

**JOHN WAYNE AIRPORT
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM**

in compliance with Title 49 Code of Federal Regulations, Part 26

Including

**SMALL BUSINESS ENTERPRISE (SBE)
PROGRAM**

in compliance with Title 49 CFR, Part 26, §26.39

November, 2021

**JOHN WAYNE AIRPORT
ORANGE COUNTY**



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INTRODUCTION

John Wayne Airport (“JWA”) has developed this Disadvantaged Business Enterprise (“DBE”) Program in accordance with Title 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation (“DOT”) Financial Assistance Programs. The DOT regulations for the DBE Program are intended to remedy past and current discrimination against DBEs, ensure a “level playing field,” and foster equal opportunity in DOT-assisted contracts. A link to 49 CFR Part 26 may be found in Attachment A.

POLICY STATEMENT

Section 26.1, 26.23 - Objectives/Policy Statement

John Wayne Airport (“JWA”), owned and operated by the County of Orange, CA, has established a Disadvantaged Business Enterprise (“DBE”) Program (“DBE Program” or the “Program”) in accordance with regulations of the U.S. Department of Transportation (“DOT”), 49 CFR Part 26, to be implemented by County of Orange (JWA and Orange County Public Works (“OCPW”)) personnel. JWA has received federal financial assistance from the DOT, and as a condition of receiving this assistance, JWA has signed an assurance that it will comply with 49 CFR Part 26. OCPW is the agency responsible for project management and procurement on all contracts for JWA Capital Improvement Plan projects. This DBE Program addresses the roles and responsibilities of JWA and OCPW (referred to collectively as the “County”) in jointly implementing the Program requirements. However, JWA is ultimately responsible for overseeing all aspects of the DBE Program.

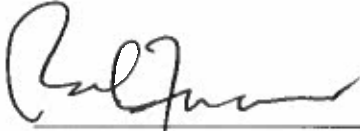
It is the policy of JWA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of JWA to ensure the following actions are taken on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

To ensure adherence to this policy, the Airport Director has delegated this responsibility to the Government Relations Manager – Public Affairs (“DBE Liaison Officer”). In that capacity, the DBE Liaison Officer (“DBELO”) 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 JWA in its financial assistance agreements with the DOT. It is the expectation of the Airport Director that the provisions of this DBE Program will be adhered to both in spirit and letter by all County personnel involved in the implementation of the Program.

JWA has disseminated this policy statement to applicable County staff. This statement has been distributed to DBE and non-DBE business communities that may perform work on JWA DOT-assisted contracts. The distribution was accomplished via email, hand-outs at pre-bid conferences, and website posting.

11-17-2021
Date


Rick Francis
Interim Airport Director

SUBPART A - GENERAL

Section 26.1 - Objectives

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

Section 26.3 - Applicability

JWA is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq., and therefore 49 CFR part 26 applies to airport projects funded in whole, or in part, by federal funds.

Section 26.5 - Definitions

The terms used in this Program have the meanings as defined in 49 CFR 26, §26.5.

Section 26.7 - Non-discrimination Requirements

The County 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, national origin, age, or disability.

In administering JWA's DBE Program, the County 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 concerning individuals of a particular race, color, sex, national origin, age, or disability.

Section 26.11 - Record-Keeping Requirements

Reporting to DOT

JWA will provide data about its DBE Program to the Department as directed by DOT operating administrations.

JWA will report DBE participation to the FAA as follows:

JWA's DBELO will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments" as described in Appendix B to Part 26. JWA will similarly report the required information about participating DBE firms. All reporting will be done through the FAA's official reporting system or another format acceptable to the FAA as instructed. OCPW will provide all requested data to JWA's DBELO in order to draft the report.

Bidders List

OCPW 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 JWA DOT-assisted contracts for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, firm's age, and annual gross receipts of firms. The form used is included as Attachment B.

OCPW will require this information to be submitted by all bidders for a DOT-assisted contract at the time of bid.

Records Retention and Reporting

JWA and OCPW will maintain records documenting a firm's compliance with the requirements of this part. Compliance-related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 - Federal Financial Assistance Agreement

Assurance

JWA has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

JWA 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. JWA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. JWA'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 JWA of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance

OCPW will ensure that the following clause is included verbatim in each DOT-funded contract it signs with a contractor, as well as each subcontract the prime contractor signs with a subcontractor:

"The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, sex, national origin, age, or disability 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 recipient 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

JWA is required to have a DBE Program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, the cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. JWA is not eligible to receive DOT financial assistance unless DOT has approved this DBE Program and JWA is in compliance with it and Part 26. JWA will continue to carry out this Program until all funds from DOT financial assistance have been expended. JWA does not have to submit regular updates of the DBE Program document as long as it remains in compliance. Significant changes in the Program, however, including those required by regulatory updates, will be submitted for DOT approval. JWA will share Program updates with OCPW staff so they are aware of any changes.

Section 26.23 - Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 - DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for JWA:

Government Relations Manager – Public Affairs
3160 Airway Avenue, Costa Mesa, CA 92626 - (949) 252-5297

The DBELO is responsible for implementing all aspects of the DBE Program and ensuring that JWA and OCPW comply with 49 CFR Part 26. The DBELO has direct, independent access to the Airport Director concerning DBE Program matters. An organization chart displaying the DBELO position in the organization is found in Attachment C to this Program.

