

CALIFORNIA HIGH-SPEED RAIL AUTHORITY PUBLIC FACILITATION COMMENTARY



SMALL AND DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SUMMARY

In conjunction with the Board Meeting on November 3, 2011, the California High-Speed Rail Authority (Authority) released the Draft Small and Disadvantaged Business Enterprise Program, which delineated contracting requirements to advance the participation of Small Businesses (SB), inclusive of Disadvantaged Business Enterprises (DBE), Disabled Veteran Business Enterprises (DVBE) and Microbusinesses in Authority's procurement process.

During the Board Meeting held on November 3, 2011, the Board approved the Authority's Draft Small and Disadvantaged Business Enterprise Program for release to the public in order to receive feedback and commentary prior to the final adoption of the program. The public was notified and encouraged to provide commentary and insight to the proposed policies and practices in the Authority's Draft Small and Disadvantaged Business Enterprise Program that will affect or impact Small Business utilization and participation. The Authority's objective was to ensure that firms participating in the construction of the high-speed rail project will reflect the diversity of the State of California.

Commentary received during the Public Facilitation Process (November 3, 2011 – January 16, 2012) was reviewed and evaluated for inclusion in the final adoption of the Authority's Small and Disadvantaged Business Enterprise Program.

The Authority received a total of 235 submissions, in which 168 of the submissions included comments pertaining to the Small and Disadvantaged Business Enterprise Program:

Summary of Submissions				
Section	Submission Type	Total Submissions Received	Submissions Pertaining to S/DBE Program	Page Number
A.	Electronic – E-mail	144	82	3
B.	Electronic – Website	19	16	70
C.	Listening Sessions	40	38	82
D.	Senate Select Committee on Procurement: Informational Hearing	21	21	114
E.	Other	11	11	137
---	Total	235	168	---

A. E-MAIL SUBMISSIONS

SUBMISSION NUMBER: A1

DATE: 11/15/2011

SUBJECT: RE: Public Comments Needed on CHSRA Small Business Program

COMMENT(S):

Can you help me in introducing my company and Green office supplies products to your Buyer or office manager?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A2

DATE: 11/15/2011

SUBJECT: RE: Public Comments Needed on CHSRA Small Business Program

COMMENT(S):

Yes, we need more support for small business to be able to participate in bids and projects. I would also like more information on how we can register with the high speed rail authority.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A3

DATE: 11/15/2011

SUBJECT: sub seeking prime

COMMENT(S):

We are SB company seeking prime to team with. How can we do that?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A4

DATE: 11/15/2011

SUBJECT: High Speed Rail Public Comments

COMMENT(S):

Being a socially and economically disadvantaged individual, I find it very hard to obtain work with the City due to financial issues. I believe in order to help people and business's like mine, plans should be free, performance bonds should be waved, and any other fee that would limit people and business's like mine from participating.

Let people like me get a set of plans and specifications and send out a proposal. If the proposal is

acceptable award us the project, if not; let us have a fair shot at a portion of the project to get us started. I know for a fact that there are quality craftsmen out here that are ready, waiting, and willing to successfully complete these projects.

If there is anything further I can do for you please, let me know.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The plans and specifications are free. The performance payment and surety bonds are required by State statute when the firm is bidding as a prime contractor.

Refer to IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation, Section C. Good Faith Efforts (Pre and Post Award) and V. Subpart E: Design Build Provisions which identifies where the Design-Build Contractor is encouraged to eliminate barriers to assist Small Businesses sustain and retain a subcontract.

SUBMISSION NUMBER: A5

DATE: 11/15/2011

SUBJECT: Comments on Small and Disadvantaged Business Enterprise Program

COMMENT(S):

I noted that you have established an overall small business goal of 30% that includes your Disabled Veteran Business Enterprises (DVBE) goal. Including the DVBE goal within the overall small business goal appears to challenge HSR's ability to conform to the following sections of the Military and Veterans Code:

- Ø Section 999 requiring a separate 3% goal for DVBEs.
- Ø Section 999.5 requiring an incentive for utilization of DVBEs.

Please advise me how the California HSR will conform to the above cited sections of the California Military and Veterans Code.

WSC Consulting is a California State certified DVBE and Small Business (Micro) enterprise with

extensive expertise in government procurement. I am the WSC Consulting President and have considerable experience in federal, state, and local government procurement. I authored two books, three research papers, and numerous articles on government procurement. Use of best practices developed for state and local government solicitations, proposal evaluation techniques, and contracts would greatly benefit HSR's contracting efforts. Unique tools developed by WSC Consulting for managing government contracts will also greatly benefit HSR's contract management efforts. Use of these practices and tools, however, are most effective when applied prior to the release of solicitations. Please let me know how I might present the WSC Consulting practices and tools at your earliest convenience.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Section 999 and 999.5 refer to 100% State-funded contract requirements, however the Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this matter. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: A6

DATE: 11/16/2011

SUBJECT: High Speed Rail Comments

COMMENT(S):

Anything that brings jobs for us would be greatly welcomed.

PLEASE, PLEASE make the DVBE 3% a REQUIREMENT. If you only make contracts that are a DBE GOAL, contractors will not take it seriously. They would send Invitations to bid just for the records, but they will negotiate with other non dvbe contractors for a lower price.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this matter. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: A7

DATE: 11/16/2011

SUBJECT: SBE

COMMENT(S):

I wanted to know how we can get listed on the Sub contractors list. We are a SBE and we would like to bid on this project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A8

DATE: 11/16/2011

SUBJECT: California Hi Speed Rail Authority

COMMENT(S):

We would be interested in participation for the upcoming funded High Speed Rail Authority project here in California. We provide printing services, promotional advertising programs, employee safety programs including worker safety wearables, employee recognition programs. We can operate as a prime or subcontractor and we are a Certified Disabled Veteran Business Enterprise as well as a Certified Small Business here in California.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A9

DATE: 11/17/2011

SUBJECT: First Responder Fire Protection SBE, DBE, VOSB, MBE

COMMENT(S):

We here at the First Responder Fire Protection Team, look forward to the opportunity to bid on the fire sprinkler work!

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A10

DATE: 11/21/2011

SUBJECT: Small Business Enterprise Program comments

COMMENT(S):

As President of a State of California-certified Small/Micro Business, I received an email inviting comments for the California High-Speed Rail Small Business Program, and I would like to offer the following feedback for your consideration.

In light of the severe economic difficulties currently faced by so many of California's small and minority-owned businesses, it is my opinion that approving a percentage higher than 30% to receive preferential bidding would be very helpful to the State's many small businesses and resident owners as well.

Additionally, I have a question as to whether Woman-Owned Businesses will also receive preference, in addition to the various other diversity classifications mentioned?

Thank you for the opportunity to review and comment on this program.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority does not have Congressional or the State of California authority to establish "preferential bidding" on the project. The Design-Build Contractor may commit to achieve a higher SB goal. The Authority's Small and Disadvantaged Business Enterprise Program recognizes women owned firms under the DBE definition.

SUBMISSION NUMBER: A11

DATE: 10/21/2011

SUBJECT: very interested in serving in a capacity that you deem appropriate.

COMMENT(S):

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AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A12

DATE: 11/22/2011

SUBJECT: WBE certified

COMMENT(S):

Pleased to receive the announcement about your program in San Francisco on 12/1/11. When do you plan to hold a program in Los Angeles? I am a certified SBE with OSMB and WBE with the City of LA and look forward to exploring opportunities to collaborate on projects with California High Speed Rail System. Is there a contact person for me at this time? What is the best first step for pursuing work with your organization?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A13

DATE: 11/22/2011

SUBJECT: CA high speed rail project

COMMENT(S):

We are a certified DBE contractor and very interested in bidding on various segments of this project. Please e-mail us any additional links to web-sites or contacts regarding this project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A14

DATE: 11/22/2011

SUBJECT: FW: Meeting Announcement: Small Business Program Listening Session in San Francisco

COMMENT(S):

Will there be webinar or an option to conference into the SB & DVBE listening session on December 1, 2011?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A15

DATE: 11/22/2011

SUBJECT: Small business

COMMENT(S):

When and Where will the San Diego hold its listening session?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A16

DATE: 11/23/2011

SUBJECT: Small Business Outreach Assistance

COMMENT(S):

Please see my attached Capability Statement. I would like to offer my services as the invitations to bid are released. I provide outreach, compliancy and certification assistance.

Enclosure: Capability Statement

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A17

DATE: 11/28/2011

SUBJECT: CHSRA Meeting

COMMENT(S):

Superior Fire Inc. would like to still be on the e-mail list for the CHSRA information and will attend the Southern California meeting TBD.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A18

DATE: 11/28/2011

SUBJECT: Public Comments Needed on CHSRA Small Business Program/Doing business with CHSRA as Office supplies vendor

COMMENT(S):

I am falling to see on your website an area where I could upload my information, and be registered as a potential Vendor, in addition all the bids submitted, closed and to be awarded none are in my field.

Please advise on how to be in line as a CA state certified vendor, so that I could be your vendor of choice for office supplies and or partner up with all those vendors in the construction sector already selected and or to be selected as awardees

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A19

DATE: 11/28/2011

SUBJECT: Question Regarding Pre-Qualified Design Build Firms

COMMENT(S):

Interested in providing Stormwater Pollution Prevention Plans (SWPPP) and monitoring for the HSR project.

Is the list of pre-qualified Design Build Firms going to be made available to small business so that we can look into possible teaming arrangements?

What companies are expected to submit at this time?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail

Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities and addressed comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A20

DATE: 11/28/2011

SUBJECT: Small Business/DVBE Inquiry

COMMENT(S):

Given that the High Speed Rail System is a \$43 Billion project, what are specific goals for Small Business participation – particularly as those goals relate to DVBE participation?

Please answer the following:

1. How will SB goals be monitored and enforced?
2. Will SB participation goals be passed on to contractors and sub-contractors?
3. What are the consequences if the project and project participants do not meet SB goals?
4. Will any so-called "Good Faith Effort" be permitted?
5. Is/Are there any aspects of this project for which SB goals will/can be waived?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation.

2. The Small Business participation goal is passed down to subcontractors regardless of tier, as described in II. Subpart B Responsibility of SB Program Implementation and V. Subpart E: Design Build Provisions.
3. “Non-compliance” mechanisms for not meeting the requirements set forth in the Small and Disadvantaged Business Enterprise Program and the Contractor’s SB Performance Plan is described in III. Subpart C: Administrative Requirements.
4. The Contractor will follow provisions of good faith efforts for the duration of the contract as described in IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
5. There are no aspects to waive a SB goal on a contract at this time.

SUBMISSION NUMBER: A21

DATE: 11/29/2011

SUBJECT: FW: Meeting Announcement: Small Business Program Listening Session in San Francisco

COMMENT(S):

We are currently considering plans to attend the December 1st SB & DVBE listening session, in preparation we would like to ask will there be webinar or an option to conference into the SB & DVBE listening session on December 1, 2011?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A22

DATE: 11/29/2011

SUBJECT: CHSRA and Small Business

COMMENT(S):

I would like to submit the following comments for consideration regarding the above MTC Outreach effort.

I am a professional, Licensed Land Surveyor in the State of California. I have over 30 years of licensed surveying experience, including 15 years of R/W engineering. I've worked on many different light rail projects in the Bay Area.

The recession forced my employer of 10 years to go out of business last year so I am now trying to make a living, in a depressed economy, by working on my own.

Question: how actively is CHSRA trying to include professionals like myself in the High Speed Rail Project? I am an independent contractor...a self-employed, sole proprietor. I am at the peak of my professional knowledge and experience. How, if at all, would I be able to contribute my surveying expertise to the Project? Would I have to be hired by a large firm, first? Is it possible for me to be hired, directly, as a consultant?

What do I have to do...how do I go about trying to get involved with the CHSRA?

Is the CHSRA interested in availing themselves of my expertise?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A23

DATE: 11/30/2011

SUBJECT: In order to participate...

COMMENT(S):

I have a small business, certified as such by the state of California (-).

I provide items such as medical and dental supplies, personal paper products such as toilet tissue and feminine hygiene, janitorial and office supplies, to state prisons, mental hospitals, colleges and universities, as well as city and county governments, and private businesses.

To whom within the Rail Authority do I have to speak with in order to be notified of potential bids for the items I can provide? I can deliver to any point in the state.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A24

DATE: 11/30/2011

SUBJECT: Listening workshop

COMMENT(S):

I am newly registered to provide Contracting in and for the State of California. Is there option to participate in this offering, though we live in So CA? Will we be able to hear the program on Internet or get e/hard copy of the presentation? Will we in So CA be able to start participation with the project immediately?

Thank you for your response and for any info you may share with a new registrant.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A25

DATE: 11/30/2011

SUBJECT: Inquiry re. Executive Search Services

COMMENT(S):

I'm seeking to obtain information regarding how to become a third-party vendor for the California High Speed Rail Authority.

I'm the Principal and Managing Director of a Small Business certified, boutique retained executive search firm that focuses exclusively on senior and executive-level positions for the Transportation industry, both domestically and internationally.

Any information you can provide regarding this request, would be appreciated.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A26

DATE: 11/30/2011

SUBJECT: California High Speed Rail Small Business Program

COMMENT(S):

Good morning, I have the following questions/comments:

1. As a small business, I am not able to travel much to attend events such as those you are having on the 1st of Dec. Can you do a webcast of the event and/or provide the information on-line after the event?

2. One of the biggest hurdles in getting involved with this project is to get introduced to the Primes. I know there are a lot of firms out there positioning for this project. Many of these firms are huge and national or in many cases international. We would like to begin to get in contact with these firms to present our qualifications. Can you provide us with a list of prime contractors on both the Engineering side as well as on the construction side for firms that are interested in pursuing this project as a prime?
3. We would encourage the HSR Authority to create a large but realistically achievable SBE, DBE, and UDBE goals for this project and would suggest that you look to agencies like the Port of Long Beach and LA Metro to see what goals they are shooting for. Ideally, we would like to see you achieving goals over 30% for SBE with a 5% UDBE goal and/or a VSBE goal.
4. Ask the prime contractors to create websites where SBE firms can begin to network with them and to present their qualifications to them.
5. - is an SBE / WBE firm here in Orange County and we have been fortunate enough to work on the I-405 Freeway Design Build project as well as other large scale project. Some of the biggest stumbling blocks for small businesses is receiving timely payments. For some of these projects it is not uncommon to not get paid for over 6 months or more after the work was completed and accepted by the client. Is there any way to create a program to ensure quick payments to small businesses. For firms such as mine, we really struggle when we have to wait for payment which results in us having to lay off employees. 30 days net would be preferred.
6. Insurance is another concern. Insurance requirements needs to be typical and something that a small business is capable of procuring on their own. (i.e. there is no way some firms can afford or even qualify to obtain a \$5 M professional liability policy due to their average annual gross receipts and history).
7. What SBE certifications will be accepted by the program? California DGS, California CUCP, Port of Long Beach Certification, Suppliers Clearing House, others?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. All information pertaining to the Listening Sessions, such as the lists of attendees, comment

sheets, poster boards and other distributed material are available on the Authority's website under 'Small Business Resources.' This information was shared through an e-blast notification.

2. The contract information for the short-listed firms was disseminated to over 21,000 small businesses and posted on the Authority's website.
3. The Authority does not have Congressional authorization to establish separate business goals. In respect to being able to establish separate business goals for Small Business, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises or Microbusinesses, the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending.
4. The short-listed firms have been asked to identify a website for Small Businesses to research the existing opportunities with the short-listed firms. Currently, two short-listed firms have websites.
5. The Authority continues to research prompt payment mechanisms beyond the provisions described in III. Subpart C: Administrative Requirements, which indicates that the Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
6. Refer to V. Subpart E: Design-Build Provisions, which addresses methods to eliminate and/or reduce insurance requirements on Small Businesses.
7. The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements. The Authority shall research the certification criteria and determinations from the California Public Utilities Commissions and others. The recognized certification agencies will be updated as needed and posted on the Authority's website.

SUBMISSION NUMBER: A27

DATE: 11/30/2011

SUBJECT: Two Additional Meetings

COMMENT(S):

Have you decided on the locations of the two additional meetings? Thank you.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the

California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The time and location of the three (3) listening sessions was disseminated to over 21,000 small businesses via an e-blast notification and posted on the Authority's website.

SUBMISSION NUMBER: A28

DATE: 11/30/2011

SUBJECT: Listening Session Questions/Answers and Comments

COMMENT(S):

Will the questions, answers and comments from the 3 listening sessions be posted online? If so, when will this information be available?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The revised Small and Disadvantaged Business Enterprise Program, comments and responses is anticipated to be posted on the Authority's website in April 2012.

SUBMISSION NUMBER: A29

DATE: 11/30/2011

SUBJECT: California High Speed Rail Authority (CHSRA)

COMMENT(S):

I'm a DBE owner and have tried to reach out to this program for a while. I understand that Parsons Brinckerhoff is the program managers for this program/project.

I have over 15 years of experience in the field of project scheduling, planning, cost and schedule management and controls. Very well versed in using Oracle Primavera Project Planner scheduling software products.

I have in the past worked for CH2MHIL, URS, Parsons, collectively for 15 years with these companies.

Any advice you can give me to be a part of this once in a life time program? Who do I reach out to get real results.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A30

DATE: 12/1/2011

SUBJECT: California SBE, WBE

COMMENT(S):

We are registered already but wanted to see if ours is accepted by your program. Can you let me know?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements.

SUBMISSION NUMBER: A31

DATE: 12/6/2011

SUBJECT: comments

COMMENT(S):

It would be nice if primes could identify themselves with name tag so we could go to them and introduce ourselves as subs.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Furthermore, the contract information for the short-listed firms was disseminated to over 21,000 small businesses and posted on the Authority's website.

SUBMISSION NUMBER: A32

DATE: 12/6/2011

SUBJECT: comments on SB sections

COMMENT(S):

additional comments-- for the small business program

1. there must be an objective of continuously expanding the base of qualified small businesses in all classification; such as veteran own, disabled veteran own, native Americans, woman owned, etc.

2. establish meaningful relationship between primes & small businesses
3. small business goals for every category of small business must be set up for sub-contracting by categories for primes & those sub-contractors
4. Subcontracted small businesses in large dollar amounts must also sub-contract to other small businesses
5. small businesses must be categorized that those that are located in economically dis-advantage location with 30% of their employees coming from economically dis-advantage neighborhoods must have more points for contracting.
6. every six months, there must be reporting of every prime contractor & sub-contractor of the dollar values contracted to small businesses & goals achievement
7. prime contractors must expand their base of qualified small businesses & achieve a potential increase of small business program as time progresses
8. there must be a data base that reflects the above info updated every six months by primes & sub-contractor reflecting on their sub-contract dollars
9. must have a mentor protégé program & that mentors must be any large business firm that demonstrates the commitment & capability to assist in the development of small business protégés & are not in any debarred list or suspended contractor anywhere
10. small businesses must also not in any debarred or suspended contractor list anywhere.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority is in partnership with the Department of General Services (DGS) and Caltrans to continue to reach out to businesses to become certified through the DGS and the California Unified Certification Program.
2. The Authority and the Design-Build Contractor shall establish and retain meaningful relationships with Small Business as described in II. Subpart B: Responsibilities of SB Program

Implementation and V. Subpart E: Design Build Provisions.

3. The Authority does not have Congressional authorization to establish separate business goals. In respect to being able to establish separate business goals for Small Business, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises or Microbusinesses, the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending.
4. The Small Business participation goal is passed down to subcontractors regardless of tier, as described in II. Subpart B Responsibility of SB Program Implementation and V. Subpart E: Design-Build Provisions.
5. This comment requires additional research to provide clarification on the intent.
6. The monthly reporting requirements set forth in III. Subpart C: Administrative Requirements is more stringent than the six (6) month reporting requirement recommended.
7. The Contractor is to continuously expand development and outreach of SB contacts to meet the overall 30% Small Business goal, as described in V. Subpart E: Design-Build Provisions.
8. Recommendation is included within the monthly reporting requirements set forth in III. Subpart C: Administrative Requirements.
9. V. Subpart E: Design Build Provisions makes reference to the Design-Build Contractor engaging in a Mentor Protégé Program.
10. All Contractors and subcontractors, including SBs, are prohibited from participating in Authority contracts if they have been debarred and/or suspended from public works contract participation.

SUBMISSION NUMBER: A33

DATE: 12/8/2011

SUBJECT: Small Business Listening Session in Bakersfield

COMMENT(S):

There have been Industry Forums in Los Angeles and Fresno. The current series of Small Business Listening session have been in San Francisco, and just announced another for Merced. The Merced announcement mentioned there would be another session yet to be announced.

We would like you to consider having the next session in Bakersfield. There is very strong interest in HSR among the local businesses here in Bakersfield and Kern County.

Kern COG would be happy to assist in the coordination of the event as we did with the Authority Board meeting held in Bakersfield last July.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority shall consider holding future events in Bakersfield, California.

SUBMISSION NUMBER: A34

DATE: 12/8/2011

SUBJECT: Small and Disadvantaged Business Enterprise Program session/open house, Dec 13

COMMENT(S):

Is registration necessary for this event?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority requires no registration for the listening sessions.

SUBMISSION NUMBER: A35

DATE: 12/8/2011

SUBJECT: CHSRA

COMMENT(S):

Hello, I learn, quite late, about this about project and Small and disadvantage Business Program and would like to know where I may find information that may help me determine if I should participate in this program.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter referred to the Authority's website under 'Small Business Resources' for more information.

SUBMISSION NUMBER: A36

DATE: 12/8/2011

SUBJECT: UNPAID INVOICES RE: Meeting Announcement: Central Valley Small Business Program Listening Session

COMMENT(S):

Before encouraging SBE's and DBE's to participate in potential upcoming CHSRA contracts, kindly ensure that small businesses and disadvantaged businesses that are currently doing business with the Authority are being paid within a reasonable amount of time. We are waiting for 9-plus months to get paid on one of our existing contracts as a sub-consultant, in spite of raising as much hue and cry as we possibly could. At this rate, the CHSRA will bankrupt most/all participating SBE's and DBE's. No firm can hope to be in business if invoices held without payment for nine-plus months, let alone small and disadvantaged businesses.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program to address the comments posed by the Commenter.

The Authority continues to research prompt payment mechanisms beyond the provisions in III. Subpart C: Administrative Requirements, which indicates that Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.

The Commenter was contacted to obtain additional information on the issue, however, the firm declined to provide additional information in order to investigate the allegations.

SUBMISSION NUMBER: A37

DATE: 12/8/2011

SUBJECT: California High-Speed Rail Authority

COMMENT(S):

Will the California High-Speed Rail Project have DVBE participation?

or has the project shifted to Federal goals.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: A38

DATE: 12/8/2011

SUBJECT: Sign language interpreters

COMMENT(S):

If you have a need to provide accessibility to deaf or hard of hearing during one of the upcoming meetings, we are ready and able to serve.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A39

DATE: 12/9/2011

SUBJECT: Cad Operator Applicant

COMMENT(S):

I am interested in joining your company as a Autocad Operator /Designer Coordinator in your Projects. I have 12 years of progressively responsible experience acquired during civil, structural, architectural and site projects.

Worked with multi-national companies in Asia as a Cad Operator / Designer Coordinator Notable projects completed includes S \$200 Million Singapore Northeast MRT Line and Tunneling Construction Project.

I am confident of my ability to make a positive and immediate contribution to your company and would welcome the opportunity to personally discuss your current or anticipated staffing requirements during a one-on-one phone or personal interview.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A40

DATE: 12/11/2011

SUBJECT: red oak and maple plywood

COMMENT(S):

We found information about your company in open sources on the Web.

We specialize on supply of maple and red oak plywood to North America

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A41

DATE: 12/12/2011

SUBJECT: DVBE Goals

COMMENT(S):

I would like to know what the DVBE goal is for this project.
Thus far I have not seen a DVBE goal.

We need to support our Service Disabled Veterans.
And obey Calif. Contracting and Procurement regulations.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: A42

DATE: 12/13/2011

SUBJECT: Written Comment re: Small Business Program

COMMENT(S):

Will there be any opportunity for small businesses in the financial/capital markets sector? - is a Disabled Veteran Business Enterprise (DVBE) with a strong track record in Fixed Income, Equities and raising funds through the capital markets. We would welcome the opportunity to present our capabilities to the CHSRA.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A43

DATE: 12/14/2011

SUBJECT: High Speed Rail Authority SB/DBE Merced Meeting

COMMENT(S):

Once again I would like to emphasize the value of the meeting. Rarely do outreach programs provide as much real information as was covered yesterday. The openness, knowledge, and genuine commitment demonstrated by the entire CHSRA team helped make us feel that the opportunities are genuine and the path is being put in place for us all to be kept informed and energized.

I was able to find the DBE information and have downloaded the application. However, I was unable to find the RFI. I found the contracts page, but did not see an RFI listed, or maybe I am missing something (probably as big as my nose!). I would like to review the RFI before I send you a statement of qualifications, so any help you can give me would be most appreciated.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter referred to the Authority's website for further information.

SUBMISSION NUMBER: A44

DATE: 12/16/2011

SUBJECT: Signage for the California High-Speed Rail Authority

COMMENT(S):

We are a sign company located in Murrieta, CA and we are a woman-owned small business. I was

wondering if we can please be placed on the bidder's list for the signage necessary for the California High-Speed Rail Authority.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A45

DATE: 12/22/2011

SUBJECT: Small Business Comments

COMMENT(S):

On recent government and state funded projects, the best programs for assisting small business firms are the ones I encountered with BART and SANDAG (San Diego Governments).

They included the following:

1. RFPs and RFQs that clearly described all the subconsultant tasks.
2. Points assigned to proposals that included small businesses.
3. Pre-proposal meetings where the primes were identified.
4. Meetings for small businesses where there was an opportunity to briefly talk one on one with each prime.
5. Choosing firms that included a number of small businesses instead of firms that included one or two (for example the top rated firm for BART environmental and planning services included numerous small businesses).
6. Creating an online "list" of small businesses and the services they can provide.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The first package is a design build construction package and unfortunately, the proposer will not be listing all subconsultant tasks.
2. The Authority's Request for Qualifications (RFQ) identified 15 points pertaining to the Small Business component. The Request for Proposal (RFP) has a pass/fail evaluation of the Small Business component and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal.
3. The Authority has hosted Industry Forums in the past and shall host another forum for Small Businesses to meet the short-listed firms.
4. See Question 3: Response.
5. See Question 2: Response.
6. The Authority and the short-listed firms have been directed to use existing Small Business directories, which includes lists from the Department of General Services, Caltrans, and the U.S. Small Business Administration.

SUBMISSION NUMBER: A46

DATE: 12/25/2011

SUBJECT: Proposed draft – small and disadvantaged bus enterprise report

COMMENT(S):

Please send me a copy of the draft.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority forwarded an electronic copy of the Draft Small and Disadvantaged Business Enterprise Program and referred Commenter to the Authority's website for further information.

SUBMISSION NUMBER: A47

DATE: 12/31/2011

SUBJECT: Public Comment re: CA HSR Small and Disadvantaged Business Enterprise Program

COMMENT(S):

Below is an item for your consideration as you finalize the CA HSR Small and Disadvantaged Business Enterprise Program:

Would CA HSR consider sanctions against prime contractor companies who don't follow the Small and Disadvantaged Business Enterprise contract obligations? FYI - The Port of Los Angeles has a sanction program related to their Small Business Development Program - see pages 5, 6 & 7 of the attached file.

