

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Ontario International Airport Authority (OIAA), owner of **Ontario International Airport (ONT)**, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. **OIAA** has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, **OIAA** has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as “Part 26”).

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

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

OIAA’s Chief Administrative Officer, has been delegated as the DBE Liaison Officer. In that capacity, **the Chief Administrative Officer** 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 **OIAA** in its financial assistance agreements with the Department of Transportation.

OIAA has disseminated this policy statement to the **OIAA Board of Commissioners** and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on **OIAA** DOT- assisted contracts. The distribution was accomplished by making the statement available on the OIAA website (www.flyontario.com) and by posting on OIAA’s e-Procurement site (OpenGov).

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05/01/25

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

OIAA is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

OIAA will use terms in this program that have their meanings defined in Part 26, § 26.5.

Section 26.7 Non-discrimination Requirements

OIAA 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, **OIAA** will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

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

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

OIAA will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. **OIAA** will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

Bidders List

OIAA will collect bidders list information as described in § 26.11(c)(2). The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping to set our overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

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

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and sex information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc) rather than requesting an exact figure from the firm.

OIAA will collect the data from all bidders for our federally assisted contracts by requiring the information to be submitted with their bids or initial responses to negotiated procurements.

OIAA will enter this data in the DOT's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

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

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

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

The **OIAA** 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 **OIAA** 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 **OIAA** 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 **OIAA** 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: **OIAA** will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

OIAA 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.

OIAA is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and **OIAA** is in compliance with it and Part 26. **OIAA** will continue to

carry out this program until all funds from DOT financial assistance have been expended. **OIAA** does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted to the relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Jamaal Avilez
Chief Administrative Officer
Ontario International Airport Authority
1923 E. Avion Avenue
Ontario, CA 91761
909-260-9794
javilez@flyontario.com

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

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of **2 plus OIAA's Airport Consultant** to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.

6. Analyzes **OIAA's** progress toward attainment and identifies ways to improve progress.
7. Advises the CEO/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. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of **OIAA** 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. Availability of such institutions will be investigated on an annual basis.

The OIAA will utilize the California Unified Certification Program (CUCP) directory of certified firms to search for financial institutions controlled by socially and economically disadvantaged individuals (<https://californiaucp.dbesystem.com>). The OIAA will also utilize its solicitation documents to encourage prime contractors to find such firms and include them in their submissions, and the OIAA will engage with such firms at industry outreach events (both hosted and attended). All actions will happen on an annual basis except for the solicitation listings which will happen per relevant occurrence.

Section 26.29 Prompt Payment Mechanisms

The OIAA requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29, the **OIAA** established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from the **OIAA**.

The OIAA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed and the prime contractor receives payment from OIAA. Pursuant to § 26.29, **OIAA** has selected the following method to comply with this requirement:

1. **OIAA** 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 7 days after **OIAA** payment to the prime contractor.

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

Prompt Payment Monitoring for DBEs and Non-DBEs

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

- ***Posting prime contractor payments to a website, database, or other place accessible to subcontractors to alert them to the start of the 7 day clock for payment***
- ***Announcing prime contractor payments at regularly scheduled progress meetings.***
- ***Providing subcontractors an avenue to confirm payments either via software system, or email confirmation.***

OIAA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of seven (7) years unless otherwise provided by applicable record retention requirements for the **OIAA’s** financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of **OIAA** or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- **OIAA** proactively reviews contract payments to subcontractors including DBEs on a quarterly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to **OIAA** by the prime contractor.

Prompt Payment Dispute Resolution

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

- **Meetings will be conducted between the Prime Contractor, the impacted Subcontractor, and the Project Manager (PM) for the OIAA. The purpose of the meeting will be to discuss satisfactory resolution of the payment dispute.**
- **OIAA will also require Prime Contractors to include dispute resolution processes in their contracts with their Subs. In the event of a payment dispute, OIAA will ensure that the Prime is abiding by the process outlined in its subcontract.**

OIAA has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR)

Section 6 Alternative Dispute Resolution

The Prime Contractor must institute an approved Alternative Dispute Resolution (ADR) process in all of its subcontracts and require the approved process be included in contracts its subcontractors have with their subcontractors of all tiers. Some acceptable types of ADR include arbitration, mediation, neutral factfinding, etc. Primes should be careful to institute a process that does not place an unreasonable burden on its subcontractor(s). The process must be approved by the OIAA prior to the receipt of a notice to proceed. Delays in the submission of the plan that lead to a delay in the project timeline may result in liquidated damages as defined in the contract documents.

Prompt Payment Complaints

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

- The affected subcontractor shall notify the Prime contractor in writing in the event payment is not received within the seven (7) day window. Subcontractor and Prime shall work together to resolve the issue. If the prime is not responsive or has not resolved the issue in ten (10) days, the subcontractor should contact the DBELO to escalate the complaint.
- If the affected subcontractor is not comfortable contracting prime directly regarding payment or is unable to resolve payment discrepancies with prime in the given time frame, the subcontractor should contact the OIAA Project

Manager (PM) and the DBELO to escalate the complaint. The PM and the DBELO shall work to resolve the payment issue through all available means.

