



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

**1. Assurances of Non-Discrimination: (PS EPRISE 2.0)**

The consultant, subrecipient, or subconsultant shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The consultant shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the consultant 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 Department deems appropriate, which may include, but are not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages;
- (4) Disqualifying the consultant from future proposals as non-responsible.

The consultant, subrecipient, or subconsultant shall ensure that all subcontract agreements contain this non-discrimination assurance.

**2. Time is of the Essence: (PS EPRISE 8.0)**

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS

**3. Computation of Time: (PS EPRISE 9.0)**

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, Federal or State holiday. In circumstances where the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

**4. Payment Reporting: (PS EPRISE 16.0)**

The consultant shall report on a monthly basis indicating the amounts paid to all subconsultants, of all tiers, working on the project. Reporting shall be in accordance with Section 4.33 of the contract.

**5. Crediting DBE Participation Toward Meeting Goals: (PS EPRISE 17.0)**

**General Requirements:**

To count toward meeting the goal, the DBE firms must be certified at the time of Cost Proposal submission in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS website. General descriptions of all NAICS codes can be found at <http://www.naics.com/search/>.

Credit towards the consultant's DBE goal is given only after the DBE has been paid for the work performed.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subconsultant purchases or leases from the prime consultant or its affiliate will not be credited toward DBE participation.



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

The consultant bears the responsibility to determine whether the DBE possesses the proper consultant's license(s) to perform the work and, if DBE credit is requested, that the DBE subconsultant is certified for the requested type of work.

If a DBE cannot complete its work due to failure to obtain or maintain its licensing, the consultant bears the responsibility to notify the PM, ECS Contract Specialist and BECO immediately after the consultant becomes aware of the situation, and request approval to replace the DBE with another DBE. The consultant shall follow the DBE termination/substitution requirements described in Subsection 22.0 of these DBE provisions.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The consultant bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime consultant, subconsultant, or as a vendor of materials or supplies. The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

The consultant may credit second-tier subcontracts issued to DBEs by non-DBE subconsultants. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

A prime consultant may credit the entire amount of that portion of a contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime consultant or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subconsultant is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non-DBE firm does not count toward a DBE goal.

A prime consultant may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consulting, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

**DBE Prime Consultant:**

When a certified DBE firm proposes on a contract that contains a DBE goal, the DBE firm is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other proposer. In most cases, a DBE proposer on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. However, all the work that is performed by the DBE proposer or any other DBE subconsultants and DBE suppliers will count toward the DBE goal. The DBE proposer shall list itself along with any DBE subconsultants and suppliers, on the DBE Intended Participation Affidavit Individual and Summary in order to receive credit toward the DBE goal.



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

**Effect of Loss of DBE Eligibility:**

If a DBE is deemed ineligible (decertified) or suspended by the Department in accordance with 49 CFR 26.87 and 26.88, the DBE may not be considered to meet a contract goal on a new contract, but may be considered to meet the contract goal under a subcontract that was executed before the DBE suspension or decertification is effective.

When the consultant makes a commitment to use an ineligible DBE firm or the Department made a commitment to use an ineligible DBE prime consultant, but a subcontract or contract has not been executed before a decertification notice is issued to the DBE firm by its certifying agency, the ineligible firm does not count toward the contract goal. The consultant must meet the contract goal with an eligible DBE firm or demonstrate good faith effort. When a subcontract is executed with the DBE firm before the Department notified the firm of its ineligibility, the consultant may continue to use the firm on the contract and may continue to receive credit toward the DBE goal for the firm's work.

**Notifying the Consultant of DBE Certification Status:**

Each DBE contract at any tier shall require any DBE subconsultant or supplier that is either decertified or certified during the term of the contract to immediately notify the consultant and all parties to the DBE contract in writing, with the date of decertification or certification. The consultant shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

**Police Officers:**

DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

**Commercially Useful Function:**

A prime consultant can credit expenditures to a DBE subconsultant toward DBE goals only if the DBE performs a Commercially Useful Function (CUF).

