

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

September 2025

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 1.

SUBPART A – POLICY STATEMENT AND PROGRAM OBJECTIVES**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. JWA has received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, JWA has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

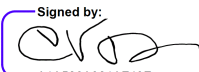
It is the policy of JWA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also the policy of JWA to engage in the following actions on a continuing basis:

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;
8. Make appropriate use of the flexibility afforded to recipients of federal financial assistance in establishing and providing opportunities for DBEs.

The Government Relations Manager - Public Affairs has been delegated as the 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.

JWA has disseminated this policy statement to applicable staff and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on JWA's DOT- assisted contracts. The distribution was accomplished by sharing on JWA's public website: [Disadvantaged Business Enterprise \(DBE\) Program | John Wayne Airport, Orange County \(ocair.com\)](https://www.ocair.com/Disadvantaged-Business-Enterprise-DBE-Program-John-Wayne-Airport-Orange-County)

Charlene Reynolds, John Wayne Airport, Airport Director

Signed by:


(Signature of Airport Director)

9/11/2025

Date

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.*

Section 26.5 – Definitions

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

Section 26.7 – Non-discrimination Requirements

JWA 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, JWA 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 – Data Collection and Reporting Requirements

§26.11(a) Uniform Report of DBE Commitments/Awards and Payments

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

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

JWA 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 Part 26. JWA will similarly report the required information about participating DBE firms. All reporting will be done through the FAA’s designated reporting system.

§26.11(c) Bidders List

JWA will collect bidders list information as described in § 26.11 (c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set overall JWA goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved. JWA utilizes OpenGov and its solicitations to capture bidder information.

JWA will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name;
- Firm Address including Zip code;
- Firm’s status as a DBE or non-DBE;
- Race and sex information for the firm’s majority owner;

- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm; and
- Annual gross receipts of the firm. The gross receipts may be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc) rather than requesting an exact figure from the firm.

JWA will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

JWA will enter this data into the US DOT system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a “design-build” contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to §26.53(e), JWA will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Records Retention and Reporting

JWA will maintain records documenting a firm’s compliance with the requirements of this part. At a minimum, JWA will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of JWA’s financial assistance agreement. Other certification or 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.

§26.13 – Assurances Recipients and Contractors Must Make

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

Assurance: Each financial assistance agreement JWA signs with a DOT operating administration (or a primary recipient) will include the following assurance:

“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: JWA will ensure that the following clause is placed in each DOT-funded contract it signs 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 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, 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. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

Section 26.23 – Policy Statement

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

Section 26.25 – DBE Liaison Officer (DBELO)

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

Constance Clabeau
Government Relations Manager – Public Affairs
John Wayne Airport
3160 Airway Avenue
Costa Mesa, CA 92626
Telephone: (949) 252-5297
Email: cclabeau@ocair.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that JWA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to JWA's Airport Director concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate staff, such as JWA's Planning and Development Division. The DBELO has a staff of one 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 applicable contracts, purchase requisitions, advertisements, boilerplate language specifications and other related documentation specific to implementing applicable DBE requirements 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 monitor results.
6. Analyzes JWA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid, project information, and pre-construction meetings for purposes of reviewing DBE solicitation and contract requirements with potential bidders and/or offerors.
8. Advises Airport Director on DBE matters and goal achievement.
9. Provides DBEs with information on preparing bids, obtaining bonding, and insurance.
10. Determines contractor compliance with DBE Program.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Acts as liaison for JWA to the California Unified Certification Program ("CUCP").

Section 26.27 – DBE Financial Institutions

It is the policy of JWA 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, as available, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. JWA utilizes the Federal Reserve's list of Minority-Owned Financial Institutions (<https://www.fdic.gov/regulations/resources/minority/mdi.html>) and re-evaluates the availability of DBE financial institutions annually.

Below is a list of DBE Financial Institutions in JWA's market area.

