

## POLICY STATEMENT

### Section 26.1, 26.23

### Objectives/Policy Statement

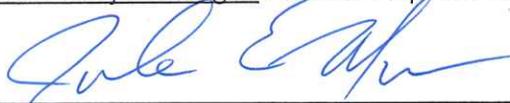
The City of San Jose has established a Disadvantaged Business Enterprise (DBE) Program for Norman Y. Mineta San José International Airport in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Norman Y. Mineta San José International Airport has received Federal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

Nina Grayson, the City's Director of the Office of Equality Assurance, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Grayson 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).



Julie Edmonds-Mares  
Deputy City Manager

7.19.16  
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 dbE-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:

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

Telephone: 408-535-8455  
Email: [nina.grayson@sanjoseca.gov](mailto:nina.grayson@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 10 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: Barry Ng, 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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>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<br><input type="checkbox"/> ≤ \$5 million<br><input type="checkbox"/> ≤ \$10 million<br><input type="checkbox"/> ≤ \$15 million<br><input type="checkbox"/> ≥ \$15 million |                     |                                     | <input type="checkbox"/> Yes<br><input type="checkbox"/> No<br>DBE Cert No. |
| <i>Address</i>                     |  | <i>Fax</i>   |   |                     |                                     |   |
| <i>City State Zip</i>              |  |              |   |                     |                                     |   |

Bidder's List of Subcontractors – Part II

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 5

### CITY OF SAN JOSÉ/NORMAN Y. MINETA INTERNATIONAL AIRPORT DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM PROPOSED THREE-YEAR OVERALL GOAL & METHODOLOGY FOR FEDERAL FISCAL YEARS 2017 THROUGH 2019

Exstare Federal Services Group, LLC, and Rosales Business Partners LLC (referred to collectively as the consultants) worked with the City of San Jose (City) to determine an overall DBE participation race-neutral goal of 6.30% for Norman Y. Mineta San José International Airport (SJC or Airport) for Federal Fiscal Years 2017-2019 (FFYs 2017-2019). In setting this proposed overall DBE goal, the consultants closely followed the U.S. Department of Transportation (USDOT) DBE Program regulations set forth in 49 Code of Federal Regulations Part 26 (the Federal Regulations), including the two-step goal-setting methodology in 49 CFR Section 26.45.

#### **Step 1. Determining a Base Figure – 49 CFR Section 26.45(c)**

**Methodology for the availability analysis.** The consultants' availability analysis focused on specific areas of work (i.e., NAICS<sup>1</sup> codes) related to the types of FAA-funded construction contracts that SJC anticipates awarding in FFYs 2017 through 2019. For the purposes of establishing a base figure, the availability analysis examined the availability of *DBEs*—minority- and women-owned businesses that are DBE-certified according to the requirements described in the Federal Regulations—for Federal Aviation Administration (FAA)-funded prime contracts and subcontracts.

**Market Area.** The consultants identified the geographic market area in which SJC awarded most of the corresponding contract dollars and where the majority of bidders have come from for similar projects. (i.e., the relevant geographic market area). The consultants determined the California counties of Santa Clara and Alameda to be SJC's relevant geographic market area for FFYs 2017-2019. Contractors in those two counties received almost 82% percent of SJC's FAA-funded contract expenditures between FFYs 2011 and 2014, and represent 54% of the interested contractors and subcontractors identified in SJC bidders' lists. The consultants then developed a database of potentially available businesses in the relevant NAICS codes from the California Unified Certification Program (CUCP) directory of certified DBE Firms (numerator) and obtained the number of all business establishments listed in each NAICS code in the U.S. Census Bureau 2013 County Business Patterns (CBP) data for the counties of Santa Clara and Alameda (denominator).

**Number and type of projects that the Airport anticipates awarding.** SJC staff confirmed that two DOT-assisted contracts totaling approximately \$20,500,000<sup>2</sup> are anticipated to be awarded during this goal period, in FFYs 2017 and 2018:

**1. Southeast Ramp Reconstruction**  
FFY 2017 anticipated Federal grant:  
\$8,400,000

**2. RIM Implementation**  
FFY 2018 anticipated Federal grant:  
\$12,100,000

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<sup>1</sup> The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the U.S. business economy.

