

*Dave Bowers
Planning*



South Carolina Department of Transportation

MINUTES

Department of Transportation Commission

Meeting of

December 16, 1999

P

NO ADDITIONS

Minutes

Department of Transportation Commission

Meeting of

December 16, 1999

MINUTES

DEPARTMENT OF TRANSPORTATION
OF
SOUTH CAROLINA

Meeting of

December 16, 1999

The regular monthly meeting of the Department of Transportation Commission was held at the Florence County City Complex in Florence, South Carolina at 9:30 a.m. on December 16, 1999. In compliance with the Freedom of Information Act, the news media was advised in writing of the time, date and place of this meeting.

Present

Bobby T. Jones, Vice Chairman, Presiding
Hugh Atkins
Arnold S. Goodstein
John N. Hardee
J. "Moot" Truluck

Absent

L. Morgan Martin
W. M. "Mat" Self

Also present: Elizabeth S. Mabry, Executive Director

SECTION 1: The Minutes for the meeting of November 30, 1999, copies of which had been previously mailed to each member of the Commission, were approved.

SECTION 2: The Commission unanimously passed a motion approving the sale of surplus right of way property-land, as shown in detail in the Appendix.

SECTION 3: The Commission unanimously passed a motion authorizing the Department to advertise and select several consulting firms for the purpose of providing as-needed engineering services for roadway and bridge projects in South Carolina, as shown in the Appendix.

SECTION 4: The Commission unanimously passed a motion approving the action of the Department in extending existing construction contracts to include additional work, as shown in detail in the Appendix.

SECTION 5: On motion of Commissioner Hardee, seconded by Commissioner Goodstein, the Commission unanimously passed a motion approving the following resolutions:

- "John Courson Interchange"
- "Bobby Gerald Parkway"
- "D. Travis (Doc) Taylor Road"
- "John M. "Moot" Truluck Highway"



The resolutions are shown in detail in the Appendix.

SECTION 6: On motion of Commissioner Truluck, seconded by Commissioner Hardee, the Commission unanimously passed a motion approving the Mass Transit Program Funding Allocation recommendations, as shown in detail in the Appendix.

SECTION 7: On motion of Commissioner Goodstein, seconded by Commissioner Truluck, the Commissioner unanimously passed a motion to approve the recommendations, as submitted by the staff, relative to the SCDOT Budget for 2000/2001 and shown in detail in the Appendix.

SECTION 8: On motion of Commissioner Truluck, the Commissioner unanimously passed a motion approving spending plans for the STIP for the remaining 1999 funds, and funds for 2000, 2001 and 2002, as shown in detail in the Appendix.

SECTION 9: On motion of Commissioner Goodstein, seconded by Commissioner Hardee, the Commission unanimously passed a motion adopting regulations for the DBE program and authorized the Department to have these regulations published in the *State Register*, as shown in detail in the Appendix.

SECTION 10: There being no further business to come before the Commission, the meeting was adjourned at 10:25 a.m.

Larry C. Duke
Secretary

L. Morgan Martin
Chairman

Appendix

Department of Transportation Commission

Meeting of

December 16, 1999

SURPLUS RIGHT OF WAY PROPERTY - LAND

1. File 818.554 – U.S. Route 17A- Dorchester County

During construction of improvements on US Route 17A Bypass, under File 818.432 in Dorchester County, near the Town of Summerville, the Department acquired right of way for Loblolly Street, by dedication from the Town of Summerville.

During negotiations for right of way for construction of US Route 17A Bypass (Berlin Myers Expressway) it was agreed that the Department would deed any surplus portion of Loblolly Street to the adjacent owner, Leo W. Ramsey, Jr., as credit for property needed to construct the new road. Therefore, a Gratis Quitclaim Deed for 0.05 of an acre of land was executed to Leo W. Ramsey, Jr. on October 22, 1999.

2. File 40.473 & 32.399 - U. S. Route 176 - Richland County

During construction of improvements on U. S. Route 176, under File 40.247 in Richland County, near the Town of Ballentine, the Department acquired right of way for U. S. Route 176, by Condemnation Notice from C. E. Rauch et al dated March 30, 1949.

At the request of the adjacent owner and successor in title, L. E. Lever, a request was circulated to the Engineering Sections to determine if a portion of the old abandoned U. S. Route 176 could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore, a Quitclaim Deed for approximately 0.78 acres of land to L. E. Lever in consideration of \$13,700.00 was executed on November 10, 1999.

3. File 7.303 - Road S-30 - Beaufort County

During construction of improvements on Road S-30, under File 7.303 in Beaufort County, near the Town of Bluffton, the Department acquired right of way for Road S-30, by Dedication on December 1, 1941. Right of way is shown on a plat recorded in plat book 3 at page 27 in the Beaufort County RMC.

At the request of the adjacent owner, a request was circulated to the Engineering Sections to determine if said parcel could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore, a Quitclaim Deed for approximately 0.86 acres of land to Neil H. Mingledorff Jr. and Jeanne M. Kronsoble in consideration of \$31,800.00 was executed on November 18, 1999.

4. File MSC 132 - Road S-26-20 - Horry County

During improvements on the draw bridge over the Intracoastal Waterway on Road S-26-20 in Horry County, near the Town of Little River, the Department acquired property for a bridge tenders' house by Title to Real Estate from Nicholas F. Nixon dated July 10, 1936.

A determination was made by the Department that the subject 1.56 acre tract was surplus to the Departments needs. The property was exposed to the market with signage and newspaper ads. Therefore, a Quitclaim Deed for 1.56 acres of land to Mullins Farms, Inc in consideration of \$120,275.00 was executed on November 16, 1999.

5. File 22.571 - US Route 521 - Georgetown County

During construction of improvements on US Route 521, under File 22.571 in Andrews County, near the Town of Georgetown, the Department acquired right of way for US Route 521, by Condemnation from Joyce M. Blake, et al dated September 19, 1997.

During negotiations to acquire right of way from Ms. Blake it was determined by the legal section that in order to settle this complicated condemnation case, the Department could relinquish back to the condemnee the surplus portion of her property. Therefore a Gratis Quitclaim Deed for 1.2 acres of land to Joyce M. Blake, et al was executed on November 18, 1999.

6. File 40.247 - US Route 176 - Richland County

During construction of improvements on US Route 176, under File 40.247 in Richland County, near the Town of Ballentine, the Department acquired right of way for US Route 176, by Condemnation Notice from E. T. Rauch dated March 30, 1949 and by Deed to Right of Way from G. D. Richardson dated March 3, 1942.

At the request of the adjacent owner and successor in title a request was circulated to the Engineering Sections to determine if a portion of the old abandoned US Route 176 could be declared surplus. After review it was determined that the parcel was surplus to Department needs. Therefore a Quitclaim Deed for 1.96 acres of land to Exit 97 Partnership in consideration of \$24,000.00 was executed on November 18, 1999.

This matter is reported to the Commission in accordance with the requirements of Code Section 57-5-340.

12/15/99

Recommendations 12/99

**Request for Professional Engineering Services on an As-Needed
Basis for Roadway and Bridge Projects Throughout South Carolina**

The Department requests Commission approval to advertise for and select several consulting firms for the purpose of providing as-needed engineering services for roadway and bridge projects throughout South Carolina. The period covered by this contract will be approximately three years. Funding for these services will be on a project by project basis and will be provided from various federal and state project funds.

Recommendations: 12/16/99

EXTENSION OF CONSTRUCTION CONTRACTS

It is recommended that the Commission approve the action of the Department in extending existing construction contracts to include additional work, as follows:

FLORENCE COUNTY:

Contract of Palmetto Paving Corporation - File 21.80991 - extended to include resurfacing (File No. 21.80991) with asphalt concrete surfacing of Byrd Street (S-332) in the Town of Scranton for a total of 0.096 mile.

Estimated Cost of Extension \$ 3,656.48

PICKENS COUNTY:

Contract of U. S. Group, Inc. - File No. 39.769 - extended to include an additional section of Project C-746 (File 39.746) to include construction of concrete sidewalk, curb and gutter, and resurfacing with asphalt concrete surfacing on SC 8/SC 135.

Estimated Cost of Extension \$ 48,852.99

These extensions were authorized by the Department prior to formal approval by the Commission since the adjacent work had reached such a stage of completion that the contractors involved could not accept the additional work unless it were authorized without delay.

RESOLUTION

WHEREAS, John E. Courson is serving his fourth consecutive term as a member of the South Carolina State Senate, representing District 20, Richland County;

AND WHEREAS, Senator Courson has admirably and effectively served the people of his district since 1985; and was elected chairman of the Advisory Commission on Intergovernmental Relations in 1995 and chairman of the Strom Thurmond Monument Commission in 1997;

AND WHEREAS, he is the current chairman of the Invitations Committee, and serves on the Education, Medical Affairs, Banking and Insurance, Finance, Ethics and General Committees;

AND WHEREAS, he began his active interest in politics in 1964, when he was a student at the University of South Carolina. He was an active supporter and held major leadership positions in the campaigns of Presidents Reagan and Bush, and served US Senator Strom Thurmond as his State Chairman, Co-Chairman and Treasurer;

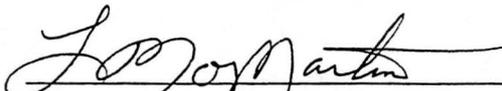
AND WHEREAS, at three Republican National Conventions, he represented President Ronald Reagan. He was honored to serve as a member of the Electoral College in 1980 and 1984 as an Elector for President Reagan;

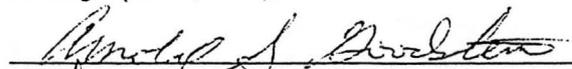
AND WHEREAS, he is a family man and a Christian. He is married to the former Elizabeth Poinsett Exum, and has two sons and a daughter. He is a member of Trinity Episcopal Church;

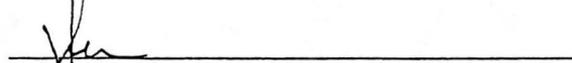
AND WHEREAS, State Representative Richard M. Quinn Jr., and Columbia Mayor Robert D. Coble and the City Council have asked that Senator Courson be appropriately recognized for his service to the people of Columbia, Richland County and the State of South Carolina;

NOW, THEREFORE, BE IT RESOLVED by the South Carolina Department of Transportation Commission, in meeting duly assembled this 16th day of December, 1999, that the Interchange of Interstate 126 at Elmwood Avenue and Huger Street in the City of Columbia be named the John Courson Interchange, in recognition of his life of service.

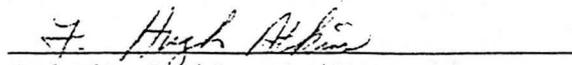


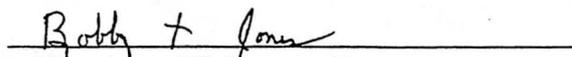

L. Morgan Martin, Chairman

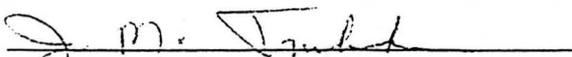

Arnold S. Goodstein, First Congressional District


John R. Hardee, Second Congressional District


W. M. "Mat" Self, Third Congressional District


Hugh Atkins, Fourth Congressional District


Bobby T. Jones, Fifth Congressional District


J.M. "Moot" Truluck, Sixth Congressional District

RESOLUTION

WHEREAS, Bobby Gerald has rendered outstanding service as Mayor of the City of Marion since 1985;

AND WHEREAS, Mayor Gerald has been instrumental in all phases of beautification projects in the city, such as providing mini-parks throughout the city, establishment of an active tree-planting program, downtown beautification improvements, removal of old and obsolete railroad tracks, securing financial assistance from industries and business firms to completely landscape Railroad Avenue, including providing a walking track laced with shrubbery and plants,. Implementing and planning an annual Christmas lighting service in which a large magnolia tree on the Public Square is decorated, working cooperatively with the Department of Transportation to beautify entrances to the city, and providing trees for planting within the city limits and beyond;

AND WHEREAS, Mayor Gerald has secured many state and federal grants for the City for housing rehabilitation, the expansion of the City's wastewater treatment plant, purchase of needed property, including a building which was renovated to house the Marion Police Department, and provision of new ballfields to serve recreational needs of youth;

AND WHEREAS, probably his greatest feat and test of leadership came during Hurricane Hugo, which brought tremendous damages to the City and to which he responded day and night to the needs of citizens, and for which he personally secured FEMA funding. In other storms and possible disasters, he has been actively involved on-the-scene to direct and supervise City employees and crews;

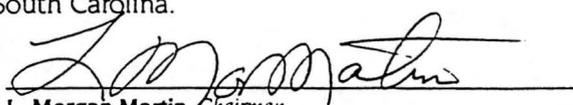
AND WHEREAS, his leadership to the members of Marion City Council is outstanding, and his personal life is exemplary and one of integrity;

AND WHEREAS, HE SERVED as a member of the South Carolina State Highways and Public Transportation Commission from 1982-85;

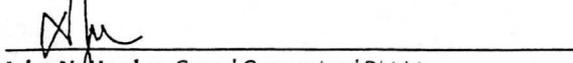
AND WHEREAS, the Marion City Council has endorsed and recommended that the name of Railroad Avenue in Marion be changed to Bobby Gerald Parkway;

NOW, THEREFORE, BE IT RESOLVED by the South Carolina Department of Transportation Commission, in meeting duly assembled this 16th day of December, 1999, that the Commission hereby renames Railroad Avenue, including Road S-846 and S-38 west of the City limits to Jones Avenue, as the Bobby Gerald Parkway, in recognition of his service to Marion and to the State of South Carolina.

