



**SAN DIEGO COUNTY  
REGIONAL AIRPORT AUTHORITY  
STAFF REPORT**

**Item No.  
14**

**Meeting Date: APRIL 12, 2012**

**Subject:**

**Update and Board Discussion on Existing Preference Programs and Amend Policies 5.12 and 5.14, to Change the Definition of a Small Business**

**Recommendation:**

Adopt Resolution No. 2012-0043, amending Policy 5.12, Preference to Small Businesses and Policy 5.14, Small Business, Local Business and Service-Disabled Veteran-Owned Small Business Goal and Preference Program to Change the Definition and Criteria of Small Business and to Improve the Verification Process.

**Background/Justification:**

There are three Authority policies/programs that relate to small business participation in Authority contracting: (1) Authority Policy 5.12, Preference to Small Businesses; (2) Authority Policy 5.14, Small Business, Local Business and Service-Disabled Veteran-Owned Small Business (SDVOSB) Goal and Preference Program; and (3) a Disadvantaged Business Enterprise (DBE) Program that applies to small businesses owned by a certified DBE while participating on federally-funded projects as governed by 49 Code of Federal Regulations (CFR) Part 26. Staff is recommending that the definition for "small business" be consistent among all three policies/programs.

Authority Policy 5.12 was originally adopted in April 2009 and last amended in January 2011. Policy 5.12 provides for a preference of up to 5% (with a cap of \$100,000 on bids) in Authority solicitations where a small business respondent is a prime contractor. Authority Policy 5.14, which was adopted in January 2011, establishes goals for small business, local business and SDVOSB with preferences awarded based on goal achievement. The maximum preference points under this policy are 7% (with a cap of \$100,000 on bids). A local goal cannot be applied using Policy 5.14 if the Authority's overall local business participation is at a level above 60% of current contract participation at the time of a solicitation. The DBE Program is a federally-mandated program required through Federal Aviation Administration grant assurances and only applies on federally-funded projects.

Currently, under Policies 5.12 & 5.14, a "small business" is defined as a for-profit business concern that (1) is enrolled in the airport's Bonding and Contract Financing Assistance Program, or (2) possesses any certification issued by a California public agency that uses size criteria that fall within the Small Business Administration (SBA) size standards, or (3) is an airport concessionaire that provides evidence that its

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business size is within standards established under 49 CFR Part 23, Section 23.33 (the Airport Concession Disadvantaged Business Enterprise (ACDBE) Program). In February 2011, the United States Department of Transportation (USDOT) issued a new rule, 49 CFR Part 26, that requires a recipient of federal funds to include a small business element in its DBE Plan. The USDOT and FAA issued guidance for this new small business element in December 2011. The guidance included new recommendations for verification of small businesses that are more stringent than the current verification procedures included in Policy 5.12 and 5.14. This new small business element does not apply to the ACDBE program. The Authority has proposed a new small business element pursuant to the recently-published guidance. It was submitted to the FAA for review in February 2012 and is attached as Attachment "A".

The definition of "small business" included in the Authority's proposed small business element is:

1. A business concern that is enrolled in the Authority's Bonding and Contract Financing Assistance Program which requires verification by staff that the firm meets Small Business Administration (SBA) size standards; or
2. A business concern that is certified as a Disadvantaged Business Enterprise (DBE) by the California Unified Certification Program; or
3. A business concern that possesses a valid certification issued by an agency, approved by the Authority, that verifies the firm is within the SBA size standards.

Staff recommends that the same definition and criteria for small business verification is used for both federally and non-federally funded projects. Therefore, Policy 5.12 and 5.14 should be amended to change the definition of "small business" to read as follows:

"For the purpose of this policy, a small business shall be a firm that (1) is enrolled in the Authority's Bonding and Contract Financing Assistance Program, which requires verification by staff that the firm meets Small Business Administration (SBA) size standards; or (2) is certified as a Disadvantaged Business Enterprise (DBE) or Airport Concession Disadvantaged Business Enterprise (ACDBE) by the California Unified Certification Program; or (3) possesses valid certification issued by an agency, approved by the Authority, that verifies the firm is within the SBA size standards; or (4) is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33. The SBA size standard used in these definitions must be relevant to the specific work and/or trade to be performed by the firm."

