

Agenda Report

TO: CITY COUNCIL

DATE: June 19, 2006

FROM: CITY MANAGER

SUBJECT: AUTHORIZATION TO ENTER INTO A DISADVANTAGED
BUSINESS ENTERPRISE RACE-NEUTRAL IMPLEMENTATION
AGREEMENT WITH THE STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION

RECOMMENDATION

It is recommended that the City Council authorize the City Manager to enter into a Disadvantaged Business Enterprise Race-Neutral Implementation Agreement with the State of California Department of Transportation in order to comply with recent changes to the State's federally mandated Disadvantaged Business Enterprise Program.

BACKGROUND

A recent Ninth Circuit Court of Appeals decision involving the Washington State Department of Transportation (WSHDOT) held that WSHDOT lacked sufficient evidence to support the use of race-conscious measures on federal-aid contracts. The Ninth Circuit's decision is controlling authority for California and other Western States within its jurisdiction. As a result of this ruling, the State of California Department of Transportation (Caltrans) performed an assessment of its Disadvantaged Business Enterprise (DBE) Program and the use of race-conscious goals on individual contracts. Based on this assessment, Caltrans determined that its program may not meet the new evidentiary standards established by the Ninth Circuit. However, the federally mandated (DBE) Program itself was not declared unconstitutional.

As a result of the Ninth Circuit decision, Caltrans implemented a race-neutral DBE program on May 1, 2006. The new program is effective immediately and there is no "grace period" for implementation. Caltrans has made the following major changes to their DBE program:

- Local agencies will no longer have their own separate DBE programs unless such programs have been approved directly by a federal agency. Instead, local agencies must complete a "Disadvantaged Business Enterprise Race-Neutral Implementation Agreement" (Agreement) (Attachment A).
- Local agencies may no longer advertise and award contracts with federal-aid funds containing race-conscious DBE goals.
- All federal-aid procurements shall contain race-neutral DBE contract language.

The revised language is not a change to the City's purchasing standards, but in fact makes this language consistent with City purchasing language utilized after the adoption of Proposition 209.

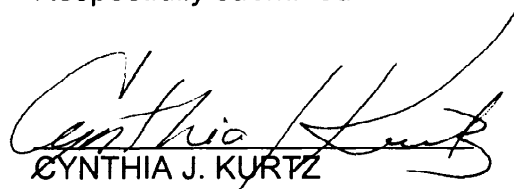
Under the City's previous State approved DBE program with race-conscious measures, contractors bidding for City projects were required to meet the advertised DBE contract goal, or show a "good faith effort" to meet the goal. The City cannot continue to require bidders to meet DBE goals or provide proof of a good faith effort, and as a result will no longer be able to use DBE goals and good faith efforts as qualification criteria for contract bids or procurement of professional services contracts. The new Caltrans program does not include DBE contract goals, but encourages participation of DBEs through race-neutral methods such as advertising bids and requests for proposals in ways that facilitate DBE and other small business participation, the unbundling of contracts and by providing technical assistance.

In order to comply with new statewide DBE requirements, and to continue receiving federal-aid for ongoing and future transportation projects, the City must execute and submit the Disadvantaged Business Enterprise Race-Neutral Implementation Agreement to the District Local Assistance Engineer (DLAE). This agreement formally acknowledges the City's responsibilities under the Caltrans race-neutral DBE Program.

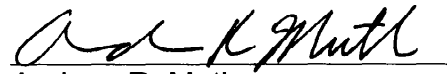
FISCAL IMPACT

There is no fiscal impact to enter into the DBE Race-Neutral Implementation Agreement with the State. However, if the Agreement is not submitted to Caltrans, the City will not be eligible to receive up to \$10 million federal-aid per year for ongoing and future transportation projects.

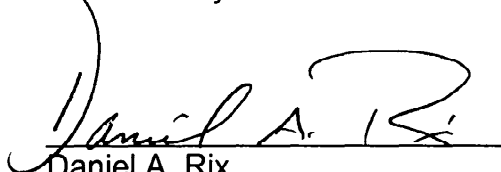
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Attachment