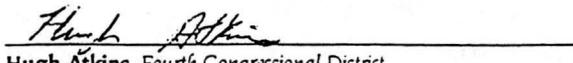


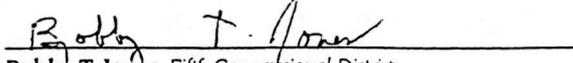

L. Morgan Martin, Chairman


Arnold S. Goodstein, First Congressional District


John N. Hardee, Second Congressional District


W. M. "Mat" Self, Third Congressional District


Hugh Atkins, Fourth Congressional District


Bobby T. Jones, Fifth Congressional District


J.M. "Moot" Truluck, Sixth Congressional District

RESOLUTION

WHEREAS, the D. Travis (Doc) Taylor was an educator, teacher, school principal, farmer, leader, and a man whose vision for a better tomorrow extended to all of Marion County and especially to the children of the Britton's Neck Community, where he lived and died;

AND WHEREAS, Mr. Taylor, the first black landowner in the Britton's Neck Community, taught school there for 45 years. He helped establish four one-room schools for African-Americans in the Britton's Neck area in the early 1920's, and in the mid-1920's he helped consolidate these schools into one four-room school, which was named Bethel School;

AND WHEREAS, in the 1940's, when the State Department of Education wanted to close the school, he fought to keep it open, believing that a school and a church gave a community its identity;

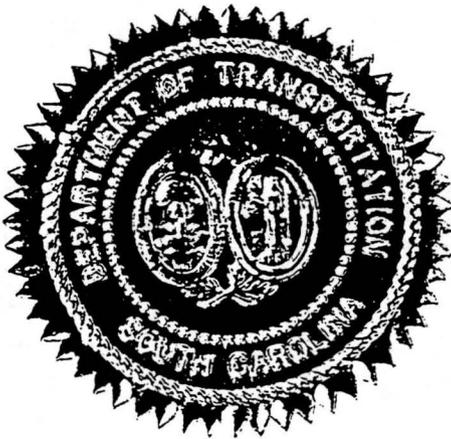
AND WHEREAS, Mr. Taylor fought continuously to ensure that the children of Britton's Neck community received a quality education. He bought the first school bus in Marion County and provided transportation for black students for which he received very little compensation;

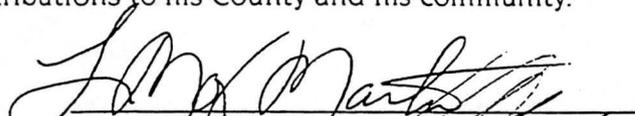
AND WHEREAS, Mr. Taylor worked diligently to improve the lives of the people of Marion County, serving on many committees in the county, including, Electrification, Britton's Neck 4-H and Boy Scouts, Soil Conservation, and Farmers Home Administration;

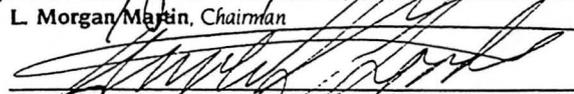
AND WHEREAS, he provided shelter, food and clothing for many needy families, and gave assistance where needed;

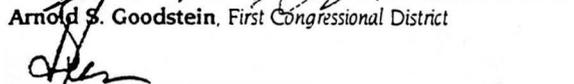
AND WHEREAS, he loved Marion County and did all he could to make it a better place for future generations, and the Marion County Council has requested that his service be remembered;

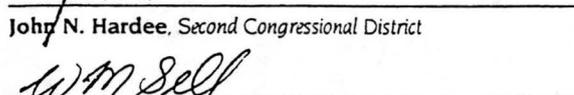
NOW, THEREFORE, BE IT RESOLVED by the South Carolina Department of Transportation Commission, in meeting duly assembled this 16th day of December, 1999, that the Commission hereby names State Road 34-86 in the Britton's Neck section of Marion County the D. Travis (Doc) Taylor Road, in recognition of his numerous contributions to his County and his community.

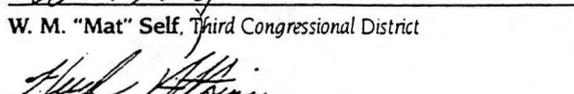


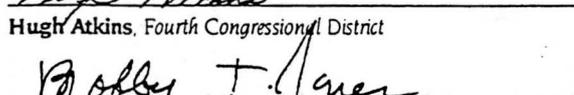

L. Morgan Martin, Chairman

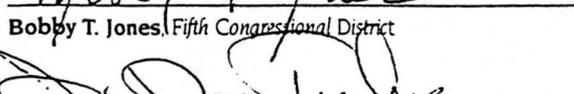

Arnold S. Goodstein, First Congressional District


John N. Hardee, Second Congressional District


W. M. "Mat" Self, Third Congressional District


Hugh Atkins, Fourth Congressional District


Bobby T. Jones, Fifth Congressional District


J.M. "Moot" Truluck, Sixth Congressional District

RESOLUTION

WHEREAS, John M. "Moot" Truluck, a Lake City businessman, ably represents the Sixth Congressional District as a member of the South Carolina Transportation Commission and served previously as a Transportation Commissioner prior to government restructuring from 1986 to 1990;

AND WHEREAS, Mr. Truluck served as chairman of the Florence County Transportation Committee for five years, before being appointed to his second term on the State Transportation Commission;

AND WHEREAS, through his hard work and effort, the South Carolina Department of transportation is planning to widen US 378 to four lanes from the Clarendon/Florence County line to US 378 Business on the east side of Lake City;

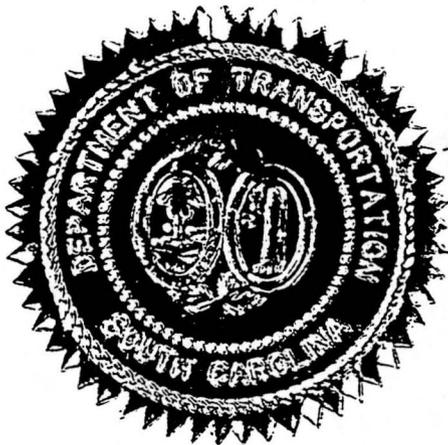
AND WHEREAS, aside from his duties as Transportation Commissioner, Mr. Truluck is a leader in the tobacco business that fuels the economy of Lake City and much of the lowcountry. He is a partner in the Planters and Growers and Golden Leaf Warehouse;

AND WHEREAS, he has served as president of the South Carolina Warehouse Association, and of the Bright Belt Warehouse Association, which comprises warehousemen from five states. He is currently Chairman of the Board of Bright Belt;

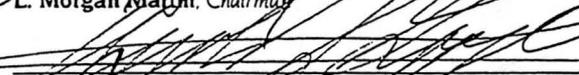
AND WHEREAS, Truluck served as a member of the City Council of Lake City from 1978-82, and was mayor pro-tem from 1980-82;

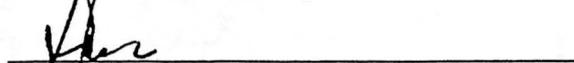
AND WHEREAS, he is married to the former Carol Ann Matthews of Lake City, and they have two grown children, John IV and Anna Caroline;

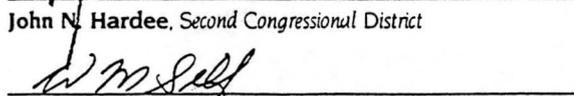
NOW, THEREFORE, BE IT RESOLVED by the South Carolina Department of Transportation Commission, in meeting duly assembled this 16th day of December, 1999, that the Commission hereby names US 378 from the Clarendon/Florence County line to US 378 Business on the east side of Lake City as the John M. "Moot" Truluck Highway, in recognition of his outstanding service.

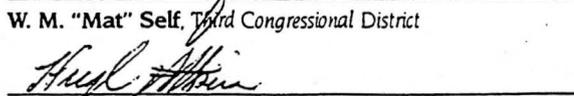


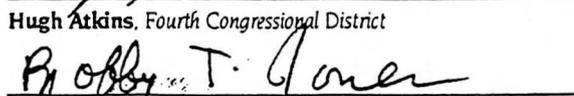

L. Morgan Martin, Chairman


Arnold S. Goodstein, First Congressional District


John N. Hardee, Second Congressional District


W. M. "Mat" Self, Third Congressional District


Hugh Atkins, Fourth Congressional District


Bobby T. Jones, Fifth Congressional District

**FEDERAL MASS TRANSIT FUNDS
AVAILABLE FOR ALLOCATION
FY 1999/2000**

	Prior Federal	Current Federal	Total Available	FY 2000
VTE		1.2 ¹	0.0	1.22
Human Services	0.287	0.0	0.287	1.061
MPO Planning	0.013	.035	0.048	0.337
RTAP	0.233	0.110 ²	0.343	0.107
Statewide Planning	0.068	.078	0.146	.088
Rural	0.007	0.0	0.007	4.543
ESC (Welfare to Work) ³		1.5	0.0	
Job Access/Reverse Commute		1.78 ⁴	0.0	2.00
			0.841	

¹ For use in Statewide Technology project

² To be applied for this Fiscal Year

³ Employment Securities Commission - RFP is in the review process

⁴ Funding previously obligated

FEDERAL FUNDS

Staff recommendations for allocation of federal funds are as follows:

Human Services

Funds Available – \$286,950.00 (as of 11/8/99)

Human Service Provider	Item Requested	Amount Recommended
Generations Unlimited	1-Cutaway	\$36,000.00
Jasper Co. DSN	1-Van	\$19,320.00
Piedmont Agency on Aging	1-Van ADA	\$27,384.00
Horry Co. COA	1-Van	\$19,320.00
Chester/Lancaster DSNB	1-Van	\$19,320.00
Aiken Area COA	1-Van ADA	\$27,384.00
Oconee Co. DSNB	1-Van ADA	\$27,384.00
Senior Options	1-Van ADA	\$27,384.00
Senior Centers of Spartanburg	1-Van	\$19,320.00
Babcock Center	1-Van	\$19,320.00
Senior Resources	1-Van ADA	\$27,384.00
Greenville Co. DSNB	1-Van	\$17,430.00
Total		\$286,950.00

Note: The Human Service Providers were selected based on their ranking by Process Team review and based on their funding category.

MPO Planning

Funds Available - \$48,000.00

Grantee	Item Requested	Amount Recommended
South Carolina Appalachian COG	Services in Pickens Co.	\$25,000.00
Central Midlands COG	Planning of Intermodal Activities	\$23,000.00
Total		\$48,000.00

Note: It is also recommended that Central Midlands COG receive \$25,000.00 in State Funds out of the Rail category, which would bring its total to \$48,000.00.

Rural Transit Assistance Program (RTAP)

Funds Available - \$343,000.00

Grantee	Item Requested	Amount Recommended
Transportation Association of South Carolina (TASC) - Rural Provider Training/ Technical Assistance	TASC Conference, Training, Conferences, and RTAP Scholarships	\$343,000.00
Total		\$343,000.00

Note: Training will be provided in part by/through University Transportation Center (South Carolina State University), providing there are no procurement issues.

Rural

Funds Available - \$7,000.00

Grantee	Item Requested	Amount Recommended
Spartanburg County	Services in Spartanburg Co.	\$7,000.00
Total		\$7,000.00

Note: It is also recommended that Spartanburg County receive \$5,000.00 in State Funds out of the Specific Funding Request category which would bring its total to \$12,000.00.

STATE FUNDS

SCDOT reserved \$1.5 million in state funds to match a statewide Mass Transit Earmark of \$45 million. We have been advised that the earmark was approved, but for a lesser amount. We will now be required to have \$303 thousand in state money available this year and next year. We also have additional state monies available from previous years which was not used as allocated and is now available for reallocation. The total state funds available for allocation is \$1,856,875.00 and staff recommendations for allocation are as follows:

Category	Allocation
Rail	\$200,000.00
Specific Funding Request	\$485,000.00
Coordination of Services	\$167,500.00
Large Urban	\$612,500.00
Small Urban	\$391,875.00
Total	\$1,856,875.00

Rail

Grantee	Item Requested	Amount Recommended
Central Midlands COG	Rail Study	\$25,000.00
York County	Rail Study	\$50,000.00
SCDOT	Future Rail Issues	\$75,000.00
CRPTA	Rail Study	\$50,000.00
Total		\$200,000.00

Specific Funding Request

Grantee	Item Requested	Amount Recommended
Clemson	Expansion to Central, SC	\$35,000.00
Lowcountry Regional Transportation Authority	Ferry Service on Daufuskie Island	\$30,000.00
Spartanburg County	Services in Spartanburg Co.	\$5,000.00
SCDOT	Financial Review of Providers	\$325,000.00
City of Spartanburg	Intermodal Facilities	\$50,000.00
SCDOT	Bus Lease Program RFP	\$20,000.00
Lower Savannah COG	RTA Feasibility Study	\$20,000.00
Total		\$485,000.00

Coordination of Services

Grantee	Item Requested	Amount Recommended
Chesterfield County Coordinating Council	^a Demonstration project	\$57,500.00
Santee Wateree RTA	^b Demonstration project	\$110,000.00
Total		\$167,500.00

- a. Chesterfield County Coordinating Council (CCCC) – request for demonstration project to institute share seat program, utilization of school buses, and promotion of fixed route system.
- b. Santee Wateree Regional Transit Authority (SWRTA) – request for demonstration to coordinate public, human service, Medicaid, and aging transportation and to institute innovative Flexroute in each county.

Large Urban

Metropolitan Area	Additional State Funding	Total State Funding
Augusta	\$20,240.00	\$44,000.00
Charleston	\$256,560.00	\$558,960.00
Columbia	\$227,880.00	\$494,280.00
Greenville	\$107,820.00	\$235,260.00
Total	\$612,500.00	\$1,332,500.00

Note: The additional funding would represent the amount necessary to achieve an approximately 20% of the total federal funding for each area.

Small Urban

Metropolitan Area	Additional State Funding	Total State Funding
Anderson	\$52,700.00	\$133,523.00
Florence	\$54,210.00	\$137,343.00
Myrtle Beach	\$56,850.00	\$144,030.00
Rock Hill	\$60,360.00	\$152,927.00
Spartanburg	\$105,225.00	\$266,590.00
Sumter	\$62,530.00	\$158,414.00
Total	\$391,875.00	\$992,827.00

Note: The additional state funding represents an approximately 14% increase in funds based on the federal allocation.

TRANSIT FUNDING FORMULA ANALYSIS

The transit funding formula for the rural funding contains several factors and is used to distribute transit funds to each county in South Carolina. The Policy/Formula Committee was asked to examine the current formula to determine if changes could be made to that formula to achieve a less complex, yet equitable, formula. The SCDOT staff serving on that committee has met and offers the following approach to that process.

CONSIDERATION OF FACTORS

The first step in the process is to examine the factors that are currently used in the formula and any other factors that will provide a suitable measure of what it is that the Department wants to achieve in terms of a transit policy. They must also be factors for which data is available. The following factors were considered including the advantages and disadvantages:

Ridership—numbers of people served

Advantages: Rewards those providers that carry the most passengers.
Encourages providers to promote transit usage.

Disadvantages: Penalizes providers in the more sparsely populated service areas.
Makes it difficult for smaller systems to expand.

Vehicle Revenue Miles—measures mileage while in service

Advantages: Compensates for sparsely populated areas with greater Distances.
Compensates for wear and tear on vehicles.
Can be combined with ridership to reward high ridership and high mileage.

Disadvantages: No assurance that it doesn't include deadhead mileage.
If used without ridership, could reward for running empty vehicles.

Cost per Revenue Mile or Cost per Revenue Hour—used as deviation from national averages by type of service

Advantages: Rewarding the lowest cost operation (efficiency).

Disadvantages: Tends to benefit the larger systems because overhead is spread over more vehicle miles or vehicle hours.

Percent of Local Support—support other than farebox and contract

Advantages: Encourages local partnership in funding transit.

Disadvantages: Penalizes systems that are already underfunded.

Population—uses 1990 population for each county

Advantages: Those counties without service would have allocation to start service.

Providers rewarded for the potential ridership.

Disadvantages: Rewards for gross population but not numbers using the system.

Doesn't reflect service area within the county.

General population doesn't reflect transit demand or potential demand.

Minimum Allocation—current formula sets aside an amount for each county

Advantages: Those counties without service would have allocation to start service.

Provides all operators a base amount to operate a minimal system.