Justifications for the above definitions are as follows:

Definition	Justification
Enrolled in Authority's Bonding and Contract Financing Program.	Program requires enrollees to be a small business. A review of the finances to verify eligibility is a requirement of the program. No change to existing policies.
Certified DBE/ACDBE	Authority is a member of the California Unified Certification Program which requires verification of size criteria before DBE/ACDBE certification is granted.
Valid certification by agency approved by Authority	To eliminate "self-certification," staff will review each agency's process to assure that there is adequate verification that will meet the USDOT's requirements. Those agencies that are acceptable will be posted on Authority's website.
An airport concessionaire that will use a different size criteria	Not impacted by USDOT rule, so no proposed change made to existing policies.

Staff recommends that the Board approve amendments to Policies 5.12 and 5.14, changing the definition of Small Business. Future Board action will be requested to amend the DBE Program after the FAA consents to the small business element.

**Fiscal Impact:**

None.

**Authority Strategies:**

This item supports one or more of the Authority Strategies, as follows:

Community Strategy     Customer Strategy     Employee Strategy     Financial Strategy     Operations Strategy

**Environmental Review:**

This Board action is not a project that would have a significant effect on the environment as defined by the California Environmental Quality Act (CEQA), as amended, 14 Cal. Code Regs. §15378. This Board action is not a "project" subject to CEQA, Cal. Pub. Res. Code §21065. This Board action is not a "development" as defined by the California Coastal Act, Cal. Pub. Res. Code §30106.

**Equal Opportunity Program:**

Not applicable.

**Prepared by:**

BOB SILVAS  
DIRECTOR, SMALL BUSINESS DEVELOPMENT

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**SECTION AMENDMENT: SMALL BUSINESS ELEMENT**

The San Diego County Regional Airport Authority (Authority) currently has a Disadvantaged Business Enterprise (DBE) Program. In accordance with the provisions of 49 CFR subpart 26.39, "Fostering small business participation", the Authority must submit to the Federal Aviation Administration (FAA) an element to structure its contracting requirements to facilitate competition by small business concerns by February 28, 2012. This proposed small business element is submitted to the FAA for review and approval.

**A. Objective (49 CFR Part 26.39)**

The Authority is committed to meeting the maximum feasible portion of the Authority's overall goal by using race-neutral means to facilitate DBE participation. Race-neutral DBE participation includes any time a DBE (a) is awarded a prime contract through customary competitive procurement procedures, (b) performs as a subcontractor on a prime contract that does not carry a DBE goal, or (c) even if there is a DBE goal, performs as a subcontractor for a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

By definition, DBE firms are small businesses. The Authority proposes to implement a small business element into its current DBE policy in accordance with applicable law. The Authority is including this element to facilitate competition by and expand opportunities for small businesses. The Authority is committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurement opportunities as prime contractors or subcontractors. The Authority will meet its objectives using a combination of the following methods and strategies:

1. **Unbundling:** The Authority, where feasible, may "unbundle" projects or separate large contracts into smaller contracts to make the contracting opportunity more suitable for small business participation. The Authority will conduct a contract review of each FAA-assisted contract to determine whether portions of the project could be "unbundled" or bid separately to facilitate participation by small businesses. Similarly, the Authority will encourage its prime contractors and prime consultants to unbundle contracts to facilitate participation by small businesses.
2. **Small Business Goals:** Where feasible, the Authority will establish a percentage goal of the total value of a contract for small business participation where the prime contractor must meet or exceed the goal or provide evidence of a good faith effort to meet the small business participation goal on FAA-assisted contracts. A small business goal is open to all small businesses regardless of the owner's gender, race or geographic location. The project manager and Disadvantaged Business Enterprise Liaison Officer (DBELO) will review FAA-assisted purchases and contracts to assess the small business opportunities, giving consideration to the size and scope of each purchase or contract to establish the small business percentage goal. In the event that a small business participation goal is not established on an FAA-assisted contract, the project manager and small business officer will document why a small business goal is not in the best interest of the Authority.

**B. Definitions**

1. **Small Business:** A small business is a business that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Small

businesses must meet the definitions specified in Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

2. Disadvantaged Business Enterprise (DBE) as defined in 14 CFR Part 26.5 is a small business.

**C. Certification and Verification Procedures**

The Authority will accept the following certifications for participation in the small business element of the Authority's DBE Program with applicable stipulations:

1. California Unified Certification Program (UCP) DBE Certification – DBE Certification by the UCP which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. All certification determinations are evidenced by a letter of DBE certification issued by the UCP.
2. A business that is enrolled in the Authority's Bonding and Contract Financing Assistance Program which requires participant to be a small business as defined by the SBA and consistent with this small business element.
3. A business that has been certified by an agency that has a reciprocity agreement with the Authority and has satisfied the Authority's requirement of a thorough and complete verification that the business concern does not exceed the SBA size standards. Said reciprocity agreement will be reviewed on an annual basis to assure verification process is consistent with the FAA guidance.
4. A small business that provides evidence at the time of solicitation submittal that it qualifies as a small business concern for the specific task to be performed. Such evidence can be provided by either of the appropriate following means:
  - a. A copy of the business tax returns for the most recent three year period indicating the gross receipts; or
  - b. A notarized statement from a Certified Public Accountant indicating the firms average gross receipts for the past three years; or
  - c. A copy of the firm's payroll statement indicating the average annual employment for the most recent year.