The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE Program in coordination with other appropriate executives and consultants. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA and DOT.
2. Reviews DOT-assisted contracts and subcontracts and purchase requisitions for compliance with this Program.
3. Works with other JWA Divisions, OCPW, and community organizations to set overall annual goals.
4. Coordinates with OCPW to ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Coordinates with OCPW to identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals).

6. Analyzes JWA's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid, project information, and pre-construction meetings. OCPW will be responsible for inviting the DBELO to these meetings with at least two weeks' advance notice.
8. Advises the Airport Director on DBE matters and goal achievement.
9. Coordinates with JWA Facilities staff and OCPW to obtain information concerning upcoming projects.
10. Acts as liaison for JWA to the California Unified Certification Program ("CUCP").
11. Serves as the point of contact for any DBE compliance review conducted by the FAA.

Section 26.27 - DBE Financial Institutions

It is the policy of the County to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions, and encourage prime contractors on DOT-assisted contracts to make use of these institutions. JWA has made the following efforts to identify and use such institutions:

Currently, no certified DBE Financial Institutions are listed in the CUCP directory. JWA has identified a link to minority- and women-owned banks located in California through the Federal Reserve Board. The link to the FDIC website listing these institutions is provided in Attachment D. While these firms are not certified as DBE firms, it has been determined through the Federal Reserve listing that all firms on the list meet the size requirements for certification and self-identify as being owned by a member(s) of one of the presumed group. These firms are, therefore, good candidates for participation in JWA's DBE Program. Participating firms or firms identified as potential participants in a DOT-assisted project will be encouraged to apply for certification through the CUCP. JWA updates this list annually. Information on the availability of such institutions will be made available at pre-bid conferences.

Section 26.29 - Prompt Payment Mechanisms

JWA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, following all relevant federal, state, and local laws.

In accordance with 49 CFR §26.29 (and pursuant to California Public Contract Code §20104.50), JWA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than ten days from the prime contractor's receipt of each payment from JWA.

OCPW will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within seven days after the subcontractor's work is satisfactorily completed. Under §26.29 (and pursuant to California Public Contract Code §20104.50), the following method will be used to comply with this requirement:

County will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the

accepted work within seven days of receipt of any retention received by the prime contractor, based on the subcontractor's work to the extent of such subcontractor's interest therein and entitlement thereto.

OCPW will include the following assurance in each DOT-assisted prime contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

Enforcement Actions for Noncompliance of Participants

OCPW will provide appropriate means to enforce the requirements of §26.29.

These means include:

1. Assessing penalties or fees, in accordance with the contract, against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor;
2. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract;
3. Find the prime contractor in default of contract requirements which could result in penalties up to and including contract termination;
4. OCPW will, on a case-by-case basis, actively implement the enforcement actions detailed above and in Section 26.37 Monitoring and Enforcement Mechanisms (below).

Section 26.31 - Directory

JWA is a non-certifying member of the CUCP. The California Department of Transportation ("Caltrans") maintains the DBE/ACDBE Directory on behalf of the CUCP. For each certified DBE or ACDBE, the directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE or ACDBE. The CUCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31. The CUCP Directory website is included in bid specifications for DOT-assisted contracts. The website address is <https://dot.ca.gov/programs/civil-rights/dbe-search>.

Section 26.33 - Over-concentration

JWA has determined that no overconcentration exists in the types of work (trades) that DBEs perform.

Section 26.35 - Business Development Program - Mentor Protégé Program

JWA has not established a Business Development Program at this time.

Section 26.37 - Monitoring and Enforcement Mechanisms

The County implements and carries out appropriate mechanisms to comply with 49 CFR Part 26 requirements, including prompt payment requirements.

JWA actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

OCPW undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. OCPW staff requires each pay application submitted to identify work performed and payments owed to subcontractors, including DBE subcontractors. Subcontractors are notified via email when payment has been made to the prime contractor.
2. OCPW proactively reviews contract payments to subcontractors, including DBEs, to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to OCPW by the prime contractor.
3. OCPW requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of four (4) years unless otherwise provided by applicable record retention requirements for JWA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any FAA or DOT authorized representative. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Prompt Payment Dispute Resolution

OCPW will take the following steps to resolve disputes about whether work has been satisfactorily completed for purposes of §26.29:

OCPW will require each party to document its position and will hold a meeting with the OCPW Project Manager to discuss a possible resolution. If the parties cannot agree, the OCPW Project Manager and OCPW Procurement staff will review the documentation and work element to determine if the work meets JWA's requirements. OCPW will take the necessary action to either have the work satisfactorily completed or will instruct payment to be made if the work is already satisfactorily completed.

OCPW will insert into each JWA DOT-assisted contract the procedures set forth in California Public Contract Code § 9204 to ensure prompt payment and return of retainage

Prompt Payment Complaints

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

1. Complaints may be initially made to the prime contractor or the OCPW Project Manager.
2. If the subcontractor has contacted the prime contractor and is unable to resolve the issue, the subcontractor should initiate a complaint with the OCPW Project Manager.
3. In all cases, if OCPW becomes aware of a prompt payment complaint, it must immediately notify JWA's DBELO.
4. OCPW Project Manager will investigate the complaint within 15 business days and will make an effort to resolve the matter through contact with the prime contractor.
5. If filing a prompt payment complaint with the OCPW Project Manager does not result in timely and meaningful action by the County to resolve the dispute, the affected subcontractor may contact the FAA Regional Civil Rights Officer for the FAA Southwest Region.
6. Under Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported to FAA in a format acceptable to the FAA, including the nature and origin of the complaint, complainant's signature, and date, and its resolution. JWA's DBELO will forward all prompt payment complaints it receives to the FAA.