Disadvantages: Multi-county systems receive multiple allocations.

Funding allocated to counties without service is unused.

Minimum allocation is not necessary when the formula provides enough funding to all systems to operate at least at a minimal level.

Potential Annual Demand—a calculation of transit demand based on age, disability and income level of the population.

Advantages: This factor attempts to target transit to the population in the state that is in most need.

This factor is not based on existing usage or existing Providers.

Disadvantages: The demand model is based on data that is only available at the county level and is not separated between urban and rural population.

There is no current demand data available.

Each of these factors should be viewed in the context of the policy that it will promote.

For example: If the policy is to maximize transit usage, promote efficiency, and promote local support, then you would choose the factors of ridership, cost per revenue mile, and percent of local support.

SUGGESTED TRANSIT POLICY

The allocation of funding resources is one of the most effective tools to implement a transit policy at the State level. The following are some suggested transit policies for consideration by the SCDOT Commission. Each policy contains the factors that should be used in the allocation formula that would support the respective policy.

Policy: To increase transit usage in South Carolina

When the funding allocation formula includes ridership as a factor, it provides funding based on the utilization of the system and encourages the providers to market the service to increase the ridership.

Policy: To increase transit usage in rural areas of South Carolina

Rural areas of the state are traditionally under-served. The vehicle miles are greater and the ridership is lower than in the more densely populated areas. The factor that measures vehicle revenue miles, that is when the vehicle is in use, will provide funding to the more rural transit providers.

Policy: To encourage efficiency in the operation of transit systems.

The State should encourage transit operators to reduce cost and operate as efficiently as possible. The factor that measures efficiency is the cost per revenue mile. Since there are basically two types of service, demand response and fixed-route, the cost per revenue mile will be different. The national average cost per revenue mile for demand response systems is \$2.49; and for fixed-route it is \$5.87. All of South Carolina's systems are below the national average. The percent of the deviation could be used as a factor to encourage cost reduction.

Policy: To increase local commitment for transit

Federal and State funding for transit is not increasing enough to expand transit service to the extent that it should; therefore, the State needs to foster partnerships with local governments to increase the resources needed to expand the service. The factor that measures the percent of local support provided should be used to provide additional Federal funding to those transit systems that are able to secure financial support from local sources.

Policy: To provide transit opportunities as an alternative means of transportation throughout the state

In the past the formula included the factors of population and minimum allocation to provide a base amount of available funding to counties that did not have service. It is important to have a discretionary amount available for new operations, expansion into new territory, or emergencies. Potential transit demand is a better indicator of potential market for transit usage in the areas not currently served than either total population or a

uniform amount for each area. By establishing a discretionary fund with a percentage of the total program and allocating it on the basis of transit demand, it provides the funding to start new service.

Policy: To encourage coordination of service with human service providers

The policy of the State should be to reduce duplication and promote cost savings in transportation. By allocating transit funding on the basis of **population, transit demand or unmet transit demand (transit demand minus ridership)**, the funding will be allocated to areas for service rather than providers of service.

FORMULA DEVELOPMENT

Option 1—Allocation to Transit Providers

In Option 1, a formula would be used to allocate the funding among the current transit providers. A discretionary amount would be set aside statewide for expanding service into areas not previously served. The factors in the formula would be determined based on the performance of the providers. The importance of each factor can be adjusted by weighting each factor. If they were of equal importance, they would be used as equal values in the formula:

$$\text{Funding Allocation} = (1/4)(\% \text{ ridership}) + (1/4)(\% \text{ vehicle revenue miles}) + (1/4)(\% \text{ cost per revenue mile deviation from average}) + (1/4)(\% \text{ local support})$$

The option that we used in this example would be to make ridership the most important followed by cost per revenue mile, then vehicle revenue miles and finally local support.

$$\text{Funding Allocation} = (40\%)(\% \text{ ridership}) + (30\%)(\% \text{ cost per revenue mile deviation from average}) + (20\%)(\% \text{ vehicle revenue miles}) + (10\%)(\% \text{ local support})$$

Option 2—Allocation to Transit Providers with the Discretionary Allocation to COGs

In Option 2, a formula similar to Option 1 would be used to allocate funding among the current providers. The discretionary amount would be allocated among the Councils of Governments on the basis of the percentage of rural population for that region.

Option 3—Allocate Total Rural Federal and State Funding to COG areas

In Option 3, funding would be allocated for each COG region on the basis of total rural population in the region.

FUNDING OPTIONS

The last step is to apply the data for these factors to the formulas in each option to determine the funding allocation in each option. A percentage of the available funding should be set aside for the discretionary fund for Options 1 and 2. The formula would be applied to the balance of the funding for each of the providers in these options. The total

Federal and State funding used in these examples is the same amount that was used for FY 2000.

In Option 1 the discretionary amount is 5% of the total. This would be a minimal amount to start service in one of the non-service areas. In Option 2, 20% was set aside for discretionary funds in Year 1. The percentage amount for discretionary funds was increased to 50% in Year 5, allowing the COGs more flexibility for non-service areas.

In Options 2 and 3, the Councils of Governments would be involved in an advisory role. In Option 2, the COGs would be involved in recommending what areas would need service, the amount of discretionary funding to be allocated to those areas and possibly the means for delivering that service. In Option 3, the COGs would be involved in making recommendations for the expenditure of the total funding for their region. This would include the amount of funding to the exiting provider for the region or portions of the region that the provider currently serves. The COG would also make recommendations similar to Option 2 for the portion of the region not currently served.

If Option 3 is determined to be the most desirable, then Option 2 could be considered as a transitional approach. The first year 20% could be allocated to COG areas, followed by 40% the second year, 60% the third year, 80% the fourth year and finally 100% the fifth year. In this way the adjustments to the providers would be more gradual as the service is established in the not previously served areas.

FUNDING ALLOCATION FORMULA

Based on the information submitted by the funding allocation formula committee, staff recommends the use of Option 1 to fund rural transit in the state of South Carolina

The funding for the Rural Transit program (Option 1) is as follows:

	Rural Federal Funds	State Funds
Funds Received/Requested	4,543,000.00	2,200,000.00
Less State Administration	563,000.00	
Total Available to Allocate	3,980,000.00	2,200,000.00
Amount available to RTAs (90%)	3,582,000.00	1,980,000.00
Amount available for discretionary and transition funds (10%)	398,000.00	220,000.00

**OPTION 1 (FEDERAL)
(10% Discretionary Funds)**

PROVIDERS	RIDERSHIP	VEH. REV. MILE	\$ PER. R. MILE.	Local Supp.	Total
	\$1,432,800	\$716,400	\$1,074,600	\$358,200	\$3,582,000
Aiken COA	\$8,597	\$14,328	\$34,387	\$3,940	\$61,252
Berk.-Char.-Dorch.RTMA	\$31,522	\$50,148	\$87,043	\$716	\$201,929
Clemson Area Trans.	\$262,202	\$12,179	\$56,954	\$5,731	\$337,066
Coastal Rapid PTA	\$110,326	\$32,954	\$89,192	\$8,239	\$273,210
Edgefield Seniors	\$10,030	\$5,731	\$74,147	\$2,866	\$92,774
Fairfield County	\$7,164	\$3,582	\$63,401	\$2,507	\$76,655
Generations Unlimited	\$2,866	\$9,313	\$88,117	\$7,880	\$108,176
Greenville RTA	\$80,237	\$10,030	\$47,282	\$0	\$137,549
Lowcountry RTA	\$126,086	\$55,879	\$91,341	\$132,534	\$405,841
Pee Dee RTA	\$416,945	\$369,662	\$95,639	\$18,626	\$900,873
Santee Wateree RTA	\$223,517	\$87,401	\$91,341	\$36,895	\$439,153
Santee Wateree @ LR	\$14,328	\$8,597	\$92,416	\$3,582	\$118,922
Spartanburg County	\$48,715	\$25,790	\$69,849	\$63,043	\$207,398
Williamsburg County	\$90,266	\$30,805	\$93,490	\$71,640	\$286,202
Total	\$1,432,800	\$716,400	\$1,074,600	\$358,200	\$3,647,000
Total Federal Rural Transit Funds for FY 1999/2000 \$3,980,000 less 10% (\$398,000) Discretionary Total Amount to be distributed \$3,781,000					

Note: Total Federal funding for Berk.-Char.-Dorch. RTMA and Coastal Rapid PTA includes \$32,500 in transition funds.

OPTION 1 (STATE)
(10% Discretionary Funds)

PROVIDERS	RIDERSHIP	VEH. REV. MILE	\$ PER. R. MILE.	Local Supp.	Total
	\$792,000	\$396,000	\$594,000	\$198,000	\$1,980,000
Aiken COA	\$4,752	\$7,920	\$19,008	\$2,178	\$33,858
Berk.-Char.-Dorch.RTMA	\$17,424	\$27,720	\$48,114	\$396	\$111,154
Clemson Area Trans.	\$144,936	\$6,732	\$31,482	\$3,168	\$186,318
Coastal Rapid PTA	\$60,984	\$18,216	\$49,302	\$4,554	\$150,556
Edgefield Seniors	\$5,544	\$3,168	\$40,986	\$1,584	\$51,282
Fairfield County	\$3,960	\$1,980	\$35,046	\$1,386	\$42,372
Generations Unlimited	\$1,584	\$5,148	\$48,708	\$4,356	\$59,796
Greenville RTA	\$44,352	\$5,544	\$26,136	\$0	\$76,032
Lowcountry RTA	\$69,696	\$30,888	\$50,490	\$73,260	\$224,334
Pee Dee RTA	\$230,472	\$204,336	\$52,866	\$10,296	\$497,970
Santee Wateree RTA	\$123,552	\$48,312	\$50,490	\$20,394	\$242,748
Santee Wateree @ LR	\$7,920	\$4,752	\$51,084	\$1,980	\$65,736
Spartanburg County	\$26,928	\$14,256	\$38,610	\$34,848	\$114,642
Williamsburg County	\$49,896	\$17,028	\$51,678	\$39,600	\$158,202
Total	\$792,000	\$396,000	\$594,000	\$198,000	\$2,015,000
Total State Rural Transit Funds for FY 1999/2000 \$2,200,000 less 10% (\$220,000) Discretionary Total Amount to be distributed \$2,090,000					

Note: Total State funding for Berk.-Char.-Dorch. RTMA and Coastal Rapid PTA includes \$17,500 in transition funds.

SUMMARY OF FUNDING FORMULA ALLOCATIONS

COG/Providers	FY 98-99	FY 99-00	Option 1	Option 2 (Yr. 1) (80%-20%)*	Option 2 (Yr. 5) (50%-50%)**	Option 3 (100% COG)	
Appalachian					\$304,056.00	\$760,140.00	\$1,520,280.00
Clemson Area Trans	\$275,879.00	\$411,246.00	\$523,384.20	\$465,230.60	\$290,769.00		
Greenville RTA	\$201,424.00	\$260,457.00	\$213,580.80	\$189,848.80	\$118,656.00		
Spartanburg County	\$391,438.00	\$515,394.00	\$322,039.80	\$286,257.00	\$178,911.00		
Total			\$1,059,004.80	\$1,245,392.40	\$1,348,476.00	\$1,520,280.00	
Berk.-Char.-Dorch					\$71,688.00	\$179,220.00	\$358,440.00
BCD RTMA	\$419,314.00	\$557,017.00	\$313,082.60	\$233,852.20	\$146,157.00		
Total			\$313,082.60	\$305,540.20	\$325,377.00	\$358,440.00	
Catawba					\$119,892.00	\$299,730.00	\$599,460.00
Total			\$0.00	\$119,892.00	\$299,730.00	\$599,460.00	
Pee Dee					\$158,208.00	\$395,520.00	\$791,040.00
Pee Dee RTA	\$1,026,896.00	\$1,384,960.00	\$1,398,843.00	\$1,243,416.80	\$777,135.00		
Total			\$1,398,843.00	\$1,401,624.80	\$1,172,655.00	\$791,040.00	
Central Midlands					\$113,712.00	\$284,280.00	\$568,560.00
Fairfield County	\$147,642.00	\$189,367.00	\$119,026.80	\$105,801.80	\$66,126.00		
Santee Wateree @ LR	\$120,034.00	\$158,570.00	\$184,658.40	\$164,141.20	\$102,588.00		
Total			\$303,685.20	\$383,655.00	\$452,994.00	\$568,560.00	
Santee Lynches					\$88,520.00	\$216,300.00	\$432,600.00
Santee Wateree RTA	\$584,352.00	\$774,648.00	\$681,901.20	\$606,135.00	\$378,834.00		
Total			\$681,901.20	\$694,655.00	\$595,134.00	\$432,600.00	
Low Country					\$97,644.00	\$244,110.00	\$488,220.00
Lowcountry RTA	\$411,431.00	\$558,973.00	\$630,174.60	\$560,155.00	\$350,097.00		
Total			\$630,174.60	\$657,799.00	\$594,207.00	\$488,220.00	

SUMMARY OF FUNDING FORMULA ALLOCATIONS

Lower Savannah				\$123,600.00	\$309,000.00	\$618,000.00
Aiken COA	\$72,160.00	\$99,262.00	\$95,110.20	\$84,542.40	\$52,839.00	
Edgefield Seniors	\$38,448.00	\$52,674.00	\$144,055.80	\$128,048.80	\$80,031.00	
Generations Unlimited	\$69,748.00	\$95,228.00	\$167,972.40	\$149,308.40	\$93,318.00	
Total			\$407,138.40	\$485,499.60	\$535,188.00	\$618,000.00
Waccamaw				\$106,296.00	\$265,740.00	\$531,480.00
Coastal Rapid PTA	\$488,508.00	\$639,682.00	\$423,766.40	\$332,236.60	\$207,648.00	
Williamsburg County	\$362,986.00	\$479,407.00	\$444,403.80	\$395,025.40	\$246,891.00	
Total			\$868,170.20	\$833,558.00	\$720,279.00	\$531,480.00
Upper Savannah				\$54,384.00	\$135,960.00	\$271,920.00
Total			\$0.00	\$54,384.00	\$135,960.00	\$271,920.00

* 20% Discretionary Funds distributed to COG's based on rural population

** 50% Discretionary Funds distributed to COG's based on rural population

\$5,662,000.00	\$4,944,000.00	\$3,090,000.00
----------------	----------------	----------------