Special Note: Minority and women-owned business enterprises which are awarded contracts under the small business enterprise set aside will be strongly encouraged to seek DBE certification in order to be counted towards race neutral DBE participation.

**D. Supportive Services**

The Authority is committed to minimizing the barriers to participation in Authority contracts to all small businesses. To provide support to the small businesses, the Authority currently offers the following programs:

1. A Bonding and Contract Financing Assistance program for qualified small businesses to assist them with obtaining legally required performance and payment bonds for public works projects.
2. An education program that includes seminars and workshops for small businesses to better prepare them for the Authority's procurement process.
3. Innovative and interactive outreach programs to inform small businesses about upcoming contracting opportunities at the Airport.

**E. Implementation Schedule**

The Authority will seek approval from its Board to amend its DBE Program to incorporate this small business element within ninety (90) days after approval of the element by the FAA.

**F. Assurances**

The Authority makes the following assurances:

1. We believe that the DBE Program, including its small business element, is not prohibited by state law.
2. Certified DBEs that meet the size criteria established under the DBE Program are presumptively eligible to participate in the small business element of the DBE Program.
3. Geographic and local preferences and limitations are prohibited on FAA-assisted contracts; however the DBE Program is open to small businesses regardless of their location.
4. There is no limit on the number of contracts that may be awarded to a firms participating in the DBE Program.
5. Reasonable efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
6. Aggressive steps will be taken to encourage minority and women owned firms who are participating in the small business element of the DBE Program and are eligible for DBE certification to become certified. Only DBE certified firms will be counted towards DBE race-neutral participation on FAA-assisted contracts



RESOLUTION NO. 2012-0043

A RESOLUTION OF THE BOARD OF THE SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY, AMENDING POLICY 5.12 - PREFERENCE TO SMALL BUSINESSES AND POLICY 5.14 - SMALL BUSINESS, LOCAL BUSINESS AND SERVICE DISABLED VETERAN OWNED SMALL BUSINESS GOAL AND PREFERENCE PROGRAM, TO CHANGE THE DEFINITION OF SMALL BUSINESS AND TO IMPROVE THE VERIFICATION PROCESS.

WHEREAS, the San Diego County Regional Airport Authority (Authority) adopted Policy 5.12, Policy 5.14 and a Disadvantaged Business Enterprise (DBE) Plan; and

WHEREAS, Policy 5.12 provides for a preference for small businesses, and Policy 5.14 establishes goals for small business, local business and service disabled veteran owned small businesses (SDVOSB) participation; and

WHEREAS, the same definition and criteria for small business verification is used for both federally and non-federally funded projects; and

WHEREAS, in February 2012 the United States Department of Transportation (USDOT) issued a new rule under 49 CFR Part 26 that requires recipients of federal funds to include a small business element in their DBE plan; and

WHEREAS, the Authority submitted the proposed small business element to the FAA containing a definition of "small business"; and

WHEREAS, in order to make Policy 5.12 and 5.14 consistent with the proposed small business element submitted to the FAA, the definitions of "small business" contained in the policies must be amended.

NOW, THEREFORE, BE IT RESOLVED that the Board hereby amends Policy 5.12, Preference to Small Businesses (Attachment A) and Policy 5.14, Small Business, Local Business and Service Disabled Veteran Owned Small Business Goal and Preference Program (Attachment B), to Change the Definition and Criteria of Small Business and Improve the Verification Process.

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BE IT FURTHER RESOLVED that the Board finds that this Board action is not a "project" as defined by the California Environmental Quality Act (CEQA), Pub. Res. Code Section 21605, and is not a "development" as defined by the California Coastal Act, Pub. Res. Code Section 30106.