- Community Commerce Bank- Claremont, CA
- US Metro Bank- Garden Grove, CA
- Bank Irvine- Irvine, CA
- California Business Bank- Irvine, CA
- Commercial Bank of CA- Irvine, CA
- Bank of Hope- Los Angeles, CA
- Cathay Bank- Los Angeles, CA
- Commonwealth Business Bank- Los Angeles, CA
- CTBC Bank Corp USA- Los Angeles, CA
- Eastern International Bank- Los Angeles, CA
- Hanmi Bank- Los Angeles, CA
- Open Bank- Los Angeles, CA
- PCB Bank- Los Angeles, CA
- Preferred Bank- Los Angeles, CA

- Royal Business Bank- Los Angeles, CA
- Genesis Bank- Newport Beach, CA
- East West Bank- Pasadena, CA
- First General Bank- Rowland Heights, CA
- Asian Pacific National Bank- San Gabriel, CA
- Mega Bank- San Gabriel, CA
- Pacific Alliance Bank- San Gabriel, CA
- Universal Bank- West Covina, CA
- California International Bank, N.A.- Westminster, CA
- Bank of Whittier, N.A.- Whittier, CA

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, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

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 30 days from the prime contractor's receipt of each payment from JWA.

JWA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29 (and pursuant to California Public Contract Code §20104.50), the following method will be used to comply with this requirement:

JWA 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 30 days after JWA payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, JWA includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

JWA clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, JWA undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

1. JWA 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. JWA 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 JWA by the prime contractor. Prime contractors and DBE subcontractors are to complete the Prompt Payment Certification form for review by JWA.
3. A running tally of actual payments to DBE firms for work committed to them at the time of contract award.

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

- JWA proactively reviews contract payments to subcontractors including DBEs on a monthly basis and may conduct periodic audits of contractor invoices. Invoice payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to JWA by the prime contractor. During these reviews, JWA may also review whether payments to DBEs include any lower tier subcontractor payments to non-DBEs and whether DBE subcontractor is performing a Commercially Useful Function.

Prompt Payment Dispute Resolution

JWA will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by §26.29.

JWA will require each party to document its position and will hold a meeting with the JWA Project Manager to discuss a possible resolution. If the parties cannot agree, the JWA Project Manager and JWA Procurement staff will review the documentation and work element to determine if the work meets JWA's requirements. JWA 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.

JWA 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.

JWA has established this part of its DBE Program, the following mechanism(s) to ensure prompt payment and return of retainage:

- Prompt Payment Contract Clause

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

JWA 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 seven (7) 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.

- Retainage Contract Clause

a. From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner for protection of the Owner’s interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the Resident Project Representative (RPR) that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. 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 Owner. When the Owner 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.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner’s discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

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 JWA Project Manager.
2. If the subcontractor is not comfortable contacting the prime contractor directly or has contacted the prime contractor and is unable to resolve the issue, the subcontractor should initiate a complaint with the JWA Project Manager.

3. In all cases, if JWA becomes aware of a prompt payment complaint, it must immediately notify JWA's DBELO.
4. JWA Project Manager will investigate the complaint within fifteen (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 JWA 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.

Pursuant to 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 and its resolution.

Enforcement Actions for Noncompliance of Participants

JWA 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. JWA will, on a case-by-case basis, actively implement the enforcement actions detailed above.

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 issues(s) of breach of contract, JWA will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced.

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

1. JWA 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.

JWA will actively implement the enforcement actions detailed above.

Section 26.31 – Directory of Certified Firms

JWA is a non-certifying member of the California Unified Certification Program (CUCP). The CUCP maintains a directory identifying all firms eligible to participate as DBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE in the program. The CUCP's DBE Directory is published at <https://californiaucp.dbesystem.com/>. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 – Over-concentration

JWA has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 – Business Development Programs and Mentor- Protégé Programs

JWA has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 – Monitoring Responsibilities

JWA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 requirements by all Program participants, and describes and sets forth these mechanisms in this DBE program.

