



## Legislation Text

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**File #:** 09-0344, **Version:** 1

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Transportation Department recommending the following pertaining to the Disadvantaged Business Enterprise Program:

- (1) Adopt Resolution approving the California Department of Transportation's Disadvantaged Business Enterprise Program for transportation projects involving the United States Department of Transportation's Federal funding for El Dorado County; and,
- (2) Authorize the Chairman to sign the California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement for Local Agencies, AGMT 09-52635.

### **Resolution 088-2009**

#### **Background:**

Pursuant to the El Dorado County Charter, Section 210 b (6), the County may enter into any contract or agreement in cases where the agreement is with or among any other governmental entities or agencies.

In order for the County to receive United States Department of Transportation (US DOT) Federal funding, including potential emergency funds, the County must have a US DOT approved Disadvantaged Business Enterprise (DBE) Program. The US DOT has delegated approval authority for local agency DBE Programs to the California Department of Transportation (Caltrans). The Transportation Department (Department) implements the Caltrans DBE Program with authority from the Board via the DBE Program Implementation Agreement (DBE Implementation Agreement) for Local Agencies.

On June 6, 2006, per Resolution 160-2006, the Board adopted and approved El Dorado County's current DBE Program and authorized the Chairman to sign the Caltrans DBE Race-Neutral Implementation Agreement for Local Agencies. The Race-Neutral DBE Program requires no contract goals, but requires the Department to submit an annual anticipated DBE participation level (AADPL) and the methodology for establishing this participation level. On June 6, 2006, the Board authorized the Chairman to sign the DBE Annual Submittal Form for Federal Fiscal Year (FFY) 2007-2008 containing the AADPL and methodology. Caltrans provided its approval of the Agreement and the DBE Annual Submittal Form on June 16, 2006.

Subsequently the Board authorized the Chairman to sign the DBE Annual Submittal Form for FFY 2008-2009 on May 20, 2008 with Caltrans approval on May 30, 2008.

#### **Reason for Recommendation:**

On March 4, 2009 Caltrans notified the Department that Caltrans had just received conditional approval from the Federal Highway Administration to immediately implement Caltrans' FFY 2009-2010 DBE Goal and Methodology. This approval requires the immediate implementation of a new DBE Program which includes a Race-Neutral component, along with a Race-Conscious component (RC DBE Program), as a result of the recent Caltrans Availability and Disparity Study. This combined DBE Program will replace both the local agencies' and Caltrans' existing Race-Neutral DBE Programs. Because of the potential opportunities for transportation funding from the recently

enacted American Recovery and Reinvestment Act (ARRA), Caltrans and local agencies receiving Federal-aid funds must begin transitioning to the new RC DBE Program.

The new RC DBE Program will reinstate contract goals and the Good Faith Effort; however, they will be limited to Underutilized DBEs (UDBEs). Four statistically underutilized groups were revealed in the Caltrans Availability and Disparity Study. The four groups are: African-American, Asian Pacific American, Native American, and women. Use of UDBEs above the contract goal and/or use of DBEs owned and controlled by Hispanic males or Subcontinent Asian males will be reported and counted toward the race-neutral portion of the local agency's overall AADPL.

Local agencies have until June 2, 2009 to transition to the newly approved RC DBE Program. Federal-aid projects awarded before June 2, 2009 and before the new DBE Implementation Agreement is executed, and existing Federal-aid projects awarded with the race-neutral requirements are authorized to continue under the old Race-Neutral DBE Program.

Local agencies are not required to resubmit previously approved FFY 2008-2009 AADPL to include segregated Race-Conscious and Race-Neutral components; however, the contract goals must be calculated and placed on all contracts after the local agency has executed the new DBE Implementation Agreement.

Caltrans' Civil Rights Officer advised the Department that the first priority in order to obtain ARRA or other new Federal funding is to have the new DBE Implementation Agreement executed. Once Caltrans finalizes the guidelines for the new AADPL, the Department will establish the FFY 2009-2010 AADPL. The Department will submit the resulting DBE Annual Submittal Form and the associated AADPL Resolution to the Board for approval in a separate Board action in the near future.

Expediting execution of the new DBE Implementation Agreement will allow Caltrans Local Assistance to move forward with the processing of Authorizations to Proceed (with construction) and obligate funds as long as the Department provides Caltrans Local Assistance the anticipated execution date. However, the Caltrans District Local Assistance Engineer (DLAE) must approve the new DBE Implementation Agreement before the County can award a construction project.

Action to be taken following Board approval:

1. The Board Clerk will obtain the Chairman's signature on the Resolution and the two (2) originals of the DBE Implementation Agreement.
2. The Board Clerk will forward the two (2) originals of the DBE Implementation Agreement and a copy of the Resolution to the Department to send to Caltrans for its approval and signature.
3. The Department will return one (1) original of the fully-executed DBE Implementation Agreement to the Board Clerk for filing.

Contact:

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Concurrences: Approved by County Counsel