PASSED, ADOPTED, AND APPROVED by the Board of the San Diego County Regional Airport Authority at a special meeting this 12<sup>th</sup> day of April, 2012, by the following vote:

AYES: Board Members:

NOES: Board Members:

ABSENT: Board Members:

ATTEST:

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TONY R. RUSSELL  
DIRECTOR, CORPORATE SERVICES/  
AUTHORITY CLERK

APPROVED AS TO FORM:

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BRETON K. LOBNER  
GENERAL COUNSEL

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**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY**  
**POLICIES**

**ARTICLE 5 - CONTRACTING AND DEBARMENT**  
**PART 5.1 - EQUAL OPPORTUNITY**  
**SECTION 5.12 - PREFERENCE TO SMALL BUSINESSES**

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**PURPOSE:** To establish a policy allowing a preference to small businesses in the award of construction and non-construction contracts for the San Diego County Regional Airport Authority (the "Authority").

**POLICY STATEMENT:**

In the procurement of contracts, the Authority's President/Chief Executive Officer or his or her designee ("President/CEO") shall be responsible for following all procedures required by (1) the Authority, (2) the San Diego County Regional Airport Authority Act, as amended from time to time, and (3) other applicable federal, state, and local laws.

(1) Applications and Definitions.

(a) This policy relates to the Authority's procurement of service and consulting agreements and the purchase of supplies, materials and equipment as defined in Article 5, Part 5.0, Section 5.01, and procurement of contracts for public projects as defined in Article 5, Part 5.0, Section 5.02 on a selected basis.

(b) In the event policy 5.14 is implemented in the procurement of service and consulting agreements and the purchase of supplies, materials and equipment, sections (2), (3), (4) ~~and~~ (6) of this policy will not apply

(c) For the purpose of this policy, a small business shall be a firm that (1) is enrolled in the Authority's Bonding and Contract Financing Assistance Program which requires verification by staff that the firm meets Small Business Administration (SBA) size standards, or (2) ~~possesses any certification issued by a California public agency that verifies the firm is within the SBA size standards or~~ (3) a business concern that is certified as a disadvantaged business enterprise (DBE) by the California Unified Certification Program, or (3) possesses valid certification issued by an agency, approved by the Authority, that verifies the firm is within the SBA size standards, or (4) is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33.-

(2) Objectives. The objectives of this policy are to:

(a) Establish principles and practices to facilitate a small business preference program that will provide full disclosure and transparency of the Authority's commitment, and

**POLICY SECTION NO. 5.12**

(b) Provide a preference of up to five percent (5%) to small businesses in the award of selected Authority contracts.

(3) Preference for Procurement When Bid Price is Primary Selection Criteria. As provided under Policy Section 5.01 and Policy Section 5.02; the contractor is selected based on being the lowest responsive and responsible bidder. In the event of a contract award where the pricing is primary selection criteria, the following shall apply;

(a) The bid amount of the lowest responsive and responsible bidder that is not a small business shall be multiplied by five percent (5%). The resulting five percent (5%) amount shall be considered as the small business preference.

(b) The lowest responsive and responsible bidder that is a small business shall have their bid adjusted by subtracting the amount of the small business preference from the small business's original bid. The adjusted bid is used in determining the award of contract. If the small business's adjusted bid is lower than the lowest non-small business bid amount, the contract shall be awarded to the small business.

(c) The maximum amount of the adjustment cannot exceed \$100,000.

(d) The final contract award should be in the amount of the original bid.

(4) Preference for Procurement on Qualification Based Selection Criteria. When a contractor is selected based on a scoring matrix that includes multiple criteria, points can be included for being a small business provided that the maximum points allowed for being a small business do not exceed five percent (5%) of the total allowable points used in the recommendation.

(5) Preference for Bonding and Contract Financing Program ("**Program**"). The Authority may allow an additional preference in a bid under this policy for a Public Project only when all of the following are present:

(a) The bidder is a participating small business contractor formally enrolled in the Authority's Program, and

(b) The bidder is the apparent low bidder for the Public Project contract, or the bidder will be the successful bidder under one of the scenarios listed above, and

(c) The amount of the additional preference does not exceed five percent (5%) of the contract price; and

(d) The total amount of the additional preference allowed bidder is only administrative costs incurred or to be incurred under the Program and are solely related to the specific bid under consideration by the Authority; and

(e) As a result of the additional preference extended under this policy, the bidder's contract bid amount is not altered or increased.

**POLICY SECTION NO. 5.12**

(6) When applicable, the combined preference for sections (3) and (5) above shall not exceed 5% or \$100,000, whichever is less.

[Amended by Resolution No. 2009-0141 R dated November 5, 2009.]

[Adopted by Resolution No. 2009-0057 dated April 2, 2009.]



