



## CITY COUNCIL STAFF REPORT

DATE: July 15, 2015

CONSENT CALENDAR

SUBJECT: AIRPORT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

FROM: David H. Ready, City Manager

BY: Department of Aviation

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### SUMMARY

This action addresses the Federal Aviation requirement for Palm Springs International Airport to maintain a current Disadvantaged Business Enterprise (DBE) Program.

### RECOMMENDATION:

1. Approve Palm Springs International Airport's (PSP) Disadvantaged Business Enterprise (DBE) Program, pending FAA approval.
2. Authorize the City Manager to execute all necessary documents.

### STAFF ANALYSIS:

All airports that are the recipients of Federal Aviation grant funds are required to maintain a Disadvantaged Business Enterprise (DBE) Program as set forth in the rules and regulations found in the Department of Transportation's (DOT) Code of Federal Regulations (CFR) Title 49 Part 23. Regulation 49 CFR Part 26 stipulates that in grant projects, recipients must 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 on the basis of race, color, sex, or national origin. In administering this DBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the DBE Program objectives.

With the recent changes in the program requirements, it is time for PSP Airport to submit a revised plan for approval which incorporates the new mandatory small business program elements into the program. The attached program, as prepared by Airport Concession Consultants (ACC), incorporates the airport's previous program and provides for the modifications as required to satisfy the new federal requirement.

ITEM NO. 31

The current DBE Program was developed with the assistance of the same firm, Airport Concession Consultants (ACC), and was approved by the City Council on November 1, 2006. There has not been any reason to change the plan until this recent Federal Government additional requirement. The new program adds:

- The Small Business Program elements to foster additional small business participation.
- Enforcement mechanisms for the DBE program.
- Certification approvals for contractors to certify and complete.

In addition, the program includes updated provisions such as:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to the City in establishing and providing opportunities for DBEs.

The program includes DBE goals established for the current period through September 30, 2017, as approved by Council on October 1, 2014, and new goals will be established for FAA approval every third year beginning October 1, 2018.

Consistent with the program, staff continues to work toward the goals, including recent participation in a June 2015 Small Business Workshop, to create awareness of projects that will become available with the new federal year beginning October 1, 2015. This workshop provided participants DBE Program overviews and encouraged small and disadvantaged businesses to compete for future federally funded contracts and subcontracts.

Once Council has approved this modified program, it will be forwarded to the FAA for final approval, and then it will be implemented with all future federal grant projects, other applicable airport leases, contracts and agreements.

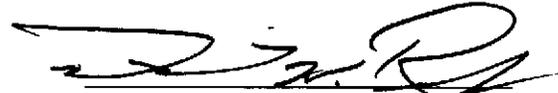
FISCAL IMPACT:

No Fiscal Impact.



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Thomas Nolan,  
Executive Director, Airport



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David H. Ready, Esq., Ph.D.  
City Manager

Attachments: DBE Program



**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
(DBE)  
49 CFR PART 26**

**REVISED JULY 2015**

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- Attachment 1 49 CFR Part 26 Definitions**
- Attachment 2 49 CFR Part 26: Website Link**
- Attachment 3 Organizational Chart**
- Attachment 4 Bidders List Collection Form**
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- Attachment 6 Overall Goal Calculations**
- Attachment 7 DBE Monitoring and Enforcement Mechanisms**
- Attachment 8 Link to DBE Certification Application Form**
- Attachment 9 Small Business Program**

**PALM SPRINGS INTERNATIONAL AIRPORT**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**POLICY STATEMENT**

**Section 26.1, 26.23 Objectives/Policy Statement**

The City of Palm Springs, Department of Aviation (hereinafter referred to as "the City"), has established a Disadvantaged Business Enterprise ("DBE") Program (the "Program" or the "DBE Program") in accordance with regulations of the U.S. Department of Transportation ("DOT"), 49 Code of Federal Regulations ("CFR") Part 26, as such regulations may be amended from time to time (the "Regulations"). The City owns and operates Palm Springs International Airport ("PSP"). The City is the recipient of federal Airport Improvement Program funds and has signed airport grant assurances that it will comply with 49 CFR Part 26.

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

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to the City in establishing and providing opportunities for DBEs.

Thomas Nolan, Executive Director of Aviation, is responsible for ensuring PSP's adherence to this policy. PSP's Airport Administration Manager, Mark Jucht, has been designated as PSP's DBE Liaison Officer (the "DBELO"). As the DBELO, Mr. Jucht is responsible for implementing all aspects of the Program, as provided in this Plan. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by PSP in its financial assistance agreements with the United States Department of Transportation ("DOT"). The DBELO has disseminated this policy statement to the Commission Members of PSP and all of the components of PSP's organization, specifically those departments within PSP that are involved in the procurement and management of construction and

procurement contracts. PSP has also distributed this statement to DBE and non-DBE businesses that perform work for PSP on DOT assisted contracts and this statement is included all DOT assisted contracts. This Program is submitted to the Federal Aviation Administration ("FAA") for approval pursuant to the Regulations. This Program will be modified by PSP to the extent required to obtain such approval.

If there are any questions or need for further information regarding this Program, please contact Mark Jucht, the DBELO, by telephone at (760) 318-3808.

