

SUBMITTAL TO THE BOARD OF SUPERVISORS
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA

213B



FROM: TLMA - Transportation Dept.

SUBMITTAL DATE:
March 27, 2006

SUBJECT: Disadvantaged Business Enterprise Program

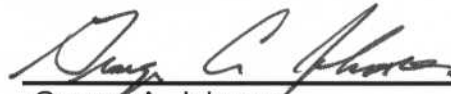
RECOMMENDED MOTION: That the Board of Supervisors authorize the Director of Transportation to implement changes to the Disadvantaged Business Enterprise Program as may be required by the State of California Department of Transportation.

BACKGROUND: The State of California Department of Transportation has oversight authority with respect to Federal Highway Administration (FHWA) funded transportation improvements. This oversight authority includes the monitoring of the development and implementation of each local agency's Disadvantaged Business Enterprise (DBE) program to ensure compliance with Federal Law and State policy.

Due to a recent decision of the Ninth Circuit Court of Appeals pertaining to a lawsuit filed in the State of Washington, the State of California is evaluating the current State of California DBE program to determine if the current program and State policy for local agencies must be amended. The current State DBE program, on which the County's adopted program is based, is a "race-conscious" program. The State is evaluating its current program to determine if it and the program of each local agency must be amended to be a "race-neutral" program. The State has set May 1st as the date that the decision will be made and announced, at which time each local agency must be in position to react accordingly and quickly. If the State announces that a change must be made to a race-neutral program, each local agency will be required to adopt the State's revised program and contract language, which is currently being written by the State. Failure to do so will result in projects becoming ineligible for Federal funds. Projects that are out to bid on May 1st will be required to be modified by addendum to incorporate the revised requirements. The attached letter from the State of California Department of Transportation provides additional details.

This submittal to the Board of Supervisors requests Board approval for the Director of Transportation to take appropriate actions, as may be required by the State of California, including implementing any changes to the County of Riverside's Disadvantaged Business Enterprise Program, in order to avoid project delays and potential loss of Federal funds. Subsequent to implementation, we will inform the Board of the actions taken, including any changes made to the County's DBE policy.

GAJ:sd


George A. Johnson
Director of Transportation

Departmental Concurrence

REVIEWED BY EXECUTIVE OFFICE

[Signature]
DATE 3/27/06

Policy

Consent

Dept's Recomm.:

Policy

Consent

Per Exec. Ofc.:

Prev. Agn. Ref.: 11/23/04 (3.31)

District: All

Agenda Number:

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DEPARTMENT OF TRANSPORTATION

DIVISION OF LOCAL ASSISTANCE – M.S. 1

1120 N STREET

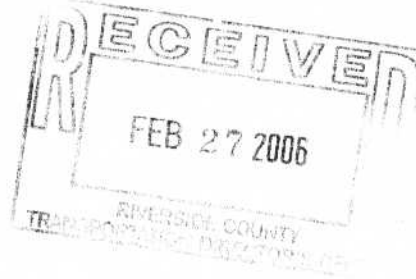
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February 8, 2006

To: Metropolitan Planning Organizations
Regional Transportation Planning Agencies
Local Transportation Commissions
League of California Cities

Dear Executive Director:

This letter is applicable to all agencies that have federal-aid projects. By letter dated December 30, 2005, the California Department of Transportation (Department) advised you that the Department is required, by a recent decision of the Ninth Circuit Court of Appeals, to consider amending its current Disadvantaged Business Enterprise (DBE) program and that the Department has begun the 45-day public comment period to do so. See the following Local Assistance website under "[Helpful Information and Resources](#)" for the December 30, 2005 letter, and the "Public Notice" initiating the 45-day public comment period:

http://www.dot.ca.gov/hq/LocalPrograms/DBE_CRLC/DBE_CRLC.html#DBE

The public comment period, scheduled to end on February 3, 2006, has been extended an additional 45 days to March 20, 2006 for submission of public comments. The "Public Notice" of the 45-day extension is also on the above Local Assistance website. The Department's Office of Civil Rights anticipates it will take approximately 30 days to evaluate comments and information received. It is estimated that on May 1, 2006, a final decision will be made whether to continue either with a race-conscious DBE program or to change to a race-neutral DBE program.

