

NORMAN Y. MINETA
SAN JOSE
INTERNATIONAL
A I R P O R T



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PLAN 2022

Submitted to:

U.S. Department of Transportation
Federal Aviation Administration



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I. POLICY STATEMENT AND PROGRAM OBJECTIVES

A. Policy Statement/Objectives (§26.1, §26.3, §26.7, §26.21, §26.23)

The City of San Jose, Norman Y. Mineta San Jose International Airport (hereinafter referred to as "Airport") is a recipient of U.S. Department of Transportation (U.S. DOT) Federal Assistance funds through the Federal Aviation Administration (FAA). As a condition of receiving this assistance the Airport has developed a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation, Title 49, Code of Federal Regulations (CFR), Part 26 "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs¹."

In accordance with the U.S DOT's DBE Program, the goal of the Airport's DBE Program is to ensure that minority-owned, women-owned, and other disadvantaged small businesses can fairly compete for contracts and subcontracts financed in whole, or in part, with U.S. DOT funds.

Pursuant to the intent of the U.S. DOT's DBE Program regulations, the Airport is firmly committed to its DBE Program objectives, which are designed to:

1. Ensure non-discrimination in the award and administration of the Airport's U.S. DOT-assisted contracts and subcontracts.
2. Create a level playing field by which DBEs can fairly compete for and perform in Airport U.S. DOT-assisted contracts.
3. Ensure that the Airport DBE Program is narrowly tailored in accordance with applicable law and current legal standards, including the Ninth Circuit Ruling in *Western States Paving vs. Washington State Department of Transportation*.
4. Ensure that only firms meeting 49 CFR Part 26 eligibility standards are permitted to participate as DBEs.
5. Help remove procurement and contracting barriers, which impede DBE participation in Airport U.S. DOT-assisted contracts.
6. Monitor and enforce contractor compliance in meeting established goal objectives and program requirements.
7. Assist DBEs and small businesses to increase their ability to compete successfully in the marketplace.
8. Ensure Airport contractors and subcontractors take all necessary and reasonable steps to comply with these policy objectives.

As evidence of the Airport's commitment to pursue these policy objectives Christopher Hickey, the City's Director of the Office of Equality Assurance, has been designated, as the DBE Liaison Officer (DBELO). In this capacity the DBELO is responsible for implementing all aspects of the DBE program, however all Airport staff share in the responsibility for making the Airport's DBE Program a success and shall give their full cooperation to the DBELO in the implementation of this Policy. The DBELO has direct access to the Director of Aviation for DBE-related matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

¹ <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>



Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

This policy is posted on the Airport website² and is available to the public and to the DBE and non-DBE business communities that perform or are interested in performing work on Airport contracts. Questions regarding Airport's DBE Program should be addressed to the DBELO.

In response to requirements set forth under 49 CFR Part 26; "Participation of Disadvantaged Business Enterprises in U.S. Department of Transportation Programs," effective March 4, 1999, and subsequently issued U. S. DOT Directives and Final Rules, the Airport will ensure DOT-assisted contracting and procurement processes promote equity in access, consideration and opportunity for DBEs and other small businesses.

The City has disseminated this policy statement to the City Council and all departments of the City. We have distributed this statement to DBE and non-DBE business communities in our area. This distribution is accomplished by posting our Policy Statement on the City's website at www.sanjose.ca.gov and the Airport's website at www.flysanjose.com.

A handwritten signature in blue ink that reads "Jennifer Maguire".

Jennifer Maguire
City Manager

7/14/2022

Date

² www.flysanjose.com.



B. Applicability (§26.3, §26.21)

The City on behalf of the Airport is a recipient of federal airport funds and as a direct recipient of federal funds from U.S. DOT, and as a condition of federal financial assistance, the Airport is required to submit for approval to the U.S. DOT Operating Administration from which it receives the majority of its federal funding, a DBE Program developed in accordance with federal regulations published under 49 CFR Part 26 and subsequent guidance. This DBE Program sets forth the policies and procedures to be implemented by the Airport to ensure that DBEs have an equitable opportunity to participate in the Airport's U.S. DOT-assisted contracting opportunities.

In direct response to these regulatory requirements, the Airport hereby establishes a DBE Program, which will:

1. Comply with federal regulations and financial assistance agreements.
2. Meet legal standards for narrow-tailoring requirements.
3. Ensure non-discrimination in the award of U.S. DOT-assisted contracts.
4. Reaffirm the commitment to fairness and the principles of equal opportunity.

In conformance with 49 CFR Part 26, the Airport will continue to carry out its DBE Program until all U.S. DOT funds have been expended. The Airport will advise all applicable U.S. DOT Operating Administrations of any significant updates and/or changes to this DBE Program.

In the event of any conflicts or inconsistencies between the DBE Program Regulations, 49 CFR Part 26, and the Airport's DBE Program with respect to U.S. DOT-assisted contracts, the Regulations shall prevail.

C. Definition of Terms (§26.5)

All terms used in this DBE Program shall have the meaning set forth in 49 CFR Part 26³.

D. Non-Discrimination Requirements (§26.7)

The Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Airport will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program with respect to individuals of a particular race, color, sex, or national origin.

Through such efforts, the Airport will ensure that its contracting and procurement-related processes promote equity in access, consideration, and opportunity for DBEs in response to the requirements set forth under Title 49 CFR, Part 26: "Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs."

E. Reporting to U.S. DOT (§26.11)

The Airport maintains a detailed recordkeeping system which identifies U.S. DOT-assisted contract awards and tracks prime contractors' progress in achieving DBE goal commitments throughout the performance

³ <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>



of the contract. The Airport verifies payments made to DBEs and keeps record of actual DBE attainments. Any areas of identified non-compliance are subject to administrative sanctions against the contractor as outlined in this manual.

The Airport's records serve to document all information, for each U.S. DOT-assisted contract, needed to comply with U.S. DOT regulations. Records will include, but will not be limited to, the following information:

- Contract title and number.
- Prime contractor name, address, and primary contact.
- DBE commitment (percentage and dollar value of contract allocated to DBEs).
- Field observation/on-site interview forms.
- Report measuring DBE commitment percentage and dollar amount vs. actual attainment.
- Certification by the Airport, attesting to having monitored contractor compliance, documentation submittal requirements, and on-site performance.
- Outreach efforts made by the Airport to inform DBEs of the contracting opportunity and inform prime bidders/proposers of DBE availability and interest in the contract.

Annual Uniform Reports

The Airport's DBELO or designee shall submit for FAA review and approval, an annual Uniform Report of DBE Awards or Commitments and Payments. In conformance with FAA direction, the Airport will submit reports through FAA Civil Rights Connect by December 1 of each Federal Fiscal Year. The reports shall list the dollar value of DBE participation for U.S. DOT-assisted contracts and subcontracts awarded and closed and shall demonstrate the Airport's progress toward reaching the FAA-approved overall/triennial DBE goal. All dollar amounts reported will reflect the federal share of such contracts. The report will identify the dollar amount awarded to certified DBEs through the use of race conscious methods and race neutral methods.

Pursuant to DBE Program regulations effective November 3, 2014, the Airport will also report DBE participation and payments on ongoing contracts.

Upon request, the Airport will compile and submit ad-hoc DBE contract award and progress reports for U.S. DOT-assisted projects. Furthermore, the Airport will continue to provide reports relative to the Airport's DBE Program, as directed. These reports will provide DBE participation information on the Airport's race-neutral and gender-neutral contracts on all U.S. DOT-assisted procurement activities.

F. Bidders List (§26.11c)

The Airport has developed and maintains a Bidders List consisting of all firms bidding on prime contracts, and bidding or quoting on subcontracts on Airport U.S. DOT-assisted projects/contracts. All U.S. DOT-assisted contracts include a contract clause requiring all prime bidders/proposers to submit a completed Bidders List to the Airport for their firm and for all firms (DBE and non-DBE) that submitted a bid, proposal or quote to the prime bidder/proposer, including firms who were contracted by the prime bidder. The Bidders List shall, at a minimum, contain the following information for each firm:

- Firm name
- Office location



- Project Number and Title

The Airport will use this information to assist in establishing the Airport's market area and as a resource in the Airport's DBE goal-setting process.

G. Federal Financial Assistance Agreement Assurance (§26.13)

The Airport has signed the following assurances as a condition of financial assistance agreements with the U.S. DOT, and which is hereby made applicable to all Airport U.S. DOT-assisted contracts:

Non-Discrimination Assurance (§26.13a):

This language will appear in financial assistance agreements with sub-recipients:

"The Airport shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S. DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. THE AIRPORT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of U.S. DOT-assisted contracts. The Airport DBE Program, as required by 49 CFR Part 26 and as approved by U.S. DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Airport of its failure to carry out its approved program, the Department may impose sanctions as provided under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)."

Contract Assurance Clause (§26.13b)

The Airport will ensure that the following clause is placed in every U.S. DOT-assisted contract and subcontract:

"The Contractor, Airport or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Airport deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the Contractor from future bidding/proposing as non-responsible.*

Contractor agrees to include these requirements in all subcontracts at any tier."

II. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates (§26.21)

As a recipient of more than \$250,000 of U.S. DOT financial assistance over a Federal Fiscal Year and pursuant to 49 CFR §26.21, the Airport shall continue to implement the DBE Program unless and until all funds from U.S. DOT financial assistance have been expended.



The Airport will regularly review directives issued by U.S. DOT and update its DBE Program as necessary to fully comply with the intent of the US DOT's DBE Program. The Airport will promptly advise all applicable U.S. DOT Operating Administrations, of any significant updates and/or changes to the Airport's DBE Program.

B. Policy Statement (§26.23)

The Policy Statement is elaborated on the first page of this program document.

C. DBE Liaison Officer (§26.25)

The City has designated the following individual to serve as the DBELO with responsibility for the implementation all aspects of the Airport's DBE Program and ensuring that the Airport complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE Program matters (**Attachment A: DBE Program Organizational Chart**). The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO is supported by a staff of two to assist in the administration of the program. The DBELO works closely with staff and the management staff of the Airport to ensure the DBE Program is implemented uniformly and that all pertinent DBE information is captured within the Airport's reports the FAA. Contact information for the Airport's DBELO is as follows:

Christopher Hickey
Director, Office of Equality Assurance
City of San José
200 East Santa Clara Street
Fifth Floor
San Jose CA 95113

Telephone: 408-535-8481

Email: Christopher.Hickey@sanjoseca.gov

The DBELO's and/or designee's duties include, but are not limited to, the following activities:

- Analyze and revise DBE Program policies and procedures as necessary.
- Submit updates to the U.S. DOT, regarding any significant changes to the Airport's DBE Program.
- Work with Airport departments to perform goal-setting analysis, establish methodology, and calculate overall triennial DBE goals.
- Facilitate public participation in the overall goal-setting process.
- Conduct an annual review of the Airport's overall DBE goal; adjust and/or re-calculate the goal as necessary and submit to the FAA.
- Review triennial/overall DBE goal commitments at the end of each Federal Fiscal Year (FFY); analyze any goal shortfall(s); provide to the FAA (within 90 days after FFY end) a written analysis of why the overall goal was not achieved, as well as a written plan for corrective actions that the Airport will take to remedy the goal shortfall.
- Conduct and coordinate outreach efforts to DBEs and small businesses to provide information regarding contracting opportunities with the Airport; utilize the assistance of minority and



- women business associations, small business development centers, industry/trade organizations, vendor fairs, workshops and minority-focused publications to assist with outreach efforts.
- Coordinate public information and communication programs regarding contracting opportunities ensuring bid notices and requests for proposals are made available to DBEs in a timely manner.
 - Participate in the development of DBE information to be presented at pre-bid/pre-proposal meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
 - Ensure that solicitation documents and contract templates include all relevant DBE Program elements, contractor documentation submittal requirements, and required contract provisions.
 - Work with the Airport's contracting/procurement staff to ensure they consistently arrange solicitations, present bid/ proposal requirements, and determine required quantities, specifications, and proposal delivery schedules to facilitate a level playing field for DBEs.
 - Work with the Airport's contracting/procurement staff to remove, where feasible, barriers which may limit DBE participation, by ensuring that Invitations for Bids (IFBs) and Requests for Proposals (RFPs) do not contain unduly restrictive requirements; ensure that sufficient time is allowed during the pre-bid phase for DBEs to schedule attendance at pre-bid/pre-proposal meetings and for non-DBEs to perform adequate good faith efforts established.
 - Maintain a Bidders List of firms that submit a bid, quote, or proposal for participation on a Airport contract; ensure that the Bidder List contains all information required by 49 CFR §26.11.
 - Ensure Good Faith Efforts are reviewed for responsiveness when bids/proposals do not meet DBE contract goals.
 - Develop and implement technical assistance programs for DBEs, including resources and referrals to supportive services.
 - Investigate services and resources offered by banks and/or financial institutions owned and controlled by socially and economically disadvantaged individuals.
 - Ensure that any DBE subcontractor terminations by the prime Contractor are for "good cause" only, and that any such terminations receive prior written approval by the Airport.
 - Monitor and enforce contractor compliance with all DBE Program provisions including goal commitments, documentation submittal requirements, reporting requirements, prompt payment to subcontractors, and DBE utilization requirements; impose administrative sanctions and/or monetary penalties for contractor's willful non-compliance.
 - Ensure procedures are in place that require upon completion of each contract on which DBEs were utilized a written affidavit attesting to monitoring and verification of contractor compliance with all DBE Program provisions.
 - Maintain all necessary documentation to verify performance of activities included in the DBE Program.
 - Provide timely DBE reports to the FAA, including the annual Uniform Report of DBE Awards or Commitments and Payments.