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Date

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Thomas Nolan  
Executive Director, Airport

\_\_\_\_\_  
Date

\_\_\_\_\_  
David H. Ready, Esq., Ph.D.  
City Manager

APPROVED AS TO FORM

\_\_\_\_\_  
City Attorney

\_\_\_\_\_  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives of the City's DBE Program are:

1. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with the Regulations and other applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. To provide appropriate flexibility to the City in establishing and providing opportunities for DBEs.

### **Section 26.3 Applicability**

Palm Springs International Airport (PSP) is the recipient of Airport Improvement Funds authorized by 49 U.S.C. 47101, *et seq.*, therefore 49 CFR part 26 applies to the City.

### **Section 26.5 Definitions**

The City will use terms in this program that have the meaning defined in Section 26.5, a copy of which is included as Attachment 1. A link to the full regulation is provided in Attachment 2.

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

The City 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 this DBE Program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of

defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

## **Section 26.11 Record Keeping Requirements**

### Reporting to DOT: 26.11(b)

The City will continue to provide data about its DBE Program to the Federal Aviation Administration ("FAA") as directed by DOT.

The City will report DBE participation to DOT/FAA as follows:

The City will transmit to FAA annually on December 1st, the "Uniform Report of DBE Awards or Commitments and Payments" form, found in Appendix B of 49 CFR part 26. The City will also report the DBE contractor firm information either on the FAA DBE Contractor's Form or another similar format.

### Bidders List: 26.11(c)

The City will create and maintain a bidders list. The purpose of the list is to provide the most accurate data possible regarding DBE and non-DBE contractors and subcontractors who seek to work on the City's DOT assisted contracts for use in setting the City's overall DBE goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts range of all firms who seek to work on the City's DOT assisted contracts.

The City will collect this information at the time of bid submission utilizing the form attached as Attachment 4.

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

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

### Assurance: 26.13(a)

Each financial assistance agreement the City signs with DOT/FAA will include the following assurance:

*The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The*

*City shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The City's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of 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: 26.13(b)

The City will ensure that the following clause is included in each contract between the City and a prime contractor and will require that each prime contractor include such clause in any subcontract the prime contractor may sign 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 may be a material breach of this contract, which may result in the termination of this contract or such other remedy as the City deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.*

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

The City 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. The City is not eligible to receive DOT financial assistance unless DOT has approved its DBE Program and the City is in compliance with it and this part. The City will continue to carry out its Program until all funds from DOT financial assistance have been expended. The City is not required to submit regular updates of its DBE Program, as long as the City remains in compliance. However, the City will submit significant changes in the Program to the FAA for approval.

## **Section 26.23 Policy Statement**

The Policy Statement is set forth on pages 1 and 2 of this DBE Program.

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

The following individual has been designated as the City's DBE Liaison Officer ("DBELO"):

Mark Jucht  
Airport Administration Manager  
Palm Springs International Airport  
3400 East Tahquitz Canyon Way  
Palm Springs, CA 92262  
mark.jucht@palmspringsca.gov  
(760) 318-3808

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City complies with the provisions of 49 CFR Part 26. The DBELO has direct, independent access to PSP's Executive Director concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 3 to this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate employees. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all airport departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.

8. Advises the Executive Director on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the Uniform Certification Process.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

There are currently no certified DBE financial institutions listed in the State of California Unified Certification Program DBE directory. The City will review the DBE directory periodically, not less than quarterly, to determine if any DBE financial institutions have been added to the directory. If a firm or firms have been added, the City will explore the full extent of services offered by any such financial institutions and make reasonable efforts to use these institutions, and to encourage prime contractors on DOT assisted contracts to make use of these institutions.

### **Section 26.29 Prompt Payment Mechanisms**

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

In addition, the City will include in its contract language a requirement for prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. The City 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 payment to the prime contractor.

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

The City will include the following clause in each DOT assisted prime contract:

*The contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the 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 the written approval of the City. This clause applies to both DBE and non-DBE subcontractors.*

### **Monitoring Payments to DBEs**

The City will require in its contracts that prime contractors maintain records and documents of payments to DBEs for three years following the performance of the contract and that these records will be made available for inspection upon request by any authorized representative of the City or DOT/FAA. This reporting requirement shall also extend to any certified DBE subcontractor.

The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### **Section 26.31 Directory**

The City uses the State of California Unified Certification Program ("CUCP") DBE directory, maintained by the certifying agencies of the CUCP.

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. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The CUCP's Directory is a real-time online database, automatically revised as firms are added. A link to the CUCP Directory is found in Attachment 5.

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

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

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

The City has not established a business development program.

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

The City will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The City will bring to the attention of 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 26.107.
2. The City will implement similar action under its own legal authorities. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the event of non-compliance with the DBE regulation by a participant in the City's DBE Program.
3. The City will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. The City will implement a monitoring and enforcement mechanism that will include written certification that the City has reviewed contracting records and monitored work sites for this purpose.
5. The City will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished as follows:
  - a. Prime Contractors working on projects containing a DBE goal shall be required by contract 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 DBELO.
  - b. The DBELO or his designee and/or the Manager of Capital Projects 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.
  - c. DBEs will be required to verify the payment information reported by the Prime Contractor. If there is a discrepancy reported by the DBE firm, the matter is investigated through correspondence with the Prime Contractor and the DBE firm and actual levels of participation are confirmed.
  - e. Once all information has been received from Prime Contractors and verified by DBE firms, the information is recapped and compared to original commitments.

