



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: April 7, 2009
Placement: Administrative
Estimated Tme:
Continued Item: No
If Yes, date from:
Vote Required: Majority

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

County Counsel Concurrence

As to form: Yes

Auditor-Controller Concurrence

As to form: N/A

Other Concurrence: Risk Management

As to form: Yes

Recommended Actions:

That the Board of Supervisors

- A. Approve and execute the Disadvantaged Business Enterprise Race-Conscious Implementation Agreement (Exhibit 9-A).
- 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 (FHWA) 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 that receive federal funding 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. Caltrans determined that the DBE goal was not being met under the Race-Neutral Program; therefore, a Race-Conscious DBE Program is being reinstated with additional requirements for a ½ Race-Conscious and ½ Race-Neutral Goal. Local Agencies are required to implement this program for all federally funded

projects that are awarded after June 2, 2009, or risk the loss of our federal funding. This would include our 2009 ARRA projects.

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 then, race-conscious DBE program. After consideration of comments received during this period, Caltrans determined that it was unable to continue with any level of a race-conscious DBE program, and that DBE participation would 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. 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 1/2 race-conscious goal and a 1/2 race-neutral goal that combined, equal the overall program 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 from Caltrans are required to abide by their decision to implement a race-conscious program. Your Board's approval of this Program is the last step before it is submitted to Caltrans. Upon Caltrans'

approval, the County of Santa Barbara will implement 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 is in effect through September, 2009. In May, 2009, the Public Works Department will submit our AADPL Goal for FFY 2009/10 for your Board's approval.

Fiscal and Facilities Impacts:

Budgeted: N/A

Fiscal Analysis:

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

Narrative:

To maintain our federal aid funding eligibility, immediate approval of this program is necessary by both your Board, as well as Caltrans.

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-A's to the Transportation Division, attn: Gena Valentine Felix, ext. 3064. Once Caltrans has signed the agreement, one (1) original will be returned to the Clerk of the Board.

Attachments:

Exhibit 9-A, California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies (3 originals)

Authored by:

Gena Valentine Felix, Administrative Professional III, Public Works Department, Transportation Division, 568-3064

cc:

Chris Sneddon, Engineering Design and Traffic Manager, Public Works Department, Transportation Division, 568-3047