JWA actively monitors attainment toward overall goals by maintaining a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by utilizing the information that is compiled for the uniform reporting form. This mechanism to maintain a running tally of overall goal

attainment will be used to inform JWA's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

JWA actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by utilizing the information that is compiled for the uniform reporting form. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

JWA reviews contracting records and 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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by JWA's Planning and Development division, including project managers and consultants. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by JWA and JWA's DBELO or designee. JWA will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. JWA will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 – Fostering Small Business Participation

JWA has created 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 small business element is incorporated as Attachment 8 to this DBE Program. The program elements will be actively implemented to foster small business participation. JWA acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

As JWA operates a race-neutral DBE Program, contract goals are not applicable to JWA procurements. Should JWA, at a future date, incorporate a race-conscious component to its DBE Program, it may then use

contract goals to meet any portion of the overall goal that JWA does not project being able to meet using race-neutral means. JWA will ensure FAA approval prior to implementing any race-conscious program. This section of the Program will be updated triennially when the goal calculation is updated.

Section 26.43 – Use of Set-Asides or Quotas

JWA does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 –Overall Goals

JWA 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 goal period. In accordance with §26.45(f), JWA will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If JWA 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. However, this DBE Program will remain in effect and JWA will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. JWA will use a Bidders List, DBE Directory information, and Census Bureau Data, or other alternative methods that comply with §26.45 as a method to determine the base figure. JWA 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. JWA 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 area.

In establishing the overall goal, JWA will provide for consultation and publication. 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 JWA 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 JWA engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of JWA. This notice will provide that JWA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) and the location(s) where the proposed goal may be reviewed. **The public comment period will not extend the August 1st deadline.**

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how JWA considered and responded to any comments and information received before finalizing the goal.

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

Project Goals

If permitted or required by the FAA, 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 it must meet all the substantive and procedural requirements 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 to be obtained 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.

Prior Operating Administration Concurrence

JWA 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 JWA for calculating goals is inadequate, FAA may, after consulting with JWA, adjust the overall goal or require that the goal be adjusted by JWA. 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 description of the methodology to calculate the overall goal and the goal calculations will be made available upon approval by FAA (Attachment 5).

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 JWA fails to administer its DBE program in good faith.

JWA 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.

JWA 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 in order to be regarded by the Department as implementing this DBE Program in good faith:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/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. JWA will 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. JWA will retain a copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.51 – Means Recipients Use to Meet Overall Goals

As JWA operates a strictly race-neutral DBE Program, contract DBE goals are not applicable to JWA's procurements. JWA will implement the following race-neutral measures which are aimed at increasing DBE and other small business participation:

- Arrange contract solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate and maximize DBE participation.
 - JWA will encourage prime contractors to identify subcontracting work that DBEs may bid on.
 - JWA and JWA's DBELO will provide greater detail on the importance of the DBE program at pre-bid/proposal meetings.
 - JWA will invite all DBEs in the market area that perform the type of work included in a solicitation to the pre-bid/proposal meeting.
 - JWA will provide time before or after pre-bid/proposal meetings to allow for prime and subcontractor networking.
 - JWA will disseminate bid opportunity information to Small, Minority, Women and other Business Organizations within the market area.

- JWA will offer instructions and clarification on bid specifications, procurement policy, procedures, and general bidding requirements. JWA will provide information on sub-contracting practices and bonding requirements and provide instructions and clarification on job performance requirements.
 - JWA will review solicitation language for federally- funded contracts to provide an emphasis on the importance of the DBE program.
 - JWA will utilize the California Unified Certification Program website to provide prospective bidders with a link to all DBEs in the market area that perform the type of work included in a solicitation: <https://dot.ca.gov/programs/civil-rights/dbe-search>
- On a case-by-case basis and depending on the availability and capacity of small businesses to perform subcontract opportunities, JWA will implement race-neutral Small Business Enterprise incentives on federally- funded contracts.

Section 26.53 – Good Faith Efforts Procedures

As JWA operates a strictly race-neutral DBE Program, contract goals are not applicable to JWA procurements; therefore, Good Faith Efforts procedures are not applicable.

Should JWA implement a race-conscious component to this DBE Program, the DBE Program will be amended to provide procedures for Good Faith Efforts, DBE terminations/substitutions, the administrative reconsideration process and to specify JWA Reconsideration Official.