In reports of DBE participation to DOT/FAA, the City will show both commitments and attainments, as required by the DOT uniform reporting form.

**Section 26.39 Fostering Small Business Participation**

The City 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 City's small business element is incorporated as Attachment 9 to this DBE Program. The City will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of the City's DBE program.

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

**Section 26.43 Set-asides or Quotas**

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

**Section 26.45 Overall Goals**

The City will establish an overall DBE goal covering a three-year federal fiscal year period for PSP if the City anticipates awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 at the airport during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), the City will submit its Overall Three-Year DBE Goal to FAA by August 1st as required by the established schedule below.

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
<b>Small Hub Primary</b>	<b>Western-Pacific</b>	<b>August 1, 2014 (2015/2016/2017)</b>	<b>August 1, 2017 (2018/2019/2020)</b>

The DBE goals will be established in accordance with the 2-step process specified in 49 CFR Part 26.45. If the City does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, the City will not develop an overall goal; however this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". The City will use *either DBE Directories and Census Bureau Data, a Bidders List, a Disparity Study, the goal of another DOT recipient or other alternative methods* as a method to determine the City's base figure, depending upon which data is most appropriate at the time that the goal is being set. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If the City uses a bidders list, the City will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on the City's DOT assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in the relevant market. When using this approach, the City will establish a mechanism (documented in goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on the City's DOT-assisted contracts.

Any methodology the City chooses 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 the City's market. The City 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 paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once the City has calculated a base figure, the City will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the City 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 City's efforts 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 City's goal setting process, and it will occur before the City is required to submit its goal methodology for review pursuant to paragraph (f) of this section. The City will document in its goal submission the consultation process that the City engaged in. Notwithstanding paragraph (f)(4) of this section, the City will not implement the proposed goal until the City has complied with this requirement.

In addition, the City will publish a notice announcing the proposed overall goal before submission on August 1st. The City will post the notice on its website and may post it in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the DOT/FAA, the revised goal will also be posted on the City's website. The City will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at its principal office and that the City and DOT/FAA 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 and where the proposal may be reviewed. The public comment period will not extend the August 1<sup>st</sup> deadline.

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

The City will begin using its overall goal on October 1 of the reporting period, unless the City has received other instructions from DOT/FAA.

#### Section 26.45 (e) - Project Goals

If permitted or required by the FAA, the City will express its overall goals 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 DOT/FAA. 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 should 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 will be separated from the base from which the City's regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If the City establishes a goal on a project basis, the City will begin using its goal by the time of the first solicitation for a DOT assisted contract for the project.

#### Section 26.45(f) - Prior Operating Administration Concurrence

The City understands that it is not required to obtain prior DOT/FAA concurrence with its overall goal. However, if the review suggests that the overall goal has not been

correctly calculated or that the method for calculating goals is inadequate, DOT/FAA may, after consulting with the City, adjust the overall goal or require that the City do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, DOT/FAA will be guided by the goal setting principles and best practices identified by the DOT in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 6 to this program.

### **Section 26.47 Failure to Meet Overall Goals**

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

If the City awards and commitments shown on its 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 City will do the following in order to be regarded by the Department as implementing the 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 The City has identified in the analysis and to enable the City to meet fully the goal for the new fiscal year;
- (3) The City will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. The City will retain a copy of analysis and corrective actions in its records for a minimum of three years, and will make such records available to FAA upon request.

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

(a) The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral 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.

Race-neutral means include, but are not 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 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding 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 and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) 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;

(6) 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;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the CUCP DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Attachment 6 (Report of Overall Goals) provides an estimate of the amount of the goal estimated to be met through race-neutral participation vs. race-conscious measures. The report also provides information relative to the basis for the estimated breakout.

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

The City 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 the overall goal that is not projected to be met through the use of race-neutral means.

The City 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 City will express contract goals as a percentage of the total amount of a DOT assisted contract. This will be accomplished by converting the percentage goal calculated based on the federally funded portion of the contract to a percentage that would equal the same goal based on the total contract dollars. For example, if a goal is calculated at 10% of the federally funded portion of the contract and the contract is 75% funded using federal funds, the contract goal would be expressed as 7.5% (10% X 75%).

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

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

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

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

The City shall determine whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The City will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before the City commits to the performance of the contract by the bidder/offeror.

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

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, the City will require the following:

- (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 recipient, at the time provided in paragraph (b)(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 use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written documentation that each listed DBE firm that it is participating 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 good faith efforts (see Appendix A of this part). The documentation of good faith efforts 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 City will require that the bidder/offeror present the information required by paragraph (b)(2) of this section no later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

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 (b)(2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within 3 business days of being informed by the City that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to:

Mark Jucht  
Airport Administration Manager  
Palm Springs International Airport  
3400 East Tahquitz Canyon Way  
Palm Springs, CA 92262  
mark.jucht@palmspringsca.gov

The DBELO shall appoint a reconsideration official to review the good faith efforts of the bidder/offeror. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts procedures in situations when there are contract goals (26.53(f)(g))

The City will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the City's written consent as provided in this paragraph 26.53(f); and

That, unless the City's consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The City will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

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

The City will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without its prior written consent. 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.