Enforcement Actions for Noncompliance of Participants

When the contractor is found to be in breach of contract, and informal resolution procedures have failed to demonstrate that the contractor has made every effort to resolve the issue(s) of breach of contract, the County will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced.

The County has several remedies available to enforce the DBE requirements in its contracts, including but not limited to breach of contract action under the contract terms.

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 26;
2. Enforcement action pursuant to 49 CFR part 31;
3. Prosecution pursuant to 18 USC 1001.

Additionally, the County will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The County will bring to the attention of the DOT 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 26.109.
2. The County will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. OCPW will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished as follows:
 - i. Prime contractors working on projects containing a DBE goal shall be required to file monthly reports listing contract work awarded to and performed by DBE

subcontractors/suppliers. These reports will be compared to bid commitments, and discrepancies or questions will be followed up in writing by the OCPW Project Manager or designee.

- ii. The OCPW Project Manager or designee will periodically visit the job site to ensure that DBE firms listed in bid documents are performing the work. These visits will be documented in the appropriate project files.
- iii. For each payment made to the prime contractor, the prime contractor will be required to report payments made to DBE firms for a specific project and identify invoice numbers, dates, amounts, and check numbers for payments made to the DBE firm.
- iv. After the above information is received from the prime contractor, DBEs will be required to verify the information. If there is a discrepancy reported by the DBE firm, the matter is investigated through written correspondence with the prime contractor and the DBE firm, and actual levels of participation are confirmed.
- v. Once all information has been received from prime contractors and verified by DBE firms, the information is recapped and compared to original commitments.

Monitoring Contracts and Work Sites

Contracting records are reviewed by OCPW and JWA's DBELO or designee. OCPW is responsible for routing each project manual, including the solicitation and contract language, to JWA's DBELO for review and approval and will provide at least two weeks for review. OCPW will complete the Contract Review checklist form found in Attachment E and provide the completed form to JWA's DBELO for each federally-funded project.

OCPW will maintain all required provisions in the project manual, solicitation, and contract for federally-assisted projects, in accordance with the FAA's contract provision guidance and JWA's DBE Program. A link to the FAA's contract provision guidance can be found in Attachment H. OCPW will enforce contract provisions related to DBE and FAA Civil Rights requirements.

OCPW engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the OCPW Project Manager or designee using the Commercially Useful Function Checklist/Site Visit, Project Site Review, and DBE Work Performance forms found in Attachment E.

Section 26.39 - Fostering Small Business Participation

The County has created a Small Business Program 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 Small Business Program will be implemented by OCPW Procurement staff.

The Small Business Program is incorporated as Attachment F to this DBE Program. The Small Business Program's elements will be actively implemented to foster small business participation. Implementation of the Small Business Program is required for JWA to be considered by DOT as implementing this DBE Program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 - Set-Asides or Quotas

The County does not use quotas in any way in the administration of this DBE Program.

Section 26.45 - Overall Goals

The County will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year period. Per §26.45(f), JWA will submit its overall three-year DBE goal to the FAA by August 1 of the year in which the goal is due, as required by the schedule established by and posted to the FAA website:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

The DBE goals will be established following the 2-step process as specified in 49 CFR Part 26.45. If the County does not anticipate awarding prime contracts, the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. This DBE Program, however, will remain in effect, and the County will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

OCPW and JWA will coordinate on the development of the three-year DBE goals. OCPW will schedule and conduct stakeholder engagement in coordination with JWA's DBELO. JWA will submit the three-year goals to the FAA for approval.

Goal Determination

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The County will use one of the methods described in 49 CFR Part 26, §26.45 as a method to determine the base figure. The County understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, 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. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The County will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in JWA's market.

In establishing the overall goal, OCPW will provide for consultation and publication in coordination with JWA's DBELO. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the County to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal-setting process, and it will occur before JWA is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which OCPW engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met. The persons or groups with whom this consultation occurred will be listed in the goal methodology and calculation document.

In addition to the consultation described above, OCPW will publish a notice announcing the proposed overall goal before submission to the FAA on August 1. The notice will be posted on OCPW's official internet website and linked on JWA's website. The notice may be posted in other sources (e.g., minority-focused media, trade association publications) and will be shared with JWA's DBELO in advance of posting. If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet website.

The overall three-year DBE goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and the County's responses.

The County will begin using the overall goal on October 1 of the relevant period unless other instructions from the FAA have been received.

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The County understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that

the method employed by the County for calculating goals is inadequate, the FAA may, after consulting with JWA, adjust the overall goal or require that the County adjust the goal. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal-setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A link to the description of the methodology used to calculate the overall goal and the goal calculations can be found in Attachment G to this Program.

Section 26.47 - Failure to Meet Overall Goals

JWA cannot be penalized or treated by the Department as being in noncompliance with Part 26 because DBE participation falls short of an overall goal unless the County fails to administer its DBE Program in good faith.

The County understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The County understands that if the awards and commitments shown on the 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, the following actions must be taken to be regarded by the Department as implementing this DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new federal fiscal year to be fully met;
3. Prepare, within 90 days of the end of the federal fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) of this section.

