



# **HAYWARD EXECUTIVE AIRPORT DISADVANTAGE BUSINESS ENTERPRISE PLAN**

**U.S. DEPARTMENT OF TRANSPORTATION  
DBE PROGRAM – 49 CFR PART 26**

**Prepared for:**



**Prepared BY:**

**Kimley»»Horn**



## POLICY STATEMENT

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

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

It is the policy of Hayward Executive Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also Hayward Executive Airport 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.

Douglas McNeeley, Airport Manager, has been delegated as the DBE Liaison Officer. In that capacity, Mr. McNeeley 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 Hayward Executive Airport in its financial assistance agreements with the Department of Transportation.

Hayward Executive Airport has disseminated this policy statement to the FAA 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 the Hayward Executive Airport DOT-assisted contracts. The distribution was accomplished by posting to the Hayward Executive Airport official website.

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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**

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

### **Section 26.5 Definitions**

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

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

Hayward Executive Airport 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, Hayward Executive Airport 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**

Hayward Executive Airport 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:

Hayward Executive Airport 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. Hayward Executive Airport 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

The City of Hayward's Public Works does not maintain a Bidder's list. When a project is advertised through Bidnet Direct, the work categories are selected and the appropriate contractors and plan rooms are notified. Hayward Executive Airport does not include resource listing for locating DBE contractors.

### **Section 26.13 Assurances Recipients and Contractors Must Make**

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

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

Hayward Executive Airport 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. Hayward Executive Airport shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. Hayward Executive Airport 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 Hayward Executive Airport 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:** Hayward Executive Airport 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**

Hayward Executive Airport 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.

Hayward Executive Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Hayward Executive Airport is in compliance with it and Part 26. Hayward Executive Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. Hayward Executive Airport 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 the Hayward Executive Airport:

*Douglas McNeeley*  
*Airport Manager*  
*20301 Skywest Drive*  
*Hayward, CA, 94541*  
*510-293-5462*  
[douglas.mcneeley@hayward-ca.gov](mailto:douglas.mcneeley@hayward-ca.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Hayward Executive Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager 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 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. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

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

Hayward Executive Airport encourages prime contractors on DOT-assisted contracts to make use of financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.

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

Hayward Executive Airport 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, Hayward Executive Airport established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from Hayward Executive Airport.

Hayward Executive Airport ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, Hayward Executive Airport has selected the following method to comply with this requirement:

Hayward Executive Airport may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, Hayward Executive Airport 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.

The Owner may decline to hold retainage from prime Contractors and require a contract clause obligating prime Contractors to make prompt and full payment of

any retainage kept by prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

- a. No retainage will be held by the Owner from progress payments due the prime.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- c. When at least 95% of the project work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

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

- Hayward Executive Airport proactively reviews contract payments to subcontractors including DBEs monthly for active projects. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Hayward Executive Airport by the prime contractor.

#### Prompt Payment Dispute Resolution

**[Recipient]** 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.

***[Detail steps here (e.g., meetings between prime and sub, with resident project representative and/or project manager presence as appropriate). Any meeting for the purpose of dispute resolution should include individuals authorized to bind each interested party, including Recipient representative(s) with authority to take any necessary enforcement action.]***



**[Recipient]** has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage **[examples of mechanisms include the following]**:

(1) Alternative dispute resolution (ADR)

**[Provide the contract clause(s) you will use to require this and explain how the alternative dispute resolution mechanism will function. If you do not specify the nature of the ADR mechanism, explain how you will determine a proposed mechanism is sufficient (for example, perhaps consider a contract clause that requires the prime contractor to submit a detailed alternative dispute resolution plan for your approval prior to the issuance of any notice to proceed).]**

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

**[Provide the contract clause(s) that implements this provision. If selecting this option to be an effective enforcement measure, your organization must also include a contract clause requiring primes to pay subcontractors for completed work prior to requesting payment from the Recipient.]**

(3) Other mechanisms

**[Detail the mechanisms that will be used and how they will be implemented and enforced. Provide the contract clause(s) that pertain to the mechanisms developed.]**

### Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- 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

**[Recipient]** provides appropriate means to enforce the requirements of § 26.29. These means include:

***[Detail the SPECIFIC means that will be utilized. You must identify and actively enforce such means to be regarded by the operating administration as implementing your program in good faith. Possible examples include, but are not limited to:***

- ***In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor***
- ***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***
- ***Pay subcontractors directly and deduct this amount from the retainage owed to the prime***
- ***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***
- ***Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly)***

***These are examples, not recommendations or requirements. Include in your DBE program the samples of the contract language you will use for all means you develop to enforce the requirements of this section.]***

Hayward Executive Airport will actively implement the enforcement actions detailed above.