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

- 1) The listed DBE subcontractor fails or refuses to execute a written contract;

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

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

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

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

The City will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts 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 that the City established for the procurement. Good faith efforts shall be documented by the contractor. If the City requests documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

The City will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the City deems appropriate if the prime contractor fails to comply with the requirements of this section.

If the contractor fails or refuses to comply in the time specified, the City 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 City may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 2), to meet the contract goal for DBE participation in the performance of this contract.

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

## **Section 26.55 Counting DBE Participation**

The City will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The City will not count the participation of a DBE subcontract toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

If the 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 City will not count the firm's participation toward any DBE goals, except as provided for in 26.87(j).

## **SUBPART D – CERTIFICATION STANDARDS**

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

The California Unified Certification program (CUCP) processes all DBE certification applications. A link to the CUCP Certification Application is found in Attachment 8.

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The City is a non-certifying member of the California Unified Certification Program (CUCP) administered by Caltrans. The CUCP meets all of the requirements of this section.

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

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

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

Notwithstanding any provision of Federal or state law, the City will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information.

All participants in the Department'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) shall be 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 a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The City, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If the City violates this prohibition, the City is in noncompliance with this part.

## **ATTACHMENTS**

<b>Attachment 1</b>	<b>49 CFR Part 26 Definitions</b>
<b>Attachment 2</b>	<b>49 CFR Part 26: Website Link</b>
<b>Attachment 3</b>	<b>Organizational Chart</b>
<b>Attachment 4</b>	<b>Bidders List Collection Form</b>
<b>Attachment 5</b>	<b>Link to DBE Directory</b>
<b>Attachment 6</b>	<b>Overall Goal Calculations</b>
<b>Attachment 7</b>	<b>DBE Monitoring and Enforcement Mechanisms</b>
<b>Attachment 8</b>	<b>Link to DBE Certification Application Form</b>
<b>Attachment 9</b>	<b>State's UCP Agreement</b>
<b>Attachment 10</b>	<b>Small Business Program</b>

**ATTACHMENT 1**  
**Definitions from the Regulation: 49 CFR Part 26**

**§26.5 What do the terms used in this part mean?**

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation (ANC)* means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

*Compliance* means that a recipient has correctly implemented the requirements of this part.

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Days* mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

*Department or DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise or DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Home state* means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is

recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site:<http://www.census.gov/eos/www/naics/>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious* measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral* measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to 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 §26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

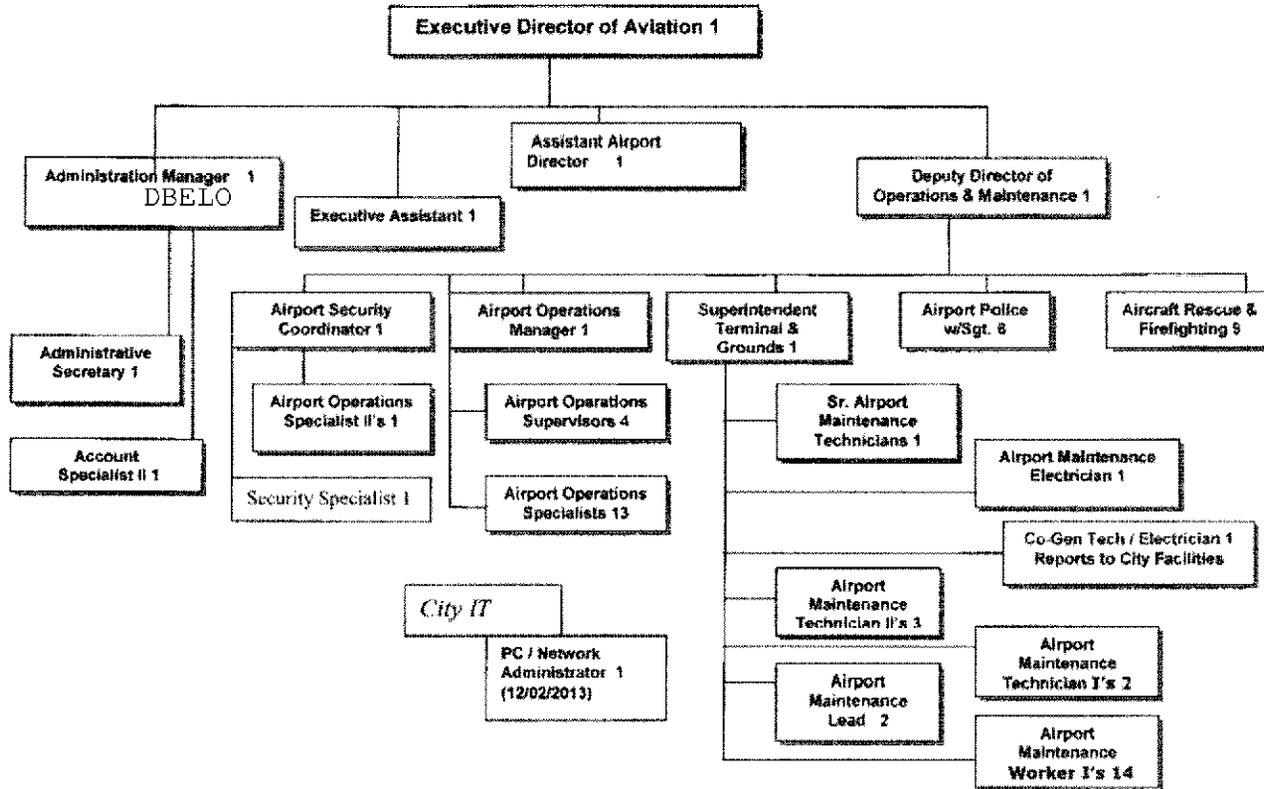
*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

