



BOARD OF SUPERVISORS
AGENDA LETTER

Agenda Number:

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

Department Name: Public Works
Department No.: 054
For Agenda Of: June 2, 2009
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

TO: Board of Supervisors
FROM: Department Scott D. McGolpin, Director of Public Works, 568-3010
Director
Contact Info: Dacé Morgan, Deputy Director – Transportation, 568-3064
**SUBJECT: Disadvantaged Business Enterprise (DBE) Program for Federal Fiscal Year 2009/10,
All Supervisorial Districts**

County Counsel Concurrence

As to form: N/A

Auditor-Controller Concurrence

As to form: N/A

Recommended Actions:

That the Board of Supervisors

- A. Approve and authorize the Chair to execute the Annual Anticipated DBE Participation Level (AADPL) of 7.1% (5.05% Race Neutral, 2.05% Race Conscious) 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).
- B. 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.

Summary Text:

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.

After years of a race-conscious DBE program, Caltrans implemented a race-neutral DBE Goal and Methodology Program in May, 2006. Local Agencies receiving federal funds were required to implement a Race-Neutral DBE Program. Following an Availability and Disparity Study conducted by Caltrans, significant underutilization was discovered in 4 groups of disadvantaged businesses referred to

as Underutilized Disadvantaged Business Enterprises (UDBE). Caltrans determined DBE goals were not being met under the Race-Neutral Program. As a result a Race-Conscious DBE Program is being reinstated with additional requirements for a partially Race-Conscious and partially Race-Neutral goal. Local Agencies are required to implement this program for all federally funded projects awarded after June 2, 2009 or risk the loss of federal funding. Your Board approved, and the County implemented this program on April 4, 2009 for all federally funded projects, including our 2009 ARRA projects.

In order to determine the County's Annual Anticipated DBE Participation Level (AADPL), the Department calculated its weighted Base Figure by first determining the number of ready, willing and able DBEs from out FY 2008/09 Bidders List by work category and dividing that number by the total number of firms in the same work category. This figure was then multiplied by its percentage of the total federal project funding for FFY 2009/10. The Race Conscious Goal was calculated using the same equation, dividing the number of ready, willing and able UDBE's by the total number of firms in that work category. The Race Neutral Goal was calculated by subtracting the Race Conscious Goal from the overall AADPL.

Using 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 2008/09. Utilizing this formula, the Department has determined the AADPL for FFY 2009/10 to be 7.1%, with a 5.05% Race Neutral Goal and a 2.05% Race Conscious Goal.

For FFY 2009/10, the Department has programmed expenditures of approximately \$12.4 mil of Federal Funding. To maintain our federal funding eligibility it is necessary that the County submit its FFY 2009/10 AADPL to Caltrans as soon as possible. Your Board's approval today of the attached Exhibit 9-B Local Agency DBE Annual Submittal Form will be the final step required to develop DBE goals required for federal project reimbursement.

Background:

For 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 that would support its race-conscious DBE program. After consideration of comments received during this period, Caltrans determined it could not continue with a race-conscious DBE program, and that DBE participation would be achieved solely by race-neutral measures. A "race-conscious" program is one focused specifically on assisting only DBE's. A "race-neutral program" is one that, while benefiting DBE's, is not solely focused on DBE firms. Other types of small businesses that benefit from a race-neutral program include Disabled Veterans Enterprise (DVBE), Minority Business Enterprise (MBE) and Women Business Enterprise (WBE).

On May 1, 2006, Caltrans implemented a race-neutral DBE program. As a result of this decision by Caltrans, local agencies no longer had their own separate DBE programs, but were required to complete Exhibit 9-A "Disadvantage Business Enterprise Race-Neutral Implementation Agreement". In addition, local agencies could 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 were required to abide by their decision to implement a race-neutral program.

Caltrans retained BBC Research & Consulting (BBC) to conduct an Availability and Disparity Study to assist Caltrans in its implementation of the Federal DBE Program and to verify if their DBE goals could be met by race-neutral means. BBC examined the transportation construction and engineering industry in California and related contracts awarded by Caltrans or with funds administered by Caltrans. BBC examined more than 10,000 construction and engineering contracts and subcontracts from 2002 through 2006 for both Caltrans and local agencies. "Statistically significant" under-utilization was found in four of the six groups presumed to be disadvantaged as defined by the Code of Federal Regulations, 49 CFR Part 26. The four groups were African American, Asian Pacific American, Native American and Women. Hispanic Male and Subcontinent Asian male groups did not show statistically significant underutilization. The findings from the Caltrans Availability and Disparity Study revealed that the Department should return to a Race Conscious Program to address this under-utilization.

Caltrans has received conditional approval from the FHWA to immediately implement its Federal Fiscal Year (FFY) 2009 Disadvantaged Business Enterprise Goal and Methodology. The 2009 Goal and Methodology provides for a composite race-conscious/race-neutral goal that combined equals the overall program goal. The four under-utilized groups are now referred to as Underutilized Disadvantaged Business Enterprise (UDBE) and make up the race-conscious portion of the goal. With the recent enactment of the American Recovery and Reinvestment Act (ARRA) of 2009, and the increase in transportation contracting opportunities it will bring, the urgency for Caltrans to implement contract goals has heightened. FHWA has indicated that failure to implement the overall goal and contract goals could result in the imposition of sanctions that may include withholding federal funds, withholding approval of projects, or other action FHWA deems appropriate under the circumstances. Local agencies such as Santa Barbara County who receive Federal funding through Caltrans are required to abide by their decision to implement a race-conscious program. Your Board approved this Program on April 7, 2009 and the Department has submitted this to Caltrans. Upon Caltrans' approval on April 20, 2009 the County of Santa Barbara implemented this program for all federally funded projects, including our 2009 ARRA projects.

In order to maintain a narrowly tailored DBE Program, local agencies must calculate their Annual Anticipated DBE Percentage Levels (AADPL) based on their respective market areas, types of work, and total dollars. On June 24, 2008, your Board approved the County's FFY 2008/09 AADPL of 9.6%, which remains in effect through September, 2009. By recalculating this figure, the Department determined the race-conscious portion to be 3% and the race-neutral portion to be 6.6%. These percentages will be included in all construction contracts advertised for bid prior to September 30, 2009.

Your Board's approval today of the FFY 2009/10 AADPL of 7.1% (5.05% Race Neutral, 2.05% Race Conscious) will be the final step required to continue receiving federal project reimbursement. Once approved, this goal will be utilized on all construction projects advertised for bid after October 1, 2009.

Fiscal and Facilities Impacts:

Budgeted: N/A

Fiscal Analysis:

<u>Funding Sources</u>	<u>Current FY Cost:</u>	<u>Annualized On-going Cost:</u>	<u>Total One-Time Project Cost</u>
General Fund			
State			
Federal			
Fees			
Other:			
Total	\$ -	\$ -	\$ -

Narrative: To maintain our federal funding eligibility it is necessary to approve this program by June 2009.

Staffing Impacts:

Legal Positions:

FTEs:

Special Instructions:

Please forward a Certified Stamped Minute Order approving this action and all three (3) of the signed original Exhibit 9-B's to the Transportation Division, attn: Gena Valentine Felix, ext. 3064. Once Caltrans' has signed, one (1) original document will be returned to the Clerk of the Board.

Attachments:

Exhibit 9-B Local Agency DBE Annual Submittal Form (3 copies)

Authored by:

Gena Valentine Felix, Administrative Office Professional III, ext. 3064.