### **Section 26.31      Directory of Certified Firms**

Hayward Executive Airport 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 types of work the firm has been certified to perform as a DBE and/or ACDBE.

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

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

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

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

### **Section 26.35 Business Development and Mentor-Protégé Programs**

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

### **Section 26.37 Monitoring Responsibilities**

Hayward Executive Airport 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.

Hayward Executive Airport 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 a running tally of actual DBE attainments (*e. g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. This mechanism to maintain a running tally of overall goal attainment will be used to inform Hayward Executive Airport decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Hayward Executive Airport 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 maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. 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

Hayward Executive Airport 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 DBELO. Contracting records are reviewed by DBELO. Hayward Executive Airport 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**

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

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

### **Section 26.43 Set-asides or Quotas**

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

### **Section 26.45 Overall Goals**

Hayward Executive Airport 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), Hayward Executive Airport will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Hayward Executive Airport 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 Hayward Executive Airport 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. Hayward Executive Airport will use a DBE Directory information and Census Bureau Data as a method to determine the base figure. Hayward Executive Airport 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. Hayward Executive Airport 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 Hayward Executive Airport market.

In establishing the overall goal, Hayward Executive Airport 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 Hayward Executive Airport 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 Hayward Executive Airport 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 Hayward Executive Airport 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, Hayward Executive Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the Hayward Executive Airport 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 the Hayward Executive Airport official internet web site.

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

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

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

### Project Goals

If permitted or required by the FAA, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and it must meet all the substantive and procedural requirements pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the

DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

#### Prior Operating Administration Concurrence

Hayward Executive Airport 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 Hayward Executive Airport for calculating goals is inadequate, FAA may, after consulting with Hayward Executive Airport, adjust the overall goal or require that the goal be adjusted by the Hayward Executive Airport. 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**

Hayward Executive Airport 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 Hayward Executive Airport fails to administer its DBE program in good faith.

Hayward Executive Airport 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.

Hayward Executive Airport 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) Hayward Executive Airport 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**

Hayward Executive Airport 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.

Hayward Executive Airport 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.

Pamela Svrclin, Airport Operations Supervisors 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.

Hayward Executive Airport 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:
  - a. 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 Hayward Executive Airport . 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 the Hayward Executive Airport 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, Hayward Executive Airport 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 Hayward Executive Airport solicits proposals to design and build a project with minimal project details at time of letting, Hayward Executive Airport 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, Hayward Executive Airport will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Hayward Executive Airport 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.

Hayward Executive Airport 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, Hayward Executive Airport **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 Hayward Executive Airport 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: Pamela Svrclin, Airport Operations Supervisor at 510.293.5462 or [pamela.svrclin@hayward-ca.gov](mailto:pamela.svrclin@hayward-ca.gov). 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)

Hayward Executive Airport 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 Hayward Executive Airport deems appropriate if the prime contractor fails to comply with the requirements of this section.

Hayward Executive Airport 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.

Hayward Executive Airport 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 Hayward Executive Airport 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.

Hayward Executive Airport 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 Hayward Executive Airport's written consent as provided in § 26.53(f); and
- (2) Unless Hayward Executive Airport's 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.

Hayward Executive Airport 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) Hayward Executive Airport 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 Hayward Executive Airport 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 Hayward Executive Airport determines compels the termination of the DBE subcontractor;

Before transmitting to Hayward Executive Airport 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 Hayward Executive Airport 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 Hayward Executive Airport and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why Hayward Executive Airport should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), Hayward Executive Airport 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 Hayward Executive Airport 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. Hayward Executive Airport 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.

## **SUBPART D – CERTIFICATION STANDARDS**

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

Hayward Executive Airport 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:

California Department of Transportation (Caltrans)  
Office of Business & Economic Opportunity  
1823 14th Street  
Sacramento, CA 95811  
Phone: 916.324.1700  
Email: DBE.Certification@dot.ca.gov

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>.