ALTERNATE A - INCLUDES ADDITIONAL FUNDING FROM THE GENERAL FUND IN THE AMOUNT OF \$100 MILLION

SC DEPARTMENT OF TRANSPORTATION
 APPROPRIATIONS BUDGET SUMMARY
 FY 2000-2001

	1998-99 Appropriations Budget	1999-2000 Appropriations Budget	2000-2001 Appropriations Budget	% increase over FY99-00
RECEIPTS				
STATE REVENUES				
MOTOR FUEL TAXES	\$ 342,460,290	\$ 360,515,454	\$ 370,007,184	2.6%
INTEREST INCOME	4,000,000	7,500,000	8,000,000	6.7%
TOLL REVENUES	4,600,000	5,500,000	5,412,704	-1.6%
MISCELLANEOUS	11,602,500	29,671,000	26,604,999	-10.3%
CASH BROUGHT FORWARD	52,560,703	36,569,684	(778,328)	
GENERAL FUND APPROPRIATION	585,976	578,976	578,976	0.0%
GENERAL FUND REQUEST	-	-	100,000,000	
TOTAL STATE REVENUES	\$ 415,809,469	\$ 440,335,114	\$ 509,825,535	15.8%
REVENUE TRANSFERS OUT				
TRANSFER TO CNTY TRANS FUND	\$ 9,500,000	\$ 9,500,000	\$ 9,500,000	0.0%
TRANSFER TO GENERAL FUND	5,474,269	5,474,269	5,474,269	0.0%
DEBT SERVICE & DEBT EXPENSE	10,285,273	11,378,379	22,411,008	97.0%
TOTAL TRANSFERS	\$ 25,259,542	\$ 26,352,648	\$ 37,385,277	41.9%
NET STATE REVENUES	\$ 390,549,927	\$ 413,982,466	\$ 472,440,259	14.1%
OTHER REVENUES				
FEDERAL AID - CONSTRUCTION	\$ 304,150,000	\$ 310,000,000	\$ 449,600,000	45.0%
FEDERAL AID - MASS TRANSIT	5,380,000	8,000,000	8,000,000	0.0%
CTC PROGRAM REVENUES	65,800,000	68,000,000	74,083,998	8.9%
SUBTOTAL	\$ 375,330,000	\$ 386,000,000	\$ 531,683,998	37.7%
TOTAL REVENUES	\$ 765,879,927	\$ 799,982,466	\$ 1,004,124,257	25.5%
EXPENDITURES				
EXECUTIVE ADMIN AND SUPPORT	\$ 16,280,526	18,539,171	19,564,346	5.5%
FINANCE ADMINISTRATION	3,705,851	3,427,532	3,608,007	5.3%
OTHER SUPPORT OPERATIONS	6,884,563	15,056,677	15,809,511	5.0%
LAND & BUILDINGS	8,000,000	8,000,000	11,000,000	37.5%
ENGINEERING	30,628,327	30,087,343	35,667,436	18.5%
TOTAL ADMIN, SUPPORT, OTHER	\$ 65,499,267	75,110,723	85,649,300	14.0%
DOT PROGRAMS:				
MASS TRANSIT - STATE FUNDS	\$ 6,089,937	\$ 5,878,475	\$ 6,200,000	5.5%
MASS TRANSIT - FEDERAL FUNDS	5,380,000	8,000,000	8,000,000	0.0%
TOTAL MASS TRANSIT	11,469,937	13,878,475	14,200,000	2.3%
HIGHWAY MAINTENANCE	218,102,890	221,547,907	267,945,598	20.9%
RURAL MATCH PROGRAM	-	10,000,000	10,000,000	0.0%
HIGHWAY CONSTRUCTION-HWY FUND	98,493,833	99,200,000	100,400,000	1.2%
HIGHWAY CONSTRUCTION-FEDERAL FUNDS	304,150,000	310,000,000	449,600,000	45.0%
TOTAL HIGHWAY CONSTRUCTION	402,643,833	409,200,000	550,000,000	34.4%
TOLL OPERATIONS	2,364,000	2,245,361	2,245,361	0.0%
TOTAL DOT PROGRAMS	\$ 634,580,660	\$ 656,871,743	\$ 844,390,959	28.5%
TOTAL HIGHWAY FUND APPROPRIATIONS	\$ 700,079,927	\$ 731,982,466	\$ 930,040,259	27.1%
TOTAL CTC FUND APPROPRIATIONS	\$ 65,800,000	\$ 68,000,000	\$ 74,083,998	8.9%
TOTAL DOT APPROPRIATIONS BUDGET	\$ 765,879,927	\$ 799,982,466	\$ 1,004,124,257	25.5%

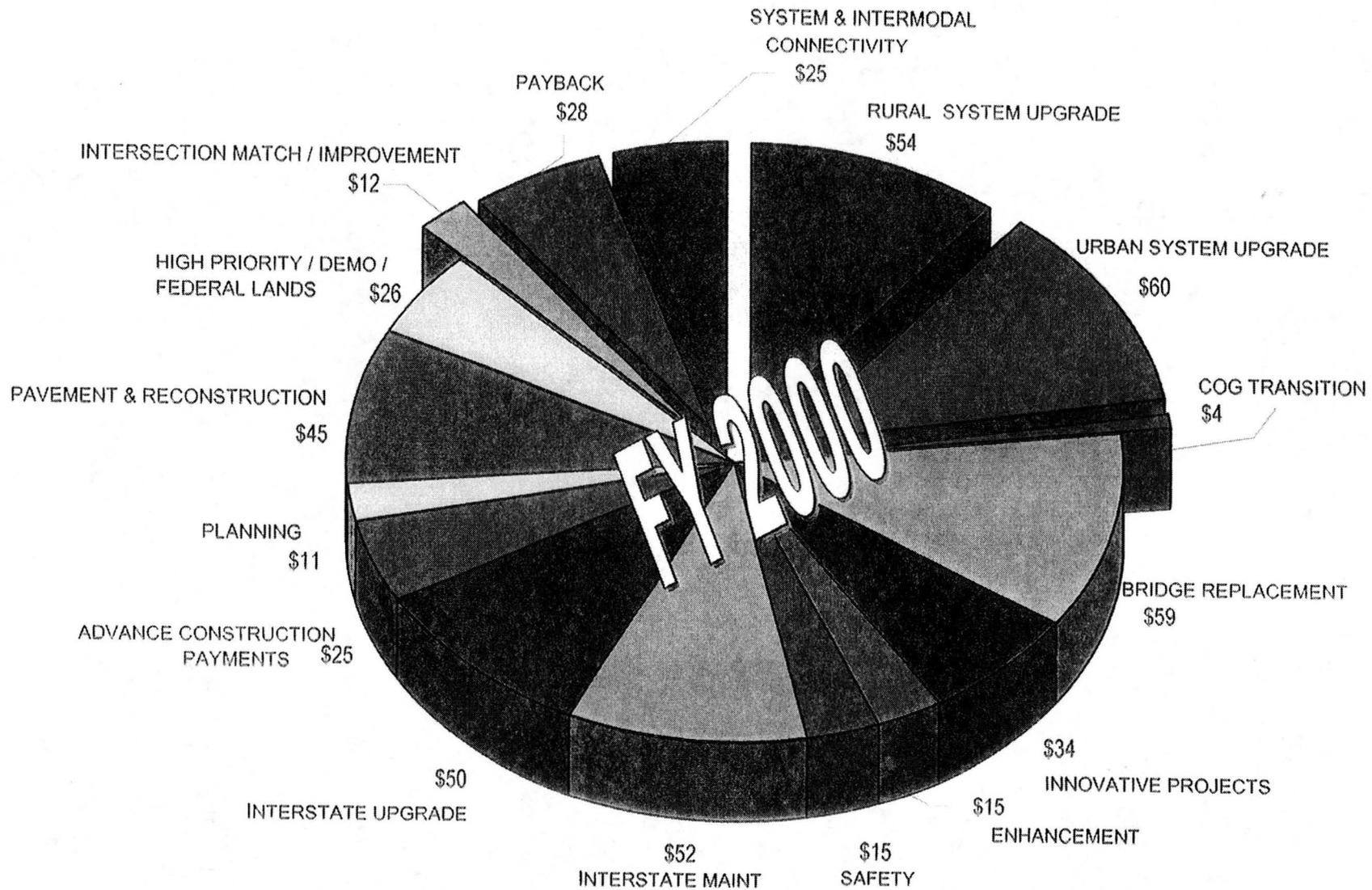
ALTERNATE B
UTILIZES \$53 MILLION OF CASH BALANCE, LEAVING REMAINDER OF \$39 MILLION

SC DEPARTMENT OF TRANSPORTATION
APPROPRIATIONS BUDGET SUMMARY
FY 2000-2001

	1998-99 Appropriations Budget	1999-2000 Appropriations Budget	2000-2001 Appropriations Budget	% increase over FY99-00
<u>RECEIPTS</u>				
STATE REVENUES				
MOTOR FUEL TAXES	\$ 342,460,290	\$ 360,515,454	\$ 370,007,184	2.6%
INTEREST INCOME	4,000,000	7,500,000	8,000,000	6.7%
TOLL REVENUES	4,600,000	5,500,000	5,412,704	-1.6%
MISCELLANEOUS	11,602,500	29,671,000	26,604,999	-10.3%
CASH BROUGHT FORWARD	52,560,703	36,569,684	53,187,154	45.4%
GENERAL FUND APPROPRIATION	585,976	578,976	578,976	0.0%
TOTAL STATE REVENUES	\$ 415,809,469	\$ 440,335,114	\$ 463,791,017	5.3%
REVENUE TRANSFERS OUT				
TRANSFER TO CNTY TRANS FUND	\$ 9,500,000	\$ 9,500,000	\$ 9,500,000	0.0%
TRANSFER TO GENERAL FUND	5,474,269	5,474,269	5,474,269	0.0%
DEBT SERVICE & DEBT EXPENSE	10,285,273	11,378,379	22,411,008	97.0%
TOTAL TRANSFERS	\$ 25,259,542	\$ 26,352,648	\$ 37,385,277	41.9%
NET STATE REVENUES	\$ 390,549,927	\$ 413,982,466	\$ 426,405,741	3.0%
OTHER REVENUES				
FEDERAL AID - CONSTRUCTION	\$ 304,150,000	\$ 310,000,000	\$ 449,600,000	45.0%
FEDERAL AID - MASS TRANSIT	5,380,000	8,000,000	8,000,000	0.0%
CTC PROGRAM REVENUES	65,800,000	68,000,000	74,083,998	8.9%
SUBTOTAL	\$ 375,330,000	\$ 386,000,000	\$ 531,683,998	37.7%
TOTAL REVENUES	\$ 765,879,927	\$ 799,982,466	\$ 958,089,739	19.8%
<u>EXPENDITURES</u>				
EXECUTIVE ADMIN AND SUPPORT	\$ 16,280,526	18,539,171	19,437,533	4.8%
FINANCE ADMINISTRATION	3,705,851	3,427,532	2,978,239	-13.1%
OTHER SUPPORT OPERATIONS	6,884,563	15,056,677	15,508,377	3.0%
LAND & BUILDINGS	8,000,000	8,000,000	11,000,000	37.5%
ENGINEERING	30,628,327	30,087,343	34,081,103	13.3%
TOTAL ADMIN, SUPPORT, OTHER	\$ 65,499,267	75,110,723	83,005,252	10.5%
DOT PROGRAMS:				
MASS TRANSIT - STATE FUNDS	\$ 6,089,937	5,878,475	6,200,000	5.5%
MASS TRANSIT - FEDERAL FUNDS	5,380,000	8,000,000	8,000,000	0.0%
TOTAL MASS TRANSIT	11,469,937	13,878,475	14,200,000	2.3%
HIGHWAY MAINTENANCE	218,102,890	221,547,907	224,555,128	1.4%
RURAL MATCH PROGRAM	-	10,000,000	10,000,000	0.0%
HIGHWAY CONSTRUCTION - STATE FUNDS	98,493,833	99,200,000	100,400,000	1.2%
HIGHWAY CONSTRUCTION - FEDERAL FUNDS	304,150,000	310,000,000	449,600,000	45.0%
TOTAL HIGHWAY CONSTRUCTION	402,643,833	409,200,000	550,000,000	34.4%
TOLL OPERATIONS	2,364,000	2,245,361	2,245,361	0.0%
TOTAL DOT PROGRAMS	\$ 634,580,660	\$ 656,871,743	\$ 801,000,489	21.9%
TOTAL HIGHWAY FUND APPROPRIATIONS	\$ 700,079,927	\$ 731,982,466	\$ 884,005,741	20.8%
TOTAL CTC FUND APPROPRIATIONS	\$ 65,800,000	\$ 68,000,000	\$ 74,083,998	8.9%
TOTAL DOT APPROPRIATIONS BUDGET	\$ 765,879,927	\$ 799,982,466	\$ 958,089,739	19.8%