**SAN DIEGO COUNTY REGIONAL AIRPORT AUTHORITY**  
**POLICIES**

**ARTICLE 5 - CONTRACTING AND DEPARTMENT**  
**PART 5.1 - EQUAL OPPORTUNITY**  
**SECTION 5.14 - SMALL BUSINESS, LOCAL BUSINESS AND SERVICE  
DISABLED VETERAN OWNED SMALL BUSINESS GOAL AND  
PREFERENCE PROGRAM**

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**PURPOSE:** To establish a program of goals and incentives benefiting small businesses, local businesses, and/or service disabled veteran owned small businesses in the contract procurement process of the San Diego County Regional Airport Authority (“**Authority**”).

**POLICY STATEMENT:**

In the procurement of contracts, the Authority’s President/Chief Executive Officer or his or her designee (“**President/CEO**”) shall be responsible for following all procedures required by (1) the Board, (2) the San Diego County Regional Airport Authority Act, as amended, and (3) all other applicable federal, state, and local laws.

(1) Definitions.

- (a) *Bonding and Contract Financing Assistance Program* – The program offered by the Authority intended to aid small and local businesses in obtaining first time bonding or increasing bonding capacity.
- (b) *Contracts* – Instrument used for the procurement of services and consulting agreements and the purchase of supplies, material, and equipment as outlined in Policy 5.01 and the procurement of contracts for Public Projects as outlined in Policy 5.02.
- (c) *Contract Owner* – A department within the Authority having responsibility for oversight and management of the contract to which the bid or proposal solicitation applies.
- (d) *Disadvantaged Business Enterprise (DBE)* – A small business concern that has been certified by the California Unified Certification Program (UCP) in compliance with 49 CFR Parts 23 or 26.
- (e) *Good Faith Effort* - The demonstration of a sustained and deliberate effort by a contractor responding to a bid or proposal solicitation issued by the Authority for the purpose of achieving meaningful participation by small businesses, local businesses and/or service disabled veteran owned small businesses.
- (f) *Local Business* – A business as defined under Policy 5.13.
- (g) *Prime Contractor* – A party or entity with whom the Authority enters into a legally binding agreement.

• SMALL BUSINESS - A PROFIT-MAKING CORPORATION, SOLE PROPRIETORSHIP, OR PARTNERSHIP THAT

(1) is enrolled in the Authority's Bonding and Contract Financing Assistance Program which requires verification by staff that the firm meets Small Business Administration (SBA) size standards, or (2) a business concern that is a certified as a disadvantaged business enterprise (DBE) by the California Unified Certification Program, or (3) possesses valid certification issued by an agency, approved by the Authority, that verifies the firm is within the SBA size standards, or (4) is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33.

~~(h) (1) is enrolled in the Authority's Bonding and Contract Financing Assistance Program which requires verification by staff that the firm meets Small Business Administration (SBA) size standards, or (2) possesses any certification issued by a California public agency that uses size criteria that fall within the SBA size standards; or (3) is an airport concessionaire that provides evidence that its business size is within standards established under 49 CFR Part 23, Section 23.33.~~

~~(i)(h) Subcontractor - A party or entity that enters into a legally binding agreement with a Prime Contractor.~~

~~(i)(i) Service Disabled Veteran Owned Small Business (SDVOSB) - A profit-making corporation, sole proprietorship, or partnership in which at least 51 percent of the shares or stock or other equitable securities are owned by one or more persons who are service-disabled veterans and included in the "VetBiz Registry" maintained by the United States Department of Veteran Administration (DVA) or any subsequent database preferred by the DVA.~~

~~(i)(j) Small Business Development - A department within the Authority, or any subsequent department identified by the President/CEO, that oversees and monitors compliance with this Policy 5.14.~~

~~(i)(k) Trade Assessment - An estimated breakdown of specific trades needed to complete a defined scope of work.~~

~~(i)(l) Vendor Management System - The registration system used by the Authority for business concerns to express interest in a particular trade and/or business opportunity.~~

(2) Application

This policy shall be applied to designated projects at the discretion of the Contract Owner, that will promote participation by small, local or SDVOSB business concerns.

When a small business goal is not established under this Policy, Policy 5.12 will apply.

(3) Methodology Used to Establish Small Business, Local Business, and/or Service Disabled Veteran Owned Small Business Goals

(a) Small Business Goal - A small business goal shall be established by the following methodology:

- i. The Trade Assessment categories needed to fulfill the scope of work will be developed based on the contract owner's estimate.
- ii. A Trade Assessment Scope Percentage (Scope%) will be calculated by taking the estimated value of the scope to be performed in each specific Trade Assessment category divided by the total estimated value of the contract.
- iii. A Trade Assessment Availability Percentage (Availability%) will be calculated by taking the total number of registered businesses within the Authority's vendor management system that (1) meet the Small Business criteria as defined by Policy 5.14; and (2) are capable to perform the specific Trade Assessment category. This number is divided by the total number of businesses in the same specific Trade Assessment categories from the same source.
- iv. A weighted goal percentage is calculated by multiplying the Trade Assessment Scope% by the Trade Assessment Availability% for each applicable Trade Assessment category. Each Trade Assessment category is added up which will result in the applicable goal.
- v. The total small business goal cannot exceed fifty percent (50%) for each contract.
- vi. The Trade Assessment Availability% can be calculated in advance provided that the Trade Assessment Availability% used is not older than 24 months.