## **SUBPART E – CERTIFICATION PROCEDURES**

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full California UCP agreement. The full UCP agreement can be found at:

<https://californiaucp.dbesystem.com/>  
<https://caltrans.dbesystem.com/>

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

Hayward Executive Airport is not a member of a Unified Certification Program (UCP) administered by the California UCP. The CAUCP is responsible for DBE certification in the state of California and provides firms a single place to find certifying agencies. To apply for DBE certification interested firms should contact any one of the ten CUCP Certifying Partners -Los Angeles County Metropolitan Transit Authority (LA Metro), San Diego County Regional Airport Authority (SDCRAA), San Francisco Bay Area Rapid Transit District (BART), San Francisco International Airport (SFO), San Francisco Municipal Transportation Agency (SFMTA), San Mateo County Transit District (SAMTrans), Santa Clara Valley Transportation Authority (VTA), City of Los Angeles, City of Fresno, California Department of Transportation (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 the Hayward Executive Airport 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 Hayward Executive Airport**

Hayward Executive Airport understands that if it fails to comply with any requirement of this part, Hayward Executive Airport 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.

Hayward Executive Airport 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**

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **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.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that Hayward Executive Airport is in noncompliance with part 26, the appropriate DOT office will promptly send Hayward Executive Airport, return receipt requested, a written notice advising that there is reasonable cause to find Hayward Executive Airport in noncompliance. The notice states the reasons for this finding and directs

Hayward Executive Airport to reply within 30 days concerning whether you wish to begin conciliation.

**(4) Conciliation.**

- a. If Hayward Executive Airport requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
- b. If Hayward Executive Airport and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and Hayward Executive Airport is regarded as complying. The conciliation agreement sets forth the measures Hayward Executive Airport has taken or will take to ensure compliance. While a conciliation agreement is in effect, Hayward Executive Airport remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If Hayward Executive Airport fail to carry out the terms of a conciliation agreement, Hayward Executive Airport is in noncompliance.
- d. If Hayward Executive Airport does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

**(5) Enforcement actions.**

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

### **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).

Hayward Executive Airport , 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. Hayward Executive Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

## ATTACHMENTS

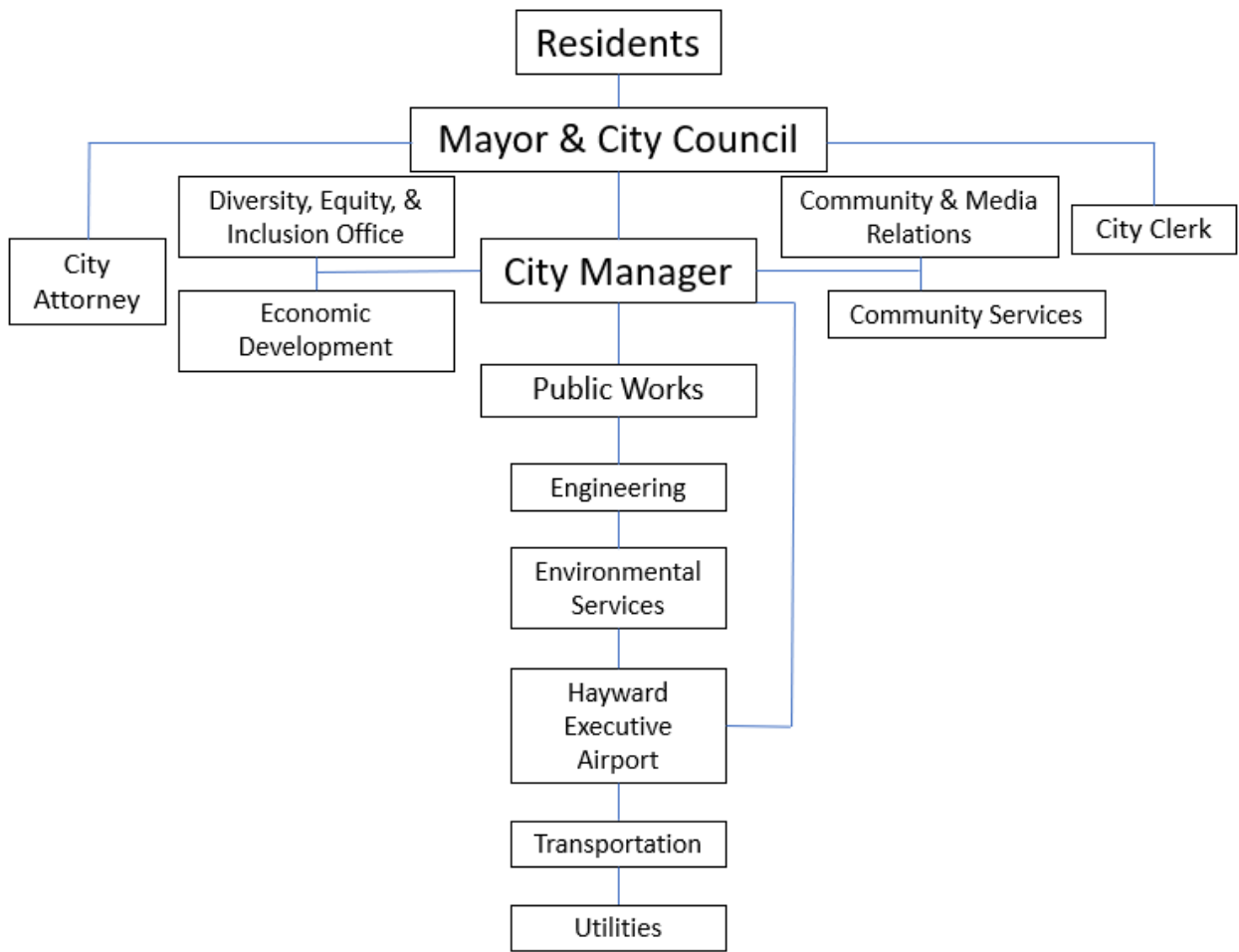
- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- 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