- If the affected subcontractor is not satisfied within ninety (90) days of the complaint, they shall notify the FAA Office of Civil Rights.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

OIAA provides appropriate means to enforce the requirements of § 26.29. These means include:

1. OIAA will bring to the attention of the Department of Transportation (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. Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
3. Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
4. Other penalties for failure to comply, up to and including contract termination, negative Vendor Performance scores, and limitations on future contract opportunities.

OIAA will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

OIAA is a non-certifying member of the California Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number

- Firm website(s)
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

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

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

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

Section 26.37 Monitoring Responsibilities

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

OIAA actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by data entry into an excel spreadsheet. **OIAA** will utilize monthly invoices to enter the data, until such a time that it has a software in place to monitor the goals. This mechanism to maintain a running tally of overall goal attainment will be used to inform **OIAA** decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

OIAA actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by data entry into an excel spreadsheet. OIAA will utilize monthly invoices to enter the data, until such a time that it has a software in place to monitor the goals. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

OIAA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by the OIAA compliance team or OIAA consultant staff assigned to the project. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

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

Section 26.39 Fostering Small Business Participation

OIAA has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment **10** to this DBE Program. The program elements will be actively implemented to foster small business

participation. **OIAA** acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

OIAA will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), **OIAA** will submit its Overall Three-year DBE Goal to the **FAA** by August 1st of the year in which the goal is due, as required by the schedule established by the FAA.

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. **OIAA** will use a Bidders List, a Disparity Study, the goal of another DOT Recipient, DBE Directory information and Census Bureau Data as a method to determine the base figure. **OIAA** understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. **OIAA** will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

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

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

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

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

Project Goals

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

Prior Operating Administration Concurrence

OIAA understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by **OIAA** for calculating goals is inadequate, FAA may, after consulting with **OIAA**, adjust the overall goal or require that the goal be adjusted by **OIAA**. 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 5 to this program.

Section 26.47 Failure to meet overall goals

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

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

OIAA understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) **OIAA** 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. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

OIAA 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.
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 recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
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 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.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

OIAA 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.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal 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).

Contract goals will be expressed as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

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

DBELO 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.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;

- b. 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;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. 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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). 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;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, 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 **OIAA**. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor **OIAA** will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, **OIAA** will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which **OIAA** solicits proposals to design and build a project with minimal project details at time of letting, **OIAA** may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, **OIAA** will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. **OIAA** and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

OIAA will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, **OIAA will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within **5** days of being informed by **OIAA** that it is **not responsive** because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Celeste Heinonen
Chief Financial Officer
Ontario International Airport Authority
1923 E. Avion Street
Ontario, CA 91761
909-544-5300
cheinonen@flyontario.com

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 the goal was met or the bidder/offeror made adequate good faith efforts to do. The

bidder/offeror will be sent 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 procedural requirements (post-solicitation/award)

OIAA 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 **OIAA** deems appropriate if the prime contractor fails to comply with the requirements of this section.

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

OIAA will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless **OIAA** causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

OIAA will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains **OIAA** written consent as provided in § 26.53(f); and
- (2) Unless **OIAA** consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

OIAA may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (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 1200 or applicable state law;
- (6) **OIAA** 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 **OIAA** 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; and
- (10) Other documented good cause that **OIAA** determines compels the termination of the DBE subcontractor;

Before transmitting to **OIAA** the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to **OIAA** sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising **OIAA** and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why **OIAA** should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), **OIAA** may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If **OIAA** requests

documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. **OIAA** shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

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

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

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

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

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

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

Los Angeles Metropolitan Transportation Authority (METRO)
One Gateway Plaza,
Los Angeles, CA 90012
213-922-2600
metro@gob2g.com
<https://metro.gob2g.com>

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

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full **California** UCP agreement. The full UCP agreement can be found at: <https://metro.gob2g.com>

Section 26.81 Unified Certification Programs

OIAA is a member of a Unified Certification Program (UCP) administered by **Caltrans**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.91 Actions Following DOT Certification Appeal Decisions

If **OIAA** is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to OIAA

OIAA understands that if it fails to comply with any requirement of this part, **OIAA** may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the 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.

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

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

This provision is applicable in FAA programs.

- (1) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105 Enforcement Actions Applicable to FAA Programs

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

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

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

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

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

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

All participants in the 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 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).