- Implement provisions to facilitate participation of small businesses on U.S. DOT-assisted contracts.
- Advise the governing body on DBE matters and achievements.

D. DBE Financial Institutions (§26.27)

It is the policy of the Airport to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to utilize these institutions, as available, and to encourage prime contractors on the Airport's U.S. DOT-assisted contracts to make use the services of minority and women-owned financial institutions identified from listings posted at the Website of the Financial Management Service, US Department of the Treasury, Minority Bank Deposit Program. The Internet address of this website is <http://www.fms.treas.gov/mbdp>.

E. Prompt Payment Provisions (§26.29)

The DBE Program found at 49 CFR Part 26 requires that any delay or postponement of payment over 30 days may take place only for good cause and with the Airport's prior written approval. Any violation of this provision shall subject the violating prime contractor or subcontractor to the penalties, sanctions and other remedies specified in Section 7108.5 of the Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontract performance, or noncompliance by a subcontractor.

Subcontractor Payments

The Airport has adopted a prompt payment provision on all U.S. DOT-assisted contracts to facilitate timely payment to all subcontractors in accordance with regulatory mandates. Pursuant to 49 CFR Part 26.29, the Airport will include the following clause in each U.S. DOT-assisted contract:

"Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment Contractor receives from the Airport. Contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the Agreement work by the Airport. Any delay or postponement of payment from the above referenced time frame may take place only for good cause and with the Airport's prior written approval."

Contractors on federally funded projects shall incorporate this clause verbatim, set forth above, in all subcontracts, broker, dealer, vendor, supplier, purchase order or other source agreements issued to both DBE and non-DBE firms.

Any violation of the provisions listed above shall subject the violating contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative or judicial remedies otherwise available to contractor or subcontractor in the event of a dispute involving late payment or nonpayment by contractor; deficient subcontractor performance and/or noncompliance by a subcontractor.



Failure to comply with this provision without prior approval from the Airport will constitute noncompliance, which may result in the application of appropriate administrative sanctions, including, but not limited to, a penalty of two percent (2%) of the invoice amount due per month, for every month that full payment is not made.

Retention Payments

Pursuant to §26.29 “Prompt Payment Provisions” (DBE Final Rule), the Airport has selected the following method to comply with the prompt payment of retainage requirement:

The Airport will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within thirty (30) days after payment to the prime contractor.

Any delay or postponement of payment from the above referenced time frames may take place only for good cause and with the Airport’s prior written approval. Failure to comply with this provision or delay in payment without prior written approval from Airport will constitute noncompliance, which may result in appropriate administrative sanctions, including, but not limited to a withhold of two percent (2%) of the invoice amount due per month for every month that payment is not made.

Prompt Payment Dispute Resolution

The Airport will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The Airport will host an initial meeting for prime and sub to present evidence to an Airport representative who has authority to settle the relevant dispute with individuals authorized to bind each interested party.
- The Airport will review evidence from both sides and issue a determination.

The Airport has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- **Alternative Dispute Resolution (ADR) Contract Clause**
Depending on the type of contract, one of the following contract clauses will be used requiring the prime contractor to engage in ADR for any prompt payment and return of retainage to the subcontractor:
- Any controversy or claim arising out of or relating to prompt payment under a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.
- Any controversy or claim arising out of or relating to prompt payment under a contract that is not a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.



- Prompt Payment Contract Clause: A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed:

Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontracts entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, the Airport may impose appropriate penalties for failure to comply with prompt payment requirements.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following steps:

1. *Prime: Subcontractor shall first contact prime contractor in writing regarding late payments. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime after several attempts to resolve prompt payment issue, subcontractor should contact DBELO to initiate complaint.*
2. *The Airport: If subcontractor is unable to timely resolve prompt payment issue after contacting prime contractor, subcontractor shall submit prompt payment complaint in writing to DBELO and include the prime contract number, copy of subcontract or purchase order, and a summary of payment issues. Subcontractor should provide any copies of checks, and correspondence, including emails, that may assist in understanding the facts of any payment issues.*
3. *FAA: If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport to resolve prompt payment disputes, affected subcontractor may contact the FAA.*

Enforcement Actions for Noncompliance of Participants

The Airport will provide appropriate means to enforce the requirements of § 26.29, including:

- Prior to the Airport's issuance of progress payments, commencing with the second invoice, the prime Contractor shall provide the Airport with evidence that the prime contractor has paid all subcontractors all amounts due for work that the subcontractor has performed.
- The Airport may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.
- In accordance with the contract, the Airport may withhold payments up to a specific amount against the prime contractor for each for non-compliance, or impose other sanctions as determined by the Airport.

F. DBE Directory (§26.31, §26.81)

The Airport is a non-certifying member of the California Unified Certification Program (CUCP). 49 CFR Part 26.81 requires each state's UCP to maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31.



The Airport refers interested parties to the CUCP Database of Certified DBE Firms⁴ (DBE Directory) to assist in identifying certified DBEs.

G. Overconcentration (§26.33)

If the City of San José identifies that over-concentration exists in the types of work that DBEs perform, we will devise appropriate measures to address this overconcentration.

H. Business Development Programs (§26.35)

The City of San José has implemented race and gender-neutral efforts to promote small business concerns, including DBEs. The Airport's Small Business Element, which was developed to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors can be found within Section J of this Program.

I. Monitoring Responsibilities (§26.37)

The City of San José implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all program participants, including prompt payment and commercially useful function reviews.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by the Project Manager and City Inspector to ensure that work committed to DBEs at contract award or subsequently is performed by the DBEs to which the work was committed. The Project Manager and City Inspector shall provide written certification that the contracting records have been reviewed (Attachment 7a) and that work sites have been monitored (Attachment 7b).
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment made to DBE firms), including a means of comparing these attainments to commitments. These mechanisms will include dollar amounts as well as dates of payments to ensure timing and

⁴ <https://caltrans.dbesystem.com/>



dollar amounts fall within the required parameters. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Monitoring Payments to DBEs and Non-DBEs:

Will undertake ongoing monitoring of prime payments to subcontractors over the course of any covered contract. The Airport monitors prompt payments to subcontractors and follows up with prime contractors and subcontractors for explanations when prompt payment requirements are not met.

Conducts periodic audits of contractor invoices. Invoice payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the Airport by the prime contractor. During these reviews, the Airport may also review whether payments to DBEs include any lower tier subcontractor payments to non-DBEs, and whether DBE subcontractor is performing a commercially useful function.

Requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Airport or U.S. DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Disadvantaged Business (DBE) Certification Status Change

If a DBE subcontractor is decertified during the life of the project, the decertified subcontractor must notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the project, the subcontractor must notify the contractor in writing with the date of certification.

The City of San José requires contractors to maintain records and documents of payments to lower-tiers, including DBEs, for a period of four (4) years from the date of final payment by the Airport, unless otherwise provided by applicable record retention requirements in the contractor’s agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Airport. This reporting requirement extends to all lower tiers, both DBE and non-DBE.

The Airport reserves the right, at its sole discretion, to demonstrate responsiveness to the requirements of CFR 49 Part 26.37 by implementing the following method(s):

- a) Posting contractor payment data to a website, database, or other place accessible to subcontractors to assist them in determining when they should expect to receive payment.
- b) Requiring the contractor to use an automated reporting system, inclusive of, but not limited to, real time entry of payments made and received by the contractor and their lower tiers.

To further ensure the integrity of the DBE Program’s intent, and in accordance with the Airport’s DBE Compliance Close-Out Report Process, the Airport’s DBELO or designee will complete and file a written certification attesting to having reviewed and monitored contractor DBE documentation, on-site performance when applicable, and payments to DBEs to verify compliance with DBE requirements.



Additionally, as part of the Commercially Useful Function Monitoring procedures conducted by the Airport, written certification is provided during the Airport's commercially useful function review process that includes an on-site observation, survey and a desk audit to compare on-site observations against submitted DBE reporting.

The Airport will bring to the attention of the U.S. DOT any false, fraudulent, or dishonest conduct in connection with the program, so that U.S. DOT can take the steps provided in 26.107 (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S. DOT Inspector General, take action under suspension and debarment or Program Fraud and Civil Penalties rules). Additionally, the Airport will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

J. Fostering Small Business Participation (§26.39)

Effective February 28, 2012, the Airport has established a Small Business Element as a supplement to the existing DBE Program to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation. This includes unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors in direct response to regulatory requirements, 49 CFR Part 26.39 "Fostering Small Business Participation" (Federal Register/ Vol. 76, No. 19/ Friday, January 28, 2011/ Rules and Regulations).

While the Airport has historically utilized race- and gender- neutral strategies to promote and advance small business participation efforts as a part of DBE Program implementation efforts, this element of the program serves to unify in a singular location these important efforts.

For purposes of capturing small business utilization, the Airport adheres to the U.S. DOT's Small Business definition for what constitutes a Small Business Enterprise.

This Small Business Element includes, but is not limited to the following assertive, active and effective strategies:

- The Airport will institute regular reviews of procurements to assess opportunities for unbundling (breaking out scopes of work/services to facilitate small business prime contracting opportunities). The Airport believes that including the participation of procurement staff in scheduled reviews will increase accountability of the Airport's procurement options and decisions and in doing so will ultimately improve contracting opportunities for small business firms at the prime level.
- The Airport currently provides online access to all available project plans for small business firms to utilize to review bid/procurement plans at no cost. The Airport informs the procurement community and small business firms that this resource has been made available to them at pre-bid/proposal meetings. For non-internet savvy small businesses, the Airport also allows small business firms the opportunity to come into the Airport's office and request project plans. The Airport will print these plans for the requesting small business firm at no cost. The Airport is confident that providing small business firms online access to these crucial plans at no additional cost will aid in leveling the playing field and enable them to submit quality proposals and bids.
- To the extent feasible, data on small business participation will be collected and maintained by the Airport which will allow the Airport to monitor and track small business participation in the Airport's contracting program.



- The Airport hosts Small and Local Business Vendor Outreach Events to establish the importance placed on fostering small business opportunities in the Airport’s contracting program and provide small businesses valuable access to key procurement individuals in order to promote their capabilities, strengthen relationships, and increase the participation of small business firms within the Airport’s contracting program.
- The Airport holds pre-proposal conferences for key procurement releases that include a networking component to encourage teaming and partnering between primes and small businesses as well as providing them access to the Airport’s key procurement individuals. This networking component will provide small business firms valuable access and opportunity needed to promote their capabilities and strengthen competitiveness, marketability and participation of small businesses firms within the Airport’s contracting program. Additionally, it will encourage prime contractors to partner and communicate with the small business community.

The Airport will actively implement the small business elements to foster small business participation as a requirement of good faith implementation of the Airport’s DBE program.

III. DETERMINING, MEETING & COUNTING PARTICIPATION TOWARDS THE OVERALL DBE GOAL

A. Use of Set-Asides or Quotas (§26.43)

The Airport shall not permit the use of quotas for DBEs on U.S. DOT-assisted contracts in accordance with 49 CFR Part 26. Further, the Airport shall not set aside contracts for DBEs on U.S. DOT-assisted contracts subject to the regulatory provisions, except in limited and extreme circumstances where no other method could be reasonably expected to redress egregious instances of discrimination.

B. Methodology for Setting Overall DBE Goals (§26.45; §26.49)

In accordance with §26.45(f), and with FAA approval, the Airport will establish and submit an overall program DBE goal on a triennial basis if the Airport anticipates awarding U.S. DOT/FAA funded prime contracts for a cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. The overall program goal will represent the amount of U.S. DOT-assisted funds the Airport anticipates expending on DBE firms over three years and will be presented as a percentage of the total U.S. DOT-assistance received.

The overall program goal will be developed in accordance with the 2-Step process specified in §26.45 (c) & (d). Step 1 is to determine the goal “base figure” based on the relative availability of DBEs in the Airport market area. Step 2 is to adjust the goal “base figure” from Step 1 so that it reflects as accurately as possible the DBE participation the Airport would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to DBE participation. The Airport will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Airport’s efforts to establish a level playing field for the participation of DBEs. The Airport will publish a notice on the Airport’s website of the proposed overall DBE goal, informing the public that the proposed goal and its rationale are available for inspection for a 30-day public comment period.