#### Bidder's List Collection Form

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Over \$10 million



## ATTACHMENT 4

California UCP Directory may be found here:

<https://californiaucp.dbesystem.com/>

## ATTACHMENT 5

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** City of Hayward

**Goal Period:** FY-2025-2027 – October 1, 2025 through September 30, 2027

<b>DOT-assisted contract amount:</b>			<b>Annual DBE Goal</b>
	FY-2025	\$6,743,100	2.16%
	FY-2026	\$5,497,000	11.16%
	FY-2027	\$590,000	4.67%
	<b>Total</b>	<b>\$12,830,100</b>	

**Overall Three-Year Goal:** 3.4%, to be accomplished through 100% RN

**Total dollar amount to be expended on DBEs:** \$708,221.52

**Describe the Number and Type of Contracts that the airport anticipates awarding:**

Contracts Fiscal Year #1

1. Airport Project – Tower Siting Study - \$225,500
2. Taxiway Z West Reconstruction – Construction (BIL) – \$2,723,300
3. Taxiway Z West Reconstruction – Construction - \$2,426,300
4. Tower Renovations for Design and Construction - \$600,000
5. T Hangar improvements - \$200,000
6. Taxiway Z Design - \$568,000

Contracts Fiscal Year #2

1. Air Traffic Control Tower Relocation (Environmental) - \$1,000,000
2. OFA Midfield Improvements Construction – Sulphur Creek Culvert (RSAT Recommendation) - \$4,500,000

Contracts Fiscal Year #3

1. Taxiway A West Rehab Design - \$590,000

**Market Area:** Alameda County, San Francisco County, San Mateo County, Contra Costa County, Marin County, Santa Clara County, Napa County, Solano County, and Sonoma County.

#### **Step 1. Relative Availability of DBEs**

The step 1 figure for the relative availability was calculated as follows:

Method: Use DBE Directories <https://californiaucp.dbesystem.com>

and Census Bureau Data from <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

