



Legislation Text

File #: 10-1177, **Version:** 4

Department of Transportation recommending Board provide clarification of Section 7.5 of the "County of El Dorado Department of Transportation Guidelines for Road Impact Fee / Traffic Impact Mitigation Fee Reimbursement Projects" and direct the Department of Transportation whether or not it shall allow for the reimbursement of project non-construction costs for non-publicly bid construction projects and if so, approve the Department's proposed method of calculating the eligible amount for reimbursement (only if the non-construction costs would have otherwise been allowed if eligible construction was publicly bid). (Est. Time: 10 Min.) (Cont'd 1/25/11, Item 25)

Fiscal Impact/Change to Net County Cost:

There is no Net County Cost to the General Fund. Future costs to the Department of Transportation Traffic Impact Mitigation Fee funds based on reimbursement requests submitted by Developers.

Background:

On January 23, 1996, the Board of Supervisors approved the "County of El Dorado Department of Transportation Guidelines for Road Impact Fee/Traffic Impact Mitigation Fee Reimbursement Projects" ("Guidelines"). The Guidelines and state laws are specific in requiring that construction projects be publicly bid in order for the Department to approve reimbursement of construction contract costs ("Construction Costs") from the Road Impact Fee/Traffic Impact Mitigation Fee ("RIF/TIM") accounts. As a result, any Construction Cost reimbursement for a project with a construction contract that was obtained outside of the public bidding process has been disallowed. However, the project's non-construction "soft" costs such as planning, engineering, and construction management ("Non-Construction Costs") are not specifically allowed or exempted by the Guidelines or current laws for such non-publicly bid projects.

Currently, there are three Developers that are seeking reimbursement for Non-Construction Costs for three non-publicly bid projects ("Projects") that were required by the conditions of approval for their residential developments, and were included in the Department of Transportation's Capital Improvement Program. The Projects currently submitted for reimbursement of Non-Construction Costs are:

1. Olson Lane road widening and signalization at El Dorado Hills Boulevard;
2. Eastwood Park Unit 5 offsite Meder Road improvement project;
3. Cameron Valley Estates Phase 1 offsite Meder Road improvement project.

Reason for Recommendation:

The Department of Transportation (DOT) has received an opinion from County Counsel that project Non-Construction Costs are not subject to the same bidding statutes as the Construction Costs. Developers, and Public Agencies, may contract directly with consultants without a competitive selection process. Currently, Section 7.5 of the Guidelines limit reimbursement of Non-Construction Costs to a total of twenty percent (20%) of the eligible Construction Costs. Strictly interpreted, on a non-publicly bid project there are zero eligible Construction Costs, so the eligible Non-Construction Costs would also be zero (20% of zero). Counsel has indicated that state laws and the Guidelines do not prohibit reimbursement for these Non-Construction Costs. Currently there are three projects that

are pending the Board's decision. Therefore, in order to process current and future reimbursement requests for Non-Construction Costs related to non-publicly bid projects, DOT recommends that the Board provide direction/approval for the Department on the following 2 items:

1. Whether or not to allow Non-Construction Costs reimbursement on CIP projects with construction contracts that were non-publicly bid.

2. If the reimbursement of otherwise eligible Non-Construction Costs is allowed for non-publicly bid CIP projects, DOT recommends the Board approves the Department's proposed method of calculating the eligible amount for reimbursement. This proposed method would allow reimbursement for Non-Construction Costs* up to twenty percent (20%) of the lowest of:
 - The amount of the actual non-publicly bid construction contract used for the project.
 - The amount of the low bid received, but not used, for the construction contract in a public bidding procedure for project (if applicable).

*Provided that the reimbursement of Non-Construction Costs would have otherwise been allowed if eligible construction was publicly bid.

Action to be taken following Board approval:

Department of Transportation to review the three current reimbursement requests based on the Board's direction and prepare reimbursement agreements and acquisition/reimbursement reports as necessary.

Contact:

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Department of Transportation

Concurrences:

County Counsel