier to read.

District 12 (Orange) – Elizabeth Phillippon, District 12 SB Liaison

District 12 has planned an outreach for projects that are going to happen between now and the next two years. All are invited to this event taking place on April 12 (also posted on internet). There are 14 Minor A & B projects, which will be advertised for bid by July 2011; four of these are being advertised this month. In addition, there are nine Minor A & B projects being advertised by April 2012. There are also 23 projects total of Minor A & B with an estimated total value of \$10 million. In addition to minor projects, there are major projects over \$1 million to be advertised in 2011; in 2012, there are an estimated total value of \$400 million in projects. All projects require a diversified level of construction industry expertise such as paving, welding, masonry, carpentry, electrical and other specialties. Some examples of these projects are: pavement rehab project on I-5 Mission Viejo, upgrade of traffic signals on SR 39 and Palm Beach Blvd., reconstruct the I-5 and SR74 interchange in San Juan Capistrano. Looking beyond 2012, in the five-year horizon, there are many more projects under development, and these projects are either in the environmental or design stage. Examples of these projects are a pavement rehab project on SR 55, ADA upgrade projects throughout the county, additional lane on SR 91, extend the high occupancy vehicle lane on I-5 and landscape improvements throughout Orange County.

ITEM 4 – Public Comment/Good of the Order – Meeting Folder Contents

Chair Fonseca identified items in member meeting packets.

Councilmember LaCome requested clarification of the term “egregious” – has it been used; and, if so, in which states and under what conditions. Chair Fonseca stated that she had requested FHWA to help define “egregious” and was told to wait for another disparity study because there was not enough time in the current program to establish “egregious.” Currently, no other state has applied “egregious.”

Tying in Councilmember LaCome's comment, Chair Fonseca said that as Chair of the Transportation Research Board (TRB) DBE Committee, one of her roles is to bring ideas to assist in implementing the program at a higher level and identify areas in the regulations or application of the program to obtain best practices from other states. Everyone in the TRB can submit a synthesis statement request to have the TRB research items of interest, in this case, to the DBE Committee. Several statements were submitted: the DBE/Supportive Services program – constantly looking for ideas to improve the delivery of supportive services; the SB program – are there tools from other states that California should consider that would allow us to set up SB program under our federal aid; the use of set-asides in the DBE program – which includes defining egregious. If this statement is selected, the TRB may do a study to assist states in defining egregious. Other statements: prequalification of DBEs (submitted by a colleague) who feels that prequalification is an item to study to enhance DBE participation on contracts; the DBE program in

Design-Build. The procurements that will probably move forward for all levels will be more Design-Build or "P3." Once the TRB makes their selection, they will contract the work out.

Councilmember Camacho commented that many jurisdictions in California conduct their own disparity studies and their resulting goals are higher than Caltrans, particularly the studies in the Bay area. Given that Caltrans has a dated disparity study, can Caltrans opt to use disparity studies that have been conducted locally when it would improve utilization of minorities in California. Chair Fonseca answered that Caltrans asked FHWA before the first disparity study was initiated if we could use existing disparity studies; and, federal regulations say that the studies should be based on Caltrans dollars. The existing studies are primarily transit and not applicable. We advertised in January for the RFP for the new disparity study and had to pull it because I could not ensure the total funding. Now, with funding ensured, we will have a short advertisement and will select a new consultant who is charged with providing the update in eight months from date of execution. Mr. Butler commented that the members of the selection panel are confidential to prevent them from lobbying those who have a vested interest in awarding the contract. They are disinterested/neutral parties that are performing a duty under the Public Contract Code. Their names will not be disclosed until everything is complete and then can be obtained under the Public Records Act.

Mr. Dougherty asked if Caltrans disparity study will be a state-wide disparity study does it identify any geographic differences in that disparity study or is it aggregated so we end up with state-wide disparity results.

