

**REPORT TO MAYOR AND COUNCIL**

TO THE HONORABLE MAYOR AND COUNCIL:

DATE: June 1, 2009

Subject: ADOPT RESOLUTION NO. 09-44, AUTHORIZING THE CITY ENGINEER TO EXECUTE THE RACE-CONSCIOUS IMPLEMENTATION AGREEMENT REQUIRED UNDER THE CALTRANS DISADVANTAGED BUSINESS ENTERPRISES (DBE) PROGRAM

Report in Brief

Federal regulations (49 CFR Part 26) require a recipient of federal aid to establish and maintain a program to promote the participation of Disadvantaged Business Enterprises (DBEs), as defined under the statute, in programs funded by such aid.

Concord has three capital projects with federal funds that will bid this year and thus require participation in the DBE program. Concord is required to enter into a new agreement with Caltrans, adopting the Race-Conscious program no later than June 2, 2009.

Staff recommends the City Council adopt Resolution No. 09-44 (**Attachment 1**), authorizing the City Engineer to execute the Race-Conscious Implementation Agreement required under the Caltrans DBE Program.

Background

Caltrans requires that local agencies follow State and Federal procedures on public works projects that utilize State and Federal Highway Administration funds, such as those made available through the recently passed economic stimulus bill, American Recovery and Reinvestment Act of 2009 (ARRA) and the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

Concord has three capital projects, expected to bid this year that require compliance with State and Federal Procedures. Project No. 2130, Clayton Road Pavement Rehabilitation (Market St. to Oakland Avenue) has \$1.27 million in ARRA funds. Project No. 2131, Clayton Road Intersections Pavement Rehabilitation has \$496,000 in ARRA funds. Project No. 2064 Monument Corridor Pedestrian Improvements has \$2.2 million in Transportation for Livable Communities (TLC) funds.

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statute, in programs funded by such aid. In California, this requirement is met by local agencies through participation in the Caltrans DBE Program. Concord participates in the Caltrans DBE Program and submits an "Annual Anticipated DBE Participation Level" (AADPL) to Caltrans for use in the development of the overall statewide DBE program and annual goal.

On May 1, 2006, Caltrans revised its DBE Program, converting from a race-conscious program to a race-neutral program. Race-Neutral measures are activities or programs that benefit and assist all small business equally, include DBEs. Race-Conscious measures, such as the use of individual contract goals, are those measures and programs that focus on specifically assisting DBEs only. Caltrans changed the DBE program response to a ruling by the Ninth Circuit Court of Appeals and to new evidentiary standards for race-conscious goals resulting from that ruling. Over the next two years, Caltrans gathered information and conducted a state-wide disparity study to more accurately identify and document discrimination against DBEs. The outcome of this effort is the identification of a subset of DBEs that are statistically under-represented in federally-funded contracts. The group of "Underutilized DBEs" (UDBEs) is comprised of African American, Asian-Pacific American, Native American, and Women-owned businesses. The study determined that two other groups, Hispanic American and Subcontinent Asian American businesses, are not subject to the same level of discrimination as the UDBEs and do not require the added protection of race-conscious goals.

Based on this evidence, Caltrans requested approval from FHWA to modify their DBE program. FHWA approved Caltrans' proposed transition to a race-conscious program on April 2, 2009. Under the proposed DBE program, the race-conscious goal established for each construction contract will be based on the subcontracting opportunities it provides and the availability of UDBEs.

Discussion

Council's adoption of the attached resolution is required by Caltrans to comply with their procedures and criteria for receipt of federal funds. Concord is required to enter into a new agreement with Caltrans, adopting the Race-Conscious program no later than June 2, 2009.

All projects utilizing State and Federal Highway Administration grant funds are administered by the City's Department of Building, Engineering and Neighborhood Services. The Director of this department also serves as the City Engineer, who oversees the City's Capital Improvement Program (CIP). It is therefore appropriate to designate the City Engineer as the appropriate person; and authorize the City Engineer to execute the Race-Conscious Caltrans Disadvantaged Business Enterprise (DBE) Program Implementation Agreement.

Fiscal Impact

The three projects discussed in the Background Section provide a total of \$3.966 million in grant funds that require compliance with State and Federal procedures. Adoption of Resolution No. 09-44 allows the City to receive the \$3.966 million in federal grants.

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Public Contact

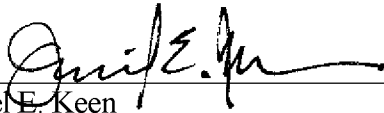
The Agenda item was posted.

Recommendation for Action

Staff recommends the City Council adopt Resolution No. 09-44, authorizing the City Engineer to execute the Race-Conscious Implementation Agreement required under the Caltrans DBE Program.

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Attachment #1 - Resolution No. 09-44

**BEFORE THE CITY COUNCIL OF THE CITY OF CONCORD
COUNTY OF CONTRA COSTA, STATE OF CALIFORNIA**

**A Resolution Designating as the Appropriate Person, and
Authorizing the City Engineer to execute the Race-Conscious
Implementation Agreement required under the Caltrans DBE
Program**

Resolution No. 09-44

WHEREAS, Caltrans requires that local agencies follow State and Federal procedures on public works projects that utilize State and Federal Highway Administration funds; and

WHEREAS, Federal regulations (49 CFR Part 26) require a recipient of federal aid to establish and maintain a program to promote the participation of Disadvantaged Business Enterprises (DBEs), as defined under the statute, in programs funded by such aid; and

WHEREAS, Caltrans requested approval from FHWA to modify their DBE program. FHWA approved Caltrans' proposed transition to a race-conscious program on April 2, 2009.

**NOW, THEREFORE, THE CITY COUNCIL OF THE CITY OF CONCORD DOES
RESOLVE AS FOLLOWS:**

Section 1. The Council designates the City Engineer, who oversees the City's Capital Improvement Program (CIP) as the appropriate person to execute the Race-Conscious Caltrans Disadvantaged Business Enterprise (DBE) Program Implementation Agreement.

Section 2. The Council authorizes the City Engineer to execute Race-Conscious Caltrans Disadvantaged Business Enterprise (DBE) Program Implementation Agreement..

Section 3. This resolution shall become effective immediately upon its passage and adoption.

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