The Airport will submit the overall program goal to U.S. DOT in accordance with §26.45 (f)(2) by August 1st. The overall goal submission to U.S. DOT will include a summary of information and comments received during this public comment/participation process and any THE AIRPORT responses. The Airport will begin using our overall goal on October 1 of each year, unless we have received other instructions from U.S. DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a U.S. DOT-assisted contract for the project.

In accordance with 49 CFR Part 26, the Airport will project how much of the overall DBE goal can be achieved through race and gender-neutral measures, and will use race-conscious measures, such as contract-specific DBE goals, only to meet that portion of the overall goal which is not likely to be met utilizing race-neutral measures.

The Airport's overall DBE goals represent the amount of ready, willing, and able DBEs that are available to participate in contracting opportunities and is reflective of the amount of DBE participation the Airport would expect, absent the effects of discrimination. The Airport intends to meet those goals to the maximum extent feasible through the race neutral measures described herein. Where race-neutral measures are inadequate to meet the overall goals, the Airport will establish DBE goals on contracts with subcontracting opportunities and relative DBE availability. A full description of the methodology used to calculate the current 3-year average goal including specific goal calculations can be found in Attachment 5 to this program.

Shortfall Analysis and Corrective Action Plan (§26.49)

The Airport will further follow accountability mechanisms in instances where the Airport has failed to meet its overall 3-year average goal for a given fiscal year. The Airport will thoroughly analyze why it fell short of meeting its overall goal for a given goal period and establish specific steps and milestones for correcting identified problems so that the Airport will meet its overall goal in subsequent years. The Airport will complete its proposed plan within 90 days of the end of the fiscal year, as applicable, to ensure compliance. The plan will be available to FAA upon request.

C. Race-Neutral Measures (§26.51)

The Airport is currently operating a strictly race-neutral DBE program and contract goals are not applicable on Airport procurements. The Airport will endeavor to meet its overall DBE goal and increase DBE participation on, the Airport's U.S. DOT-assisted contracts, by utilizing the following race-neutral measures:

- Identify components of the work which represent subcontracting opportunities and identify the availability of DBE subcontractors to participate in proportion to total available subcontractors. Contractors will be encouraged to consider subcontractors for components of the work for which there is a known supply of ready, willing, and able subcontractors, including DBE subcontractors, in preparing their bids.
- Provide technical assistance to DBEs, in areas relevant to public contracting success; provide referrals to small/minority business assistance organizations.
- Facilitate the distribution of the CUCP DBE Directory to the widest feasible universe of potential prime contractors.
- Assist DBEs in overcoming limitations.



- Include small and disadvantaged businesses in the Airport's outreach, public information, and communications programs, to ensure that DBEs are made aware of the Airport's contracting opportunities.
- Provide business development assistance to DBEs, to facilitate business growth and success beyond participation in the Airport's DBE Program.

D. Meeting DBE Contract Goals or Demonstrating Good Faith Efforts (§26.53)

As the Airport is currently operating a strictly race-neutral DBE Program and contract goals are not applicable on Airport procurements, Good Faith Efforts procedures for contract goals are not applicable.

Should the Airport implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide the procedures for the administrative reconsideration process and to specify the Airport Reconsideration Official.

DBE Substitution, Termination and On-going Good Faith Efforts

The Airport requires that the contractor not terminate a DBE without the Airport's prior written consent. This includes, but is not limited to, instances in which the contractor seeks to perform work originally designated for a DBE with its own work force or those of an affiliate, a non-DBE firm, or with another DBE firm.

The Airport will provide such written consent only if it agrees, for reasons stated in the concurrence document, that the contractor has good cause to terminate the DBE firm. For purposes of this section, good cause includes the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract.
- The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the contractor.
- The listed DBE subcontractor fails or refuses to meet the contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law.
- The contractor has determined that the listed DBE subcontractor is not a responsible contractor.
- The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal.
- The listed DBE is ineligible to receive DBE credit for the type of work required.
- A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- Other documented good cause that the Airport determines compels the termination of the DBE.



Before transmitting to us its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise us and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why we should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

If the contractor fails or refuses to comply in the time specified, the Project Manager will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Project Manager may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City of San Jose to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of __ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

E. Counting DBE Participation (§26.55)

The Airport will count DBE participation toward overall goals as provided in 49 CFR 26.55.

Notification of Reporting Responsibilities

Prior to execution of all contracts containing DBE goals, the prime contractor shall be directed to the contract specification for the Airport's specific DBE reporting and record keeping requirements.



Monthly Payment Reporting Requirements

All prime contractors must report monthly prime and subcontractor payments. Failure to submit these reports in a timely manner may result in a penalty.

Contracting in Good Faith

During the term of the contract, the contractor shall continue to make good faith efforts to ensure that DBEs have an opportunity to successfully perform in the contract, and that the contractor meets its DBE goal.

The following guidelines apply in calculating DBE participation toward meeting established goals in accordance with Title 49CFR, Part 26.55:

- Only work proposed to be performed by a DBE's own work forces (including cost of supplies, materials and equipment leases) obtained by the DBE for the work of the contract, except supplies and equipment the subcontractor purchases and/or leases from the prime contractor or its affiliate.
- When a DBE subcontracts part of its work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE subcontractor is itself a certified DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. A DBE should perform at least thirty percent (30%) of the total cost of its contract with its own workforce.
- In instances of joint venture, a Bidder/Proposer may only count toward its DBE goal the portion of the bid which meets certification, ownership and control standards.
- A Bidder/Proposer may count toward its DBE goal, only expenditures to firms that are proposed to perform a commercially useful function on that contract. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved.
- A Bidder/Proposer may count toward its DBE goal, sixty percent (60%) of its expenditures for materials and supplies required under the contract and obtained from a DBE regular dealer, and one hundred (100%) percent of such expenditures to a DBE manufacturer. For purposes of this section, a manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials and supplies obtained by the contractor. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.
- A Bidder/Proposer may count towards its DBE goal, fees and commissions paid to DBE firms that are not manufacturers or regular dealers, provided that the fees or commissions are determined to be reasonable and not excessive, as compared with fees customarily allowed for similar services.
- Special Provisions for Trucking – A Bidder/Proposer may count towards its goal, all transportation services provided by DBE trucking firms, who can demonstrate control of trucking operations for which it seeks credit and it owns, insures, and operates, using drivers it employs in the performance of the contract. The DBE must itself own and operate at least one fully licensed, insured, and operation truck used on the contract. The DBE who leases



trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

- In cases where DBE certification has ceased during the performance period of the contract, although the prime contractor will continue to report the dollar value of the worked performed to the Airport on the monthly DBE Paid Report (Form 103), the Airport will not count the participation towards its overall goal.

Commercially Useful Function Standards

The Airport will count payments to a DBE firm for DBE credit only if the DBE is performing a Commercially Useful Function (CUF) on that contract. A DBE performs a CUF when it is responsible for execution of the work of the contract or a distinct element of the work by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing the material (where applicable), and paying for the material itself.

To determine whether a DBE is performing a commercially useful function, the Airport will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing, the DBE credit claimed for its performance of the work, and other relevant factors. The Airport will conduct site visits and phone interviews of DBEs performing on FAA-assisted contracts to determine if a commercially useful function is being provided by DBEs. A DBE questionnaire has been developed to monitor DBE compliance with CUF requirements. The Airport will interview various types of DBE firms, including, construction, services, materials, supplies and trucking firms to determine if the DBE firm is providing a commercially useful function.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Airport may examine similar transactions, particularly those in which DBEs do not participate. The firm's role must not be a superfluous step added in an attempt to obtain credit towards the goal.

If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own work force or, if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Airport will presume that it is not performing a commercially useful function.

If the Airport determines that a DBE is not performing a CUF, the DBE may present evidence to rebut this determination. The Airport's decisions on commercially useful function matters are subject to review by the U.S. DOT Operating Administration.

A DBE's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform



a CUF that raises serious issues with the firm's ability to control the work and its independence from a non-DBE firm, the Airport will address this matter with the DBE firm. The Airport may commence a proceeding under Section 26.87 to determine the continued eligibility of the DBE firm.

DBE "Frauds" and "Fronts"

Only legitimate DBEs are eligible to participate in federally funded contracts. Therefore, bidders/proposers are cautioned against knowingly and willfully using "fronts" to meet DBE goals. The use of "fronts" and "pass through" subcontracts to non-disadvantaged firms constitute criminal violations.

In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE. Further, any indication of fraud, waste, abuse, or mismanagement of Federal funds should be immediately reported to the Office of Inspector General (OIG), U.S. Department of Transportation, via the toll-free hotline at 800-424-9071, email at <https://www.oig.dot.gov/hotline> or U.S. mail at U.S. DOT Inspector General, 1200 New Jersey Avenue SE, West Bldg. 7th Floor, Washington, CA 20590. The hotline is open 24 hours per day, seven days per week. Additional information can be found on www.oig.dot.gov/hotline.

IV. CALIFORNIA UNIFIED CERTIFICATION PROGRAM (§26.81)

49 CFR §26.81 requires all public agencies that receive U.S. DOT financial assistance to participate in a statewide Unified Certification Program (UCP). A UCP is a "one-stop shopping" certification program that standardizes DBE eligibility criteria and the application process and eliminates the need for a DBE to certify with multiple agencies within the state.

The Airport is a non-certifying member of a Unified Certification Program (UCP) administered by the California Unified Certification Program (CUCP). The UCP will meet all of the requirements of this section. The Airport will use and count for DBE credit only those DBE firms certified by the CUCP.

CUCP agencies are classified as certifying and non-certifying members. CUCP certifying members perform DBE certifications which apply to all U.S. DOT funded contracts. Certification activities include processing applications, reviewing financial and company ownership information, performing site visit and employee interviews, making certification decisions, investigating certification complaints and appeals, and maintaining a single Statewide directory of certified DBEs. A business certified as a DBE by any CUCP certifying member is automatically accepted by all U.S. DOT recipients in California.

Effective August 1, 2013, the California UCP (including Caltrans) is no longer issuing DBE Certificates as evidence of certification. A copy of a printout from the DBE Database should be sufficient proof of a firm's certification. Prime contractors and awarding agencies should not impose on DBE firms the burden of providing a DBE certificate in their bid packages - it is not required.

A non-certifying member agency adheres to all aspects of the U.S. DOT DBE program, except that it does not perform DBE certification activities. The Airport is a Non-certifying member of the CUCP; therefore, the Airport accepts DBE certifications from all CUCP certifying members. The Airport maintains a copy of the latest CUCP Memorandum of Agreement (MOA) on file, as well as a Declaration of Status Letter signed by the Airport's Department Manager and the CUCP Secretary and Chair.



For more information about the certification process or to apply for certification, firms should visit the California Department of Transportation Office of Civil Rights website⁵.

V. DBE CERTIFICATION

As a non-certifying member of the CUCP, the Airport will accept DBE certifications from certifying member agencies of the CUCP (§26.61-§26.73; §26.81; §26.83a). The CUCP DBE Certification application is online at: <https://caltrans.dbesystem.com/>. The DBE certification application forms and documentation requirements can also be found in Attachment 8 to this Program.

Scope of Work Covered by Certification (§26.71(n))

Firms must be DBE certified in the scope of work (represented by NAICS code(s)) directly applicable to their performance on a contract. If a firm wishes to participate on a contract under a scope of work for which the firm is not currently certified (i.e., if the firm wishes to add one or more NAICS codes to its certification), the firm must contact its certifying agency and submit all required documentation to demonstrate DBE ownership and control of the specific type(s) of work the firm wishes to add to its DBE certification. The firm shall then submit proof of DBE certification in the applicable scope(s) of work to the Airport, in order to receive DBE credit for performing that scope of work. For a firm's DBE participation to be counted towards a bidder's/proposer's initial DBE commitment, the firm must be DBE certified in the applicable scope of work prior to the bid/proposal due date.

Annual Affidavit of Continuing Eligibility

Each certified DBE is required to submit a written affidavit to its certifying agency once annually, on the anniversary date of the firm's initial certification, to certify that the firm continues to meet DBE eligibility criteria as defined in 49 CFR Part 26. The affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet DBE eligibility, including size, gross receipts, DBE status, ownership, or control requirements. The affidavit must also affirm that there have been no material changes to the information provided in the original certification application.

If the DBE fails to submit an affidavit, or any required supporting documentation, in a timely manner, it will be deemed to have failed to cooperate with 49 CFR Part 26 and will no longer be considered a certified DBE. It is the DBE's sole responsibility to maintain its certification status with the certifying agency and the Airport.

Notification of Change in Circumstances

If a DBE's circumstances affecting the firm's DBE eligibility change at any time after the firm has been identified as a DBE participant on an Airport contract, the DBE must provide written notification of such change(s) to its certifying agency, the Airport and the prime contractor, if applicable. Such changes include, but are not limited to, business size, gross receipts, disadvantaged status, ownership, and/or control requirements. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate with 49 CFR Part 26.

⁵ <https://dot.ca.gov/programs/civil-rights>



Lapse in Certification Status

If a DBE participant on an Airport contract ceases to be certified at any time during the life of the contract, any participation by that DBE after the firm ceases to be certified will not count as DBE participation.