OCPW will prepare the shortfall analysis described above in consultation with JWA. JWA's DBELO will sign the analysis and retain a copy of the analysis and corrective actions for a minimum of three years and will make it available to the FAA upon request. OCPW will carry out corrective actions identified in the analysis.

Section 26.51 - Means which Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

JWA will meet the maximum feasible portion of its overall goal through race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

As the agency responsible for contracting, OCPW will be responsible for implementing race-neutral participation methods on JWA DOT-assisted projects, which may include, but not be limited to the following:

1. Arranging 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.
2. Providing assistance in overcoming limitations such as inability to obtain bonding, insurance, or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding, insurance, or financing);
3. Providing technical assistance and other services;
4. Providing outreach to DBEs and community organizations to advise them of opportunities.
5. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
6. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
7. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
8. Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low;
9. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
10. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media;
11. Selectively set small business goals in accordance with JWA's approved Small Business Program.

The breakout of estimated race-neutral and race-conscious participation can be found in the overall goal methodology. A link to the methodology may be found in Attachment G to this Program.

OCPW will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules without prejudice for 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.

Contract Goals

The County will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

The County will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Contract goals need not be established 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). The County will express contract goals as a percentage of the total amount of a DOT-assisted contract.

Implementing the Use of Contract Goals

To ensure that the DBE Program continues to be narrowly tailored to overcome the effects of discrimination, the County will implement the use of contract goals as follows:

1. If the approved projection of the portion of the goal to be met through race-neutral means estimates that the entire overall goal for a given year can be met through race-neutral means, the County will implement the Program without setting contract goals during that year, unless it becomes necessary to meet the overall goal.
2. If during any year in which contract goals are being used, the County determines that the overall goal will be exceeded, the use of contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that there will be a short fall of the overall goal, then JWA will make appropriate modifications in using race-neutral and/or race-conscious measures to allow the overall goal to be met.
3. If the DBE participation obtained by race-neutral means alone meets or exceeds the overall goals for two consecutive years, contract goals will not be set on any contracts in the next year. Only race-neutral means will be used to meet the overall goals unless and until the overall goal is not met.
4. If DBE participation exceeds the overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), the County will reduce the use of contract goals proportionately in the following year.

Section 26.53 - Good Faith Efforts (“GFE”) Procedures in Situations Where There are Contract Goals

Demonstration of GFE (Pre-Award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made GFE to meet the contract goal. The bidder/offeror can demonstrate that it has made GFE by either meeting the contract goal or documenting that it has made adequate GFE to do so. Examples of GFE are found in Appendix A to Part 26.

OCPW is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient GFE to be regarded as responsive.

OCPW will ensure that all information is complete and accurate and adequately documents the bidder/offeror's GFE before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the County, at the time provided in paragraph (3) of this section:
 - i. The names and addresses of DBE firms that will participate in the contract;
 - ii. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - iii. The dollar amount of the participation of each DBE firm participating;
 - iv. Written documentation of the bidder/offeror's commitment to using a DBE subcontractor whose participation it submits to meet a contract goal; and
 - v. Written confirmation from each listed DBE firm that it will participate in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - vi. If the contract goal is not met, evidence of GFE (as elaborated in Appendix A of Part 26). The documentation of GFE must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
3. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section no later than five days after bid opening as a matter of responsibility. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative Reconsideration

Within three days of being informed by OCPW that it is not responsive because it has not documented sufficient GFE, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following person:

DBELO, Government Relations Manager – Public Affairs
3160 Airway Avenue, Costa Mesa, CA 92626 - (949) 252-5297

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not make/document sufficient GFE.

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 GFE to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate GFE to do so. JWA 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 GFE to do so. The result of the reconsideration process is not administratively appealable to the DOT.

GFE Procedural Requirements (Post-Solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower-tier subcontractors perform in accordance with the provisions of Part 26.

The County requires that a prime contractor not terminate a DBE subcontractor listed in its bid or a previously approved substituted DBE without the prior written consent of OCPW. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

OCPW will only provide such written consent if it has been determined that the prime contractor has good cause to terminate the DBE firm. Good cause may include 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, nondiscriminatory 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. JWA has determined that the listed DBE subcontractor is not a responsible subcontractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides JWA written notice of its withdrawal;
8. The listed DBE subcontractor is ineligible to receive DBE credit for the type of work required;

9. A DBE subcontractor owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the contract;
10. Other documented good cause that JWA has determined to compel the termination of the DBE subcontractor, provided that good cause does not exist if the prime contractor seeks to terminate a DBE subcontractor it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE subcontractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE subcontractor after contract award.

Before seeking approval to terminate and/or substitute a DBE subcontractor, the County will require the prime contractor to give notice in writing to the DBE subcontractor, with a copy to OCPW, 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 to advise the OCPW Project Manager and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why OCPW should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), OCPW may approve a response period shorter than five business days.

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

OCPW will ensure each prime contractor's contract will include a provision stating:

"The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of OCPW as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE."

The County will require a contractor to make GFE to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These GFE shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the procurement. The GFE shall be documented by the contractor. If the County requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven days, which may be extended for an additional seven days, if necessary, at the contractor's request. OCPW shall provide a written determination to the contractor stating whether or not GFE have been demonstrated.

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

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

Section 26.55 - Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted 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.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE under the standards of Subpart D of Part 26 at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Under Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in §26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 - 26.73 - Certification Process

JWA is a non-certifying member of the CUCP. The 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. OCPW will ensure JWA DBE participants are certified by the CUCP and appropriately listed in the CUCP Directory maintained by Caltrans when reviewing bids.