Fiscal Year #1

For FY-2025, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Airport Project - Tower Siting Study (\$225,000)	Civil Engineering (or Planning)	Civil Engineering Services	541330	\$225,500	523	3	0.6%	\$1,294
Taxiway Z West Reconstruction – Construction (BIL) (\$2,723,333)	Electrical Contractors and Other Wiring Installation Contractors	Electrical Contractors	238210	\$725,000	355	3	0.8%	\$6,127
	Geophysical Surveying and Mapping Services	Surveying and Mapping	541360	\$15,000	0	2	-	-
	Highway, Street, and Bridge Construction - Paving	Mill and Overla	237310	\$1,525,000	37	0	0.0%	\$0.00
	Highway, Street, and Bridge Construction	Striping/Airport runway line painting	237310	\$45,000	37	8	21.6%	\$9,730
	Environmental Consulting Services	Sediment control system construction	541620	\$17,300	112	2	1.8%	\$309
	Flagging (i.e., traffic control) services	Flagging and traffic control services	561990	\$25,200	48	3	6.3%	\$1,5759
	Landscaping Services	Landscape services, sod	561730	\$13,800	296	0	0.0%	\$0.00
	Highway, Street, and Bridge Construction	Construction Management	237310	\$275,000	37	8	21.6%	\$59,460
	Testing Laboratories	Geotechnical Testing laboratories or services	541380	\$42,000	56	2	3.6%	\$1,500
		City Administrative Costs	N/A	\$40,000	0	0	-	-
Taxiway Z West Reconstruction – Construction (\$2,426,667)	Electrical Contractors and Other Wiring Installation Contractors	Electrical Contractors	238210	\$600,000	355	3	0.8%	\$5,070

	Geophysical Surveying and Mapping Services	Surveying and Mapping	541360	\$15,000	0	2	-	-
	Highway, Street, and Bridge Construction - Paving	Mill and Overlay	237310	\$1,400,000	37	0	0.0%	\$0.00
	Highway, Street, and Bridge Construction	Striping/Airport runway line painting	237310	\$45,000	37	8	21.6%	\$9,730
	Environmental Consulting Services	Sediment control system construction	541620	\$15,300	112	2	1.8%	\$273
	All Other Support Services	Flagging and traffic control services	561990	\$25,200	48	3	6.3%	\$1,575
	Landscaping Services	Landscape services, sod	561730	\$13,800	296	0	0.0%	\$0.00
	Highway, Street, and Bridge Construction	Construction Management	237310	\$240,000	37	8	21.6%	\$51,892
	Testing Laboratories	Geotechnical Testing laboratories or services	541380	\$42,000	56	2	3.6%	\$1,500
		City Administrative Costs	XX	\$30,000	0	0	-	-
Tower Renovations for Design and Construction of HVAC and Fire Alarm System (\$600,000)	Plumbing, Heating, and Air-Conditioning Contractors	HVAC	238220	\$300,000	357	0	0.0%	\$0.00
	Fire alarm sales combined with installation, repair, or monitoring services	Fire Alarm System	561621	\$300,000	39	0	0.0%	\$0.00
T Hangar Improvements	Other Building Finishing Contractors	Hangar Wheel	238390	\$100,000	41	1	2.4%	\$2,440
	All other Specialty Trade Contractors	Track	238990	\$100,000	80	8	10.0%	\$10,000
Taxiway Z Design (\$568,000)	Civil Engineering	Engineering Design Services	541330	\$568,000.00	523	2	0.4%	\$2,172

Fiscal Year #2  
 For FY-2026, award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Directory	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Taxiway Z Design (\$568,000)	Civil Engineering	Engineering Design Services	541330	\$568,000.00	523	2	0.4%	\$2,172
OFA Midfield Improvements Construction - Sulphur Creek Culvert (RSAT Recommendation) (\$4,500,000)	Water and Sewer Line and Related Structures Construction	Grading and Drainage	237110	\$3,100,000	25	3	12.0%	\$372,000
	Electrical Contractors and Other Wiring Installation Contractors	Electrical	238210	\$450,000	355	3	0.8%	\$3,803
	Surveying and Mapping (except Geophysical) Services	Construction Staking	541370	\$30,000	15	6	40.0%	\$12,000
	Environmental Consulting Services	Sediment control system construction	541620	\$90,000	112	2	1.8%	\$1,607
	Flagging (i.e., traffic control) services	Flagging and traffic control services	561990	\$200,000	48	3	6.3%	\$12,500
	Landscaping Services	Landscape services, sod	561730	\$42,000	296	0	0.0%	\$0.00
	Highway, Street, and Bridge Construction	Construction Management	237310	\$450,000	37	8	21.6%	\$97,297
	Testing Laboratories	Geotechnical Testing laboratories or services	541380	\$80,000	56	2	3.6%	\$2,857
		City Administrative Costs	N/A	\$55,000	0	0	-	-