FY 2000 Funding Obligation Plan

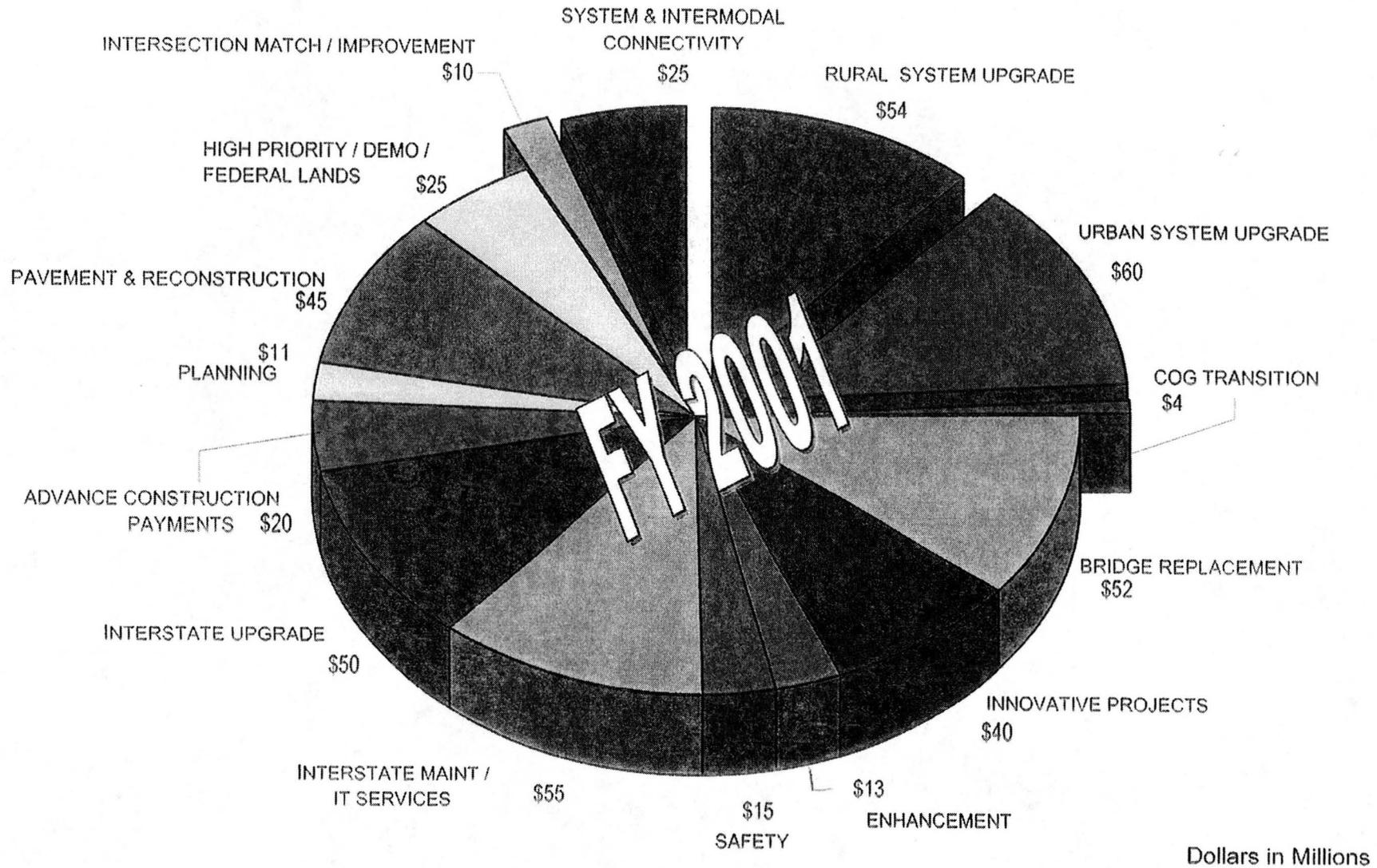
\$515 million



Dollars in Millions

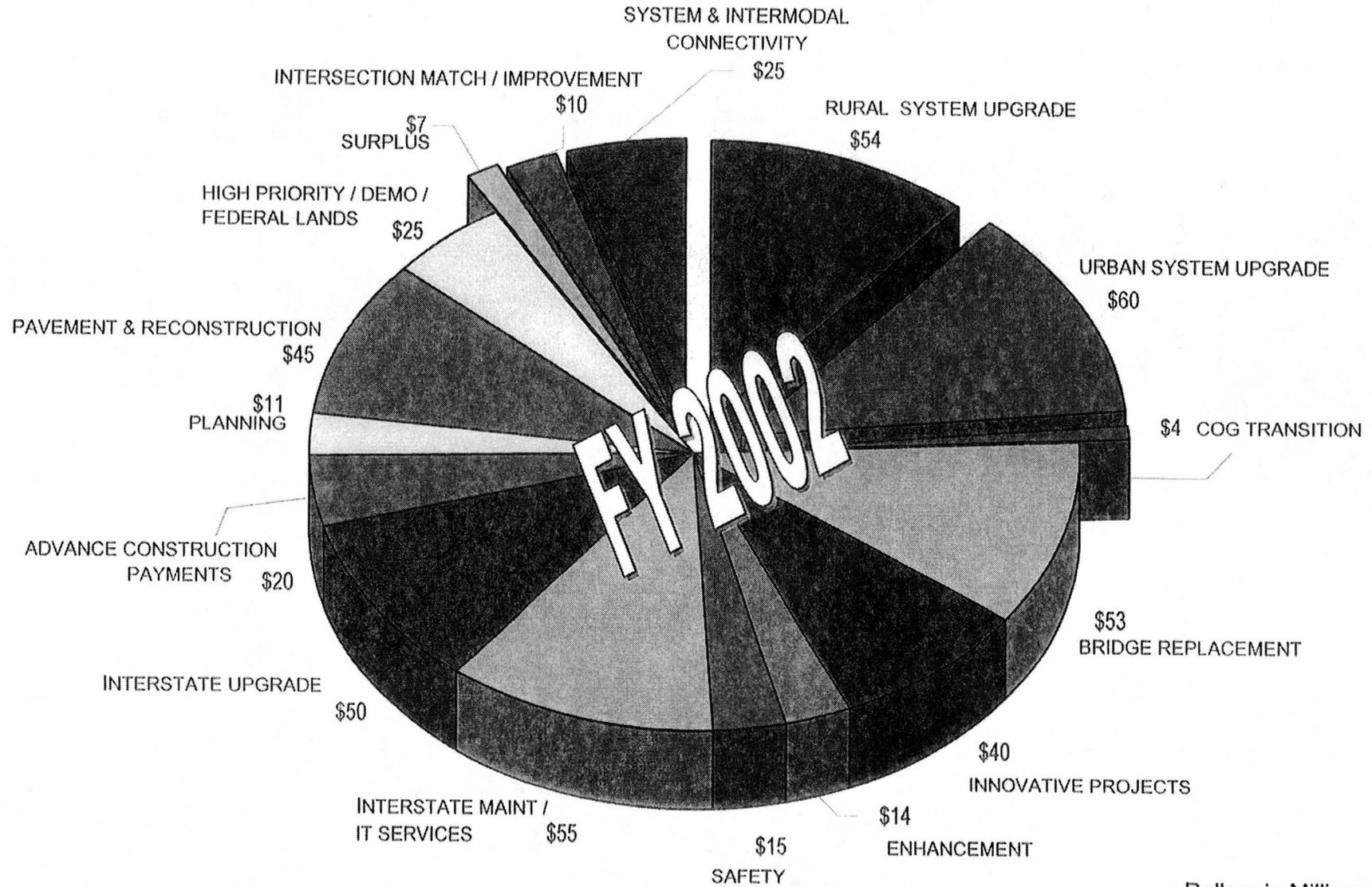
FY 2001 Funding Obligation Plan

\$479 million



FY 2002 Funding Obligation Plan

\$488 million



Dollars in Millions

December 8, 1999

Intersection Improvement Match Program

The following is a general outline for the Intersection Improvement Match Program for the 2000 federal fiscal year. The goal of this program is to encourage the expenditure of "C" Funds for the improvement, safety and operations of intersections by providing additional SCDOT funds in the form of a match. Also, CTCs are encouraged to coordinate with other local governmental entities to leverage other local funds if desired or needed.

1. The SCDOT will allocate a maximum of \$9.6 million in federal funding to authorize the program this fiscal year in order to match "C" Fund contributions or other local funds. The contributions will serve as SCDOT's match for the \$9.6 million of federal funds.
2. The minimum initial allocation by SCDOT for each county will be based on population. Funds not claimed in the initial allocation will be reallocated based on population to those counties that are interested.
3. A minimum of one dollar in "C" Funds or other local funds must be committed to Intersection Improvement Match Program for each dollar contributed by SCDOT.
4. The CTC may choose to contribute at a greater than 1:1 ratio by committing additional funds to Intersection Improvement Match Program.
5. Intersection improvements eligible for this program include the addition of turning lanes, improving the alignment, increased turning radii and throats, and other significant measures that will improve safety and operations. A new signal system alone, with no other improvement is not considered as eligible for the program.
6. The selection of projects will be a cooperative effort between the CTC and SCDOT.
7. Intersection Improvement Match Projects in this program must be eligible for federal aid highway funds and must be developed to federal standards.
8. The SCDOT will administer the "C" Fund Intersection Improvement Match Program including bidding, contract award and administration.

COUNTY DISTRIBUTION OF FUNDS
BY POPULATION

COUNTY	1990 POPULATION	PERCENT OF OF POP	SHARE OF \$ 9,600,000	SHARE OF \$ 19,200,000	SCENARIO 1 (\$25k + Dist of Remainder)					SCENARIO 2 (\$50 k + Dist of Remainder)				
					\$25 k Dist	SHARE OF \$ 8,450,000	County Share	SCDOT Share	GRAND TOTAL	\$50 K Dist	SHARE OF \$ 7,300,000	County Share	SCDOT Share	GRAND TOTAL
ABBEVILLE	23,862	0.6844%	\$ 65,699.66	\$ 131,399.32	\$ 25,000	\$ 57,829.39	82,829.39	82,829.39	165,658.78	\$ 50,000	\$ 49,959.12	99,959.12	99,959.12	199,918.23
AIKEN	120,940	3.4686%	\$ 332,986.21	\$ 665,972.41	\$ 25,000	\$ 293,097.23	318,097.23	318,097.23	636,194.47	\$ 50,000	\$ 253,208.26	303,208.26	303,208.26	606,416.52
ALLENDALE	11,722	0.3362%	\$ 32,274.39	\$ 64,548.77	\$ 25,000	\$ 28,408.18	53,408.18	53,408.18	106,816.37	\$ 50,000	\$ 24,541.98	74,541.98	74,541.98	149,083.96
ANDERSON	145,196	4.1643%	\$ 399,770.67	\$ 799,541.34	\$ 25,000	\$ 351,881.48	376,881.48	376,881.48	753,762.95	\$ 50,000	\$ 303,992.28	353,992.28	353,992.28	707,984.56
BAMBERG	16,902	0.4848%	\$ 46,536.57	\$ 93,073.14	\$ 25,000	\$ 40,961.88	65,961.88	65,961.88	131,923.75	\$ 50,000	\$ 35,387.18	85,387.18	85,387.18	170,774.37
BARNWELL	20,293	0.5820%	\$ 55,873.07	\$ 111,746.14	\$ 25,000	\$ 49,179.94	74,179.94	74,179.94	148,359.88	\$ 50,000	\$ 42,486.81	92,486.81	92,486.81	184,973.63
BEAUFORT	86,425	2.4787%	\$ 237,955.46	\$ 475,910.91	\$ 25,000	\$ 209,450.37	234,450.37	234,450.37	468,900.75	\$ 50,000	\$ 180,945.29	230,945.29	230,945.29	461,890.59
BERKELEY	128,776	3.6933%	\$ 354,561.20	\$ 709,122.40	\$ 25,000	\$ 312,087.72	337,087.72	337,087.72	674,175.45	\$ 50,000	\$ 269,614.25	319,614.25	319,614.25	639,228.49
CALHOUN	12,753	0.3658%	\$ 35,113.06	\$ 70,226.11	\$ 25,000	\$ 30,906.81	55,906.81	55,906.81	111,813.61	\$ 50,000	\$ 26,700.55	76,700.55	76,700.55	153,401.11
CHARLESTON	295,039	8.4618%	\$ 812,336.01	\$ 1,624,672.02	\$ 25,000	\$ 715,024.92	740,024.92	740,024.92	1,480,049.85	\$ 50,000	\$ 617,713.84	667,713.84	667,713.84	1,335,427.68
CHEROKEE	44,506	1.2764%	\$ 122,539.14	\$ 245,078.29	\$ 25,000	\$ 107,859.98	132,859.98	132,859.98	265,719.95	\$ 50,000	\$ 93,180.81	143,180.81	143,180.81	286,361.61
CHESTER	32,170	0.9226%	\$ 88,574.22	\$ 177,148.44	\$ 25,000	\$ 77,963.77	102,963.77	102,963.77	205,927.53	\$ 50,000	\$ 67,353.31	117,353.31	117,353.31	234,706.63
CHESTERFIELD	38,577	1.1064%	\$ 106,214.72	\$ 212,429.45	\$ 25,000	\$ 93,491.09	118,491.09	118,491.09	236,982.17	\$ 50,000	\$ 80,767.45	130,767.45	130,767.45	261,534.89
CLARENDON	28,450	0.8160%	\$ 78,331.88	\$ 156,663.76	\$ 25,000	\$ 68,948.37	93,948.37	93,948.37	187,896.75	\$ 50,000	\$ 59,564.87	109,564.87	109,564.87	219,129.73
COLLETON	34,377	0.9859%	\$ 94,650.79	\$ 189,301.58	\$ 25,000	\$ 83,312.42	108,312.42	108,312.42	216,624.83	\$ 50,000	\$ 71,974.04	121,974.04	121,974.04	243,948.08
DARLINGTON	61,851	1.7739%	\$ 170,295.43	\$ 340,590.87	\$ 25,000	\$ 149,895.46	174,895.46	174,895.46	349,790.92	\$ 50,000	\$ 129,495.49	179,495.49	179,495.49	358,990.97
DILLON	29,114	0.8350%	\$ 80,160.08	\$ 160,320.16	\$ 25,000	\$ 70,557.57	95,557.57	95,557.57	191,115.15	\$ 50,000	\$ 60,955.06	110,955.06	110,955.06	221,910.13
DORCHESTER	83,060	2.3822%	\$ 228,690.54	\$ 457,381.08	\$ 25,000	\$ 201,295.32	226,295.32	226,295.32	452,590.64	\$ 50,000	\$ 173,900.10	223,900.10	223,900.10	447,800.20
EDGEFIELD	18,375	0.5270%	\$ 50,592.21	\$ 101,184.41	\$ 25,000	\$ 44,531.68	69,531.68	69,531.68	139,063.36	\$ 50,000	\$ 38,471.16	88,471.16	88,471.16	176,942.31
FAIRFIELD	22,295	0.6394%	\$ 61,385.21	\$ 122,770.42	\$ 25,000	\$ 54,031.77	79,031.77	79,031.77	158,063.55	\$ 50,000	\$ 46,678.34	96,678.34	96,678.34	193,356.88
FLORENCE	114,344	3.2794%	\$ 314,825.32	\$ 629,650.65	\$ 25,000	\$ 277,111.87	302,111.87	302,111.87	604,223.75	\$ 50,000	\$ 239,398.42	289,398.42	289,398.42	578,796.85
GEORGETOWN	46,302	1.3280%	\$ 127,484.10	\$ 254,968.20	\$ 25,000	\$ 112,212.57	137,212.57	137,212.57	274,425.14	\$ 50,000	\$ 96,941.04	146,941.04	146,941.04	293,882.07
GREENVILLE	320,167	9.1825%	\$ 881,521.37	\$ 1,763,042.74	\$ 25,000	\$ 775,922.45	800,922.45	800,922.45	1,601,844.91	\$ 50,000	\$ 670,323.54	720,323.54	720,323.54	1,440,647.08
GREENWOOD	59,567	1.7084%	\$ 164,006.86	\$ 328,013.71	\$ 25,000	\$ 144,360.20	169,360.20	169,360.20	338,720.40	\$ 50,000	\$ 124,713.55	174,713.55	174,713.55	349,427.09
HAMPTON	18,191	0.5217%	\$ 50,085.60	\$ 100,171.19	\$ 25,000	\$ 44,085.76	69,085.76	69,085.76	138,171.52	\$ 50,000	\$ 38,085.92	88,085.92	88,085.92	176,171.84
HORRY	144,053	4.1315%	\$ 396,623.63	\$ 793,247.26	\$ 25,000	\$ 349,111.42	374,111.42	374,111.42	748,222.85	\$ 50,000	\$ 301,599.22	351,599.22	351,599.22	703,198.44
JASPER	15,487	0.4442%	\$ 42,640.63	\$ 85,281.25	\$ 25,000	\$ 37,532.63	62,532.63	62,532.63	125,065.27	\$ 50,000	\$ 32,424.64	82,424.64	82,424.64	164,849.29
KERSHAW	43,599	1.2504%	\$ 120,041.88	\$ 240,083.77	\$ 25,000	\$ 105,661.87	130,661.87	130,661.87	261,323.73	\$ 50,000	\$ 91,281.85	141,281.85	141,281.85	282,563.70
LANCASTER	54,516	1.5635%	\$ 150,099.85	\$ 300,199.70	\$ 25,000	\$ 132,119.14	157,119.14	157,119.14	314,238.28	\$ 50,000	\$ 114,138.43	164,138.43	164,138.43	328,276.86
LAURENS	58,092	1.6661%	\$ 159,945.71	\$ 319,891.43	\$ 25,000	\$ 140,785.55	165,785.55	165,785.55	331,571.10	\$ 50,000	\$ 121,625.39	171,625.39	171,625.39	343,250.77
LEE	18,437	0.5288%	\$ 50,762.91	\$ 101,525.83	\$ 25,000	\$ 44,681.94	69,681.94	69,681.94	139,363.88	\$ 50,000	\$ 38,600.96	88,600.96	88,600.96	177,201.93
LEXINGTON	167,611	4.8071%	\$ 461,486.28	\$ 922,972.56	\$ 25,000	\$ 406,204.07	431,204.07	431,204.07	862,408.14	\$ 50,000	\$ 350,921.86	400,921.86	400,921.86	801,843.72
LINCOLN	33,899	0.9722%	\$ 93,334.71	\$ 186,669.41	\$ 25,000	\$ 82,153.99	107,153.99	107,153.99	214,307.97	\$ 50,000	\$ 70,973.27	120,973.27	120,973.27	241,946.53
MARLBORO	29,361	0.8421%	\$ 80,840.15	\$ 161,680.30	\$ 25,000	\$ 71,156.18	96,156.18	96,156.18	192,312.35	\$ 50,000	\$ 61,472.20	111,472.20	111,472.20	222,944.40
MCCORMICK	8,868	0.2543%	\$ 24,416.42	\$ 48,832.84	\$ 25,000	\$ 21,491.54	46,491.54	46,491.54	92,983.07	\$ 50,000	\$ 18,566.65	68,566.65	68,566.65	137,133.30
NEWBERRY	33,172	0.9514%	\$ 91,333.04	\$ 182,666.09	\$ 25,000	\$ 80,392.11	105,392.11	105,392.11	210,784.21	\$ 50,000	\$ 69,451.17	119,451.17	119,451.17	238,902.34
OCONEE	57,494	1.6490%	\$ 158,299.23	\$ 316,598.46	\$ 25,000	\$ 139,336.30	164,336.30	164,336.30	328,672.60	\$ 50,000	\$ 120,373.37	170,373.37	170,373.37	340,746.75
ORANGEBURG	84,803	2.4322%	\$ 233,489.57	\$ 466,979.15	\$ 25,000	\$ 205,519.47	230,519.47	230,519.47	461,038.94	\$ 50,000	\$ 177,549.36	227,549.36	227,549.36	455,098.73
PICKENS	93,894	2.6929%	\$ 258,519.98	\$ 517,039.97	\$ 25,000	\$ 227,551.44	252,551.44	252,551.44	505,102.89	\$ 50,000	\$ 196,582.90	246,582.90	246,582.90	493,165.81
RICHLAND	285,720	8.1946%	\$ 786,677.84	\$ 1,573,355.69	\$ 25,000	\$ 692,440.39	717,440.39	717,440.39	1,434,880.79	\$ 50,000	\$ 598,202.94	648,202.94	648,202.94	1,296,405.89
SALUDA	16,357	0.4691%	\$ 45,036.01	\$ 90,072.03	\$ 25,000	\$ 39,641.07	64,641.07	64,641.07	129,282.15	\$ 50,000	\$ 34,246.13	84,246.13	84,246.13	168,492.27
SPARTANBURG	226,800	6.5047%	\$ 624,452.38	\$ 1,248,904.77	\$ 25,000	\$ 549,648.19	574,648.19	574,648.19	1,149,296.38	\$ 50,000	\$ 474,844.00	524,844.00	524,844.00	1,049,688.00
SUMTER	102,637	2.9437%	\$ 282,592.24	\$ 565,184.47	\$ 25,000	\$ 248,740.04	273,740.04	273,740.04	547,480.08	\$ 50,000	\$ 214,887.85	264,887.85	264,887.85	529,775.69
UNION	30,337	0.8701%	\$ 83,527.39	\$ 167,054.78	\$ 25,000	\$ 73,521.50	98,521.50	98,521.50	197,043.01	\$ 50,000	\$ 63,515.62	113,515.62	113,515.62	227,031.24
WILLIAMSBURG	36,815	1.0559%	\$ 101,363.38	\$ 202,726.76	\$ 25,000	\$ 89,220.89	114,220.89	114,220.89	228,441.78	\$ 50,000	\$ 77,078.40	127,078.40	127,078.40	254,156.81
YORK	131,497	3.7714%	\$ 362,052.98	\$ 724,105.95	\$ 25,000	\$ 318,682.05	343,682.05	343,682.05	687,364.09	\$ 50,000	\$ 275,311.12	325,311.12	325,311.12	650,622.24
TOTALS	3,486,703	100.0000%	\$ 9,600,000.00	\$ 19,200,000.00	\$ 1,150,000	\$ 8,450,000.00	\$ 9,600,000.00	\$ 9,600,000.00	\$ 19,200,000.00	\$ 2,300,000	\$ 7,300,000.00	\$ 9,600,000.00	\$ 9,600,000.00	\$ 19,200,000.00