**ATTACHMENT 2**

**49 CFR PART 26 MAY BE FOUND ONLINE AT:**

[HTTP://WWW.ECFR.GOV/CGI-BIN/TEXT-IDX?TPL=/ECFRBROWSE/TITLE49/49CFR26\\_MAIN\\_02.TPL](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/ttitle49/49cfr26_main_02.tpl)

# Palm Springs International Airport



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Organizational Chart

ATTACHMENT 3

2015/2016 = 69.0 FTE's

May 4, 2015

**ATTACHMENT 4**  
Bidder's List Collection Form

Prime Contractor Firm Name	Firm Address/ Phone #	DBE or Non- DBE Status (verify via California'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

**ATTACHMENT 5**

*The California Unified Certification Program  
DBE Directory  
may be found online at:*

[http://www.dot.ca.gov/hq/bep/find\\_certified.htm](http://www.dot.ca.gov/hq/bep/find_certified.htm)

**ATTACHMENT 6**

**PALM SPRINGS INTERNATIONAL AIRPORT  
PROPOSED DBE OVERALL GOALS  
FY 2015 – FY 2017**

**Airport Sponsor:** Palm Springs International Airport

**Goal Period:**                   **From:**       October 1, 2014  
   **Thru:**       September 30, 2017

**Overall DBE Goal for FAA-Assisted Projects:** 6.3%

**Race-Neutral Goal:**                   6.3%

**Race-Conscious Goal:**               0.0%

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## **DBE GOAL METHODOLOGY**

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Overall goals for the Palm Springs International Airport Disadvantaged Business Enterprise Program for federally assisted projects is established at three-year intervals for a period of three years. The goal period for the three-year interval covered in this report will begin on October 1, 2014 and end on September 30, 2017. The overall DBE goal for the three-year period has been set at 6.9% of the Federal financial assistance to be expended in DOT-assisted contracts during the time period covered. Federal funding for projects is anticipated to be approximately \$22.8 million during the period.

The relevant geographic market for contractors for Palm Springs International Airport projects has been defined as Los Angeles, Orange, Riverside, San Bernardino and San Diego counties because more than 80% of the companies performing projects at the Airport over the last eight years are based in one of these areas.

49 CFR Part 26, Section 26.45(b) states as follows:

*Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.*

49 CFR Part 26, Section 26.45 further provides for a two-step process, consisting of:

**Step 1 - Determine a Base Figure representing the Relative Availability of DBEs**

**and**

**Step 2 - Examine data to determine what adjustment, if any, is needed to the Base Figure**

The regulation provides the following examples of potential approaches for accomplishing Step 1, determining the base figure, as follows:

- 1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) database, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes.
- 2) Use a bidders list. Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.
- 3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.
- 4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
- 5) Alternative methods. Subject to the approval of the DOT operating administration, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must 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 your market.

We have examined each of the alternatives. We have elected to use the combined approach of DBE directories/Census Bureau data and data from a disparity study. The methodology for establishing the FY 2015 – FY 2017 DBE Goal is described on the following pages.

**Step 1 - Determine a Base Figure representing the Relative Availability of DBEs**

Projects planned for award during FY 2015 - 2017 are as follows:

**FY 2015**

- Runway Rehabilitation
- Access Control Equipment
- Flight Information Display (FIDS) and Paging System

**FY 2016**

- Building Projects

**FY 2017**

- Expand Terminal Building/Baggage Claim

The trade classifications expected to be utilized for these projects are as follows:

<b>Table 1: Trade Breakdown for 2015 - 2017 AIP Projects</b>			
<b>Project</b>	<b>Trade</b>	<b>NAICS</b>	<b>Trade \$</b>
RW Rehabilitation	Highway, Street and Bridge Construction	237310	\$5,787,000
	Demolition, Excavation	238910	\$720,000
	Electrical	238210	\$1,530,000
	Trucking	484220	\$1,080,000
	Fencing	238990	\$225,000
<b>Total Project</b>			<b>\$9,342,000</b>
Securing Access Control Equipment	Electrical	238210	\$1,980,000
	Equipment	423610	\$1,350,000
<b>Total Project</b>			<b>\$3,330,000</b>
FIDS and Paging System	Electrical	238210	\$1,170,000
	Equipment	specialty	\$1,050,000
<b>Total Project</b>			<b>\$2,220,000</b>
<b>Total Projects- 2015</b>			<b>\$14,892,000</b>
Building Projects	Design, Construction Management	541310	\$1,170,000
	Electrical	238210	\$135,000
	Carpenter	238350	\$810,000
	Painting	238320	\$90,000
	Carpet	238330	\$135,000
	Drywall	238310	\$72,000
	Materials	423990	\$828,000
	Equipment	238290	\$360,000
<b>Total Project</b>			<b>\$3,600,000</b>