Fiscal Year #3

For FY-2027, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$) (= Trade \$ x DBE %)</i>
<i>Taxiway A West Rehab Design</i>	Civil Engineering	Engineering Design Services	541330	\$400,000	523	2	0.4%	\$1,530
	Geotechnical Engineers	Testing Laboratory (Geotechnical)	541380	\$85,000	523	0	0.0%	\$0.00
	Surveyor	Survey and Mapping	541370	\$65,000	15	6	40.0%	\$26,000
		County development agencies	N/A	\$40,000	0	0	-	-

Dividing the weighted DBE totals by the total estimate for all trades gives an initial DBE availability figure for the projects anticipated during the goal-setting period (This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Weighted DBE Goal at Step 1: 3.4%

## **Step 2: Adjustments to Step 1 base figure**

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

### Past History Participation

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, Hayward Executive Airport is adopting the Step 1 base figure as the overall goal for this three-year goal period.

Furthermore, there are no applicable disparity studies for the local market area or recent legal case information from relevant jurisdictions to show evidence of barriers to make entry or competitiveness of DBEs in the market area that is sufficient to warrant making an adjustment to the base goal.

### **Breakout of Estimated “Race and Gender Neutral” (RN) Participation.**

Under 49 CFR 26.13(b): The contractor, subrecipient or subcontractor shall not discriminate based on 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.

Take necessary and reasonable steps to ensure that DBEs have opportunity to participate in the contract (49 CFR 26).

The prime contractor shall meet the DBE goal shown elsewhere in these special provisions or demonstrate that they made adequate good faith efforts to meet this goal.

Make work available to DBEs and select work parts consistent with available DBE subcontractors and suppliers.

It is your responsibility to verify that the DBE firm is certified as DBE at date of bid opening. For a list of DBE s certified by the California Unified Certification Program, go to:

<http://www.ucp.dot.ca.gov>

All DBE participation will count toward the California Department of Transportation’s federally mandated statewide overall DBE goal.

Credit for materials or supplies you purchase from DBEs counts towards the goal in the following manner:

1. 100 percent counts if the materials or supplies are obtained from a DBE manufacturer.
2. 60 percent counts if the materials or supplies are obtained from a DBE regular dealer.
3. Only fees, commissions, and charges for assistance in the procurement and delivery of materials or supplies count if obtained from a DBE that is neither a manufacturer nor regular dealer. 49 CFR 26.55 defines "manufacturer" and "regular dealer."

You receive credit towards the goal if you employ a DBE trucking company that performs a commercially useful function as defined in 49 CFR 26.55(d)(1) through (4) and (6).



Hayward Executive Airport will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Provide notices of informally let contracts to DBEs who perform those types of work or supply materials relative to the contract.
2. Refer DBEs to other resources for assistance when appropriate.

Hayward Executive Airport estimates that in meeting the established overall goal of 3.4% it will obtain 100% from RN participation measures.

This breakout is based on:

- a) The U.S. 9<sup>th</sup> Circuit Court decision in the Western States Paving vs. Washington State DOT case. The Court ruled the Department of Transportation's DBE Program is constitutional and narrowly tailored, however race conscious elements of a national program must be limited to those parts of the country where its race-based measures are demonstrably needed. Use of RC measures must be substantiated by a disparity study reflecting evidence of discrimination. Analysis in the 2012 Disparity Study completed by BBC Research & Consulting for the California Department of Transportation (Caltrans) showed that Caltrans had a higher percentage of DBE participation on contracts that did not use race-conscious goals.

Hayward Executive Airport will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation 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, Hayward Executive Airport provided for consultation and publication. This process included 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 Hayward Executive Airport efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation process are as follows.

The consultation will be in a hybrid public meeting held on August 14, 2024, at 10:00 a.m. for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. The first fifteen minutes will be used to explain the process behind the goal calculation, and the balance of the meeting will be open to public comment related to the goal. The meeting will be held at Hayward Executive Airport Conference room and accessible online through a Zoom meeting link.

Comments will be collected and will be added to a future version to be submitted to the FAA.

A notice of the proposed goal was published on the Hayward Executive Airport official website before the methodology was submitted to FAA.