A prime contractor sanction program may help reduce/eliminate the problems small businesses have regarding prompt payment (including 2nd and lower tier subcontractors). Also, it would reinforce the CA HSR GFE requirements.

Just wondering how to make the sanction program effective given that a prime contractor may have a large scope of remaining CS HSR work and it is unlikely the CA HSR organization would replace a prime contractor in mid-stream.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: III. Subpart C: Administrative Requirements, V. Subpart E: Design-Build Provisions.

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments rendered to the Small and Disadvantaged Business Enterprise Program to incorporate

additional program elements to address sanctions/non-compliance as referenced in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.

SUBMISSION NUMBER: A48

DATE: 12/31/2011

SUBJECT: Public Comments re: CA HSR Small and Disadvantaged Business Enterprise Program

COMMENT(S):

Below are some items for your consideration as you finalize the CA HSR Small and Disadvantaged Business Enterprise Program:

1. To increase participation of small businesses, eliminate any Good Faith Efforts outreach and require Prime Proposers to include certified small businesses in their proposal documents at the time of proposal submission. They should clearly define the subcontracted scope of work, estimated dollar value and estimated percentage of contract dollar value.
2. To increase the potential for technology innovation, request that Prime Proposers evaluate new technologies prior to creating small business subcontracting packages. Also, if possible, in the proposal evaluation criteria, create an incentive for the use of newer technologies.
3. Reduce the potential for 2nd, 3rd-and 4th-tier Subcontractors that are at higher risk of non-payment by Prime Contractors and 1st-tier Subcontractors. In practice, current small business “prompt payment” laws protect Prime and 1st-tier Subcontractors on large federal, state and local contracts. However, these laws DO NOT protect 2nd- and successive lower-tiered Subcontractors.
4. Please limit the use of bench contracts. We’ve been awarded several large bench contracts in the past year yet no Task Orders have been issued to date. For example, at a LA County transportation agency, there are 19 firms on a program management bench. At another LA County transportation agency, there are 70 firms on a civil engineering bench. Yet only a few Task Orders valued at \$150 - \$450K will ever be issued to some of these firms over the 3-year bench term. A lot of work went into each proposal for very little return on investment for almost all concerned.
5. Please include small business participation requirements even on the Operations and Maintenance project portions, especially where software technology is used. Too often, on state and local projects, the small business participation focus is on construction firms. Perhaps the CA HSR Authority can take a page from the Federal Contracting requirements and incentivize technology firms to include small businesses in their proposals – another way to create technology innovation opportunities to the benefit of all concerned.
6. If the projects are unbundled to create more opportunities for small businesses to prime on CA HSR projects, please reduced the amount of paperwork required to submit a proposal.
 - a. For example, in some public agencies, the administrative burden for contracts valued at \$100K+ are almost the same as those valued at \$500K or \$1M.Perhaps the CA HSR Authority can review its internal processes and policies to address the actual need for all

this extra, burdensome paperwork in both the proposal and contract delivery phases.

- b. Note that contracts unbundled for small businesses are often too small. For example, contracts for \$100K over 9 months do not allow small businesses to hire additional staff. In the federal contracting arena, small businesses are often awarded contracts up to \$5M over 3 – 5 years. These contracts are often structured as 2- or 3-year contracts with a few 1-year options. Benefits:
 - i. Higher valued, longer term contracts allow small businesses to actually create jobs.
 - j. The proposal effort is reduced for both the contracting agency and the small business. Also, this allows the agency to replace the contractor if their performance is unsatisfactory. Too often, we see smaller contracts issued for 1 year when the project term is 3 –5 years. This makes the small business have to re-compete each year with the same amount of paperwork. However, if the incumbent is doing a great job, no new Proposers are likely to unseat them. Thus, a follow-on RFP process is a waste of time and effort for all concerned.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which includes Good Faith Efforts to meet the Small Business goal throughout the duration of the project. The first package is a design-build construction package and unfortunately, the proposer will not be listing all its SBs by task or dollar amounts. The Proposer will submit its Affidavit of Commitment to meet or exceed the Small Business goal and a Small Business Performance Plan.
2. The comment shall be forwarded to the short-listed firms for their consideration.
3. The Authority continues to research prompt payment mechanisms beyond the provisions in III. Subpart C: Administrative Requirements, which indicates that Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
4. The Small and Disadvantaged Business Enterprise Program does not reference bench contracts.

5. The requirements set forth in the Small and Disadvantaged Business Enterprise Program shall apply to all Authority contracts, including future Operations and Maintenance.
6. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

SUBMISSION NUMBER: A49

DATE: 1/3/2012

SUBJECT: California Certification

COMMENT(S):

I am an Insurance Broker Certified with the State, Will I be able to participate in the Insurance program of this project?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A50

DATE: 1/4/2012

SUBJECT: Paint Supplies

COMMENT(S):

Who is painter for the High Speed Rail, Bridge, Water sealer, striping, tunnel

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A51

DATE: 1/4/2012

SUBJECT: -

COMMENT(S):

Consultants for Trenchless Construction Projects, Tunneling, Pipeline. We provide Construction Management, QA/QC, Design, Inspection and other services.

We and our affiliates are very interested in working with CHSRA in the implementation of the high speed rail.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A52

DATE: 1/6/2012

SUBJECT: FW: Reminder: High Speed Rail Informational Hearing TODAY January 5 -- 1 to 3 p.m.

COMMENT(S):

I believe the definition of contractor should be expanded to include all subcontractors. Current definition applies to Prime and offeror.

Definition of contractor as it applies to goal achievement and DBE utilization should be Offeror/ Prime and all Sub tier Contractors. The market for small contractors (Hard Hats) is not with the prime it is with the subcontractors.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Small Business participation goal is passed down to subcontractors regardless of tier, as described in II. Subpart B Responsibility of SB Program Implementation and V. Subpart E: Design-Build Provisions.

SUBMISSION NUMBER: A53

DATE: 1/11/2012

SUBJECT: SBE/DVBE

COMMENT(S):

We are a SBE/DVBE business and would like to know if there are any job opportunities available for this project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A54

DATE: 1/11/2012

SUBJECT: Advertising Opportunity

COMMENT(S):

We publish the premier relocation guide for the area – Relocation Bay Area.

We would like to discuss possibly including a map and informational page in the next edition.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A55

DATE: 1/13/2012

SUBJECT: High Speed DBE Question

COMMENT(S):

I was reading through the documentation provided at the "meet and greet" event and it stated that Small Business goal was 30%. In the small business category there was a "micro-business". I could not find what defined a "micro-business" and if there is going to be any kind of certification for it for this project. Can you please provide a description.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Small and Disadvantaged Business Enterprise Program is inclusive of the definition for 'Microbusiness' and is recognized by the Authority as described in I. Subpart A: General Requirements, B. Definitions.

SUBMISSION NUMBER: A56

DATE: 1/13/2012

SUBJECT: Attendees list

COMMENT(S):

Where can I find the Small Business Attendees List from the Open House (1/12/12)?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter referred to the Authority's website under 'Small Business Resources' for all pertinent information and distributed materials regarding the listening sessions.

SUBMISSION NUMBER: A57

DATE: 1/13/2012

SUBJECT: High Speed Rail SB Program

COMMENT(S):

Recent media has indicated that the Authority could be rolled into one Department along with Caltrans.

If that were to happen, would the SB goals be converted to UDBE goals?

Would the percentage of work for the UDBE goal be reduced to less than the 30% SB goal?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority shall address the questions by the Commenter *if* directed by regulatory changes or the Federal Railroad Administration.

SUBMISSION NUMBER: A58

DATE: 1/13/2012

SUBJECT: Local O/O

COMMENT(S):

I have been getting your e-mail notices about the meetings that are upcoming. I am an owner/operator of a small trucking business in Northern San Diego County. I would love to be part of a project like this, but I am limited to staying in this area. Because of my responsibilities here, I cannot travel throughout the state. I look forward to the opportunity to participate in any way I can on this end of the project. I cover most aspects of trucking from equipment moving to construction materials and demo to water trucks. My flyer is attached. I will not be able to attend a meeting in Sac., but would jump at a chance to be involved in this area.

Enclosure: Flyer

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A59

DATE: 1/13/2012

SUBJECT: Small business participation on the program management consultant team

COMMENT(S):

Does the small business goal of 30% participation apply retroactively to the program management consultant teams sbe participation by the PB lead team? What is the current actual usage by the Pmc team for small business?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority's 30 percent Small Business goal will not apply retroactively to the Authority's active contracts. Current attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.

SUBMISSION NUMBER: A60

DATE: 1/13/2012

SUBJECT: Trees along the route

COMMENT(S):

I am a very experienced and well-credentialed consulting arborist. I have not seen any information that you will need my kind of services. However, I expect that as the route passes through cities and counties that have protected tree ordinances or tree preservation requirements that you will need my services. When that time comes, please call me.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A61

DATE: 1/13/2012

SUBJECT: CHSRA SB Program Goals

COMMENT(S):

Rather than providing a goal of 30% SB/MBE/DVBE participation for prime contractors to meet, it may be better to pre-qualify a set of those businesses and contract them for a period of 3 to 5 years to supply resources on a case by case basis. This way the CHSRA can demand that the Primes use those contracted services or the CHSRA can contract them directly. This system works best with commodities or IT or Project Management services.

I also urge the CHSRA to focus more on efforts to begin work in the Southern California corridor and the bay area where the investment returns can be realized more quickly when operational rather than to lay rail first in the more remote areas of the state.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program, as pre-qualification is considered to be a form of preferential bidding and would limit competition. The Federal Railroad Administration discourages a state's pre-qualification process as it would limit competition and/or discourage the submission of a bid or sub-bid from other responsible bidders.

SUBMISSION NUMBER: A62

DATE: 1/13/2012

SUBJECT: Small Business Credentials

COMMENT(S):

Can you make sure my information gets into the right hands so I can be able to bid on upcoming jobs such as the California High Speed Rail Authority projects. Look forward to your response.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A63

DATE: 1/13/2012

SUBJECT: -

COMMENT(S):

I have traveled to about 30 countries and we are really behind most of the world when it comes to High Speed Rail.

I also know that there has been some comments about going by Bakersfield High School. I attended BHS in the 50's and I am here to tell you that there were a lot of trains that went by on those tracks by the high school. We were never bothered by them, and the students are not going to be bothered by the High Speed Rail.

Common sense tells you since we are going to have a station it is going to slow down when it reaches that area, just like Amtrak does.

Thanks and good luck with the project it has been a long time coming and our company looks forward to working on it.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A64

DATE: 1/13/2012

SUBJECT: Cash Flow Concerns

COMMENT(S):

One key concern in our line of work—video/content production—is cash flow. A production timeline can be months-long, and begins with pre-production-- client meetings, research, writing several drafts of a script or outline. This all happens well before shooting, and related expenses begin immediately. Similarly, when hiring a video crew for a job, their expenses begin immediately, and may include renting special equipment for the job. Therefore, traditional contract language for a production company requires 1/3 of the budget upon signing the contract, one-third when shooting begins, and the final third and any additional costs incurred due upon completion. (Some companies may require 50% up front.) Under this structure, a small business production company does not have to front all the cash for a production that may take months before it is deemed “completed.”

Generally, do SCRRA contracts for services require that a job be completed before any funds can be released? If so, is there any flexibility in this area when working with a disadvantaged, minority company, on a video project whose timeline may be six months or longer? Without that, it would be nearly impossible for a small business to underwrite all the expenses for an SCRRA production on its

own.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Prompt payment mechanisms are described in III. Subpart C: Administrative Requirements, which indicates that Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.

SUBMISSION NUMBER: A65

DATE: 1/13/2012

SUBJECT: DBE

COMMENT(S):

Effective January 1, 2012 (ALL) letting projects request shall meet the following criteria. In order to provide you with quality product quotes, I am requesting a detail solicitation format for each project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A66

DATE: 1/13/2012

SUBJECT: follow up question

COMMENT(S):

Do any off your meetings or events require audio, video, lighting, or live event production equipment and services for meetings or events. Our company would extremely interested in providing a quotation for a simple public address system to a grand opening.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A67

DATE: 1/13/2012

SUBJECT: SB participation

COMMENT(S):

Please let me know how the small business can participate in the professional service – engineering design phase of the high speed rail program. We are a Civil Engineering firm, principal of the firm had experience in the design of Metrolink Station in Placentia, California.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail

Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A68

DATE: 1/13/2012

SUBJECT: Comment of Railroad from Disabled Veteran Business Enterprise

COMMENT(S):

Thank you for the change of submitting a comment.

I'm a small business (micro) and DVBE. It has been extremely challenging to obtain a small contract because general's always find loop holes on contracts and thus would substitute dvbe immediately.

1. Please let the contract have a requirement or an incentive to have DVBE's instead of a goal.
2. No substitutions allowed, there are hundreds of DVBE's in California.
3. Allow Small Businesses and DVBE to work only their own County so that we give the chance to have more dvbe's participate.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

1. The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

2. The Authority is prohibited from preventing substitutions per state statutes and federal regulations.
3. The Authority does not have Congressional authority to establish “preferential bidding” on the project.

SUBMISSION NUMBER: A69

DATE: 1/14/2012

SUBJECT: difficult to know what RFO’s RFPs

COMMENT(S):

My comment is very limited and to the point: please make it simple to receive RFO/RFP and other requests.

I believe currently we don't have such a system - or at least we at MetroServ Communications are not aware of one.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter referred to the Authority’s website under ‘Contracting Opportunities’ and BidSync for further information regarding the Authority’s contracting opportunities.

SUBMISSION NUMBER: A70

DATE: 1/14/2012

SUBJECT: California High Speed Rail Comments

COMMENT(S):

Will there be any opportunity for accounts receivable management services, training or consulting? I am a very small woman-owned business that offers these services. Any input for opportunities is appreciated.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A71

DATE: 1/15/2012

SUBJECT: Small Business Participation in the High Speed Rail Program

COMMENT(S):

Outreaching to small businesses is relatively meaningless unless there is a specific percentage requirement in place for their participation. As it is now the State of California has an overall goal for small business participation but small business participation is not considered or required as part of the selection criteria. Until small business participation is required and considered in the selection process the Small Business Program is nothing but any empty gesture.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Project.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the questions posed by the Commenter.

The Authority's Request for Qualifications (RFQ) identified 15 points pertaining to the Small Business component. The Request for Proposal (RFP) has a pass/fail evaluation of the Small Business component

and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal.

SUBMISSION NUMBER: A72

DATE: 1/15/2012

SUBJECT: Small Bus. Cert.

COMMENT(S):

If we are certified through the State of CA, due we qualify?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements.

SUBMISSION NUMBER: A73

DATE: 1/16/2012

SUBJECT: Comments on CHSRA Small Business Program

COMMENT(S):

We are a small business only recently expanded into industrial chemical distribution including construction related concrete dissolvers, eco-friendly green de-greasers, bio-degradable cleaners, anti-microbial and personal protection equipment and treatments.

Our total awareness of the CHRSA Small Business Program consists of being invited to attend the Fresno conference on the 19th. Thank you for that opportunity. I will be able to comment more fully with substance after we are able to participate in our first activity with your program.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A74

DATE: 1/16/2012

SUBJECT: The Small Business Policy

COMMENT(S):

We are very pleased by the HSRA's commitment to California based SB and DVBE partners. We are invested in the California Transportation sector (e.g., currently working at the Dept. of Transportation) with qualifications as an IT Services and Management Consulting firm.

We would be pleased to be considered for one or more opportunities to do business with the HSRA as you continued to pursue your charter.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A75

DATE: 1/16/2012

SUBJECT: Comments on HSR Small Business Program

COMMENT(S):

I am contacting you in regards to your request for California Small Business to review the program documents and provide feedback to the Authority. In advance on my comments I wish to acknowledge support for the California High Speed Rail Program. -, a Oakland, California based small business, has provided Quality Assurance Engineering services to the High Speed Rail Authority for two years now on the Design of the San Francisco Peninsula Corridor and for 5 years now on the San Francisco Transbay Terminal. These California High Speed Rail artery projects have provided opportunity and growth for our firm and huge career opportunities for 4 to 5 engineers.

As mentioned -, has been working to mobilize personnel and resources for the in advance of the HSR Construction Packages and we like all were somewhat alarmed with the departure of HSR Executive Staff, but we stay committed and united to the project. - looks forward to working with the High Speed Rail Authority in support of the above referenced Small Business Plan. It is our hope to avoid any delay in moving this shovel ready project forward. Any delay is a delay in saving homes, lives, minimizing congestion, lowering green house gases and last but not least creating jobs in the design and construction sectors for the citizens of the central valley and California.

My Comments; Section V Subpart E Design Build Provisions:

I commend the HSR Authority in V-C and your overall Small Business Percent Goal of 30%. This with your HSR requirements to not only facilitate, but the engagement of small business, but also for the strategic planning to identify available experienced firms for the program. - is in support of the Small Business Plan.

We thank the Authority in advance of your approval of the plan and the challenges associated with the project. Your small business support and project requirements will give California Small Business and the region's infrastructure the best opportunity for staying functional as well as providing the necessary jobs we so desperately need.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A76

DATE: 1/16/2012

SUBJECT: Comments of HSR Small Business Program

COMMENT(S):

- is pleased the California High-Speed Rail Authority has decided on a 30% goal for Small Business, Disabled Veteran Business Enterprises, Disadvantaged Business Enterprise and Micro-Businesses. -, a California corporation, is a certified Disabled Veteran Business Enterprise (DVBE). - is a proud supporter of the Wounded Warriors Program and has hired disabled veterans as employees.

All too often DVBE firms are not represented in the goal submissions. We miss out on opportunities from Caltrans and various other agencies that only give preference to minorities and disadvantaged businesses but not Disabled Veteran Business Enterprises.

- fully supports the SBE/DVBE/DBE/MB goals of the California High Speed Rail Authority. Additionally we are in support of the performance plan, SBO duties and responsibilities, GFE, compliance and breach of contract efforts that will be in place. We hope that we can do business with the agency.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A77

DATE: 1/16/2012

SUBJECT: Small Business Program Comments

COMMENT(S):

I recently attended a work shop on January 12, 2012, on the fifteenth floor of the metro building. I spoke at length with one of the metro agents about bidding on the up and coming contracts. My concern was that small companies, such as mine, don't get a chance to put in a bid with the main agency that is putting out the contract. Almost always, the communication part of the bid is lumped in with the electrical part of the

contract. Sir/ Ms., I have worked in communications now for almost forty years and not at any time has telecommunications been related to power albeit low voltage, so why would you bundle them both together? First of all, the electric companies, more often than not, already have their telecommunication companies on their books and just hand off that part of the contract, which is unfair to small business companies like mine. It would only be fair to have a separate bid for the communication part of any contract. Low voltage communications is different to power, and my suggestion is that tele/data communication should be a different part of the total contract and not lumped together with the power contract.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

SUBMISSION NUMBER: A78

DATE: 1/16/2012

SUBJECT: Comments for Small & Disadvantaged Business Program Bay Area Listening Session - Dec 1, 2011

COMMENT(S):

It is very commendable that CHSRA is in the process of establishing an overall SB project goal of 30%. In order to meet such an ambitious goal, CHSRA needs to ensure that SB/DBE companies are provided fair opportunity to provide services to the Prime Consultants/Contractors.

1. It would be very useful if CHSRA arranges for a meeting or series of meetings to allow SB/DBE's to meet the Prime Consultants/Contractors to be able to introduce themselves to the Primes and to market their services.
2. Some sort of a mechanism is required by CHSRA to ensure SB/DBE participation in HSR projects by collecting information/documentation of SB/DBE contacts/proposals to the Primes to market their services.

3. It may be very useful to set up some sort of a SB/DBE participation oversight/monitoring group in CHSRA to ensure fair opportunities for SB/DBE companies.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority has hosted Industry Forums in the past and shall host another forum for Small Businesses to meet the short-listed firms.
2. The contract information for the short-listed firms was disseminated to over 21,000 small businesses and posted on the Authority's website.
3. The Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration, to share thoughts and provide guidance on meeting the objectives set forth by the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A79

DATE: 1/16/2012

SUBJECT: Comments on CHSR Small Business Outreach

COMMENT(S):

Thank you for the opportunity to comment on the CA High Speed Rail Small Business Program. The program has good words but may require important changes to current implementation practices if the true goal of the program is to maximize the opportunity for small and disadvantaged business owners/operators to participate in economically meaningful ways. Remembering that small business owners are the foundation of the California economy, I am certain that their meaningful participation is an underlying objective of the program. Here are my comments:

Vendors Registry List: A list of all contractors, SB and Non-SB, which have expressed an interest in bidding on the CHSRA's prime contracts and subcontracts on the CHSRA assisted projects. The purpose of this list is to provide as accurate data as possible about the universe of SBs and non-SBs who seek to work on the CHSRA contracts.

1. Comment: If the goal is to maintain a list of ALL CONTRACTORS interested in bidding on

CHSRA's prime and subcontracts, and to provide as accurate data as possible about the universe of businesses who seek to work on CHSRA contracts, the outreach to inform and engage businesses needs to be broad and on-going, and needs to utilize far more diverse approaches than have been visible to date. For key portions of the CHSRA work, especially in NAICS where SBE's, DVBE's are strong in the market place, I suggest dividing contracts into phases and bidding each phase separately, allowing new businesses to be added to the bidders list over time.

2. I also recommend a policy of not awarding these types of contracts to the same bidder or group of bidders for more than 20% or less of the total dollar value of these types of projects. The small business liaison officer and his or her staff should be able to identify small business dominated industries by NAICS.
3. The Small Business Liaison Officer should have executive level responsibility for setting the goals and the process for achieving them, not simply manage the process.

Communications and Outreach Team responsibilities will include, and not limited to:

Provides up-to-date information electronically, on the CHSRA website, regarding contracting opportunities, upcoming events and current SB Program information.

Ensures similar business opportunities and events are posted on the DGS and BidSync website

4. Comment: Providing electronic information ensures discrimination against firms which might be interested in and able to participate as sub contractors but who live in rural or other areas poorly served by Internet and/or whose business activities require them to be in the field and not in an office environment most of the time. To ensure that these firms have an opportunity to participate in the economic opportunity potential provided by the high speed rail project, DGS and DOT should use additional forms of promotion, such as billboards, pointing firms to Internet sites as well as toll free #'s where information can be accessed. Additionally, local business organizations, ethnic chambers of commerce, local economic development organizations and others should be utilized to reach small businesses with relevant, current, bid opportunities and training. In northern CA, the Federal Technology Center should be utilized for training and information dissemination.

The Vendors Registry list will be derived through the contract procurement solicitation process and through the CHSRA's website. The listing will be distributed to prospective bidders and offerers based on the identified subcontracting possibilities associated with a bid and/or RFP solicitation

5. Comment: This list should not expire when a bid or RFP solicitation ends. To capture all interested businesses, you may consider acknowledging that a particular solicitation is now closed and providing an opportunity for the potential bidder to add his/her name to the list for future, related solicitations and/or informational updates.

Amendments to the program will be incorporated and presented to the appropriate funding partners, as deemed necessary

6. Comment: To make this actionable from a public perspective, there needs to be an explanation of who "deems necessary" and a process identified for the public to request a program amendment. Shouldn't part of the evaluation of the need for program amendments include a review of revenue expended by geographic area with the objective of ensuring a share of the work from the project among all regions where the rail will be constructed.?

The CHSRA will exercise good faith efforts to meet the overall SB Program goals, in partnership with its Contractors and resource partners

Comment: The comments above are intended to help CHSRA ensure that it actually operates in good faith and not simply follow routine practices, which will be less than fully effective for a project of the size, duration, and complexity of the High Speed Rail

The Design-Build Contractor will be responsible for establishing subsequent contract goals, as appropriate, for the subcontracts it lets, in conformance with 49 CFR Part 26.53 best practices and the CHSRA's SB Program

7. Comment: While design build projects are intended to reduce contracting time they are recognized as limiting access to projects for small business owners who were not aware of projects early (often in the pre-public stages of project concept and development) and in this regard can be and often are discriminatory in that the opportunity to prepare for and create a winning bid are limited.

This Design-Build project is subject to an Overall SB project goal of 30 percent

8. Is there a proportionate goal for risk sharing or will the most hazardous/ and or costly-per-unit, parts of the project be subcontracted to small businesses?

The SB/SS model will enlist a partnering Memorandum of Understanding (MOU) (See Attachment 8) with industry, governments and community partners with the goal of leveraging mutual strengths and services, to assist SB in the areas of:

9. Comment: In addition to SBDC's other sources of excellent small business expertise, mentoring and partnering are the small business assistance programs in many of the regulatory agencies, the Federal Technology Center in Sacramento region, the manufacturing partnerships in So Cal, local economic development agencies, some faith-based organizations, women's groups etc.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: II. Subpart B: Responsibility of SB Program Implementation, III. Subpart C: Administrative Requirements, V. Subpart E: Design-Build Provisions

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate program elements to address the comments posed by the Commenter:

1. The Authority shall create and maintain a Business Registry, as described under III. Subpart C:

Administrative Requirements, of businesses interested and available for contracting opportunities. In addition, the Authority shall host a forum for Small Businesses to meet the short-listed firms, in addition to the outreach events to be held by the proposers for the first Design-Build contract. Small Businesses shall be sought by the North American Industry Classification System (NAICS) codes, other work codes and key words as provided for in the certification directories. Refer to II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions, which reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

2. The comment is believed to address an “overconcentration” of Small Businesses within the same industry. The Authority shall conduct further research to determine potential options for consideration.
3. The Small Business Liaison Officer does have executive level authority to administer the Small and Disadvantaged Business Enterprise Program, which is inclusive of setting the overall Small Business goal, as described in II. Subpart B: Responsibility of SB Program Implementation.
4. The responsibilities of the Communications and Outreach Team was amended to incorporate the utilization of multiple medias to outreach to the Small Business Community, such as newspapers, other publications, webpages and a toll-free number, as described in II. Subpart B: Responsibility of SB Program Implementation. Furthermore, the Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, such as the Small Business Development Centers, under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering. Unfortunately, the Federal Technology Center ceased operations on March 16, 2012.
5. The Business Registry does not have an expiration date.
6. III.C. SB Program, Updates and Amendments under III. Subpart C: Administrative Requirements was amended to provide clarification that the Authority shall determine updates and amendments to the Small and Disadvantaged Business Enterprise Program as deemed necessary.
7. V.D. Contractor Good Faith Efforts and Reporting Obligations under V. Subpart E: Design-Build Provisions was amended to provide clarification that continuous efforts are made throughout the duration of the project to increase SB utilization.
8. There are no specific conditions for risk sharing. The Authority shall conduct further research to determine potential options for consideration as it relates to the evaluation of good faith efforts to utilize SBs.
9. The Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, such as the Small Business Development Centers, under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering. Unfortunately, the Federal Technology Center ceased operations on March 16, 2012.

SUBMISSION NUMBER: A80

DATE: 1/17/2012

SUBJECT: California High-Speed Rail

COMMENT(S):

I hope this email finds you well - I wanted to take this opportunity to introduce our firm and solutions.

- has been servicing the Engineering, Procurement and Construction sector for over sixteen (16) years; our web-based solutions for Project Management, Document Control, Daily Dairy and Material Management have been deployed globally; by many of the largest participants in the industry.

Our solutions are unique in that they are designed from the Owner's perspective in control of their projects.

As you are well aware, Owners have very unique ongoing requirements – change management, document dissemination, cost-schedule integration, multiple related projects and claims management, project close-out can all significantly impact an Owner's ongoing success.

