



Legislation Text

File #: 22-0994, **Version:** 1

Department of Transportation recommending the Board:

- 1) Adopt and authorize the Chair to sign Resolution **087-2022** and the Local Agency Disadvantaged Business Enterprise Annual Submittal Form (Exhibit 9-B) for Federal Fiscal Year 2022-23; and
- 2) Authorize the Department of Transportation to submit said Resolution and Exhibit 9-B to the California Department of Transportation for Federal Fiscal Year 2022-2023.

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.

The FHWA/Caltrans approved Federal Fiscal Year (FFY) 2009/2010 DBE Implementation Agreement (Exhibit 9-A) had gone unchanged for over a 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. These updates are included in the fully executed updated Exhibit 9-A in blue font. On May 6, 2021, Caltrans directed local agencies to re-execute/resubmit the September 2020 DBE Implementation Agreement for Local Agencies. This re-execution/resubmission is only required once until receipt of future revisions and direction from Caltrans. On June 29, 2021, Legistar 21-0939, Item 28, the Board of Supervisors adopted the updated September 2020 DBE Implementation Agreement for Local Agencies (Exhibit 9-A) and associated Resolution 076-2021.

Article IV, Annual DBE Submittal Form (49 CFR 26.21), of the new September 2020 DBE Implementation Agreement for Local Agencies (Exhibit 9-A), requires that local agencies provide to the Caltrans District Local Assistance Engineer, by June 30 of each year, a completed Local Agency DBE Annual Submittal Form (Exhibit 9-B) for each FFY. Exhibit 9-B must include the name, phone number, and electronic mailing address of the designated DBE Liaison Officer. In accordance with Article IV and V, the Exhibit 9-B must also include attachments for the Race Neutral Measures that the local agency intends to implement for that year and the Prompt Payment Provision choices for that year. The new Exhibit 9-A is silent with regard to the need for a resolution. To stay consistent with County process, the Resolution for Board adoption of the Exhibit 9-B is still included in this process. The Exhibit 9B DBE Liaison Officer continues to be Brian Franklin.

The difference from last year's submittals is that the September 2020 Exhibit 9-A is still required by Caltrans with no specified revisions. The Board Resolution to Adopt the September 2020 Exhibit 9-A is also still in effect, with no new resolution needed. Revisions to the Exhibit 9-B, Attachment A, Attachment B, and Resolution XXX-2022 are minimal to reference their application to the new FFY

2022/23 and adherence to the September 2020 Exhibit 9A and associated Resolution 076-2021.

This year's Exhibit 9-B is for FFY 2022-23 and includes the following two attachments:

- 1) DBE Attachment A: Lists the Race Neutral Measures that Transportation believes it can reasonably implement in FFY 2022-23.
- 2) DBE Attachment B: Indicates that in accordance with Federal regulation 49 CFR 26.29(b), Transportation elects to retain funds from the prime contractor. The selected methods describe 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 Resolution **087-2022** and authorize submittal of Exhibit 9-B, Transportation will not be able to request federal funding for County projects for FFY 2022-23.

PRIOR BOARD ACTION

See Discussion / Background Section above.

OTHER DEPARTMENT / AGENCY INVOLVEMENT

County Counsel reviewed and approved the Resolution and Exhibit 9-B.

CAO RECOMMENDATION / COMMENTS

Approve as recommended.

FINANCIAL IMPACT

There is no change to Net County Cost associated with this item. The September 2020 DBE Implementation Agreement, along with Exhibit 9-B, 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 Resolution and Exhibit 9-B 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 the Resolution, and on two (2) original copies of Exhibit 9-B.
- 2) The Clerk of the Board will forward one (1) signed copy of the Resolution to Transportation and the two (2) original copies of the partially executed Exhibit 9-B to Transportation, Fairlane Engineering, attention Shanann Findley.

TRANSPORTATION FOLLOW UP ACTIONS

- 1) Transportation will send a copy of the Resolution to Caltrans for its files.
- 2) Transportation will send the two (2) original copies of the partially executed 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 Exhibit 9-B to the Clerk of the Board for its files.

STRATEGIC PLAN COMPONENT

Infrastructure

CONTACT

Rafael Martinez, Director
Department of Transportation