

May 21, 1996



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Authority

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TO: BOARD OF DIRECTORS

FROM: GAIL CHARLES, Esq. *Gail Charles*
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SUBJECT: PREDICATE STUDY FINDINGS / DISADVANTAGED
BUSINESS ENTERPRISE (DBE) PROGRAM

ISSUE

The MTA Board of Directors adopted the Predicate Study findings with Mayor Riordan's motion on April 24, 1996. The motion directed staff to provide recommendations and to report on the following four areas:

1. How to increase total subcontracting opportunities and expand the number of different firms participating in subcontracting opportunities;
2. How to increase prime contracting opportunities for small and mid-sized businesses, as well as women and minority owned firms;
3. How to increase the level and success of proactive outreach and technical assistance to minority and women-owned firms; and
4. The barriers faced by small and mid-sized businesses, as well as women and minority owned firms, in successfully accessing and competing for MTA contracts, and recommendations on how to eliminate such barriers.

Attachment 1 provides a summary of recommendations developed to-date. Staff intends, with the Board's permission, to return to the August 28, 1996 meeting with recommendations for improving the MTA's DBE Program.

BACKGROUND

The MTA's Disadvantaged Business Enterprise (DBE) Program is a federally funded mandate by the Federal Transit Administration (FTA) which requires that all recipients of federal funds establish an annual DBE goal that is approved by FTA. Adoption of the predicate study was also required for compliance with Adarand, and will positively impact MTA's compliance with federal regulations and with Supreme Court decisions. MTA must proceed with caution and be mindful of the pending legal challenge of its DBE Program; therefore, any recommendations must be in compliance with the Predicate Study's findings. While the Program is currently working under a Stay Order, any and all recommendations for changes and/or improvements to the DBE Program must be thoroughly researched and supported so that the Authority is not subjected to any further legal challenge.

Upon approval of the MTA's Predicate Study by the Board with the Amendment, staff immediately initiated the following course of action:

- a) Notified FTA regarding adoption of the predicate study along with a request for approval of the MTA's revised DBE goal;
- b) Requested and received feedback from the Transportation Business Advisory Council (TBAC) and the Minority Business Task Force on the Mayor's amendment;
- c) Solicited feedback from all Equal Opportunity Programs Department staff;
- d) Initiated development of a federal grant application for technical assistance for DBEs;
- e) Received a briefing and information on the City's Minority Business Opportunity Committee;
- f) Reviewed anecdotal evidence for identification of barriers; and
- g) Reviewed Chapter 4 of Predicate Study, "Methods for Assisting Minority and Women-Owned Businesses."

DOT DBE CERTIFICATION GUIDELINES

The US Department of Transportation intends to issue revised DBE Certification Eligibility Standards. In 1992, DOT issued a Notice of Proposed Rule Making regarding 49 CFR, Part 23.53. The MTA is closely monitoring the proposed changes in order to maximize effective implementation. DOT anticipates the final guidelines will be available on or before September of this year. On May 21, 1996, representatives from the US Department of Transportation, Departmental Office of Civil Rights conducted a DBE Certification Workshop at the MTA and discussed the proposed changes. Clement Monge, Regional Director, along with Albert Williams and Joseph Austin, spoke to over 50 individuals who represented governmental and transit agencies, DBE firms, and community organizations.

The new guidelines call for a "One Stop Certification Shopping" process, whereby a statewide certification mechanism streamlines DBE certification for individual agencies as well as DBE firms. Another significant revision involves the need for recipient agencies, like the MTA, to have a dispute resolution procedure in place that meets DOT criteria. The guidelines also address the need for a prompt payment mechanism. These are issues the MTA is currently addressing. DOT informs us that the revised guidelines are currently being reviewed internally and that copies are not available at this time.

ATTACHMENT

1. Summary of Recommendations, dated May 21, 1996