Given the size and breadth of this project we wanted to impart the importance of using a *single system across all project participants*; one that allows each participating entity to retain control of their own documents yet still benefit from *real-time collaboration* and *centralized anywhere, anytime access*.

With this many participants, seemingly trivial elements such as re-duplication of data, attempting to integrate disparate systems, rigging an enterprise document control system for your specific work flow or relying on an outdated home-grown solution from one of the contractors can create an excessive amount of friction which historically has caused problems during the project life cycle.

PMIV is a cost effective and project proven system specifically designed to handle this situation.

In fact – Caltrans was able to use this system since 2000, with great success, on the \$6.8 billion Toll Bridge Seismic Retrofit Program. By requesting that the prime contractors also utilize our solutions, they ensured consistency in reporting and documentation, complete capture of all information in one central location and access to the appropriate information by all project participants when needed.

Be able to search for a document for issues that could develop into a claim could reduce impact on the project cost and time. PMIV help resolving potential claims before money is spend setting them, as potential claims should be treated as they occur, not at the end of the project. PMIV proved itself during the FBI investigation at the Skyway Project, reducing the shut-down time of the project and saving the tax payer money hundreds of thousands of dollars.

The Owner is in charge of the project and as such should decide how to manage the project and how to receive and collect documents from all sources with no exceptions. Caltrans had the right approach on the Toll Bridge Seismic Retrofit Program.

I look forward to an opportunity to discuss our solutions and explore if we can be of service.

We are a Certified Small Business with Principal with over twenty two (22) years of experience in Project Management with Bechtel Corporation.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A81

DATE: 1/17/2012

SUBJECT: -

COMMENT(S):

If you want to make sure we all get piece of the pie.

Federal
Service-Disabled Veteran-Owned Small Business
Veteran-Owned Small Business
State
SBE
DVBE

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: A82

DATE: 2/4/2012

SUBJECT: Suggestions for M

COMMENT(S):

P.8

II. SUBPART B –Responsibility of SB Program Implementation

IIA. SB Liaison Officer (SBLO)

- Seems like the reporting function could be stronger. The fourth bullet describes “Gathers and reports statistical data as required for appropriate entities”
 - Perhaps there should be a specific bullet regarding “at least quarterly reports to a stakeholder group regarding outcomes of the SB Program. The data regarding program performance should be sent out at least a week in advance of the meetings”

Page 9 and 10: Shared Responsibility/Administrative Services

7th bullet down on page 10:

“Collects tracks and reports quarterly an annual SB reports to State and Federal officials”—should also include reports to the SBLO. This information is necessary for the SBLO to make complete reports to the stakeholders as well as the State and Federal officials

IIC. Other Program Support Divisions

Page 10 (last bullet on the page):

- Refers to “contracting actions to create a level playing field and participation by SBs wherever possible”. The last sentence reads “This also includes, if not prohibited by State law, waiving or reducing bonding requirements or allowing for incremental bonding.” Although well intentioned the waiving of bonds can inadvertently eliminate what may otherwise be the opportunity to enable contractors to establish and/or grow their bonding capacity, which helps to achieve the overall capacity building of the small contractors who need bonding capacity to access other opportunities and grow their business. If the prime considers waiving bonds, they are more likely to consider it on the smallest of contracts – the very same level of contracts which better lend themselves to securing first time bonding for small contractors. Also, reducing bonding requirements has to be approached using the right tactic or it does not achieve the objective of enabling the contractor to qualify for the bond. For example reducing the required bond percentage, but maintaining the higher contract value, doesn’t translate to easier qualifying for the contractor since the surety underwrites to the contract amount not the bond amount. (Ladies, we share this with you as a point of information and understanding about realities of various efforts to address the bonding barrier)
 - This at least requires having Legal and Risk Management to be identified and involved (specifically called out on the “project management team” responsibilities that will support the small business program . (It would be helpful to have an HSR Risk Manager on board that has some knowledge and experience about balancing conventional risk management premises (risk avoidance) with approaches that enable more open

participation)

- This bullet might be expanded or amended to read “This includes cooperation in and facilitation of mechanisms to expand contracting opportunities through innovative bonding or capacity building programs which enhance bonding/contractor capacity, such as use of collateral support, phased bonding/contracting, and/or other alternative risk management tools like using funds administration, for example.

Page 11: Perhaps the Communications and Outreach Team responsibilities should include:

- First bullet—add “available resources” either after contracting opportunities, or after “current SB Program Information, including available resources”

Page 12: Not sure about this, because it might hurt small contractors, but the Registry List could also include bonding capacity

Page 15: III.E. Pre-Construction (Kick-off) Meeting

- Should include available resources to assist SBs in completing their work (maybe before “and other matters”.

III.F Contract Monitoring and Compliance

- Executed Subcontract Agreements (bottom of page 15) should include any “mentorship or other assistance the Contractor has promised, including bonding assistance” (maybe include after “and dispute resolution provisions”)
- Bottom of page 16—penalties include withholding payments due to equivalent of the difference between the actual SB attainment and SB goal commitment; suspension of payments....” This is GOOD!

Page 19: Good Faith Efforts

State Funded contracts

Paragraph 3 bullets:

In bullet 9, “Assist SBs in obtaining and enhancing bonding credit and lines of credit including the establishment of innovative but proven programs”

P.20 Federal Financial Assisted Projects

1. Attendance at Pre-Bid conference/Job Walk

Effort: Attendance ...to solicit the interest of certified DBEs who have the capacity to perform the work of the contract” and to provide information on available resources to assist the DBEs to obtain and perform the work

In Section 3, 4, 5 and 6 Contractors might be encouraged to include a link to available resources in these various ways of notifying DBEs about upcoming opportunities. Bonding/Capacity Assistance should be a

part of those resources if such are made available.

GFE 7:

In Evidence: add, “including addressing barriers to bonding/capacity and access to capital”.

GFE 8: “Provision of assistance to interested DBEs in obtaining bonding/capacity, lines of credit and/or insurance as required by the Bidder/Proposer”

In Evidence: Instead of “Brief description of the type of assistance...”, “Description of the types of assistance provided by the Bid/Proposer to interested DBEs in obtaining bonding/capacity, lines of credit and/or insurance, such as the establishment of innovative and proven programs or approaches.

Page 23:

2. Add: “when additional subcontractors are necessary or can perform those tasks historically performed by non-SBE firms, such as insurance, bonding, legal services, communications, etc.” to meet the overall goals and objectives.

3. Add: Such actions might include offering innovative and proven programs or approaches.

9. I think this refers to Section IV. Subpart E, not subpart D, Item F.

IV.E. Substitution or Termination of a SB, DVBE or DBE on a Contract (page 27)

Bullet 4 indicates that the listed subcontractors failure or refusal to meet the Contractor’s bond requirements is reason to substitute the SB. Add: “after demonstrating good faith efforts to assist the SB meet those requirements through bonding assistance”.

Same for Substitution or Termination of a listed DBE (page 29): bullet 3 “fails or refuses to meet reasonable, nondiscriminatory bond requirements”. . Add: “after demonstrating good faith efforts to assist the SB meet those requirements through bonding assistance”.

Design-Build Components:

P. 32 SBO duties and Responsibilities

12th bullet:

This should probably be two bullets: 1) Conducts business outreach... and 2) assists in the development of the Contractor’s supportive services, such as mentor-protégée, bonding/capacity and financing assistance, matchmaking and other technical assistance programs.

We might also suggest the Contractor’s SBO convene at least quarterly meetings with the stakeholder community.

Additional Elements:

d) Refers to providing assistance, in coordination with the CHSRA, to SB firms so that they (says “these”) may overcome barriers such as the inability to obtain bonding, insurance, financing or technical assistance: we might suggest adding: “including industry-specific subconsultant arrangements with

technical assistance program consultants”.

Page 35 b: Talks about what the contractor must do if it fails to meet its SB goals. The contractor must report its progress on attaining its goal, but it is important to know what the problems are. So perhaps, language could be added to sentence 3: “If an progress report shows that the Contractor is behind target, or if it anticipates being behind target, the report must include a description of those challenges the Contractor has encountered to meeting the goals, must include satisfactory evidence of past good faith efforts undertaken and must specify additional good faith efforts planned to be taken.....).

SubPart F SB Supportive Services, Resource Partners and Partnering

The second full paragraph on page 37 says the CHSRA and the Contractor will work closely with the SBDCs and the USDOT OSDBU to direct the SB to assistance on business development, capital and bonding assistance. After OSDBU, add “and consultants with demonstrated results in overcoming issues most pertinent to SBs, including to bonding, insurance and finance”.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: II. Subpart B: Responsibility of SB Program Implementation, III. Subpart C: Administrative Requirements, V. Subpart E: Design-Build Provisions, VI. Subpart F: SB Supportive Services, Resource Partners and Partnering

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

The Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address several of the comments posed by the Commenter. Other recommendations could not be considered as the comments conflicted with Federal and State regulatory requirements.

The following amendments were rendered to the Small and Disadvantaged Business Enterprise Program as a result of this submission:

1. The duties and responsibilities of the Small Business Liaison Officer was amended to include the facilitation of the Business Advisory Council, which is inclusive of its formation, reporting, and associated activity, as described in II. Subpart B: Responsibility of SB Program Implementation.
2. The responsibilities listed under II.B. Shared Responsibility was amended to appoint the Small Business Liaison Officer as the recipient of various Small Business utilization reports, as described in II. Subpart B: Responsibility of SB Program Implementation.
3. II. Subpart B: Responsibility of SB Program Implementation was amended to expand on the methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E:

Design-Build Provisions references bonding assistance as a method to address financial barriers.

4. III.E. Small Business Construction Meetings under III. Subpart C: Administrative Requirements was amended to include Small Business technical assistance as an additional Contractor responsibility.
5. SBO Duties and Responsibilities were amended to include development and implementation assistance of the Design-Builder's Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.
6. Amendments rendered to the Small and Disadvantaged Business Enterprise Program to incorporate additional program elements to address sanctions/non-compliance as referenced in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.
7. VI.A. Supportive Services was amended to adopt language pertaining to consultant contract solicitations and/or agreements with existing governmental entities with demonstrated results in overcoming issues most pertinent to Small Businesses, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering

B. WEBSITE SUBMISSIONS

SUBMISSION NUMBER: B1

DATE: 11/22/2011

INTEREST AS: Business

COMMENT(S):

Construction Management Questions:

1. What will the minimum qualifications be for SBE CM firms?
2. Do SBE's need to have previous experience with the CHSRA in order to qualify?
3. Will an SBE firm have the an equal opportunity to gain business opportunities as the larger firms?
4. How will the CHSRA contract firms for CM work?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

1. The Authority does not have a Construction Management procurement solicitation at this time and cannot address the minimum qualifications for this type of work.
2. Refer to Question 1: Response. However, the Authority will ensure it will not require firms to have previous experience with the Authority in order to qualify.
3. The Authority shall ensure that all firms will have an equal opportunity to pursue contracting opportunities regardless of business size.
4. Refer to Question 1: Response.

SUBMISSION NUMBER: B2

DATE: 11/25/2011

INTEREST AS: Business

COMMENT(S):

3% requirement will not do much for our cert
Interested in rock sand recycle -dirt -trucking
please send updates to this e-mail

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: B3

DATE: 12/5/2011

INTEREST AS: Business

COMMENT(S):

I would like to request that the word "construction" is replaced everywhere with the words "design and construction", as in the phrase "The construction of California's high-speed rail program" or "Meet construction employment goals".

With the current language being used, it seems as if the design portion of this historic project (civil, geotechnical, structural, etc.) will not be subject to any of the requirements being placed on the construction side of this project. This would be a common but indeed tragic oversight.

Thank you for taking my comments into consideration.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: Various

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate the term "design" to program elements, as appropriate, to address the comments posed by the Commenter

SUBMISSION NUMBER: B4

DATE: 12/8/2011

INTEREST AS: Business

COMMENT(S):

We are a certified Small Business with DGS, Federal Gov, and in several cities here in Northern Calif. How do we get listed as a certified small business supplier for this project?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: B5

DATE: 12/8/2011

INTEREST AS: Business

COMMENT(S):

With the official definition of a small business for General Construction being: General construction annual receipts may not exceed \$13.5 to \$17 million, depending on the type of construction; If that is a

small business (?) then there should be a classification of business called super-micro-nano businesses. You know, for all the contractors like me whose annual receipts don't even come close to thirteen MILLION a year, and yet want to participate in these projects.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority's Small and Disadvantaged Business Enterprise Program is inclusive of Micro-Business participation, as described in I. Subpart A: General Requirements, B. Definitions.

SUBMISSION NUMBER: B6

DATE: 12/30/2011

INTEREST AS: Business

COMMENT(S):

The CHSRA Small and Disadvantaged Business Enterprise Program appears to require compliance with an FAR-type cost accounting structure, i.e. percentage rates, that are comprised of allocations for fringe benefits, indirect overhead, general and administrative, and profit. While some small businesses can comply with the accounting specifics of the FAR structure, many small businesses are not so equipped due to the limitations of their accounting systems, costs to comply, or other reasons. It is likely that the majority of small businesses charge for their services based on industry-specific competitive rates which can be compared by a contracting entity against others providing similar services.

The 30% small and disadvantaged participation goal for the project is commendable. However, it seems counter-productive to strongly encourage small business participation while requiring complex and costly accounting procedures that may deter that participation.

If it is in fact the intent of the program to require FAR-type compliance from small and disadvantaged businesses, we think the matter bears further examination. Perhaps there are exemptions or exclusions that can be considered or it may be possible to apply some aspect of industry-specific competitive rate reviews. In any case, achieving this worthwhile goal should not be unduly hindered by cost accounting systems processes.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program, as the project is federally funded. Therefore, procurements must adhere to the federal contract requirements. The Authority is unable to amend the Small and Disadvantaged Business Enterprise Program to address the comments posed at this time.

SUBMISSION NUMBER: B7

DATE: 1/3/2012

INTEREST AS: Business Opportunity Notices

COMMENT(S):

I am an Insurance Broker Certified with the State how can I insure different part of the projects?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: B8

DATE: 1/12/2012

INTEREST AS: Business

COMMENT(S):

Now that the first SOQ submittals have occurred for the first Design Build segment, when can we expect to see a posting of the teams? When will the pre-qualified list be issued?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter referred to the Authority's website for the contract information for the short-listed firms, which was disseminated to over 21,000 small businesses via e-blast notification and posted on the Authority's website.

SUBMISSION NUMBER: B9

DATE: 1/13/2012

INTEREST AS: Business

COMMENT(S):

I am a co-owner of a small women-owned business located in San Diego, CA. We have been in business since 2004. The best way to help small businesses is to

1. give them direct contracts that are substantial and
2. require that larger contractors to have a percent of the total contract value be awarded to small businesses, e.g. 25 to 30%. This should also be verified because many larger businesses will run a large business thru a small business so that it appears that a small business was used. Allowing large contractors to have small business contracting "goal" is not acceptable. Allowing large contractors to say that there are "not good small businesses out there" is also not acceptable because we know firsthand that the industry does not as a whole put forth a true effort to find and build relationship with small businesses, such as mine. - works primarily with the Federal government and we have "excellent to very good" reviews. We have all the local gov and California certifications and registrations and there has been only two companies who have contacted us and asked that we join their team on a bid.
3. Unbundle contracts and let a small business work on one to several to all the projects doing one

of the normally bundled items, e.g. GIS. Thank you for your consideration.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority does not have Congressional authority to establish "preferential bidding" or set – asides on the project.
2. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which requires Contractors to utilize Good Faith Efforts to meet the 30% Small Business goal throughout the duration of the project. Issues pertaining to Contract Monitoring and Compliance are described under III. Subpart C: Administrative Requirements and are further addressed in II. Subpart B: Responsibility of SB Program Implementation and IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
3. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

SUBMISSION NUMBER: B10

DATE: 1/13/2012

INTEREST AS: Business

COMMENT(S):

Is there a formal subcontractors networking list?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: B11

DATE: 1/16/2012

INTEREST AS: Business

COMMENT(S):

I have been in business for 25 years and some of the richest people I know are black, Hispanic, and Asian, but you say that they are socially and economically disadvantaged. I would like to know how long I as a white male business owner will be discriminated against and put at a disadvantage to these DBE firms. Because of your quotas I have a much harder time of getting HSR work even though I am a California taxpayer and run a CA corporation. Please explain your rationale.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority's Small and Disadvantaged Business Enterprise Program's 30 percent Small Business goal is inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses, as set forth under I. Subpart A: General Requirements.

SUBMISSION NUMBER: B12

DATE: 1/16/2012

INTEREST AS: Business

COMMENT(S):

We would like to submit the following comments on the proposed CA HSR small business program.

We would like to commend you on the development of the plan and look forward for the future business opportunities.

Company is registered with your RFEI. The company provides Geographic Information System (GIS) and Renewable Energy Services.

We support the use of local businesses. However, we suggest you clarify the definition of "local businesses". Our suggestion is to define local businesses to mean where a worker can reach and perform their duty within the same day. Meaning no travel or overnight expense.

We suggest you form some alliance or collaborative arrangement with the Black, and other minority Chambers of Commerce.

Your consideration of these comments are highly appreciated.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority does not reference "local business" within the Small and Disadvantaged Business Enterprise Program.
2. The Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering. In addition, the Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration.

SUBMISSION NUMBER: B13

DATE: 1/16/2012

INTEREST AS: Business

COMMENT(S):

It is not sufficient to disregard small business certifications and such as DVBE, SDVOSB, DBE, etc... and simply consider all of us small businesses. You must set SB goals for each SB category.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority's Small and Disadvantaged Business Enterprise Program's 30 percent Small Business goal is inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Micro-Businesses.

The Authority does not have Congressional authority to establish separate Small Business goals on the project. The Authority has requested an official response from the Federal Railroad Administration (FRA) regarding this matter. The FRA response is currently pending.

SUBMISSION NUMBER: B14

DATE: 1/17/2012

INTEREST AS: Business

COMMENT(S):

I commend the HSR for conducting such wonderful outreach in soliciting feedback on its small business policy. I would like to make sure that the HSR's small business policy covers not only public works contractors but also goods and service providers to the HSR. I was uncertain from reading it whether all such contractors were covered.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The requirements set forth in the Small and Disadvantaged Business Enterprise Program and Policy shall apply to all Authority contracts.

SUBMISSION NUMBER: B15

DATE: 1/17/2012

INTEREST AS: Business

COMMENT(S):

Where are the opportunities for small diverse companies? Why aren't they included in subcontracting. The State of California workplace and ethnicity is changing and not having a goal for small diverse companies to participate in this project will effect State's revenues, job creations, community growth and growing the local economy.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority does not have Congressional authority to establish "preferential bidding" on the project. The Authority has requested an official response from the Federal Railroad Administration (FRA) regarding this matter. The FRA response is currently pending.

SUBMISSION NUMBER: B16

DATE: 1/20/2012

SUBJECT: Business Opportunity Notices

COMMENT(S):

We are a Black owned minority & small business outreach firm. We are interested in outreach efforts to get Minority small businesses involved in the project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Correspondence referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

C. LISTENING SESSIONS SUBMISSIONS

SUBMISSION NUMBER: C1

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

When will the primes have outreach sessions where small businesses can meet them?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority's website.

SUBMISSION NUMBER: C2

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. How do a small business get connected with an actual contractor?
2. Minimize the process for small business to acquire contracts. We do not have the resources to compete and do the work.
3. We have limited resources – we are small!
4. Provide Direct link to getting contracts

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority's website. Furthermore, the contract information for the short-listed firms was disseminated to over 21,000 small businesses and posted on the Authority's website.
2. Refer to IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation, Section C. Good Faith Efforts (Pre and Post Award) and V. Subpart E: Design Build Provisions, which identifies where the Design-Build Contractor is encouraged to eliminate barriers to assist Small Businesses sustain and retain a subcontract.
3. –
4. Commenter referred to the Authority's website, Bidsync and additional sources with further information and instruction regarding contracting opportunities.

SUBMISSION NUMBER: C3

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

Unbundling on contracts is require for small architects to participate.

Scope of work for architectural service need to be broken down:

- Such as peer reviews for bridging documents
- Tenant improvements
- Ancillary Services
 - Café/Restaurant
 - Offices
- Utility Cores/ADA/Toilet

Evaluation of experience should be based on knowledge of project delivery system or related, project management of similar work not exact experience, and references.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

SUBMISSION NUMBER: C4

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. SBE threshold is too high for most small businesses. Therefore, there should be a breakdown of 15% SBE and 15% DBE goals, instead of 30% SBE goal. Within DBE goals of 15%, 10% should go to UDBEs (under utilized DBEs).
2. Disparity study should be completed as soon as possible to hopefully enable the implementation of race and gender conscious program instead just the current SBE program.
3. Same goals shall apply separately to both Construction and Professional Services.
4. Design-Build contract are not conducive to small businesses. Implement traditional Design-Bid-Build project as well.
5. Break down contract size to have more smaller contracts
6. Implement Small Business set aside contracts for SBEs and DBEs.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority does not have Congressional authority to establish separate Small Business goals on the project. The Authority has requested an official response from the Federal Railroad Administration (FRA) on this matter. The FRA response is currently pending.
2. The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant.
3. The requirements set forth in the Small and Disadvantaged Business Enterprise Program, inclusive of the 30% Small Business goal, shall apply to all Authority contracts.
4. The Authority has selected the Design-Build method.
5. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.
6. The Authority does not have Congressional authority to establish "preferential bidding" or set – asides on the project.

SUBMISSION NUMBER: C5

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

The small business plan includes credit for federal small business that have low requirements for certification, and they can be up to \$33.6 million in average revenue compared to California SBEs at \$14 million. I have never heard of federal SBs (out-of-state) having the same standing as CA SBEs and DBEs. Why is this policy, when it has never been done, even by Caltrans or FTA?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority's Small and Disadvantaged Business Enterprise Program's definition of a 'Small Business' is a firm that meets the definition contained in Section 3 of the U.S. Small Business Administration (SBA) regulations that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b). This citation is in conformance with the size standard and criteria requirements met by SBs and DBEs certified by the Department of General Services.

SUBMISSION NUMBER: C6

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. How much budget has been (or will be) allocated to monitor/enforce "SB" goal?
2. Is small business participation of 30% mandatory?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority has an obligation to monitor and/or enforce the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. There is not specific budget allocation for this task.
2. The Authority does not have Congressional or the State of California authority to establish a mandatory Small Business participation goal.

SUBMISSION NUMBER: C7

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

Please send me a list of all the current contractors in any capacity.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Commenter was forwarded the requested information.

SUBMISSION NUMBER: C8

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

Sub-Goals should be set for each group = e.g.

Example: Small Business = 30%

DBE: 10%

DVBE: 10%

Micro-Business: 10%

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority does not have Congressional authority to establish separate Small Business goals on the project. The Authority has requested an official response from the Federal Railroad Administration (FRA) regarding this matter. The FRA response is currently pending.

SUBMISSION NUMBER: C9

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. Supportive Services Program: A dedicated exclusive Supportive Service (SS) Provider will be needed. The partners are ok but a SS provider will respond only to needs of this project. The resource partners have other responsibilities.
2. Procurement: There is a need to ensure that there will be small size contract that SB/DBE/DVBE can bid for as prime contractors. That is efforts need to be made to break up large contract into small contracts.
3. Business Development Program: This is mentioned but appears that no or little thought has been given to what this means and therefore how such an effort would be implemented. This is an extremely important activity.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the questions posed by the Commenter.

1. The Authority is pursuing funding from FRA to procure a Supportive Services Consultant to provide technical assistance to Small Businesses.
2. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.
3. The Authority is pursuing funding from FRA to procure a Supportive Services Consultant (Business Development) to provide technical assistance to Small Businesses.

SUBMISSION NUMBER: C10

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

We have been asked to submit our credentials to a large team. We are a SBE/DBE/MBE/VE with specific expertise. The firm has asked ALL SBEs who submit to them to be exclusive, or they won't be part of their proposal. We request that you eliminate their and other teams from requiring an SBE/DBE to be EXCLUSIVE to them. Exclusivity is impossible for a small firm. It also would allow the excuse "we can't find enough SBEs."

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

The General Provisions within the Authority's Request for Proposal (RFP) discourages exclusivity and states the following, "Subcontractors are not precluded from being on more than one Proposer's team..."

SUBMISSION NUMBER: C11

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

What type of contracting/subcontracting opportunities are available for professional services firm that provides civil engineering, land surveying, traffic engineering and landscape architectural design services. We are a DBE/UDBE certified firm by Caltrans CUCP and an SBE certified firm by State DGS. We provide our services statewide: Northern, Central & Southern California.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C12

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. Small Business and DBE should have separate goal so that DBE will really get help which they are in an disadvantage position to start with.
2. Design-build project tends to exclude small businesses especially if general contractors do not list SB and DBE clearly before the bid.
3. Most public contracts talk about prompt payment. Contractors do not really it in reality. There should be some strict rules for the administration/financial department as well as project

management departments to follow.

4. Updated SB and DBE list are always helpful for GC to work at because old information waste a lot of energy and resources to sort out.
5. Self-perform criteria should be included or some business is just have a shell. It will help cut down the cost of the project to avoid middle man and ensure performance.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority does not have Congressional authorization to establish separate business goals. The Authority has requested an official response from FRA pertaining to this matter. The response from FRA is currently pending.
2. The first package is a design-build construction package and unfortunately, the proposer will not be listing all its SBs by task or dollar amounts. The Proposer will submit its Affidavit of Commitment to meet or exceed the Small Business goal and a Small Business Performance Plan.
3. The Authority continues to research prompt payment mechanisms beyond the provisions described in III. Subpart C: Administrative Requirements, which indicates that the Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
4. The Authority and the short-listed firms have been directed to use existing Small Business directories, which includes lists from the Department of General Services, Caltrans, and the U.S. Small Business Administration.
5. Issues pertaining to Contract Monitoring and Compliance are described under III. Subpart C: Administrative Requirements and are further addressed in II. Subpart B: Responsibility of SB Program Implementation and IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.

SUBMISSION NUMBER: C13

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

We are a woman owner small business which currently holds the/a district 3 contract for gases.

Question, if a large firm like, Tiebert Const, Granite Const, etc. get awarded the heavy Const part of the contract, which has national agreements with suppliers (gases) Is 30% to the subs based on total monies paid to them by the state?

Will the State direct/advice that they purchases from current state approved vendors?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

The 30% Small Business goal attainment shall be based on total dollars paid to Small Businesses, as described under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.

The Authority does not currently have State approved vendors.

SUBMISSION NUMBER: C14

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

We will provide concrete crossties and track slab for general contractors bidding for track work of CHST project.

Our partners are a PC concrete company in Spokane, WA and a PC concrete company in Japan. We may need service from local concrete companies to make these concrete products.

We will do our best in making good faith efforts toward involving SB/DVBE/DBE in our business

scheme.

What does CHSRA recommend us, a subcontractor/supplier to do to meet CHSRA requirements?

