

## POLICY STATEMENT

### **Section 26.1, 26.23**

### **Objectives/Policy Statement**


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. Norman Y. Mineta San José International Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City of San José has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT – assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Christopher Hickey, the City's Director of the Office of Equality Assurance, has been delegated as the DBE Liaison Officer. In that capacity, Mr. Hickey is responsible for implementing all aspects of the DBE program. 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.

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](http://www.sanjose.ca.gov) and the Airport's website at [www.flysanjose.com](http://www.flysanjose.com).

  
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Jennifer Maguire  
Assistant City Manager

7-16-19  
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Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives are found in the policy statement on the first page of this Program.

### **Section 26.3 Applicability**

The City of San José is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The City of San José will use terms in this Program that have the meaning defined in Section 26.5.

### **Section 26.7 Non-discrimination Requirements**

The City of San José 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 City of San José 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.

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT: 26.11

(b) The City of San José will continue to provide data about its DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor's Form or other similar format.

The City of San José will transmit the information electronically via FAA-Connect at <http://faa.dbeconnect.com/FAA/login.asp>.



### Bidders List: 26.11(c)

The City of San José will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The City of San José will collect this information by including a Bidder's List of Subcontractors (DBE and NON-DBE) – Part I and Part II forms in all bid specifications. On the Part I form, the bidder shall list all subcontractors, both DBE and non-DBE, in accordance with Section 2-1.054 of Standard Specifications and per Title 49, Section 26.11 of the Code of Federal Regulations. On the Part II form, the bidder shall list all subcontractors, both DBE and non-DBE, who provided a quote or bid but were not selected to participate as a subcontractor on this project.

### **Section 26.13 Federal Financial Assistance Agreement**

The City of San José has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The City of San José shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The City of San Jose shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City of San José's DBE program, as required by 49 CFR Part 26 and as approved by 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 City of San José of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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: 26.13b

The City of San José will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the 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 City of San José 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 as non-responsible.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The City of San José will receive grant(s) for airport planning or development totaling at least \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in our DBE Program for approval.

The City of San José is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our DBE Program until all funds from DOT financial assistance have been expended.

### **Section 26.23 Policy Statement**

The City of San José will circulate the Policy Statement elaborated on the first page of this DBE Program throughout our organization and to the DBE and non-DBE business communities that perform work on our DOT-assisted contracts.

### **Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

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

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City of San José complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An



organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate officials. The DBELO has a staff of three to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the City of San José 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 use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The City of San José's Office of Economic Development has the responsibility of formulating and implementing various strategies and programs to foster business growth, job creation and a strong revenue base to meet the needs of San Jose's diverse community. The Office of Economic Development refers businesses to the following financial institutions for the best assistance. These institutions and other resources are generally non-profit and are run by women or minorities.

Chambers of Commerce: San José Silicon Valley, Black, Hispanic, Vietnamese, Filipino  
CA Resources & Training  
Silicon Valley Small Business Development Center  
Bank of America  
Community Bank of the Bay  
Tech CU  
SpartUps  
Wells Fargo

## **Section 26.29 Prompt Payment Mechanisms**

The City of San José has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the City makes to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following method to comply with this requirement:

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 30 days after your payment to the prime contractor.

The City of San José will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City of San José. When the City of San José has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

The City of San José will provide appropriate means to enforce the requirements of this section. These means include:

Upon receipt of a payment request, the Project Manager shall act in accordance with both of the following:

1. Each payment request shall be reviewed by the Project Manager as soon as practicable after receipt for the purpose of determining that the payment request is a proper payment request.
2. Any payment request determined not to be a proper payment request suitable for payment shall be returned to the contractor as soon as practicable, but not later than seven days after receipt. A request returned pursuant to this paragraph shall be accompanied by a document setting forth in writing the reasons why the payment request is not proper.

Payment requests approved before Wednesday will be paid in the check run on the Friday of the following week. With prior notice, checks may be picked up rather than mailed.

The prime contractor shall pay to his/her subcontractors within 30 days of receipt of each progress payment the respective amounts allowed the contractor on account of the work performed by his/her subcontractors to the extent of each subcontractor's interest therein.

In the event there is a good faith dispute over all or any portion of the amount due on a progress payment from the prime contractor or subcontractor to a subcontractor, then the prime contractor or subcontractor may withhold no more than 150 percent of the disputed amount.