(b) Local Business Goal – A local business goal shall be established by the following methodology:

- i. Identify the Trade Assessment categories needed to fulfill the scope of work.
- ii. A Trade Assessment Scope Percentage (Scope%) will be calculated by taking the estimated value of the scope to be performed in each specific Trade Assessment category divided by the total estimated value of the contract.
- iii. A Trade Assessment Availability Percentage (Availability%) will be calculated by taking the total number of registered businesses within the Authority's vendor management system that (1) meet the Local Business criteria as defined by Policy 5.14; and (2) are capable to perform the specific Trade Assessment category. This number is divided by the total number of businesses in the same Trade Assessment categories from the Authority's vendor management system.
- iv. A weighted goal percentage is calculated by multiplying the Trade Assessment Scope% by the Trade Assessment Availability% for each applicable Trade Assessment category. Then each Trade Assessment category is added up which will result in the applicable goal.
- v. The total local business goal cannot exceed sixty percent (60%) for each contract.
- vi. The Trade Assessment Availability% can be calculated in advance provided that the Trade Assessment Availability% used is not older than 24 months.

(c) A Service Disabled Veteran Owned Small Business (SDVOSB) Goal – A SDVOSB goal shall be established at three percent (3%).

(4) Goal Application When Price is Primary Selection Criteria for public projects or purchase of supplies, materials or equipment.

(a) A Small Business participation goal will be established for each identified project based on the methodology set forth in section (3) above. For those bids that meet or exceed the established goal, a price preference equal to three percent (3%) shall be awarded. For those businesses that have some participation, but do not meet the goal, a partial preference point will be provided for every full third of the goal achieved.

(b) A Local Business participation goal will be established for each identified project based on the methodology set forth in Section (3) above. For those bids that meet or exceed the established goal, a price preference equal to two percent (2%) shall be awarded. For those businesses that have some participation, but do not meet the goal, a single preference point will be provided if bid exceeds one-half of the goal. However, there will be no preference points awarded if the Authority's overall Local Business participation is at a level above sixty percent (60%) of current contract participation excluding those contracts that utilize federal funds and The Green Build terminal expansion project. A Local Business participation goal shall only be applied to contracts in excess of twenty-five thousand dollars (\$25,000).

(c) A Service Disabled Veteran Owned Small Business (SDVOSB) participation goal of three percent (3%) shall be established for each identified project. For those bids that meet or exceed the 3% goal, a price preference equal to two percent (2%) shall be awarded. For those businesses that have at least 1% participation, but less than the 3% goal, a single preference point will be provided.

(d) Partial goal achievement will be determined by dividing the goal percentage by the available preference points. All goals shall be expressed in whole percentage numbers and rounding for partial goals shall always be up to the next whole percentage number. (EXAMPLE: Goal is 32% and there are three preference points available  $31\% \div 3 = 10.33\%$  shall be rounded up to 11%)

(e) The maximum allowable combined participation preference shall not exceed seven percent (7%) or a combined price preference of \$100,000 on any single bid.

(f) The bid amount of the lowest responsive and responsible bidder (low bidder) shall be multiplied by the combined percentage points attributed to the eligible preferences identified in (4)(a), (4)(b), & (4)(c) above, for each responsive and responsible bidder (bidder). This will result in a unique bid adjustment amount specific to each bidder. (For example, a bidder that meets two of the three criteria for a combined preference of 5% will be awarded the contract if their bid price is within 5% or less of the lowest bid). The corresponding bid adjustment amount will be subtracted from each bidders'

original bid price, including the low bidder, to create the adjusted bid price. The adjusted bid price is used in determining the award of contract.

(g) The final contract award shall be in the amount set forth in the original bid.