Is making good faith efforts enough?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Commenter referred to VI. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions for further information on approaches to meet the requirements set forth by the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C15

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. Please add our firm to your database
UCP Certified
2. Where do you get the list of primes with contracts?
& List of proposing primes?
3. Real participation in dollars needs to be posted on a monthly basis so people can track real time the participation percentage
4. The 30% goal should be reflected across disciplines.
5. Develop a website devoted specifically to notifying, assisting DBEs & SBs where they can track real time participation. Also a place to file a grievance.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the questions posed by the Commenter:

1. The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements.
2. Commenter referred to the Authority's website for the contract information for the short-listed firms, which was disseminated to over 21,000 small businesses via e-blast notification and posted on the Authority's website.
3. Small Business attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.
4. The requirements set forth in the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal, shall apply to all Authority contracts.
5. Information and pertinent materials pertaining to Small Businesses are located on the Authority's website under 'Small Business Resources,' which allows commenters to submit on-line comments and provides information on how to file a complaint.

SUBMISSION NUMBER: C16

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

Has the Authority or would the Authority consider including the Small and Disadvantaged Businesses who are sub tiers to DB/DBE higher tier firms as part of the value of work utilizing SB/DBE?

E.g. If a SB/DBE is a first tier subcontractor with \$50 million contract and it buys \$5 million from a SB/DBE firm, would the Authority count the SB/DBE participation as \$55 million? This would encourage SB/DBE firms to also use SB/DBE firms and increase the overall opportunities for SB/DBE firms.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Small Business participation goal is passed down to subcontractors regardless of tier, as described in II. Subpart B Responsibility of SB Program Implementation and V. Subpart E: Design Build Provisions.

SUBMISSION NUMBER: C17

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

Could you send me the contact people at the segment design firms for 30% design. We would like to team up with them.

We are an African American architectural, engineering, contraction team of 10 alliance members.

We have submitted our qualifications to you in April for your RFI then. We also attended your L.A. conference.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

Contact information forwarded to Commenter, as requested.

SUBMISSION NUMBER: C18

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. S/DBE Payment Provision:

Please ensure prime contractor does not use fund maturity (i.e. hold funds beyond 10 days of receipt until "maturity." Otherwise, fund recipient is charged % fees.) This mechanism is being use by large prime contractor through SP Morgan Chase, as a real example. Please disallow this practice.

2. Need Clarification:

Current advertisements concentrate on construction. It appears S/DBE participation and requirement in networks/information technology is absent. Are teaming opportunities closed other than in construction?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority continues to research prompt payment mechanisms beyond the provisions described in III. Subpart C: Administrative Requirements, which indicates that the Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
2. The requirements set forth in the Small and Disadvantaged Business Enterprise Program,

inclusive of the Small Business goal, shall apply to all Authority contracts. However, teaming opportunities in the field of networks/information technology have yet to be defined by the Design-Builder. Commenter referred to the Authority's website for the contract information for the short-listed firms, which was disseminated to over 21,000 small businesses via e-blast notification and posted on the Authority's website.

SUBMISSION NUMBER: C19

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. Are their primes to this contract aside from the main contractor?
2. Will there be a mentor-protégé aspect on this prospect/contracts?
3. At what value will the sub kick in?
4. What is the incentive for a prime who has already a establish relationship with another SB to seek another SB who is new to the environment?
5. How is the sub teaming partnership with the prime & SB be monitored?
6. Any special software desired for any aspect of this work?
7. How do we get to know the different sub, partnership, teaming, etc. opportunities?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. A Design-Build Contractor shall be solely responsible for the design and construction requirements.
2. V. Subpart E: Design Build Provisions makes reference to the Design-Build Contractor engaging

in a Mentor Protégé Program.

3. The subcontractor is recognized regardless of the contract value.
4. II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization.
5. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation.
6. Contracting opportunities in the field of special software have yet to be defined by the Design-Builder. Commenter referred to the Authority's website for the contract information for the short-listed firms, which was disseminated to over 21,000 small businesses via e-blast notification and posted on the Authority's website.
7. The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority's website.

SUBMISSION NUMBER: C20

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

When will Black Contractors get some of the business?

Let me know

I cant wait

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C21

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

1. Having been in business here in the SF Bay Area for a while, I've come to notice that when clients choose "design-build" as delivery method, A/E firms tend to get left out. General Contractors prefer, overwhelmingly, to use suppliers and transporters to fulfill their small business goals. Please consider assigning percentages to each aspect of the design-build contract.
2. The federal government has this thing called the "set-aside" program. BART adopted this in its recent round of A/E contracting. Given the rise of CAHSR, set-asides are definitely implementable. Break away scopes such a parking lot design, state design; portions of work that do not require high level of continuity/program-wide design consistency.
3. Will the Authority offer geotechnical engineering contracts ahead of time, separately?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The requirements set forth in the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal, shall apply to all Authority contracts, including the design component.
2. The Authority does not have Congressional or the State of California authority to establish "preferential bidding" or set-asides on the federal aid project.
3. The geotechnical engineering component shall be a component of the design-build delivery method.

SUBMISSION NUMBER: C22

DATE: 12/1/2011

LOCATION: San Francisco, California

COMMENT(S):

The 30% goal for a heavy, civic works design/build project seems overly aggressive on a large (\$2B), fast-paced (\$1.6M/day in place over the life of the project). This equates to ~\$600M to the S D DVBE Community.

We all want to help the SBE community and welcome their involvement.

We would encourage the goals to be established based on available resources for the type of services requested.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Pursuant to the Authority's funding assurances, the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal, is authorized by Executive Order S-02-06 and the Title VI of the Civil Rights Act of 1964 and related statutes, as described under I. Subpart A: General Requirements.

SUBMISSION NUMBER: C23

DATE: 12/15/2011

LOCATION: San Francisco, California

COMMENT(S):

I attended the Bay Area Listening Session on Dec 1 and have the following comments;

1. In selecting the Design-Build Teams, there should be points and separate goals for the inclusion of Disadvantaged Business Enterprise (DBE).

2. The Design Build Contractors should be encouraged to have SET-A-SIDES for DBE firms. Being non-government, they are allowed to.
3. DBE's should be properly licensed and certified in the categories of work selected for to eliminate "shams."
4. Small Business goals and points should be separate.
5. In request for qualifications, why discourage exceeding the goal by saying the goal of record will be that commented by the proposer

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority does not have Congressional authorization to establish separate business goals. In respect to being able to establish separate business goals for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises or Microbusinesses, the Authority has requested an official response from FRA pertaining to this matter. The response from FRA is currently pending.
2. The Authority does not have Congressional or the State of California authority to establish "preferential bidding" or set-asides for DBE involvement.
3. Recognized Small Businesses must perform a Commercially Useful Function in order to be credited toward the Small Business goal, as described in IV.D. Counting SB Participation under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
4. Refer to Question 1: Response. Furthermore, the Authority's Request for Qualifications (RFQ) identified 15 points pertaining to the Small Business component, while the Request for Proposal (RFP) has a pass/fail evaluation of the Small Business component.
5. The RFQ and RFP both require the proposer to sign and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal. In addition, II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization, as well as utilize innovative procurement approaches, such as the Small Business

Option procurement method, to increase Small Business participation.

SUBMISSION NUMBER: C24

DATE: 12/13/2011

LOCATION: Merced, California

COMMENT(S):

As the project is just beginning, these comments are based on past experience that can/could be incorporated into program. Most DBE goals are based on construction services, not professional services. As a firm that provides design services the process of outreach and good faith effort usually fall short or are non-existent; as current required underutilized/DBE programs do not address the design process.

1. How is CAHSRA going to ensure that design build firms (who can do it all anyway) do not do all the design services in-house?
2. How will "CUF" be determined, defined and monitored?
3. An added issue is who holds liability which determines who signs drawings and therefore who or who design firm is even recognized in process.

Past bad experience varies from calling to use or name & DBE certs with no intention of using us to firms that did include us in process but kept us out of the main information process (all of which helps/critical in design process). So we provided useful work but were excluded from the entire information process; this impacted our ability to anticipate work coming up and made it harder – as a small business – to be as responsive as we could

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Design-Builder shall submit a Small Business Performance Plan to address the methods in which the Contractor shall meet the requirements set forth in the Small and Disadvantaged Business Enterprise Program and engage Small Businesses in all aspects of the project, as described in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build

Provisions.

6. Recognized Small Businesses must perform a Commercially Useful Function in order to be credited toward the Small Business goal. Further information pertaining to a Commercially Useful Function is described in IV.D. Counting SB Participation under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
2. The Design-Builder shall make the determination regarding this subject.

SUBMISSION NUMBER: C25

DATE: 12/13/2011

LOCATION: Merced, California

COMMENT(S):

We are trying to meet and interview as many SB/DVBE/DBE as possible to make sure that we can achieve 30% utilization of SB/DVBE/DBE. We are especially looking for SB/DVBE/DBE in the field of precast concrete and tracking. We have CHSRA provide more opportunities for general contractors, subcontractors, suppliers and SB/DVBE/DBE to meet

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Commenter referred to VI. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions for further information on approaches to meet the requirements set forth by the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C26

DATE: 12/13/2011

LOCATION: Merced, California

COMMENT(S):

This was a very informative meeting. Thank you.

1. Regarding the question of insurance, we would like to see the concept of a bond/insurance pool for SB to be implemented.
2. We would like to see SB listed by standard industry codes for ease of search.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The Authority shall continue to research and evaluate resources available to Small Business to implement the concept recommended.
2. Small Businesses shall be sought by the North American Industry Classification System (NAICS) codes, other work codes and key words as provided for in the certification directories.

SUBMISSION NUMBER: C27

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

1. I believe the 30% SB/DBE goal is acceptable, although it could be more.
2. It can also be used in the selection criteria, if the proposal has validated submittals from "qualified" SB/DBE firms, the "proposer" has points for upfront commitments from subs included.
3. For service providers, "Higher" SB/DBE goals should be set... California has all the technological resources available, w/c would be a good motivation to have all the technical expertise stay in California.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter:

1. The RFQ and RFP both require the proposer to sign and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal. In addition, II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization.
2. The Authority's Request for Qualifications (RFQ) identified 15 points pertaining to the Small Business component. The Request for Proposal (RFP) has a pass/fail evaluation of the Small Business component and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal. Furthermore, the Design-Builder shall submit a Small Business Performance Plan to address the methods in which the Contractor shall meet the requirements set forth in the Small and Disadvantaged Business Enterprise Program and engage Small Businesses in all aspects of the project, as described in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.
3. The Small and Disadvantaged Business Enterprise Program encourages Contractors to utilize innovative procurement methods to ensure Small Business participation, such as the Small Business Option procurement method, as described under V. Subpart E: Design-Build Provisions.

SUBMISSION NUMBER: C28

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

The CA Disabled Veteran Business Alliance, which represents all 1200 plus Disabled Veteran Businesses that are certified in the State of California, supports and requests that 5% of the 25% small business goals be reserved for CA DVBEs.

CALTRANS already has a 5% DVBE goal on most projects and is achieving 5% routinely; Therefore, it is a natural conclusion that 5% DVBE reserve or goal for HSR should be easily accomplished.

We also feel that without specific goals for DVBEs it is unlikely that DVBEs will be afforded adequate opportunity to perform the work with this project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this comment. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: C29

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

When the RFP for Right of Way is let, how will small businesses be included.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

The requirements set forth in the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal, shall apply to all Authority contracts, including Right of Way contracts.

SUBMISSION NUMBER: C30

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

1. How the Authority will review and monitoring the utilization of SB, DBE businesses by the prime contractors?
2. How the Authority will ensure that the prime contractors will divide the scope of work in suitable size for a SB/DBE business?
3. Will any sub-tier count for the goal?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

1. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation.
2. The Design-Builder shall submit a Small Business Performance Plan to address the methods in which the Contractor shall meet the requirements set forth in the Small and Disadvantaged Business Enterprise Program and engage Small Businesses in all aspects of the project, as described in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.
6. The Small Business participation goal is passed down to subcontractors regardless of tier, as

described in II. Subpart B Responsibility of SB Program Implementation and V. Subpart E: Design Build Provisions.

SUBMISSION NUMBER: C31

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

- is a certified DBE, SBE, WBE and underutilized business, right of way and community outreach consulting firm. In the past - has been included on proposals by others (i.e. DHR and Paragon Partners Ltd) but in the end did not receive any work. There is a need for compliance at the start, middle and end of the process.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

SUBMISSION NUMBER: C32

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

Good meeting. Very informative. Well functioning.

The meeting overwhelmingly met my expectations!

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C33

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

Would like to help as consultant to provide assistance to small business in the Kern County and San Joaquin Central Valley.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C34

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

Our firm was requested to participate with Paragon Partners 2 years ago as a sub on Real Estate Program Management. I was told that our resume and DBE MBE status was used. Paragon started the job and no word for over a year. When asked why - had no work Paragon replied there was no work for you. Another year pasted and Paragon suggested we “network” to find work with CHSRA

Again back room deals cut on the backs of small business.

I would like to know and see policies for monitor DBE participation with the Primes. - is a ROW and Outreach Consulting Firm.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made, as the Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address the comments posed by the Commenter.

Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

Furthermore, the Commenter was contacted to obtain additional information on the issue, however, the firm declined to provide additional information in the matter.

SUBMISSION NUMBER: C35

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

I have a few concerns as a small business.

1. First, if my company is part of a proposal we are often not informed of the success of the proposal and we are never given subcontracts based on successful proposals. One of the problems is that it costs a great deal of money and time to help someone else win a proposal and never be given a chance once a proposal has been won.

2. I am also concerned with payment issues: reasonably prompt payments (30 days) and resources to take if payment is not made upon successful completion of a task.
3. It is all too easy for a small business to get lost amongst the thousands of contracts. I would like to have a mechanism to each and speak with primes in regards to our company capabilities (email, phone #'s, etc.). Our company works with the MTA with programming and GIS.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: V. Subpart E: Design-Build Provisions

RESPONSE:

Response issued verbally at the Listening Session to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

The Small and Disadvantaged Business Enterprise Program is inclusive of program elements to address several of the comments posed by the Commenter. However, as a direct result of this submission, amendment(s) were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate the following:

1. The duties and responsibilities of the Small Business Officer was amended to include the following statement, "Posts on Contractor's website, a list of SBs, regardless of tier, who are being utilized to meet the overall SB goal" as described in V. Subpart E: Design-Build Provisions.
2. The Authority continues to research prompt payment mechanisms beyond the provisions in III. Subpart C: Administrative Requirements, which indicates that Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
3. The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority's website. Furthermore, the Commenter was referred to the Authority's website to obtain contract information for the short-listed firms, which was disseminated to over 21,000 small businesses and posted on the Authority's website.

SUBMISSION NUMBER: C36

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

I am interested in providing environmental testing and consulting services as a certified small business. I could not get any information today on how the Right of Way Contracts are going to work. Most of the services we provide will be performed during the demolition of properties which I was informed will be under the ROW, not thru the Prime Contractors(s). I was also under the impression that the ROW Contracts will be contracted directly to Ca. High Speed Rail? If so, how or who do I get my qualifications to?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C37

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

Are there any outreach, communication, public relations, advertising RFPs?

Where will they be posted?

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: C38

DATE: 1/12/2012

LOCATION: Los Angeles, California

COMMENT(S):

Is there any opportunity for small businesses to prime stations, bridge & tunnel segments and maintenance facilities.

Will CHSRA offer opportunities for companies that have graduated out of DBE & SBE Programs – They have experience!!!

Does experience in transit and allied fields count for joining teams or is it all going to be political?

Most of the earlier contracts went to larger organizations/forms... will this truly change to allow small firms to meaningfully participate on building the “California High Speed Rail.”

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Listening Session to acknowledge interest in contracting opportunities with the California High-Speed Rail Authority. Commenter referred to additional sources with further information and instruction regarding contracting opportunities.

REMARK(S):

No amendments were made, as comment(s) were not specific to the Small and Disadvantaged Business Enterprise Program.

D. SENATE SELECT COMMITTEE ON PROCUREMENT: INFORMATIONAL HEARING, HOSTED BY SENATOR CURREN PRICE

SUBMISSION NUMBER: D1

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

The California Disabled Veteran Business Alliance requested the Authority to consider a three (3) and up to five (5) percent DVBE participation goal within the 30 percent Small Business goal in order to support DVBE utilization in the Authority's contracting process.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA regarding this matter. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

The California Disabled Veteran Business Alliance additionally submitted written comments. Refer to Submission Number: C29.

SUBMISSION NUMBER: D2

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Abdur-Rahim Hameed, the National President of the Black Contractors Association, expressed his concerns regarding the Authority's staff diversity and workforce utilization. Mr. Hameed inquired specifically about the Authority's participation in hiring African Americans in their staff and consultants and stressed the importance of community outreach efforts and holding primes and their consultants

accountable.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

In addition, the Authority shall host a forum for Small Businesses to meet the short-listed firms, in addition to the outreach events to be held by the proposers for the first Design-Build contract.

SUBMISSION NUMBER: D3

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Paul Guerrero of the La Raza Roundtable of California stated that his organization would endorse two separate programs: a DBE program and a Small Business Program, instead of the Authority's Small and Disadvantaged Business Enterprise Program.

Mr. Guerrero asked the Authority to consider moving forward with a race-neutral program until a disparity study was conducted. Upon the results of the disparity study, Mr. Guerrero asked for the program to then become a race-conscious program.

Mr. Guerrero requested that the Authority consider conducting disparity studies locally/regionally, instead of statewide based on where construction activity is currently being performed.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The Authority considered existing studies such as the Caltrans 2006 Disparity Study and determined that the data used in the Caltrans study was from 2002-2006, thereby making the data six (6) to ten (10) years old. The Authority wishes to utilize current data that is relevant to the rail project in today's economy. The Authority shall consult with the selected consultant to consider the rationalization of completing a local or regional study versus a statewide study to evaluate the current availability of the SBs that are available to perform on the rail project.

The study results will be shared with FRA to determine whether the Authority may amend the Small and Disadvantaged Business Enterprise Program to incorporate additional requirements from 49 C.F.R. Part 26.

SUBMISSION NUMBER: D4

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Tate Hill of the Fresno Metro Black Chamber of Commerce posed questions regarding regional equity as it relates to communication and outreach and the second and compliance.

1. Mr. Hill expressed his concerns regarding the number of business-oriented outreach activities (such as pre-construction kickoff meetings) held in the San Joaquin Valley, as well as the outreach to minority and small businesses within that region. Mr. Hill stated his concern regarding the low number of certified DBEs within that region. As an example, Mr. Tate stated that Fresno had 150 certified DBEs although there are approximately 26,000 minority businesses in that region. Mr. Tate referred to a letter submitted with comments to the Authority which include suggestions for increasing DBE participation by supporting and connecting minority chambers and associations and expanding outreach to DBEs and minority businesses.
2. Mr. Hill posed questions regarding the compliance and oversight of the Small and Disadvantaged Business Enterprise Program, such as how the Compliance Officer would be selected, such as the criteria set forth for the selection of that individual, successful DBE implementation, public access.
3. Mr. Hill requested transparency in regards to DBE reporting.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority SB Liaison Officer and the Design-Build Contractor's Small Business Officer are tasked to conduct outreach to SBs on the contracting opportunities that exist for the high-speed rail project. The formation of the Authority's Business Advisory Council, in which membership shall be composed of minority and women business associations and Chambers of Commerce is a program element to increase outreach to the Small Business community. Another component incorporated within the Small and Disadvantaged Business Enterprise Program includes stakeholder meetings to be held by the Design-Build Contractor on a quarterly basis. Refer to II. Subpart B: Responsibility of SB Program Implementation and V. Subpart E: Design-Build Provisions for further detailed information.
2. The Authority is responsible for ensuring compliance and monitoring of the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. At this time, the Authority has not identified the Compliance Officer. The Authority shall continue to fill State employment vacancies. In the meanwhile, the Authority's Small Business Liaison Officer, Mr. Fellenz, is the Compliance Officer and may delegate the compliance to a designee.
3. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements. Small Business attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.

SUBMISSION NUMBER: D5

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Henry Parea, Fresno County Supervisor and the Co-Chair of Fresno Works, shared his support for the project, which shall commence in the San Joaquin Valley. Mr. Parea requested that the Authority consider the implementation of a local hire initiative to get Californians back to work.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority does not have Congressional authority to establish "preferential bidding" on the project.

SUBMISSION NUMBER: D6

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Ms. Cynthia Sterling, former member of the Fresno City Council and Vice Chair of the San Joaquin Valley Black Minority Contractors Association, shared an upcoming event hosted by the organization to promote minority business participation.

Ms. Sterling also shared that she is member of Morgan Business Innovations LLC, a DBE certified firm currently applying for an 8A certification.

The San Joaquin Valley Black Minority Contractors Association would like to be considered as the outreach headquarters/representative for the CHSRA for the San Joaquin Valley.

The Association would also like to provide commodities in any capacity on the project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority participated in the 5th Annual San Joaquin Valley Regional Minority/Women/SB/DVBE/DBE Conference in Fresno as a workshop presenter and exhibitor. Furthermore, Boardmember Tom Richards was the Luncheon Keynote Speaker.
2. The Authority does not currently have a business outreach procurement solicitation. However, the San Joaquin Valley Black Minority Contractors Association did embrace the opportunity to

have the Authority participate at future events sponsored by the San Joaquin Valley Black Minority Contractors Association.

3. The San Joaquin Valley Black Minority Contractors Association was advised that solicitations for commodities are posted on the Authority's website and BidSync and further recommended the Association meet with the short-listed firms. Commenter was referred to the Authority's website for the contract information for the short-listed firms, which was disseminated to over 21,000 small businesses via e-blast notification and posted on the Authority's website.

SUBMISSION NUMBER: D7

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Colonel Michael Wells from the California Military Department of the California National Guard discussed the importance of best business practices, as well as shared information as to the successes of the California National Guard as it relates to Small Business and Disabled Veteran Business Enterprise utilization, such as speeding up contracting services.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: D8

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Gary Stevens, a Managing Partner of a DBE Certified Consulting Firm in California, stated that the corporate culture in California is not conducive to minority businesses, which has been outlined in comments to date. Mr. Stevens expressed that the Authority is not complying with the full requirements under 49 CFR Part 26 which requires a race-conscious DBE goal.

Mr. Stevens further expressed his concerns that good faith efforts will outweigh the number of minority firms that are available.

Mr. Stevens submitted the verbal comments in a letter as well. See Submission Number D21.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority does not have Congressional authorization to fully implement a DBE Program as described in 49 C.F.R. Part 26. Under the direction of FRA, the Authority is to implement the best practices of 49 C.F.R. Part 26 under a race-neutral program. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26 to be utilized throughout the duration of the project.
2. II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project, inclusive of Good Faith Efforts, to increase SB utilization.
3. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements. Small Business attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.

SUBMISSION NUMBER: D9

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Ms. Yolanda Benson of the California Asian Pacific Chamber of Commerce expressed that the organization would like there to be strong SB/DBE participation on the high-speed rail project.

Ms. Benson shared that the organization is pleased and supports the implementation of the Authority's 30 percent goal.

Ms. Benson shared that the organization would like the Authority to place an emphasis on the businesses and workforce in California.

Furthermore, the organization would like to participate on the Authority's Business Advisory Council.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The RFQ and RFP both require the proposer to sign and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal. In addition, II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization.
2. The Authority does not have Congressional or the State of California authority to establish "preferential bidding," "local hiring" or set-asides on the project. However, the Authority's Small Business 30% goal is an overall project goal, inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Micro-Businesses. In addition, the Authority's Small and Disadvantaged Business Enterprise Program instructs Contractors to utilize innovative procurement methods to ensure Small Business participation, such as the Small Business Option procurement method.
3. The Authority extended an invitation to the California Asian Pacific Chamber of Commerce to apply for membership to serve on the Authority's Business Advisory Council.

SUBMISSION NUMBER: D10

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Chris Johnson, President and Chief Executive Officer of the Johnson Group, a DBE/UDBE certified firm, expressed his concerns and shared past experience pertaining to good faith efforts. Mr. Johnson requested that the Authority:

1. Remove good faith efforts to eliminate costs associated with the performance, review and evaluation of good faith efforts
2. Increase DBE participation by making it a mandatory requirement to utilize DBEs to meet the DBE goal listed in the solicitation

3. Meet the legislative requirements of the 3 percent DVBE goal.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which includes Good Faith Efforts to meet the Small Business goal throughout the duration of the project.
2. The Authority does not have Congressional authorization to fully implement a DBE Program as described in 49 C.F.R. Part 26. Under the direction of FRA, the Authority is to implement the best practices of 49 C.F.R. Part 26 under a race-neutral program. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26 to be utilized throughout the duration of the project.
3. The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA regarding this matter. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

SUBMISSION NUMBER: D11

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Troy Hightower of the Kern Council of Governments shared the organization's support for the high-speed rail project and posed questions relating to local business preference, such as what is defined as a local business and what, if any, preferences will be afforded to local businesses.

Mr. Hightower requested for the Authority to explore options/alternatives to utilize local hiring.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority does not have Congressional or the State of California authority to establish "preferential bidding," "local hiring" or set-asides on the project.

SUBMISSION NUMBER: D12

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Ms. Leann Yeager of the Economic Development Corporation stated that the organization shall draft language pertaining to hiring preferences in disadvantaged areas, as opposed to local for further consideration.

Ms. Yeager acknowledged the Authority's participation to Small Business outreach.

Ms. Yeager shared information regarding the Small Business Industry Forum held previously in Fresno, California and suggested that additional events be conducted to ensure that small, minority, women-owned and local businesses participate in the high-speed rail project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority does not have Congressional or the State of California authority to establish "preferential bidding," "local hiring" or set-asides on the project.

The Authority shall host a forum for Small Businesses to meet the short-listed firms, in addition to the

outreach events to be held by the proposers for the first Design-Build contract. The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority's website.

SUBMISSION NUMBER: D13

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Ms. Darlene Moore of the Council of Asian American Business Associations requested the following:

1. Upon completion of a disparity study, a race-conscious DBE program is to be implemented immediately without modifying the original program for the Board.
2. Ms. Moore shared her support of the 30 percent goal and would additionally like for it to include the dollar amount, the type of businesses utilized, the number of small contracts and the new businesses and jobs created.
3. Ms. Moore would like the Authority to include a mentorship component in the program, such as those utilized at Caltrans, as well as program elements to be implemented to increase Micro-Business participation, such as set-asides or a separate goal.
4. Ms. Moore expressed that a single person should not oversee the project, but that the small business community, public leaders and interested parties in represented in an oversight committee and to issue reports.
5. Ms. Moore shared that specific funds be made available for the training and preparation of Small Businesses to succeed on the project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The study results will be shared with FRA to determine whether the Authority may amend the Small and Disadvantaged Business Enterprise Program to incorporate additional requirements from 49 C.F.R. Part 26.

2. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements and IV. Subpart D: Goal, Good Faith Efforts, and Counting SB Participation, which includes a monthly report. The report shall include the dollar amount, the type of businesses utilized, the number of small contracts, and etc. The report does not include how many businesses were created. A separate report as required by the American Reinvestment and Recovery Act will identify the number of jobs created and retained.
3. V. Subpart E: Design Build Provisions makes reference to the Design-Build Contractor engaging in a Mentor Protégé Program.
4. The Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration, to share thoughts and provide guidance on meeting the objectives set forth by the Small and Disadvantaged Business Enterprise Program.
5. The Authority is pursuing funding from FRA to procure a Supportive Services Consultant to provide technical assistance to Small Businesses.