<b>Table 1: Trade Breakdown for 2015 - 2017 AIP Projects</b>			
<b>Project</b>	<b>Trade</b>	<b>NAICS</b>	<b>Trade \$</b>
Total Projects- 2016			\$3,600,000
Building Projects	Design, Construction Management	541310	\$810,000
	Electrical	238910	\$135,000
	Carpenter	238210	\$630,000
	Painting	238320	\$90,000
	Carpet	238330	\$225,000
	Drywall	238310	\$162,000
	Materials	423990	\$468,000
	Equipment	238290	\$1,080,000
<b>Total Project</b>			<b>\$3,600,000</b>
ARFF Vehicle	Vehicle Purchase	336120	\$720,000
<b>Total Project</b>			<b>\$720,000</b>
Total Projects- 2017			\$4,320,000
Total Projects 2015-2017			\$22,812,000

In August 2012, the California Department of Transportation (Caltrans) Availability and Disparity Study was published. The study developed a base goal of 12.5% for Caltrans projects. The study considers only trades typically utilized in Caltrans projects. Caltrans projects were broken down between construction and engineering. Construction projects account for 97% of the projects undertaken by Caltrans. Trades included in the construction category are: highway and street construction, electrical work, asphalt and concrete supply, rebar and reinforcing steel, fencing, guardrails and signs, land site prep, landscape services, wrecking and demolition, painting and striping, water, sewer and utility lines, excavation and drilling, trucking, flagging services, heavy construction equipment rental, construction sand and gravel, other construction and other construction supplies.

Given the above, we believe that only the runway Rehabilitation project is comparable to Caltrans projects. Therefore, we have utilized the Caltrans base goal of 12.5% for the Runway Rehabilitation project and an alternative methodology for the remaining projects.

DBE availability for trades used in the projects to be undertaken during the three-year goal period, excluding the Runway Rehabilitation project, have been determined by utilizing the California Unified Certification Program DBE Directory and Census Bureau Data. Census and Directory information was extracted for the relevant trades listed above. The geographic areas represented include Los Angeles, Orange, Riverside, San

Bernardino and San Diego counties. In addition, DBE availability from the Caltrans Disparity Study has been included for those trades that are included in the study. The availability calculations are as follows:

TRADE	NAICS Description	NAICS	Census	Directory	DBE %
Electrical	Electrical Contractors	238210	3911	108	2.8%
Equipment	Other Building Equipment Contractors	238290	336	10	3.0%
Drywall	Drywall and Insulation Contractors	238310	936	14	1.5%
Painting	Painting and Wall Covering Contractors	238320	1568	25	1.6%
Carpet	Flooring Contractors	238330	788	12	1.5%
Carpenter	Carpenters (except framing)	238350	1070	20	1.9%
Demolition, Excavation	Site Preparation Contractors	238910	1091	87	8.0%
Fencing	All Other Specialty Trade Contractors	238990	1487	102	6.9%
Baggage Conveying Equipment	Conveyor and Conveying Equipment Manufacturing	333922	26	0	0.0%
Equipment	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	423610	1246	35	2.8%
Materials	Other Miscellaneous Durable Goods Merchant Wholesalers	423990	1191	13	1.1%
Trucking	Trucking	484220	898	187	20.8%
Design, Construction Management	Design, Construction Management	541310	1640	68	4.1%

\* The % was obtained by dividing the DBE directory # of firms by the census # of firms.

The availability calculations from the above chart have been weighted by the anticipated expenditures for each trade classification for all projects excluding the Runway Rehabilitation project. For the Runway Rehabilitation project, the Caltrans base goal has been used.

Project	Trade	NAICS	Trade \$	DBE %	DBE \$
RW Rehabilitation	Highway, Street and Bridge Const	237310	\$5,787,000	*12.5%	\$723,375
	Demolition, Excavation	238910	\$720,000	*12.5%	\$90,000
	Electrical	238210	\$1,530,000	*12.5%	\$191,250
	Trucking	484220	\$1,080,000	*12.5%	\$135,000
	Fencing	238990	\$225,000	*12.5%	\$28,125