(5) Goal Application for Qualification Based Selection Criteria

- (a) A Small Business participation goal will be established for each identified project based on the methodology set forth in section (3) above. For those submittals that meet or exceed the established goal, a scoring preference equal to three percent (3%) of the total available points shall be awarded as part of the overall scoring matrix used in determining selection. For those submittals that have some participation, but do not meet the goal, a partial points can be awarded provided it is limited to one point for every full third of the goal achieved.
- (b) A Local Business participation goal will be established for each identified project based on the methodology set forth in section (3) above. For those submittals that meet or exceed the established goal, a scoring preference equal to two percent (2%) of the total available points shall be awarded as part of the overall scoring matrix used in determining selection. For those submittals that have some participation, but do not meet the goal, one (1) point will be awarded provided submittal achieves one-half of the goal. A local goal is not permitted in awarding airport concessions under Federal regulations as long as the airport is recipient of federal grant monies.
- (c) A SDVOSB participation goal of three percent (3%) will be established for each identified project. For those submittals that meet or exceed the established goal, a scoring preference equal to two percent (2%) of the total available points shall be awarded as part of the overall scoring matrix used in determining selection. For those businesses that have at least 1% participation, but less than the 3% goal, a single preference point will be provided.
- (d) Partial goal achievement will be determined by dividing the goal percentage by the available preference points. All goals shall be expressed in whole percentage numbers and rounding for partial goals shall always be up to the next whole percentage number. (EXAMPLE: Goal is 32% and there are three preference points available  $31\% \div 3 = 10.33\%$  shall be rounded up to 11%)
- (e) The points awarded shall not exceed seven percent (7%) of the total allowable points used in the overall recommendation.
- (f) The use of the preference points shall be applied to determine which proposers will be interviewed for final consideration. Preference points will not be used in the final ranking.
- (g) The Prime Contractor must provide a distinct and clearly defined portion of work for all subcontractors whose participation is submitted in response to the corresponding goal. Any substitution in performance of said work without the Authority's prior

written consent may be grounds for contract termination, at which time the Authority may negotiate a new contract to the next highest ranked proposer without need to re-compete, provided there is no less than 50% of the contract term remaining.

**(6) Exemptions**

- (a) Federally funded projects require conformance with grant assurance requirements as established pursuant to 49 CFR Part 18.36.
- (b) Concession contracts pursuant to 49 CFR Part 23 prohibit the use of local participation in the award of contracts.
- (c) This Policy shall not apply if it conflicts with applicable federal, state or local laws of regulations.

Item #14

# Amend Policies 5.12 and 5.14 and Board Discussion Regarding Contracting Preferences

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Presented by Bob Silvas - Director, Small Business Development  
&  
Jana Vargas – Director, Procurement

April 12, 2012

# Agenda

- Program Overview
- Results
- Program Modifications
  - Amend DBE Plan
  - Redefine Small Business
- Process
- Recommended Board Action
- Questions

# Program Overview

- Programs

- Policy 5.12 – Preference to Small Businesses (*Adopted April 2009; Last Amended January 2011*)
- Policy 5.14-Small Business, Local Business & SDVOSB Goal and Preference (*Adopted January 2011*)
- Disadvantaged Business Enterprise (DBE) Program – Initiated w/ Creation of SDCRAA
- Airport Concession DBE (ACDBE) Program (*Revised January 2006*)

- Conditions

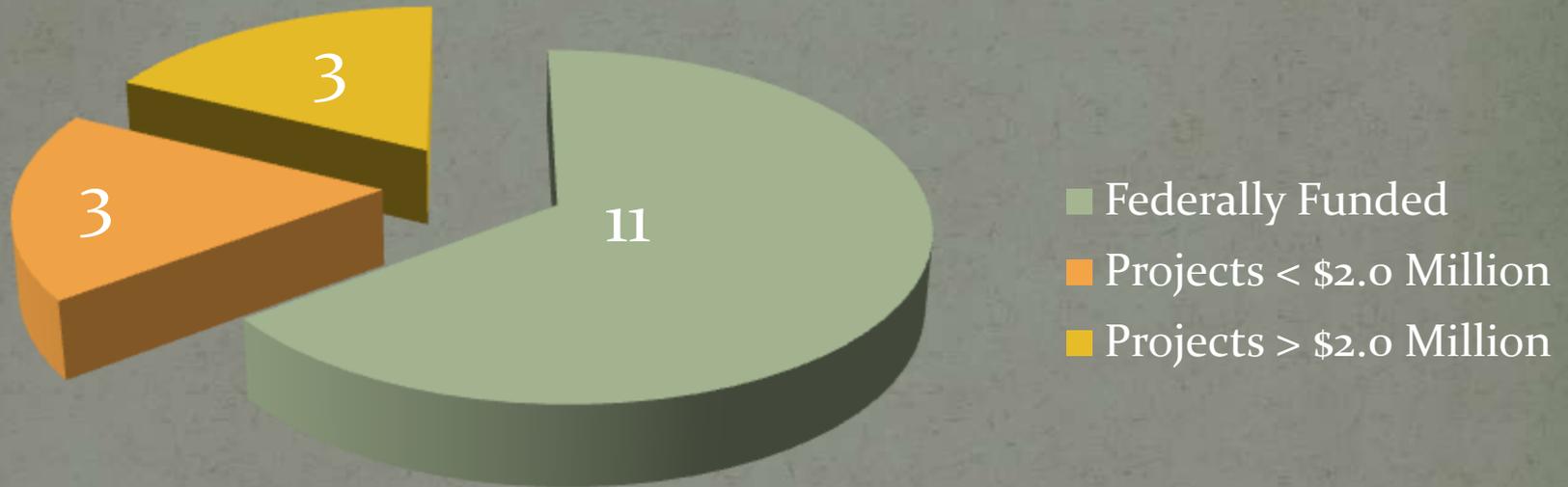
- Policy 5.12 –Preference to Small Business as a Prime
- Policy 5.14 –Preference Based on Goal Achievement; Excludes Federally Funded Project; Local Goal When Current Participation is Below 60%
- DBE Program – Federally Funded Projects (*49 CFR Part 26*); No Preferences Allowed
- ACDBE Program – Airport Concessions (*49 CFR Part 23*)