Procedures for Removal of DBE Eligibility (§26.87)

Pursuant to 49 CFR §26.87, any person may file a written complaint alleging that a currently certified DBE is ineligible to be certified as such and specifying the alleged reasons why the firm is ineligible. Because the Airport is a NON-certifying member of the CUCP, the Department will implement the following procedures upon receipt of a written complaint challenging a firm's DBE certification status. The Airport will also protect the confidentiality of complainants' identities as required by 49 CFR §26.09(b).

1. Obtain the name of the CUCP certifying member agency that issued the DBE's certification.
2. Provide the complainant(s) with contact information for the CUCP certifying member agency.
3. Provide the complainant(s) with a copy of 49 CFR §26.87, which outlines the DBE eligibility removal process.
4. Provide a written notification to the DBE in question, stating that the firm's DBE eligibility has been challenged and that the complainant has been referred to the DBE's certifying agency; include a copy of 49 CFR §26.87. If the DBE in question is a current participant in the Airport's DBE Program, remind the DBE of its obligation to notify the Airport of any change in the DBE's certification status within 30 days of the change.

Certification Denials and Appeals (§26.89)

Firms that have applied for and were denied DBE certification under one or more NAICS codes, and/or firms whose certification has been removed by a CUCP certifying member agency, may file an administrative appeal with the U.S. DOT within 90 days from the date of denial, in accordance with 49 CFR §26.89. Certification decisions are NOT appealable to the Airport.

To file a DBE certification appeal, firms should send a letter to the U.S. DOT Office of Civil Rights. The appeal should, at a minimum, include information and arguments concerning why the recipient's decision should be reversed, a copy of the denial letter, and any additional information the denied firm believes to be pertinent to the appeal. Firms must provide the name(s) and address(es) of any U.S. DOT recipient the firm is currently certified with or who has rejected its application for certification or removed the firm's eligibility within one year prior to the date of the appeal. This includes applications currently pending certification action.

All appeals should be submitted to the U.S. Department of Transportation, Office of Civil Rights, External Policy & Programs Division, 400 7th Street SW – Room 5414, Washington, DC 20590, Phone: (202) 366-4754, TTY: (202) 366-9696, Fax: (202) 366-5575.

VI. REQUIRED CONTRACT PROVISIONS AND ENFORCEMENT

Information, Confidentiality, Cooperation (§26.109)

The Airport will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a), California Public Records Act (Government Code §6250) state,



and local law. Notwithstanding the preceding provision, the Airport will not release any information that may reasonably be construed as confidential business information to any third party (other than U.S. DOT) without the written consent of the firm that submitted the information.

Intimidation and Retaliation

Neither the Airport nor its contractors will intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Contractors in violation of this requirement will be subject to appropriate action.



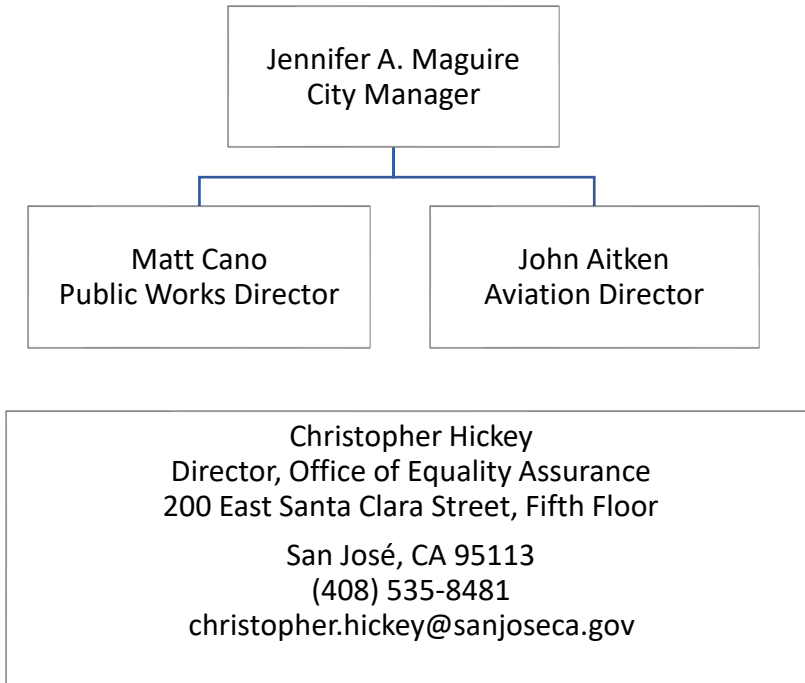
ATTACHMENT 1:

Website Link to USDOT Regulations: 49 CFR Part 26

<http://www.ecfr.gov/cgi-bin/text-idx?SID=13af74af528520ba427cf26a184fd02&node=pt49.1.26&rgn=div5>



ATTACHMENT 2: ORGANIZATIONAL CHART





ATTACHMENT 3: BIDDERS' LIST COLLECTION FORMS - PART I AND PART II

BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART I

The bidder shall fully complete this form. The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.15A of the Standard Specifications and per 49 CFR Part 26.11. This listing is required in addition to listing DBE Subcontractors elsewhere in the proposal. Photocopy this form for additional firms.

Firm Name/Address/City, State, ZIP		Phone/Fax	Annual Gross Receipts	Age of Firm (Years)	Description of Work to be Performed	CSJ Use Only
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						

Bidder's List of Subcontractors -- Part I



BIDDER'S LIST OF SUBCONTRACTORS (DBE AND NON-DBE)

PART II

The bidder shall **fully** complete this form. The bidder shall list **all** subcontractors who provided a quote or bid but were **not** selected to participate as a subcontractor on this project. This is required for compliance with 49 CFR Part 26. Photocopy this form for additional firms.

Firm Name/Address/City, State, ZIP		Phone/Fax	Annual Gross Receipts	Age of Firm (Years)	Description of Work to be Performed	CSJ Use Only
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million <input type="checkbox"/> ≤ \$5 million <input type="checkbox"/> ≤ \$10 million <input type="checkbox"/> ≤ \$15 million <input type="checkbox"/> ≥ \$15 million			<input type="checkbox"/> Yes <input type="checkbox"/> No DBE Cert No.
<i>Address</i>		<i>Fax</i>				
<i>City State Zip</i>						

Bidder's List of Subcontractors – Part II



ATTACHMENT 4:

Website Link to California DBE Directory

http://www.dot.ca.gov/hq/bep/find_certified.htm



ATTACHMENT 5A:

Federal Aviation Administration (FAA)
Overall Disadvantage Business Enterprise (DBE)
Goal-Setting Methodology

Fiscal Federal Years (FFY) 2023-2025
Goal Period



**NORMAN Y. MINETA
SAN JOSE INTERNATIONAL
AIRPORT**

**Federal Aviation Administration (FAA)
Overall Disadvantage Business Enterprise
(DBE)
Goal-Setting Methodology**

**Fiscal Federal Years (FFY) 2023-2025
Goal Period**

Submitted in fulfillment of:
Title 49 Code of Federal Regulations Part 26



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DBE GOAL METHODOLOGY

I. INTRODUCTION

The City of San Jose/Norman Y. Mineta San Jose International Airport (SJC) herein sets forth its Overall Disadvantaged Business Enterprise (DBE) Goal and corresponding federally prescribed goal-setting methodology for the three-year Federal Fiscal Year (FFY) goal period of 2023-2025 (October 1, 2022 through September 30, 2025), pursuant to Title 49 Code of Federal Regulations (CFR) Part 26 “Participation by Disadvantaged Business Enterprises in U.S. Department of Transportation Programs.” The purpose of the DBE goal-setting process is to level the playing field so that DBEs can compete fairly for Department of Transportation-assisted contracts, however, the program must be narrowly tailored in accordance with applicable law.

II. BACKGROUND

SJC is a recipient of U.S. Department of Transportation (USDOT), Federal Aviation Administration (FAA), funding. As a condition of receiving this assistance, SJC signed an assurance that it will comply with FAA’s DBE requirements. In accordance with Title 49 CFR Part 26 provisions: Participation by DBEs in USDOT Programs, SJC is required to develop and submit a Triennial Overall DBE Goal for its FAA-assisted projects.

SJC herein presents its Overall DBE Goal Methodology for FFY 2023-2025.

III. FAA-ASSISTED CONTRACTING PROGRAM FOR FFY 2023-2025

Market Area

The Federal DBE program requires agencies to implement the DBE program based on information from the relevant geographic market area—the area in which the agency spends the substantial majority of its contracting dollars.

The SJC local market for contracts consists of a geographic area that is:

- where a large majority of contracting dollars is expended, and
- where a substantial number of contractors and subcontractors are located and available to submit bids or quotes.

The SJC bidder’s list was reviewed and analyzed to determine where SJC spends the substantial majority of its contracting dollars. The previously established market area of Alameda and Santa Clara counties remain the valid market area

Anticipated Projects

SJC has five (5) FAA-assisted projects that are anticipated to be awarded during the triennial period and which were considered in preparing this goal methodology. The projects, which include construction and professional services contracting opportunities, are anticipated to be awarded during the triennial period and have potential subcontracting opportunities. These projects and their federal share are listed in Table 1.



TABLE 1
 (amounts subject to rounding differences)

PROJECT NAME/DESCRIPTION ⁶	EST. TOTAL PROJECT COST ⁷	EST. FAA \$ SHARE ⁸	EST. FAA % SHARE ⁹
General Aviation Run-Up Pad Relocation - REBID - The General Aviation (GA) Run-up Pad Relocation project will improve airfield safety by eliminating a designated airfield incursion hotspot. The project is addressing the current hotspot at the intersection of Taxiway D and Taxiway W by relocating the existing run-up pad to the apron area between Taxiway B and Taxiway C on the southwestern end of the Airport. The scope of work includes removal of existing pavement and tie-downs, unclassified excavation, lime treated subgrade stabilization, crushed Aggregate Base Course, bituminous Surface Course, drainage Improvements, striping, lighting, directional Signage, and removal of Existing Run-up.	\$1,209,566	\$967,653	80.00%
New Taxiway Victor Phase 1 The New Taxiway Victor- Phase 1 Project includes approximately 1,100 LF of New Taxiway V pavement and a taxiway connector stub approximately 457 LF, and includes installation of drainage improvements, grading improvements, and installation of new airfield lighting and signage.	\$9,835,444	\$7,868,355	80.00%
Terminal B South Ramp - phase 4 Removal and Replacement of approx. 100K SF of existing apron south of terminal b (gate positions 37 and 38) and replace with new DG-V rated PCC Pavement	\$6,595,351	\$5,276,281	80.00%
Terminal B South Ramp - phase 5 Removal and Replacement of approx. 76K SF of existing apron south of terminal b (gate positions 39 &40)	\$6,595,351	\$5,276,281	80.00%

⁶ The name and brief description of each project.
⁷ The total estimated cost of each project.
⁸ The estimated FAA dollar share for each project.
⁹ The estimated FAA percentage share for each project.



PROJECT NAME/DESCRIPTION ⁶	EST. TOTAL PROJECT COST ⁷	EST. FAA \$ SHARE ⁸	EST. FAA % SHARE ⁹
New Taxiway Victor Phase 2 and 3 Phase 2 will consist of the demolition of existing airfield pavement between existing Taxiway V and Taxiway W, demolition of portions of existing Taxiway W1, and the construction of up to 325,600 square feet of new portland cement concrete (PCC) pavement. Other improvements include site grading, drainage improvements, airfield electrical improvements (signage and lighting), existing utility protection, and FAA NAVAID and infrastructure protection.	\$9,835,444	\$7,868,355	80.00%
Total	\$34,071,155	\$27,256,924	80.00%

Subrecipients

SJC does not reallocate any FAA funds to subrecipients.

Categories of Work

SJC reviewed each project anticipated to be awarded in the triennial period and determined the applicable categories of work applicable for each project using North American Industry Classification System (NAICS) codes. The corresponding dollar values for each NAICS code for each project were summarized for purposes of weighting the categories of work based on the staff estimates. Table 2 provides a summary of the categories of work with estimated dollars for each.

TABLE 2: Project NAICS Codes
(amounts subject to rounding differences)

PROJECT NAME	EST. FAA \$ SHARE ¹⁰	NAICS CODE ¹¹	NAICS TITLE ¹²	EST. FAA \$ SHARE NAICS ¹³
General Aviation Run-Up Pad Relocation - REBID	\$967,652.80	237310	Highway, Street, and Bridge Construction	\$308,904.43
		237990	Other Heavy and Civil Engineering Construction	\$4,719.91
		238120	Structural Steel and Precast Concrete Contractors	\$1,890.13
		238210	Electrical Contractors and Other Wiring Installation Contractors	\$409,103.15
		238390	Other Building Finishing Contractors	\$6,731.88
		238910	Site Preparation Contractors	\$105,916.69
		238990	All Other Specialty Trade Contractors	\$5,938.27

¹⁰ The estimated FAA dollar share for each project.

