



**Contra
Costa
County**

To: Board of Supervisors
From: Julia R. Bueren, Public Works Director/Chief Engineer
Date: December 8, 2015

Subject: APPROVE and ADOPT the Disadvantaged Business Enterprise (DBE) Program for County Airports, Concord and Byron areas.

RECOMMENDATION(S):

APPROVE and ADOPT the Disadvantaged Business Enterprise (DBE) Program for County Airports,

AUTHORIZE and DIRECT the Public Works Director, or designee, to sign and submit the DBE Program for County Airports document to the Federal Aviation Administration for acceptance, and

RESCIND the existing Disadvantaged Business Enterprise Program approved by the Board of Supervisors on June 9, 2009, with regard to the Federal Aviation Administration.

FISCAL IMPACT:

Costs associated with the DBE Program for County Airports will be funded 100% by Federal Aviation Administration Funds. Without a DBE Program for County Airports, the County will not be eligible for federal funding for airport projects.

☒ APPROVE

☐ OTHER

☒ RECOMMENDATION OF CNTY ADMINISTRATOR

☐ RECOMMENDATION OF BOARD COMMITTEE

Action of Board On: **12/08/2015** ☒ APPROVED AS RECOMMENDED ☐ OTHER

Clerks Notes:

VOTE OF SUPERVISORS

AYE: John Gioia, District I Supervisor
Candace Andersen, District II Supervisor
Mary N. Piepho, District III Supervisor
Karen Mitchoff, District IV Supervisor
Federal D. Glover, District V Supervisor

I hereby certify that this is a true and correct copy of an action taken and entered on the minutes of the Board of Supervisors on the date shown.

ATTESTED: December 8, 2015

David Twa, County Administrator and Clerk of the Board of Supervisors

By: Stacey M. Boyd, Deputy

Contact: Michelle Parella,
925-313-2249

cc:

BACKGROUND:

The Federal Aviation Administration (FAA) and Federal Highway Administration (FHWA) are within the U.S. Department of Transportation (DOT). They are the source of billions of dollars in federal funding to local agencies for airport and highway improvements each year. To be eligible for funding, agencies must comply with Part 26 of Title 49 of the Code of Federal Regulations (CFR), "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Program." 49 CFR, Part 26 requires local agencies to implement a disadvantaged business enterprise ("DBE") program. In general, the goal of a DBE program is to allow small businesses that are at least 51% controlled by one or more persons who are socially and economically disadvantaged the opportunity to compete for certain contracts.

In 2005, the Ninth Circuit Court of Appeals issued a ruling that affected all state and local agency DBE programs in the nine western states. (*Western States Paving Co. v. State of Washington Dept. of Transportation*, 407 F.3d 983 (9th Cir. 2005).) The Court of Appeals ruled that agencies must have evidence that demonstrated a need for race-conscious measures, such as DBE goals, in their federally-funded contracts. Following this ruling, the FHWA instructed agencies to provide evidence in support of their race-conscious DBE programs, or begin gathering evidence and change to race-neutral DBE programs in the interim.

Operating under FHWA, the California Department of Transportation (Caltrans) conducted a state-wide availability and disparity study on behalf of the local agencies in its jurisdiction that receive FHWA funds. The FHWA approved this study in March 2009. The study demonstrated a need for race-conscious contract goals for African American, Women, Asian Pacific American and Native American-owned businesses (Underutilized Disadvantaged Business Enterprises ("UDBE")).

Based on the results of the study, Caltrans revised its DBE Program to implement race-conscious UDBE goals. Under the revised DBE Program, new race-conscious contract specifications were required to be incorporated in all federal-aid construction and consultant contracts. Caltrans required local agencies that receive FHWA funds through Caltrans (and FAA funds) to implement this revised DBE program. The Board of Supervisors approved the Caltrans DBE Implementation Agreement on May 19, 2009.

In 2012, Caltrans again revised its DBE Program removing the requirement for race-conscious UDBE goals and the Federal Aviation Administration released its own format requirements for a DBE Program.

In 2014, the Department of Transportation made significant changes to the overall DBE Program requirements. The FAA and Caltrans have interpreted the changes differently resulting in the need to create two separate program documents - one for FAA and another for Caltrans.

In 2015, the Contra Costa County Administrator's Office determined that the overall responsibility for the DOT DBE Program(s) should reside with the Public Works Department. In consideration of the changes at the DOT and Contra Costa County, the new DBE program for County Airports refers to the County as the responsible party but assigns the responsibility for implementation to the Public Works Department.

As a result of the great many changes, this DBE Program for County Airports has been created and is being submitted for Approval and Adoption. This DBE Program for County Airports will supersede the County DBE Program adopted by the Board of Supervisors on June 9, 2009, as applied to County airports. The County DBE Program adopted by the Board of Supervisors on June 9, 2009, will continue to apply to County projects that receive FHWA funds, until it is superseded by a revised program adopted by the Board of Supervisors at a later date.

Upon Board approval of the attached DBE Program for County Airports, the Public Works Department will submit the attached DBE Program for County Airports to the FAA for acceptance. The attached DBE Program for County Airports replaces the previous DBE Program adopted by the Board on June 9, 2009 for federally funded airport construction and consulting projects.

CONSEQUENCE OF NEGATIVE ACTION:

If the Board does not take the recommended action, FAA will stop authorizing Federal funds earmarked for County airport projects.

ATTACHMENTS

DBE Program Document

DBE Program Attachments