South Carolina
Department of Transportation
Office of Legal Services

Hart Baker
Chief Counsel
Linda C. McDonald
Deputy Chief Counsel

Assistant Chief Counsel
Natalie J. Moore
Glennith C. Johnson
Barbara M. Wessinger
Deborah Brooks Durden
and Legislative Liaison
Beacham O. Brooker, Jr.

MEMORANDUM

To: Elizabeth S. Mabry, Executive Director
Robert J. Probst, Chief of Staff

From: Deborah Brooks Durden, Assistant Chief Counsel

Date: December 13, 1999

Re: Permanent DBE Regulations



Attached is the Notice of Public Hearing and proposed Regulations which were filed with the *State Register* on Friday, December 10, 1999, to permanently promulgate regulations for our new DBE Program and to set up the process of hearings being held by the Administrative Law Judge Division.

The proposed regulations will be published in the December 24, 1999, issue of the *State Register*. Interested parties may submit written comments or request for hearing by January 24, 2000. If at least 25 people request a hearing, that hearing will be held on February 10, 2000. The rules provide that the hearing would be conducted by the Commission and presided over by the Chairman.

If no hearing is requested (which is normally the case), I will file the final regulations with the *State Register* on February 11, 2000.

Because we limited the changes in the regulations to those required by Federal law, no General Assembly review of the regulations will be required. The regulations will become effective upon their publication in the *State Register* on February 25, 2000.

Please let me know if you have any questions or comments concerning these regulations.

DBD/dla
attachments

cc:
Linda C. McDonald, Deputy Chief Counsel
Val Burroughs, Jr., Director of Minority Affairs

DOCUMENT TRANSMITTAL FORM

This form must be completed and submitted with each Document filed with the Editor of the *State Register* in the Legislative Council

Agency Name SC Department of Transportation	1. Chapter Number 63	2. Date of Filing December 10, 1999
--	-------------------------	--

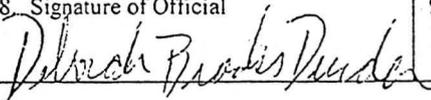
3. Regulation Number 63-700 et seq.	4. Subject of Regulation Disadvantaged Business Enterprise Program
--	---

5. Statutory Authority SC Code §12-28-2930; 49 CFR part 26

6. Type of Filing

- NOTICE OF GENERAL PUBLIC INTEREST
- NOTICE OF DRAFTING
- PROPOSED REGULATION
- EMERGENCY REGULATION
- FINAL REGULATION FOR GENERAL ASSEMBLY REVIEW
- RESUBMISSION OF WITHDRAWN REGULATION FOR GENERAL ASSEMBLY REVIEW
- FINAL REGULATION EXEMPT FROM GENERAL ASSEMBLY REVIEW

5. For Additional Information Contact SCDOT Governmental Liaison	6. Telephone Number 803-737-1347
---	-------------------------------------

7. Typed Name of Official Deborah Brooks Durden	8. Signature of Official 	9. Date 12-10-99
--	--	---------------------

SOUTH CAROLINA STATE REGISTER USE ONLY

10. For publication in SR Volume _____ Issue _____ Document Number _____ Verification: _____	OFFICIAL FILING STAMP
--	-----------------------

DEPARTMENT OF TRANSPORTATION
CHAPTER 63
Statutory Authority 1976 Code Section 12-28-2930 and 49 CFR part 26

Preamble:

The Department of Transportation proposes to amend the regulations concerning its Disadvantaged Business Enterprises Program to conform to the requirements of 49 CFR Part 26 and to provide for hearings on certification decisions to be heard by the Administrative Law Judge Division. The amendments also change references to the "Department of Highways and Public Transportation" to the "Department of Transportation" and references to Section 12-27-1320 of the Code of Laws (1976), as amended (the old codification section of the State DBE law) to Section 12-28-2930 of the Code of Laws (1976), as amended (the new section where the State DBE law was recodified in 1995).

A Notice of Drafting for the proposed amendments was published in the State Register on August 27, 1999.

Section-by section analysis:

- 63-700. Requirements of 49 CFR Part 26 are incorporated in the State regulations by reference.
- 63-701. Revises some definitions to comply with the provisions of 49 CFR Part 26.
- 63-702. Makes clear that the State regulations incorporate standards and procedures for the Federal as well as State DBE Programs. Incorporates provision of Federal regulations that firms shall be certified for at least a three year period, rather than only one year periods, unless they become ineligible for any reason.
- 63-703. Makes clear that the Department certifies firms for participation in both the State and Federal DBE Programs. Incorporates the certification standards of 49 CFR Part 26 and eliminates the restatement of those standards in the current State regulations. Clarifies the definitions of the terms DBE's, MBE's and WBE's.
- 63-704. Clarifies that the procedures in the State regulations also apply to firms applying for certification under the Federal Program. Deletes the detail of what information must be submitted to the Department in the application. Changes the appeal procedure so that appeals are heard by the Administrative Law Judge Division rather than within the Department of Transportation. Specifically states the requirement under 49 CFR Part 26 for the filing of an annual affidavit that there have been no changes in the firms circumstances that would affect eligibility for certification.
- 63-705. Deletes the "Third-Party Challenge Procedure" and substitutes the new procedure for "Ineligibility Complaints" required under 49 CFR Part 26.
- 63-706. Deletes the old procedure for Decertification and substitutes the new procedure required by 49 CFR Part 26 and provides for decertification hearings before the Administrative Law Judge Division.
- 63-700 - 63-718.
References to old Section 12-27-1320 changed to new Section 12-28-2930; References to the Office of Compliance changed to Office of DBE Program Development; References to Department officials revised to reflect correct titles due to internal Department restructuring.

Notice of Public Hearing and Opportunity for Public Comment:

Should a public hearing be requested pursuant to Section 1-23-110(b) of the 1976 Code of Laws, as amended, such a hearing will be conducted at 955 Park Street, Columbia, South Carolina, on February 10, 2000. Written comments or requests for a hearing may be directed to Deborah Brooks Durden, Governmental Liaison, PO Box 191, Columbia, South Carolina 29202. To be considered, comments should be received no later than January 24, 2000.

Preliminary Fiscal Impact Statement:

The South Carolina Department of Transportation estimates that there will be no additional costs incurred by the State or its political subdivisions in complying with the proposed amendments.

Statement of Need and Reasonableness:

DESCRIPTION OF REGULATION 63-700 *et seq.* Disadvantaged Business Enterprises Program.

Purpose of amendment: The Department of Transportation proposes to amend the regulations concerning its Disadvantaged Business Enterprises Program to conform to the requirements of 49 CFR Part 26, and to provide for hearings on certification decisions to be heard by the Administrative Law Judge Division.

Legal Authority: The legal authority for regulation 63-700 *et seq.* is section 12-28-2930, SC Code of Laws and Code of Federal Regulations Part 26.

Plan for Implementation: Because the regulations are promulgated to comply with federal law, no legislative review will be required. The proposed amendments will take effect following any public hearing and publication in the *State Register*.

DETERMINATION OF NEED AND REASONABLENESS OF PROPOSED REGULATIONS BASED ON ALL FACTORS HEREIN AND EXPECTED BENEFITS:

The proposed amendments will benefit the public by deleting confusing and outdated information from the regulations and by conforming the regulation to the federal law.

DETERMINATION OF COSTS AND BENEFITS: There will be no costs imposed by these changes to the State. The Administrative Law Judge Division can absorb the appeals (approximately five per year) into their existing work load.

UNCERTAINTIES OF ESTIMATES: None.

EFFECT ON ENVIRONMENTAL AND PUBLIC HEALTH: None.

DETRIMENTAL EFFECTS ON ENVIRONMENTAL AND PUBLIC HEALTH IF THE REGULATIONS ARE NOT IMPLEMENTED: None.

Text:

DEPARTMENT OF TRANSPORTATION

ARTICLE 8.

DISADVANTAGED BUSINESS ENTERPRISES PROGRAM

63-700. Purpose and Scope.

A. The South Carolina Department of Transportation (hereinafter "Department") promulgates these regulations to carry out the disadvantaged business enterprises program mandated by Section 12-28-2930 of the Code of Laws (1976), as amended (hereinafter "State DBE Program") and to comply with the requirements of 49 CFR Part 26 regarding the disadvantaged business enterprises program required by federal law and regulations (hereinafter "Federal DBE Program").

B. In accordance with Section 12-28-2930(A), the State DBE Program shall be applicable to total state source highway funds expended in a fiscal year on highway, bridge and building construction, and building renovation contracts.

(1) "Total State source highway funds" shall include all revenue generated by State law for use by the South Carolina Department of Transportation (hereinafter the "Department") for the construction and renovation of highways, bridges and buildings.

(2) "Expended in a fiscal year" shall mean become legally obligated to expend within the fiscal year.

(3) "Contracts" shall mean agreements to perform or furnish labor or materials made between the Department and a contractor, after a solicitation for bids.

C. The Department shall ensure that not less than ten percent (as allocated in Section 12-28-2930(A)(1) and (2)) of the funds subject to the State DBE Program are expended through direct contracts with Disadvantaged Business Enterprises (hereinafter "DBEs"). However, this ten percent requirement is subject to the counting provisions of Section 12-28-2930(K) and (M). "Direct contracts" shall mean contracts between the Department and DBEs acting as prime contractors. Direct contracts with DBEs shall be achieved by limiting consideration of bids and proposals on certain projects to those submitted by DBEs only. These shall be known as "set aside" projects or contracts.

D. The Department, as a recipient of federal-aid highway and federal transit funds, is required to implement a Federal DBE Program in accordance with 49 CFR Part 26. Therefore, the Department incorporates herein by reference the provisions of 49 CFR Part 26 and specifically provides that its Federal DBE Program shall be carried out in compliance therewith.

63-701. Definitions.

For the purposes of these regulations, the following terms shall have the meanings set forth below unless a different meaning is clearly required by the context in which the term is used.

A. Certified DBE --A business determined by the Department to be a bona fide Disadvantaged Business Enterprise (DBE) pursuant to these regulations and 49 CFR Part 26 and whose certification status is in good standing with the Department.