<sup>2</sup> The estimated FAA funding amount of \$20,470,078 for both projects has been rounded.

**Step 1 base figure.** As part of the availability analysis, the consultants prepared dollar-weighted availability estimates to help SJC set its overall DBE goal. Dollar-weighted availability estimates represent the percentage of FAA-funded contracting dollars that DBEs would be expected to receive based on their availability for specific types and sizes of SJC’s FAA-funded prime contracts and subcontracts. According to USDOT’s “Tips for Goal-Setting”<sup>3</sup>, weighting is not required by the Federal Regulations but it will make the goal calculation more accurate.

SJC staff identified the specific contract elements by NAICS code and the percentages of the work in each of these codes that make up the components of each project anticipated during the FFY 2017-2019 goal period. For each FAA-funded prime contract examined as part of the availability analysis and then, for the purposes of helping SJC establish a base figure, the consultants took the following steps to calculate the availability of potential DBEs for each FAA-funded contract element:

1. The consultants identified businesses in the availability database that are DBE certified in the specific type of work (based on 6-digit NAICS codes) and the number of all business establishments listed in the CBP data.
2. The number of DBEs was then counted relative to all businesses specified in step 1.
3. The consultants translated the numeric availability of potential DBEs certified in each NAICS code into percentage availability.

The consultants repeated those steps for each FAA-funded contract element examined, by multiplying the percentage availability for each contract element by the dollars associated with the contract element, added results across all contract elements, and divided by the total dollars for all contract elements. The result was a dollar-weighted estimate of the overall availability of DBEs, as shown in Table 1.

**Table 1 - Weighted Availability of DBEs in Market Area**

| NAICS Codes                                     | DBE Firms | All Firms | DBE Availability | Ratio of Federal Dollar Amount Per NAICS Code | Federal Dollar Amount per NAICS Code | Weighted DBE Availability |
|---|-----------|-----------|------------------|---|--------------------------------------|---------------------------|
| 237310  | 6         | 48        | 12.50%           | 76.00%  | \$ 15,566,761                        | 9.50%                     |
| 237990  | 6         | 25        | 24.00%           | 2.30%   | \$ 474,050                           | 0.55%                     |
| 238110  | 11        | 121       | 9.00%            | 1.30%   | \$ 270,737                           | 0.12%                     |
| 238210  | 22        | 693       | 3.20%            | 4.30%   | \$ 880,613                           | 0.14%                     |
| 238910  | 10        | 148       | 6.80%            | 11.00%  | \$ 2,242,300                         | 0.74%                     |
| 541330  | 47        | 1,141     | 4.10%            | 0.05%   | \$ 9,731                             | 0.00%                     |
| 541690  | 27        | 706       | 3.80%            | 1.80%   | \$ 364,836                           | 0.06%                     |
| 561730  | 3         | 661       | 0.50%            | 3.20%   | \$ 661,050                           | 0.02%                     |
|   | 132       | 3,543     | 3.73%            |   | \$20,470,078                         |                           |
| <b>Weighted Step 1 DBE Base Figure = 11.13%</b> |           |           |                  |   |                                      |                           |

Sources: City of San Jose; CUCP DBE directory; U.S. Census Bureau 2013 County Business Patterns

Note: Numbers rounded to nearest tenth of 1 percent. Numbers may not add to totals due to rounding.

- The first column presents the NAICS codes for the two projects anticipated to be awarded during this goal period, in FFY 2017.

<sup>3</sup> Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program:  
<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>.

- The second column presents the number of DBEs that the consultants considered as part of the base figure analysis;
- The third column presents the number of all firms, both non-DBE and DBE, for each NAICS code;
- The fourth column presents DBE availability, expressed as a percentage of all firms;
- The fifth column presents the ratio of the FAA-funded portion of the projects for each NAICS code, expressed as a percentage;
- The sixth column presents the combined, estimated dollar amount for the two projects, by NAICS code; and
- The last column presents weighted DBE availability.

As presented in Table 1, the availability analysis shows that DBEs could be considered available for 11.13 percent of SJC’s FAA-funded prime contracts and subcontracts. Thus, SJC considers 11.13 percent as its base figure.

