



Legislation Text

File #: 11-0469, **Version:** 3

Department of Transportation recommending the Board consider the following pertaining to the Disadvantaged Business Enterprise program:

1) Adopt Resolution **095-2012** adopting and approving the overall Disadvantaged Business Enterprise (DBE) goal and methodology used to calculate the goal for Federal Fiscal Years 2012-2013 through 2014-2015 for Federal Aviation Administration funded projects.

Fiscal Impact/Change to Net County Cost

There is no fiscal impact associated with this agenda item.

Background

In order to receive federal transportation funds, the County must establish a Disadvantaged Business Enterprise (DBE) program for implementation into projects funded with United States Department of Transportation (USDOT) funds. The DBE program does not apply to projects without USDOT funding. The Federal Aviation Administration (FAA) is an Operating Administration for USDOT funding of transportation projects.

On March 5, 2009 the State of California Department of Transportation (Caltrans) notified the County of El Dorado (County) Department of Transportation (Department) that it had just received conditional approval from the Federal Highway Administration (FHWA) to immediately implement 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 the Board approved the County's adoption of Caltrans' new DBE program and authorized the Board Chairman to sign the new DBE Implementation Agreement (AGMT 09-52635). Caltrans provided its approval on May 8, 2009 on behalf of the FHWA. In accordance with 49 Code of Federal Regulations (CFR) Part 26.21, this approval of the program counts for all of the County's USDOT-assisted programs.

Reason for Recommendation

In February 2010 the USDOT issued a final rule changing 49 CFR Part 26 to require recipients of USDOT funding to submit the overall DBE goals every three years rather than annually. Recipients must express the goal as a percentage of FHWA or FAA funds, as applicable, that the recipient will expend in the forthcoming three years. Each Operating Administration reviews the goals for its USDOT-assisted funding.

49CFR 26.45(a) (2) states that if you are an FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FAA for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1. For FFY 2012-2013 the Department anticipates awarding less than \$250,000 in FAA funds in prime contracts. Therefore, the Department has not developed a DBE goal for FFY 2012-2013.

Implementing the methodology for establishing the overall DBE goal outlined in 49 CFR Part 26.45, the Department calculated for FAA funded projects an overall goal of 9% consisting of a Race Conscious portion equal to 6% and a Race Neutral portion equal to 3% for FFYs 2013-2014 through 2014-2015. The methodology and calculations used to arrive at these figures are attached. The due date to submit the overall goals meeting the three-year requirements to the FAA Civil Rights Office for approval is August 1, 2012. The Department prepared the three-year overall goal for Board approval in accordance with the 49 CFR Part 26.45 (f) (1) (iv) requirement to set the goal annually.

There are no penalties for failure to meet the overall goals provided the County administers the DBE program in good faith (49 CFR 26.47).

The Department's overall goal and methodology for FAA funded projects is based on Caltrans' DBE program that the County has adopted. On June 26, 2012 Caltrans released a June 22, 2012 letter from its Director describing the changes to the DBE program that FHWA is requiring. A copy of this letter is attached. The Department anticipates returning to the Board with an amended overall goal and methodology for FAA projects once the details of the required changes are available.

Action(s) to be taken following Board approval

1. The Acting Clerk of the Board will obtain the Chair's signature on the Resolution.
2. The Acting Clerk of the Board will forward a copy of the Resolution to the Department.

Action(s) to be taken by the Department following Board approval

The Department will send the overall DBE goal methodology and calculations to FAA for approval and include a copy of the Resolution for FAA funded projects.

Contact

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Concurrences: County Counsel