

# **Disadvantaged Business Enterprise Program**

**Prepared for  
Contra Costa County  
Department of Public Works  
Airports Division**



**Ford & Associates LLC**

**June, 2021**

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**CONTRA COSTA COUNTY  
DEPARTMENT OF PUBLIC WORKS AIRPORTS DIVISION  
DEPARTMENT OF TRANSPORTATION  
DBE PROGRAM - 49 CFR PART 26**

**Definitions of Terms**

The terms used in this program have the meanings defined in 49 CFR 26.5.

**Sections 26.1 and 26.23 Objectives /Policy Statement**

The Contra Costa County Department of Public Works Airports Division has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Contra Costa County Department of Public Works Airports Division has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Contra Costa County Department of Public Works Airports Division has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Contra Costa County Department of Public Works Airports Division to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Brian Balbas, has been designated as the DBE Liaison Officer. In that capacity, Mr. Balbas is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the County Board of Supervisors in its financial assistance agreements with the Department of Transportation.

The airport has disseminated this policy statement to the Contra Costa County Department of Public Works Airports Division and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts as posted on the airport web site and at the airport's business office.

Brian Balbas, Public Works Director \_\_\_\_\_ Date: \_\_\_\_\_

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

The Contra Costa County Department of Public Works Airports Division is the Recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The Contra Costa County Department of Public Works Airports Division will use terms in this program that have the meaning defined in Section 26.5.

### **Section 26.7 Nondiscrimination**

Contra Costa County Department of Public Works Airports Division will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Contra Costa County Department of Public Works Airports Division 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) We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE contractor firm’s information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2022 reports due December 1, 2022.

#### **Bidders List 26.11(c)**

The Contra Costa County Department of Public Works, Airports Division will create and maintain a bidders list. The purpose of the list is to provide as accurate data as

possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following way: By including a contract clause requiring all bidders to complete the Subcontractor Participation Plan found on Attachment 2 of this plan. Bidders not completing and submitting the plan with the bid will be considered unresponsive.

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

The Contra Costa County Department of Public Works Airports Division has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

#### Assurance 26.13(a)

Each financial assistance agreement Contra Costa County Department of Public Works Airports Division signs with a DOT operating administration (or a primary) must include the following assurance:

The Contra Costa County Department of Public Works Airports Division 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 Contra Costa County Department of Public Works Airports Division 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 Contra Costa County Department of Public Works Airports Division 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 of its failure to carry out its approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.* ).

#### Contract Assurance: 26.13(b)

The Contra Costa County Department of Public Works Airports Division will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

The contractor, Contra Costa County Department of Public Works Airports Division or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements

of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Contra Costa County Department of Public Works Airports Division deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

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

The Contra Costa County Department of Public Works Airports Division is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

### **Section 26.23 Policy Statement**

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

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

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

**Keith Freitas**  
**Director of Airports**  
**Public Works Department**  
**Airports Division**  
**Contra Costa County Airports**  
**550 Sally Ride Drive**  
**Concord, California 94520**  
[keith.freitas@airport.cccounty.us](mailto:keith.freitas@airport.cccounty.us)

In that capacity, Keith Freitas /DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Contra Costa County Department of Public Works Airports Division complies with all provisions of 49 CFR Part 26.

Keith Freitas has direct, independent access, concerning DBE program matters. The DBELO has at least one support person, who can devote a portion of their time to the program. 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 officials. Duties and responsibilities include the following:

The project manager duties and responsibilities will include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes Contra Costa County Department of Public Works Airports Division's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the governing body on DBE matters and achievement.
8. Determines contractor compliance with good faith efforts.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process.
12. Maintains the agency's updated directory on certified DBEs.

## **Section 26.27 DBE Financial Institutions**

It is the policy of the Contra Costa County Department of Public Works Airports Division to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

In an effort to identify and use such institutions, utilizing the State of California DBE online database, the airport did not find any financial institutions in Contra Costa County or in surrounding counties including Counties in Caltrans District 4. We will investigate once every three years.

## Section 26.29 Prompt Payment Mechanisms

The Contra Costa County Department of Public Works Airports Division 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 7 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. We will use one of the following methods to comply with this requirement:

Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within seven (7) days after the County's payment to the prime contractor.

To implement this measure, the Airports Division includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

1. From the total of the amount determined to be payable on a partial payment, up to 10% percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

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

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

2. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than seven (7) days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an

incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

### **Section 26.31 Directory**

The Contra Costa County Department of Public Works Airports Division uses the State of California DBE directory, maintained by the State and updated daily.

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.

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

Contra Costa County Department of Public Works Airports Division has not identified that over-concentration exists in the types of work that DBEs perform.

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

Contra Costa County Department of Public Works Airports Division has not established a business development program.

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

The Contra Costa County Department of Public Works Airports Division will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. The Contra Costa County Department of Public Works Airports Division will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.



2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 5 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for his purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract). This will be accomplished by review of the contract proposal and subsequent work by the contract manager or appointed contract officer's representative.
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

### **Section 26.39 Fostering Small Business Participation**

The Contra Costa County Department of Public Works Airports Division has created a Small Business Participation 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 Contra Costa County Department of Public Works Airports Division Small Business Participation Element is incorporated as Attachment 6 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

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

### **Section 26.43 Quotas**

We do not use quotas in any way in the administration of this DBE program.

## Section 26.45 Overall Goals

The Contra Costa County Department of Public Works Airports Division will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Contra Costa County Department of Public Works Airports Division will submit its Overall Three year DBE Goal to FAA by August 1st as required by the established schedule below.