In the event JWA intends to award an alternative delivery method project, including design-build and construction manager / general contractor (CMGC) projects, JWA will comply with 49 CFR Part 26.53(e) for prime contractors responding to an RFP on a design-build procurement to submit an open-ended DBE Performance Plan. JWA will also comply with best practices and subsequent regulations for these projects.

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 in accordance with the standards of subpart D of this part 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).

For FAA-funded projects only, firms that exceed the business size standard in §26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – DBE CERTIFICATION STANDARDS

Section 26.61- 26.73 – Certification Process

JWA is a non-certifying member of the California Unified Certification Program (CUCP) and relies on the CUCP's determinations of certification eligibility. 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. Certifying CUCP members make all certification decisions based on the facts as a whole.

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

- Jennifer Baker
 Certification Officer
 Department of Transportation, Civil Rights- MS 79
 1823 14th Street, Sacramento, CA 95811
 (916) 324-0990
Jennifer.Baker@dot.ca.gov
<https://dot.ca.gov/programs/civil-rights>
<https://californiaucp.dbesystem.com/>

To apply for certification, visit <https://caltrans.dbesystem.com/> (Attachment 4).

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply> (Attachment 6).

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full California UCP agreement. The full UCP agreement can be found at: <https://www.lawa.org/sites/lawa/files/documents/CUCP%20MOA%20FINAL%20Approved%20Feb%2012%202020%20For%20Signature%202020225%20%20signed.pdf>

Section 26.81 – Unified Certification Programs

JWA is a member of the CUCP administered by the State of California Certifying Members. The CUCP will meet all the requirements of 49 CFR Part 26 Subparts D and E.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101- Compliance Procedures Applicable to John Wayne Airport

JWA understands that if it fails to comply with any requirement of this part, 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.

JWA understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.105 – Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 – Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part 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 Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, 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 Department may initiate suspension or debarment proceedings against you under 2 CFR Parts 180 and 1200.

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 Department 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.

The Department 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.

The Department 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.

Section 26.109 – Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

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).

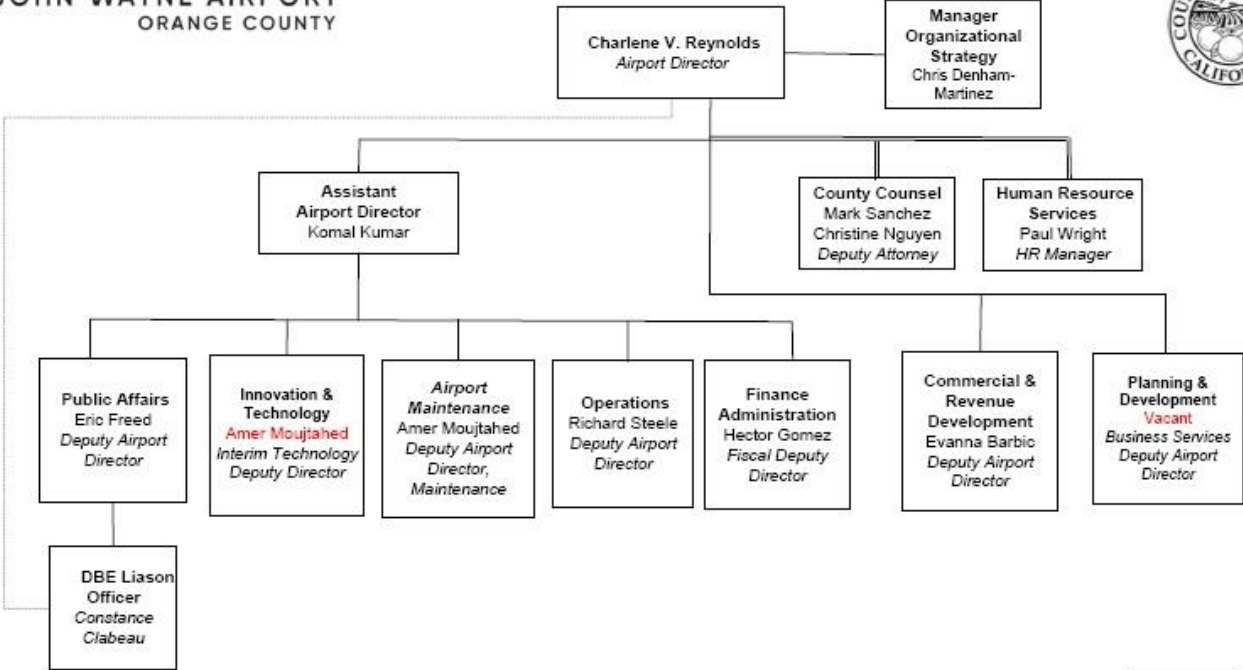
JWA, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm to interfere with any right or privilege secured by Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any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

