



## Legislation Details (With Text)

**File #:** 21-0939      **Version:** 1

**Type:** Agenda Item      **Status:** Approved

**File created:** 6/1/2021      **In control:** Board of Supervisors

**On agenda:** 6/29/2021      **Final action:** 6/29/2021

**Title:** Department of Transportation recommending the Board:  
 1) Adopt and authorize the Chair to sign Resolution 076-2021 and the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (Exhibit 9-A);  
 2) Adopt and authorize the Chair to sign Resolution 077-2021 and the Local Agency Disadvantaged Business Enterprise Annual Submittal Form (Exhibit 9-B); and  
 3) Authorize the Department of Transportation to submit said Resolutions, Agreement, and Form to the California Department of Transportation for Federal Fiscal Year 2021-2022.

FUNDING: N/A

**Sponsors:**

**Indexes:**

**Code sections:**

**Attachments:** 1. A - Counsel Approval, 2. B - Resolution 9A, 3. C - FFY 2021-22\_DBE Exhibit 9-A Agmt, 4. D - Resolution 9B, 5. E - FFY 2021-22\_DBE Exhibit 9-B Form, 6. F - FFY 2021-22\_DBE Exhibit 9B\_Attach A.pdf, 7. H - (9A) AGMT 09-52635 FE - Draft Resolution 088-2009, 8. G - FFY 2021-22\_DBE Exhibit 9B\_Attach B, 9. Executed Resolution 076-2021, 10. Executed Resolution 077-2021, 11. Executed FFY 2021-22\_DBE Exhibit 9-A Agmt

Date	Ver.	Action By	Action	Result
6/29/2021	1	Board of Supervisors	Approved	Pass

Department of Transportation recommending the Board:  
 1) Adopt and authorize the Chair to sign Resolution **076-2021** and the California Department of Transportation Disadvantaged Business Enterprise Implementation Agreement (Exhibit 9-A);  
 2) Adopt and authorize the Chair to sign Resolution **077-2021** and the Local Agency Disadvantaged Business Enterprise Annual Submittal Form (Exhibit 9-B); and  
 3) Authorize the Department of Transportation to submit said Resolutions, Agreement, and Form to the California Department of Transportation for Federal Fiscal Year 2021-2022.

**FUNDING:** N/A

### DISCUSSION / BACKGROUND

In order to receive federal transportation funds, the County must follow California Department of Transportation's (Caltrans) Disadvantaged Business Enterprise (DBE) Program for implementation into projects funded with United States Department of Transportation (USDOT) funds. This DBE Program does not apply to projects without USDOT funding. The Federal Highway Administration (FHWA) is the Operating Administrator for USDOT funding of transportation projects.

On March 5, 2009, Caltrans notified the County that it had just received conditional approval from FHWA to immediately implement the Caltrans Federal Fiscal Year (FFY) 2009-2010 DBE goal and methodology. That approval required the immediate implementation of a new DBE Program, which included a Race Conscious component.

On May 5, 2009, Legistar 09-0344, Item 27, the Board adopted Resolution 088-2009 approving the Caltrans DBE Program and authorized the Board Chair to sign the Caltrans DBE Program Implementation Agreement (Attachment H) for Local Agencies 09-52635 (DBE Implementation Agreement). On behalf of the FHWA, Caltrans provided its approval on May 8, 2009. In accordance with 49 Code of Federal Regulations Part 26.21, this approval of the Program counts for all of the County's USDOT-assisted programs.

The FHWA/Caltrans approved FFY 2009-2010 DBE Implementation Agreement has gone unchanged over the past decade. On September 4, 2020, Caltrans revised the agreement to include format changes, extending language to include consultants as contractors, revisions to prompt payment of withheld funds to subcontractor clauses, revisions to updated code references, and added Article XVII for prompt payment from the Local Agency to the Contractors. Resolution XXX-2021 (Attachment B) is drafted for the Board adoption of the new September 2020 DBE Implementation Agreement along with the September 2020 DBE Implementation Agreement for Local Agencies (Attachment C) for Board signature.