Given the amount of DOT-assisted contracts the Contra Costa County Department of Public Works Airports Division expects to let for **Buchanan Field** during this fiscal year/project, which is \$93,010. This means that we have set a goal of expending 1 % with DBEs during this fiscal year/project.

Given the amount of DOT-assisted contracts the Contra Costa County Department of Public Works Airports Division expects to let for **Byron Airport** during this fiscal year/project, which is \$86,625. This means that we have set a goal of expending 6% with DBEs during this fiscal year/project.

### Method

| Airport Type                                | Region                                  | Date Due (Goal Period)          | Next Goal Due (Goal Period)     |
|---|---|---------------------------------|---------------------------------|
| Non-Primary (GAs, Relievers and State DOTs) | Central, Southwest, and Western-Pacific | August 1, 2021 (2022/2023/2024) | August 1, 2024 (2025/2026/2027) |

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Contra Costa County Department of Public Works Airports Division 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, we will not develop an overall goal; however this DBE Program will remain in effect and the Contra Costa County Department of Public Works Airports Division will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c)The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use DBE Directories and Census Bureau Data as a method to determine our base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the Contra Costa County Department of Public Works Airports Division 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 we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on our 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 your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.

Any methodology we choose 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 our market. We understand 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) 26:11 c 2, is not an acceptable alternative means of determining the availability of DBEs.

Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

In addition, the Contra Costa County Department of Public Works Airports Division will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet website (<https://www.contracosta.ca.gov/5731/Contracting-with-the-Airports-RFPRFQs>) and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet website. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the Contra Costa County Department of Public Works Airports Division 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 (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend the August 1<sup>st</sup> deadline.**

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

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

If permitted or required by the FAA Administrator, we will express our 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 the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal 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 are separated from the base from which our regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Section 26.45(f) Prior Operating Administration Concurrent**

The Contra Costa County Department of Public Works Airports Division understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 7 to this program.

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

The Contra Costa County Department of Public Works Airports Division will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If Contra Costa County Department of Public Works Airports Division awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will

do the following in order to be regarded by the Department as implementing our DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to meet fully your goal for the new fiscal year;

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

(a) The Contra Costa County Department of Public Works Airports Division 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, on Contra Costa County Department of Public Works Airports Division mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(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 your 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.

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

The Contra Costa County Department of Public Works Airports Division will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

## Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26. Brian Balbas, Director of Public Works, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive.

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

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

The Contra Costa County Department of Public Works Airports Division treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

**Responsiveness** - Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we 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 amount of work provided in the prime contractor's commitment.

- (v) If the contract goal is not met, the evidence of good faith efforts is in Attachment 8. 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) We will require that the bidder/offeror present the information required by paragraph (b) (2) of this section:

Under sealed bid procedures, as a matter of responsiveness, under contract negotiation procedures;

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.

#### **Section 26.53(d) Administrative Reconsideration**

Within 3 business days of being informed by Contra Costa County Department of Public Works Airports Division 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 the following reconsideration official:

**Steve Kowalewski  
Public Works Department  
Reconsideration Official  
Contra Costa County Airports  
255 Glacier Drive  
Martinez, CA 94553**

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 with our reconsideration official, Steve Kowalewski to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or



make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Section 26.53(f)(g) Good Faith Efforts Procedures In Situations When There Are Contract Goals**

We 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 your written consent as provided in this paragraph 26.53(f); and that, unless our 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.

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b) (2) of this Section 26.53 (or an approved substitute DBE firm) without our prior written consent. This includes, but 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.

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) We have determined that the listed DBE subcontractor is not a responsible contractor;

- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

The Contra Costa County Department of Public Works Airports Division 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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request 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 Contra Costa County Department of Public Works Airports Division shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We 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 we deem 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 Airport will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the Airport 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 Contra Costa County Department of Public Works Airports Division 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 overall goal of 1% percent as determined in the goal calculation Attachment 5 has been established for **Buchanan Field**. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), to meet the contract goal for DBE participation in the performance of this contract.

A DBE goal of 6% percent as determined in the goal calculation Attachment 5 has been established for **Byron Airport**. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), to meet the 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**

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

been paid to the DBE.

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, we 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 Contra Costa County Department of Public Works Airports Division is a non-certifying member of the State of California Unified Certification Program (UCP). State of California UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

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

California Department of Transportation  
Office of Business & Economic Opportunity  
Attn: Certification Unit  
1823 14th Street,  
Sacramento, CA 95811

Questions? Call (916) 324-1700

Email: [DBE.Certification@dot.ca.gov](mailto:DBE.Certification@dot.ca.gov)

Fax: (916) 324-1949

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

## **SUBPART E – CERTIFICATION PROCEDURES**

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

The Contra Costa County Department of Public Works Airports Division is a member of the California Unified Certification Program (UCP) administered by Keith Freitas. The UCP will meet all of the requirements of this section. See Attachment 9, a copy of the signed agreement page of the membership of the UCP between the Contra Costa County Department of Public Works Airports Division and the UCP

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

### **Section 26.101 Compliance Procedures Applicable to Airports Division**

Airports Division understands that if it fails to comply with any requirement of this part, Airports Division may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration/ the FAA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109**

We will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. Section 552). We may make available to the public any information concerning the DBE program provided release is not prohibited by Federal law.

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

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) are required to cooperate fully and promptly with DOT and Contra Costa County Department of Public Works Airports Division 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 Contra Costa County Department of Public Works Airports Division's 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. Airports Division understands that it is in noncompliance with Part 26 if it violates this prohibition.