OIAA, 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. **OIAA** understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

[List and append]

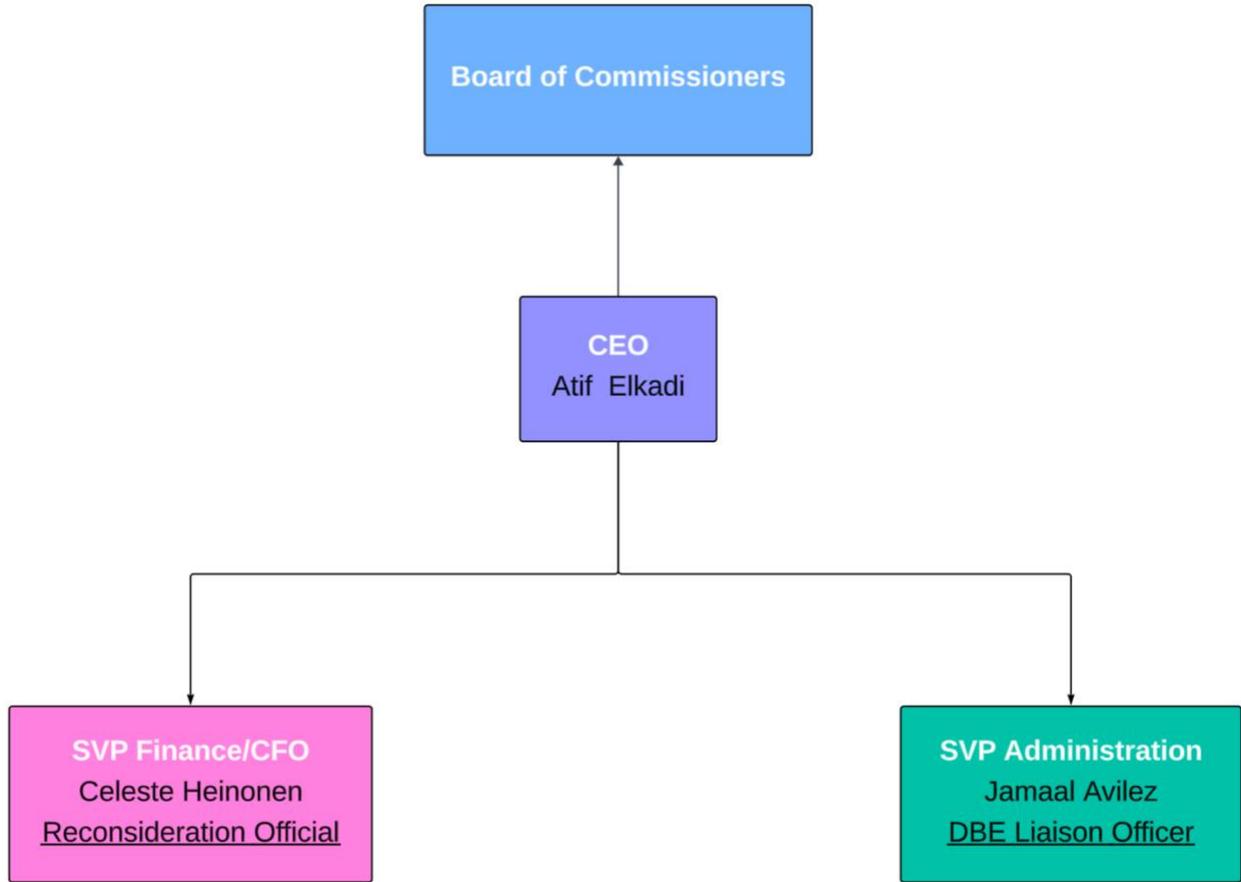
- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology [***Provided for illustrative purposes. Goal methodologies should be submitted in FAA Civil Rights Connect according to the established schedule, independent of the DBE program document.***]
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement [***or Link to State's UCP Agreement, if available***]
- Attachment 10 Small Business Element Program

ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2
ORGANIZATIONAL CHART



ATTACHMENT 3

[EXAMPLE] Bidders List Collection Form

Firm Information		DBE Status	Firm Age	Annual Gross Receipts
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				
Name:				
Address (incl. Zip):				
Race of Majority Owner:				
Gender of Majority Owner:				

ATTACHMENT 4

California UCP Directory may be found here:

<https://californiaucp.dbesystem.com>

ATTACHMENT 5

**DEPARTMENT OF TRANSPORTATION
DBE PROGRAM – 49 CFR PART 26
3-Year Goal Computation
FFY 2023/2024/2025**



Ontario International Airport (ONT)

Prepared for
Ontario International Airport Authority (OIAA)
Ontario, CA

Prepared by
**Mead
& Hunt**

May 12, 2023

Preface

The Ontario International Airport Authority (OIAA) is the owner and operator of the Ontario International Airport (ONT). The OIAA controls, operates, and manages all airport operations. It establishes policy in order to ensure that quality aviation related services are provided to the region. The OIAA has established the following Disadvantaged Business Enterprise (DBE) program for the Ontario International Airport in accordance with Code of Federal Regulations (CFR) of the U. S. Department of Transportation (DOT), 49 CFR Part 26. All reference to Subparts and Section numbers throughout this DBE policy (i.e. Subpart A, 26.1, 26.3, etc.) are to the 49 CFR Part 26 regulations.

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ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: The Ontario International Airport Authority is the owner of Ontario International Airport (ONT).