A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, the Department will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the Department will presume that the DBE is not performing a commercially useful function.



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the consultant, in writing, if it determines that the consultant's DBE subconsultant is not performing a CUF. The consultant will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the ADOT State Engineer. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The appeal must be received by the State Engineer no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the State Engineer reverses or modifies BECO's decision. ADOT State Engineer will promptly consider any appeals under this subsection and notify the consultant of ADOT's State Engineer findings and decisions. Decisions on CUF matters are not administratively appealable to USDOT.

The BECO may conduct project site visits on the contract to confirm that DBEs are performing a CUF. The consultant shall cooperate during the site visits and the BECO's staff will make every effort not to disrupt work on the project.

**6. Effect of Contract Changes: (PS EPRISE 18.0)**

The consultant acknowledges that uncertainties can occur during the performance of the work and if for any reason it becomes apparent that the DBE goal will not be met then the consultant shall: (1) immediately notify the PM, ECS Contract Specialist and BECO of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the project DBE goal.

BECO will approve or deny the consultant's good faith efforts. Good faith efforts required under the provisions of this section may vary, depending on the time available, the nature of the change, and other factors as determined by BECO.

The consultant is not required to take work committed to another subconsultant and assign it to a DBE subconsultant in order to meet the committed DBE percentage.

If the resulting change increases the scope or quantity of work being done by a DBE subconsultant, the DBE shall be given the opportunity to complete the additional work and receive additional compensation beyond their original subcontract amount.

**7. DBE Participation Above the Goal (Race-Neutral Participation): (PS EPRISE 19.0)**

Additional DBE participation above the DBE participation required to meet the contract DBE goal is an important aspect of the Department's DBE program. The consultant is strongly encouraged to use additional DBEs above the DBE goal requirement in the contract to assist the Department in meeting its overall DBE goal and help the Department to meet the maximum feasible portion of its DBE goals through race neutral participation as outlined in 49 CFR Part 26.

There are fewer administrative requirements on the part of the consultant when using race neutral DBEs (DBEs not listed on the DBE Intended Participation Affidavit - Consultant). For example, if a DBE is not listed on the DBE Intended Participation Affidavit - Consultant, the DBE does not have to submit an Affidavit, and the subcontract approval process follows the same process of any other subcontract. The consultant does not have to replace the DBE with another DBE subconsultant if the DBE fails to perform. Therefore these DBEs are treated as any other subconsultant on the project.



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

**8. Required Provisions for DBE Subcontracts:**

**(PS EPRISE 20.0)**

All subcontracts of any tier, all supply contracts, and any other contracts in which a committed DBE is a participant shall include as a physical attachment, DBE Subconsultant Compliance Assurances available on BECO website and all of the Uniform Terms and Conditions set forth in Section 3.0 and 4.0 of this contract.

Consultants executing agreements with subconsultants, DBE or non-DBE, that materially modify federal regulation and state statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the deemed appropriate as outline in DBE Subsection 2.0.

The Department reserves the right to conduct random reviews of DBE and non-DBE subcontract documentation to ensure compliance with federal requirements.

The consultant shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontracts be performed in accordance with 49 CFR Part 26 provisions.

The Consultant shall provide electronic copies of signed subcontract agreements with all Subconsultants by uploading them within 15 calendar days of an executed contract to the ADOT DBE System. Subcontract agreements shall include all required assurances and clauses as outlined in Section 3.0 and 4.0 of this Contract. Each agreement and required attachment shall be dated and signed by the Subconsultant in order for the subcontract to be considered valid.

The Consultant shall be in breach of this Contract if the Consultant materially modifies the federal regulations and State statutes in its subcontract agreements terms and conditions with its Subconsultants. Deviations from the terms of this Contract may result in termination of the Contract, or any other such remedy as deemed appropriate by the Department.