Any contractor who violates this section shall pay to the subcontractor a penalty of 2 percent of the amount due per month for every month that payment is not made. In any action for the



collection of funds wrongfully withheld, the prevailing party shall be entitled to his/her attorney's fees and costs.

Any diversion by the contractor of payments received for prosecution of a contract or failure to reasonably account for the application or use of the payments constitutes grounds for disciplinary action by the Contractors' State License Board. The subcontractor shall notify in writing the Contractors' State License Board and the Department of any payment less than the amount or percentage approved for the class or item of work as set forth in Section 10261 of the Public Contracts Code.

The City of San José's Project Manager's Grant Manual contains this language. Additionally, project managers are required to monitor the payments to the subcontractors as part of the normal project management process.

The City of San José will include the following clause in each DOT-assisted contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City of San Jose. This clause applies to both DBE and non-DBE subcontractors.

### **Section 26.31 Directory**

The Directory identifying all firms eligible to participate as DBEs is available at [www.dot.ca.gov/hq/bep](http://www.dot.ca.gov/hq/bep) or by contacting the California Department of Transportation's Office of Business and Economic Opportunity at 1-916-324-1700.

The State of California revises the Directory at least annually.

### **Section 26.33 Over-concentration**

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.

### **Section 26.35 Business Development Programs**

The City of San José has an outreach program but has not established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The City of San José will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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 actually 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 actually 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 actually 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 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.

### **Section 26.39 Fostering small business participation.**

The City of San José has implemented a Small Business Element to structure contracting requirements 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.

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.



## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The City of San José does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

The City of San José will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), the City of San Jose will submit its Overall Three-year DBE Goal to FAA by August 1 at three-year intervals, based on a schedule established by the FAA.

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the City of San Jose does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the City of San José will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, the City of San José 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 City of San José's efforts to establish a level playing field for the participation of DBEs.

Following this consultation and before submitting the proposed overall goal to FAA, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at San Jose City Hall, 200 East Santa Clara Street, Fifth Floor, San Jose CA 95113 for 30 days following the date of the notice, and informing the public that the City of San Jose and DOT/FAA will accept comments on the goals for 45 days from the date of the notice. Notice will be posted on our official Internet Web site and issued in general circulation media and available minority-focused media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses, including email addresses where the proposal may be reviewed.

Our Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT/FAA. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

#### **Section 26.47 Failure to meet overall goals.**

The City of San José will maintain an approved DBE Program and overall DBE goal, if applicable, as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City of San José awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing our DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;
- (3) The City of San José will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

#### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

#### **Section 26.51(d-g) Contract Goals**

The City of San José will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of



contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

## **Section 26.53 Good Faith Efforts Procedures**

### Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The City of San José is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

### Information to be submitted (26.53(b))

The City of San José treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

**Responsibility-** Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within four business days of being notified that they are the successful bidders, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

### Administrative reconsideration (26.53(d))

Within seven business days of being informed by the City of San José that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Matt Cano, Public Works Director, 200 East Santa Clara Street, 5<sup>th</sup> Floor, San Jose CA 95113. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

The City of San José will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) 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 prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was



engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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.

**Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor's final compliance

with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The California Unified Certification Program (CUCP) will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The CUCP will make certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

California Department of Transportation  
Office of Business & Economic Opportunity  
ATTN: Certification Unit  
1823 14<sup>th</sup> Street  
Sacramento CA 95811  
Telephone Number: 1-916-324 1700

The Roster of Certifying Agencies is found at:  
[http://www.dot.ca.gov/hq/bep/downloads/pdf/Agency\\_Roster.pdf](http://www.dot.ca.gov/hq/bep/downloads/pdf/Agency_Roster.pdf)

DBE Certification application forms are found at:  
[http://www.dot.ca.gov/hq/bep/business\\_forms.htm](http://www.dot.ca.gov/hq/bep/business_forms.htm)

The DBE certification application forms and documentation requirements are found in Attachment 8 to this Program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

The City of San José is a member of a Unified Certification Program (UCP) administered by California Department of Transportation. The UCP will meet all of the requirements of this section.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.103(b)**

The FAA may review the City of San José's compliance with Part 26 at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received. The Office of Civil Rights may direct the FAA to initiate a compliance review based on complaints received.



**Section 26.105(c)**

Any person who knows of a violation of Part 26 by the City of San José may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

**26.107 Enforcement Actions**

The enforcement actions applicable to firms participating in the DBE program can be found in Attachment 7 of this Program.