The Step 1 DBE base figure is zero percent (0%) for FFY 2019. At this time, SJC does not anticipate any new FAA-funded contracts during FFY 2019.

**Step 2. Determining if a base figure adjustment is needed – 49 CFR Section 26.45(d)**

After establishing the base figure, SJC considered available information to determine whether any adjustment was needed to the base figure to determine the overall DBE goal and to make it as precise as possible. In considering an adjustment to the base figure, SJC evaluated information about:

- Past DBE participation on SJC’s federally-funded contracts;
- Paucity of contracting opportunities;
- Any disparities in the ability of DBEs to get financing, bonding, and insurance;
- Marketplace conditions including employment, self-employment, education and training; and
- Other relevant data.

SJC considered all of the above information in considering whether to make an adjustment to the base figure.

**Past DBE participation on SJC’s federally-funded contracts.** USDOT’s “Tips for Goal-Setting”<sup>4</sup> suggests that agencies should examine data on past DBE participation on their

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<sup>4</sup> Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program:  
<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/tips-goal-setting-disadvantaged-business-enterprise>

USDOT-funded contracts in recent years. USDOT further suggests that agencies use only one year's worth of past participation if the agency determines that its goal will be more accurate; the year utilized must be in a year that the agency's goals were set in compliance with Part 26. The City used FFY 2015 past participation, a year in which its goals were set in compliance with Part 26. In addition, the City awarded a project at SJC in FFY 2015 that had elements of work similar to the work elements of the two projects anticipated during this goal period.

The City's FFY 2015 Uniform Report of DBE Participation indicates that DBE participation was 1.48 percent in FFY 2015. Some factors that have affected past participation include limited availability of DBEs for an airfield improvement project and two projects anticipated for award in 2015 were not awarded until 2016<sup>5</sup>.

Averaging the 11.13 percent base figure with 1.48 past participation yields 6.30 percent, which suggests a downward adjustment to the base figure.

***Paucity of contracts.*** During the FFYs 2017-2019 goal period, SJC anticipates FAA funding of only two projects. The work elements in those projects are similar to the work elements of contracts SJC has awarded in recent years. The projects during this goal period are contemplated for award in FFYs 2017 and 2018, though implementation of these projects will extend beyond those fiscal years.

**Any disparities in the ability of DBEs to get financing, bonding, and insurance.** The consultants reviewed and/or participated in conducting recent Federal DBE Program-related disparity studies in California. Those studies revealed quantitative and qualitative evidence that minorities, women, and minority- and women-owned businesses (MBE/WBEs) do not have the same access to financing, bonding, and insurance as non-Hispanic white males and 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 MBE/WBEs face in obtaining financing, bonding, and insurance would also place those businesses at a disadvantage in obtaining SJC FAA-funded prime contracts and subcontracts. That information suggests an upward adjustment to the base figure to "account for the continuing effects of past discrimination (often called the 'but for' factor)."<sup>6</sup>

**Marketplace Conditions including employment, self-employment, education and training.** The 2015 San Francisco Municipal Transportation Agency (SFMTA) Disadvantaged Business Enterprise Availability, Utilization and Disparity Study (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 minorities, women, and for MBE/WBEs, and whether such barriers affect the utilization and availability of MBE/WBEs for SFMTA contracting.

The 2015 SFMTA Disparity Study's quantitative analyses show barriers in the San Francisco Bay Area marketplace for certain minority groups, women, and minority- and woman-owned businesses in the areas of entry and advancement, business ownership, access to capital, and

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<sup>5</sup> SJC's Uniform Report of DBE Participation for FFY 2015.

<sup>6</sup> 49 CFR Section 26.45 (d).

success of businesses. As stated in SJC's Overall Goal & Methodology for FFYs 2014-2016<sup>7</sup>, evidence presented in the 2012 Caltrans FHWA disparity study that covers Santa Clara and Alameda Counties supports that conclusion and also demonstrates substantial disparities in the utilization of MBE/WBEs in transportation-related construction and professional services contracting. (See attached Exhibit 1 for an in-depth summary of the marketplace conditions analyses.)

