



## Legislation Text

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**File #:** 23-1070, **Version:** 1

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Department of Transportation recommending the Board:

- 1) Adopt and authorize the Chair to sign Resolution **102-2023** and the Local Agency Disadvantaged Business Enterprise Annual Submittal Form (Exhibit 9-B) for Federal Fiscal Year 2023-24; 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 2023-24.

**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) 2009-10 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. At this time, the County has not been directed to update this document.

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 (Attachment A) and the Prompt Payment Provision choices for that year (Attachment B). The new Exhibit 9-A is silent with regards to a 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 9-B DBE Liaison Officer is now Jennifer Rimoldi.

The following is a summary of changes and relevant information compared to last year's submittal:

- 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-2023 are minimal and include:
  - Reference their application to the new FFY 2023-24;
  - Update the DBE officer to Jennifer Rimoldi, previously Brian Franklin;
  - Adherence to the September 2020 Exhibit 9-A and associated Resolution 076-2021.

This year's Exhibit 9-B is for FFY 2023-24 and includes the following two attachments:

1) DBE Attachment A: Lists the Race Neutral Measures that Transportation believes it can reasonably implement in FFY 2023-24.

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 for all construction projects and does not retain funds from consultant contracts. 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 **102-2023** and authorize submittal of Exhibit 9-B, Transportation will not be able to request federal funding for County projects for FFY 2023-24.

## **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 staff recommendation.

## **FINANCIAL IMPACT**

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.

There is no direct financial impact associated with this item.

## **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, Headington Engineering, attention Matt Gourley.

## **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**

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Department of Transportation