¹¹ The category of work (NAICS) code for each project.

¹² The category of work (NAICS) title.

¹³ The estimated FAA dollars for each NAICS code in each project.



PROJECT NAME	EST. FAA \$ SHARE ¹⁰	NAICS CODE ¹¹	NAICS TITLE ¹²	EST. FAA \$ SHARE NAICS ¹³
		541330	Engineering Services	\$12,517.43
		541360	Geophysical Surveying and Mapping Services	\$10,706.58
		541620	Environmental Consulting Services	\$23,198.98
		541690	Other Scientific and Technical Consulting Services	\$46,314.51
		561730	Landscaping Services	\$31,710.84
New Taxiway Victor Phase 1	\$7,868,355.14	237310	Highway, Street, and Bridge Construction	\$3,575,085.53
		238120	Structural Steel and Precast Concrete Contractors	\$297,926.94
		238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,228,461.59
		238390	Other Building Finishing Contractors	\$50,112.48
		238910	Site Preparation Contractors	\$73,961.56
		541330	Engineering Services	\$8,779.34
		541360	Geophysical Surveying and Mapping Services	\$57,065.72
		541611	Administrative Management and General Management Consulting Services	\$162,239.34
		541620	Environmental Consulting Services	\$122,910.78
		541690	Other Scientific and Technical Consulting Services	\$87,793.41
		561730	Landscaping Services	\$121,894.13
		562111	Solid Waste Collection	\$2,082,124.34
New Taxiway Victor Phase 2 and 3	\$7,868,355.14	237310	Highway, Street, and Bridge Construction	\$3,575,085.53
		238120	Structural Steel and Precast Concrete Contractors	\$297,926.94
		238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,228,461.59
		238390	Other Building Finishing Contractors	\$50,112.48
		238910	Site Preparation Contractors	\$73,961.56
		541330	Engineering Services	\$8,779.34
		541360	Geophysical Surveying and Mapping Services	\$57,065.72
		541611	Administrative Management and General Management Consulting Services	\$162,239.34
		541620	Environmental Consulting Services	\$122,910.78
		541690	Other Scientific and Technical Consulting Services	\$87,793.41
		561730	Landscaping Services	\$121,894.13
		562111	Solid Waste Collection	\$2,082,124.34
Terminal B South Ramp - phase 4	\$5,276,280.64	237310	Highway, Street, and Bridge Construction	\$3,411,888.48
		237990	Other Heavy and Civil Engineering Construction	\$178,627.68
		238120	Structural Steel and Precast Concrete Contractors	\$72,585.07



PROJECT NAME	EST. FAA \$ SHARE ¹⁰	NAICS CODE ¹¹	NAICS TITLE ¹²	EST. FAA \$ SHARE NAICS ¹³
		238210	Electrical Contractors and Other Wiring Installation Contractors	\$112,470.12
		238910	Site Preparation Contractors	\$1,234,899.69
		541330	Engineering Services	\$9,072.00
		541380	Testing Laboratories	\$272.16
		541611	Administrative Management and General Management Consulting Services	\$2,268.00
		541620	Environmental Consulting Services	\$9,752.40
		541690	Other Scientific and Technical Consulting Services	\$181,440.00
		561730	Landscaping Services	\$17,645.04
		561990	All Other Support Services	\$45,360.00
		Terminal B South Ramp - phase 5	\$5,276,280.64	237310
237990	Other Heavy and Civil Engineering Construction			\$178,627.68
238120	Structural Steel and Precast Concrete Contractors			\$72,585.07
238210	Electrical Contractors and Other Wiring Installation Contractors			\$112,470.12
238910	Site Preparation Contractors			\$1,234,899.69
541330	Engineering Services			\$9,072.00
541380	Testing Laboratories			\$272.16
541611	Administrative Management and General Management Consulting Services			\$2,268.00
541620	Environmental Consulting Services			\$9,752.40
541690	Other Scientific and Technical Consulting Services			\$181,440.00
		561730	Landscaping Services	\$17,645.04
		561990	All Other Support Services	\$45,360.00
Total	\$27,256,924			\$27,256,924.37

Table 3 is a summary of each NAICS code and the total dollar values for each NAICS code based on projects listed in Table 2.

TABLE 3: NAICS Code Summary
(amounts subject to rounding differences)

NAICS Code	Category of Work	NAICS Dollars ¹⁴	NAICS Funding Weight ¹⁵
237310	Highway, Street, and Bridge Construction	\$14,282,852	52.4%
237990	Other Heavy and Civil Engineering Construction	\$361,975	1.3%
238120	Structural Steel and Precast Concrete Contractors	\$742,914	2.7%

¹⁴ The total dollars for each category of work (NAICS) that are summed from the values in Table 2.

¹⁵ The percentage of dollars for each category of work (NAICS) for all projects anticipated to be awarded.



NAICS Code	Category of Work	NAICS Dollars ¹⁴	NAICS Funding Weight ¹⁵
238210	Electrical Contractors and Other Wiring Installation Contractors	\$3,090,967	11.3%
238390	Other Building Finishing Contractors	\$106,957	0.4%
238910	Site Preparation Contractors	\$2,723,639	10.0%
238990	All Other Specialty Trade Contractors	\$5,938	0.0%
541330	Engineering Services	\$48,220	0.2%
541360	Geophysical Surveying and Mapping Services	\$124,838	0.5%
541380	Testing Laboratories	\$544	0.0%
541611	Administrative Management and General Management Consulting Services	\$329,015	1.2%
541620	Environmental Consulting Services	\$288,525	1.1%
541690	Other Scientific and Technical Consulting Services	\$584,781	2.1%
561730	Landscaping Services	\$310,789	1.1%
561990	All Other Support Services	\$90,720	0.3%
562111	Solid Waste Collection	\$4,164,249	15.3%
		\$27,256,924	100.0%

IV. GOAL METHODOLOGY

A. **STEP 1: DETERMINATION OF A BASE FIGURE (26.45)¹⁶**

To establish the SJC Base Figure of the relative availability of DBEs relative to all comparable firms (DBE and Non-DBE) available to bid or submit proposals on SJC FAA-assisted contracting opportunities projected to be solicited during the triennial goal period, SJC followed the prescribed federal methodology to determine relative availability. This was accomplished by assessing the *California Unified Certification Program (CUCP) DBE Database of Certified Firms* and the *2020 U.S. Census Bureau County Business Patterns Database* within the SJC market area (defined as Alameda and Santa Clara counties) for each of the categories of work defined in Table 2.

$$\text{Base Figure} = \sum \frac{(\text{Number of Ready, Willing and Able DBEs})}{(\text{Number of All Ready, Willing and Able Firms})} \times \text{weighted ratio}$$

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2020 U.S. Census Bureau County Business Patterns Database

In accordance with the formula listed below, the Base Figure is derived by:

- a. Relative Availability: dividing the number of ready, willing and able DBE firms identified for each NAICS work category by the number of all firms identified within the market are for each corresponding work category,

¹⁶ 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.



- b. **Weighted Relative Availability:** weighting the relative availability of each work category by the corresponding work category weight from Table 2 (NAICS %) to determine the Weighted Ratio for each NAICS work category and adding the weighted ratio figures together.

A concerted effort was made to ensure that the scope of businesses included in the numerator was as close as possible to the scope included in the denominator.

The relative availability of DBEs is calculated in Table 4 below.

TABLE 4: DBE Relative Availability
(amounts subject to rounding differences)

NAICS Code	Category of Work	DBEs ¹⁷	ALL Firms ¹⁸	Rel. Aval. ¹⁹
237310	Highway, Street, and Bridge Construction	9	104	8.7%
237990	Other Heavy and Civil Engineering Construction	5	27	18.5%
238120	Structural Steel and Precast Concrete Contractors	4	51	7.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	21	1,570	1.3%
238390	Other Building Finishing Contractors	3	179	1.7%
238910	Site Preparation Contractors	10	320	3.1%
238990	All Other Specialty Trade Contractors	26	472	5.5%
541330	Engineering Services	55	2,436	2.3%
541360	Geophysical Surveying and Mapping Services	7	12	58.3%
541380	Testing Laboratories	9	228	3.9%
541611	Administrative Management and General Management Consulting Services	78	2,714	2.9%
541620	Environmental Consulting Services	33	329	10.0%
541690	Other Scientific and Technical Consulting Services	37	873	4.2%
561730	Landscaping Services	2	1,541	0.1%
561990	All Other Support Services	6	221	2.7%
562111	Solid Waste Collection	0	165	0.0%
Total		305	11,242	2.7%

The relative availability of DBEs from Table 4 is 2.7%. However, to make the Base Figure more accurate, SJC used weighting to take into account the amount of work that is available for each category of work (NAICS).

¹⁷ The number of DBEs in the market area for each NAICS code from the CUCP DBE Database of Certified Firms.

¹⁸ The number of all firms (DBE and non-DBE) in the market area for each NAICS code from the 2020 U.S. Census Bureau County Business Patterns Database.

¹⁹ The number of DBEs divided by the number of all firms.



The weighted relative availability of DBEs is calculated in Table 5 below.

TABLE 5: DBE Weighted Relative Availability
(amounts subject to rounding differences)

NAICS Code	Category of Work	Estimated FAA % by NAICS ²⁰	Rel. Aval. ²¹	Weighted Ratio ²²
237310	Highway, Street, and Bridge Construction	52.4%	8.7%	4.5%
237990	Other Heavy and Civil Engineering Construction	1.3%	18.5%	0.2%
238120	Structural Steel and Precast Concrete Contractors	2.7%	7.8%	0.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	11.3%	1.3%	0.2%
238390	Other Building Finishing Contractors	0.4%	1.7%	0.0%
238910	Site Preparation Contractors	10.0%	3.1%	0.3%
238990	All Other Specialty Trade Contractors	0.0%	5.5%	0.0%
541330	Engineering Services	0.2%	2.3%	0.0%
541360	Geophysical Surveying and Mapping Services	0.5%	58.3%	0.3%
541380	Testing Laboratories	0.0%	3.9%	0.0%
541611	Administrative Management and General Management Consulting Services	1.2%	2.9%	0.0%
541620	Environmental Consulting Services	1.1%	10.0%	0.1%
541690	Other Scientific and Technical Consulting Services	2.1%	4.2%	0.1%
561730	Landscaping Services	1.1%	0.1%	0.0%
561990	All Other Support Services	0.3%	2.7%	0.0%
562111	Solid Waste Collection	15.3%	0.0%	0.0%
Total				6.0%

B. Step 2: Adjusting the Base Figure

Upon establishing the Base Figure, SJC reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within the market area, in accordance with prescribed narrow tailoring provisions as set forth under 49 CFR Part 26.45: Step 2, DBE Goal Adjustment Guidelines.

Evidence considered in making adjustments to the Base Figure included Past DBE Goal Attainments and Other Evidence, as follows:

1) Past DBE Goal Attainments

Historical DBE participation attainments provide demonstrable evidence of DBE availability and capacity to perform on SJC projects. The projects anticipated to be awarded during the triennial period are substantially similar to those awarded in the recent past. SJC proceeded to calculate past DBE participation attainments for the three (3)

²⁰ From Table 3

²¹ From Table 4

²² The NAICS weight multiplied by the relative availability.



federal fiscal years, for which DBE attainment data is available. The table below reflects the demonstrated capacity of DBEs (measured by actual historical DBE participation attainments) on FAA-assisted contracts awarded by SJC within the last three (3) federal fiscal years.

TABLE 6: Past Participation
(amounts subject to rounding differences)

FEDEAL FISCAL YEAR (FFY)	FAA DBE GOAL %²³	FAA DBE % ATTAINMENT
FFY 2019	6.3%	0.0%
FFY 2020	4.1%	7.6%
FFY 2021	4.1%	4.1%
Median DBE Attainment Within the Last 3 FFYs		4.1%

The median established for the past three (3) federal fiscal years (4.1%) is lower than the Base Figure derived from Step 1 (6.0%); therefore, an adjustment to the Base Figure based on SJC past DBE goal attainments has been made. The adjustment is calculated in accordance with FAA guidance by averaging the Base Figure with the median DBE Past Attainment, as shown below.

TABLE 7: Adjusted Base Figure
(amounts subject to rounding differences)

Step 1 Base Figure ²⁴	6.0%
Median DBE Attainment ²⁵	4.1%
Adjusted Base Figure²⁶	5.0%

²³ The FAA DBE Goal percentage for each Federal Fiscal Year.

²⁴ From Table 5.

²⁵ From Table 6.

²⁶ The average of the Base figure and the median DBE attainment $[(10.2\% + 4.1\%) \div 2]$.



2) Disparity Studies

SJC reviewed a number of recent Federal DBE Program-related disparity studies in California. Those studies reveal quantitative and qualitative evidence that minority- and women-owned businesses do not have the same access to financing, bonding, and insurance as non-Hispanic white male-owned businesses in California. Any barriers to obtaining financing, bonding, and insurance might affect opportunities for minorities and women to successfully form and operate construction and engineering businesses in SJC's marketplace. Any barriers that minority- and women-owned businesses face in obtaining financing, bonding, and insurance would also place those businesses at a disadvantage in obtaining SJC FAA-funded prime contracts and subcontracts.

