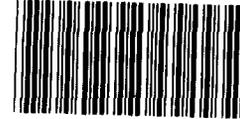


Resources, Community, and
Economic Development Division

B-247934

January 19, 1993



148389

The Honorable William F. Goodling
House of Representatives

Dear Mr. Goodling:

This letter responds to concerns about the implementation of the U.S. Department of Transportation's (DOT) Disadvantaged Business Enterprise (DBE) Program in Pennsylvania. As agreed with your office, we reviewed whether (1) certain minority groups that the Pennsylvania DOT determined were eligible to participate in the state's DBE program were, in fact, eligible under federal laws and regulations and (2) 38 firms cited by one of your constituents as certified DBE firms were "fronts" for nonminority contractors.

The Surface Transportation Assistance Act of 1982 required states to spend at least 10 percent of their federal-aid highway program funds contracting with small businesses owned and controlled by socially and economically disadvantaged individuals. The Surface Transportation and Uniform Relocation Assistance Act of 1987 expanded the DBE program to include women. With some revisions, these provisions were incorporated into the Intermodal Surface Transportation Efficiency Act of 1991.

MINORITY GROUP PARTICIPATION

The minority groups that the Pennsylvania DOT presumed to be eligible to participate met the eligibility criteria for the DBE program contained in federal laws and regulations. Under 49 C.F.R. part 23, businesses owned and controlled by Blacks, Hispanics, Native Americans, or Asian Americans are presumed eligible for participation in DOT's DBE program. To clarify further, the regulation lists the ethnic and nationality groups, which comprise these larger classifications. Federal law and this regulation also prescribe that any minority groups deemed eligible by the Small Business Administration (SBA) under 13 C.F.R. chapter

1, part 124, for SBA's Minority Small Business and Capital Ownership Development program are also eligible for DOT's DBE program. The Minority Small Business and Capital Ownership Development program is commonly referred to as SBA's 8(a) program.

Two nationality groups that the Pennsylvania DOT presumed eligible--Burmese and Thais--were not listed under 49 C.F.R. part 23 as participants in DOT's program. These groups are eligible for participation because SBA lists them in its regulations and presumes them eligible for its 8(a) program. However, since they are not listed under 49 C.F.R. part 23, confusion was created not only with the Pennsylvania DOT but at DOT as well. On March 17, 1992, we asked DOT's Office of General Counsel to clarify whether firms owned by Thai and Burmese individuals were eligible. At that time, a General Counsel official stated that the regulation appeared unclear and that the Office would have to conduct further research. On July 29, 1992, the General Counsel informed us that it intends to include persons of Thai and Burmese extraction as eligible to participate in the DBE program.

Confusion over DBE eligibility procedures has not been limited to the Pennsylvania DOT or to the issue of eligible groups. As we reported in September 1992, DOT's DBE program eligibility guidance has been confusing and conflicting and has hindered states from consistently applying the program's eligibility criteria.¹ Our report, which we have enclosed, made several recommendations for strengthening the quality and consistency of DOT's guidance and oversight.

To avoid confusion over the eligibility of minority groups, DOT's General Counsel stated that it would add Thais and Burmese to its list of ethnic groups presumed to be disadvantaged in 49 C.F.R. part 23. The Office further stated that as part of its ongoing revisions to DOT's DBE regulation, DOT will institute procedures to automatically update DOT's list of eligible groups whenever SBA modifies its eligibility list.

¹Highway Contracting: Disadvantaged Business Eligibility Guidance and Oversight Are Ineffective (GAO/RCED-92-148, Sept. 1, 1992).

"FRONT" FIRMS

We were unable to verify the status of the 38 minority contractors provided by your constituent because none of the 38 firms are currently certified in Pennsylvania for the DBE program. While 12 firms had submitted certification applications to the Pennsylvania DOT for participation at one time, we found no evidence that the remaining 26 firms ever applied in Pennsylvania.² Of the 12 firms that had submitted applications:

- Ten firms were certified between 1982 and 1987. However, 6 of the 10 did not apply for recertification when their existing certification expired, and 4 of the 10 had their certifications revoked for failing to provide information requested by the Pennsylvania DOT Certification Appeals Committee during the recertification process.
- One firm was denied certification, and the other withdrew its application during the state's review process.

According to Pennsylvania DOT officials, most of the state's records for the 12 firms had been destroyed in accordance with the state government's practice of not retaining records for more than 3 years. As a result, we were unable to determine whether the 10 certified firms were "fronts" for nonminority contractors.

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To determine whether minority groups determined by the Pennsylvania DOT were eligible for participation and to determine the status of the firms in question, we interviewed officials and reviewed records at DOT and the Pennsylvania DOT; the Bureau of Equal Opportunity; and the Office of the Inspector General, Pennsylvania DOT. We also interviewed your constituent. Our review was conducted in accordance with generally accepted government auditing standards.

²We were unable to identify one of the firms on the list because we were not provided an address or other identifying information.

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We hope that this information will be helpful to you and your constituent. If you or your staff have any further questions about this matter, please contact me at (202) 275-1000, or Ms. Gary Jones, Assistant Director, at (202) 401-4946.

Sincerely yours,

John H. Anderson, Jr.
for Kenneth M. Mead
Director, Transportation Issues

Enclosure

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