

**10436. RESOLUTION 11-37 AMENDS RESOLUTION 08-34, WHICH ADOPTED A DISADVANTAGED BUSINESS ENTERPRISE (DBE) POLICY FOR ALL AUTHORITY-FUNDED CAPITAL CONSTRUCTION CONTRACTS IN EXCESS OF \$250,000, TO WAIVE SUCH DBE REQUIREMENTS WHEN REQUIRED AS A CONDITION OF ACCEPTING GRANT FUNDS**

WHEREAS, The Delaware River and Bay Authority (the “Authority”) is a bi-state Authority created by Compact for the purpose of owning, operating and controlling both Crossing and Non-Crossing facilities; and

WHEREAS, the Authority instituted a Disadvantaged Business Enterprise (“DBE”) Program Policy in 1996, as required by the Federal Aviation Administration (“FAA”) under Regulation 49 CFR Part 26, as a condition of accepting FAA funding for airport projects; and

WHEREAS, the Authority currently incorporates Federal DBE requirements in all Airport Improvement Projects of the Authority that receive FAA funding in excess of \$250,000; and

WHEREAS, the Authority implemented a DBE Policy incorporating this same methodology to include Disadvantaged, Minority-owned and Women-owned Business Enterprises in all Authority-funded capital construction projects in excess of \$250,000; and

WHEREAS, the Authority occasionally receives grant funding for capital construction projects that may require the Authority to spend more than \$250,000 of Authority funds, triggering the DBE participation requirements of Resolution 08-34 ; and

WHEREAS, as a condition of accepting of such grant funds, the Authority may be required to apply DBE provisions to such capital construction contracts that differ from the Authority DBE policy; and

WHEREAS, the Authority, as a matter of policy, has determined that it is in the best of interest of the Authority to accept grant funds to fund its capital improvement projects when available and desires to waive the DBE requirements of Resolution 08-34 when required as a condition of accepting such grant funds.

NOW, THEREFORE, BE IT RESOLVED, that the Executive Director, with the advice and consent of counsel, is hereby authorized and directed to waive the DBE requirements of Resolution 08-34 for all Authority-funded capital construction contracts in excess of \$250,000 in order to satisfy alternative DBE requirements required as a condition of accepting grant funds.

Discussion ensued regarding conflicts with federal DBE requirements and the Authority’s policy under Resolution 08-34. In order to receive federal funding, the Authority must comply with federal standards. The adoption of Resolution 11-37 allows the Authority to waive its DBE/WBE/MBE requirements and accept federal requirements on capital projects in excess of

\$250,000 when required as a condition of accepting federal grants. It was suggested that the WBE and MBE companies in the DRBA database also file for DBE status.

Executive Director Johnson stated that, based on the discussion, he will assign staff to outreach to the DBE/WBE/MBE companies in the Authority's database.

A motion to approve Resolution 11-37 incorporating the Executive Director's comments was made by Commissioner Downes, seconded by Commissioner Smith. A roll call vote was taken. Commissioners Downes, Green, Murphy, and Traynor from the State of Delaware voted yes. Commissioners Smith, Van Sant, and Hogan from the State of New Jersey voted yes, while Commissioner Dorn voted no.

Resolution 11-37 failed to produce the four (4) majority votes required from each State to pass Authority actions as required by Article VI, 6.2 of the Authority By-Laws.

## **Resolution 11-37 Executive Summary Sheet**

**Resolution:** Amending Resolution 08-34 to waive the DBE requirements of Resolution 08-34 when required as a condition of accepting grant funds

**Committee:** Projects Committee

**Committee/Commission Date:** September 20, 2011

### **Purpose of Resolution:**

The Authority desires to amend Resolution 08-34 to allow the Authority to waive the DBE requirements for Authority-funded capital projects in excess of \$250,000 when required by the acceptance of grant funds for such capital construction projects.

### **Background for Resolution:**

The Authority, as a matter of policy, has determined that it is in the best of interest of the Authority to accept grant funds to fund its capital improvement projects when available. Recognizing, that as a condition of accepting such grant funds, the Authority may be required to incorporate DBE requirements in Authority-funded capital projects in excess of \$250,000 that differ from the DBE requirements established by Resolution 08-34, the Authority desires to waive the DBE requirements of Resolution 08-34 when required as a condition of accepting grant funds.