**Other relevant data.** The Federal DBE Program suggests that federal aid recipients also examine "other factors" when determining whether to make any step-2 adjustments to their base figures.<sup>8</sup> In addition to the 2015 SFMTA Disparity Study, other recent disparity studies provide quantitative evidence in California that certain groups of MBE/WBEs are less successful than non-Hispanic white male-owned businesses and face greater barriers in the marketplace, even after considering race- and gender-neutral factors. Appendix H of the Caltrans 2012 FHWA disparity study report presents that evidence. There is also qualitative evidence of barriers to the success of MBE/WBEs, as explored in Appendix J of the Caltrans 2012 FHWA disparity study report. Some of that information suggests that discrimination on the basis of race/ethnicity and gender affects MBE/WBEs in the California transportation contracting industry.

**Goals and achievements of other airports.** The consultants also reviewed DBE goals and participation achievements of other airports. Oakland International Airport (OAK) is a medium hub airport like SJC, in a similar contracting market, and has had FAA-funded projects similar to those that SJC anticipates awarding during this goal period. The Port of Oakland adopted an overall, race-neutral DBE participation goal of 10.28% for FFYs 2014-2016 for OAK for those projects. In FFY 2011-2014, overall, OAK achieved 4.86% race-neutral DBE participation, 15.21% below its race-neutral goal of 20.07%<sup>9</sup>.

The consultants also note that San Francisco International Airport (SFO), a large hub airport, adopted an overall, race-neutral DBE participation goal of 13% for FFYs 2014-2016 for construction and professional services contracts<sup>10</sup>. In FFY 2014, SFO awarded a runway safety area improvement project of \$87.4 million for which \$670,000 was awarded to DBEs, or a DBE participation rate of 0.77%.<sup>11</sup> This project is also similar to the projects SJC anticipates during this goal period.

**Step 2 adjustment.** While recent disparity studies document evidence of discrimination in the Bay Area and California transportation industry, including SJC's market areas, there is no evidence of SJC's contracting practices passively contributing to the identified marketplace discrimination. During this goal period we will continue to monitor and assess the DBE program in that regard. Thus, considering all of the available information relevant to a potential step-2 adjustment, the City proposes the adjusted goal of 6.30% as its overall, race-neutral DBE participation goal of FFYs 2017-2019.

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<sup>7</sup> City of San Jose DBE Plan, April 2015, pp. 26-27.

<sup>8</sup> 49 CFR Section 26.45.

<sup>9</sup> Port of Oakland Disadvantaged Business Enterprise Triennial Overall Goal and Methodology Report for Federal Fiscal Years 2014-2016 to the Federal Aviation Administration.

<sup>10</sup> <http://www.flysfo.com/business-at-sfo/small-business-affairs-office>.

<sup>11</sup> San Francisco International Airport Annual Report of Airport Contract Awards Fiscal Year 2013-2014.

## **Public Participation – 49 CFR Section 26.45(g)**

Before establishing the final overall goal, invitations were sent to 1,589 individuals representing DBEs, minority-owned businesses, woman-owned businesses, community groups and others to seek their participation in the City's stakeholder consultation meeting that was held April 6, 2016. Notice of the stakeholder consultation meeting was also published on SJC's website, and advertised in *The San José Post* and *The San José Mercury News*.

The following stakeholders participated in the consultation meeting:

Gboyega Aladegbami, AEKO Consulting  
Jesse Almara, Energ Shield  
Nancy Avila, President, Silicon Valley Vietnamese American Business Chamber of Commerce  
Carl Davis, The Black Chamber of Silicon Valley  
Michael Fagan, JSG Elevator Consultants  
Frank Fletcher, McKim Design  
Romana Jones, Pari & Gershon  
Susan Oldroyd, Principal, Susan Oldroyd Architect  
Michael Prishlyak, Procurement Manager, Direct Resource Management  
Venessa Rogers, Aura Telecom  
Mara Rosales, Rosales Business Partners  
Reginald Swilley, Minority Business Consortium  
Nancy West, Exstare Federal Services Group

The stakeholders were primarily interested in understanding how their firms could qualify to do business with SJC, either as DBEs or a local firm or in partnership with these firms and/or prime contractors. Stakeholders also suggested unbundling larger contracts into components that smaller businesses could perform. City/Airport and consultant staff responded with information about: (1) the small business component of the City's DBE program; (2) upcoming SJC contract opportunities, both federally and non-federally funded, including where a firm could obtain more information about SJC business opportunities (e.g. the City and SJC websites, and BidSync); (3) where a firm can seek DBE certification in the San Francisco Bay Area, and other parts of the state; and (4) the City of San Jose's local business preference programs.