The 2017 San Francisco Bay Area Rapid Transit District (BART) Disparity Study²⁷, which includes Alameda and Santa Clara counties, found statistically significant disparity across all categories of work, including architecture and engineering, construction, professional services, other services, and procurement.

The 2015 San Francisco Municipal Transportation Agency (SFMTA) Disadvantaged Business Enterprise Availability, Utilization and Disparity Study²⁸ (2015 SFMTA Disparity Study) conducted quantitative and qualitative analyses of conditions in SFMTA's local marketplace, (which includes Santa Clara and Alameda Counties) to examine whether barriers exist in the marketplace in the construction and engineering industries for minority- and women-owned businesses and whether such barriers affect the utilization and availability of these businesses for SFMTA contracting. The 2015 SFMTA Disparity Study's quantitative analyses show barriers in the San Francisco Bay Area marketplace for minority- and woman-owned businesses in the areas of entry and advancement, business ownership, access to capital, and success of businesses.

The 2016 Caltrans FHWA Disparity Study²⁹ includes Santa Clara and Alameda counties and demonstrates substantial disparities in the utilization of minority- and women-owned businesses in transportation-related construction and professional services contracting.

While these disparity studies demonstrate that disparity exists in federal contracting, no adjustments to the SJC base figure were made due to the result of any disparity studies.

3) Other Available Evidence

SJC is not in possession of other information that would have an impact on the DBE goal assessment and has not made an adjustment to the SJC base figure due to the result of other airport goals.

²⁷

https://www.bart.gov/sites/default/files/docs/VI.BART%20Final%20Report.Volume%20I.1.12.2017_0.pdf

²⁸

<https://www.sfmta.com/sites/default/files/agendaitems/2016/4-19-16%20Item%2014%20Disparity%20Study%20-%20report.pdf>

²⁹

<http://www.dot.ca.gov/obeo/docs/2016DisparityStudyReport.pdf>



V. PROPOSED OVERALL DBE GOAL

Since the Ninth Circuit Court of Appeals decision regarding *Western States Paving v. Washington State Department of Transportation*, SJC has set race neutral goals. SJC will periodically re-evaluate its DBE Program to determine whether contract goals are necessary to achieve the overall goal. If after re-evaluation SJC believes a race-conscious program is necessary, as required by *Western States*, SJC will gather evidence to determine if discrimination in the transportation contracting industry is present. SJC will make a determination at that time what type of evidence gathering is appropriate, based on DOT regulations and case law.

The Proposed Overall DBE Goal for FFY 2023-2025 for SJC FAA-assisted contracts is 5.0%.

SJC will continue to have a race-neutral DBE Program for FFY 2023-2025. SJC has been able to achieve DBE participation by using only race-neutral methods and will continue to use the existing race-neutral measures as listed below and will consider new measures in order to achieve even greater participation over the triennial period. SJC will carefully monitor participation during the course of the goal period. At the conclusion of each year during the goal period, SJC will re-evaluate the effectiveness of the race-neutral methods and determine if it is necessary to institute a race-conscious portion and contract specific goals. If, in the future, as a result of this re-evaluation, SJC decides to implement race-conscious means, SJC will submit a revised DBE Goal Methodology for FTA's review and approval.

SJC has a race-neutral DBE Program and is not using race-conscious methods, including contract specific goals. SJC will use solely race-neutral methods, as shown below, to meet the overall DBE goal of 5.0% for FFY 2023-2025 in accordance with Title 49 CFR Part 26.51.

RACE-CONSCIOUS & RACE-NEUTRAL PROJECTIONS	
DBE Adjusted Base Figure	5.0%
Race-Conscious Component	0.0%
Race-Neutral Component	5.0%

VI. RACE-NEUTRAL IMPLEMENTATION MEASURES

SJC is currently implementing a number of race- and gender-neutral remedies. In order to outreach and promote the participation of DBEs and small businesses in the SJC FAA-assisted contracting program and to increase the effectiveness of these remedies, SJC plans to continue utilizing existing remedies and will continue to explore other options for consideration based on SJC success in meeting its overall DBE goals based on these efforts.

SJC will:

- Arrange contract solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate and maximize DBE and other small business participation.



- SJC will encourage prime contractors to identify subcontracting work that DBEs may bid on.
 - SJC will provide greater detail on the importance of the DBE program at pre-bid/proposal meetings.
 - SJC will invite all DBEs in the market area that perform the type of work included in a solicitation to the pre-bid/proposal meeting.
 - SJC will provide time before or after pre-bid/proposal meetings to allow for prime and subcontractor networking.
 - SJC will disseminate bid opportunity information to Small, Minority, Women and other Business Organizations within the market area.
- SJC will offer instructions and clarification on bid specifications, procurement policy, procedures, and general bidding requirements. SJC will provide information on subcontracting practices and bonding requirements and provide instructions and clarification on job performance requirements.
 - SJC will review solicitation language to provide an emphasis on the importance of the DBE program.
 - SJC will utilize the California Unified Certification Program website to provide prospective bidders with a list of all DBEs in the market area that perform the type of work included in a solicitation:
http://www.dot.ca.gov/hq/bep/find_certified.htm
 - Maintain a file of successful bid documents from past procurements and permit potential participants to review and evaluate such documents.
 - SJC will offer unsuccessful DBE bidders the opportunity for a debrief to help them understand areas in which they can improve their bid/proposal in the future.
 - Host and participate in workshops for the DBE and small business contracting community.
 - SJC will attend and participate in vendor fairs hosted by other public agencies in order to learn about best practices for DBE and small business inclusion on procurement.
 - As a supportive service to help develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses, SJC will actively promote the small business conferences, programs, and support services offered by other agencies that have established DBE and other small business programs.
 - SJC will refer DBEs and other small businesses to the local Small Business Development Centers, and other local government related entities for technical assistance and other business development services.
 - SJC will advise its contracting community of the online directory of certified DBEs, found at the California Unified Certification Program website:
www.dot.ca.gov/hq/bep/find_certified.htm
 - SJC will advise the contracting community of the available small businesses certified by the California Department of General Services (DGS):
<http://www.dgs.ca.gov/pd/Programs/eprocure.aspx>



- On a case-by-case basis and depending on the availability and capacity of small businesses to perform subcontract opportunities, the City will implement race-neutral Small Business Enterprise incentives on federally funded contracts.

Fostering Small Business Participation³⁰

SJC has implemented several strategies to foster small business participation in its contracting process. These include the following:

- Conducting “How to do Business with SJC” and DBE workshops.
- On larger prime contracts, encouraging the prime contractor to consider subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Provide outreach to current SJC contractors or past SJC contractors who may qualify for DBE-certification by encouraging them to seek and obtain DBE-certification.

VII. PUBLIC PARTICIPATION AND FACILITATION

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 26, minority, women, small, and local business associations, and community organizations within the SJC market area were consulted and provided an opportunity to review the triennial goal analysis and provide input.

SJC posted a Public Notice to the airport’s website on May 10, 2022, then later revised and re-posted on May 19, 2022, publishing the SJC Draft Proposed FAA Overall DBE Goal-Setting Methodology for FFY 2023-2025 (See ATTACHMENT 1: Website Notification). The notice informed the public that the proposed goal and rationale were available for inspection at the SJC principal office during normal business hours and SJC would accept comments on the goal analysis for 30 days. This notice was also distributed to the following:

- Posted to FAA DBE Opportunities on May 10, 2022
- Posted to Airport Minority Advisory Council’s Events Page on May 10, 2022
- Presented to Airport Commission on May 9, 2022
- Presented to San Jose Council Small Business Task Force on June 3, 2022
- Sent to the Council Members, the San Jose Minority Business Development Agency, Airport Minority Advisory Council, Small Business Development Center - Hispanic Chamber(SBDCHC), and various Business & Ethnic Chambers.

SJC reached out to local minority, women, and community business organizations to provide them information on the SJC DBE program and specifically the Draft Proposed FAA Overall DBE Goal-Setting

³⁰ See Title 49 CFR Part 26 Section 26.39 “Fostering Small Business Participation.”



Methodology for FFY 2023-2025. Each organization will be contacted and given an opportunity for a one-on-one meeting or to participate in a webinar. This notice also provided information about how to attend the Stakeholder meeting. ATTACHMENT 2: Consultative Process Summary includes SJC’s outreach efforts, and any comments received from the organizations.

SJC hosted a webinar on May 31, 2022 from 2:30 p.m. to 4:00 p.m. SJC provided the option to either attend in-person or participate virtually in order to accommodate more participation from the public. Stakeholders were able to join via Microsoft Teams or in-person at Downtown City Hall.

During this Stakeholder Meeting, a PowerPoint presentation was shown explaining the DBE program and the FFY 2023-2025 Triennial DBE Goal Methodology. The following slides were presented at the Stakeholder Meeting.

INTRODUCTION

- Recipient of FAA Funds
- Title 49 CFR Part 26
- DBE Program
- Overall DBE Goal for FFY 2023-2025

DBE GOAL DEVELOPMENT

MARKET AREA ANTICIPATED PROJECTS CATEGORIZATION OF WORK DBE GOAL FIGURE

**NORMAN Y. MINETA
 SAN JOSE INTERNATIONAL AIRPORT**
 FEDERAL AVIATION ADMINISTRATION (FAA)
 OVERALL DISADVANTAGED BUSINESS ENTERPRISE (DBE)
 GOAL SETTING METHODOLOGY
 FISCAL FEDERAL YEARS (FFY) 2023-2025

Introduction DBE Goal Development Next Steps

DBE PROGRAM

MARKET AREA

- Market Area – the area in which the agency spends the substantial majority of its contracting dollars.
- Required to evaluate the availability of DBEs to perform work on SJC FAA-assisted contracts.

ANTICIPATED FAA-ASSISTED PROJECTS

FFY 2023-2025	
Number of Projects	5
Total Est. Project Cost	\$65,100,001
Total Est. FAA \$ Share	\$52,158,191
Total Est. FAA %	80.00%



ANTICIPATED FAA-ASSISTED PROJECTS

PROJECT NAME/DESCRIPTION	EST. TOTAL PROJECT COST	EST. FAA \$ SHARE	EST. FAA % SHARE
General Aviation Run Up Pad Relocation	\$1,209,566	\$967,653	80.00%
New Taxiway Victor Phase 1 The New Taxiway Victor	\$9,835,444	\$7,868,355	80.00%
Terminal B South Ramp - phase 4	\$6,595,351	\$5,276,281	80.00%
Terminal B South Ramp - phase 5	\$6,595,351	\$5,276,281	80.00%
New Taxiway Victor Phase 2 and 3 Phase 2	\$9,835,444	\$7,868,355	80.00%
TOTAL	\$34,071,155	\$27,256,924	80.00%

CATEGORIZATION OF WORK PROJECT NAICS CODES

PROJECT NAME	EST. FAA \$ SHARE	NAICS CODE	NAICS TITLE	EST. FAA \$ SHARE NAICS
General Aviation Run-Up Pad Relocation - REBID	\$987,653	237310	Highway, Street, and Bridge Construction	\$308,904.43
		237990	Other Heavy and Civil Engineering Construction	\$4,719.08
		238120	Structural Steel and Precast Concrete Contractors	\$1,890.33
		238210	Electrical Contractors and Other Wiring Installation Contractors	\$409,109.35
		238300	Other Building Finishing Contractors	\$6,731.88
		238910	Site Preparation Contractors	\$105,236.60
		238990	All Other Specialty Trade Contractors	\$5,938.27
		541330	Engineering Services	\$12,517.43
		541360	Geophysical Surveying and Mapping Services	\$10,706.58
		541820	Professional Consulting Services	\$23,198.98
541890	Other Scientific and Technical Consulting Services	\$46,314.51		
561730	Landscaping Services	\$31,710.84		
Other Projects	\$26,280,272			\$26,280,272
TOTAL	\$27,256,924			\$27,256,924

CATEGORIZATION OF WORK NAICS CODE SUMMARY

NAICS Code	Category of Work	Estimated FAA Dollars by NAICS	Estimated FAA % by NAICS
237310	Highway, Street, and Bridge Construction	\$1,209,566	12.9%
237990	Other Heavy and Civil Engineering Construction	\$31,975	1.3%
238120	Structural Steel and Precast Concrete Contractors	\$793,824	2.7%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$3,060,907	11.2%
238300	Other Building Finishing Contractors	\$106,957	0.4%
238910	Site Preparation Contractors	\$5,723,159	21.0%
238990	All Other Specialty Trade Contractors	\$5,938	0.0%
541330	Engineering Services	\$48,230	0.2%
541360	Geophysical Surveying and Mapping Services	\$14,830	0.5%
541380	Testing Laboratories	\$544	0.0%
541820	Administrative Management and General Management Consulting Services	\$29,015	1.2%
541890	Other Scientific and Technical Consulting Services	\$268,125	1.1%
541990	Other Scientific and Technical Consulting Services	\$584,761	2.1%
561730	Landscaping Services	\$330,789	1.5%
561990	All Other Support Services	\$86,720	0.3%
562111	Solid Waste Collection	\$1,154,100	5.3%
TOTAL		\$27,256,924	100.0%