Goal Period: October 1, 2022 through September 30, 2025

Airport Type: The Ontario International Airport (ONT) is classified as a primary medium hub facility with approximately 2.2 million annual enplanements in 2021.

DOT-Assisted Airport Contract Amount:	FY-2023-1	\$ 27,982,000
	FY-2023-2	\$ 484,000
	FY-2023-3	\$ 3,950,000
	FY-2024-1	\$ 35,777,000
	FY-2024-2	\$ 403,000
	FY-2024-3	\$ 3,611,000
	FY-2024-4	\$ 1,289,000
	FY-2024-5	\$ 27,765,000
	FY-2025-1	\$ 33,207,000
	FY-2025-2	\$ 2,391,000
	FY-2025-3	\$ 9,685,000
	<u>FY-2025-4</u>	<u>\$ 50,000,000</u>
	Total	\$196,544,000

Overall Three-Year Goal: 9.38%, to be accomplished through 6.38% RC and 3.00% RN

Total dollar amount to be expended on DBE's: \$ 18,435,827

The Number and Types of Contracts with federal funding participation the Ontario International Airport anticipates awarding is as follows:

Federal Contracts Fiscal Year 2023

1. Rehabilitate Runway 8R-26L and Connector Taxiways – Phase I (Construction)
2. Update Airport Pavement Management System
3. Security Checkpoint Expansion

Federal Contracts Fiscal Year 2024

1. Rehabilitate Runway 8R-26L and Connector Taxiways – Phase II (Construction)
2. Update Airport Layout Plan
3. Rehabilitate Runway 8R-26L, Taxiway N & Connector Taxiways East of Taxiway U (Design)
4. Terminal Complex Enhancement Environmental
5. Terminal Complex Enhancement Design

Federal Contracts Fiscal Year 2025

1. Rehabilitate Runway 8R-26L, Taxiway N & Connector Taxiways East of Taxiway U (Constr)
2. Rehabilitate Taxiway S East of Cucamonga Channel (Design)
3. Terminal Complex Enhancement (Design)
4. Terminal Complex Enhancement (Construction)

Market Area: The City of Ontario California (population 175,265 (2020 est)) is located in the southwestern part of San Bernardino County California and 35 miles east of downtown Los Angeles. The Ontario International Airport (ONT) is classified as a Medium Hub facility with approximately 2.2 Million enplaned passengers per year. According to the 2010 US Census, the racial makeup of Ontario was 83,683 (51.0%) White (18.2% Non-Hispanic White), 10,561 (6.4%) African American, 1,686 (1.0%) Native American, 8,453 (5.2%) Asian, 514 (0.3%) Pacific Islander, 51,373 (31.3%) from other races, and 7,654 (4.7%) from two or more races. Hispanic or Latino of any race were 113,085 persons (69.0%). The Community is the third largest populous municipality in San Bernardino County. The County demographics show steady growth due to industry, local retail and businesses. The airport is in Caltrans Department of Transportation District 8. The Caltrans districts are typically determined by the level of transportation related activities in the district as well as the level of management needed to administer the projects. Similarly, the pool of construction contractors available to perform the work are typically located in the same district. For this reason, District 8 was chosen as the primary representative market area based on reasonable proximity to Ontario International Airport and ability to perform work at the Airport on the upcoming projects. Due to the airport proximity to Districts 7 and 12 the market area will also include some areas in those districts as well. Thus, the market area includes San Bernardino, Riverside, Los Angeles, and Orange counties.

Step 1. 26.45(c) Analysis: Actual relative availability of DBE's

Step 1 examines the number of actual DBE's compared to number of businesses available to perform the work on the Airport's upcoming projects. This is achieved by identifying the work items using the North American Industry Classification System (NAICS) and relating them to the State of California Unified Certification Program Directory and the U.S. Census Bureau Data.

The work involving the use of federal transportation dollars was examined for potential DBE work items in market area. The following tables identify the work items and associated DBE's and businesses in these counties that could potentially be used for the Airport projects.

FY 2023 ONT Project 1 – Rehabilitate Runway 8R-26L and Connector Twys – Phase I (Constr.)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
212321	Sand and Gravel	4	48	8.33%
237110	Storm Sewer Line Construction	11	157	7.01%
237310	Airport Runway Construction	34	134	25.37%
237310	Painted Traffic Striping and Marking	9	75	12.00%
238110	Poured Concrete	22	334	6.59%
238910	Demolition/Excavation/Site Preparation	20	315	6.35%
238990	Construction Site Cleanup	167	1235	13.52%
423320	Construction Materials	19	103	18.45%
484110	Trucking	13	229	5.68%
541370	Construction Survey	5	79	6.33%
561439	Business Service Center (Reproductions)	14	325	4.31%
561730	Landscaping/Erosion Control	13	205	6.34%
561990	Traffic Control	11	152	7.24%
Total		342	3391	10.09%

