

REPORT OF THE EXECUTIVE OFFICER
STATE ALLOCATION BOARD MEETING, February 28, 1996

PURPOSE OF REPORT

To request the State Allocation Board (SAB) to consider the appropriateness of the Minority, Women and Disabled Veterans Business Enterprises (M/W/DVBE) Participation Program.

BOARD REGULATIONS

The SAB adopted California Code of Regulations, Title 2, Chapter 3 Sections 1865.12 - 1865.20 and Sections 1896.90 - 1896.94. These regulations require that all contracts over \$10,000.00 that are awarded by school districts that receive certain State general obligation bond funding meet participation goals of not less than 15 percent Minority Business Enterprise (MBE), 5 percent Women Business Enterprise (WBE) and 3 percent Disabled Veterans Business Enterprise (DVBE), or demonstrate a "Good Faith" effort in attempting to attain these goals.

LEGAL ANALYSIS

In 1991, the Attorney General issued an opinion (74 Ops. Cal. Atty. Gen. 16) concluding that contracts awarded under the Leroy F. Greene State School Building Lease-Purchase Program are not subject to Public Contract Code Sections 10115 et seq establishing state M/WBE participation goals. Subsequently, the SAB implemented a M/WBE program through the above cited regulations and through amendment to those regulations included the DVBE in the requirements.

In an opinion issued July 20, 1995, the Legislative Counsel concluded that the SAB is subject to the executive orders of the Governor and must implement the Governor's directives contained in Executive Order W-124-95 (see Attachment A). Specifically, Legislative Counsel concluded that in order to comply with the Governor's Executive Order, the SAB may not require school districts that receive apportionments from the SAB to comply with minority and women business enterprise goals prescribed by Public Contract Code sections 10115 et seq. In order to comply with the Governor's directive, the Board must rescind the M/WBE regulations.

STAFF COMMENTS

and The Governor, in his executive order, directed State agencies to eliminate any race and gender based preferential treatment provisions which are not required by State or Federal statutes. To comply with the Governor's Executive Order, the SAB should initiate the process and do all acts necessary to repeal the Board's regulations that implement the M/WBE goals. The Governor is not directing the SAB to rescind that portion of the program relating to the DVBE; however, to maintain consistency, the DVBE program should also be repealed by the SAB.

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Alternatives that the SAB may wish to address regarding this issue are as follows:

Alternative #1

Repeal the regulations immediately utilizing an emergency repeal process outlined in Government Code Section 11346.1. This process will require the SAB to adopt findings that the emergency action is necessary for the immediate preservation of the public peace, health and safety or general welfare. The findings for the emergency process are contained in Attachment B and are summarized below:

1. That the M/W/DVBE program has resulted in additional State funds being expended that could otherwise be spent to fund additional projects. As of January, 1996, there was an additional \$6.4 million spent to award to other than the low bidder as a result of non compliance with the M/W/DVBE regulations.
2. It is important to repeal the regulations before additional bond funds become available to avoid inconsistent application of the M/W/DVBE requirements for those projects that could be funded from these bonds.
3. That pending the approval of the \$2 billion bond issue in March, 1996, it is necessary to expedite the approval and expenditure of these funds as quickly as possible. The M/W/DVBE process extends that approval process.

Once the SAB has adopted the emergency findings, they are submitted to the Office of Administrative Law (OAL) for approval. If approved by the OAL, the emergency repeal is filed with the Secretary of State, takes effect immediately and is good for 120 days. During the 120 day period, the SAB will schedule hearings on the proposed action if requested by an interested party. The SAB must allow 45 days for public comments and notice of any hearings. If there are no adverse findings as a result of the hearings, the regulations are submitted to the OAL, which has 30 days to review and transmit them to the Secretary of State for filing.

Alternative #2

Start the normal repeal process and continue to enforce the regulations until they are repealed. This process will take from six to nine months and could result in most of the \$2 billion bond issue subject to the M/W/DVBE regulations.

RECOMMENDATION

Should the SAB's recommendation be to discontinue the M/W/DVBE program, staff recommends Alternative #1.

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BOARD ACTION

In considering this Item, the Board elected to discontinue the Minority/Women Business Enterprise Program and, therefore, adopted Alternative No. 1. In addition, Senator Leonard requested that staff add a declarative statement on the SAB forms that states, "The Board will not tolerate racial or gender discrimination of any kind anywhere. Discrimination is wrong".