## **Section 26.109 Information, Confidentiality, Cooperation**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

### Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of San Jose or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will 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 stated in the schedule of DBE participation.

## **ATTACHMENTS**

- Attachment 1 Website Link to USDOT Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidders' List Collection Forms – Part I and Part II
- Attachment 4 Website Link to DBE Directory
- Attachment 5 DBE Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 7a Certification of Required FAA Assurances and Contract Elements Form
- Attachment 7b DBE On-site Review Form
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program



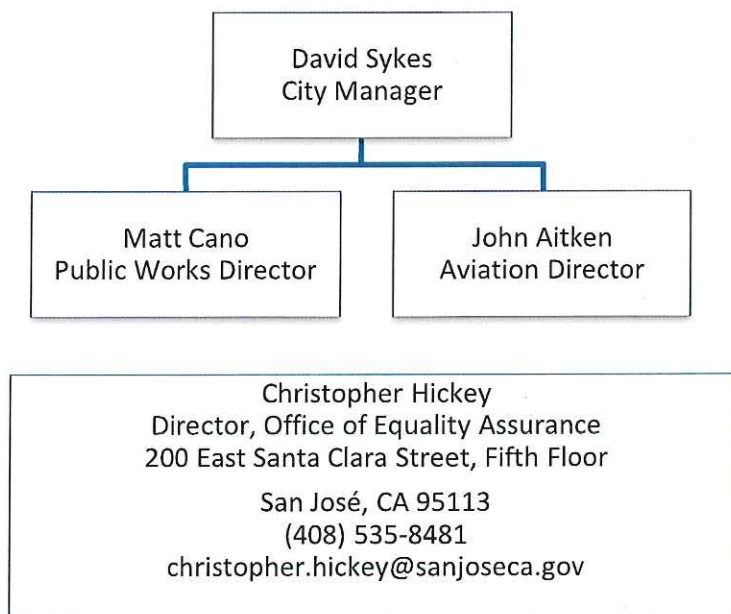
**ATTACHMENT 1**

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**

See Attached 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"/> Yes
<i>Address</i>		<i>Fax</i>	<input type="checkbox"/> ≤ \$5 million			<input type="checkbox"/> No
<i>City State Zip</i>			<input type="checkbox"/> ≤ \$10 million			DBE Cert No.
			<input type="checkbox"/> ≤ \$15 million			
			<input type="checkbox"/> ≥ \$15 million			
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million			<input type="checkbox"/> Yes
<i>Address</i>		<i>Fax</i>	<input type="checkbox"/> ≤ \$5 million			<input type="checkbox"/> No
<i>City State Zip</i>			<input type="checkbox"/> ≤ \$10 million			DBE Cert No.
			<input type="checkbox"/> ≤ \$15 million			
			<input type="checkbox"/> ≥ \$15 million			
<i>Name</i>		<i>Phone</i>	<input type="checkbox"/> ≤ \$1 million			<input type="checkbox"/> Yes
<i>Address</i>		<i>Fax</i>	<input type="checkbox"/> ≤ \$5 million			<input type="checkbox"/> No
<i>City State Zip</i>			<input type="checkbox"/> ≤ \$10 million			DBE Cert No.
			<input type="checkbox"/> ≤ \$15 million			
			<input type="checkbox"/> ≥ \$15 million			

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](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) 2020-2022  
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) 2020-2022**  
**Goal Period**

**August 1, 2019**

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 José/Norman Y. Mineta San José 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 2020-2022 (October 1, 2019 through September 30, 2022), 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 2020-2022.

## III. FAA-ASSISTED CONTRACTING PROGRAM FOR FFY 2020-2022

### 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 six (6) FAA-assisted projects that are anticipated to be awarded during the triennial period and which were considered in preparing this goal methodology. These projects and their federal share are listed in Table 1.

- Column A lists the name and brief description of each project.
- Column B lists the total estimated cost of each project.
- Column C lists the estimated FAA dollar share for each project.
- Column D lists estimated FAA percentage share for each project.