A couple of stakeholders asked general questions about the goal setting methodology, its application to federally funded contracts and compliance efforts in the event SJC was unable to achieve the goal. Additionally, several firms sought clarification that the goal setting process being presented concerned only the two airside projects (i.e., Southeast Ramp Reconstruction and RIM Implementation) anticipated for federal assistance in FFYs 2017 through 2019. In the opinion of one stakeholder representative, the draft overall DBE race-neutral goal of 5.88% was lower than that speaker thought desirable to attract the interest of small and minority firms. Airport and consultant staff provided responses on the goal setting methodology and its requirements as set forth in 49 CFR Part 26 and USDOT guidance, which resulted in the draft overall DBE race-neutral goal. In general terms, participants were informed about FAA compliance efforts when an airport is found not to have achieved the overall DBE race neutral goal. Finally, Airport staff also confirmed that the two airside projects identified were the only contracts anticipated for federal funding in FFY 2017 through 2019 but emphasized that there other available non-federally funded contract opportunities.

Following the consultation, the consultants and SJC refined the draft goal, and notice of a proposed overall goal of 6.30% was published on the City's and the Airport's website on April 26, 2016 and in the *San José Post Record*. The notice informed the public that the proposed goal and its rationale were available for inspection during normal business hours, and that the City would accept written comments on the proposed goal for 45 days following the date of the notice at the following address:

City of San José  
Attention: Nina Grayson  
200 East Santa Clara Street  
Fifth Floor  
San José, CA 95113  
[nina.grayson@sanjoseca.gov](mailto:nina.grayson@sanjoseca.gov)

The City received 1 written comment on the proposed goal. The comment asked for additional details about the DBE plan. It did not express an opinion on the proposed goal of 6.30%.

#### **Race-/Gender-Neutral and Race/Gender-Conscious Split – 49 CFR Section 26.51 (c)**

The City will meet the maximum feasible portion of its overall goal by using the following race-neutral methods for DBE and small business participation in contract opportunities:

- Arranging 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;
- Providing technical and referral assistance to DBEs and small businesses to overcome challenges or barriers to contract participation such as inability to obtain or satisfy bonding or financing requirements;
- On a case-by-case basis and depending on the availability and capacity of small businesses to perform subcontract opportunities, the City will implement race-neutral Small Business Enterprise goals on federally funded contracts.
- Disseminating contract opportunity information with sufficient lead time so that DBEs and small businesses have a meaningful opportunity to participate in SJC contracts;
- Providing supportive and referral services addressing business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- Providing strategies to enhance and expand the capacity of DBEs and other small businesses to handle increasingly significant projects, and achieve eventual self-sufficiency;
- Assisting start-up firms, particularly in fields in which DBE participation has historically been low;
- Distributing the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- Assisting DBEs and other small businesses develop their capability to utilize emerging technology and conduct business through electronic media.

The City estimates that in meeting its 6.30% overall goal, it will obtain 100% from race-neutral participation and 0% through race-conscious measures.

Although the City does not yet have several years of history of DBE participation or over-achievement of goals to reference, we expect to obtain DBE participation through the use of race-neutral efforts. Therefore, we are applying the entire goal of 6.30% to race-neutral participation.

The City will adjust the estimated breakout of race-neutral and race-conscious DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

**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:

.....  
.....  
.....  
.....

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: |
|--------------|--------|-------|

|              |        |       |
|--------------|--------|-------|
| Reviewed by: | Title: | Date: |
|--------------|--------|-------|

**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

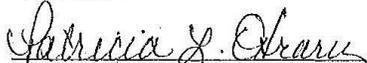
ABSENT: DIQUISTO

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.