BASE FIGURE DBE Relative Availability

NAICS Code	NAICS Title	DBE	# of Firms	Relative Availability (DBE ÷ # of Firms)
237310	Highway, Street, and Bridge Construction	9	304	8.7%
237990	Other Heavy and Civil Engineering Construction	5	27	18.5%
238120	Structural Steel and Precast Concrete Contractors	4	51	7.8%
238210	Electrical Contractors and Other Wiring Installation Contractors	21	1,570	1.3%
238300	Other Building Finishing Contractors	3	179	1.7%
238910	Site Preparation Contractors	10	300	3.3%
238990	All Other Specialty Trade Contractors	36	472	5.5%
541330	Engineering Services	25	2,436	2.3%
541360	Geophysical Surveying and Mapping Services	7	12	62.5%
541380	Testing Laboratories	9	238	3.9%
541820	Administrative Management and General Management Consulting Services	78	2,714	2.9%
541890	Other Scientific and Technical Consulting Services	33	329	10.0%
541990	Other Scientific and Technical Consulting Services	37	873	4.2%
561730	Landscaping Services	2	1,511	0.1%
561990	All Other Support Services	6	231	2.7%
562111	Solid Waste Collection	-	185	0.0%
	TOTAL	305	11,242	2.7%

BASE FIGURE DBE WEIGHTED Relative Availability

NAICS Code	Category of Work	Estimated FAA % by NAICS	Rel. Avail.	Weighted Ratio
237310	Highway, Street, and Bridge Construction	12.9%	8.7%	6.5%
237990	Other Heavy and Civil Engineering Construction	1.3%	18.5%	0.2%
238120	Structural Steel and Precast Concrete Contractors	2.7%	7.8%	0.2%
238210	Electrical Contractors and Other Wiring Installation Contractors	11.2%	1.3%	0.2%
238300	Other Building Finishing Contractors	0.4%	1.7%	0.0%
238910	Site Preparation Contractors	10.7%	3.3%	0.3%
238990	All Other Specialty Trade Contractors	0.0%	5.5%	0.0%
541330	Engineering Services	0.2%	2.3%	0.0%
541360	Geophysical Surveying and Mapping Services	0.5%	62.5%	0.3%
541380	Testing Laboratories	0.0%	3.9%	0.0%
541820	Administrative Management and General Management Consulting Services	1.2%	2.9%	0.0%
541890	Other Scientific and Technical Consulting Services	1.1%	10.0%	0.1%
541990	Other Scientific and Technical Consulting Services	2.1%	4.2%	0.1%
561730	Landscaping Services	1.5%	0.1%	0.0%
561990	All Other Support Services	0.3%	2.7%	0.0%
562111	Solid Waste Collection	5.3%	0.0%	0.0%
TOTAL				8.6%

ADJUSTMENTS TO THE BASE FIGURE

FEDEAL FISCAL YEAR (FFY)	FAA DBE GOAL %	FAA DBE % ATTAINMENT
FFY 2019	6.3%	0.0%
FFY 2020	4.1%	7.6%
FFY 2021	4.1%	4.1%
Median DBE Attainment Within the Last 3 FFYs:		4.1%

ADJUSTMENT	Value
Step 1 Base Figure	6.0%
Median DBE Attainment	4.1%
Adjusted Base Figure	5.0%

NEXT STEPS

5.0%

Draft Proposed DBE Goal

1. Public Consultation through 6/10
2. Analyze Responses
3. Revise Goal, as needed
4. Finalize Goal
5. Submit Final Goal to FAA

QUESTIONS?

Magdalena Nofal | Senior Analyst
City of San Jose | Director Office
Office: 408.302.3673 | Magdalena.Nofal@sjc.org

SJC received one comment during the Stakeholder meeting from Silicon Valley Minority Business Consortium regarding the concern for utilizing small businesses on projects. SJC agreed with the Consortium on the importance of small business utilization and stated that they will continue to review future projects to ascertain if they could be broken down into opportunities for small




businesses and DBEs and noted that primes are reminded and encouraged to utilize small businesses and DBE firms at pre-bid/pre-proposal meetings.

No changes to the DBE goal or methodology were made based on the comments received.



ATTACHMENT 1: Website Notification



SAN JOSE INTERNATIONAL
SILICON VALLEY'S AIRPORT

ABOUT SJC ▾ COMMUNITY & ENVIRONMENT ▾ DOING BUSINESS ▾ PRESS ROOM ▾

Home / Standards and Guidelines / Disadvantaged Business Enterprise (DBE)

Disadvantaged Business Enterprise (DBE)

Notice to Public: Posted May 10, 2022 (Revised and Reposted May 19, 2022)
Federal Aviation Administration (FAA) Disadvantaged Business Enterprise (DBE) Project Goal Federal Fiscal Years 2023-2025

The City of San Jose has established a Disadvantaged Business Enterprise (DBE) Program for Norman Y. Mineta San José International Airport in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airport's DBE plans are:

- [Norman Y. Mineta San José Int'l Airport FFY 2020-2022 DBE Plan](#)
- [Norman Y. Mineta San José Int'l Airport FFY 2017-2019 DBE Plan](#)

DBEs are encouraged to explore the following sites, which may have resources available to assist your business:

- [Office of Small and Disadvantaged Business Utilization](#)
- [Small Business Transportation Resource Centers](#)
- [The Financial Assistance Division administers the Short Term Lending Program \(STLP\) and Bonding Education Program \(BEP\)](#)
- [DBE Technical Assistance Resources from the U.S. Dept. of Transportation](#)

If you are a small disadvantaged business, please make sure you are certified in the State of California. Certification puts you in the statewide California DBE database, which is often a place that many public agencies use for outreach about potential public works projects. For more information about certification:

- [Details about the requirements and application are available from the California Unified Certification Program](#)
- [Two local agencies that can process your DBE application are: VTA and SFMTA](#)

Please contact the following for additional information or to be added to our outreach list:

Magdalena Nodal, Senior Analyst
Norman Y. Mineta San José International Airport
1701 Airport Boulevard, Suite B-1130
San José, CA 95110-1206
1-408-392-3673
mnodal@sjc.org

Christopher Hickey
Office of Equality Assurance, City of San José
200 East Santa Clara Street – Fifth Floor
San José, CA 95113
1-408-535-8481
christopher.hickey@sanjoseca.gov



NOTICE TO PUBLIC – MAY 10TH, 2022

NORMAN Y. MINETA SAN JOSE INTERNATIONAL AIRPORT FEDERAL AVIATION ADMINISTRATION DBE GOAL FEDERAL FISCAL YEARS 2023 – 2025

In accordance with 49 CFR Part 26.45(g), the City of San Jose/Norman Y. Mineta International Airport (SJC), as a recipient of U.S. Department of Transportation (DOT) assistance, announces a proposed Federal Aviation Administration (FAA) Disadvantaged Business Enterprise (DBE) project overall project goal of 5.0% for the project period. This race-neutral goal represents the percentage of work to be performed by certified DBE firms on SJC's FAA-assisted projects during the project period.

The methodology used to determine the proposed goal will be available for public inspection for thirty (30) days from the date of this notice, Monday through Friday from 8:00 a.m. to 4:00 p.m. at the following location:

City of San Jose/ Norman Y. Mineta San Jose International Airport
1701 Airport Blvd. Ste B-1130
San José, CA 95110
Tel: (408) 392-3673

The U.S. DOT and SJC will accept comments on this proposed goal for 30 days from the date of this notice.

A Stakeholder Meeting will also be held at the following:

May 31st, 2022
2:30 p.m. to 4:00 pm
Norman Y. Mineta San Jose International Airport – Boeing Room
1701 Airport Blvd. Ste B-1130
San José, CA 95110
Tel: (408) 392-3673

For further information on the Stakeholder Meeting or the zoom link reach out to: Magdalena Nodal via email to mnodal@sjc.gov or phone by 408-392-3673.

Written comments to the SJC DBE Liaison Officer, Christopher Hickey, may be sent to the address above and/or emailed to Christopher.Hickey@sanjoseca.gov. Written comments can also be sent directly to the FAA, DBE/ACDBE Compliance Specialist for the Western Pacific Region, P.O. Box 920078, Los Angeles, CA 90009-2007. Written comments at both locations will be accepted until June 10, 2022.



ATTACHMENT 2: Consultative Process Summary

List of Minority/Trade Organizations

Company & Address	Contact Info	Notes	Comments
Building & Construction Trades Council	David Bini, Executive Director david@scbtc.org; 408-265-7643	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and left voicemail. 	No comments received.
Filipino American Chamber of Commerce of Silicon Valley	info@filamchamber.org; (408) 283-0833	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26. Number no longer in service. 	No comments received.
San Francisco Bay Area Hispanic Chamber of Commerce	info@sfbayhcc.com; (415) 572-3568	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and spoke to staff about goal methodology and notice for public comment on goal setting. Informed staff that e-blasts would be sent out with more information on the methodology. 	No comments received.
Hispanic Chamber of Commerce Silicon Valley	Dennis King, Executive Director dennisk@hccsv.org; Connie Madrigal, Office Manager- Executive Assistant connie@sbdchc.org; info@hccsv.org; (408) 248-4800	<ul style="list-style-type: none"> Attempted to send email notice to organization on 5/25. Called 5/26 and left voicemail. 	No comments received.



Company & Address	Contact Info	Notes	Comments
Silicon Valley Minority Business Consortium	Walter Wilson walter@minoritybusinessconsortium.com; Reginald Swilley swilley@minoritybusinessconsortium.com; info@minoritybusinessconsortium.com; 408-660-9171	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and mailbox was full. 	<p>Carol Been participated in the Stakeholder Meeting on 5/31. She asked for clarification on the number of firms for NAICS Code 237310. SJC clarified that the number of firms is determined based on the number of DBE firms certified with NAICS Code 237310 within the market area and number of establishments within the market area that are categorized by the Census Bureau under NAICS Code 237310.</p> <p>Ms. Been also expressed concern about utilizing small businesses for projects. SJC analyzed whether the anticipated projects could be broken down when applicable and providing loans to ACDBEs. SJC also confirmed that primes are reminded and encouraged to utilize small business firms at pre-bid/pre-proposal meetings.</p>
San Jose MBDA Business Center	Tony Tang ttang@sanjosembdcenter.com; info@asianinc.org; 408-998-8058 x134	<ul style="list-style-type: none"> Attempted to send email notice to organization on 5/25. Called 5/26 and left voicemail. 	No comments received.



Company & Address	Contact Info	Notes	Comments
National Association of Women Business Owners Silicon Valley	info@nawbo-sv.org ; communications@nawbo-sv.org (408) 657-7190	<ul style="list-style-type: none"> Email notification sent 5/25. Attempted to send email notice to organization on 5/26. Called 5/26 and spoke to staff. Staff provided updated email address for e-blast: communications@nawbo-sv.org. Updated contact list to reflect new email and sent notice to new email. 	No comments received.
Oakland African American Chamber of Commerce Airport Plaza Building	office@oaacc.org ; 510-268-1600	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and left voicemail. 	No comments received.
Silicon Valley Vietnamese American Chamber of Commerce	info@svvacoc.org ; 408.673.7181	<ul style="list-style-type: none"> Attempted to send email notice to organization on 5/25. Called 5/26 and left voicemail. 	No comments received.
The Silicon Valley Black Chamber of Commerce	info@blackchamber.com ; 408-288-8806	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and left voicemail. 	No comments received.



Company & Address	Contact Info	Notes	Comments
City of San Jose - Capital of Silicon Valley District I	Vice Mayor Chappie Jones, David Gomez, Chief of Staff david.gomez@sanjoseca.gov (408) 535-4901	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and spoke to staff about goal methodology and notice for public comment on goal setting. Staff notified SJC that David Gomez will be forwarded the message. 	No comments received.
Korean American Chamber of Commerce of Silicon Valley	Ken Kim kaccosv@gmail.com (408) 781-8346	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 6/8 and left voicemail. 	No comments received.
Santa Clara County Korean American Chamber of Commerce	(408) 747-9894	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 6/8 and left voicemail. 	No comments received.
Rainbow Chamber of Commerce	Bettie Owen info@rainbowchamber.com (916) 266-9630	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 6/8 and spoke to staff. Staff said that they did not have a comment on methodology. 	No comments received.
Silicon Valley Chinese Technology & Business Association	Helen Wang svctba@gmail.com	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. 	No comments received.