To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying CUCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should refer to: <https://dot.ca.gov/programs/civil-rights>.

The electronic Uniform Certification Application form and documentation requirements are found on <https://dot.ca.gov/programs/civil-rights/dbe>.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 - Unified Certification Programs

JWA is a non-certifying member of the CUCP administered by Caltrans for the State of California. The CUCP will meet all of the requirements of this section.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 - Compliance Procedures Applicable to JWA

The County understands that if it fails to comply with any requirement of Part 26, JWA may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions

by the concerned operating administration, such as the suspension or termination of federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 - Information, Confidentiality, Cooperation, and Intimidation or Retaliation

Information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law, will be safeguarded from disclosure to third parties.

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

All participants in the DOT's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved (e.g., concerning recipients, a finding of noncompliance; concerning DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; concerning a complainant or appellant, dismissal of the complaint or appeal; concerning a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The County, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm to interfere with any right or privilege secured by Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Part 26. The County understands that it is in noncompliance with Part 26 if it violates this prohibition.

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ATTACHMENT A

Link to:

**49 CFR Part 26 - Participation by Disadvantaged Business Enterprises in Department of
Transportation Financial Assistance Programs**

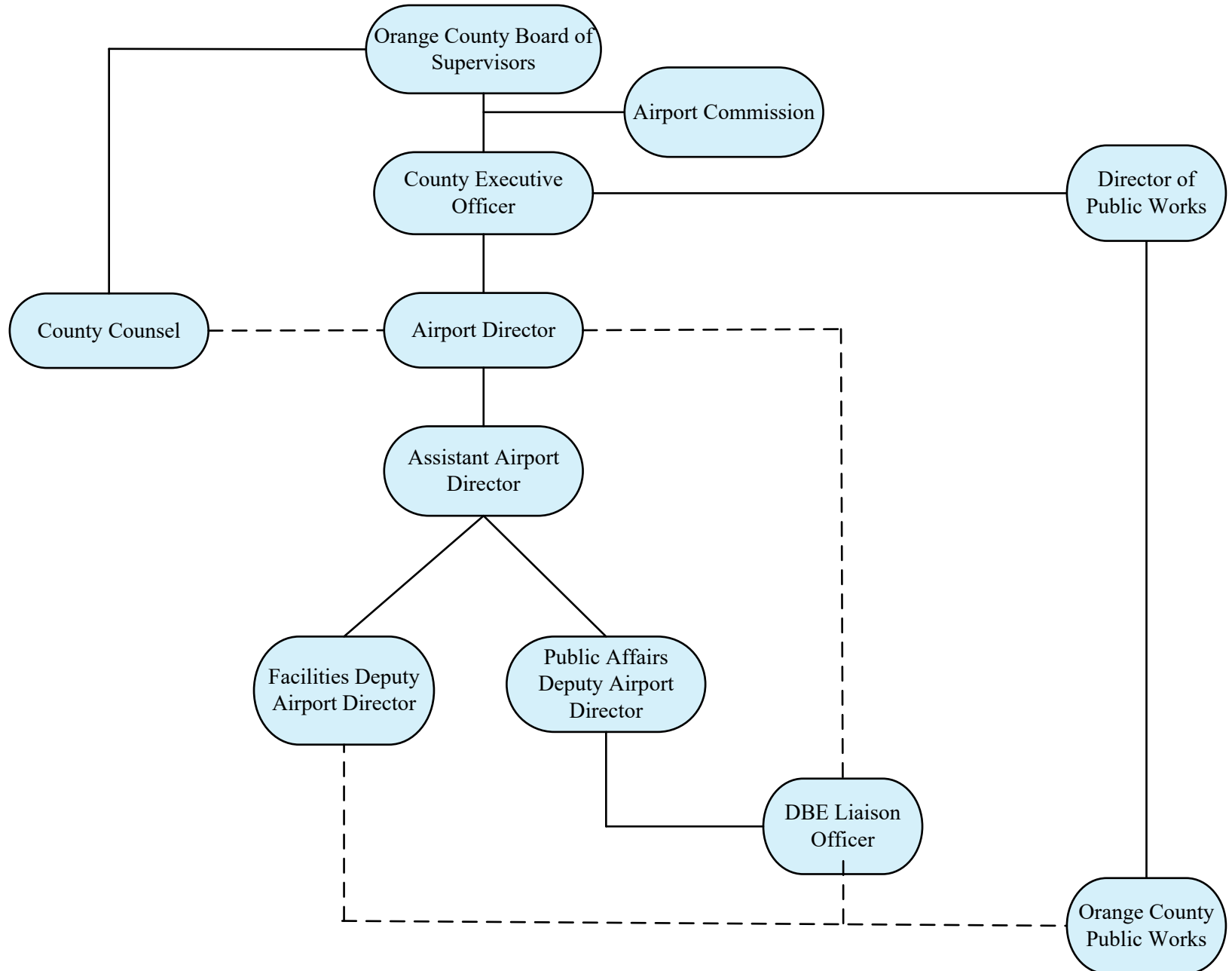
https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT B

Bidders List Form

| Firm Name | Firm Address/ Phone # | DBE or Non-DBE Status (verify via State's UCP Directory) | Age of Firm | Annual Gross Receipts |
|-----------|--------------------------|---|--|---|
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |
| | | | <input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years | <input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million |

Attachment C
John Wayne Airport Organizational Chart



ATTACHMENT D

Minority-Owned Banks – State of California

Link to the most current data:

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

Note: Not all minority-owned banks are certified DBEs, so please check their DBE certification status before identifying them as a DBE participant on the contract.