SUBMISSION NUMBER: D14

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Fred Jordan of the Associated Professionals and Contractors (APAC) expressed the following:

1. More responsibility pertaining to the utilization of Small Businesses should be shifted to prime contractors.
2. Mr. Jordan suggested that prime contractors share their proposed methods of utilizing small businesses during the selection process and that the presentation be evaluated as criteria of award.
3. Mr. Jordan expressed his concerns pertaining to contract compliance and would like the Authority to consider the enforcement of penalties for non-compliance.
4. Mr. Jordan expressed that the Design Builder establish their own SB set-aside program.
5. In addition, Mr. Jordan requested that outstanding task orders be issued to impose compliance from existing contractors.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to

acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Design-Build Contractor shall be primarily responsible for meeting the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal, as described under V. Subpart E: Design-Build Provisions.
2. The Authority's Request for Qualifications (RFQ) identified 15 points pertaining to the Small Business component. The Request for Proposal (RFP) has a pass/fail evaluation of the Small Business component and proposers are to submit an Affidavit of Commitment to meet or exceed the Small Business goal. Furthermore, the Design-Builder shall submit a Small Business Performance Plan to address the methods in which the Contractor shall meet the requirements set forth in the Small and Disadvantaged Business Enterprise Program and engage Small Businesses in all aspects of the project, as described in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.
3. III. Subpart C: Administrative Requirements describes up to seven (7) enforcement and remedial actions the Authority may take should the Contractor fail to comply with the requirements set forth by the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal.
4. In addition, II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization, as well as utilize innovative procurement approaches, such as the Small Business Option procurement method, to increase Small Business participation.
5. The Authority is currently requesting existing consultants to provide their Small Business utilization reports and to identify additional opportunities that will enable Small Businesses to participate in the contract.

SUBMISSION NUMBER: D15

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Marvin Dean of the San Joaquin Valley Black Contractors Association stressed the importance of continuous monitoring.

Mr. Dean expressed his support for an Environmental Justice Program to mitigate the impact that high-speed rail on low-income communities of color and address issues such as high unemployment and dispersed communities.

Furthermore, Mr. Dean expressed his concern pertaining to the lack of African American consulting teams working on Environmental contracts.

In addition, Mr. Dean stressed the importance of fostering Small Business involvement by building cooperative partnerships in support of the high-speed rail project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.
2. The Authority is in the process of preparing an Environmental Justice Policy, which shall be inclusive of the concerns addressed by the Commenter.
3. The Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering.

SUBMISSION NUMBER: D16

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Jack Tony, the Director of the Federal Technology Center's Procurement Assistance Program, shared the organization's mission to help Small Businesses in California grow and develop by providing education and counseling to Small Businesses on any aspect of contracting with the government, such as assistance with certifications and proposals.

Mr. Tony offered the services provided by the Federal Technology Center's Procurement Assistance Program to any Small Business that may require assistance.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering. Unfortunately, the Federal Technology Center ceased operations on March 16, 2012.

SUBMISSION NUMBER: D17

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Bobby Bivens, President of the Stockton Branch of the National Association for the Advancement of Colored People (NAACP) and the Economic Development Chair for the California Conference State Branch of the NAACP, expressed the following:

1. Concerned whether DBE include African Americans businesses.
2. Federal Railroad Administration and the Authority to make good faith efforts to include African American businesses in the project.
3. Mr. Bivens stressed further concerns regarding the frequency of monitoring.
4. Need for more of sanctions on the lack and its effects on African American participation.
5. Mr. Bivens informed the Authority that the organizational chart (listed on the new proposal) did not include a contract compliance monitoring unit, although it had been addressed. Mr. Bivens recommended that the contract compliance monitoring unit be placed on the highest level to report to the director or the rail authority to ensure compliance.
6. In addition, Mr. Bivens inquired as to why the Authority does not use the disparity and utilization study conducted by Caltrans a few years ago, as it spoke to the lack of African American business opportunities. Mr. Bivens acknowledged that although the information may not be up-to-date, it may still be usable and could be updated as opposed to conducting a new study.
7. Furthermore, Mr. Bivens shared his concerns that the Small Business Development Centers have not assisted in promoting the utilization of African American businesses in the Central Valley.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements.
2. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which includes Good Faith Efforts to meet the Small Business goal throughout the duration of the project, which include African American business participation.
3. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.
4. III. Subpart C: Administrative Requirements describes up to seven (7) enforcement and remedial actions the Authority may take should the Contractor fail to comply with the requirements set forth by the Small and Disadvantaged Business Enterprise Program, inclusive of the Small Business goal.
5. The Authority is responsible for ensuring compliance and monitoring of the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. At this time, the Authority has not identified the Compliance Officer. The Authority shall continue to fill State employment vacancies. In the meanwhile, the Authority's Small Business Liaison Officer, Mr. Fellenz, is the Compliance Officer and may delegate the compliance to a designee.
6. The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The Authority considered existing studies such as the Caltrans 2006 Disparity Study and determined that the data used in the Caltrans study was from 2002-2006, thereby making the data six (6) to ten (10) years old. The Authority wishes to utilize current data that is relevant to the rail project in today's economy. The Authority shall consult with the selected consultant to consider the rationalization of completing a local or regional study versus a statewide study to evaluate the current availability of the SBs that are available to perform on the rail project.
7. The Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, which include the Small Business Development Centers, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering.

SUBMISSION NUMBER: D18

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

1. Ms. Tara-Lynn Gray of Yadari Enterprises suggested that the compensation of individuals employed by the Authority be directly associated with Small and Micro-Business utilization to ensure compliance.
2. Ms. Gray requested the Authority to calculate the current percentage of Micro-Business utilization to be used as a benchmark number for all future contacts.
3. Ms. Gray expressed that Small Business be able to participate as prime contractors.
4. Ms. Gray suggested that contracts be unbundled for Small Businesses.
5. In addition, Ms. Gray suggested that Small Businesses not be required to operate under the auspices of prime contractors.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority is prohibited by personnel agreements and union agreements to associate compensation based on SB utilization.
2. The Authority does not have Congressional or the State of California authority to establish "preferential bidding" or set-asides on the project. However, the Authority's Small and Disadvantaged Business Enterprise Program's 30 percent Small Business goal is an overall project goal that is inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Micro-Businesses.
3. The Authority has procurements ranging in size and Small Businesses may compete on contracting solicitations as a prime, as appropriate.
4. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build

Provisions, which reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

5. Recognized Small Businesses must perform a Commercially Useful Function in order to be credited toward the Small Business goal. Further information pertaining to a Commercially Useful Function is described in IV.D. Counting SB Participation under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. In addition, the Authority shall monitor the SB goal attainment as described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

SUBMISSION NUMBER: D19

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

Mr. Larry Edmundson of the Southern California Consortium Group expressed his concerns as related to the bonding and financial requirements in the SB selection process and suggested that an advisory group be created to address issues and make recommendations to the Authority.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.

SBO Duties and Responsibilities include the development and implementation assistance of the Design-Builder's Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.

The Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration, to share thoughts and provide guidance on meeting the objectives set forth by

the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: D20

DATE: 1/5/2012

SUMMARIZED COMMENT(S):

1. Ms. Elizabeth Nors expressed her concerns associated with bonding capacities.
2. Ms. Nors suggested that Small Businesses be paid sooner than sixty to ninety days and to receive a “quick pay.”
3. In addition, Ms. Nors expressed her concerns pertaining to good faith efforts.
4. The Authority should have a pool of certified DBEs readily available.
5. Furthermore, Ms. Nors expressed her support for the previous comments discussed, such as the ‘break out’ or unbundling of packages and the earlier suggestion of utilizing the disparity study conducted in the past by Caltrans.
6. Ms. Nors inquired whether there will be a component or any consideration made for UDBEs, such as a set-aside.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.

SBO Duties and Responsibilities include the development and implementation assistance of the Design-Builder’s Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build

Provisions.

2. The Authority continues to research prompt payment mechanisms beyond the provisions described in III. Subpart C: Administrative Requirements, which indicates that the Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment.
3. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which requires Contractors to utilize Good Faith Efforts to meet the 30% Small Business goal throughout the duration of the project. Issues pertaining to Contract Monitoring and Compliance are described under III. Subpart C: Administrative Requirements and are further addressed in II. Subpart B: Responsibility of SB Program Implementation and IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
4. The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements. The Authority and the short-listed firms have been directed to use existing Small Business directories, which includes lists from the Department of General Services, Caltrans, and the U.S. Small Business Administration. Small Businesses shall be sought by the North American Industry Classification System (NAICS) codes, other work codes and key words as provided for in the certification directories.
5. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.

The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The Authority considered existing studies such as the Caltrans 2006 Disparity Study and determined that the data used in the Caltrans study was from 2002-2006, thereby making the data six (6) to ten (10) years old. The Authority wishes to utilize current data that is relevant to the rail project in today's economy. The Authority shall consult with the selected consultant to consider the rationalization of completing a local or regional study versus a statewide study to evaluate the current availability of the SBs that are available to perform on the rail project.

6. The Authority does not have Congressional or the State of California authority to establish "preferential bidding" or set-asides for Small Business utilization.

SUBMISSION NUMBER: D21

DATE: 1/16/2012

SUBJECT: Comments relating to Small and Disadvantaged Business Enterprise Program

COMMENT(S):

Since 2001 or ten years ago the ethnic population has grown to become the minority majority. These taxpayers come in a variety of colors, shapes and sizes, but State agencies continue to operate with bias

policies against this new minority majority.

This committee and every person in this room shares the responsibility to ensure when this project is complete the minority population in California was given equal access, and economic opportunities without prejudice by the California High-Speed Rail Authority.

In the letter from Mr. Calvin Gibson, Director of the Office of Civil Rights, U.S. Department of Transportation (USDOT) Federal Railroad Administration (FRA), dated September 15th 2011 addressed to Mr. Roelof van Ark, Chief Executive Officer (CEO), California High Speed Rail Authority are two statements that are significant to the final document that governs the activities within the Small and Disadvantaged Business Enterprise Program for this project and future projects under the administration of the agency, and I quote “The Federal government is anticipated to fund nearly half of the project, with \$3.05 billion in federal stimulus funds already awarded, and an additional \$15-17 billion expected to be awarded before project completion.” The next statement of major importance is found at the end of that same paragraph and I quote, “CHSRA’s practices are in direct violation of the Title VI of the Civil Right Act of 1964 and its implementing regulations, which prohibit federal funding recipients from engaging in unjustified practices that exclude minorities.”

I would like to point out two areas within the draft document where practices that exclude minorities are being put forth by the CHSRA.

Page 18, Section 4, Subpart D entitled GOALS, GOOD FAITH EFFORTS, and COUNTING SB PARTICIPATION. The document state “The CHSRA has established an SB overall goal of 30 Percent to be achieved through the utilization, in any combination and at any tier level, of firms who are certified as:” and it outlines four categories.

The words, “in any combination”, creates a loop hole to the 49 CFR Part 26 statute and creates opportunities to exclude minority consultants and contractors. I want to demonstrate one example which could be replicated in three of the four categories listed in the document which would exclude the participation of minority firms on this or any project administered by this agency.

The prime contractor is a non minority owned and operated firm, it creates a team of vendors, and professional services firms that like the prime are non minority owned and operated companies, and their apparent low bid is included with a significant amount of good faith paper work for minority participation, This scenario may satisfy the 30 percent goal requirement for SB participation, and in the mind’s eye and current contracting culture satisfy the agencies practices for good faith efforts, but it excludes economic participation on the upper tier and most crucial level for minority participation or the level playing field as articulated in the federal statute 49 CFR Part 26.

I would like to ask this committee as part of the legislative body to have the agency (CHSRA) include verbiage or policy within the final document that makes this scenario and similar scenarios considered a non responsive bidder.

My second and final comment relates to the accountability of agency staff that by past performance or track record has little if any past experiences of meeting or exceeding DBE participation as outlined in the law.

Once again in the draft document there is no mention of disciplinary actions to include termination of agency staff or personnel who violate the statutes which lend the agency to further its corporate culture as expressed in the letter from Director Gibson and articulated as and I quote, “a restrictive procurement system and a *laissez-faire* attitude”.

For example, it would be safe to assume this draft was created by staff within the agency. At the bottom of page 18 the paragraph reads, and I quote, “In the event, the CHSRA is directed by the USDOT Operating Administration, to operate in a race-conscious environment,” the three words “in the event” demonstrates the staff does not understand the definition of a federally funded program which includes regulations such as 49 CFR Part 26. Does staff not understand and I quote again from Director Gibson’s letter, page three (3) “In implementing its High-Speed Intercity Passenger Rail Program (HSPR) as authorized by the Passenger Rail Investment and Improvement Act of 2008, FRA has already entered into two additional cooperative agreements with the CHSRA.”

Mr. Chairman this paragraph goes on to spell out each agreement and funds already appropriated to the CHSRA. In paragraphs further down the page Mr. Gibson uses language like “The Grantee agrees to (a) provide maximum practicable opportunities for small business, including veteran-owned small businesses and service disabled veteran-owned businesses, and (b) implement best practices, consistent with our nation’s civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this agreement.”

If the agencies response to Mr. Gibson’s “maximum practicable opportunities” is phone logs and data collected by non-minority companies and this agency as its “GOOD FAITH EFFORT” and not percentage of contract awards on any and all federally funded contracts, than we are witnessing the institution of a new type of set-aside program, where the economic rights of minority contractors and companies have been “SET-ASIDE” in favor for “GOOD FAITH EFFORT” documentation.

In closing Mr. Chairman and the members of this caucus please ensure paragraphs in the final document include hard numbers for DBE participation as suggested by the USDOT as a best practice, and that there be accountability clauses relating to staff and personnel within the agency, and recognize the existing pattern outlined in Director Gibson’s letter as restrictive procurement and federal violations.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued verbally at the Senate Select Committee on Procurement: Informational Hearing to acknowledge receipt and address comment(s) and/or question(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Authority does not have Congressional authorization to fully implement a DBE Program as described in 49 C.F.R. Part 26. Under the direction of FRA, the Authority is to implement the best practices of 49 C.F.R. Part 26 under a race-neutral program. The Authority has incorporated the Best Practices of 49 C.F.R. Part 26 to be utilized throughout the duration of the project.
2. II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith

Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project, inclusive of Good Faith Efforts, to increase SB utilization.

3. Monitoring the SB goal attainment is described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements. Small Business attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.

E. OTHER

SUBMISSION NUMBER: E1

DATE: 1/13/2012

SUBJECT: Comments to the Small and Disadvantaged Business Enterprise Program

COMMENT(S):

COMMENTS
INTRODUCTION

Pacific Legal Foundation submits these comments regarding the proposed Small and Disadvantaged Business Enterprise Program (SB Program). The California High-Speed Rail Authority (Authority) is scheduled to receive \$3.5 billion in federal funding assistance. According to the SB Program, the Authority proposes a goal of 30% participation of small and disadvantaged businesses based on the total cost of a contract on federally funded projects. The Authority will achieve this goal through the participation of small businesses, disabled veteran business enterprises, disadvantaged business enterprises and micro-business. Relying on federal regulations, the discriminatory quota program is limited to Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent-Asian Americans and women. SB Program at 2-4. If a contractor's bid fail to meet the quota or exercise good-faith efforts to meet the quota, the Authority will punish the contractor by rejecting the bid as unresponsive. SB Program at 22. There is no federal or state law to support the race-conscious portions of the SB Program, and we urge the Authority not to adopt a program that could lead to litigation.

ANALYSIS
I

ARTICLE I, SECTION 31 OF THE CALIFORNIA CONSTITUTION PROHIBITS RACE- AND SEX-BASED DBE PROGRAMS

There is no question that the Authority's SB Program provides race- and sex-based preference in violation of Article 1, section 31(a), of the California Constitution (Section 31). Section 31 prohibits the state and its political subdivisions, including the Authority, from using race or sex in public contracting. Cal. Const. art. 1, §31(a). Even Section 31's federal funding exception does not save the Authority's proposed SB Program.

Under Section 31(e), the Authority has the burden to bring forth "substantial evidence that it will lose federal funding if it does not use race-based measures and must narrowly tailor those measures to minimize race-based discrimination." *C & C Const., Inc. v. Sacramento Mun. Util. Dist.*, 122 Cal. App. 4th 284, 298 (2004). If a particular regulation

expressly requires a state agency to use race-based measures to remedy past discrimination, the state agency must have substantial evidence of the type of past discrimination that triggers the federal regulation's requirement for current race-based measures. What facts, if present, require race-based remedial measures – the factual predicate for race-based measures – must be defined in the federal law or regulation, not by the state agency.

Id. At 299.

As explained below, the Authority had failed to identify any federal law requiring it to adopt a race-conscious program or risk losing federal funding.

A. THE AUTHORITY'S PROPOSED RACE- AND SEX-BASED PREFERENCES ARE NOT REQUIRED BY THE FEDERAL RAILROAD ADMINISTRATION

The Authority's SB Program states that all projects receiving Federal Railroad Administration (FRA) funds must meet the requirements of 49 C.F.R. Part 26 and make annual reports to the FRA. SB Program at 7. Yet, Congress has not provided the FRA with the authority to require a race-conscious program or to oversee such a program's implementation. In fact, prominently displayed on the FRA's website is the following statement:

The Federal Railroad Administration (FRA) *does not* currently have a Disadvantaged Business Enterprise program like those in place at the Federal Highway Administration.... The FRA does not have the statutory authority to administer a DBE program. The FRA fully supports the objectives of DBE programs and all FRA's grantees are required to avoid discrimination in contracting.

(Emphasis Added.)

Available at <http://www.fra.dot.gov/Pages/124.shtml> (last visited Jan. 10, 2012).

It is strange that the Authority's proposed race-conscious preference program would require recipients of FRA funds to engage in such a discriminatory program when the FRA has no authority to require this type of program. It is even stranger to assume that the FRA would oversee such activities when it has no statutory authority to do so.

B. THE AUTHORITY'S PROPOSED RACE- AND SEX- BASED PREFERENCES ARE NOT REQUIRED BY TITLE VI

The Authority relies on Title VI to support its quota program. SB Program at 6. The Authority's reliance is misplaced. The plain language of Title VI does not compel government to grant benefits or withhold those benefits on the basis of the contractor's race. Under the Supremacy Clause of the United State Constitution, federal law only preempts state laws that conflict directly with a federal law or that obstruct the goals the federal law seeks to achieve. *Gade v. National Solid Waste Management Ass'n*, 505 U.S. 88, 103 (1992). Importantly, Title VI of the Civil Rights Act contains an express provision limiting the preemptive affect of the act:

Nothing contained in any title of this Act shall be construed as indicating an intent on the part of Congress to occupy the field in which any such title operates to the exclusion of State laws on the same subject matter, nor shall any provision of this Act be construed as invalidating any provision of State law unless such provision is inconsistent with any of the purposes of this Act, or any provision thereof.

42 U.S.C. § 2000h-4.

In *Coalition for Economic Equity v. Wilson*, 946 F. Supp. 1480, 1518 (N.D. Cal. 1996), the court held that Title VI does not preempt anything in Section 31. "[N]othing on the face of Titles VI or IX indicates that Congress intended to maintain voluntary affirmative action under the two statutes."

Id. At 1517.

California voters adopted Proposition 209, adding Article 1, Section 31, to the California Constitution to categorically prohibit discrimination or preferential treatment in the operation of public contracting. This mandate is consistent with Title VI, which prohibits recipients of federal funds from discriminating on the basis of race, color, or national origin. As the California Supreme Court recognized in *Hi-Voltage Wire Works, Inc. v. City of San Jose*, 24 Cal. 4th 537, 566 (2000), the Civil Rights Act, like Section 31, seeks to ensure equal opportunity for all and eliminate race and sex from the decision making process. Given this background, there is no question that Title VI does not require the Authority to violate the California Constitution by adopting the proposed race- and sex-based quota program.

C. THE AUTHORITY’S PROPOSED RACE- AND SEX BASED PREFERENCES ARE NOT REQUIRED BY FEDERAL REGULATIONS

The Authority’s reliance on 49 C.F.R. Part 26 regulations is misplaced. SB Plan at 1. In *Coral Construction, Inc. v. City and County of San Francisco*, 50 Cal. 4th 315, 333-35 (2010), the California Supreme Court looked at 49 C.F.R. Part 26 regulations to determine whether they require race- and sex-based preference programs in public contracting. The Court recognized that the “Secretary of Transportation... issued regulations forbidding discrimination in the project they fund and requiring ‘affirmative action’ in specified circumstances.” *Coral*, 50 Cal. 4th at 334. The Court found that the U.S. Department of Transportation’s regulations do not require racial preferences. *Id.*

The Secretary of Transportation’s regulation more broadly requires the recipients of federal funds to take “affirmative action to assure that no person is excluded from participation” in a federal funded program “[e]ven in the absence of prior discriminatory practice or usage....” (49 C.F.R. § 21.5(b)(7) (2009).) The regulation also mentions race-based remedies but is on this point expressly permissive, stating that it “*does not prohibit the consideration of race... to... overcome the consequences*” of past discrimination. The unmistakable import of this language is not that race-based remedies are required, but simply that they are permitted, so far as the Secretary is concerned, if no other law precludes them.

Id. at 334035 (citation omitted). Here, the Authority’s reliance on these federal regulations to support its race-conscious quota program fails.

II

THE AUTHORITY MUST EXHAUST RACE-NEUTRAL ALTERNATIVES BEFORE RESORTING TO RACE-CONSCIOUS METHODS

An examination of the SB Program discloses that the Authority has not explained or demonstrated why race-neutral measures are not effective alternative to a race-conscious quota program. A race-conscious quota program is inconsistent with the federal regulation requiring federal funding recipients to pursue race-neutral measures to the “maximum feasible” extent possible. 49 C.F.R. § 26.51. This means that race-based measures are to be used only as a last resort, not the first option. *Richmond v. J.A. Croson Co.*, 488 U.S. 469, 518 (1989) (Kennedy J., concurring in part and concurring in judgment). Requiring an examination of race neutral mechanisms before resorting to a race-conscious program was reemphasized in *Parents Involved in Cmty. Schools v. Seattle Sch. Dist. No.1*, 551 U.S. 701, 735 (2007) (citation omitted), where a majority of the Justices stated: “Narrow tailoring requires ‘serious, good faith consideration of workable race-neutral alternatives,’ and yet in Seattle several alternative assignment plans – many of which would not have used express racial classifications – were rejected with little or no consideration.”

Certainly, the Authority can combat past discrimination and comply with both federal and state laws

through race-neutral mechanisms. As stated in Croson, 488 U.S. at 507, “[m]any of the barriers to minority participation in the construction industry... appear to be race neutral.” In a report entitled *Federal Procurement After Adarand*, the United States Civil Rights Commission identified five race-neutral contracting strategies which are applicable to state and local governments:

- Strictly enforce nondiscrimination laws in all facets of public contracting;
- Increase knowledge about opportunities to contract with the government;
- Provide education or technical assistance to impart business skills, knowledge of procurement, and strategies to win government contracts;
- Provide financial aid or adjustments to offset the difficulties struggling firms encounter; and
- Expand contracting opportunities and promote business development in underutilized geographic regions.

U.S. Commission on Civil Rights, *Federal Procurement After Adarand* 31 (Sept. 2005).
Available at http://www.usccr.gov/pubs/080505_fedprocadarand.pdf (last visited Jan. 10, 2012).

CONCLUSION

It is puzzling that the Authority is considering adopting a race- and sex-based quota program that has no support in federal or state law. If the Authority adopts such a program, it is likely to be challenged in court and struck down as unconstitutional. In *Hershell Gill Consulting Engineers, Inc. v. Miami-Dade County*, 333 F. Supp. 2d 1305 (S.D. Fla. 2004), not only was the public contracting quota program found unconstitutional, but Miami officials who voted to approve the race-conscious program were held personally liable. In the event of a legal challenge, the Authority will have to pay its lawyers and expert witnesses, and if it loses, the Authority will also pay the other side’s lawyers and expert witnesses. Certainly race- and sex-based preference programs are divisive and unfair, and it is a waste of taxpayers’ money to award contracts to other than the lowest qualified bidder.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The Federal Railroad Administration directed the Authority under the Cooperative Grant Agreement to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals; and (b) implement best practices, consistent with our nation’s civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement. An example of a best practice under (b)

above would be to incorporate the best practices of the Disadvantage Business Enterprise (DBE) Program of 49 C.F.R. Part 26.

The Small and Disadvantaged Business Enterprise Program makes no reference to a “quota” program or that the Authority will institute race-conscious goals or a preference program on the project, unless directed by the FRA.

The Authority’s 30 percent Small Business goal is inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses recognized by the U.S. Small Business Administration, Department of General Services, and California Unified Certification Process.

2. The Authority shall host a forum for Small Businesses to meet the short-listed firms, in addition to the outreach events to be held by the proposers for the first Design-Build contract. The Authority shall notify the Small Business community of outreach forums and events via electronic notification and by posting the information on the Authority’s website. Furthermore, contracting opportunities are listed on the Authority’s website under ‘Contracting Opportunities’ and BidSync.
3. SBO Duties and Responsibilities include development and implementation assistance of the Design-Builder’s Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.

Furthermore, the Small and Disadvantaged Business Enterprise Program addresses the need to leverage with existing small business development and technical assistance resource centers, as described under VI. Subpart F: SB Supportive Services, Resource Partners and Partnering.

4. II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.
5. II. Subpart B: Responsibilities of SB Program Implementation, IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation and V. Subpart E: Design-Build Provisions describe and encourage the Design-Builder to make continuous efforts throughout the duration of the project to increase SB utilization, as well as utilize innovative procurement approaches, such as the Small Business Option procurement method, to increase Small Business participation.

SUBMISSION NUMBER: E2

DATE: 1/16/2012

SUBJECT: Public Comments on CHSRA Small Business Program

COMMENT(S):

On behalf of the member of the Elite SDVOB Network, we are pleased to provide comments on the

proposed small business program for the California High Speed Rail Authority (CHSRA) titled “Small and Disadvantaged Business Enterprise Program” published on November 3, 2011.

The Elite SDVOB Network is a national organization comprised of over 10,000 Service Disabled Veteran Owned businesses and whose organizational headquarters is located in San Diego, CA. The Elite SDVOB Network is incorporated as a 501(c)19 organization. Our mission is to assist Service - Disabled Veterans by successfully helping them establish their own business and to network with our members to procure business contracts with local, state and government agencies.

The Elite SDVOB Network supports small business initiatives that ensure all small business subcontractors, especially Service Disabled Veteran Owned Small Businesses (SDVOSB) and Disabled Veteran Business Enterprises (DVBE), are used appropriately, treated fairly, and paid promptly and accurately. However, we have a number of concerns with the proposed plan as written, and offer the below recommendations for improving it.

Cover

1. “Disabled Veteran” should be included in the title and summary to signify the importance to the CHSRA of including DVBE/SDVOSB participation.

Subpart A: General Requirements

2. Section 1.B Definitions, Good Faith Effort

In July 2009, Governor Schwarzenegger signed Assembly Bill X4 21, which amended the Public Contract Code to eliminate the Good Faith Effort (GFE) provision from DVBE statutes. As a result, the GFE is no longer applicable to State solicitations with DVBE participation goals. Therefore, the Elite SDVOB Network is concerned that this section of the CHSRA Small Business Plan may be in violation of California State law.

3. Section 1.B (New Definition)

In order to ensure that service disabled veteran owned small businesses are recognized under the CHSRA small business program for participation in federal financially assisted projects, the Elite SDVOB Network highly encourages the CHSRA to adopt a new definition in addition to the definition of Disabled Veteran Business Enterprise (DVBE).