**Table 1**

A <b>Project Name and Description</b>	B <b>Total Estimated Project Cost</b>	C <b>Estimated FAA Dollar Share</b>	D <b>Estimated FAA % Share</b>
<p>Airfield Electrical System Rehabilitation Phase 3 &amp; 4 This project funds the replacement of airfield lighting cables and associated improvements to circuiting routes, manholes/handholes, and duct bank systems. It may also include can or handhole "plazas" to improve access and testing capability and reduce confined space issues.</p>	\$6,500,000	\$5,238,350	80.59%
<p>Terminal B Expansion Ramp Phase 5 Apron rehabilitation project at gate positions 39 and 40.</p>	\$6,700,000	\$5,399,530	80.59%
<p>Electric Ground Support Equipment (VALE) Phase 1 &amp; 2 This project funds the installation of charging stations for electric vehicle and ground support equipment (GSE) and associated electrical infrastructure upgrades to support the charging stations. This project may also fund the purchase of electric vehicles and GSE.</p>	\$1,000,000	\$500,000	50.0%
<p>Pavement Management Study This project includes a pavement condition survey on the Airport's airfield pavements (runways, taxiways, aircraft parking ramps) as part of the update to the Airport's Pavement Maintenance and Management System (PMMS) required by the Federal Aviation Administration (FAA). The survey report includes the pavement condition index (PCI) and the pavement condition number (PCN) which provides a physical condition analysis of the pavement and their structural capacity respectively.</p>	\$400,000	\$322,360	80.59%
<p>Runway Incursion Mitigation (RIM) Implementation Phases 1-3 This project funds the design and construction of a phased program of airfield configuration changes as recommended in the ongoing Runway Incursion Mitigation/Design Standards Analysis Study. An implementation phasing plan will be completed upon FAA approval of the updated Airport Layout Plan displaying the proposed improvements. Implementation will be contingent on the timing and availability of FAA grant funding.</p>	\$50,000,001	\$40,295,001	80.59%
<p>Safety Management Systems (SMS) This project funds the consultant services required to develop an SMS program for the Airport to meet the FAA's proposed regulation.</p>	\$500,000	\$402,950	80.59%
	<b>\$65,100,001</b>	<b>\$52,158,191</b>	<b>80.12%</b>

## 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.

- Column A lists the category of work (NAICS) code and title.
- Column B lists the estimated FAA dollar share for each NAICS code.
- Column C lists the estimated percentage of each NAICS code (the estimated FAA dollars for each NAICS code divided by the grand total of all estimated FAA dollars).

**Table 2**

A	B	C
NAICS Code: Category of Work	Estimated FAA Dollars by NAICS	Estimated FAA % by NAICS
237310: Highway, street, and bridge construction	\$14,248,312	27.3%
237990: Other heavy and civil engineering construction	\$2,284,727	4.4%
238110: Poured concrete foundation and structure contractors	\$3,094,656	5.9%
238210: Electrical contractors and other wiring installation contractors	\$4,163,178	8.0%
238910: Site preparation contractors	\$4,569,453	8.8%
238990: All other specialty trade contractors	\$2,284,727	4.4%
335999: All other miscellaneous electrical equipment and component manufacturing	\$500,000	1.0%
423610: Electrical apparatus and equipment, wiring supplies, and related equipment merchant wholesalers	\$3,359,899	6.4%
484220: Specialized freight (except used goods) trucking, local	\$269,977	0.5%
541330: Engineering services	\$10,073,750	19.3%
541690: Other scientific and technical consulting services	\$2,740,060	5.3%
561730: Landscaping services	\$2,284,727	4.4%
561990: All other support services	\$2,284,727	4.4%
<b>Grand Total</b>	<b>\$52,158,191</b>	<b>100.0%</b>



## IV. GOAL METHODOLOGY

### A. Step 1: Determination of a Base Figure (26.45)<sup>1</sup>

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 *2016 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.

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

- 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 SJC market area for each corresponding work category (*relative availability*),
- weighting the relative availability for each work category by the corresponding work category weight from Table 2 (*weighted ratio*), and
- adding the weighted ratio figures together.

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

⇒ For the numerator: CUCP DBE Database of Certified Firms

⇒ For the denominator: 2016 U.S. Census Bureau County Business Patterns Database

A concerted effort was made to ensure that the scope of businesses included in the numerator were as close as possible to the scope included in the denominator. The result of the Base Figure calculation is shown in Table 3.