ATTACHMENT E Monitoring Forms Contract Review

| Prime Contract | | | |
|----------------------------|---|---------------------------|--|
| Project Name/No: | Prime Contractor: | Reviewer: Review Date: | |
| Prime Contract Provisions: | DBE Contract Assurance (FAA Guidance – A12.3.3, §26.13) = <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI Clauses (FAA Guidance - A6.4.1) = <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI List of Pertinent Acts (FAA Guidance - A6.4.5) = <input type="checkbox"/> Yes <input type="checkbox"/> No General Civil Rights (FAA Guidance – A5.3.1) = <input type="checkbox"/> Yes <input type="checkbox"/> No Prompt Payment Assurance (DBE Program §26.29) = <input type="checkbox"/> Yes <input type="checkbox"/> No Other = <input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A | | |
| Subcontracts | | | |
| Subcontractor | DBE (Check box) | Scope of Work | Required Subcontract Provisions: • DBE Contract Assurance • Title VI Clauses • Title VI List of Pertinent Acts |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |
| | | | Required Subcontract Provisions Included: <input type="checkbox"/> Yes <input type="checkbox"/> No |

I, _____, hereby certify that DBE contracting records for the above referenced project have been monitored on the Review Date indicated above.

Signature: _____

Title: _____

Organization: Orange County Public Works _____

Project Site Review

| | | | |
|---|--|-----------------|----------------------|
| Project Name/No: | | Reviewer: | |
| | | Review Date: | |
| Prime Contractor: | | | |
| DBE Subcontractor: | | | |
| DBE Foreman/Supt: | | DBE Start Date: | DBE Completion Date: |
| REGARDING DBE'S FOREMAN/SUPT. | | | |
| Circle the correct answer below: | | | |
| Exclusively employed by DBE? | | Yes | No |
| Shown on the DBE payroll? | | Yes | No |
| How long? _____ | | | |
| Who issues the Foreman's'/Supt. paycheck? _____ | | | |
| Directly reports to: _____ | | | |
| Who would the DBE superintendent/foreman contact to put on additional personnel or modify the DBE contract due to changed conditions? (Name and Title): _____ | | | |
| REGARDING DBE'S EMPLOYEES | | | |
| Have the DBE employees worked for any other contractor prior to this project? Yes No | | | |
| Are DBE's employees shown on any other contractor's payrolls? Yes No | | | |
| If yes, whose? _____ | | | |
| Do the DBE's employees receive work assignments from DBE Foreman/Supt? Yes No | | | |
| REGARDING DBE'S MATERIALS & EQUIPMENT | | | |
| Who produces the material used on the project site? _____ | | | |
| Is this company an affiliate of the prime contractor? | | Yes | No |
| In cases where the DBE contractor furnishes material, who actually pays for it? | | | |
| Name: _____ | | Title: _____ | |
| Does the equipment have the DBE's name or logo? | | Yes | No |
| If another firm's name or logo is shown, identify: | | | |
| Does the equipment belong to the DBE? | | Yes | No |
| If leased or rented, is there a copy of the lease or rental agreement in the project file? | | Yes | No |

| | |
|---|---|
| <p>REGARDING DBE'S WORK PERFORMANCE</p> <p>Has any other contractor performed work that was to be performed by the DBE? Yes No</p> <p>Identify the contractor who performed the work:</p> <p>What work items were performed by the identified contractor? (If more than two, write on the back of the form)</p> | <p>Has the DBE performed work not listed on their subcontract? Yes No</p> <p>Has the DBE owner been present on the job site? Yes No</p> <p>Does the DBE appear to have control over their work? Yes No</p> <p>Does the DBE appear to have control over their equipment? Yes No</p> <p>Does the DBE appear to have control over its employees? Yes No</p> |
| <p>Based on the above, do you believe this DBE contractor is an independent business, is executing a distinct work element, and is actually performing, managing, and supervising the work specified in the DBE's contract?</p> <p>Yes _____</p> <p>No _____</p> | |
| <p>If the DBE subcontractor is not performing a CUF, what action was taken to correct the deficiency?</p> | |
| <p>Did the action taken as described above correct the deficiency? Yes No</p> | |
| <p>Comments: (any comments about the performance or conduct of the DBE company)</p> | |

I, _____, hereby certify that DBE participation in the above referenced agreement/ subagreement was monitored on the Review Date indicated above.

Signature: _____

Title & Organization: _____

Commercially Useful Function Checklist/Site Visit

Project Name and Number: _____

Prime Contractor: _____

DBE Firm's Name: _____

Type of Operation:

Contractor Trucker Manufacturer Regular Dealer

Date Contract/Subcontract/Agreement Approved: _____

Start Date(s) of DBE's Work: _____ Date DBE to Complete Work: _____ Date of review:

Describe the type of work observed:

Check off each item used in conducting this review. The documents checked need not be attached to the review report but should be filed with the report for easy reference if needed. *If the answer is no to any of the following questions, explain in the general notes at the end of the report.*

1. Management:

a. Is there a legal contract executed by the DBE to perform a distinct element of work?

