

**SANTA BARBARA COUNTY
BOARD AGENDA LETTER**



Clerk of the Board of Supervisors
105 E. Anapamu Street, Suite 407
Santa Barbara, CA 93101
(805) 568-2240

Agenda Number:
Prepared on: 5/16/06
Department Name: Public Works
Department No.: 054
Agenda Date: 6/6/06
Placement: Administrative
Estimate Time:
Continued Item: NO
If Yes, date from:

TO: Board of Supervisors

FROM: Phillip M. Demery, Director
Public Works, 568-3010

STAFF CONTACT: Scott McGolpin, Deputy Director
Public Works, Transportation 568-3064

SUBJECT: Disadvantaged Business Enterprise (DBE) Program for Federal Fiscal Year 2006/07
All Supervisorial Districts

Recommendation(s):

That the Board of Supervisors

- A. Approve and execute the Disadvantaged Business Enterprise Race-Neutral Implementation Agreement (Exhibit 9-A).
- B. Approve the Annual Anticipated DBE Participation Level (AADPL) of 12.6% and the methodology that are presented herein, in accordance with Title 49 of the Code of Federal regulations, Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program (Exhibit 9-B).
- C. Designate and authorize the Public Works director to act on the County's behalf as the DBE Liaison Officer for the Disadvantaged Business Enterprise (DBE) Program, to negotiate and execute all documents pertaining to DBE program to the extent permitted by law.

Alignment with Board Strategic Plan:

The recommendation(s) are primarily aligned with Goal No.1, An Efficient Government Able to Respond Effectively to the Needs of the Community.

Executive Summary and Discussion:

Each year the County of Santa Barbara is required to adopt a Disadvantaged Business Enterprise (DBE) Program for projects utilizing Federal-aid highway funds. This program was implemented by the Federal Highway Administration to ensure non-discrimination in the award and administration of the Department of Transportation (DOT)-assisted contracts.

For several years, Caltrans through the local agencies implemented a DBE Program in accordance with applicable requirements and included race-conscious components in the program. In May 2005 the Ninth Circuit Court of Appeals issued a decision on *Western States Paving, Inc. vs. Washington Department of Transportation et al*, which required the State of Washington to comply with new evidentiary standards necessary to constitutionally support the use of race-conscious DBE goals such as those being used by Caltrans. The decision is binding on the states within its jurisdiction, including California.

Caltrans initiated a public comment period to request submission of evidence and information from the public that would support its current race-conscious DBE program. After consideration of comments received during the public comment period, Caltrans determined that it is unable to continue with any level of a race-conscious DBE program, and that DBE participation will be achieved solely by race-neutral measures. A "Race-conscious" program is one that is focused specifically on assisting only DBEs. A "race-neutral program" is one that, while benefiting DBEs, is not solely focused on DBE firms. For example, small business outreach programs, technical assistance programs, and prompt payment clauses can assist a wide variety of small businesses, not just DBEs. For purposes here, race-neutral includes gender neutrality.

On May 1, 2006, Caltrans implemented a race-neutral DBE program. As a result of this decision by Caltrans, local agencies will no longer have their own separate DBE programs, but must complete Exhibit 9-A "Disadvantage Business Enterprise Race-Neutral Implementation Agreement". In addition, local agencies may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals. Local agencies such as Santa Barbara County who receive Federal funding from Caltrans are required to abide by their decision to implement a race-neutral program.

In order to determine the County's Annual Anticipated DBE Participation Level, the Department calculated its weighted Base Figure by first determining the number of ready, willing and able DBEs in its FY 2005/06 Bidders List by work category, and dividing the number of DBEs by the total number of firms in the same work category. Through this method, the County of Santa Barbara can measure availability by the number of firms that have directly participated in, or attempted to participate in, County of Santa Barbara's DOT-assisted contracting for FY 2005/06. By utilizing this formula the Department has determined the Annual Anticipated DBE Participation Level to be 12.6% for Federal Fiscal Year 2006/07.

For the FFY 2006/07 the Department has programmed expenditures of \$5,360,000 of Federal Aid Funding. To maintain our federal aid funding eligibility it is necessary that the County submit its FFY 2006/07 Annual Anticipated DBE Participation Level to Caltrans. Your Board's approval today will be the final step required to continue receiving federal project reimbursement.

Mandates and Service Levels:

No change in programs or service levels.

Fiscal and Facilities Impacts:

To maintain our federal aid funding eligibility it is necessary to approve this program by June 2006.

Special Instructions:

Please forward a Certified Stamped Minute Order approving this action and the signed original copies of Exhibit 9-A and Exhibit 9-B to the Transportation Division, attn: Gena Valentine Felix at ext. 3064.

Attachments: Exhibit 9-A Disadvantaged Business Enterprise Race-Neutral Implementation Agreement for Local Agencies
Exhibit 9-B Local Agency DBE Annual Submittal Form

Board Letter Authored by: Gena Valentine Felix, Administrative Secretary, Transportation Division, 568-3064

G:\Board\060606\DBE_SMD.doc