<b>Table3: Weighted DBE Availability</b>					
Project	Trade	NAICS	Trade \$	DBE %	DBE \$
<b>Total Project</b>			<b>\$9,342,000</b>	<b>*12.5%</b>	<b>\$1,167,750</b>
Access Control Equipment	Electrical	238210	\$1,980,000	2.8%	\$55,440
	Equipment	423610	\$1,350,000	2.8%	\$37,800
<b>Total Project</b>			<b>\$3,330,000</b>	<b>2.8%</b>	<b>\$93,240</b>
FIDS and Paging System	Electrical	238210	\$1,170,000	2.8%	\$32,760
	Equipment	*specialty	\$1,050,000	0.0%	\$0
<b>Total Project</b>			<b>\$2,220,000</b>	<b>1.5%</b>	<b>\$32,760</b>
<b>Total Projects- 2015</b>			<b>\$14,892,000</b>	<b>8.7%</b>	<b>\$1,293,750</b>
Building Projects	Design, Construction Management	541310	\$1,170,000	4.1%	\$47,970
	Electrical	238210	\$135,000	2.8%	\$3,780
	Carpenter	238350	\$810,000	1.9%	\$15,390
	Painting	238320	\$90,000	1.6%	\$1,440
	Carpet	238330	\$135,000	1.5%	\$2,025
	Drywall	238310	\$72,000	1.5%	\$1,080
	Materials	423990	\$828,000	1.1%	\$9,108
<b>Total Project</b>			<b>\$3,600,000</b>	<b>2.5%</b>	<b>\$91,593</b>
<b>Total Projects- 2016</b>			<b>\$3,600,000</b>	<b>2.5%</b>	<b>\$91,593</b>
Terminal Baggage Improvements	Design, Construction Management	541310	\$810,000	4.1%	\$33,210
	Electrical	238910	\$135,000	2.8%	\$3,780
	Carpenter	238210	\$630,000	1.9%	\$11,970
	Painting	238320	\$90,000	1.6%	\$1,440
	Carpet	238330	\$225,000	1.5%	\$3,375
	Drywall	238310	\$162,000	1.5%	\$2,430
	Materials	423990	\$468,000	1.1%	\$5,148
<b>Total Project</b>			<b>\$3,600,000</b>	<b>1.7%</b>	<b>\$61,353</b>
ARFF Vehicle	Vehicle Purchase	*specialty	\$720,000	0.0%	\$0
<b>Total Project</b>			<b>\$720,000</b>	<b>0.0%</b>	<b>\$0</b>
<b>Total Projects- 2017</b>			<b>\$4,320,000</b>	<b>1.4%</b>	<b>\$61,353</b>
<b>Total Projects 2015-2017</b>			<b>\$22,812,000</b>	<b>6.3%</b>	<b>\$1,446,696</b>

\* Based on Caltrans Base goal

**Note: The dollars to be spent for each trade (Table 1) have been multiplied by the DBE calculated Caltrans availability if available, the Directory/Census availability if Caltrans is not available (Table 2). The total is the dollar amount of DBE participation expected to be awarded to DBE firms given the availability of DBE firms and dollar amount to be expended on each trade.**

**The result of the above calculations yields a base goal of 6.3%.**

**Step 2 - Examine data to determine what adjustment, if any, is needed to the Base Figure.**

Section 26.45(d) provides many examples of the types of data to examine in order to adjust the base figure. The Caltrans Availability and Disparity Study determined that there are various reasons for both upward and downward adjustments that tend to cancel each other out. Therefore, we have elected not to make a Step II Adjustment based on the Caltrans Study.

In addition to considering the information provided in the Caltrans Study, we have examined past history of DBE participation at Palm Springs International Airport. Because DBE goals have been race neutral for the past 5 years, DBE goals have not been met. We do not believe that this is indicative of availability, therefore we have elected not to adjust the goal for past history.

**Given the above, we propose a DBE goal of 6.3% for the three-year period beginning October 1, 2014 and ending September 30, 2017.**

**Race-Neutral Vs Race-Conscious Goal**

In light of the Ninth Circuit Court of Appeals decision regarding *Western States Paving v. Washington State Department of Transportation* and the fact that the Caltrans Availability and Disparity Study does not include specific contracting practices for Palm Springs International Airport, the DBE goal for Palm Springs International Airport will be set as race neutral. We do not have sufficient evidence of discrimination or its effects to support a race-conscious goal at this time. It should be noted that the City has developed a Small Business Enterprise program that provides a means to set goals for small business utilization in federally-funded projects. The program will be implemented during this goal period and it is projected that the program will assist the airport in meeting its DBE goals.

The following methods will be employed to implement race-neutral goals:

- 1) Provide information on the Palm Springs International Airport organization, functions and its full range of contractual needs.
- 2) Offer instructions and clarification on bid specifications, procurement policy, procedures, and general bidding requirements.
- 3) Maintain a file of successful bid documents from past procurement and permit potential participants to review and evaluate such documents.
- 4) Conduct debriefing sessions on each awarded contract to explain why certain bids were unsuccessful.

- 5) Routinely issue projected procurement information.
- 6) Provide instructions and clarification on job performance requirements.
- 7) Provide information and assistance on certification procedures, sub-contracting practices, bonding requirements.
- 8) Provide assistance in obtaining bonding and financing and provide technical assistance.
- 9) Arrange solicitations, time for presentation of bids, quantities, specifications and delivery schedules to facilitate the participation of DBE's.
- 10) Implement small business goals where practicable.

The recruiting area for the projects will consist of San Bernardino, San Diego, Riverside, Orange, and Los Angeles counties.

A published notice announcing our proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the our principal office for 30 days following the date of the notice, and informing the public that we will accept comments on the goals for 45 days from the date of the notice will be published in The Desert Sun and on the airport's website.

Notices will also be sent to the following organizations:

- Association of General Contractors – Los Angeles District
- Black Chamber of Commerce of Orange County
- Coachella Valley Mexican American Chamber of Commerce
- National Association of Minority Contractors – So. Cal Chapter
- National Association of Women Contractors – Orange Co. Chapter
- Palm Springs Chamber of Commerce

## **Attachment 7**

### **DBE Enforcement Mechanisms**

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

The Contractor shall, under the Contract, carry out applicable requirements of 49 CFR Part 26 in the award and administration of such DOT- assisted contracts. Failure by the Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or such other remedy as The City deems appropriate, which may include, but is not limited to:

- 1.) Withholding monthly progress payments;
- 2.) Assessing sanctions;
- 3.) Liquidated damages;
- 4.) Disqualifying Contractor from future bidding as non-responsible;
- 5.) Specific performance;
- 6.) Contract suspension;
- 7.) Withholding a portion of final payment in the amount of the DBE goal shortfall; and/or
- 8.) Such other remedies as may be available to The City by law.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, 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.