“Service Disabled Veteran Owned Small Business:

To be eligible for the SDVOSB program, a veteran must be able to produce one of the following stating that s/he has a service - connected disability in the event of a protest:

- *Adjudication letter from the Veterans Administration; or*
- *Department of Defense Form 214, Certificate of Release or Discharge from Active Duty.*

According to the Center for Veteran’s Enterprise, Defense Form 214 is needed to prove that the individual is honorably discharged and it also documents the type of service disability. The letter from VA is needed for confirmation that the individual is eligible to under the program and that there is a disability. To be seen as a SDVOSB, a small business concern must meet the following two conditions:

- *At least 51 percent owned by one or more Service - Disabled Veterans; or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more Service - Disabled Veterans; and*
- *Management and daily business operations are controlled by one or more Service - Disabled Veterans (or in the case of a veteran with a permanent and severe disability, the spouse or permanent caregiver of such a veteran)."*

4. Section 1.D Federal Financial Assistance Agreements

Implies that local governments and utilities will have DBE programs and no others, including small business and DBE. Is it the intent of the Plan to have these agencies contract 30% of assistance funds to DBEs only? Service Disabled Veteran Owned Small Businesses (SDVOSB) should also be included.

Subpart B: Responsibility of SB Program Implementation

5. Section II.A SB Liaison Officer (SBLO)

Under the duties and responsibilities, the SBLO should also be tasked to publish statistical data, in addition to collecting and reporting it to the Director. Data reported and published should include specific contract commitments and performance in terms of dollars contracted and spent on SBs, by category. In addition, CHSRA should add the responsibility to the SBLO as main point of contact for inquiries and complaints from DVBE and other SB, and as prime mover to investigate same.

6. Section II.B Subpart B - Responsibility for SB Program Implementation

This section generally avoids any responsibility to communicate with SBs by any organ of the CHSRA. No group appears to be responsible for actual compliance. All communication responsibilities, both incoming and outgoing, are internal to CHSRA, creating a closed system under which DVBEs are able to neither inform or be informed. This is a problem that has thwarted SBEs and DVBEs in past contracts, and can be expected to thwart SBs in the future. Under this section as written, SBs are not part of the system. This will lead to lack of opportunities, reliance on GFE, and abortion of actual contracting participation.

7. Section III. Administrative Requirements, SB Vendors Registry List

Apparently, this list relies on information provided by vendors, and is not subject to any screening or verification by CHSRA. Without detailed screening, this is a prescription for fraud that will take participation away from legitimate SBs. To our knowledge, CHSRA's SB staff is very small, consisting of one parttime staff member; will CHSRA rely on contractors to screen the legitimacy of SB certifications? If so, we can expect minimal effort to that end.

8. Section III.D Prompt Payment Mechanisms

California law has specific prompt payment requirements specific to DVBEs. These should be incorporated in the Plan and in all contracts.

9. Section III.F Contract Monitoring and Compliance

No person or position is defined as having responsibility to monitor and enforce SB programs. A hierarchy of responsibility for enforcing compliance should be stated, as should a method by which SBs can lodge complaints and request information.

Subpart D: Goal, Good Faith Efforts and Counting SB Participation

10. Section IV.A. Overall Goal

“The CHSRA has established an SB overall project goal of 30 percent to be achieved through the utilization, in any combination and at any tier level, of firms who are certified as:

- *Small Business*
- *Disabled Veteran Business Enterprises*
- *Disadvantaged Business Enterprise*
- *Micro - Business”*

The Elite SDVOB Network fully supports the concept of the overall project goal of 30% utilization in any combination and at any tier level. However, the Elite SDVOB Network recommends that CHSRA set goals for percentage contracting to the different categories. In support of California Code of Regulations (CCR), Title 2, Division 2, Chapter 3, Subchapter 10.5, Section 1896.62, which states that a participation goal either less than or in excess of the statutory goal of 3 percent DVBE(s) for a specific solicitation, project or contract as long as the overall goal of 3 percent DVBE(s) is satisfied, we strongly encourage that a 3% DVBE goal is define as a sub - categorical goal within the over 30% goal for small businesses.

11. Section IV.B. Federal Financial Assisted Contract Goal

“For contracts with USDOT financial assistance that are received from an Operating Administration with statutory authority to impose 49 CFR Part 26, the CHSRA shall establish an appropriate DBE goal for the individual projects and or contracts.”

The Elite SDVOB Network understands that statutory requirements of the United States Department of Transportation (US DOT) as they are currently written. However, creating a small business program for federally supported contracts is without any active legislation currently in place. Title 49 (which was issued as a 10 - year bill) outlined the procedures to be followed by US DOT for goals for the DBE community for projects involving the use of federal money. Title 49 expired in December 2009 and has not been reactivated by US Congress. The only legally active legislation providing guidance as to federal goals is Public Law (PL 108 - 183) also known as the Veterans Bill of 2004 and Executive Order 13360 which states “agencies shall more effectively implement section 15(g) of the Small Business Act (15 U.S.C. 644(g)), which provides that the President must establish a goal of not less than 3 percent for participation by service - disabled veteran businesses in Federal contracting.” This Public Law and Executive Order both support the 3% requirement of ALL federal agencies to meet service - disabled veteran businesses goals. I am not sure how the US DOT can be allowed to function without Title 49, but to the best of my knowledge it is still a federal agency and must comply with all existing active legislation.

In addition, California law positively bans DBE set asides and requirements under the SB 209 Legislation of 1996 and known as Proposition 209 forbids race, creed and gender set asides as unconstitutional.

While we realize that the California High Speed Rail Authority is not in position to update the Code of Federal Regulations to include language that recognizes Service Disabled Veteran Owned Small Business and implement this Order as directed, we do feel that the California High Speed Rail should recognize Service Disabled Veteran Owned Small Businesses on procurements that are Federally funded by increasing the scope of small business participation to include SDVOSB's, as well as DBE's.

12. Section IV.C. Good Faith Efforts (Pre and Post Award)

“The CHSRA and its Contractors, as good business stewards will exercise good faith efforts to meet the CHSRA’s overall SB goal outlined in this SB Program, including developing innovative contracting strategies and providing necessary supportive services to promote and ensure the success of Small Businesses as defined in all aspects and phases of the CHSRA’s contracting program. At this time the CHSRA will administer the SB Program in a race and gender neutral environment.

Good Faith Efforts procedures are not a condition of the contract award for SB and DVBE participation in meeting the State funded project goal.”

This plan provides extensive discussion of “Good Faith Effort” to the extent that it is practically a how - to manual the use GFE for avoiding SB participation. It contains no advice, admonitions, or strong policy statements to the effect that SB participation will be demanded. The weak language will be taken by contractors as a statement of disinterest in the program, and a license to comply with as little effort as possible. The Elite SDVOB Network recommends that the CHSRA review this section closely and increase the requirements that are to be made by the prime contractors to the greatest extent possible, including punitive damages or the withholding of funds.

Subpart E: Design - Build Provisions

13. Section V. SB Program Requirements – Specific to Design - Build Contracts

“The CHSRA has established an SB overall project goal of 30 percent to be achieved through the utilization, in any combination and at any tier level, of firms who are certified as:

- *Small Business*
- *Disabled Veteran Business Enterprises*
- *Disadvantaged Business Enterprise*
- *Micro-Business”*

The Elite SDVOB Network fully supports the concept of the overall project goal of 30% utilization in any combination and at any tier level. However, the Elite SDVOB Network recommends that CHSRA set goals for percentage contracting to the different categories. In support of California Code of Regulations (CCR), Title 2, Division 2, Chapter 3, Subchapter 10.5, Section 1896.62 and Executive Order 13360 which both state the requirement for a minimum goal of 3% to be established for DVBE and SDVOSB, respectively, we strongly encourage that a 3% DVBE/SDVOSB goal is define as a sub - categorical goal within the over 30% goal for small businesses.

Summary

In summary, the Elite SDVOB Network is in support of the good work that the CHSRA has done to establish a small business program that is aggressive in achieving significant impact on the small business

community. We are pleased to see the CHSRA reach out to the community for input during this response to draft plan process, as well as establishing a small business council to listen to ongoing concerns. However, the plan as currently drafted discounts both state and federal laws regarding DVBE and SDVOSB minimum participation goals of 3% and completely neglects SDVOSB participation on federal financially assisted projects. We also hope that some of the language can be revised to ensure that the prime contractors are held accountable for obtaining the small business participation rather than being held accountable for demonstrating a good faith effort in small business outreach.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: II. Subpart B: Responsibility of SB Program Implementation, Subpart C: Administrative Requirements, V. Subpart E: Design-Build Provisions.

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate program elements to address the comments posed by the Commenter:

1. Under the direction of the FRA, the Authority recognizes DVBEs as a "Small Business Concern" as defined under I. Subpart A: General Requirements, B. Definitions. Therefore, the title of the Small and Disadvantaged Business Enterprise Program is inclusive of DVBEs.
2. The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this matter. The response from FRA is currently pending.

In addition, the Authority's Small and Disadvantaged Business Enterprise Program acknowledges that a DVBE goal and requirements shall apply to 100% State-funded contracts. The Authority shall comply with Assembly Bill X4 21 that prohibit good faith effort considerations in 100% State funded contracts.

3. The Authority shall request a response from the FRA pertaining to the recognition of Service Disabled Veteran Owned Small Businesses as a separate entity apart from DVBEs.
4. The Federal Financial Assistance Agreements are imposed on subrecipients of FRA grant funding. As a condition of receiving Federal financial assistance funds, the local government or private entities must adhere to non-discrimination and develop and implement a Small Business Program in accordance with the Best Practices of 49 C.F.R. Part 26, where applicable. The local government or private entity may implement an existing Small Business Program, with the concurrence of the Authority.
5. The Small and Disadvantaged Business Enterprise Program was amended to require the Authority

SB Liaison Officer to publish statistical data, in addition to collecting and reporting to the Authority's Chief Executive Officer and Business Advisory Council, as described in II. Subpart B: Responsibility of SB Program Implementation. Small Business attainment values shall be posted on the Authority's website under 'Small Business Resources' once available.

6. The Authority is responsible for ensuring compliance and monitoring of the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. At this time, the Authority has not identified the Compliance Officer. The Authority shall continue to fill State employment vacancies. In the meanwhile, the Authority's Small Business Liaison Officer, Mr. Fellenz, is the Compliance Officer and may delegate the compliance to a designee.
7. The Authority recognizes certifications for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses from the U.S. Small Business Administration, Department of General Services and the California Unified Certification Program, as described in I. Subpart A: General Requirements. The Authority and the short-listed firms have been directed to use existing Small Business directories, which includes lists from the Department of General Services, Caltrans, and the U.S. Small Business Administration. Small Businesses shall be sought by the North American Industry Classification System (NAICS) codes, other work codes and key words as provided for in the certification directories.

The Small and Disadvantaged Business Enterprise Program was amended to provide clarification that the Authority SB Liaison Officer shall ensure that only recognized Small Businesses must perform a Commercially Useful Function in order to be credited toward the Small Business goal. Further information pertaining to a Commercially Useful Function is described in IV.D. Counting SB Participation under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. In addition, the Authority shall monitor the SB goal attainment as described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

8. The Authority continues to research prompt payment mechanisms beyond the provisions described in III. Subpart C: Administrative Requirements, which indicates that the Contractor and subcontractors, regardless of tier, shall comply with the prompt payment statutes and pay an invoice within 7 days of receipt of payment. However, the prompt payment mechanisms for DVBEs are already a component of Subpart C: Administrative Requirements, and referenced as Military and Veterans Code 999.5(d)(4).
9. Refer to Question 6: Response. In addition, the Small and Disadvantaged Business Enterprise Program was amended to identify the Authority SB Liaison Officer to perform the duties of the Small Business Liaison and Disabled Veteran Business Enterprise Advocate, as prescribed by State statutes.
10. Refer to Question 2: Response.
11. This comment requires additional research to provide clarification on the intent pertaining to the reference that Title 49 expired in December 2009. The Authority researched the comment that Public Law 108-183 and Presidential Executive Order 13360 and determined the directive applies to the Federal government agencies. The Authority is not a federal government; therefore the two (2) citations do not apply to the Authority's program. In addition, refer to Question 2 & 3: Response for further information.

12. Amendments rendered to the Small and Disadvantaged Business Enterprise Program to incorporate additional program elements to address sanctions/non-compliance as referenced in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.

The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which includes Good Faith Efforts to meet the Small Business goal throughout the duration of the project, as described under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.

13. Refer to Question 2: Response.

SUBMISSION NUMBER: E3

DATE: 1/13/2012

SUBJECT: Small Business Plan Comments

COMMENT(S):

California Rural Legal Assistance is the statewide farmworker legal services program that represent the low-income rural communities in the San Joaquin Valley. These comments are submitted on behalf of our clients, low-income, minorities, farmworkers and indigenous individuals and families in our service areas who stand to be affected in myriad ways by the rail project. This letter sets forth policy and organizational recommendations for maximizing equity and opportunity small business contracting and workforce hiring.

We have reviewed the Small Business Plan (“SBP” hereafter) and offer the following comments. While we are heartened that the SBP promises to comply with the law and regulations, however, it fails to reflect the promise of this mega-project and can do better. Accordingly, we are proposing some options that the current document doesn’t include:

1. A much more robust outreach to minority chambers of commerce and contractor and/or licensed trade associations and networks which involve paid community-based organizations to identify, assist and support there efforts. Prospective small and minority businesses should be provided with technical assistance to navigate the system. These activities should precede the letting of all contracts.
2. Small and micro-business bid preferences, bid discounts and set-asides (not just goals). The plan should define small and micro-business. If the dollar value of the threshold is set too high, many minority and women-owned businesses will be shut out in favor of other, larger small businesses. E.g., some jurisdictions set the business receipt threshold for a micro-business at 50% of that of a small business. More specifically, supply, service, and trucking contracts/subcontracts are sectors in which lower thresholds are likely to help minority and women-owned businesses.
3. Local business bid preferences, bid discounts, set-asides (not just goals), and stronger outreach efforts. Local business preferences can be combined with small business programs. Geographic preferences do not need to target en entire jurisdiction. E.g., the program can be based on business location or operation in areas or census tracts with high unemployment or below-average household income. Such tailoring can achieve important, well-established policy goals of fighting poverty and revitalizing disadvantaged neighborhoods.

4. Preferences to businesses that employ local and/or low-income residents. Not all small businesses deserve special consideration. Small business can come from anywhere and bring an outside workforce to an area, usurping job opportunities for residents most affected by the HSR project activity. A carefully crafted preference for business that employ workers residing in the specified low-income neighborhood which awards contract points, advance the twin goals of combating unemployment and revitalizing distressed neighborhoods.
5. Closely scrutinized insurance and bonding requirements to ensure that they are actually necessary at the specified levels. Simply “assisting” SBE to meet unreasonably burdensome and unnecessary requirements is of little help.
6. Breaking large contracts into separate, smaller contracts in order to allow a wider range of businesses to compete.
7. Requiring re-bidding if the number of respondents to contract or subcontract opportunities are small.
8. Monitoring and contract compliance is essential to ensure the success of this project and those duties should not be relegated to the authority alone. The Authority should commission a consortium in each locale consisting of local stakeholders including community-based organizations that will receive and review all reports, monitor contract compliance, perform on-site review, and provide recommendations to staff. The community-based organizations should be provided with a stipend for its participation the funding for which is built into the contractor bids. Contract performance schedule should build in time for input from the consortium and ensuing action by the Authority, if necessary. Further, contract activities should be suspended pending review, investigation and resolution of dispute.

The balance of the comments on the Small and Disadvantaged Business Enterprise Program will focuses on what is currently Subpart G of the plan, “Workforce Development Partners.” As has often been touted, High-Speed Rail presents vast potential for job growth and for revitalization of depressed local economies. However, we believe that this potential can only be realized if the proper hiring policies are set forth from the outset, before ground is broken.

First and foremost, we request that the Authority draft the Workforce Development Partners section as a stand-alone plan, separate from the Small and Disadvantaged Business Enterprise Program. In the Central Valley where the first alignment will be built and other areas with significant low-income and minority communities, the impacts of the High-Speed Rail project can be mitigated by the economic growth spurred by the project in the form of jobs; however, the only way these communities stand to directly benefit via job creation is if firm local hiring goals and other workforce policies are enacted. We feel that the workforce development issue is of paramount importance and that these policies deserve their own, separate plan.

As to the substance of workforce development program, we strongly urge the Authority to adopt a set of policies that provides for local hiring policies and a goal of hiring at least 30% of the project workforce from “Targeted Employment Areas” as designated by the California Employment Development Department and defined by the Code of Federal Regulations as “an area which, at the time of investment, is a rural area or an area which has experienced unemployment of at least 150% of the national average rate.” 8 C.F.R. Sec. 204.6(e). These policies should be distinct from the Small and Disadvantaged Business Enterprise Program, should provide training and opportunities for workers who have not yet joined unions, and should be backed by a comprehensive monitoring and coordination network of community-based organizations and a central compliance office to help facilitate contractors in following

the policies. If these policies are in place from the outset, the High-Speed Rail can fully realize the potential for economic revitalization in the communities it most directly impacts. With 600,000 construction jobs soon to be created, the entire state will benefit tremendously from a coordinated effort to ensure equitable access to those opportunities.

In that connection, we believe that within the local hiring policy there should be a separate percentage of jobs that will go to non-union workers. While we fully support our local unions, most of the Central Valley's unemployed population lacks the resources and experience to join a union. Pre-apprenticeship programs carry a high tuition fee and do not guarantee a job upon completion. In order to truly benefit the community, High-Speed Rail jobs in the first phase of contraction and beyond must be open to those who are not yet in the organized labor force. To that effect, we also request the Authority to consider funding training programs (or at a minimum, a pilot project) to help get unemployed workers into the pipeline for the skilled labor jobs that will be created by the project. Such an investment will ensure that low-income communities without access to training have the opportunity to benefit from the project – an important consideration for both the short- and long-term prospects for environmental justice.

Last but not least, for these policies to be effective in securing jobs growth for affected communities there must be mechanisms for review and enforcement. We strongly suggest that monitoring policies be adopted in which the Authority will 1) establish a regional contract compliance office, and 2) appoint and fund local community advisory committees tasked with monitoring the workforce hiring in each county. These committees should serve a number of functions related to workforce coordination, including local recruitment, coordination with the Authority and other job referral sources and training centers, screening of applicants contacting contractors regarding their hiring activities, and assisting contractors with reporting responsibilities. The advisory committees must include local community-based organizations, legal services and other non-profit entities.

Thank you for your anticipated cooperation and kind attention to the points raised in this letter and we stand ready to provide clarification and further comments.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. The SB Liaison Officer shall be responsible to ensure that the Authority conducts business outreach and assists Small Businesses in obtaining the necessary information to compete on contracts by providing guidance and direction, and advising SBs on where to seek management, technical business development expertise, bonding, lines of credit and other supportive services, as described under II. Subpart B: Responsibility of SB Program Implementation. The Design-Build Contractor shall assist in the development and implementation of the Design-Build

Contractor's SB supportive services, such as providing technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking with subcontractors, and contract administration, which is inclusive of the coordination and facilitation of SB training seminars to promote understanding and acclimation of small business communities regarding contracting opportunities and contract administration, as described under V. Subpart E: Design-Build Provisions.

2. The Authority does not have Congressional or the State of California authority to establish "preferential bidding," "local hiring" or set-asides on the project. However, the Authority's Small and Disadvantaged Business Enterprise Program's 30 percent Small Business goal is an overall project goal that is inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses. In addition, the Authority's Small and Disadvantaged Business Enterprise Program instructs Contractors to utilize innovative procurement methods to ensure Small Business participation, such as the Small Business Option procurement method.
3. Refer to Question 2: Response.
4. Refer to Question 2: Response.
5. II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.

SBO Duties and Responsibilities include the development and implementation assistance of the Design-Builder's Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.

6. II. Subpart B: Responsibilities of SB Program Implementation and V. Subpart E: Design-Build Provisions reference innovative procurement approaches which include splitting contracts to increase Small Business participation.
7. The Authority has the option to reject bids, as deemed appropriate, which may include the number of proposers to a contract. The Authority is unable to require the Contractor to rebid subcontracts due to the number of responding subcontractors.
8. Monitoring the SB goal attainment is a program component of the Small and Disadvantaged Business Enterprise Program and the Contractor's SB Performance Plan, as described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements. The recommendation to commission a consortium in each locale to monitor contract compliance and perform on site reviews shall be further considered.
9. The remaining comments are related to Subpart G: Workforce Development Partners. The Small and Disadvantaged Business Enterprise Program was amended to remove Subpart G: Workforce Development Partners. Workforce development shall be a separate component of the Authority's overall objectives.

SUBMISSION NUMBER: E4

DATE: 1/15/2012

SUBJECT: Recommended Changes to the California High Speed Rail Authority's Draft "*Small Business and Disadvantaged Business Enterprise Program*"

COMMENT(S):

Please accept this document as "public comment" in response to the California High Speed Rail Authority's (CHSRA) Draft "*Small Business and Disadvantaged Business Enterprise Program*" (SB/DBEP).

Historical Contracting Practices

The initial business model used by the CHSRA excluded businesses owned by ethnic minorities. As an example, the initial design team of Parsons Brinckerhoff and Hatch Mott MacDonald are the two main contractors. Despite the alleged "Good Faith" efforts, Parsons Brinckerhoff and Hatch Mott MacDonald did not hire any ethnic minority owned architectural, engineering or environmental firms on work performed to date. Clearly, the dissemination of information and the selection process on the initial phase of construction that has been implemented to date did not take into account the stated goal of including small businesses (SB), disadvantaged business enterprises (DBE) or any other minority business enterprises.

It appears that the contracts entered into during this initial phase of construction were drafted in such a manner as to effectively defeat or substantially impair the objectives of the Small Business Program with respect to firms and individuals of a particular race, color, sex, disability and national origin. We believe strongly that this occurred due to the lack of ethnic diversity on the CHSRA's leadership staff.

To rectify this situation, we have provided the following recommendations to make your Small Business and Disadvantaged Business Enterprise Program more competitive for California's ethnic small business contractors.

Going Forward

We request that the CHSRA, as a condition of any funding provided by the United States Department of Transportation (USDOT), make the following revisions to the SB/DBEP applicable to all existing contracts as of January 17, 2012 and also make these revisions a part of all future contracts and procurements:

Disparity Study (Race Conscience v. Race Neutral Program)

- It has been the pattern and practice, whenever the lack of contracting opportunities for ethnic minority contractors of all tiers is raised, for the public contracting entity to agree to a "disparity study". According to all of the studies that we have read to date, minorities were underrepresented in public contracts before and after the passage of Proposition 209.

The Federal Railroad Administration (FRA) has mandated a current statewide disparity study that requires the CHSRA to consider examples of existing small business programs used by other public

agencies in California and the United States. However, we recommend that the CHSRA use the most recent study available for the cities of Los Angeles, Sacramento, San Francisco or Caltrans, subject to revision upon completion of their own disparity study, in adopting the CHSRA SB/DBE plan.

We are of the opinion that the CHSRA shall be obligated to apply a race conscious goal to the SB/DBEP. We also believe this same goal shall be mandatory for “underutilized business enterprises” (UBE).

Promote More Ethnic Diversity within the CHSRA

- We request that the CHSRA SB/DBE leadership team be comprised of ethnically diverse personnel.
- We also suggest that there be sufficient ethnic small business participation on the newly established SB/DBE Advisory Committee.

Participation Goals

- We recommend separating the 30% goal by ethnicity as well as a distinct category for microbusinesses. We also suggest that the CHSRA establish an additional contract incentive, such as a price preference or score of 2.5% of the bid amount, to qualified state-certified micro-businesses. Moreover, we believe that there should be a separate category of the 30% contracting goal for Disadvantaged Veteran Business Enterprises (DVBE).
- To boost California’s workforce and give a preference to California residents, the CHSRA shall also develop a strategy to ensure that at least 25% of the project workforce used at each authority worksite is from the local workforce.
- It shall be mandatory that the CHSRA require all responsible bids to include a detailed plan on achieving the CHSRA’s stated SB/DBE goals. It shall be the stated policy of the CHSRA to encourage private contractors to draft creative solutions to reach their mandated SB/DBE goals. It shall further be the policy of the CHSRA to encourage contractors to exceed the goals for the SB/DBE Program.

These innovative contracting strategies must be required in all responsible bids. Establishing goals after the contract has been signed reduces the incentive to achieve the goal of the SB/DBE program.

Increase Contract Compliance

- The CHSRA should hire a minority compliance officer, preferably an ethnic representative from a group that has been historically disadvantaged.
 - The CHSRA should list the compliance officer on its organization chart.
- The CHSRA shall develop stronger penalties for primes that are noncompliant.

Elimination of Good Faith Efforts

- The CHSRA shall mandate that all responsive bids in response to Requests for Qualifications (RFQs) for work to be performed to include the SB/DBE/DVBE/Minority/Micro-Business selected to perform work under the bid being submitted. Presently, the CHSRA hires contractors

and then requires them to exercise good faith efforts to achieve the goal sought.

As presently drafted, the plan allows for failure by making such goals “conditional” so long as the contractor exercised “good faith”. This “conditional” language appears to allow the contractor an escape from actually complying with the stated goals and objectives of the SB/DBE Program.

Technical Assistance and Bonding

- The Authority shall offer technical assistance and advice to SB/DBEs with the goal of making them more competitive to win High Speed Rail (HSR) contracts.
 - It was noted that Small Business Development Centers in the Central Valley have not been promoting small businesses in that area.
- The CHSRA shall be obligated to assist in establishing a program that allows SB/DBE bonding to be commensurate with the contractual amount of the contract awarded to the SB/DBE firm.
 - The CHSRA shall have the discretion to establish bonding requirements for SB/DBE as an additional named insured under the prime contractor.

Administrative Changes

- The CHSRA shall unbundle large contracts to increase the opportunity for small business contracting.
- To make the CHSRA more accountable to SB/DBE contracting, the CHSRA SB/DBE leadership shall tie their pay to the level of small business contracting.
- The CHSRA shall separate construction contracts from professional contracts because the process is different for both.
- The CHSRA shall expand the definition of contractor to include all subcontractors. The current definition applies to Prime and offeror. The definition of contractor as it applies to goal achievement and DBE utilization should be Offeror/ Prime and all Subtier Contractors. The market for small contractors (Hard Hats) is not with the prime it is with the subcontractors.

Certification

- A number of the outreach activities specify using the state-managed DBE Directory. In central California there is low participation from minority and women-owned firms. For example, in Fresno there are only 150 DBEs within a 40-50 miles radius of the city. There are more than 26,000 minority-owned businesses in Fresno County alone (US Census Bureau, 2010 Economic Survey).

Recommendation: Require the Authority to conduct and/or support regional activities that encourage DBE certification and engagement from prime contractors.

Improve Outreach

Several ethnic minority chambers complained that they were not contacted by the CHSRA about its draft small business plan, while other ethnic minority chamber representatives voiced concern that The

CHSRA's meetings are typically held in areas outside of where the project will be constructed. We have some suggestions below to mitigate these concerns:

- Require pre-construction and kick-off meetings be in the region/county where 60% of the work will be conducted allowing the prime contractor(s) and subcontractors/SBE/ DBE to encourage participation in business match making opportunities.
- Make the semi-annual and annual federal DBE Report submitted to the USDOT available to the public via the CAHSR website within the federal review period to allow public participation (pg. 12)
- Ask the Authority to develop a SB and DBE Frequently Asked Question (FAQ) Sheet-- online and paper copy.
- Implement an effective external communication system that implores clear channels for the business community to understand processes, deadlines, and project resources.
- Designate and subcontract regional SBO/DBE Officer(s).
- Increase minority/women-owned business notification by actively engaging ethnic & women chambers of commerce and trade associations.