ATTACHMENT 1: REGULATIONS, 49 CFR PART 26

The DBE program regulations can be found at the following website: <https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2: ORGANIZATIONAL CHART

JOHN WAYNE AIRPORT
ORANGE COUNTY



ATTACHMENT 4: CUCP DIRECTORY

The California Unified Certification Program Directory may be found here:
<https://californiaucp.dbesystem.com/>

Welcome!

Thank you for your interest in participating in the California Unified Certification Program (CUCP) for Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE). As mandated by the United States Department of Transportation (U.S. DOT), 49 Code of Federal Regulations (CFR), Part 23 and 26, all U.S. DOT recipients of federal financial assistance must participate in a statewide UCP by March 2002. The UCP is a "One-Stop Shopping" certification procedure that eliminates the need for DBE/ACDBE firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining the Database of certified DBE/ACDBEs for U.S. DOT grantees in California, pursuant to 49 CFR Part 23 and 26. The Database is intended to expand the use of DBE/ACDBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California.

The CUCP has Certifying agencies throughout the State to effectively facilitate statewide DBE/ACDBE certification activities. Below are a list of certifying agencies and their respective areas and counties.

Certifying Agencies and Their Respective Areas and Counties

Is your firm located in the Imperial, Riverside & San Diego Area?

Show Details

Is your firm located in the Los Angeles area?

Show Details

Is your firm located in the Central Valley/Bay area?

Show Details

Is your firm located in the Northern California area?

Show Details

ATTACHMENT 5: OVERALL TRIENNIAL DBE GOAL METHODOLOGY

JWA's current Triennial DBE Goal Methodology is available upon request. Please contact the DBELO for a copy of the triennial DBE Goal Setting and Methodology document.

ATTACHMENT 6: DBE CERTIFICATION FORM AND PERSONAL NET WORTH STATEMENT

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

ATTACHMENT 7: STATE'S UCP AGREEMENT

California's UCP Agreement can be found here:

<https://www.lawa.org/sites/lawa/files/documents/CUCP%20MOA%20FINAL%20Approved%20Feb%2012%202020%20For%20Signature%20202225%20%20signed.pdf>

ATTACHMENT 8: SMALL BUSINESS ELEMENT

Small Business Element

1. Objective/Strategies

In order to promote Small Business participation, JWA will implement the following procedures to assist certified Small Business participation as a prime or subcontractor on Airport Projects:

- For larger projects that will have subcontracting opportunities eligible for SBE or DBE participation, the Airport will strongly encourage prime bidders to provide these subcontracting opportunities to SBE and DBE contractors. The significance of these programs will be reiterated at outreach events, such as JWA's Capital Improvement Program Industry Day.
- The Airport, when feasible, may unbundle large projects into smaller contracts, which may be more feasible for small business participation.
- JWA will require prime contractors to make Good Faith Efforts to use small businesses in contracting opportunities, where feasible. Good Faith Efforts will be measured utilizing guidance provided in 49 CFR Part 26, Appendix A.

2. 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 which meets the size standard consistent with 49 CFR Part 26.5 and is no larger than the Small Business Administration's size standards. Personal net worth standards should be consistent with those outlined in the 49 CFR Part 26 thresholds.

All businesses meeting the criteria outlined shall be considered to be a small business, without regard to race or sex.

3. Verification

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

4. Monitoring/Record Keeping

JWA 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.

5. Assurances

- The program is permitted under state law;

- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).