



THE CITY OF SAN DIEGO

DEPARTMENT OF TRANSPORTATION (DOT)
Federal Aviation Administration (FAA) – Western Pacific Region
DBE Program Plan
April 13, 2010



I. Definition of Terms

The terms used in this program have the meaning defined in Section 26.5.

II. OBJECTIVE/POLICY STATEMENT (§26/1.26/23)

The City of San Diego (City) is the recipient of U. S Department of Transportation (DOT) Federal airport funds authorized by 49 U.S.C. 47101, *et seq.* As a condition of receiving these funds, the City agrees to implement this Disadvantaged Business Enterprise (DBE) Program Plan (herein referred to as the DBE Program Plan) based on U. S. Department of Transportation (DOT), 49, CFR, Part 26 requirements. We will continue to carry out this program until all funds from DOT have been expended. We will provide DOT with updates regarding any significant changes in the program.

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

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

III. Nondiscrimination (§26.7)

The City will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin. In administering its DBE Program Plan, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

IV. Contract Assurance (§26.13b)

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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.

V. Annual DBE Submittal Form (§26.21)

The City will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for use by FAA recipients. We will include an Annual Anticipated DBE Participation Level (AADPL), the name, phone number and electronic mailing address of the designated DBELO and the choice of Prompt Pay provisions to be used by the City for the Federal Fiscal Year. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

VI. Race-Neutral Means of Meeting the Overall DBE Goal (§26.51)

The City must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).

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 facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;
6. Providing services to help DBE's 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 DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

9. Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VII. Race Conscious Means of Meeting the Overall DBE Goal (§26.51(d))

The City has established contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet the portion of our AADPL that we project not being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women and Asian Pacific Americans.

VIII. Quotas (§26.43)

The City will not use quotas or set-asides in any way in the administration of this DBE Program Plan.

IX. DBE Liaison Officer (DBELO) (§26.25)

As indicated in our Annual Anticipated DBE participation memo, the City has designated the following individual as our DBE Liaison Officer:

Name: Debra Fischle-Faulk
Title: Director, Administration Department
Address: 202 "C" Street, San Diego, CA 92101 MS 9A
Telephone: 619-533-4541
Fax: 619-236-7344
E-Mail: dffaulk@sandiego.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the City complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Mayor concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 9 professional employees assigned to the DBE program on a full time basis and 1 administrative employee assigned to the DBE program on a full time basis. In addition, City Attorney, Engineering & Capital Projects and Purchasing & Contracting staff provides as needed legal, technical and coordination support 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.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

X. Federal Financial Assistance Agreement Assurance (§26.13)

The City will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

“The City shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements of 49 CFR Part 26. The City shall take all necessary and reasonable steps under 49 CFR, Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City's DBE Program, as required by 49 CFR, Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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.).”

XI. DBE Financial Institutions (§26.27)

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

XII. Directory (§26.31)

The City will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

XIII. Required Contract Clauses (§26.13, 26.29)

The City ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

The contractor 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 City deems appropriate.

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors.

XIV. Record Keeping Requirements (§26.11)

A. REPORTING TO DOT (§26.11(b))

We will submit annually the Uniform Report of DBE Awards or Commitments and Payment Form, as modified for use by FAA recipients.

B. BIDDERS LIST (§26.11(c))

The City will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status

XV. Transit Vehicle Manufacturers (§26.49)

If FTA assisted contracts will include transit vehicle procurements, the City will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of this section.

XVI. Monitoring and Enforcement Mechanisms (§26.37)

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil

Penalties rules) provided in 26.107.

2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This will be accomplished requiring contractors to submit ongoing monthly invoicing reports and a final summary report at prior to the release of final payment and retention. This information will be tracked through an excel spreadsheet.
4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT reporting form.

A. MONITORING PAYMENTS TO DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City and/or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

XVII. Information, Confidentiality, Cooperation (§26.109)

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

Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.