FY 2023 ONT Project 2 – Update Airport Pavement Management System

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541370	Topographic Survey Services	20	239	8.37%
541380	Testing Lab	19	287	6.62%
561439	Business Service Center (Reproductions)	14	325	4.31%
Total		53	851	6.23%

FY 2023 ONT Project 3 – Security Checkpoint Expansion

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
236220	Institutional Building Construction	4	140	2.86%
237110	Sewer and Water	11	157	7.01%
238110	Poured Concrete Foundations	22	334	6.59%
238140	Masonry Contractor	27	235	11.49%
238160	Roofing Contractor	22	168	13.10%
238120	Structural Steel	24	186	12.90%
238210	Electrical/Lighting	28	202	13.86%
238220	Fire Protection System	4	55	7.27%
238310	Drywall and Insulation	21	225	9.33%
238320	Painting and Wall Coverings	26	259	10.04%
238330	Flooring	8	198	4.04%
238350	Finish Carpentry Contractors	16	320	5.00%
238910	Demo/Excav/Site Prep Contractors	20	315	6.35%
561730	Landscaping/Erosion Control	13	205	6.34%
Total		246	2999	8.20%

FY 2024 ONT Project 1 – Rehabilitate Runway 8R-26L and Connector Twys – Phase II (Constr.)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
212321	Sand and Gravel	4	48	8.33%
237110	Storm Sewer Line Construction	11	157	7.01%
237310	Airport Runway Construction	34	134	25.37%
237310	Painted Traffic Striping and Marking	9	75	12.00%
238110	Poured Concrete	22	334	6.59%
238910	Demolition/Excavation/Site Preparation	20	315	6.35%
238990	Construction Site Cleanup	167	1235	13.52%
423320	Construction Materials	19	103	18.45%
484110	Trucking	13	229	5.68%
541370	Construction Survey	5	79	6.33%
561439	Business Service Center (Reproductions)	14	325	4.31%
561730	Landscaping/Erosion Control	13	205	6.34%
561990	Traffic Control	11	152	7.24%
Total		342	3391	10.09%

FY 2024 ONT Project 2 – Update Airport Layout Plan

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541380	Testing Lab	12	152	7.89%
541620	Environmental Consulting (Airports)	24	231	10.39%
561439	Business Service Center (Reproductions)	14	325	4.31%
925120	Airport Planning	2	32	6.25%
Total		52	740	7.03%

FY 2024 ONT Project 3 – Runway 8R-26L, Taxiway N & Connector Twys East of Twy U (Design)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541330	Engineering Airport Civil	23	239	9.62%
541340	CADD Drafting	22	232	9.48%
541380	Testing Lab	19	287	6.62%
541620	Environmental Consulting (Airports)	24	231	10.39%
561439	Business Service Center (Reproductions)	14	325	4.31%
Total		102	1314	7.76%

FY 2024 ONT Project 4 – Terminal Complex Enhancement Environmental

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541380	Testing Lab	12	152	7.89%
541620	Environmental Consulting (Airports)	24	231	10.39%
561439	Business Service Center (Reproductions)	14	325	4.31%
541820	Public Relations	32	387	8.27%
Total		82	1095	7.49%

FY 2024 ONT Project 5 – Terminal Complex Enhancement (Design)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541310	Architect Airport Terminal	22	251	8.76%
541330	Engineering Airport Terminal	13	119	10.92%
541340	CADD Drafting	22	232	9.48%
541380	Testing Lab	12	152	7.89%
541410	Interior Design	32	438	7.31%
541620	Environmental Consulting (Airports)	24	231	10.39%
Total		139	1748	7.95%

FY 2025 ONT Project 1 – Runway 8R-26L, Taxiway N & Connector Twys East of Twy U (Constr)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
212321	Sand and Gravel	4	48	8.33%
237110	Storm Sewer Line Construction	11	157	7.01%
237310	Airport Runway Construction	34	134	25.37%
237310	Painted Traffic Striping and Marking	9	75	12.00%
238110	Poured Concrete	22	334	6.59%
238910	Demolition/Excavation/Site Preparation	20	315	6.35%
238990	Construction Site Cleanup	167	1235	13.52%
423320	Construction Materials	19	103	18.45%
484110	Trucking	13	229	5.68%
541370	Construction Survey	5	79	6.33%
561439	Business Service Center (Reproductions)	14	325	4.31%
561730	Landscaping/Erosion Control	13	205	6.34%
561990	Traffic Control	11	152	7.24%
Total		342	3391	10.09%

FY 2025 ONT Project 2 – Taxiway S East of Cucamonga Channel (Design)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541330	Engineering Airport Civil	23	239	9.62%
541340	CADD Drafting	22	232	9.48%
541380	Testing Lab	19	287	6.62%
541620	Environmental Consulting (Airports)	24	231	10.39%
561439	Business Service Center (Reproductions)	14	325	4.31%
Total		102	1314	7.76%