Yes No

b. Name of the on-site DBE representative:

c. On-site representative reports to:

d. Has the on-site representative been identified as an employee of the DBE? Yes No

e. Has this individual ever appeared on any other contractor's payroll? Yes No

f. Does the DBE on-site representative effectively manage the job without interference from any other non-DBE contractor? Yes No

g. Who does the DBE on-site representative contact for hiring, firing, or to modify the contract? _____

h. Has the DBE owner been present on the job site? Yes No

i. Does the DBE appear to have control over methods of work on its contract items? Yes No

j. Is the DBE maintaining its own payroll? Yes No

k. Who prepares the DBEs certified payroll?

l. Is the DBE actually scheduling work activities, material deliveries, and other related actions required for prosecution of the work? Yes No

m. Did the DBE subcontract any items or portions of the work to any other firm? Yes No

If yes, what % was subcontracted? _____%

Name of the subcontractor: _____

Tier I Tier II Tier III Tier IV Tier V Other

2. Equipment

a. List the major equipment used by the DBE:

b. Does the equipment have the DBE’s business logo, markings, or emblems? Yes No

If another firm’s markings are discernible, note the name:

c. Is the DBE’s equipment? Owned Leased from

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

e. Is the equipment under the direct supervision of the DBE? Yes No

f. Is the operator of the leased equipment the DBE's employee? Yes No

If not the DBE's, whose employee is he/she? _____

g. If the equipment is leased, is the payment for the equipment deducted from the work performed?
Yes No

3. Workforce:

a. List the name of DBE's crew as observed during the operation described above:

b. Has any of this crew ever shown up on any other contractors' payroll? Yes No

c. Does the DBE's workforce know for whom they work? Yes No

4. Materials:

a. Is the DBE contracted to furnish and install a contract item? Yes No

b. Is the quality and quantity of the materials controlled by the DBE? Yes No

c. If two-party checks are used, who are the parties identified as payable to:

d. Who makes arrangements for delivery of materials? _____

e. Material Invoices made out to: _____

- f. Who scheduled delivery of materials? _____
- g. In whose name area materials shipped? _____
- h. Does the prime contractor direct whom the DBE is to obtain the material from, and at what price?
 Yes No

5. Performance:

- a. Does the DBE appear to have control over methods of work on its contract items? Yes No
- b. Has any other contractor performed any amount of work specified in the DBE contract?
 Yes No

6. Other Work categories:

Truckers:

- a. Are DBE trucks present on the job site? Yes No
Are they: Owned Leased from _____
- b. If leased, is there a formal agreement identifying the terms and parties? Yes No
- c. Are the rates appropriate? Yes No
- d. Is there an approved subcontract or written agreement? Yes No
- e. Who are the parties? _____
- f. Are DBE employees shown on the certified payroll? Yes No

Regular Dealers:

- a. Does the regular dealer have an established storage facility and inventory? Yes No
- b. Does the dealer have a business that sells the product being supplied to the public on a routine basis? Yes No

d. Does the business stock the product being supplied as a normal stock item? Yes No

e. Is the quantity and quality of the materials controlled by the DBE? Yes No

f. In whose name are the materials shipped?

g. Who is delivering and unloading the material?

h. Is the distribution equipment used in delivering the product the DBE's? Yes No

If so, is it: Owned Leased

i. If leased, is it a long-term lease and not a lease developed specifically for the project?

Yes

No

7. Manufacturer

a. Is the business's primary function to manufacture construction products? Yes No

b. Does the business stock the product manufactured or altered for this project as a normal stock item?

Yes No

c. Is the quality of the materials controlled by the DBE? Yes No

General Notes: _____

I, _____, hereby certify that DBE participation in the above referenced agreement/
subagreement was monitored on the Review Date indicated above.

Signature: _____

Title & Organization: _____

ATTACHMENT F

Small Business Program

John Wayne Airport

Small Business Program Developed as an Element of the DBE Program

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I. Small Business Program Policy

JWA developed this Small Business Program as an element of the DBE Program to provide additional opportunities for small businesses to participate in contracting at JWA. The Small Business Program is to be fully implemented by OCPW as the County department principally responsible for contracting JWA's DOT-assisted projects.

The JWA Small Business Program, as described herein, applies to certain federally-funded contracts and expenditures. The Small Business Program combines unbundling and small business enterprise goals to facilitate competition by small business concerns, including DBEs.

The Small Business Program will operate in a race and gender-neutral manner and will not be used to discriminate against any company or groups of companies. It has been designed to include all segments of the business community and is open to participation without regard to race, color, sex, religion, national origin, age, or disability. JWA's Small Business Program is open to small businesses regardless of their location. There will be no geographic preference or limitation imposed on small businesses participating in federally-funded contracts.

The Small Business Program will utilize procedures that promote inclusion and opportunity while maintaining race and gender-neutral measures in their operations.

The County is committed to ensuring that small businesses are offered an equitable opportunity to participate in the contracting and procurement process.

II. Authorization

In accordance with the regulations governing the U.S. DOT DBE program, the County sets triennial overall DBE goals for contracts funded in whole or in part with federal funds. The County is obligated to meet the maximum feasible portion of its overall goal through race and gender-neutral means of facilitating DBE participation. (49 CFR §26.51).

In January 2011, 49 CFR part 26 was amended, and a section entitled "Fostering Small Business Participation" was added as follows:

§26.39 - Fostering small business participation.