**9. Contract Performance:**

**(PS EPRISE 21.0)**

Contract items of work designated by the consultant to be awarded to DBEs shall be performed by the designated DBE or a Department-approved DBE substitute. The Consultant or a non-DBE Subconsultant shall not perform DBE contract work items without prior approval by BECO and execution of the Contract Modification by ECS. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

The consultant is required to use DBEs identified in the SOQ to meet the contract goal, so the prime consultant is responsible for ensuring that the DBEs are available to meet scheduling, work and other requirements on the contract.

The Department will visit the consultant's office to conduct reviews to ensure compliance with CUF and other DBE requirements. The reviews may include, among other activities, interview of DBEs and their employees and the consultant and its employees. The consultant shall cooperate in the review and make its employees available. The consultant shall inform the PM and BECO in advance when each DBE will be working on the project to help facilitate reviews.

The Department reserves the right to request and inspect all records of the consultant and all records of the DBEs and non-DBE subconsultants concerning this contract. The consultant must make available a copy of all documents related to all contracts to ADOT upon request.

Use of every DBE listed on the DBE Intended Participation Affidavit Summary is a condition of this contract. The consultant shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed on the DBE Intended Participation Affidavit Summary unless the consultant obtains the Department's



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

written consent. Absent consent from the Department, the consultant shall not be entitled to any payment for work or material that is not performed or supplied by the listed DBE.

**10. DBE Termination/Substitution: (PS EPRISE 22.0)**

**General Requirements:**

The consultant shall make all reasonable efforts to avoid terminating or substituting a DBE listed on the DBE Intended Participation Affidavit Summary. At a minimum, the consultant shall negotiate in good faith, give timely notices and/or extend deadlines to the extent that it will not jeopardize the contract with the Department. Reasonable methods to resolve performance disputes must be applied and documentation provided to the Department before attempting to substitute or terminate a DBE.

**Consultant Notice of Termination/Substitution:**

All terminations, substitutions, and reductions in scope of work to be performed by DBEs listed on the DBE Intended Participation Affidavit Summary must be approved in writing by BECO and by means of the executed contract modification from ECS. The consultant shall contact the BECO and ECS promptly at the first sign of any reason for DBE termination/substitution.

The consultant shall not terminate a DBE subconsultant listed on the DBE Intended Participation Affidavit Summary or complete the work contracted to the DBE with its own forces or with a non-DBE firm without written consent from BECO and ECS. Before submitting a formal request to the BECO and ECS for DBE termination/substitution, the consultant shall give written notice to the DBE subconsultant with a copy to BECO of its intent to terminate or substitute the DBE identifying the reason for the action. The DBE shall be allowed a minimum of five calendar days to respond to the consultant's notice advising the consultant and BECO of its position. BECO and ECS will consider both the consultant's request and the DBE firm's response before approving the consultant's termination and substitution request.

**Consultant Request of Termination/Substitution:**

The consultant shall formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary by submitting the DBE Termination/Substitution Request Form and supporting documentation to ECS. The submission shall include the following information:

- 1) The date the consultant determined the DBE to be unwilling, unable or ineligible to perform.
- 2) A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to consultant's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
- 3) A brief statement of the good faith efforts undertaken by the consultant to enable the DBE firm to perform.
- 4) The total dollar amount currently paid for work performed by the DBE firm.
- 5) The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the consultant and the DBE firm have no dispute.
- 6) The remaining work that has not been completed by the DBE and the corresponding dollar amount
- 7) The projected date that the consultant requires a substitution or replacement DBE to commence work, if consent is granted to the request.

Written consent for terminating the performance of any DBE listed on the DBE Intended Participation Affidavit Summary will be granted only where the consultant can demonstrate good cause showing that the DBE is unable, unwilling, or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

consent to substitute or replace the terminated DBE. Termination or substitution of a DBE listed on the DBE Intended Participation Summary will not be allowed based solely on a consultant's ability to negotiate a more advantageous contract with another subconsultant. The Department will consider both the consultant's request and DBE's response and explanation before approving the consultant's termination and substitution request.