Councilmember Guerrero commented that he has read the Western States decision, where the court said we know there's discrimination in the state of Washington, but we do not know where it is within the state or who is being discriminated against; therefore, you need to conduct a disparity study and tell us where that discrimination is and who is being discriminated against so we can remedy it. We need to remedy discrimination differently by locality, which is where he feels Caltrans study is flawed. Also, opposed to Design-Build because it is open bid shopping; believes that all Design-Build jobs should have quality control/assurances and expand that to oversee the bidding processes so when the prime puts some work out to bid that the low bidder gets the work. Mr. Dougherty commented that California is just starting to engage, as far as transportation projects, with Design-Build. Caltrans has 600+ projects ongoing at any given time, and we're doing ten Design-Build pilot projects and will learn a lot of lessons. Of the ten projects, five are qualification based, and five are low bid.

Councilmember Camacho asked Mr. Miles about audit practices on the Design-Build 405 project. Mr. Miles answered that Caltrans is auditing the 405; but, it is a joint project between Caltrans and the MTA. The MTA is administering the contract, and Caltrans is participating. Caltrans looks at the gross project and is not looking at the specifics. Councilmember Camacho asked if there were results of the audit. Mr. Miles responded that Caltrans receives a monthly report on the status of the project but doesn't know if it includes the dollar amount spent since it is an MTA administered project.

Councilmember Hernandez recommends Caltrans, for the disparity study selection panel, pick someone from the community that not conflicted. Also, the Society of Hispanic Engineers, Los Angeles Chapter, is having a luncheon from noon to 1:30 p.m. today with Congresswoman Judy Chu and Don Knabe, Chair of the Metropolitan Transportation Authority, in attendance.

Chair Fonseca also mentioned restructuring of the DVBE goal, how we are setting a certain percentage on certain size contracts; a summary of the new DBE rule – the significant change is personal net worth from \$750,000 to \$1.3 million. This has been communicated to businesses who were on the edge of applying to see if we can increase our directory.

Ms. Robertson wanted to follow up on a comment regarding the TRB synthesis statements. Once the TRB selects any of those various categories that have been identified, there will be RFQs generated, and they will be identified and advertised by the TRB. As soon as Chair Fonseca knows what's selected, TRB will advertise those types of requests and encourage everyone to look at. Ms. Robertson also welcomed the Statewide SBC to District 7 and mentioned that she had invited some local SB to observe the Statewide SBC process. She introduced Mr. Dexter Pleasure, with Quick Wealth. Ms. Robertson will share the advisory contact list with Mr. Pleasure, who will contact Statewide SBC members on behalf of the association they represent to tell them about his service that could benefit their organization.

Councilmember LaCome commented about the revisions to 49 CFR to establish race neutral SB set aside and asked how soon will Caltrans be able to have this program ready. Chair Fonseca has proposed to FHWA to identify what Caltrans needs to prepare. There are two obstacles: one is that Caltrans would have to create a SB certification program. Chair Fonseca offered existing DGS certification, which is not allowed. It is limited to state of California residents, must be an open enterprise to all states and the size standard is too low – it has to be \$22 million. The second obstacle is that Caltrans has to have legislative authority to establish a SB program under our federal-aid program. Chair Fonseca is challenging those interpretations to USDOT because she believes the DGS directory is one of many directories in the state of California, along with the SBA directory, which is a more open and acceptable small business certification that is recognized by FHWA. As far as legislative authority, there is Senator Curren Price's bill, AB31?, that has identified a set aside of \$250,000 to SB/DVBE and could that be a start. Councilmember LaCome offered help in any way possible to make this a reality.

Councilmember Lau commented that several members of the SBC, courtesy of the San Francisco African American Chamber of Commerce, were able to meet with Senator Feinstein's state director last week. Senator Feinstein will attend the San Francisco Chinese American Democratic Club dinner on March 25 and urged SBC members in Northern California to attend. A table for 10 is \$750; a single ticket is \$85. For details, please speak with Councilmember Lau.

Councilmember Bill Ulmer asked about the new DVBE requirements: where does Design-Build fall in those categories – in construction dollars? Chair Fonseca confirmed that it would fall into construction.

Meeting adjourned: 11:30 a.m.

Next meeting: May 20, 2011
Office of Business and Economic Opportunity
Sacramento, CA

Approved by:



OLIVIA FONSECA
Deputy Director
Office of Business and Economic Opportunity
California Department of Transportation