FY 2025 ONT Project 3 – Terminal Complex Enhancement (Design)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
541310	Architect Airport Terminal	22	251	8.76%
541330	Engineering Airport Terminal	13	119	10.92%
541340	CADD Drafting	22	232	9.48%
541380	Testing Lab	12	152	7.89%
541410	Interior Design	32	438	7.31%
541620	Environmental Consulting (Airports)	24	231	10.39%
Total		139	1748	7.95%

FY 2025 ONT Project 4 – Terminal Complex Enhancement (Construction)

NAICS	Type of Work	Total DBE's	Total Market Area Businesses	Relative Availability of DBEs
236220	Institutional Building Construction	4	140	2.86%
237110	Sewer and Water	11	157	7.01%
238110	Poured Concrete Foundations	22	334	6.59%
238140	Masonry Contractor	27	235	11.49%

238160	Roofing Contractor	22	168	13.10%
238120	Structural Steel	24	186	12.90%
238210	Electrical/Lighting	28	202	13.86%
238220	Fire Protection System	4	55	7.27%
238310	Drywall and Insulation	21	225	9.33%
238320	Painting and Wall Coverings	26	259	10.04%
238330	Flooring	8	198	4.04%
238350	Finish Carpentry Contractors	16	320	5.00%
238910	Demo/Excav/Site Prep Contractors	20	315	6.35%
561730	Landscaping/Erosion Control	13	205	6.34%
Total		246	2999	8.20%

In order to attain the DBE goal, the percentage should take into account the relative weight of the anticipated projects. The following tables reflect the relative weight of the work items for each anticipated project. Based on the relative weight of projects in previous tables, the following tables establish the relative weight, per project, per federal funding participation:

Relative Weight Computation			
Project Description	Federal Share	Relative Weight¹	Relative Availability of DBE (By Project)
FY2023 Proj 1 – Rehab. Rwy 8R-26L & Connector Taxiways Ph I Construction	\$ 27,982,000.00	14%	10.09%
FY2023 Proj 2 – Update APMS	\$ 484,000.00	0%	6.23%
FY2023 Proj 3 – Security Checkpoint Exp.	\$ 3,950,000.00	2%	8.20%
FY2024 Proj 1 – Rehab. Rwy 8R-26L & Connector Taxiways Ph II Construction	\$ 35,777,000.00	18%	10.09%
FY2024 Proj 2 – Update Airport Layout Plan	\$ 403,000.00	0%	7.03%
FY2024 Proj 3 – Rehab. Rwy 8R-26L Taxiway N & Connectors Design	\$ 3,611,000.00	2%	7.76%
FY2024 Proj 4 – Terminal Enhancements Env.	\$ 1,289,000.00	1%	7.49%
FY2024 Proj 5 – Terminal Enhancements Design	\$ 27,765,000.00	14%	7.95%
FY2025 Proj 1 – Rehab. Rwy 8R-26L Taxiway N & Connectors Construction.	\$ 33,207,000.00	17%	10.09%
FY2025 Proj 2 – Rehab. Rwy 8R-26L Taxiway S & Connectors Design.	\$ 2,391,000.00	1%	7.76%
FY2025 Proj 3 – Terminal Enhancements Design	\$ 9,685,000.00	5%	7.95%
FY2025 Proj 4 – Terminal Enhancements Constr	\$ 50,000,000.00	25%	8.20%
SUM TOTALS	\$ 196,544,000.00	100%	

Note: ¹ Expressed as a percentage of total participation FY 2023-2024

3 Year Weighted Average

Project Description	Relative Availability of DBE	Relative Weight ¹	Weighted Average
FY2023 Proj 1 – Rehab. Rwy 8R-26L & Connector Taxiways Ph I Construction	10.09%	14%	1.44%
FY2023 Proj 2 – Update APMS	6.23%	0%	0.02%
FY2023 Proj 3 – Security Checkpoint Exp.	8.20%	2%	0.16%
FY2024 Proj 1 – Rehab. Rwy 8R-26L & Connector Taxiways Ph II Construction	10.09%	18%	1.84%
FY2024 Proj 2 – Update Airport Layout Plan	7.03%	0%	0.01%
FY2024 Proj 3 – Rehab. Rwy 8R-26L Taxiway N & Connectors Design	7.76%	2%	0.14%
FY2024 Proj 4 – Terminal Enhancements Env.	7.49%	1%	0.05%
FY2024 Proj 5 – Terminal Enhancements Design	7.95%	14%	1.12%
FY2025 Proj 1 – Rehab. Rwy 8R-26L Taxiway N & Connectors Construction.	10.09%	17%	1.70%
FY2025 Proj 2 – Rehab. Rwy 8R-26L Taxiway S & Connectors Design.	7.76%	1%	0.09%
FY2025 Proj 3 – Terminal Enhancements Design	7.95%	5%	0.39%
FY2025 Proj 4 – Terminal Enhancements Constr	8.20%	25%	2.09%
SUM TOTALS		100%	9.06%

Note: ¹ Expressed as a percentage of total federal participation

The overall base figure is therefore established at 9.06%. Further analysis was done to see if any other adjustment to the base figure percentage of 9.06% is warranted.