- Column A lists the category of work (NAICS) code and title.
- Column B lists the estimated percentage of each NAICS code (the estimated FAA dollars for each NAICS code divided by the grand total of all estimated FAA dollars) from Table 2.
- Column C lists number of ready, willing and able DBEs in the SJC market area for each NAICS code from the California Unified Certification Program (CUCP) DBE Database of Certified Firms.
- Column D lists number of all firms (DBE and non-DBE) in the SJC market area for each NAICS code from the 2016 U.S. Census Bureau County Business Patterns Database.
- Column E lists the weighted ratio of the DBEs availability for each NAICS code (the number of DBEs divided by the number of all firms, multiplied by the estimated NAICS percentage).
- The weighted base figure is the sum of the weighted ratios of the DBEs availability for each NAICS code.

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<sup>1</sup> 26.45 represents Title 49 CFR Part 26 regulatory goal setting methodology reference.



**Table 3**

A NAICS Code: Category of Work	B Estimated FAA % by NAICS	C DBEs	D All Firms	E Base Weighted Ratio
237310: Highway, street, and bridge construction	27.3%	5	61	2.2%
237990: Other heavy and civil engineering construction	4.4%	3	23	0.6%
238110: Poured concrete foundation and structure contractors	5.9%	3	112	0.2%
238210: Electrical contractors and other wiring installation contractors	8.0%	19	717	0.2%
238910: Site preparation contractors	8.8%	11	144	0.7%
238990: All other specialty trade contractors	4.4%	17	232	0.3%
335999: All other miscellaneous electrical equipment and component manufacturing	1.0%	0	34	0.0%
423610: Electrical apparatus and equipment, wiring supplies, and related equipment merchant wholesalers	6.4%	7	258	0.2%
484220: Specialized freight (except used goods) trucking, local	0.5%	33	125	0.1%
541330: Engineering services	19.3%	38	1178	0.6%
541690: Other scientific and technical consulting services	5.3%	35	604	0.3%
561730: Landscaping services	4.4%	3	739	0.0%
561990: All other support services	4.4%	7	133	0.2%
<b>Base Figure</b>				<b>5.7%</b>

**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 five (5) 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 five (5) federal fiscal years.

**Table 4**

FEDERAL FISCAL YEAR (FFY)	FAA DBE GOAL ATTAINMENT %
2013/2014	0.0%
2014/2015	1.5%
2015/2016	8.1%
2016/2017	21.2% <sup>2</sup>
2017/2018	2.6%
<b>Median DBE Attainment Within the Last Five (5) Federal Fiscal Years</b>	<b>2.6%</b>

The median established for the past five (5) federal fiscal years (2.6%) is lower than the Base Figure derived from Step 1 (5.7%); 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.

Base Figure (A)	5.7%
Median DBE Attainment (B)	2.6%
<b>Adjusted Base Figure [(A+B)/2]</b>	<b>4.1%</b>

## 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 Study<sup>3</sup>, 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.

<sup>2</sup> The 21.2% DBE participation in FFY 2016-2017 was due to a security project with 23% DBE participation. SJC does not have a similar project coming up and does not expect achieve this high level of participation in the coming triennial period.

<sup>3</sup> [https://www.bart.gov/sites/default/files/docs/VI.BART%20Final%20Report.Volume%20I.1.12.2017\\_0.pdf](https://www.bart.gov/sites/default/files/docs/VI.BART%20Final%20Report.Volume%20I.1.12.2017_0.pdf)



The 2015 San Francisco Municipal Transportation Agency (SFMTA) Disadvantaged Business Enterprise Availability, Utilization and Disparity Study<sup>4</sup> (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 Study<sup>5</sup> 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.

## **V. PROPOSED OVERALL DBE GOAL**

SJC operates a race-neutral DBE program. SJC will evaluate its DBE program on a regular basis to determine whether contract goals should be considered to achieve the overall goal.

**The Proposed Overall DBE Goal for FFY 2020-2022 for SJC FAA-assisted contracts is 4.1%.**

The DBE Goal based on the federal share is a Race Neutral goal and SJC will implement race neutral measures to achieve this goal, as generally described in the following section. As a part of the prescribed goal-setting methodology, SJC must project the percentage of its Proposed Overall DBE Goal that can be met utilizing race-neutral and race-conscious measures.

### **Race-Conscious & Race-Neutral Projection**

The United States Department of Transportation (USDOT) regulations require that race-neutral methods be used to the maximum extent feasible to reach the DBE overall goal listed below. 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 measures and determine if it is necessary to institute a race conscious portion and contract specific goals.