(a) Your DBE program must include an 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.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

- (1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
 - (2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
 - (3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
 - (4) 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.
 - (5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- (c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

This Small Business Program has been developed as an element of JWA’s DBE Program in compliance with the above-stated sections of 49 CFR Part 26 and further guidance issued by the DOT in December 2011.

III. Small Business Enterprise Definition

For purposes of this Small Business Program, a Small Business Enterprise (“SBE”) shall be defined as follows:

An SBE, with respect to firms seeking to participate as SBEs in JWA’s Small Business Program, is a small business concern as defined under section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR part 26, §26.65(b).

49 CFR part 26, §26.65(b) states as follows:

- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.104), over the firm's previous three fiscal years, in excess of \$26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.*

The SBA size standards may be found at: <https://www.sba.gov/federal-contracting/contracting-guide/size-standards>

IV. Small Business Enterprise Verification

If a firm wishes to participate as an SBE on a JWA project and has not been certified as a DBE or verified as an SBE by one of the certifying agencies of the CUCP within the preceding 12 months, that firm may apply for verification as an SBE by filing an SBE Verification Form and submitting the form along with all required attachments at the time of bid.

Firms applying for verification as an SBE must provide all required information and documentation necessary to verify that they meet the definition of an SBE.

V. Scope of the Program

The intent of JWA's Small Business Program is to provide full and fair opportunities for equal participation by small businesses in federally-funded contracting and procurement opportunities.

The Small Business Program requires prime contractors to make GFE to use small businesses in certain contracting and procurement opportunities. GFE will be measured utilizing guidance provided in 49 CFR Part 26, Appendix A.

All construction, professional services, goods, and general services solicitations that include federal funding shall be reviewed by OCPW Procurement to determine if an SBE goal is appropriate for the solicitation. SBE contract goals may be set for a contract when it has been determined that a race-conscious contract goal will not be set and that, instead, race-neutral measures will be used. An SBE goal may be used as a race-neutral measure for contracts that have subcontracting opportunities. SBE goals do not replace DBE goals but merely provide a race-neutral method for achieving race-neutral DBE participation, which can be used in concert with other established race-neutral measures discussed in 49 CFR Part 26, §26.51 (a)-(c).

A decision to use race-neutral goals will be made per 49 CFR Part 26, §26.51, including a determination that race-neutral methods are sufficient to meet JWA's overall DBE goal. The County may determine that an SBE goal is an appropriate race-neutral measure for certain contracts. The criteria used to set a race-neutral SBE goal shall include: small business capacity, small business availability, nature of the contract, past experiences with small business participation with similar contracts, price competitiveness, and subcontracting opportunities. Procedures for implementation, including GFE requirements and information submitted with bid and reporting procedures, shall be consistent with procedures utilized in JWA's DBE Program under a race-neutral environment. GFE to achieve a race-neutral goal shall apply only when an SBE goal has been set for a project. Other race-neutral methods, including those listed in 49 CFR part 26, §26.51, are not subject to GFE on the part of the bidder.

The Small Business Program also requires OCPW staff to consider unbundling of contracts when feasible. The County seeks to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation in procurements as prime contractors. To achieve this, multi-trade projects estimated to exceed \$5 million will be reviewed for potential unbundling to provide for a reasonable number of small opportunities to facilitate participation by small businesses. OCPW Procurement, in coordination with the OCPW Project Manager, will provide a

recommendation for unbundling based on a determination that there are a sufficient number of qualified SBE firms available to compete to perform the contract(s) which would result from unbundling. The OCPW Project Manager will have the opportunity to review the unbundling recommendation and either accept or provide a rationale for rejecting the recommendation.

VI. Tracking SBE Participation

OCPW will monitor and track participation by small businesses in federally-funded projects. Only small businesses that are also certified as DBEs will be counted towards JWA's overall DBE goal. Participation by SBEs who are not certified as DBEs will be tracked for informational purposes but not reported to the FAA. Race- and gender-neutral DBE participation obtained through the Small Business Program will be included in JWA's Annual Reports of Accomplishments and will be calculated by dividing the total dollars to DBEs achieved through the Small Business Program by the total federal dollars.

VII. Technical Assistance, Business Development Resources

Small businesses may obtain technical assistance through the following resources:

https://www.transportation.gov/sites/dot.gov/files/docs/OSDBU-Technical-Assistance-Brochure_508_compliant.pdf

VIII. Assurances

The County provides the following assurances regarding the development and implementation of the Small Business Program described herein:

- 1) The development of this Small Business Program is not prohibited by California state law.
- 2) Certified DBEs that meet the size criteria established under the Small Business Program are presumptively eligible to participate in JWA's Small Business Program.
- 3) There will be no geographic preferences or limitations imposed on any federally-assisted procurement included in JWA's Small Business Program.
- 4) There will be no limits on the number of contracts awarded to firms participating in the Small Business Program.
- 5) The County will make every effort to avoid creating barriers to the use of new, emerging, or untried businesses.
- 6) JWA's Small Business Program is open to small businesses regardless of their location. There will be no local or other geographic preference.

ATTACHMENT G

**Link to:
JWA's Overall DBE Goals**

<https://www.ocair.com/business/business-opportunities/dbe-acdbe/disadvantaged-business-enterprise-dbe-program/>

ATTACHMENT H

Link to:

FAA Contract Provision Guidelines for Obligated Sponsors and Airport Improvement Program Projects

https://www.faa.gov/airports/aip/procurement/federal_contract_provisions/media/combined-federal-contract-provisions.pdf