The new September 2020 DBE Implementation Agreement requires that local agencies provide to the Caltrans District Local Assistance Engineer a completed Local Agency DBE Annual Submittal Form (Exhibit 9-B) (Attachment E) for each FFY, which includes the name, phone number, and electronic mailing address of the designated DBE Liaison Officer (DBELO); the Race Neutral Measures that the local agency intends to implement for that year (Attachment F); and, the Prompt Payment Provision choice for that year (Attachment G), as well as the Resolution for Board adoption of the Exhibit 9-B (Attachment D).

This year's Local Agency DBE Annual Submittal Form (Exhibit 9-B) is for FFY 2021-2022 and includes the following two attachments:

- 1) DBE Attachment A: Lists the Race Neutral Measures that Transportation believes it can reasonably implement in FFY 2021-2022.
- 2) DBE Attachment B: Indicates that in accordance with Section 9203 of the Public Contract Code, Transportation elects to retain funds from the prime contractor. The selected method describes the conditions for release of retained funds and the requirements and timelines prime contractors must abide by for the release of retention withheld from their subcontractors.

## **ALTERNATIVES**

If the Board does not adopt the Resolutions and authorize submittal of the September 2020 DBE Implementation Agreement, along with the FFY 2021-2022 DBE Annual Submittal Form, Transportation will not be able to request federal funding for County projects for FFY 2021-2022.

## **PRIOR BOARD ACTION**

See Discussion / Background Section above.

## **OTHER DEPARTMENT / AGENCY INVOLVEMENT**

County Counsel reviewed and approved the Resolutions, the September 2020 DBE Implementation Agreement, and the FFY 2021-2022 DBE Annual Submittal Form.

## **CAO RECOMMENDATION / COMMENTS**

Approve as recommended.

## **FINANCIAL IMPACT**

The September 2020 DBE Implementation Agreement, along with the FFY 2021-2022 DBE Annual Submittal Form, is required for continued compliance with regulations associated with federal funding received from USDOT. As these types of funds are regularly utilized to implement capital improvement projects throughout the County, approval of the Resolutions, Exhibit 9-A Agreement, and Exhibit 9-B Form with DBE Attachments A and B, is critical to the improvement and maintenance of the County's infrastructure.

## **CLERK OF THE BOARD FOLLOW UP ACTIONS**

- 1) The Clerk of the Board will obtain the Chair's signature on one (1) original of each Resolution, and on two (2) original copies of the September 2020 DBE Implementation Agreement and the FFY 2021-2022 DBE Annual Submittal Form.
- 2) The Clerk of the Board will forward one (1) signed copy of each Resolution to Transportation and the two (2) original copies of the partially executed September 2020 DBE Implementation Agreement and the FFY 2021-2022 DBE Annual Submittal Form to Transportation, Fairlane Engineering, attention Matt Smeltzer.

## **TRANSPORTATION FOLLOW UP ACTIONS**

- 1) Transportation will send a copy of both Resolutions to Caltrans for its files.
- 2) Transportation will send the two (2) original copies of the partially executed 2020 DBE Implementation Agreement for Local Agencies (Exhibit 9-A) and the FY2021/2022 Local Agency DBE Annual Submittal Form (Exhibit 9-B) to Caltrans for its review, approval, and signature.
- 3) Upon receipt from Caltrans, Transportation will return one (1) fully executed original copy of September 2020 DBE Implementation Agreement for Local Agencies (Exhibit 9-A) and the FFY2021/2022 Local Agency DBE Annual Submittal Form (Exhibit 9-B) to the Clerk of the Board for its files.

## **STRATEGIC PLAN COMPONENT**

Infrastructure

## **CONTACT**

Rafael Martinez, Director  
Department of Transportation