SJC intends to continue to use race-neutral methods to meet the overall DBE goal of 4.1% for FFY 2020-2022 in accordance with Title 49 CFR Part 26.51.

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

<sup>5</sup> <http://www.dot.ca.gov/obeo/docs/2016DisparityStudyReport.pdf>



<b>RACE-CONSCIOUS &amp; RACE-NEUTRAL PROJECTIONS</b>	
<b>DBE Adjusted Base Figure</b>	<b>4.1%</b>
<b>Race-Conscious Component</b>	<b>0%</b>
<b>Race-Neutral Component</b>	<b>4.1%</b>

## **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 sub-contracting 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](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](http://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 encourage race-neutral Small Business Enterprises to participate on federally funded contracts.

#### **Fostering Small Business Participation<sup>6</sup>**

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.

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<sup>6</sup> See Title 49 CFR Part 26 Section 26.39 “Fostering Small Business Participation.”



## 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 will be consulted and provided an opportunity to review the triennial goal analysis and provide input.

SJC posted a Public Notice to the airport website, on May 9<sup>th</sup>, 2019 publishing the SJC Draft Proposed FAA Overall DBE Goal for FFY 2020-2022. The notice informed the public that the proposed goal rationale was 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:

- Presented to San José Council Small Business Task Force on May 9, 2019
- Posted to FAA Matchmaker Website on May 10, 2019
- Posted to AMAC Event's page on May 10, 2019
- Presented to Airport Commission on May 13, 2019
- Sent to the San José City Council, the San Jose Minority Business Development Agency, Airport Minority Advisory Council, Small Business Development Center - Hispanic Chamber(SBDCHC), and various Business & Ethnic Chambers.
- Direct outreach to DBE firms listed in the CUCP DBE database

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 Methodology for FFY 2020-2022. This notice also provided information about to attend the Stakeholder meeting. SJC hosted a stakeholder's meeting on May 31, 2019 from 2:30 p.m. to 4:00 p.m. In order to accommodate more participation from the public, stakeholders were able to join online (via a webinar) or in-person at the downtown San José City Hall. The stakeholder meeting presented details about the new DBE goal, methodology, and details on the projects the public can expect to be available in FFY 2020-2022.

A full draft of the proposed FAA DBE Goal for SJC was posted to the San José City Council website on May 31, 2019 for public inspection and comment in advance of a City Council meeting. The San José City Council took up this item at their June 11, 2019 meeting, which was open to public and provided an opportunity for additional input and comment on the proposed plan. The City receive no additional public comments or feedback, and the City Council approved the 3-year DBE goal outlined in this document at that meeting.



ATTACHMENT 5B  
Website Notification

**NOTICE TO PUBLIC – MAY 9<sup>TH</sup>, 2019**

**NORMAN Y. MINETA  
SAN JOSE INTERNATIONAL AIRPORT  
FEDERAL AVIATION ADMINISTRATION  
DBE GOAL FEDERAL FISCAL YEARS 2020 – 2022**

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 4.1% 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 31<sup>st</sup>, 2019  
2:30 p.m. to 4:00 pm  
Public Work's Conference Room T-550  
San José City Hall - 5th Floor  
200 E. Santa Clara Street  
San Jose, California 95113

For further information on the Stakeholder Meeting reach out to:  
Magdalena Nodal via email to [mnodal@sjc.gov](mailto: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](mailto: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 8, 2019.