Any requests for substitutions or terminations of DBEs shall be made on the forms provided online by ECS.

**Good Cause:**

The Department will make the determination of good cause by providing written consent to the consultant after evaluating the consultant's good cause to terminate or substitute a DBE firm. Good cause for this purpose includes the following in relation to the listed DBE subconsultant:

1. Fails or refuses to execute a written contract.
2. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice standards. However, good cause does not exist if the failure or refusal of the DBE subconsultant to perform its work on the subcontract results from the bad faith or discriminatory action of the prime consultant.
3. Fails or refuses to meet the prime consultant's reasonable, nondiscriminatory insurance/bond requirements.
4. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
5. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to federal or state law.
6. Is not a responsible consultant.
7. Voluntarily withdraws from the project and provides written notice of its withdrawal to the Department.
8. 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 firm is unable to complete its work on the contract.
10. Other documented good cause that the Department determines compels the termination or substitution of the DBE subconsultant.

If good cause is determined, the Department will notify the Consultant of the decision and necessary modifications to the contract can be made.

**DBE Replacement Good Faith Effort:**

If the Department approves the termination of a DBE, the consultant shall make good faith efforts to find another DBE subconsultant to substitute for the original DBE. The good faith efforts as identified in DBE Subsection 17.0 shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal. The good faith efforts shall be documented and provided, upon request, to the Department within seven calendar days from the date of the request.

A prime consultant's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the consultant has the ability and/or desire to perform the contract work with its own forces does not relieve the consultant of the obligation to make good faith efforts to find the replacement DBE, and it is not a sound basis for rejecting a perspective replacement DBE's reasonable quote.

The termination of a DBE firm shall not relieve the consultant of its obligations under this Special Provision, and the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal. If the



ARIZONA DEPARTMENT OF TRANSPORTATION  
PROFESSIONAL SERVICES/DESIGN  
DBE SUBCONTRACT COMPLIANCE ASSURANCES  
(07/01/2016)

Department has eliminated items of work subcontracted to a committed DBE, the prime consultant shall still make good faith efforts to replace the DBE with another DBE to the extent necessary to meet the goal. The Department will review the quality, thoroughness, and intensity of those efforts.

When a DBE substitution is necessary, the consultant shall submit an amended DBE Intended Participation Affidavit Individual and Intended Participation Affidavit Summary to ECS for processing and to BECO for approval with the substitute DBE's name, description of work, NAICS code, AZ UTRACS registration number, and dollar value of work to the PM, ECS Contract Specialist and BECO. Approval from BECO must be obtained prior to the execution of Contract Modification by ECS and before substituted DBE can begin work.

**Sanctions:**

Failure by the consultant to carry out the requirements of the Department's DBE Termination/Substitution specifications is a material breach of contract and will result in such remedies as the Department deems appropriate, which will include, but are not limited to the assessment of liquidated damages. The Department will deduct from monies due or becoming due the consultant, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25% of the amount remaining to be paid to the DBE as liquidated damages. These liquidated damages shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

**11. Certification of Final DBE Payments: (PS EPRISE 23.0)**

The consultant's achievement of the goal is measured by actual payments made to the DBEs. The consultant shall submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract. This form shall be signed by the consultant and the relevant DBE, and submitted to ECS no later than 30 days after the DBE completes its work.

ADOT will use this certification and other information available to determine applicable DBE credit allowed to date by the Prime Consultant and the extent to which the DBE firms were fully paid for that work. By the act of filing the forms, the consultant acknowledges that the information is supplied in order to justify the payment of state and federal funds to the consultant.

The consultant will not be released from the obligations of the contract until the "Certification of Final DBE Payments" forms are received and deemed acceptable by the ECS and BECO.

**12. False, Fraudulent, or Dishonest Conduct: (PS EPRISE 25.0)**

In addition to any other remedies or actions, the Department will bring to the attention of the US Department of Transportation any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending parties or application of "Program Fraud and Civil Penalties" rules provided in 49 CFR Part 31.