Wally Hill, Assistant Chief Operating Officer

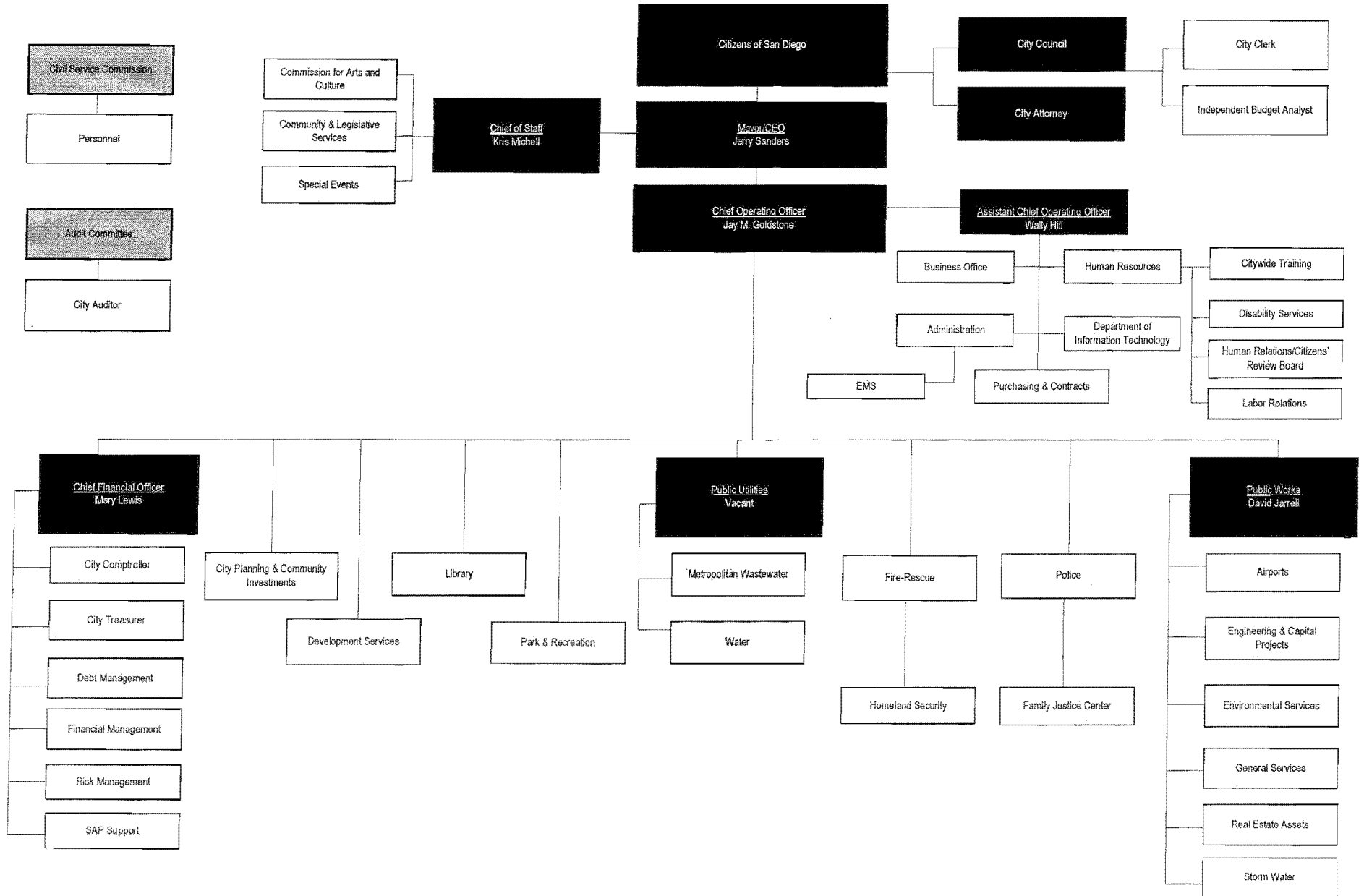
4-22-10
Date

APPROVED:

Patricia A. White, External Program Specialist
Federal Aviation Administration-Western Pacific Region

Date

CITY OF SAN DIEGO ORGANIZATION
(All City Functions)



**Equal Opportunity Contracting Program
Organizational Chart
FY 2010**