# Program Overview (cont.)

- Preference Points
  - Pricing is Determining Factor
    - 5.12 - 5% of Bid Price w/ \$100,000 Maximum Allowed
    - 5.14 – Possible 7% of Bid Price w/ \$100,000 Maximum Allowed
      - 3% Small Business Goal Achievement
      - 2% Local Business Goal Achievement
      - 2% SDVOSB Goal Achievement
      - Partial Goal Achievement Allowed
  - Qualification Based Selection
    - Preference in Scoring Points Cannot Exceed 5% of the Total Allowable Points
    - 5.14 is Only Used to Shortlist

# Program Results (January 2011 – February 2012)

## Projects



# Impact on Construction

- 6 Projects Total Value \$23.3 Million
- Local Business Participation – 80%
- Small Business Participation – 28%
- SDVOSB – 6%
- Contracts <\$2.0 Million:
  - All 3 Prime Contractors Were Small Businesses
  - One Contract Award Due to Policy 5.12 (\$7,000 Adjustment)
  - Local Participation – 100%
  - Small Business Participation – 99%
  - SDVOSB – 0%
- Contracts >\$2.0 Million:
  - No Small Business Were Primes
  - Local Participation – 79%
  - Small Business Participation – 24%
  - SDVOSB – 7%

# Findings

- Continue Strong Local Participation
- Small Business Participation High on Small Project w/ Low Complexity
- \$100,000 Cap May Provide Little Incentive on Larger Complex Projects

# DBE Program Modifications

- 49 Code Federal Regulation (CFR) Part 26
- New Rule Published in February 2011 Requiring a Small Business Element Added to DBE Plan
- FAA/DOT Guidance Issued December 2011
- Current Small Business Program is Consistent w/ Guidance Except Stronger Emphasis on Verification
- Current Small Business Definition Will Not Comply w/ Guidance

# Small Business Definition (Current)

- Enrollee in Airport Bonding and Contract Financing Assistance Program
- Possesses a Certification Issued by a California Public Agency that Verifies the Firm is w/in SBA Size Standards
- Airport Concession w/in Size Standards as Defined by 49 CFR Part 23.33

# Small Business Definition (Proposed)

- Enrollee in Airport Bonding and Contract Financing Assistance Program
- A California Certified DBE
- A Valid Certification by an Agency, Approved by the Authority, that Verifies SBA Size Standards
- Airport Concession w/in Size Standards as Defined by 49 CFR Part 23.33

# Revised Process

- Contract Owner (CO) Consults with SBD and Determines Best Program for Specific Solicitation
  - SBD collaborates with CO to determine goals under Policy 5.14
  - CO Must Receive VP Approval to Bypass 5.12 or 5.14
- Procurement Inserts Appropriate Preference Documentation into the solicitation
- Procurement applies Preferences Based on Information Submitted by Respondent
- Procurement request verification of preferences if applicable from SBD for Recommended Vendor prior to contract award

# Board Action

- Adopt Resolution Amending Policy 5.12 and 5.14 to Redefine Small Business (April 2012)
- Adopt Resolution Amending DBE Plan After Approval by FAA to incorporate Small Business Element (est. June 2012)

Questions?

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