



# Oregon

John A. Kitzhaber, M.D., Governor

## Department of Transportation

Office of the Director  
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October 25, 2011

Phillip A. Ditzler, Division Administrator  
Federal Highway Administration  
530 Center Street NE, Suite 420  
Salem, OR 97301

Dear Phil,

On January 18, 2008, Oregon Department of Transportation (ODOT) originally requested a waiver of the requirements of 49 CFR part 26.51(e)(4), which would allow the Agency to subdivide the use of race- and gender-conscious goals in order to comply with the decision of the 9<sup>th</sup> US Circuit Court of Appeals in the case of *Western States Paving vs. Washington DOT*. After additional information was provided in support of the request, the waiver was approved on September 9, 2008. Prior to the expiration of that waiver, ODOT requested an extension which would allow the Agency to complete an updated disparity study and amend the waiver request if sufficient supporting data was found. The waiver extension was granted on September 16, 2010, with the requirement that any recommendations for modifying the waiver must be submitted to the Federal Highway Administration (FHWA) by September 30, 2011. The deadline was based on the expectation that the updated study would be completed by June 30, 2011. Due to unforeseen difficulty in collecting critical data, the study was not completed until August 15, 2011. ODOT has now evaluated the results of the 2011 Updated Disparity Study, and has calculated a new DBE Goal based on current business statistics, and is requesting that the previous waiver be amended to adjust the overall goal and the race-conscious/race-neutral breakout to reflect the needs identified in the Study.

The most significant changes between the 2007 Disparity Study and the 2011 Updated Disparity Study are the following:

- In the 2007 Study, only construction contracting data was sufficiently available to allow a thorough evaluation, but in the 2011 Update contracting for Architecture and Engineering services was also considered.
- In the 2007 Study, Asian Pacific and Subcontinent Asian DBE firms were grouped together, while in the 2011 Update the two presumptive groups were evaluated separately.
- In the 2011 Update, Asian Pacific American-owned DBE firms were shown to have increased their share of contracts sufficiently to no longer need race-conscious goals. Black American and Subcontinent Asian American DBE firms are still below the threshold in the significant disparity category.
- Black American, Subcontinent American, Hispanic American, Native American and non-minority women-owned DBE firms all have significant contracting disparities in Architecture, Engineering and A & E related classes of work.

- The total number of certified DBE firms has decreased since the 2007 Study was completed.

ODOT has updated the three-year overall goal calculation using current statistics, and has added Architecture and Engineering as part of the Race-conscious Breakout in response to the findings of the 2011 Updated Disparity Study. A copy of the revised calculation is attached to this request, along with other supporting documents.

Please let me know if there is anything else you need to evaluate our request.

Sincerely,



Matthew L. Garrett  
Director

cc: Joan Plank, ODOT Chief of Staff  
Norman Snead, FHWA Technical Services Team Lead  
Michael A. Cobb, ODOT Civil Rights Manager  
Dale Hormann, Senior Assistant Attorney General  
C Jill Miller, ODOT DBE Program Manager

Attachments: 2011 Disparity Study Report  
2012-2013 Goal calculation report  
2010 Waiver Extension Request  
Waiver approval letters, 2008 and 2010  
Outreach and Public Meetings notices and sign-in sheets  
Full-year DBE Utilization reports for FFYs 2008, 2009 and 2010