At the time the Department makes its decision to either continue using a race-conscious DBE goal or to change to a race-neutral DBE goal, an announcement will be placed on the Local Assistance DBE website under "[Helpful Information and Resources](#)".

If the Department's decision were to continue with a race-conscious DBE program, there would be no immediate change to the way local agencies are presently administering federal-aid projects.

If the Department's decision is to change to a race-neutral DBE program, local agencies must also change to a race-neutral DBE program immediately to maintain federal fund eligibility and shall observe the following:

- Immediately implement the statewide race-neutral DBE program prepared by the Department. Local agencies will not be permitted to continue with their own separate DBE programs unless such programs have been approved directly by a federal agency.

Local agencies are not required by the Department to initiate a 45-day public comment period to effect this change.

- No longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals. Subsequent federal-aid procurements shall contain race-neutral DBE contract language and availability goal.
- Re-advertise with the race-neutral contract language, all federal-aid contracts with race-conscious DBE goals, which have had bids opened or proposals received but contract award documents not yet fully executed. A contract change order or contract amendment to change from a race-conscious to a race-neutral DBE goal is not acceptable.
- Federal-aid contracts that have been advertised, but for which bids have not yet been opened or proposals received, may proceed with an addendum changing the contract provisions from race-conscious to race-neutral.
- If full execution of the contract award documents has occurred prior to the Department's change to a race-neutral program, federal-aid contracts with race-conscious DBE goals will continue unchanged and not be affected.
- Local agencies will continue to collect and report anticipated DBE participation at award, and final utilization at completion of all federal-aid contracts.

Executing the award of a contract with a race-conscious DBE goal after the Department has changed to a race-neutral DBE program will make a contract ineligible for federal-aid funding.

The above information is being provided to ensure that agencies are fully informed, and to mitigate and minimize disruption and delays to local agency federal-aid procurements caused by a shift from a race-conscious DBE program to a race-neutral DBE program. It is recommended that local agencies review their planned advertisements, bid openings and contract execution dates, and consider scheduling or extending bid openings a week or two after the May 1st timeframe. This would allow for extending bid openings and including the new race-neutral specifications by addendums, if required.

To help prepare local agencies should the change to race-neutral occur, the Department is taking the following actions to prepare race-neutral contract documents:

- Preparing race-neutral "Sample Notice to Contractors Special Provisions" and the "Sample Proposal and Contract" for use in federal-aid construction contracts. Both will be available shortly for local agencies to download from the Division of Local Assistance website at:

http://www.dot.ca.gov/hq/LocalPrograms/sam_boil/sam_boil.htm

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- Preparing race neutral "Bidder/Proposer DBE Participation Requirements and Instructions" (Exhibit 10-I), and the "Sample DBE Participation Requirements" (Exhibit 10-J), in Chapter 10, "Consultant Selection," of the Local Assistance Procedures Manual for use in federal-aid consultant contracts. Both will be available shortly for agencies to download from the Division of Local Assistance website under "Announcements" at:

<http://www.dot.ca.gov/hq/LocalPrograms/>

- A copy of the Department's race-neutral statewide DBE program will be made available in the near future for local agencies to download for information and use under "Announcements" at the Division of Local Assistance website.

I want each agency to know that the Department is very concerned about the potential delays and effects to local agency projects should there be a change to a race-neutral DBE program. Through advance communication with each of you, my goal is to minimize the disruption to project delivery. I encourage each agency to maintain contact with their District Local Assistance Engineer (DLAE) and bring to the DLAE's attention any questions or special circumstances that need to be quickly addressed by the Department. DBE informational meetings will be held in your area by the Department to answer questions and further assist local agencies with their federal-aid projects. You will be contacted by your DLAE in the near future as to the date and location of these meetings.

Sincerely,



TERRY L. ABBOTT
Chief
Division of Local Assistance

c: DLAEs