**ATTACHMENT 8**  
DBE Certification Application Form

The CUCP DBE Certification Application Form may be found online at:

[http://www.caltrans.ca.gov/hq/bep/business\\_forms.htm](http://www.caltrans.ca.gov/hq/bep/business_forms.htm)

# City of Palm Springs Palm Springs International Airport

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## Small Business Program Developed as an Element of the DBE Program

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## I. SMALL BUSINESS PROGRAM POLICY

This Small Business Program was developed by the City of Palm Springs (“the City”) as an element of the Palm Springs International Airport DBE Program to provide additional opportunities for small businesses to participate in contracting at Palm Springs International Airport.

The City’s Small Business Program, as described herein, applies to certain federally funded contracts and expenditures. The Program utilizes small business enterprise goals, where appropriate, in an effort to facilitate competition by small business concerns, including Disadvantaged Business Enterprises.

The Small Business Program will operate in a race and gender-neutral manner. The Program 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 or ethnic origin, age or disability. The City’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 Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender-neutral measures in their operations.

The City 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. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) Program, the City sets triennial overall DBE goals for contracts that are funded in whole or in part with federal funds. The City 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).

49 CFR part 26 includes a section (26.39) entitled “Fostering Small Business Participation” which states 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. 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 Program has been developed as an element of the Pam Springs International Airport DBE program in compliance with the above stated sections of 49 CFR part 26 and further guidance issued by DOT.

### **III. NON-DISCRIMINATION**

It is the policy of PSP, that the Airport, its contractors, subcontractors and concessionaires, shall not discriminate on the basis of race, color, religion, national origin, or sex in the award and performance of contracts and subcontracts and to remove barriers for small businesses, including minority, women-owned, and disadvantaged business enterprises, to compete for contracts and subcontracts awarded by the Airport.

It is also the policy of PSP to support the growth and development of small businesses, including Disadvantaged Business Enterprises, that can successfully compete, outside of the Program, for Airport prime contracting opportunities.

This Small Business Program has been developed in furtherance of these policies.

#### **IV. SMALL BUSINESS ENTERPRISE DEFINITION**

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

A small business enterprise, with respect to firms seeking to participate as SBEs in the City's Small Business Program, is a small business concern as defined pursuant to 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 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 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.*

The SBA size standards may be found at:

[www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html](http://www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html)

#### **IV. SMALL BUSINESS ENTERPRISE VERIFICATION**

A firm who wishes to participate as an SBE on a project at Palm Springs International Airport and has not been certified as a DBE or verified as an SBE by one of the certifying agencies of the California Unified Certification Program within the preceding 12 months may apply for verification as an SBE by filing a **SMALL BUSINESS ENTERPRISE (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 a Small Business Enterprise.

#### **V. SCOPE OF THE PROGRAM**

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

The Small Business Program requires contractors to make good faith efforts to use small businesses in certain contracting and procurement opportunities. Good faith efforts 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 the DBE Liaison Officer to determine if a

Small Business Enterprise (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 an alternative race neutral method for achieving race neutral DBE participation.

A decision to use race-neutral goals will be made in accordance with 49 CFR part 26.51, including a determination that race neutral methods are sufficient to meet the Airport's overall DBE goal. PSP may determine that an SBE goal is an appropriate race neutral measure to be used 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 good faith efforts requirements and information submitted with bid and reporting procedures shall be consistent with procedures utilized in the Airport's DBE Program under a race neutral environment. Good faith efforts 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 good faith efforts on the part of the bidder.

The program also requires airport staff to consider unbundling of contracts when feasible. The Airport 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. The DBE Liaison Officer, in coordination with the Executive Airport Director, 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 Executive Airport Director will have the opportunity to review the recommendation for unbundling and either accept the recommendation or provide rationale for rejecting the recommendation.

## **VI. TRACKING SBE PARTICIPATION**

The City 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 PSP'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 SBE Program will be included in the Airport'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:

1. Governor's Office of Business and Economic Opportunity (GO-Biz):  
[www.business.ca.gov](http://www.business.ca.gov)
2. SBA Office of Small business Development Centers:  
[www.sba.gov/offices/headquarters/osbdc/resources/11409](http://www.sba.gov/offices/headquarters/osbdc/resources/11409)
3. California Small Business Development Center – Inland Empire
4. SCORE – Coachella Valley

## **VIII. ASSURANCES**

The City provides the following assurances regarding the development and implementation of the SBE 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 program are presumptively eligible to participate in The City's Small Business Program.
- 3) There will be no geographic preferences or limitations imposed on any federally assisted procurement included in the City's Small Business Program.
- 4) There will be no limits on the number of contracts awarded to firms participating in the program.
- 5) The City will make every effort to avoid creating barriers to the use of new or emerging businesses.
- 6) The Airport's Small Business Program is open to small businesses regardless of their location. There will be no local or other geographic preference.