Following the consultation, a notice was published in the Hayward Executive Airport regarding the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Hayward Executive Airport offices for 30 days following the date of the notice, and informing the public that Hayward Executive Airport will accept comments on the goals for 30 days from the date of the notice.

If the proposed goal changes following review by FAA, the revised goal will be posted on the Hayward Executive Airport official website.

Notwithstanding paragraph (f)(4) of §26.45, Hayward Executive Airport proposed goals will not be implemented until the stakeholder consultation requirement has been met.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses, if any.

## PUBLIC NOTICE

Hayward Executive Airport hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 3.4% for FAA-funded contracts/agreements. The proposed goal pertains to federal fiscal years 2025 through 2027. Prior to submittal to the FAA, a hybrid public meeting will be held on August 14, 2024, at 10:00 a.m. for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process.

The meeting will consist of two parts. The first fifteen minutes will be used to explain the process behind the goal calculation, and the balance of the meeting will be open to public comment related to the goal. Specific subjects will include DBE participation at Airport projects, and hear from community organizations who can share information on the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and the recipient's efforts to establish a level playing field for the participation of DBEs. Minority, women's and general contractor groups and encouraged to participate.

The proposed goal and its attendant methodology are available for inspection between 8:00 a.m. and 5:00 p.m. Monday through Friday at the Hayward Executive Airport Office and on the Airport webpage (<http://www.hayward-ca.gov/airport/doing-business-withus/projects>) for 30 days from the date of this publication.

### Meeting details:

August 14, 2024, at 10:00 a.m.  
Hayward Executive Airport Conference Room  
20301 Skywest Dr  
Hayward, CA 94541

Virtual attendance can be accessed via this link:

Virtual attendance can be accessed via this link: <https://kimley-horn.zoom.us/j/97518716681?pwd=BgL5bAMLC2ruQuB2IbVSQRg8zMiPRb.1>

Meeting ID: 975 1871 6681  
Passcode: 314262

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

Hayward Executive Airport  
20301 Skywest Drive, Hayward, CA 94541  
510-293-8678  
[airport@hayward-ca.gov](mailto:airport@hayward-ca.gov)

**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  NO<sup>1</sup>

(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.)

<sup>1</sup> 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)?

YES<sup>2</sup>  NO<sup>3</sup>

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

YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> 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%.

<sup>3</sup> 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**

Hayward Executive Airport 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;
2. Breach of contract action, pursuant to State Code Civil Code Sections 3300-3302 and 3353-3360.

## ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

Hayward Executive Airport is not a certifying agency but relies on DBE certifications of the California UCP. A link to the California DBE UCP Certification Application Process, including required forms, is available at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>



## ATTACHMENT 9

### California UCP Agreement:

Hayward Executive Airport does not have an agreement with the California UCP, but does rely on the California UCP certification to determine eligibility of a firms' participation in FAA-funded contracts to be counted toward DBE program and contract goals.

## ATTACHMENT 10

### Small Business Element

#### 1. Objective/Strategies

(1) 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.

(2) To meet the portion of the overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

#### 2. Definition

**As stated on the Office of Small Business and DVBE Services website. Small Business to be eligible for certification, the small business must meet the following requirements:**

- Be independently owned and operated;
- Not dominant in field of operation;
- Principal office located in California;
- Owners (officers, if a corporation) domiciled in California; and,
- Including affiliates, be either,
  - A business with 100 or fewer employees; an average annual gross receipts of \$16 million or less, over the last three tax years;
  - A manufacturer with 100 or fewer employees; or,
  - A micro business – a small business will automatically be designated as a micro business, if gross annual receipts are \$5,000,000 or less; or the small business is a manufacturer with 25 or fewer employees.

#### 3. Verification

The Office of Small Business and DVBE Services (OSDS) is the state's certifying that administers the small business, small business for the purpose of public works, and DVBE certification programs. Contractor shall maintain, and provide to the City, documentation from the OSDS recognizing subcontractors as being certified as a small business or DVBE.

#### 4. Monitoring/Record Keeping

- Hayward Executive Airport will establish Small Business Enterprise (SBE) participation goals concurrent with the next DBE overall goal setting process.

#### 5. Assurances

- The program is permitted under state law;
- Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;

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