**ATTACHMENT 5C**  
**List of Minority/Trade Organizations**

<b>Organization</b>	<b>Contact Info</b>	<b>Notes</b>	<b>Comments</b>
<b>Building &amp; Construction Trades Council</b>	Norene Sakazaki, Office Manager 408-265-7643 norene@scbtc.org	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17</li> <li>Called 5/16 and left message. Noreen called back and stated she will be forwarding the notification to David B., Executive of Building and Construction Trades Council.</li> <li>Called 5/20 and left message. David called back and requested clarification on the Triennial DBE goal. SJC provided the steps for how the goal was calculated and the comparison between FFY 2017-2019 and FFY 2020-2022. David stated he would reach out to his DBE certified affiliates for their thoughts on the Triennial DBE goal and will provide SJC any feedback he receives.</li> </ul>	No comments received
<b>Chinese American Chamber of Commerce Santa Clara Valley</b>	408-615-7300 cacc_sc@yahoo.com www.cacc-sc.org	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/21, 5/28</li> <li>Attempted to call 5/16. Number has been disconnected.</li> </ul>	No comments received
<b>Filipino American Chamber of Commerce of Silicon Valley</b>	408-283-0833 info@filamchamber.org	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/28</li> <li>Called and left messages 5/16, 5/23, 5/30</li> </ul>	No comments received
<b>Hispanic Chamber of Alameda County</b>	415-572-3568 510-536-4477 www.hccac.com	<ul style="list-style-type: none"> <li>Email notification sent 5/14. Received undeliverable auto response.</li> <li>Attempted to call 5/16. Numbers have been disconnected.</li> </ul>	No comments received
<b>Hispanic Chamber of Commerce Silicon Valley</b>	Dennis King 408-248-4800 dennisk@hccsv.org http://www.hccsv.com/staff.asp	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/21, 5/28</li> <li>Called and left messages 5/16, 5/23, 5/30</li> </ul>	No comments received
<b>Silicon Valley Minority Business Consortium</b>	Walter Wilson 408-660-9171 walter@minoritybusinessconsortium.com	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17</li> <li>Called and left message 5/16</li> <li>5/18 received email from Walter stating MBC will attend Stakeholder Meeting. SJC sent response email to Walter confirming MBC's attendance.</li> </ul>	No comments received
<b>San Jose MBDA Business Center</b>	Paula Tran 408-998-8058 x 139 ptran@sanjosembdacenter.com;	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/21, 5/28</li> <li>Called and left message 5/16. Tony called back and SJC provided overview of DBE program. Forwarded initial email for feedback.</li> <li>5/23 SJC spoke with Tony for feedback. Tony stated he will provide his feedback later as he was recently</li> </ul>	No comments received



Organization	Contact Info	Notes	Comments
	Tony Tang ttang@sanjosembdacenter.com  mbda.gov/businesscenters/sanjose	appointed Director of the center. 5/30 SJC left voicemail.	
<b>National Association of Women Business Owners Silicon Valley</b>	408-657-7190 info@nawbo-sv.org	Email notifications sent 5/14, 5/17, 5/21, 5/28 Called and left messages 5/16, 5/23, 5/30	No comments received
<b>Oakland African American Chamber of Commerce</b>	510-268-1600 communityengagement@oaacc.org office@oaacc.org www.oakaacc.org	Email notifications sent 5/14, 5/17, 5/21 5/21 SJC received email confirmation from Myisha Director of Community Engagement stating that she will participate in the webinar. SJC sent her and her team the meeting invitation with the webinar information included. Called 5/16 and spoke with Joyce regarding the purpose of the DBE program. SJC confirmed the correct point of contact for review of the DBE goal. SJC forwarded initial email to Joyce.	No comments received
<b>Silicon Valley Vietnamese American Chamber of Commerce</b>	Nancy Kieu Nga Avila 408-673-7181 408-658-7785 info@svvacoc.org knavila@svvacoc.org www.svvacoc.org	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/21</li> <li>Called 5/16 and spoke with Nancy. Nancy informed SJC that she has not reviewed the document yet and will provide her comments after review.</li> <li>5/22 SJC received email from Nancy stating that she will be reviewing the information and will send her feedback. She stated she will attend the Stakeholder Meeting. SJC sent response email to Nancy confirming receipt of email and to answer any questions that may arise.</li> <li>5/28 SJC received email from Nancy that information was being shared with the team and will offer feedback after review.</li> </ul>	No comments received
<b>The Silicon Valley Black Chamber of Commerce</b>	Carl Davis 408-288-8806 pres@blackchamber.com www.blackchamber.com	<ul style="list-style-type: none"> <li>Email notifications sent 5/14, 5/17, 5/21, 5/28</li> <li>Called and left messages 5/16, 5/23</li> <li>Called 5/30 and spoke with Jackie and provided details about the triennial goal and the upcoming stakeholder meeting, including location and time.</li> </ul>	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

**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:

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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 7b**  
**DBE ON-SITE ACTIVITY REVIEW REPORT**

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
		<b>Foreman/Superintendent</b>

**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**

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

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**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](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.

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

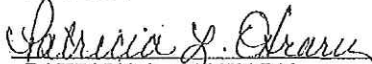
ABSENT: DIQUISTO

DISQUALIFIED: NONE



RON GONZALES  
Mayor

ATTEST:



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 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.