Thank you for your consideration of these recommendations to improve the California High Speed Rail's draft "Small Business and Disadvantaged Business Enterprise Program. We appreciate the opportunity to provide our input and look forward to these positive changes for California's small business community.

AUTHORITY RESPONSE

DISPOSITION: Amendments Rendered

SECTION(S) IMPACTED: III. Subpart C: Administrative Requirements, V. Subpart E: Design-Build Provisions.

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate program elements to address the comments posed by the Commenter:

1. Disparity Study: The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The Authority considered existing studies such as the Caltrans 2006 Disparity Study and determined that the data used in the Caltrans study was from 2002-2006, thereby making the data six (6) to ten (10) years old. The Authority wishes to utilize current data that is relevant to the rail project in today's economy. The Authority shall consult with the selected consultant to consider the rationalization of completing a local or regional study versus a statewide study to evaluate the current availability of the SBs that are

available to perform on the rail project.

The study results will be shared with FRA to determine whether the Authority may amend the Small and Disadvantaged Business Enterprise Program to incorporate additional requirements from 49 C.F.R. Part 26.

2. **Ethnic Diversity within the Authority:** The Authority Business Advisory Council is designed to allow for representation on the council of trade associations (minority, women and non-minority) and industries including construction, professional services, commodities, architecture and engineering member associations to actively provide commentary and insight to the Authority's policies and practices that affect or impact Small Business utilization and participation in high-speed rail projects and contracts.
3. **Participation Goals:** The Authority does not have Congressional or the State of California authority to establish separate goals for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses by ethnicity. At this time, the Authority does not have authorization from FRA to establish an incentive component for utilizing Small Businesses on the contract. This comment shall be directed to FRA for reconsideration.

The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. In respect to being able to establish a DVBE goal on federal-aid projects the Authority has requested an official response from FRA on this matter. The response from FRA is currently pending. In addition, the Authority's Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts.

The Authority does not have Congressional or the State of California authority to establish "local hiring" preferences. The Authority is encouraging the Design Build Contractor to utilize local workforce centers and local assistance to seek employees. V. Subpart E: Design-Build Provisions describes the elements that the Design-Build Contractor must include in their SB Performance Plan, inclusive of utilizing creative and innovative solutions to meet the goal; establishing a mentor protégé program, outreach, bond capacity, technical assistance, etc.

4. **Increase Contract Compliance:** The Authority is responsible for ensuring compliance and monitoring of the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. At this time, the Authority has not identified the Compliance Officer. The Authority shall continue to fill State employment vacancies. In the meanwhile, the Authority's Small Business Liaison Officer, Mr. Fellenz, is the Compliance Officer and may delegate the compliance to a designee.

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate additional program elements to address sanctions/non-compliance as referenced in III. Subpart C: Administrative Requirements and V. Subpart E: Design-Build Provisions.

5. **Elimination of Good Faith Efforts:** The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which requires Contractors to utilize Good Faith Efforts to meet the 30% Small Business goal throughout the duration of the project, as described under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation.
6. **Technical Assistance and Bonding:** II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small

Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.

SBO Duties and Responsibilities include the development and implementation assistance of the Design-Builder's Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.

Furthermore, the Authority is unable to mandate the Contractor to have their Small Businesses as an additional named insured under the Contractor's surety bond.

7. Administrative Changes: Subpart D: Good Faith Efforts, and Counting SB Participation directs the Contractor to select and break out contract work items into economically feasible units to facilitate SB utilization, even when the Contractor might otherwise prefer to perform these work items with its own forces. The Authority is prohibited by personnel agreements and union agreements to associate compensation based on SB utilization. Where appropriate, the Authority will apply separate procurement methods for the selection of professional services and construction contracts. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation encourage major subcontractors to meet the SB goal on their lower tier agreements and report attainments to the Contractor for the monthly SB utilization report.
8. Certification: The SB Program directs the Authority's SB Liaison Officer and the Contractor's SB Officer to assist SBs to obtain certifications.
9. Improve Outreach: The Small and Disadvantaged Business Enterprise Program advises the Contractor to host construction meetings in proximity to the construction site. Refer to III. Subpart C: Administrative Requirements, SB Construction Meetings. The Authority's SB Liaison shall publish SB data reports on the Authority's SB Resource webpage. The Authority has drafted the FAQs and when it is complete, it will be posted on the Authority's SB Resource webpage. The Authority has in place methods to communicate with the business community that includes: email blasts, webpage and attendance at SB outreach events as a presenter and exhibitor. The Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration, to provide advice and guidance on meeting the objectives of the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: E5

DATE: 1/16/2012

SUBJECT: Public Comments on the Draft Small Business Plan for CA High Speed Rail (CAHSR)

COMMENT(S):

The California Disabled Veteran Business Alliance does not believe that the present draft small business plan can be executed to provide California Disabled Veteran Business Enterprises (DVBE) a reasonable opportunity to participate in CAHSR construction contracts. In fact with its present language, it allows these contracts to be awarded to primes who opt not to use any DVBE in their subcontracting plan.

The following recommendation/inquiries are made:

Re-title the plan to: “Small, Micro, Disabled Veteran and Disadvantaged Business Enterprise Program”. This is a much more accurate description of the plan and is the best way to cover all of the small business participants.

General Comments: There may arise the issue of Service Disabled Veteran Small Business (SDVOSB) and Veteran Owned Small Business (VOSB) participation in CAHSR contracting. Here are the items of concern with those businesses:

CAHSR shall never consider that these businesses are part of the disabled veteran or veteran business goals for CAHSR. California defines their disabled veteran business program under Military and Veterans Code and defines them as DVBE. There are adequate DVBE to meet a 3% goal for HSR projects.

SDVOSB and VOSB are self certified in the federal system and CA DVBE are certified through a very demanding and stringent system. Recent GAO and Federal Department of Veterans Affairs Inspector General reports indicate that as many as 50% of self certified SDVOSB are fraudulent. Further, The Federal Department of Veterans Affairs has also disqualified legitimate SDVOBs from certification based on California being a community property state, inferring erroneously that this removes control of these businesses from the disabled veteran. This means that legitimate California DV businesses might be excluded from participation in favor of DV businesses from non-community property states.”

As such it is not possible to have these businesses compete against DVBE nor is it necessary in order to make the 3% goal.

There is no intent by this Alliance to exclude the federally recognized business classifications of SDVOSB and VOSB. SDVOSB and VOSB can compete for all HSR projects but shall not count against the 3% goal.

General Comment regarding Small Business participation: If small businesses certified by the Small Business Administration can compete equally with CA certified Small Businesses, then the latter are at an immediate disadvantage because the SBA construction small businesses size standard is 21.5 million where the CA SB standard is 14 million. This gives a distinct advantage to small businesses certified by SBA but not by CA.

Specific comments:

Under 1.B Definitions:

DBE Certification – HSRA has signaled intent to count out-of-state DBEs’ participation on the same footing as California SBEs and DVBEs. Will out-of-state firms be required to get certification under the California Unified Certification Program (CUCP) and thus prove they are legitimately qualified? Is this allowed by the governing law and regulations applicable to CUCP?

Good Faith Effort – This definition is vague. Who judges whether GFE is adequate? If left to the contractors, the standard will be very low.

Good Faith Effort – Does this definition also apply to DVBE? Due to past fraud and abuse perpetrated by prime contractors, California law has been changed to disallow GFE for DVBE goals. The underlying

causes of past fraud – a desire to avoid effort and apathy toward DVBE on the part of agency project administration staff – are still very much in play. Who will determine whether GFE has truly been made? Contractors have been proven not to be trustworthy stewards of this program, if the agency does not make a strong effort based on detailed information. Past experience with HSRA’s SBE/DVBE program has shown lack of transparency to be a problem. A true good faith effort would imply that SBE and DVBE vendors would have access to this data on request, to verify that they have not been falsely represented as having been solicited for work. True good faith would also imply that the HSRA would have open avenues of communication between DVBEs and HSRA staff, including those in charge of administering the design-build contracts.

Under 1.C Non-discrimination Requirements, For Strictly State Funded Contracts, F. Incorporation of Provisions: CAHSR needs to get a legal opinion regarding Bond dollars that were approved by voters in support of HSR. Specifically, do those Bond dollars carry the State’s 3% Disabled Veteran Business Enterprise (DVBE)goal? When these Bond dollars are mixed with federal funds, are those DVBE goals lost in lieu of federal goals?

Under 1.C Non-discrimination Requirements, For Federal Funded Contracts, F. Incorporation of Provisions:

This is where Title 49 CFR Part 26 begins to be referenced. All reference to this Law should be prefaced by this statement: “Title 49 CFR Part 26 is not legally associated with funds distributed by Federal Rail Authority. There may be instances where it is in the interest of CAHSR Authority to use some practices of Title 49 CFR Part 26 to implement our small business program but that action is not mandatory.”

Further, CAHSR is not bound by FRA regarding setting goals for types of small businesses and will make all efforts to ensure that small business plans have clear intent to meet the California 25% small business goal, the 3% DVBE goal, a micro business goal and DBE goals. These goals shall be articulated in all CAHSR construction contracts, by percentage of desired participation.

1.D Federal Financial Assistance Agreements – Implies that local governments and utilities will have DBE programs and no others, including small business and DBE. Just as noted in changes to 1.C above, all four of the small businesses shall have specified goals in all contracts.

II.A SB Liaison Officer (SBLO) - 4th bullet, the SBLO should also be tasked to publish statistical data, in addition to collecting and reporting it to the Director. Data reported and published should include specific contract commitments and performance in terms of dollars contracted and spent on SBs, by category. Otherwise, DVBE, SBE, and DBE with proposed and contracted participation will have no way of knowing the status of their participation, specific prime contractor performance, and overall HSRA participation goal compliance.

II.A SB Liaison Officer (SBLO) – Add responsibility of SBLO as main point of contact for inquiries and complaints from DVBE and other SB, and as prime mover to investigate same. A point of contact and SBLO responsible for enforcement, complaint investigations, and information should be named for each prime contract. Since major segment design/build contracts may be valued at several billion dollars, each of these projects should have an adequate staff to manage SB affairs and compliance. Line project managers should have clear guidance and tasked responsibility for SB programs.

II.B Subpart B- Responsibility for SB Program Implementation (in general) – This section generally avoids any responsibility to communicate with SBs by CAHSRA. All communication responsibilities, both incoming and outgoing, are internal to CAHSRA, creating a closed system under which DVBEs can neither inform nor be informed. This is a problem that has thwarted SBEs and DVBEs in past contracts,

and can be expected to thwart SBs in the future. Under this section as written, SBs are not part of the system. This will lead to lack of opportunities, reliance on GFE, and abortion of actual contracting participation.

There does not appear to be any reference to a SB/DVBE Advocate, a position that is required for a state agency.

III. Administrative Requirements, SB Vendors Registry List – Apparently, this list relies on information provided by vendors, and is not subject to any screening or verification by HSRA. Without detailed screening, this is a prescription for fraud that will take participation away from legitimate SBs. To our knowledge, HSRA’s SB staff is very small, consisting of one part-time staff member; will HSRA rely on contractors to screen the legitimacy of SB certifications? If so, we can expect minimal effort to that end.

III.D Prompt Payment Mechanisms – California law has specific prompt payment requirements specific to DVBEs. These should be incorporated in the Plan and in all contracts.

III.F Contract Monitoring and Compliance – No person or position is defined as having responsibility to monitor and enforce SB programs. A hierarchy of responsibility for enforcing compliance should be stated, as should a method by which SBs can lodge complaints and request information.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Amendments were rendered to the Small and Disadvantaged Business Enterprise Program to incorporate program elements to address the comments posed by the Commenter:

1. Retitle Plan: Under the direction of the FRA, the Authority recognizes DVBEs as a “Small Business Concern” as defined under I. Subpart A: General Requirements, B. Definitions. Therefore, the title of the Small and Disadvantaged Business Enterprise Program is inclusive of DVBEs.
2. Service Disabled Veteran Owned Small Business (SDVOB): The Authority shall request a response from the FRA pertaining to the recognition of Service Disabled Veteran Owned Small Businesses as a separate entity apart from DVBEs.
3. Small Business Participation. The Authority followed the direction from FRA to include “small business concerns. For the purpose of this federal aid project and in order to be as inclusive as possible to small businesses, the Authority recognizes a Small Business Concern to include certified Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises, and Microbusinesses. With respect to firms seeking to participate as Small

Businesses in DOT-assisted contracts, a business which meets the definition contained in Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65 (b).

4. DBE Certification: The DBE regulations at 49 CFR Part 26.85 Interstate Certification indicates “when a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.” The California Unified Certification Program policy is to require the Out of State DBE to provide evidence of the Out of State certification documents and the CUCP will evaluate the documents and assess its own determination for DBE certification in California.
5. Good Faith Effort: As described in Subpart B: Responsibility of SB Program Implementation, the Authority SB Liaison Officer evaluates the Bidder/Offeror’s Good Faith Efforts and or Small Business Performance Plan submittals for compliance with the objectives set forth by the Small and Disadvantaged Business Enterprise Program. In addition, the Authority’s Small and Disadvantaged Business Enterprise Program recognizes that a DVBE goal and requirements will apply to 100% State-funded contracts. The Authority shall comply with Assembly Bill X4 21 that prohibit good faith effort considerations in 100% State funded contracts.
6. Non-discrimination Requirements, For Solely State Funded Contracts: The Authority is utilizing Federal-aid on the project and this requires the Authority to follow federal contract requirements. When funding from other sources are used on the contract, the Authority continues to commit to the FRA that it will follow the federal funding requirements.
7. Non-discrimination Requirements, For Federal Funded Contracts: The FRA directed the Authority under the Cooperative Grant Agreement to: (a) provide maximum practicable opportunities for small businesses, including veteran-owned small businesses and service disabled veteran-owned small businesses, small businesses owned and controlled by socially and economically disadvantaged individuals; and (b) implement best practices, consistent with our nation’s civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement. An example of a best practice under (b) above would be to incorporate the best practices of the Disadvantage Business Enterprise (DBE) Program under 49 C.F.R. Part 26.
8. Setting Goals for Types of Small Businesses: The Authority does not have Congressional authorization to establish separate business goals. In respect to being able to establish separate business goals for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises, or Microbusinesses, the Authority has requested an official response from FRA on this matter. The response from FRA is currently pending.
9. Refer to Question 8: Response.
10. The Federal Financial Assistance Agreements are imposed on subrecipients of FRA grant funding. As a condition of receiving Federal financial assistance funds, the local government or private entities must adhere to non-discrimination and develop and implement a Small Business Program in accordance with the best practices of 49 CFR Part 26, where applicable. The local government or private entity may implement an existing Small Business Program, with the concurrence of the Authority.

11. **Publish Data:** The Small and Disadvantaged Business Enterprise Program was amended to require the Authority SB Liaison Officer to publish statistical data, in addition to collecting and reporting to the Authority's Chief Executive Officer and Business Advisory Council, as described in II. Subpart B: Responsibility of SB Program Implementation. Small Business attainment values shall be posted on the Authority's website under "Small Business Resources" once available.
12. **SB Liaison Officer (SBLO):** The Small and Disadvantaged Business Enterprise Program was amended to identify the Authority SB Liaison Officer to perform the duties of the Small Business Liaison and Disabled Veteran Business Enterprise Advocate, as prescribed by State statutes, which includes open communication with Small Businesses and addressing inquiries and complaints.
13. **Administrative Requirement, SB Vendors Registry List:** The Vendor Registry was renamed to Business Registry. The registry is not intended to be a "certification" directory/registry.

The Small and Disadvantaged Business Enterprise Program was amended to provide clarification that the Authority SB Liaison Officer shall ensure that only recognized Small Businesses must perform a Commercially Useful Function in order to be credited toward the Small Business goal. Further information pertaining to a Commercially Useful Function is described in IV.D. Counting SB Participation under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. In addition, the Authority shall monitor the SB goal attainment as described in II. Subpart B: Responsibility of SB Program Implementation and Contract Monitoring and Compliance is addressed under III. Subpart C: Administrative Requirements.

14. **Prompt Payment Mechanisms:** The prompt payment mechanism for DVBEs is already a component of Subpart C: Administrative Requirements, and referenced as Military and Veterans Code 999.5(d)(4).
15. **Contract Monitoring and Compliance:** The Authority is responsible for ensuring compliance and monitoring of the objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. At this time, the Authority has not identified the Compliance Officer. The Authority shall continue to fill State employment vacancies. In the meanwhile, the Authority's Small Business Liaison Officer, Mr. Fellenz, is the Compliance Officer and may delegate the compliance to a designee.

SUBMISSION NUMBER: E6

DATE: 1/16/2012

SUBJECT: Representative Barbara Lee comments for CA High Speed Rail, Comments On Draft Small Business/Disadvantaged Business Plan

COMMENT(S):

I am writing in support of the views expressed by the Associated Professionals and Contractors of California ("APAC") concerning the Disadvantaged Business Enterprise (DBE) program of the California High-Speed Rail Authority (CHSRA).

Let me say from the outset that I believe in the integrity of business plan put forward by the California

High Speed Rail Authority, and look forward to working constructively with the parties here today and in the future to make this critical project happen. However, one major shortcoming to CHSRA has been not meeting expectations that construction projects would be open to bids from small, women, minority, and disabled veteran contractors. The CHSRA has not been acting in accordance with Disadvantaged Business Enterprise (DBE) goals to address underrepresented minorities in the contract bid process. The CHSRA's official response to a complaint that the racially discriminatory process was in violation of a Title VI was to point out that the Federal Rail Administration (FRA) was not specifically bound by Congress to DBE goals.

While a legislative fix is unlikely in the current political environment in Washington, D.C., much can be done to address the fact that all of California's communities do not currently have a fair opportunity to take part in the rail construction project. I plan to work to ensure that CHSRA does in fact reform its business practices as ordered by FRA. Despite the recent departure of C.E.O. Van Ark and Chairman Umberg, I am confident that CHSRA will sustain its commitment to promoting equal opportunity on this project. Because if all businesses are allowed to compete on an equal footing for these contracting opportunities, then we will see not only the creation of a significant new infrastructure project, but the economic stimulus our communities need as well.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority would like to acknowledge its gratitude to be working with Congress Member Barbara Lee. The Associated Professionals and Contractors of California (APAC) provided guidance in the development of the Draft Small and Disadvantaged Business Enterprise Program (November 3, 2011) that hence is amended following the conclusion of the Authority's Public Facilitation Period. Refer to Submission Number: E7.

SUBMISSION NUMBER: E7

DATE: 1/16/2012

SUBJECT: Comments On Draft Small Business/Disadvantaged Business Plan

COMMENT(S):

Associated Professionals and Contractors of California ("APAC") is pleased to submit these comments on the draft Small and Disadvantaged Business Enterprise Program of the California High-Speed Rail Authority (CHSRA). APAC is a non-profit organization founded to encourage, develop, and support

Disadvantaged Business Enterprises (“DBEs”) and other businesses traditionally excluded from equal opportunity. APAC is based in Oakland, but draws its membership from throughout the State. Members include trade associations, businesses, and individuals.

I. BACKGROUND

In December 2010, APAC filed an administrative complaint under Title VI of the Civil Rights Act of 1964 with the Federal Railroad Administration (FRA), outlining how CHSRA’s contracting practices were unjustifiably excluding minority-owned businesses from equal opportunity. In September 2011, FRA issued a ruling on APAC’s complaint, requiring that CHSRA take a number of specific steps to open up its contracting practices. (FRA’s ruling can be found at: http://www.lccr.com/Decision_CHSRA_091511.pdf).

Among the requirements that FRA imposed was the mandate for CHSRA to develop a “comprehensive plan” for complying with the grant agreements entered into between FRA and CHSRA. In those agreements, CHSRA agrees to “provide maximum practicable opportunities for small businesses” and “implement best practices, consistent with our nation’s civil rights and equal opportunity laws, for ensuring that all individuals – regardless of race, gender, age, disability, and national origin – benefit from activities funded through this Agreement.” See FRA Ruling at 3 (citing Section 11, paragraph G of Cooperative Agreements, as amended). The agreements further specify that:

2) An example of a best practice... would be to incorporate key elements of the [U.S. Department of Transportation’s] Disadvantaged Business Enterprise (DBE) program (See 49 C.F.R. Part 26) in contract under this Agreement. This practice would involve setting a DBE contract goal on contracts funded under this Agreement that have subcontracting possibilities. The goal would reflect the amount of DBE participation on the contract that the Grantee would expect to obtain absent the effects of discrimination and consistent with the availability of certified DBE firms to perform work under the contract. When a DBE contract goal has been established by a grantee, the contract would be award only to a bidder/offer that has met or made (or in the case of a design/build project, is continuing to meeting or making) documented, good faith efforts to reach the goal. Good faith efforts are defined as efforts to achieve a DBE goal or other requirement of this Agreement which, by their scope, intensity, and appropriateness to the objective can reasonably be expected to achieve the goal.

3) ... If the Grantee is not able to substantially incorporate Part 26 elements in accordance with the above-described best practice, the Grantee agrees to provide the FRA with a written explanation and an alternative program for ensuring the use of contractors owned and controlled by socially and economically disadvantaged individuals.

In addition to requiring that CHSRA implement a “comprehensive plan” for meeting these requirements, the FRA Ruling also specifies that the plan must include “the methodology to set goals for small and disadvantaged business utilization” and must include “[t]he process for assuring that when CHSRA has established an overall contract goal for small and disadvantaged business participation, it awards every contract only to a bidder/offeror that makes good faith efforts to meet it.” FRA Ruling at 11. The FRA Ruling also requires CHSRA to complete a disparity study by September 2012. *Id.*

With this background in mind, we offer the following comments on CHSRA’s draft plan.

II. CHSRA’S Plan Must Have A Specific Focus On Minority-Owned Businesses

As the background outlined above makes clear, CHSRA in its plan and in its implementation must

maintain a specific focus on ensuring equal opportunity for minority-owned businesses, rather than simply small businesses. One of the primary reasons that APAC filed its administrative complaint under Title VI and its implementing regulations is because those laws are specifically geared towards rooting out discrimination – and discriminatory impact – based on race and ethnicity. FRA, in its September 15, 2011 order, similarly recognized this specific focus of Title VI.

From APAC’s experiences under Proposition 209, California’s anti-affirmative action initiative, we know that a contracting program that takes as its framework a “small business” focus, with the assumption that minority-owned businesses will thereby naturally be included, is destined to fail. What we have seen time and again under such programs is that majority-owned small businesses may perhaps be brought into the hold by prime contractors, but minority-owned small businesses remain largely excluded.

That is why it is fundamental – and we believe imperative – that CHSRA’s plan maintain a specific focus on the steps necessary to ensure equal opportunity for minority-owned businesses. While we recognize that CHSRA may have other mandates that require outreach to all small businesses, those requirements should be listed separately, with appropriate cross-references to the minority-owned business plan, as needed. Otherwise, the terminology becomes confusing and the focus on minority-owned businesses that is required by Title VI and by FRA’s September 15, 2011 order will be diluted and ultimately lost.

III. CHSRA’s Program Should Include An Overall DBE Goal

For the same reasons, CHSRA should set an overall minority-owned business/DBE goal. As the passages from the grant agreement cited above make clear, CHSRA is required to implement “best practices” to ensure contracting equity, such as those included in the federal DBE program. The federal DBE program starts by requiring recipients to set an overall DBE goal that “reflect [a] determination of the level of DBE participation you would expect absent the effects of discrimination.” *See* 49 C.F.R. § 26.45(b). Such a benchmark allows recipients to gauge how well they are doing in leveling the playing field and can be an invaluable tool.

Although we believe that there is additionally sufficient current evidence to allow FRA/CHSRA to implement *contract-by-contract* DBE goals – and that this is the only effective way to ensure equal opportunity for DBEs – we understand that CHSRA/FRA may believe that this must await completion of a disparity study. Even if that were true, however, CHSRA should still at least set an overall DBE goal. For example, when Caltrans operated a purely race-neutral DBE program from 2006 to 2009, it still set an overall DBE goal, even if it implemented only race-neutral measures to try to reach it.

Setting an overall DBE goal, even if for the time being the measures to reach it were only race-neutral, would demonstrate that CHSRA understands that the issues of DBEs and the issues of small businesses are not the same, and that a specific focus on DBEs is necessary to achieve contracting equity.

IV. The Goals/Good Faith Efforts Provisions Should Reflect The Mandates Of The Cooperative Agreements

The language in the Cooperative Agreement that CHSRA signed with FRA (as set forth above) is strong and appropriate requires CHSRA to either “substantially incorporate” the type of goals/good faith efforts requirements found in 49 CFR Part 26 or set forth an alternative program that ensures for “the use of contractors owned and controlled by socially and economically disadvantaged individuals” (DBEs).

However, the current draft plan satisfies neither prong. If the issue is that CHSRA believes that a DBE goals/good faith efforts requirement cannot be implemented until a disparity study is complete, then the plan should state that and be structured in such a way to allow for immediate insertion of this element

once that factual predicate is completed. In the meantime, as stated above, CHSRA’s plan should still specifically focus on steps to ensure the use of DBEs, as the Cooperative Agreement language requires.

Moreover, the sections describing when goals and good faith efforts are to be used is drafted too narrowly. As the Cooperative Agreement language appropriately reflects, a goals/good faith efforts program is an example of a “best practice” that must be implemented regardless of whether the federal funder is directly governed by the DBE regulations. Limiting this requirement to “Operating Administration[s] with statutory authority to impose 49 CFR, Part 26,” as the draft plan purports to do, is not consistent with the Cooperative Agreement language.

V. The Plan Should Accurately Reflect The Governing Legal Authorities

The draft plan and policy statement, in setting forth the applicable legal mandates, should specifically refer to FRA’s September 15, 2011 directive. In addition, in the sections and contract provisions that refer to Title VI and its regulations, the language should cite to those parts of the Title VI regulations that prohibit discrimination that has an adverse *impact* on minority-owned businesses. *See, e.g., 49 C.F.R. § 21.5(b)(2)(i), (iv)* (USDOT regulations barring the use of criteria or methods of administration “which have the *effect* of subjecting persons to discrimination because of their race, color, or national origin....”).

Moreover, the Program should reflect that Title VI and its mandates applies to all of CHSRA’s activities. By accepting federal funds, CHSRA is bound by Title VI and its implementing regulations *in all its activities*. *See* Civil Rights Division, U.S. Dep’t of Justice, Title VI Manual, Ch. VII § D (2001); *see also* authorities cited at p.10 of APAC’s original complaint. The draft plan should therefore not reflect a split between “strictly state funded contracts” and “federal funded contracts.” The provisions currently listed under “federal funded contracts” are based on Title VI and therefore apply to *all* CHSRA’s contracting.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority’s Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

1. CHSRA’s Plan Must Have A Specific Focus on Minority-Owned Businesses: The Authority made a request to the FRA to clarify their previous directive that indicates the Authority’s Small and Disadvantaged Business Enterprise Program shall be inclusive of Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Micro-Businesses recognized by the U.S. Small Business Administration, Department of General Services, and California Unified Certification Program and the overall goal will be met through race-neutral measures. In addition, the request for clarification included the discussion on setting an overall DBE goal and methodology.

