



THE SECRETARY OF TRANSPORTATION
WASHINGTON, D.C. 20590

September 9, 2008

Mr. Matthew L. Garrett
Director
Oregon Department of Transportation
355 Capitol Street, NE, Rm 135
Salem, OR 97301

Dear Mr. Garrett:

This is in reply to your request for a waiver of the provisions of the Department of Transportation's Disadvantaged Business Enterprise (DBE) rule that require goals established by the Oregon Department of Transportation (ODOT) to allow for participation by all certified DBEs and that prohibit the use of group-specific goals in administering the Federal DBE program. Based on the 2007 Disparity and Availability Study conducted by MGT of America, Inc., ODOT proposes to use race conscious DBE contract goals that would not include all certified DBEs. The contract goals would be limited to DBEs for whom statistically significant disparities between availability and utilization exist, namely small businesses owned and controlled by African Americans, Asian-Pacific Americans, and Subcontinent Asian Americans. Thus, ODOT seeks to narrowly tailor its use of DBE contract goal to address these disparities.

You submitted the request under the waiver procedures of 49 CFR § 26.15(b) as suggested by guidance issued by the Department in light of the Ninth Circuit Court of Appeals decision in *Western States Paving Co. v. Washington State Department of Transportation, et. al.*, 407 F.3d 983 (9th Cir. 2005). The request complies with the procedural requirements of this section, including the requirement for public participation, and it satisfies the criteria for approval delineated in section 26.15(b) (2). Consequently, your waiver request is granted for a period of three federal fiscal years (FY 2008, 2009, and 2010). Six months before the waiver expires, you must submit a report to the Department, through the Federal Highway Administration, on whether a need for the waiver continues. ODOT's projection of how much of its annual DBE goal will need to be met through the use of DBE contract goals covered by this waiver remains subject to FHWA approval as part of its review of ODOT's annual DBE goal submissions consistent with the requirements of 49 CFR §§ 26.45(f) and 26.51(c).

If you have any questions regarding this matter, please feel free to contact Marcus Lemon, the Federal Highway Administration's Chief Counsel, at 202-366-0740.

Sincerely yours,

A handwritten signature in cursive script, appearing to read 'Mary E. Peters', is written in black ink.

Mary E. Peters