B. Certification --A certification by the Department that a firm is a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards set forth in these regulations and 49 CFR Part 26.

C. Controlled --Having the primary power to direct the management and day to day operations of a business in accordance with the requirements for control set forth in 49 CFR Part 26.

D. Department --The South Carolina Department of Transportation.

E. Disadvantaged Business Enterprise (DBE) -- As set forth in 49 CFR Part 26, a for-profit small business concern owned and controlled by one or more individuals who are socially and economically

disadvantaged, which may include businesses owned by ethnic minorities (MBE) or disadvantaged females (WBE).

F. Disadvantaged female --A woman who is (1) a citizen of or a lawfully admitted permanent resident of the United States; and, (2) found by the Department to be socially and economically disadvantaged pursuant to the standards set forth in these regulations and 49 CFR Part 26.

G. Economically disadvantaged --A finding by the Department that a socially disadvantaged individual's ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities, as compared to others in the same or similar line of business and competitive market area who are not socially disadvantaged as set forth in 49 CFR Part 26.

H. Ethnic minorities --Persons who are (1) citizens or lawfully admitted permanent residents of the United States; and, (2) Black Americans, Hispanic Americans, Native Americans, or members of other racial or national groups; and, (3) found to be socially and economically disadvantaged by the Department pursuant to the standards set forth in these regulations and 49 CFR Part 26.

I. Firm --A business concern which is organized in any form other than a joint venture (e.g. sole proprietorship, partnership, corporation) and which is engaged in lawful commercial transactions.

J. Minority Business Enterprise (MBE) --A disadvantaged business enterprise owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities.

K. "Non-bonded project or contract" --A set aside project or contract in which the Department has waived bond and is acting as bonding agent pursuant to subsection (E) of Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended.

L. Office of DBE Program Development --The office within the Department primarily responsible for certification of DBEs and compliance with State and Federal DBE Program requirements.

M. Official Engineer -- The State Highway Engineer of the South Carolina Department of Transportation, acting directly or through his duly authorized representative.

N. Owned --Ownership and control of at least fifty-one percent of a business, or if the business is publicly owned, ownership of at least fifty-one percent of the stock of the business.

O. Small business concerns --Those business entities defined pursuant to Section 3 of the Small Business Act (15 U.S.C. 632) and Title 13 C.F.R Part 121, which regulations are incorporated herein by reference and made a part of these regulations; except that such term shall not include any concern or group of concerns controlled by the same socially and economically disadvantaged individual or individuals which have average annual gross receipts over the preceding three fiscal years in excess of \$16.6 million as adjusted by the Secretary of the United States Department of Transportation for inflation.

P. Set aside --A technique which limits consideration of bids for contracts to those submitted by certified DBEs, which technique is only available under the State DBE Program, not the Federal DBE Program.

Q. State DBE Program --The program mandated by Section 12-28-2930 of the Code of Laws of South Carolina (1976), as amended, and implemented by the Department pursuant to these regulations.

R. Socially disadvantaged --A finding by the Department that an individual has been subjected to prejudice or cultural bias because of the individual's race, color, sex or ethnic origin without regard to the individual's individual qualities or capabilities in accordance with 49 CFR Part 26.

S. Woman-Owned Business Enterprise (WBE) --A disadvantaged business enterprise owned and controlled by one or more disadvantaged females.

63-702. Eligibility for Participation in State DBE Program or Federal DBE Program.

A. To be eligible for the State DBE Program or Federal DBE Program, a firm must be certified by the Department as a bona fide Disadvantaged Business Enterprise (DBE) pursuant to the standards and procedures set forth in Regulations 63-703 and 63-704 and 49 CFR Part 26.

B. After the first year of certification, to continue to be eligible for participation in the State and Federal DBE Programs, the firm must continue to meet the requirements of 49 CFR Part 26 and to comply with the standards and procedures set forth herein. To continue to be eligible for participation in the State DBE Program, a firm must also meet the following requirements:

(1) A firm must complete twenty hours of continuing education annually as required in Regulation 63-715;

(2) A firm must take the following steps toward business development:

(a) Participate in a needs assessment to determine the management, engineering and financial levels of the firm;

(b) Establish a business development plan;

(c) Annually review with the Department the firm's financial statement, income tax returns and updated business development plan;

(d) Submit an application for bonding to a bonding agent at least by the third year of active participation.

(3) No DBE may participate in the State DBE Program after June 30, 1999, or nine years from the date of the DBE's first contract, whichever is later, if that DBE performed at least three million dollars in highway contracts awarded pursuant to the State DBE Program for four consecutive years while certified as a DBE. DBEs performing less than three million dollars in highway contracts for four consecutive years may be eligible for the State DBE Program for additional five year periods, provided all requirements of the program are met.

C. To bid on set-aside contracts as a prime or general contractor, an eligible firm must meet the bidding requirements of prequalification and licensing as set forth in Regulation 63-710.

63-703. Certification Standards.

A. General Standards. The Department will certify a firm as a bona fide DBE under the State or Federal DBE Program if the Department determines that the firm meets the eligibility requirements of 49 CFR Part 26.

B. Minority Business Enterprises. For purposes of the State DBE Program, a DBE owned and controlled by one or more individuals who are socially and economically disadvantaged ethnic minorities is known as a Minority Business Enterprise ("MBE").

C. Women-owned Businesses. For purposes of the State DBE Program, a DBE owned and controlled by one or more disadvantaged females is known as a Women-Owned Business Enterprise ("WBE").

63-704. Procedures for Certification.

A. Application to Department. All firms applying for certification as a DBE under the State or Federal DBE Program must submit a completed application and Certification Affidavit on forms provided by the Department, which shall be signed by the authorized representative of the firm and notarized. The application shall indicate that the applicant is applying for participation in the State DBE Program, the Federal DBE Program, or both.

B. Firms Ineligible to Apply for Certification. The Department will not accept applications from the following applicants:

(1) Applicants who have been determined by the Department to be ineligible for participation in the State or Federal DBE Programs within one year prior to the date of application.

(2) Applicants who have been determined by the U.S. Department of Transportation to be ineligible for participation as a DBE in U.S. Department of Transportation projects, during the period of ineligibility.

C. Information Required with Application. The completed application shall be submitted to the Department's Office of DBE Program Development along with copies of the requested information.

D. Request for Additional Information. After receipt of the application for certification, the Department will examine the application and notify the applicant in writing of any apparent errors or omissions and request any additional information needed.

E. On Site Reviews. The Department will conduct an on site review to verify and evaluate the information provided by the applicant firm. Failure of an applicant to cooperate in facilitating an on-site review shall be grounds for denial of certification. An on-site review may include, but is not limited to, the following:

- (1) Interviews with owners, key officers and managers; and,
- (2) Visits to job sites or facility sites.

F. Review of Application. The Department will review every completed application along with the results of the on-site review and notify the applicant in writing of its decision.

G. Notice of Certification. Certification shall be effective upon receipt by the applicant of the Notice of Certification.

H. Notice of Denial. If the Department intends to deny the application for certification, the Department shall provide, by Certified Mail, Return Receipt Requested, or by personal delivery to the office of the applicant, a Notice of Denial which will contain:

- (1) The specific facts and grounds upon which the denial is based;
- (2) A statement that the applicant has the right to an administrative hearing pursuant to the State Administrative Procedures Act, Section 1-23-310, et seq., Code of Laws of South Carolina (1976), as amended;
- (3) A statement that the denial shall become conclusive and final agency action if no request for hearing is filed with the Department's Office of DBE Program Development within fifteen days of the applicant's receipt of the Notice of Denial.

I. Request for Hearing. All requests for hearing shall be made in writing and shall be filed with the Department's Office of DBE Program Development within fifteen days of receipt of the Notice of Denial and must include:

- (1) The name and address of the party making the request;
- (2) A statement that the party is requesting a hearing before an Administrative Law Judge pursuant to S. C. Code Section 1-23-600;
- (3) A reference to the date of the Notice of Denial of the application.

J. Failure to Request Hearing. If the applicant fails to request a hearing within fifteen days after receipt of the Notice of Denial, the denial shall become the final agency decision. The final agency decision for an application for participation in the Federal DBE Program may be appealed to the U.S. Department of Transportation in accordance with 49 CFR Section 26.89.

K. Hearings. If a hearing is requested, it shall be conducted by an Administrative Law Judge in accordance with S. C. Code Section 1-23-600 under contested case procedures.

L. Recertification. Once a firm has been certified, it shall remain certified for a period of at least three years unless and until its certification is removed through the decertification procedures set forth in 63-706.

M. Changes in Address, Management or Ownership. A certified firm shall notify the Department's Office of DBE Program Development in writing within 30 days of any change of address, management or ownership of the firm.

N. No Change Affidavit. A certified firm must provide the Department, every year on the anniversary date of its certification, an affidavit sworn to by the firm's owners, before a person who is authorized by state law to administer oaths, affirming that there have been no changes in the firm's circumstances which would affect its eligibility for DBE status. The affidavit shall be in a form acceptable to the Department.

63-705. Ineligibility complaints.

A. Any person may file with the Department a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. Complaints must be sent to the Department in care of the Office of DBE Program Development, P. O. Box 191, Columbia, SC 29202. The Department is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified.

B. The identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the Department will so advise the complainant. Complainants are advised that failure to waive the privilege of confidentiality may result in the closure of the investigation.

C. The Department will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The Department may request additional information from the challenged firm or conduct any other investigation that it deems necessary.

D. If the Department determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination, in accordance with Section 63-706 below.

E. If the Department determines that such reasonable cause does not exist, the Department must notify the complainant and the challenged firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

63-706.Procedures for Decertification.

A. Determination of reasonable cause to decertify. If the Department determines, based on notification by the firm of a change in its circumstances or other information that comes to its attention, that there is reasonable cause to believe that a currently certified firm is ineligible, the Department will provide written notice to the firm that it proposes to find the firm ineligible, in accordance with Paragraph B below. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

B. Notice of Proposed Decertification. The written Notice of Proposed Decertification shall contain the following:

1. The specific facts or conduct relied upon to justify a finding that there is reasonable cause to remove the firm's certification;
2. The statutory or regulatory provisions which are alleged to have been violated;
3. A statement that the firm has the right to request a hearing before the State Administrative Law Judge Division pursuant S.C. Code Section 1-23-600 under contested case procedures;
4. A statement that the Department will make a final finding of decertification unless a request for hearing is filed within fifteen (15) days of the receipt of the Notice.

C. Request for Hearing. A firm making a request for hearing must do so in writing and must file such request with the Department's Office of DBE Program Development within fifteen (15) days of receipt of the Notice of Proposed Decertification. The request shall include:

- (1) The name and address of the firm making the request;
- (2) A statement that the firm is requesting a hearing before the State Administrative Law Judge Division;
- (3) A reference to the Notice of Proposed Decertification, the date thereof, and the specific grounds upon which the action is being challenged.

D. Hearings.

(1) Procedures and burden of proof. All hearings requested shall be conducted by the State Administrative Law Judge Division ("ALJ Division") in accordance with the Rules of Procedure for that Division and contested case procedures. In such hearings, the Department bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards. Appeals from the decisions of the Administrative Law Judge shall be in accordance with State law.

(2) Request to Submit Written Information and Arguments Only. A firm may elect to present evidence and arguments to the Administrative Law Judge in writing, without the necessity of a hearing. In such a situation, the firm must file a statement with the Administrative Law Judge assigned to the case that the firm wishes to present written evidence and arguments and to waive its right to a contested case hearing.

E. Effect of Failure to Request a Hearing. If the firm fails, within fifteen (15) days after receipt of the Notice of Proposed Decertification, to file a Request for Hearing, the Department may decertify or remove the eligibility of the firm based upon the grounds set forth in the Notice of Proposed Decertification. A Notice of Decertification shall be sent to the firm pursuant to Paragraph G below.

F. Grounds for Decision. A decision to decertify or remove eligibility may not be made based upon a reinterpretation or changed opinion of information available to the Department at the time of its certification of the firm. The decision to decertify or remove eligibility may be made only on one or more of the following grounds:

- (1) Changes in the firm's circumstances since the certification of the firm that render the firm unable to meet the eligibility standards;
- (2) Information or evidence not available to the Department at the time the firm was certified;
- (3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- (4) A change in the certification standards or requirements since the firm was certified; or
- (5) A documented finding that the Department's determination to certify the firm was factually erroneous.

G. Notice of Decertification.

(1) If heard by ALJ Division. If the case is heard by the Administrative Law Judge Division, and the decision is to decertify or remove the eligibility of the firm, the Department shall send a Notice of Decertification to the firm.

(2) Contents of Notice. The Notice of Decertification shall inform the firm of the consequences of the decision on pending contracts and of the availability of an appeal to the United States Department of Transportation under 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

(3) Copy to Complainant. When the proceedings to remove the eligibility of the firm were initiated pursuant to Section 63-705 above, the Department will also send a copy of the Notice of Decertification to the complainant.

H. Status of firm during proceeding. A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible until there is an issuance of a notice issued as provided for in Paragraph G above.

I. Effects of removal of eligibility. When a firm's eligibility is removed, the effect on existing or pending contracts shall be as provided in 49 CFR Section 26.87.

J. Availability of appeal. When the Department issues a Notice of Decertification pursuant to this section, the firm, where appropriate, may appeal the decision to the United States Department of Transportation pursuant to 49 CFR §26.89 or through State procedures pursuant to Title 1, Chapter 23, Article 3 of the South Carolina Code of Laws, 1976, as amended.

63-707. Guidelines for Selection of Set Aside Projects.

In selecting and designing contracts suitable for set aside projects, the Department will consider a number of factors including, but not limited to, the following:

- A. Availability of certified DBEs within 100 miles of work to be performed;
- B. Capabilities of the available certified DBEs in relation to the type of work required by the contract;
- C. Limitation of estimated value of contract to \$250,000.00 in most cases;
- D. Limitation of the work of a single contract to a maximum of four roads within a reasonable distance of each other;
- E. Equitable geographic distribution of contracts throughout the State, insofar as is possible with available contracts;
- F. Availability of technical assistance for contract;
- G. The requirement of Section ~~12-27-1320~~ 12-28-2930(c) that the Department shall advertise a number of highway construction projects at each regularly scheduled highway letting to be bid exclusively by DBEs.

63-708. Waiver of Bonding.

- A. The Department may waive bonding on set aside contracts with estimated construction costs not exceeding Two Hundred Fifty Thousand and No/100 (\$250,000.00) Dollars.
- B. Bonding requirements that may be waived include the following:
 - (1) On highway construction or bridge construction contracts,
 - (a) Proposal guaranty or bid bond;
 - (b) Performance and indemnity bond required by Section 57-5-1660(a)(1) of the Code of Laws of South Carolina (1976), as amended;
 - (c) Payment bond required by Section 57-5-1660(a)(2) of the Code of Laws of South Carolina (1976), as amended.
 - (2) On building construction or building renovation contracts,
 - (a) Bid security required by Section 11-35-3030 of the Code of Laws of South Carolina (1976), as amended;
 - (b) Performance bond required by Section 11-35-3030(2)(i) of the Code of Laws of South Carolina (1976), as amended;
 - (c) Payment bond required by Section 11-35-3030(2)(ii) of the Code of Laws of South Carolina (1976), as amended.
- C. The Department shall process claims arising on non-bonded set-aside projects pursuant to Regulation 63-717.