1. CHSRA's Program Should Include an Overall DBE Goal. See Question 1: Response.
2. Goals/Good Faith Efforts Provisions Should Reflect the Mandates of the Cooperative Agreements: The draft Small and Disadvantaged Business Enterprise Program was presented to FRA on August 14, 2011 and on November 3, 2011 as an alternative program to a race-conscious program. In both instances, the FRA accepted the Small and Disadvantaged Business Enterprise Program and good faith effort discussion in Subpart D: Goals, Good Faith Efforts and Counting SB Participation as complying with the Cooperative Grant Agreement. The Authority shall request FRA to address this matter.
3. Plan Should Accurately Reflect The Governing Legal Authorities: The Authority accurately applied Title VI for *all its activities* and 49 CFR § 21.5 as specifically cited in the document. The inclusion of "solely State funded" components in the Small and Disadvantaged Business Enterprise Program are to address the occasions that the Authority has 100% State funded contracts that shall incorporate State contract requirements.

SUBMISSION NUMBER: E8

DATE: 1/17/2012

SUBJECT: Recommended Changes to the California High Speed Rail Authority's Draft "Small Business and Disadvantaged Business Enterprise Program"

COMMENT(S):

Please accept this document as "public comment" in response to the California High Speed Rail Authority's (CHSRA) Draft "*Small Business and Disadvantaged Business Enterprise Program*" (SB/DBEP).

Historical Contracting Practices

The initial business model used by the CHSRA excluded businesses owned by ethnic minorities. As an example, the initial design team of Parsons Brinckerhoff and Hatch Mott MacDonald are the two main contractors. Despite the alleged "Good Faith" efforts, Parsons Brinckerhoff and Hatch Mott MacDonald did not hire any ethnic minority owned architectural, engineering or environmental firms on work performed to date. Clearly, the dissemination of information and the selection process on the initial phase of construction that has been implemented to date did not take into account the stated goal of including small businesses (SB), disadvantaged business enterprises (DBE) or any other minority business enterprises.

It appears that the contracts entered into during this initial phase of construction were drafted in such a manner as to effectively defeat or substantially impair the objectives of the Small Business Program with respect to firms and individuals of a particular race, color, sex, disability and national origin. We believe strongly that this occurred due to the lack of ethnic diversity on the CHSRA's leadership staff.

To rectify this situation, we have provided the following recommendations to make your Small Business and Disadvantaged Business Enterprise Program more competitive for California's ethnic small business contractors.

Going Forward

We request that the CHSRA, as a condition of any funding provided by the United States Department of Transportation (USDOT), make the following revisions to the SB/DBEP applicable to all existing contracts as of January 17, 2012 and also make these revisions a part of all future contracts and procurements:

Disparity Study (Race Conscience v. Race Neutral Program)

- It has been the pattern and practice, whenever the lack of contracting opportunities for ethnic minority contractors of all tiers is raised, for the public contracting entity to agree to a “disparity study”. According to all of the studies that we have read to date, minorities were underrepresented in public contracts before and after the passage of Proposition 209.

The Federal Railroad Administration (FRA) has mandated a current statewide disparity study that requires the CHSRA to consider examples of existing small business programs used by other public agencies in California and the United States. However, we recommend that the CHSRA use the most recent study available for the cities of Los Angeles, Sacramento, San Francisco or Caltrans, subject to revision upon completion of their own disparity study, in adopting the CHSRA SB/DBE plan.

We are of the opinion that the CHSRA shall be obligated to apply a race conscious goal to the SB/DBEP. We also believe this same goal shall be mandatory for “underutilized business enterprises” (UBE).

Promote More Ethnic Diversity within the CHSRA

- We request that the CHSRA SB/DBE leadership team be comprised of ethnically diverse personnel.
- We also suggest that there be sufficient ethnic small business participation on the newly established SB/DBE Advisory Committee.

Participation Goals

- We recommend separating the 30% goal by ethnicity as well as a distinct category for microbusinesses. We also suggest that the CHSRA establish an additional contract incentive, such as a price preference or score of 2.5% of the bid amount, to qualified state-certified micro-businesses. Moreover, we believe that there should be a separate category of the 30% contracting goal for Disadvantaged Veteran Business Enterprises (DVBE).
- We support the *Targeted Unemployment Workers Hire Criteria and First Source Transparency Requirements* proposed by the Fresno Regional Workforce Investment Board with goals on construction hours and apprentice construction hours for targeted high unemployment areas.
- To boost California’s workforce and give a preference to California residents, the CHSRA shall also develop a strategy to ensure that at least 25% of the project workforce used at each authority worksite is from the local workforce.
- It shall be mandatory that the CHSRA require all responsible bids to include a detailed plan on achieving the CHSRA’s stated SB/DBE goals. It shall be the stated policy of the CHSRA to encourage private contractors to draft creative solutions to reach their mandated SB/DBE goals. It shall further be the policy of the CHSRA to encourage contractors to exceed the goals for the

SB/DBE Program.

These innovative contracting strategies must be required in all responsible bids. Establishing goals after the contract has been signed reduces the incentive to achieve the goal of the SB/DBE program.

Increase Contract Compliance

- The CHSRA should hire a minority compliance officer, preferably an ethnic representative from a group that has been historically disadvantaged.
 - The CHSRA should list the compliance officer on its organization chart.
- The CHSRA shall develop stronger penalties for primes that are noncompliant.

Elimination of Good Faith Efforts

- The CHSRA shall mandate that all responsive bids in response to Requests for Qualifications (RFQs) for work to be performed to include the SB/DBE/DVBE/Minority/Micro-Business selected to perform work under the bid being submitted. Presently, the CHSRA hires contractors and then requires them to exercise good faith efforts to achieve the goal sought.

As presently drafted, the plan allows for failure by making such goals “conditional” so long as the contractor exercised “good faith”. This “conditional” language appears to allow the contractor an escape from actually complying with the stated goals and objectives of the SB/DBE Program.

Technical Assistance and Bonding

- The Authority shall offer technical assistance and advice to SB/DBEs with the goal of making them more competitive to win High Speed Rail (HSR) contracts.
 - It was noted that Small Business Development Centers in the Central Valley have not been promoting small businesses in that area.
- The CHSRA shall be obligated to assist in establishing a program that allows SB/DBE bonding to be commensurate with the contractual amount of the contract awarded to the SB/DBE firm.
 - The CHSRA shall have the discretion to establish bonding requirements for SB/DBE as an additional named insured under the prime contractor.

Administrative Changes

The CHSRA shall unbundle large contracts to increase the opportunity for small business contracting.

- To make the CHSHA more accountable to SB/DBE contracting, the CHSRA SB/DBE leadership shall tie their pay to the level of small business contracting.
- The CHSRA shall separate construction contracts from professional contracts because the process is different for both.

- The CHSRA shall expand the definition of contractor to include all subcontractors. The current definition applies to Prime and offeror. The definition of contractor as it applies to goal achievement and DBE utilization should be Offeror/ Prime and all Subtier Contractors. The market for small contractors (hard hats) is not with the prime it is with the subcontractors.

Certification

A number of the outreach activities specify using the state-managed DBE Directory. In central California there is low participation from minority and women-owned firms. For example, in Fresno there are only 150 DBEs within a 40-50 miles radius of the city. There are more than 26,000 minority-owned businesses in Fresno County alone (US Census Bureau, 2010 Economic Survey).

Recommendation: Require the Authority to conduct and/or support regional activities that encourage DBE certification and engagement from prime contractors.

Improve Outreach

Several ethnic minority chambers complained that they were not contacted by the CHSRA about its draft small business plan, while other ethnic minority chamber representatives voiced concern that The CHSRA’s meetings are typically held in areas outside of where the project will be constructed. We have some suggestions below to mitigate these concerns:

- Require pre-construction and kick-off meetings be in the region/county where 60% of the work will be conducted allowing the prime contractor(s) and subcontractors/SBE/ DBE to encourage participation in business match making opportunities.
- Make the semi-annual and annual federal DBE Report submitted to the USDOT available to the public via the CAHSR website within the federal review period to allow public participation (pg. 12)
- Ask the Authority to develop a SB and DBE Frequently Asked Question (FAQ) Sheet-- online and paper copy.
- Implement an effective external communication system that implores clear channels for the business community to understand processes, deadlines, and project resources.
- Designate and subcontract regional SBO/DBE Officer(s).
- Increase minority/women-owned business notification by actively engaging ethnic & women chambers of commerce and trade associations.

Thank you for your consideration of these recommendations to improve the California High Speed Rail’s draft “Small Business and Disadvantaged Business Enterprise Program. We appreciate the opportunity to provide our input and look forward to these positive changes for California’s small business community.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Commenter's submission is identical to the comments received from Submission Number: E4. Refer to Submission Number: E4 – Response.

SUBMISSION NUMBER: E9

DATE: 1/17/2012

SUBJECT: Recommended Changes to the California High Speed Rail Authority's Draft "*Small Business and Disadvantaged Business Enterprise Program*"

COMMENT(S):

Please accept this document as "public comment" in response to the California High Speed Rail Authority's (CHSRA) Draft "*Small Business and Disadvantaged Business Enterprise Program*" (SB/DBEP).

Historical Contracting Practices

The initial business model used by the CHSRA excluded businesses owned by ethnic minorities. As an example, the initial design team of Parsons Brinckerhoff and Hatch Mott MacDonald are the two main contractors. Despite the alleged "Good Faith" efforts, Parsons Brinckerhoff and Hatch Mott MacDonald did not hire any ethnic minority owned architectural, engineering or environmental firms on work performed to date. Clearly, the dissemination of information and the selection process on the initial phase of construction that has been implemented to date did not take into account the stated goal of including small businesses (SB), disadvantaged business enterprises (DBE) or any other minority business enterprises.

It appears that the contracts entered into during this initial phase of construction were drafted in such a manner as to effectively defeat or substantially impair the objectives of the Small Business Program with respect to firms and individuals of a particular race, color, sex, disability and national origin. We believe strongly that this occurred due to the lack of ethnic diversity on the CHSRA's leadership staff.

To rectify this situation, we have provided the following recommendations to make your Small Business and Disadvantaged Business Enterprise Program more competitive for California's ethnic small business contractors.

Going Forward

We request that the CHSRA, as a condition of any funding provided by the United States Department of Transportation (USDOT), make the following revisions to the SB/DBEP applicable to all existing contracts as of January 17, 2012 and also make these revisions a part of all future contracts and procurements:

Disparity Study (Race Conscience v. Race Neutral Program)

- It has been the pattern and practice, whenever the lack of contracting opportunities for ethnic minority contractors of all tiers is raised, for the public contracting entity to agree to a “disparity study”. According to all of the studies that we have read to date, minorities were underrepresented in public contracts before and after the passage of Proposition 209.

The Federal Railroad Administration (FRA) has mandated a current statewide disparity study that requires the CHSRA to consider examples of existing small business programs used by other public agencies in California and the United States. However, we recommend that the CHSRA use the most recent study available for the cities of Los Angeles, Sacramento, San Francisco or CalTrans, subject to revision upon completion of their own disparity study, in adopting the CHSRA SB/DBE plan.

We are of the opinion that the CHSRA shall be obligated to apply a race conscious goal to the SB/DBEP. We also believe this same goal shall be mandatory for “underutilized business enterprises” (UBE).

Promote More Ethnic Diversity within the CHSRA

- We request that the CHSRA SB/DBE leadership team be comprised of ethnically diverse personnel, including diversity of members of the CHSR Board.
- We also suggest that there be sufficient ethnic small business participation on the newly established SB/DBE Advisory Committee.

Participation Goals

- We recommend separating the 30% goal by ethnicity as well as a distinct category for micro-businesses. We also suggest that the CHSRA establish an additional contract incentive, such as a price preference or score of 2.5% of the bid amount, to qualified state-certified micro-businesses. Moreover, we believe that there should be a separate category of the 30% contracting goal for Disadvantaged Veteran Business Enterprises (DVBE).
- To boost California’s workforce and give a preference to California residents, the CHSRA shall also develop a strategy to ensure that at least 25% of the project workforce used at each authority worksite is from the local workforce.
- It shall be mandatory that the CHSRA require all responsible bids to include a detailed plan on achieving the CHSRA’s stated SB/DBE goals. It shall be the stated policy of the CHSRA to encourage private contractors to draft creative solutions to reach their mandated SB/DBE goals. It shall further be the policy of the CHSRA to encourage contractors to exceed the goals for the SB/DBE Program.

These innovative contracting strategies must be required in all responsible bids. Establishing goals after the contract has been signed reduces the incentive to achieve the goal of the SB/DBE program.

Increase Contract Compliance

- The CHSRA should hire a minority compliance officer, preferably an ethnic representative from a group that has been historically disadvantaged.
 - The CHSRA should list the compliance officer on its organization chart.
- The CHSRA shall develop stronger penalties for primes that are noncompliant.

Elimination of Good Faith Efforts

- The CHSRA shall mandate that all responsive bids in response to Requests for Qualifications (RFQs) for work to be performed to include the SB/DBE/DVBE/Minority/Micro-Business selected to perform work under the bid being submitted. Presently, the CHSRA hires contractors and then requires them to exercise good faith efforts to achieve the goal sought.

As presently drafted, the plan allows for failure by making such goals “conditional” so long as the contractor exercised “good faith”. This “conditional” language appears to allow the contractor an escape from actually complying with the stated goals and objectives of the SB/DBE Program.

Our recommendation is to either eliminate the Good Faith Effort mandate or do not allow it to count against the 30% participation goal.

Technical Assistance and Bonding

- The Authority shall offer technical assistance and advice to SB/DBEs with the goal of making them more competitive to win High Speed Rail (HSR) contracts.
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market for small contractors (Hard Hats) is not with the prime it is with the subcontractors.

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- A number of the outreach activities specify using the state-managed DBE Directory. In central California there is low participation from minority and women-owned firms. For example, in Fresno there are only 150 DBEs within a 40-50 miles radius of the city. There are more than 26,000 minority-owned businesses in Fresno County alone (US Census Bureau, 2010 Economic Survey).

Recommendation: Require the Authority to conduct and/or support regional activities that encourage DBE certification and engagement from prime contractors.

Improve Outreach

Several ethnic minority chambers complained that they were not contacted by the CHSRA about its draft small business plan, while other ethnic minority chamber representatives voiced concern that The CHSRA’s meetings are typically held in areas outside of where the project will be constructed. We have some suggestions below to mitigate these concerns:

- Require pre-construction and kick-off meetings be in the region/county where 60% of the work will be conducted allowing the prime contractor(s) and subcontractors/SBE/ DBE to encourage participation in business match making opportunities.
- Make the semi-annual and annual federal DBE Report submitted to the USDOT available to the public via the CAHSR website within the federal review period to allow public participation (pg. 12)
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- Designate and subcontract regional SBO/DBE Officer(s).
- Increase minority/women-owned business notification by actively engaging ethnic & women chambers of commerce and trade associations.

Thank you for your consideration of these recommendations to improve the California High Speed Rail’s draft “Small Business and Disadvantaged Business Enterprise Program. We appreciate the opportunity to provide our input and look forward to these positive changes for California’s small business community.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

Commenter's submission is identical to the comments received from Submission Number: E4. Refer to Submission Number: E4 – Response.

SUBMISSION NUMBER: E10

DATE: 1/17/2012

SUBJECT: California High Speed Rail Authority's Draft "*Small Business and Disadvantaged Business Enterprise Program*"

COMMENT(S):

On behalf of Senator Curren Price and the Senate Select Committee on Procurement, I am attaching a letter of thanks and recommendations to the California High Speed Rail Authority's draft Small Business and Disadvantaged Business Enterprise Program."

Enclosure:

As Chair of the Senate Select Committee on Procurement, I am writing to personally thank you, Patricia Padilla and Olivia Fonseca for your overview of the California High Speed Rail Authority's (CHSRA) draft "Small Business and Disadvantaged Business Enterprise Program." As expressed during this very lively and informative hearing on Thursday, January 5, 2012, I appreciate your diligence in developing this important program to boost California small business participation (including minority, women and disabled veteran businesses) on this major, historic infrastructure project.

On behalf of the Committee, I am submitting the following recommendations for consideration of refining the draft program. These suggestions consist of the top-five issues that small business firms have expressed to me before, during and after the hearing:

Participation Goals

Last year, I authored several bills (SB 733 and SB 734) that would have ensured employment opportunities for California's local workforce and contracting opportunities for California small businesses, including microbusinesses on this major project. I appreciate the CHSRA's attempt to address the local hire issue in its draft plan. From your description of this proposal during the hearing, it appears to be similar to what I proposed in 2011.

As for microbusinesses, as stated during the hearing, I am hopeful that the CHSRA will give consideration to offering these smaller firms an extra incentive or contract preference so that they can effectively compete for your contracts. From what I understand, microbusinesses tend to be owned by ethnic minorities or women, and they are known for bringing real diversity to local economies and the State. Although these smaller businesses comprise over 80 percent of California's certified small businesses, many microbusiness owners are disadvantaged when competing against their larger small business counterparts.

According to the DGS, of the \$2.4 billion of contract dollars issued by State Departments and Agencies to small businesses and microbusinesses in fiscal year 2008-2009, microbusinesses were awarded only 37% or \$866 million worth of state contracting. Moreover, of the 103,371 contracts issued during the same time frame, microbusinesses received only 42,140 or 41% of the contracts awarded by the state. I believe that granting an extra incentive to these smaller firms could boost their participation in this major undertaking.

Elimination of Good Faith Efforts

Over the years, many small business contractors have expressed disappointment and concern about Good Faith Effort provisions in state contracts. Many small business contractors believe that this provision allows prime contractors to circumvent the hiring of small business contractors. As pointed out at the hearing, the Good Faith Effort clause was recently rescinded for State contracts involving Disabled Veteran Business Enterprises (AB 4X 21 of 2009) for the reasons stated above. I am hopeful that you will work with the federal government to remove this mandate from all CHSRA contracts involving small business participation.

Technical Assistance and Bonding

Another popular issue that serves as an impediment to small business contracting is their inability to obtain surety bonding. As a result, I am recommending that the CHSRA include in its program a solution to this issue, such as by offering a service that provides technical advice and assistance for small businesses to get bonded or by partnering with an entity that provides this service. I also suggest that bonding be commensurate with the level of business a small firm is receiving, and that CHSRA establish bonding requirements for small businesses as an additional named insured under the prime contractor.

Disparity Study:

Several small business owners have expressed a desire to bid on the development of the disparity study if a new one is produced. I am hopeful that these smaller firms will have an opportunity to bid on this phase of the project as well as on all other areas that will be contracted out.

Outreach

One last issue that I would like to convey is the need for the CHSRA to expand its outreach to more ethnic small business owners. After our informational hearing, several ethnic minority chamber leaders expressed to me that they did not receive notice of the draft plan, and if not for my notifications of the hearing, they would have been uninformed. As a very strong advocate of small businesses, not only in my district of Los Angeles, but in the State of California, I have mailing lists to reach this audience. I am happy to assist the CHSRA with its outreach to these populations and others that it is attempting to target.

In conclusion, again I thank you and your team for the detailed presentation of the CHSRA's draft "Small Business and Disadvantaged Business Enterprise Program." I look forward to working with you on this important issue to advance California small business participation on this major infrastructure project.

AUTHORITY RESPONSE

DISPOSITION: No Change

SECTION(S) IMPACTED: None

RESPONSE:

Response issued to acknowledge receipt of comment(s) and/or recommendation(s) regarding the California High-Speed Rail Authority's Small and Disadvantaged Business Enterprise Program.

REMARK(S):

No amendments were made to the Small and Disadvantaged Business Enterprise Program.

The Authority is grateful to be working with Senator Curren Price and for facilitating numerous outreach events and most recently the Informational Hearing on January 5, 2012. The Authority will continue to work with Senator Price and Lisa Martin, Chief of Staff to ensure the greatest and widest reach to SBs in California.

1. **Participation Goals:** The Authority does not have Congressional or the State of California authority to establish separate goals for Small Businesses, Disadvantaged Business Enterprises, Disabled Veteran Business Enterprises and Microbusinesses by ethnicity. At this time, the Authority does not have authorization from FRA to establish an incentive component for utilizing Small Businesses on the contract. This comment shall be directed to FRA for reconsideration.
2. **Elimination of Good Faith Efforts:** The Authority has incorporated the Best Practices of 49 C.F.R. Part 26, which requires Contractors to utilize Good Faith Efforts to meet the 30% Small Business goal throughout the duration of the project, as described under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. The good faith efforts do not apply to 100% State funded contracts.
3. **Technical Assistance and Bonding:** II. Subpart B: Responsibility of SB Program Implementation describes methods of creative and innovative bonding and capacity building for Small Businesses. In addition, assistance in obtaining bonding and lines of credit are recognized efforts under IV. Subpart D: Goals, Good Faith Efforts, and Counting SB Participation. Furthermore, V. Subpart E: Design-Build Provisions references bonding assistance as a method to address financial barriers.

SBO Duties and Responsibilities include the development and implementation assistance of the Design-Builder's Small Business supportive services, inclusive of technical assistance, business development, mentor-protégé, bonding/capacity building, financial assistance, business matchmaking and other associated activity as described in V. Subpart E: Design-Build Provisions.

4. **Disparity Study:** The Authority shall complete an Availability/Disparity Study, once funding is authorized by the FRA to procure the consultant. The Authority considered existing studies such as the Caltrans 2006 Disparity Study and determined that the data used in the Caltrans study was from 2002-2006, thereby making the data six (6) to ten (10) years old. The Authority wishes to utilize current data that is relevant to the rail project in today's economy. The Authority shall consult with the selected consultant to consider the rationalization of completing a local or regional study versus a statewide study to evaluate the current availability of the SBs that are available to perform on the rail project.

The study results will be shared with FRA to determine whether the Authority may amend the Small and Disadvantaged Business Enterprise Program to incorporate additional requirements

from 49 C.F.R. Part 26.

5. Outreach: The Authority recognizes more outreach is needed to communicate and educate the business industry on the Authority's commitments, Small Business goal and other objectives and requirements set forth by the Small and Disadvantaged Business Enterprise Program. The Authority recognizes its need to leverage outreach efforts with other government entities such as the Department of General Services, Small Business Development Centers and through the formation of a Business Advisory Council, as directed by the Federal Railroad Administration. Furthermore, the Authority is in the process of forming a Business Advisory Council, as directed by the Federal Railroad Administration, to share thoughts and provide guidance on meeting the objectives set forth by the Small and Disadvantaged Business Enterprise Program.

SUBMISSION NUMBER: E11

DATE: 1/18/2012

SUBJECT: NAACP Recommended Changes to the California High Speed Rail Authority's Draft "*Small Business and Disadvantaged Business Enterprise Program*"

COMMENT(S):

Please accept this document as the NAACP Stockton Branch in conjunction with the California NAACP State Conference of Branches "public comment" in response to the California High Speed Rail Authority's (CHSRA) Draft "*Small Business and Disadvantaged Business Enterprise Program*" (SB/DBEP).

Historical Contracting Practices

The initial business model used by the CHSRA excluded businesses owned by ethnic minorities. As an example, the initial design team of Parsons Brinckerhoff and Hatch Mott MacDonald are the two main contractors. Despite the alleged "Good Faith" efforts, Parsons Brinckerhoff and Hatch Mott MacDonald did not hire any ethnic minority owned architectural, engineering or environmental firms on work performed to date. Clearly, the dissemination of information and the selection process on the initial phase of construction that has been implemented to date did not take into account the stated goal of including small businesses (SB), disadvantaged business enterprises (DBE) or any other minority business enterprises.

It appears that the contracts entered into during this initial phase of construction were drafted in such a manner as to effectively defeat or substantially impair the objectives of the Small Business Program with respect to firms and individuals of a particular race, color, sex, disability and national origin. We believe strongly that this occurred due to the lack of ethnic diversity on the CHSRA's leadership staff.

To rectify this situation, we have provided the following recommendations to make your Small Business and Disadvantaged Business Enterprise Program more competitive for California's ethnic small business contractors.

Going Forward

We request that the CHSRA, as a condition of any funding provided by the United States Department of Transportation (USDOT), make the following revisions to the SB/DBEP applicable to all existing

contracts as of January 17, 2012 and also make these revisions a part of all future contracts and procurements:

Disparity Study (Race Conscience v. Race Neutral Program)

- It has been the pattern and practice, whenever the lack of contracting opportunities for ethnic minority contractors of all tiers is raised, for the public contracting entity to agree to a “disparity study”. According to all of the studies that we have read to date, minorities were underrepresented in public contracts before and after the passage of Proposition 209.

The Federal Railroad Administration (FRA) has mandated a current statewide disparity study that requires the CHSRA to consider examples of existing small business programs used by other public agencies in California and the United States. However, we recommend that the CHSRA use the most recent study available for the cities of Los Angeles, Sacramento, San Francisco or Caltrans, subject to revision upon completion of their own disparity study, in adopting the CHSRA SB/DBE plan.

We are of the opinion that the CHSRA shall be obligated to apply a race conscious goal to the SB/DBEP. We also believe this same goal shall be mandatory for “underutilized business enterprises” (UBE).

Promote More Ethnic Diversity within the CHSRA

- We request that the CHSRA SB/DBE leadership team be comprised of ethnically diverse personnel, including diversity of members of the CHSR Board.
- We also suggest that there be sufficient ethnic small business participation on the newly established SB/DBE Advisory Committee.

Participation Goals

- We recommend separating the 30% goal by ethnicity as well as a distinct category for microbusinesses. We also suggest that the CHSRA establish an additional contract incentive, such as a price preference or score of 2.5% of the bid amount, to qualified state-certified microbusinesses. Moreover, we believe that there should be a separate category of the 30% contracting goal for Disadvantaged Veteran Business Enterprises (DVBE).
- To boost California’s workforce and give a preference to California residents, the CHSRA shall also develop a strategy to ensure that at least 25% of the project workforce used at each authority worksite is from the local workforce.
- It shall be mandatory that the CHSRA require all responsible bids to include a detailed plan on achieving the CHSRA’s stated SB/DBE goals. It shall be the stated policy of the CHSRA to encourage private contractors to draft creative solutions to reach their mandated SB/DBE goals. It shall further be the policy of the CHSRA to encourage contractors to exceed the goals for the SB/DBE Program.

These innovative contracting strategies must be required for all bids to be considered responsible bids. Establishing goals after the contract has been signed reduces the incentive to achieve the goal of the SB/DBE program.

Increase Contract Compliance

- The CHSRA should hire a minority compliance officer, preferably an ethnic representative from a group that has been historically disadvantaged.
 - The CHSRA should list the compliance officer on its organization chart responsible and reporting directly to the CHSRA Commission.
- The CHSRA shall develop stronger penalties for primes that are noncompliant.

Elimination of Good Faith Efforts

- The CHSRA shall mandate that all responsive bids in response to Requests for Qualifications (RFQs) for work to be performed to include the SB/DBE/DVBE/Minority/Micro-Business selected to perform work under the bid being submitted. Presently, the CHSRA hires contractors and then requires them to exercise good faith efforts to achieve the goal sought.

As presently drafted, the plan allows for failure by making such goals “conditional” so long as the contractor exercised “good faith”. This “conditional” language appears to allow the contractor an escape from actually complying with the stated goals and objectives of the SB/DBE Program.

Our recommendation is to either eliminate the Good Faith Effort mandate or do not allow it to count against the 30% participation goal.

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SECTION(S) IMPACTED: None

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