Company & Address	Contact Info	Notes	Comments
Vietnamese American Chamber of Commerce of Northern California	Nga Nguyen ncvacoc@gmail.com 408-676-9789	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 6/8 and left voicemail. 	No comments received.
Winchester Business Association	Ken Kelly president@winchesterba.org (408) 823-8201	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and spoke to staff about goal methodology and notice for public comment on goal setting. Staff informed SJC that they have received the notice. 	No comments received.
Latino Business Foundation	Jesus Flores Info@lbfsv.org 408.618.8599	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 6/8 and call disconnected before voicemail. 	No comments received.
San Jose Chamber of Commerce	Derrick Seaver derricks@thesvo.com Kathryn Satcher, COO kathryns@sjchamber.com (408) 291-5260	<ul style="list-style-type: none"> Email notifications sent 5/25, 5/26, 5/27, 5/30, 5/31, 6/8. Called 5/26 and spoke to staff about goal methodology and notice for public comment on goal setting. Informed staff that e-blasts would be sent out with more information on the methodology. 	No comments received.



ATTACHMENT 6:

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature)

Title



A. FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____

(Signature)

Date: _____

(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

ATTACHMENT 7:

DBE Monitoring and Enforcement Mechanisms

The City of San José has several monitoring mechanisms in place to monitor the DBE requirements contained in its contracts, including but not limited to:

1. Verification of required FAA assurances and contract elements
 - a. DBE-related contracts, leases, joint ventures, and/or agreements will be reviewed for the inclusion of required contract element pursuant to FAA DBE requirements, including that subcontracts also have the required assurances and appropriate contract elements concerning work to be completed, prompt payment, retainage, and termination.
 - b. The project manager or similar appropriate City staff shall sign a “Certification of Required FAA Assurances and Contract Elements” (Attachment 7) that this review was conducted and that the contract contained the required elements.
2. Inspection of the workplace for compliance with DBE requirements
 - a. The project manager, city inspector, or similar appropriate City staff shall inspect DBE worksites for compliance of required DBE requirements, including but not limited to: verification of business names on equipment and vehicles, verifying workers employer, and verifying supplies.
 - b. This individual shall document this inspection by signing a “Certification of DBE Workplace Inspection” (attached) and include details about who and what was reviewed.

The City of San Jose has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to California Civil Code Sections 3300 - 3322.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, the following:

(a) If you are a firm that does not meet the eligibility criteria of subpart D of Part 26 and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the DOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the DOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the DOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.



(e) The DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

ATTACHMENT 7A:

DBE/ACDBE Certification of Required FAA Assurances and Contract Elements

I, _____, certify that San Jose International Airport has reviewed the follow DBE/ACDBE-related contracts, leases, joint ventures, and/or agreements to ensure the firms included in the bidding process are the same firms being awarded the subcontracts and that these subcontracts include the required assurances and appropriate contract elements concerning work to be completed, prompt payment, retainage, termination, etc. These documents meet the ACDBE/DBE requirements as outlined in the San Jose Airport’s DBE/ACDBE Plans.

Type of Agreement _____

Project Name and/or Number _____

Contracts Reviewed/Commitments Compared to Award:

Reviewer Signature	
Reviewer Name	
Reviewer Title	
Date Signed	



This document must be retained for 3 years after the signed date



ATTACHMENT 7B:

Contract Name/Number
Prime Contractor
DBE Subcontractor

I Management

1. DBE's site superintendent/foreman name _____
2. Is the DBE's superintendent/foreman shown on the DBE's payroll? Yes No
3. Is he/she shown on the prime contractor's payroll or any other subcontractor's payroll?
If yes, name of contractor/subcontractor _____ Yes No
4. Are any of the DBE's crew on the prime contractor's payroll or any other subcontractor's payroll?
Yes No
If yes, list the name and crafts _____
5. Does the DBE superintendent/foreman administer his/her work in an independent manner free of interference from the prime contractor? Yes No
If no, explain _____
6. Who would the DBE superintendent/foreman contact to put on additional personnel or modify the contract due to changed conditions? (Name and Title)

7. Indicate DBE work observed this date

8. Has any other contractor performed any amount of work specified in the DBE's contract?
Yes No If yes, explain _____
9. Has the disadvantaged owner been present on the jobsite? Yes No If yes, percent _____
10. Are DBE's personnel and equipment under direct supervision of the DBE subcontractor?
 Yes No
11. Does the DBE subcontractor appear to have control over methods of work on its contract items?
 Yes No



DBE ON-SITE ACTIVITY REVIEW REPORT

II Workforce

12. List names of DBE’s crew as observed (indicate craft) **Include DBE’s Foreman/Superintendent’s Name**

Name	Craft	Classification
		Foreman/Superintendent

III Equipment

13. List major, self-propelled equipment used by DBE _____

14. Does the equipment have the DBE markings or emblems? Yes No

If another firm’s markings are shown, please indicate the name _____

15. If leased is there a formal agreement identifying the terms and parties? Yes No

16. Is the equipment operator an employee of the DBE? Yes No

If no, explain _____

17. Record DBE Equipment information in the spaces below:

Equipment Information		
Make	Model	License #



DBE ON-SITE ACTIVITY REVIEW REPORT

IV. DBE Trucking Company (if applicable)

18. Is the DBE responsible for the management and supervision of the entire trucking operation for which it is responsible on the contract? Yes No

19. Does the DBE itself own and operate at least one fully licensed, insured, and operational truck used on the contract? Yes No

V. DBE Materials

20. In cases where the DBE contractor furnishes material who actually pays for it?

Name: _____ Title: _____

21. Who received the materials on site? _____

22. How were the materials delivered to the job site? _____

23. Who delivered the materials to the job site? _____

24. Who scheduled delivery of the materials? _____

25. Is the DBE negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself?

26. Based upon the above, is the DBE contractor performing as an independent business, executing a distinct element of work, and actually performing, managing, and supervising on this contract?

Yes No

27. If a commercially useful function is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

28. Did the action taken, described in question 27 above, correct the deficiency? Yes No

Explain: _____



DBE ON-SITE ACTIVITY REVIEW REPORT

Prepared by:	Title:	Date:
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Reviewed by:	Title:	Date:
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Additional comments:

Internal Distribution:

Name(s):	Title(s):	Date:



ATTACHMENT 8:

The DBE Certification Application Form can be found at:

http://www.dot.ca.gov/hq/bep/business_forms.htm



ATTACHMENT 9:

State's UCP Agreement

Below is the City of Jose Resolution 70373 authorizing the City's participation in a Unified Certification Program for DBEs and authorizing the City Manager to executive an agreement to participate in the California Unified Certification Program.



.RD:NS
5-29-01

RESOLUTION NO. 70373

A RESOLUTION OF THE COUNCIL OF THE CITY OF SAN JOSÉ APPROVING CITY OF SAN JOSE PARTICIPATION IN A UNIFIED STATEWIDE DISADVANTAGED BUSINESS ENTERPRISE (DBE) CERTIFICATION PROGRAM AS REQUIRED BY FEDERAL REGULATIONS

WHEREAS, the United States Department of Transportation issued Regulations (49 CFR Part 26 on February 2, 1999 regarding participation by Disadvantaged Business Enterprises (DBE) in U.S. Department of Transportation (DOT) Programs; and

WHEREAS, the U.S. Department of Transportation Regulations require that all recipients of federal financial assistance to participate in a statewide unified DBE certification program by March 4, 2002.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF SAN JOSÉ THAT:

SECTION 1.

The City Council of the City of San Jose hereby approves the City's participation in a Unified Certification Program for Disadvantaged Business Enterprise as required by the federal Regulations of the Department of Transportation.

SECTION 2.

The City Manager is hereby authorized to execute an agreement and declaration in order that the City of San Jose can participate as a certified member in the Unified Certification Program.



res. No. 70373

RD:NS
5-29-01

ADOPTED this 29th day of May, 2001, by the following vote:

AYES: CAMPOS, CHAVEZ, CORTESE, DANDO, LeZOTTE,
REED, SHIRAKAWA, WILLIAMS, YEAGER: GONZALES

NOES: NONE

ABSENT: DIQUISTO

DISQUALIFIED: NONE

A handwritten signature in cursive script, appearing to read "Ron Gonzales", written over a horizontal line.

RON GONZALES
Mayor

ATTEST:

A handwritten signature in cursive script, appearing to read "Patricia L. O'Hearn", written over a horizontal line.

PATRICIA L. O'HEARN
City Clerk



ATTACHMENT 10:

City of San Jose's Approved Small Business Participation Element

Section 26.39 Fostering Small Business Participation

Objectives

In accordance with the requirements of 49 CFR Part 26, the City is incorporating this small business participation element in its DBE program to facilitate competition by and expansion of opportunities for DBEs and other small businesses.

The City of San José's Small Business Element Program is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

The City is committed to taking all reasonable steps to eliminate obstacles to the participation of DBEs and other small businesses as prime contractors or subcontractors in federally funded City procurements. The City will meet its objectives using a combination of the methods and strategies outlined below.

Assurances

The City's DBE program is open to small businesses that meet the program standards contained in this document regardless of their location; there is no geographic or local preference imposed on federally assisted contracts. This element of the City's DBE Program is a race, ethnicity, and gender-neutral program. Reasonable efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses.

The City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of this element of its DBE Program.

Definitions

DBEs and other small businesses eligible to participate in the City's DBE program are defined as follows:

Disadvantaged Business Enterprise (DBE): A for-profit small business that is 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. A DBE must be certified as such by a certifying entity of the California Unified Certification Program (CUCP) in accordance with the certification standards of 49 CFR Part 26.

Small Business Enterprise (SBE): A for-profit small 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 12 months or on sales volume averaged over a three-year period. For the purposes of this element of our DBE Program, Small Business Enterprises must meet the definitions of Section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR Part 121).

Certification and Verification Procedures



The City will accept the following certifications and verification procedures for participation in this small business component of its DBE Program, with applicable stipulations:

CUCP DBE Certification: The City will rely upon the certification and verification procedures utilized by the CUCP certifying entities to confirm eligibility of DBEs in accordance with 49 CFR Part 26.

SBA 8(a) Business Development Certification - The City will rely upon the certification and verification procedures described in 13 CFR Parts 121 and 124. Firms will not be permitted to self-certify and are required to submit at the time of proposal submission the following documents as evidence of eligibility:

- A copy of the firm's tax returns for the most recent three-year period indicating the firm's average gross receipts; and
- A copy of the firm's payroll statement indicating the average annual employment for the most recent full year.

Contracting Requirements

The City's DBE program provides for contracting requirements that are structured to facilitate competition by small business concerns, and small business participation in procurements as prime contractors or subcontractors. The reasonable steps the City takes to eliminate obstacles to small business participation include:

1. In multi-year design-build contracts or other large contracts (e.g., "megaprojects") bidders on the prime contract will be asked in the solicitation process to voluntarily specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
2. Depending on the type, size and dollar value of a contract, the availability of small businesses, and the financial resources and capacity of small business concerns, the City will make reasonable efforts to divide contracts into smaller-sized packages on a case-by-case basis. Solicitation documents will clearly identify these contract opportunities.
3. On contracts not having DBE goals, the prime contractor will be asked to identify in its proposal to the City business opportunities for small business participation in the contract of a size that small businesses, including DBEs, can reasonably perform or provide, rather than self-performing all the work involved or supplying all the goods and services in support of the contract.
4. The City will ensure that solicitation language is stated so that consortia or joint ventures consisting of small businesses, including DBEs, are encouraged to compete for and perform prime contracts. This will also be accomplished by providing information at pre-proposal meetings, and through advertisements of opportunities, direct contact with small businesses, and other outreach activities.
5. To meet the portion of our overall goal projected to be met through race-neutral measures, the City will ensure that the components of work of a contract that small businesses, including DBEs, can reasonably perform are stated in solicitation documents, including the NAICS code(s). This will also be accomplished through advertisements of opportunities, and at pre-proposal meetings and other outreach activities.
6. In the solicitation process, bidders/offerors will be asked to identify voluntary actions they will take to assist small businesses with issues such as obtaining performance guarantees, lines of credit, and insurance. Proposers will be asked to approach this with the goal of lowering or eliminating barriers to small business participation in the contract.



7. In the solicitation documents, advertisements of contract opportunities, and in outreach efforts, bidders/offerors will be advised of the City's strong desire to have all types of small businesses participate in its federally funded contracts. Prime contractors will also be asked to make voluntary efforts to include small businesses in their proposals for contracts that do not have DBE goals. All proposers should approach this with the goal of maximizing active participation from small businesses.
8. Proposers will be strongly encouraged to identify any business participation requirements that may limit or exclude participation of a small business in the contract and to inform the City of any such limitations or exclusions. Proposers will be asked to approach this through their own outreach efforts and with the goal of minimizing barriers to participation while maintaining the operation standards of the contract.
9. In meeting its good faith efforts requirements, the City will take reasonable steps to encourage small businesses which are also owned and controlled by socially and economically disadvantaged individuals to seek DBE certification. This will be accomplished through outreach efforts and informational programs, direct contact and in solicitation documents.
10. Only DBE certified firms will be counted towards the City's DBE race-neutral participation on federally funded contracts.