Step 2. 26.45(d): Analysis: Adjustments to Step 1 base figure.

After calculating the overall base figure of the relative availability of DBEs, evidence was examined to determine what adjustment (if any) was needed to the base figure in order to arrive at the overall goal.

Past History Participation

Historical DBE accomplishments for the comparable work items at the Ontario International Airport range are as follows:

FY	DBE Goals			Accomplishments			Type of work
	RC	RN	Total	RC	RN	Total	
FY 18	13.00%	0.00%	13.00%	6.60%	0.00%	6.60%	Twy Constr
FY 19	13.00%	0.00%	13.00%	13.00%	5.70%	18.70%	Lighting Constr.
FY 20*	6.18%	2.00%	8.18%	0.00%	0.00%	0.00%	No Project/Grant
FY 21	6.18%	2.00%	8.18%	6.20%	12.20%	18.40%	Lighting/Twy Constr
FY 22	6.18%	2.00%	8.18%	6.20%	3.50%	9.70%	Lighting/Twy Constr

*No AIP Grant Awarded

Arranging this historical data of total DBE accomplishments from low to high, (0.00%, 6.60% 9.70%, 18.40%, 18.70%) we arrive at a central tendency or median accomplishment of 9.70%.

To arrive at an overall goal, we added our Step 1 base figure (9.06%) with our Step 2 adjustment figure (9.70%) and then averaged the total arriving at an overall goal of 9.38%. We believe this adjusted overall goal of 9.38% will accurately reflect DBE participation that can be achieved for the types of comparable project work being awarded during this three-year overall goal period.

Comparative Goal Analysis

The proposed goal calculated in Step 1 was also compared against the current triennium goal at several nearby Part 139 Airports in the Region. The established goals for the FY 2023/2024/2025 period are:

<i>Airport</i>	<i>Race Conscious</i>	<i>Race Neutral</i>	<i>Total Goal</i>
Los Angeles (LAX)	8.58%	1.52%	10.10%
San Francisco (SFO)	0.00%	4.20%	4.20%
San Diego (SAN)	0.00%	7.10%	7.10%
San Jose (SBD)	0.00%	5.00%	5.00%
John Wayne (JWA)	0.00%	4.70%	4.70%

Disparity Studies

While there is no disparity study specifically tailored to Ontario International Airport, there are other disparity studies that considered the markets areas in proximity to the Ontario International Airport. The most recent study is the ***Caltrans 2021 Disparity Study*** conducted by **BBC Research and Consulting**. The second relevant study that was examined is the ***2015 Disadvantaged Business Enterprise Disparity Study for the John Wayne Airport*** conducted by **MGT of America, Inc.** Both studies identified a disparity in DBE contracting. The results of these studies combined with a consistent shortfall in meeting the DBE goal on recent projects, OIAA will use a combination of contract goals for the FY 2023/2024/2025 triennium similar to the combination used at nearby Los Angeles World Airport. This is also consistent with 49CFR Part 26.51.

Adjustment summary

Therefore, the total adjusted overall goal for the Ontario International Airport Authority for FY 2023/2024/2025 period is **9.38%**.

Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation. 26.51(b) (1-9)

The Ontario International Airport Authority will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation.

In order to meet DBE participation goals on its DOT/FAA-assisted airport projects the following RN methods will be used:

- (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 49 CFR Part 26 Paragraph 26.39.
- (2) Providing technical assistance and other services;
- (3) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., requesting the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors.
- (4) Provide information on the Airport website with contact information for the DBE directory.
- (5) When requested, conduct debriefing sessions to explain why certain bids were unsuccessful.

Ontario International Airport Authority estimates that in meeting its overall goal for the Ontario International Airport, it will obtain 3.00% from RN participation and 6.38% through RC measures.

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

PUBLIC PARTICIPATION

Consultation: Section 26.45(g)(1).

In establishing the overall goal, Ontario International Airport Authority provided for consultation and publication. Public Notice was issued for the Consultation Meeting and the meeting was conducted on May 11, 2023 at 3PM. The meeting was open to all interested organizations which were expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Ontario International Airport Company efforts to establish a level playing field for the participation of DBEs. The Consultation Meeting was conducted at Ontario International Airport included a scheduled opportunity for direct, interactive exchange (e.g., a face-to-face meeting, video conference, or teleconference) with as many interested stakeholders as

possible focused on obtaining information relevant to the Ontario International Airport goal setting process, and occurred before we submitted our goal methodology to the operating administration for review pursuant to 49 CFR Part 26 paragraph 26.45(f). The program and FY 2023/2024/2025 goal computation were submitted to the operating administration and uploaded to FAA Civil Rights System on September 15, 2023. As of the date of this report we have not received any comments requesting changes to the program or goal.