63-709. Advertisement and Notice of Set Aside Projects.

- A. All projects designated as set asides will be advertised for at least two weeks in one or more daily newspapers in this State, at least thirty days prior to the date for receiving bids on such projects. The advertisement shall indicate whether the project is a non-bonded or bonded project.

B. The Department will give written notice by mail of set aside contracts to all certified DBEs who are eligible for bidding on the project.

63-710. Requirements for Bidding on Set Aside Projects.

A. All bidders on set aside projects must be eligible for participation in the State DBE Program as provided in Regulation 63-702.

B. Bidders on set aside contracts for highway and bridge construction contracts must be prequalified pursuant to 25 S.C. Code Ann. Regs. 63-300 through 63-308 (1976). Any bidder eligible to participate in the State DBE Program whose prequalification status is not renewed solely because of its lack of net liquid assets may request a review of its prequalified status. A Review Committee shall be appointed by the State Highway Engineer for this purpose. The Department's Executive Assistant for Minority Affairs or a representative from the Office of DBE Program Development will be a member of the Review Committee.

C. Bidders on set aside contracts for building construction or building renovation contracts are subject to the provisions of the State Consolidated Procurement Code, S.C. Code Ann. Section 11-35-10, et seq. (1976), as amended, and all regulations promulgated pursuant thereto. Bidders on building construction and building renovation contracts must have a bidder's and contractor's license from the South Carolina Contractor's Licensing Board, if required by law.

D. All bidders on set aside contracts are subject to the provisions of 25 S.C. Code Ann. Regs. 63-309 and 63-310 (1976) regarding disqualification of bidders for violations of bidding laws or offenses involving business integrity.

E. In the event of any conflict between the above stated statutes and/or regulations and these regulations, these regulations shall control.

F. All bidders are subject to the bidding requirements and conditions as set forth in the Department's Standard Specifications for Highway Construction, specifically Section 102.

63-711. Bid Evaluation.

A. If the lowest responsive bid by a responsible bidder is within ten percent of the Official Engineer's estimate, the Department will award the contract to the bidder making such bid.

B. Preference must be given to an otherwise eligible and responsible South Carolina contractor submitting a responsive bid not exceeding an otherwise eligible out-of-state contractor's low bid by two and one-half percent.

C. If the Department fails to award an advertised set aside contract for reasons unrelated to the total costs of the project, the contract may be readvertised as a set aside contract.

63-712. Negotiation of Low Bid.

A. If the lowest responsive bid by a responsible bidder exceeds the Official Engineer's estimate by more than ten percent, the Department may afford the bidder the opportunity to show just cause why the bid exceeds the ten percent range or may enter into negotiations with the bidder to make reasonable changes in the plans and specifications to bring the bid within ten percent of the Original Engineer's estimate.

B. The Department will not consider bids which exceed the Official Engineer's estimate by more than thirty percent, unless the difference in price is due to some error or miscalculation on the part of the Department.

C. If the Department determines that the bidder should be given the opportunity to show just cause or to enter into negotiations, written notice shall be given to the low bidder within seven days of the closing of bids. The notice shall specify a time and place that the bidder may meet with appropriate Department representatives to discuss the bid. Such meeting shall be held no later than fourteen days after the closing

of bids. If the low bidder fails to appear at the time and place designated in the notice, then the Department may reject the bid. Persons entitled to be present at such meeting shall include the Official Engineer or his designee; the Official Engineer's representative; the Executive Assistant for Minority Affairs; the Director of the Office of DBE Program Development or his designee; the bidder or the bidder's designee; the bidder's representative. The decision as to whether just cause has been shown or whether the plans and specifications can be reasonably changed is within the sole discretion of the Official Engineer and such decision shall be final.

63-713. Letter to Lending Institutions.

When a DBE receives a contract, the Department will furnish a letter, upon request, stating the dollar value and duration of, and other information about the contract, which may be used by the DBE in negotiating lines of credit with lending institutions.

(1) For highway and bridge construction contracts, this letter will be in the form of the Statement of Award.

(2) For building construction and renovation contracts, this letter will be in the form of the Notice to Proceed.

63-714. Technical Assistance to DBEs.

A. Level of Assistance. The Department will make available technical assistance for DBEs in accordance with state law.

B. Supportive and Developmental Services. The Department will provide written and oral instruction on competitive bidding, management techniques and general business operations. These services may be provided through continuing education programs sponsored by the Department, technical and developmental services contractors, and/or direct services.

C. Lead Engineer. The Department will designate a lead engineer to ensure positive communication, provide helpful technical information, encourage quality performance, and assist with on site problems. The Department may designate an engineer in each district to serve as the lead engineer for set aside projects. The lead engineer shall work with the Office of DBE Program Development, the Technical and Developmental Services Contractor and the Department's engineers to provide early technical assistance to DBEs with construction projects in each highway district.

D. Assistance from Established Contractors/Engineers. The Department will utilize the experience of established contractors and/or engineers to provide DBEs professional and technical assistance aimed toward meeting the standards, specifications, timing, quality and other requirements of their set aside contracts. The Department will provide this assistance as follows:

(1) The Department will provide a list of established engineers, architects and/or contractors who are available on a part time basis to work with DBEs on contracts.

(2) A DBE must apply for technical assistance on an application form provided by the Department within thirty days after award of a set aside contract.

(3) The Official Engineer will negotiate with the engineer, architect and/or contractor to provide the specific services requested by the DBE or any other services deemed necessary by the Department based upon the DBE's experience and skills as a contractor.

(4) The Department may provide, through a supplemental agreement to the DBE set aside contract, specific funds for the DBE to hire the engineer, architect and/or contractor. The engineer, architect and/or contractor will be a subcontractor of the DBE and not of the Department.

63-715. Continuing Education Requirements.

A. All DBEs participating in the State DBE Program must be represented by a company officer in at least twenty hours of continuing education each year.

B. For purposes of this section, company officer shall mean any of the following:

- (1) If a corporation, one or more of the elected corporate officers;
- (2) If a partnership, one or more of the partners;
- (3) If a sole proprietorship, the sole proprietor or owner.

C. The Department will determine how many credit hours can be earned by a DBE for attendance at a continuing education activity. Generally, one hour of instructional time will equal one hour of credit, provided that the instruction relates to highway or building construction or business development in these industries.

D. Hours of credit for continuing education must be earned through attendance at an educational program sponsored, co-sponsored or approved by the Department. Successful completion of a course given by a college, university or technical school may also qualify for credit hours, if approved by the Department.

E. The Department will provide for reasonable notice to be given to all certified DBEs regarding prospective continuing education activities which have been approved by the Department or which will be sponsored by the Department. The notice shall also state the number of credit hours approved for each activity. The Department will publish within the first quarter of each calendar year a list of the continuing education opportunities to be provided by the Department in that calendar year.

F. A sponsor wishing to apply for approval of continuing educational activities shall submit to the Department's Office of DBE Program Development:

- (1) An application for status as an approved sponsor on forms provided by the Department;
- (2) Copies of written materials described in the application form;
- (3) Such further information as the Department may require. Sponsor approval must be renewed every five years; provided, however, that sponsor approval may be withdrawn for cause at any time after sixty days notice to the sponsor.

G. Educational events, courses or activities presented by a sponsor which have not been granted Department approval will be considered for approval on an individual basis. An application for approval of a program may be submitted to the Department's Office of DBE Program Development on forms provided by the Department by the sponsor or the DBE who desires credit for attending the program. The Department will consider applications for the retroactive as well as prospective approval of programs.

H. The Department may provide scholarships to certified DBEs who attend construction-related continuing education activities approved by the Department. Scholarships shall be limited to Two Hundred and No/100 (\$200.00) Dollars per firm annually.

I. At the time a certified firm requests recertification, the firm shall submit to the Department's Office of DBE Program Development a report of all continuing education activities that the firm completed in the preceding year. Any firm that fails to fulfill the annual continuing education requirement shall be ineligible for participation in the State DBE Program.

63-716. Special Provisions Applicable to Non-bonded Projects.

A. By submission of a bid on a non-bonded project, the DBE grants permission to the Department to issue joint checks to suppliers, vendors or subcontractors who supply materials, render services or perform work on the contract when joint checks are, in the Department's judgment, necessary or desirable.

B. A bid on a non-bonded project shall include a list of all suppliers, vendors or subcontractors who the DBE proposes to use in performing the contract.

C. A DBE on a non-bonded project shall not permit a subcontractor to perform work on a contract until the subcontractor and the subcontract have been approved by the Department. To obtain such approval after the award of the contract, the Contractor must submit a request for approval and a copy of the

executed subcontract to the Department's Official Engineer. The Department will approve or disapprove such subcontractor within a reasonable amount of time after the receipt of such request.

D. A DBE on a non-bonded project shall not incorporate materials or supplies into the work of a contract until the executed invoice or purchase agreement has been submitted to the Department. The DBE must submit the copy of the invoice or purchase agreement to the Official Engineer, as appropriate.

E. Failure to obtain approval for subcontractors or subcontracts, or failure to submit copies of subcontracts, purchase agreements or invoices, shall constitute, at the Department's option, a default of the contract.

F. Termination of any non-bonded contract for default of the contractor renders the contractor ineligible for any further Department non-bonded contracts for a minimum period of two years from the date of the Notice of Default. The Department may also consider defaulting contractors ineligible to bid on other Department contracts pursuant to the provisions of Section 102.03(e) of the Department's Standard Specifications for Highway Construction and ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.

G. In the event of default, the provisions of Section 108.10 of the Department's Standard Specifications for Highway Construction shall apply, with the Department acting as surety. Any costs or charges incurred by the Department, or for which the Department, acting as such surety, shall become liable as a result of the default, shall be charged against the defaulting DBE contractor. The costs and charges may include, but are not limited to: (1) charges incident to preparing bid proposal and arranging for work to be resumed; and, (2) the excess of the expense of completing the work under the contract deducted from any monies due or which may be due the DBE contractor. The defaulting DBE contractor shall reimburse or indemnify the Department, as surety, for all such costs or charges. The defaulting DBE contractor shall be ineligible to bid as a prime contractor on any Department contracts and shall be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department for such costs or charges.

63-717. Claims Procedure on Non-bonded Contracts.

A. Every person who has furnished labor or material under a Department-approved contract in the prosecution of the work of a non-bonded contract and who has not been paid in full therefor before the expiration of sixty days after either (1) the day on which the last of the labor was done or performed by the claimant, or material was furnished or supplied by the claimant, for which such claim is made; or, (2) the day on which payment was made by the Department to the DBE contractor for the work or materials for which such claim was made, shall have the right to make a claim to the Department, acting as Surety, for the amount, or the balance thereof, unpaid at the time the claim is made; provided, however, that any person having a direct contractual relationship with a sub-contractor but no contractual relationship expressed or implied with the DBE prime contractor shall have the right to make a claim upon giving written notice to the DBE prime contractor within sixty days from the date on which such person did or performed the last of the labor or furnished or supplied the last of the material for which claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom material was furnished or supplied or for whom labor was done or performed. In no event shall any claim be made after the expiration of ninety days from the date of final payment by the Department.

B. No claim shall be considered legitimate unless it is supported by a written agreement or invoice.

C. Within thirty days after receiving a claim, the official engineer shall refer the claim to the Department's Official Engineer, to gather the information necessary for an analysis of the claim. The Official Engineer shall forward the claim along with any additional information to a Claims Committee. The Claims Committee shall be appointed by the State Highway Engineer. The Department's Executive Assistant for Minority Affairs shall serve as an Ex-Officio member of each Claims Committee.

D. The Claims Committee shall give ten days written notice to the claimant and DBE contractor of the time and place for an informal hearing on the claim. At such hearing the claimant and DBE contractor shall have the right to appear and present evidence concerning the validity of the claim. The DBE contractor, or an employee of the DBE contractor having knowledge of the claim, must appear at the hearing if requested by the Claims Committee. Failure of the DBE contractor, or employee of the DBE contractor, to appear when requested may, in the Department's discretion, constitute grounds for immediate termination of the contract.

E. The Claims Committee shall take into account circumstances such as unsettled payments and disputes with the Department or other circumstances that are beyond the DBE's control.

F. The Claims Committee shall make a written recommendation to the State Highway Engineer as to the resolution of the claim within ten days of the hearing. The State Highway Engineer shall consider the recommendation and make the final decision as to the resolution of the claim. The State Highway Engineer will notify the claimant and DBE contractor of the decision within ten days after receipt of the Claims Committee's recommendation.

G. If the Department's decision requires the payment of money to the claimant by the DBE contractor, the Department shall pay such money to the claimant on behalf of the DBE contractor. Payment shall be made to the claimant within twenty-one days of the Department's final decision. Payment shall be made from contract funds or retainage. In the event contract funds or retainage are insufficient to make full payment of claim, the payment amount shall be charged to the same funding source as was used for the project out of which the claim arose.

H. The DBE contractor shall reimburse or indemnify the Department for all amounts paid to a claimant on behalf of the DBE contractor. The DBE contractor shall be ineligible for further Department non-bonded contracts until the DBE contractor has reimbursed the Department or made acceptable arrangements to reimburse the Department. The DBE contractor may also be disqualified from bidding on any and all Department contracts pursuant to the provisions of Section 102.3 of the Department's Standard Specifications for Highway Construction and be ineligible for approval as a DBE subcontractor on any Department contract with a DBE goal.

63-718. Reporting Requirements.

A. The Department shall issue an annual report, thirty days after the close of the fiscal year, listing all contracts awarded under the State DBE Program as specifically set forth in Section 12-28-2930(I).

B. The Department shall record each time there are no certified DBEs available to perform a set aside contract. The unavailability of certified DBEs shall be verified by written documentation.

C. The Department may count toward the yearly set aside goal the following amounts:

(1) The total amount of all set aside contracts where the DBE performs at least thirty percent of the work with its own forces;

(2) Only the portion of the contract performed by the DBE's own forces, when the DBE performs less than thirty percent of the work of a set aside contract;

(3) The total amount of any contract awarded to a certified DBE for technical assistance or other consultant services, if the DBE is South Carolina based and experienced in assisting with the development of minority firms;

(4) The total amount of all non-set aside state-funded contracts awarded to certified DBEs;

(5) Subcontracts entered into between prime contractors and certified DBEs, to the extent such contracts are funded by state source highway funds, if these subcontracts are verified by the Department records.

RECEIVED
JAN 5 8 2000
PLA 119

RECEIVED

JAN 26 2000

PLANNING