Following the Consultation Meeting, the Ontario International Airport Authority published a notice in the Airport Website (<http://www.flyontario.com>) of the proposed overall goal, informing the public that the proposed goal and its rationale were available for inspection during normal business hours at the Ontario International Airport, 1923 East Avion Street Ontario, California 91761 for 30 days following the date of the notice, and informed the public that Ontario International Airport and FAA would accept comments on the goals for 30 days from the date of the notice.

Public Notice was issued on August 15, 2023 that the DBE Program and FY 2023/2024/2025 goal computation were available for review and comment. No comments were received therefore Ontario International Airport Authority has fully implemented the three-year goal.

The Ontario International Airport Authority has uploaded the Disadvantaged Business Enterprise Program for federal fiscal years 2023/2024/2025 to the FAA Civil Rights System which concludes the planning process.

EXAMPLE PUBLIC NOTICE

The Ontario International Airport Authority hereby announces its fiscal years 2023 through 2025 goal of 9.38% for Disadvantaged Business Enterprise (DBE) airport construction Contracts. The proposed goals and rationale are available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at the Ontario International Airport, 1923 East Avion Street Ontario, California 91761 for 30 days from the date of this publication.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

c/o Jamaal Avilez
Chief Administrative Officer
Ontario International Airport
1923 East Avion Street
Ontario, CA 91761
909/544-5429
Jamaal Avilez <Javilez@flyontario.com>

OR

Shaun A. Bouy
DBE/ACDBE Compliance Specialist
Federal Aviation Administration
U.S. Department of Transportation
777 S. Aviation Blvd, Suite 150
El Segundo, CA 90245
Shaun.A.Bouy@faa.gov
Phone: 267-702-5190

Contract Goals

The Ontario International Airport Authority will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN 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 recipient's overall goal that is not projected to be met through the use of RN means.

The Ontario International Airport Authority will establish contract goals only on those FAA/DOT-assisted airport contracts that have subcontracting possibilities. It need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work and availability of DBE's to perform the particular type of work).

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

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Manufacturer/Regular Dealer/Distributor/Broker**

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan. **DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)?

YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)?

YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased ?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7

Administrative Enforcement Mechanisms

The **OIAA** has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as follows:
 - a. Assessment of penalties; General Condition GC-9
 - b. Suspension of Work; General Condition GC-37
 - c. Termination for Default; General Condition GC-39
2. Breach of contract action, pursuant to;
 - a. California Civil Code, Article 1 Damages for Breach of Contract 3300 - 3322

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

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 and Personal Net Worth Statement:

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

ATTACHMENT 9

California UCP Agreement can be found here:

<https://californiaucp.dbesystem.com>

ATTACHMENT 10

Small Business Element

The OIAA will include this small business element into this DBE program. This small business element is intended to facilitate competition by and expand opportunities for small businesses. We are committed to taking all reasonable steps to eliminate obstacles to small businesses that may preclude their participation in procurements as contractors or subcontractors. We will meet its objectives using a combination of the following methods and strategies:

1. Objective/Strategies

- (1) 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.
- (2) 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.
- (3) 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.
- (4) Where feasible, the Authority may “unbundle” projects or separate large contracts into smaller contracts which may be more suitable for small business participation. This will be done following contract reviews to determine the availability of portions for unbundling. The Authority encourages its prime contractors and consultants to do the same.

2. Definition

The definitions provided shall be in accordance with 49 CFR Part §26.39:

1. Small Business Enterprise (SBE):
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).
2. Disadvantaged Business Enterprise (DBE):
At least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals; and
The Personal Net Worth (PNW) of the individual(s) falls below the PNW maximum established in 49 CFR Part 26 as adjusted periodically; and
The management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

For the purpose of the small business element of the OIAA DBE Program, DBE's who are also defined as small businesses shall be in accordance with 49 CFR Part 26

3. Verification

The OIAA will accept the following certifications for participation in this small business element of the DBE Program with applicable stipulations:

- (1) DBE Certification by the State of California – California Unified Certification Program (CUCP) which stipulates that a firm has been determined to meet all the requirements in accordance with 49 CFR Part 26. Certification determinations are evidenced by inclusion in the listing of DBE's on the CUCP DBE Directory.
- (2) Certification through the OIAA may occur on projects with specific SBE goals. Firms will be able to submit an unsworn affidavit declaring their qualification as an SBE. Affidavits will be submitted at the time of bid submission. OIAA will verify, and certify, the status of SBE firms on the successful bidder's team. Certified firms will not have to submit for recertification if participating on other OIAA projects within a 12-month period.

4. Monitoring/Record Keeping

- (1) Documentation regarding the small business element of this program will be organized in a designated directory, or in a system of OIAA's choosing, and will be monitored and updated on an annual basis with the OIAA administration.
- (2) The Small Business element will be monitored by reviewing project financial reporting documentation. If the financial reporting shows evidence of the need to revise the program, the OIAA will revisit the SB Element to ensure it is achieving the desired effect.

5. Assurances

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

ONT_DBE_Program_Plan_2025

Final Audit Report

2025-05-01

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