



Business Engagement & Compliance



Part 3 – New DBE Special Provision Requirements Taking the On Ramp to Successful DBE Compliance

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Objectives

- DBE Goal Assurance
 - Contracts with DBE goals
- DBE Submissions Timeframe
- Forms (Construction & Professional Services)
- Payment Reporting
- Prompt Pay
- Loss of DBE Eligibility
- DBE Prime Contractor
- AZ UTRACS Website Review
- DBE System Review



Bid Requirements

DBE Goal Assurance



- Contractor must select one of two options at bid time:
 - Meet the contract DBE goal, or
 - Made good faith efforts (GFE)
- This declaration cannot be changed after submission of bid
- DBE “arrangements must have been made prior to bid submittal”
- For professional services contracts, submission is at time of initial cost proposal

Bid Requirements

DBE Goal Assurance



- On-Call Contracts ONLY
- Contractor must meet two options at time of bid or initial cost proposal:
 - Meet the established DBE goal or make good faith efforts (GFE) to meet the goal for the contract **and**;
 - Meet the established DBE goal or make good faith efforts to meet the goal on **each** task assignment

Pre-Award Requirements

DBE Submissions Timeframe



Construction Contracts:

If a Prime indicates that it will meet the DBE goal on a contract:

- Bidders List and DBE Affidavits are due on the **7th calendar** day after bids are opened (generally on a Friday)
 - Best practice – submit documents as soon as possible to be able to fix errors by the deadline
 - **LPAs – currently due on the 5th calendar day**
- Contractors and subcontractors must also be registered in AZ UTRACS by that same timeframe

EPRISE Section 13.0

Pre-Award Requirements

DBE Submissions Timeframe



Construction Contracts:

NOTE:

- Effective **January 1, 2017** Bidders lists, DBE Affidavits or GFE Documentation are due on the **5th calendar** day after bids are opened.
 - This will be **2 days less** than current requirements - Generally **Wednesday** after bid opening

EPRISE Section 11.0, 14.0 and 15.0

Pre-Award Requirements

DBE Submissions Timeframe



Professional Services Contracts:

Project-Specific:

- Proposers lists are due with the statement of qualifications submittal
- DBE Affidavits or GFE Documentation are due with the initial cost proposal.

On-Call:

- Proposers lists are due with the statement of qualifications submittal
- DBE Affidavits or GFE Documentation are due with every task order cost proposal

Appendix C Section 12 & 13

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Construction:

➤ DBE Intended Participation Affidavit Form 105C

- One for each DBE: contractor, trucker, broker, supplier, manufacturer
- List NAICS code - DBE is certified in the NAICS code for work the DBE will be performing on the project
- List Bid Item numbers (leave blank if no bid item number)
- DBE Affidavit amount cannot be higher than the prime's bid price for that item

EPRISE Section 14.0

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Construction:

- **DBE Intended Participation Affidavit Form 105C**
 - Work included in a force account item cannot be listed on the DBE Intended Participation Affidavit
 - Trucking – List number of trucks owned and to be used by DBE on the project
 - DBE Subletting work
 - Form includes the DBE Confirmation/Signature

- Instructions for completing form on second page

EPRISE Section 14.0



ARIZONA DEPARTMENT OF TRANSPORTATION

CONSTRUCTION

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

INTENDED PARTICIPATION AFFIDAVIT

TRACS No(s): _____ Project/Contract No.: _____

DBE Firm: _____ AZ UTRACS Registration No.: _____

Select: ☐ Contractor ☐ Trucker ☐ Broker (Fees/Commission) ☐ Supplier (60% DBE Credit) ☐ Manufacturer

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

UNIT PRICE OR HOURLY RATE BID					
NAICS Code	Bid Item No.	Description / Scope of Work	Unit/ Hourly Quantity	Unit/ Hourly Price	Total Minimum Contract Amount
					0.00
					0.00
					0.00
					0.00
Total					\$0.00

LUMP SUM BID			
NAICS Code	Bid Item No.	Description / Scope of Work	Total Minimum Contract Amount
Total			\$0.00

2. (Trucking) The undersigned affirms that of the trucking/hauling work quoted above, the following applies:

	<u>Project Use</u>	<u># of Trucks</u>	<u>Dollar Amount</u>
DBE firm owns total # _____ Trucks	DBE owned trucks	_____	_____
	DBE leased trucks	_____	_____
	non-DBE leased w/DBE driver	_____	_____
	non-DBE leased w/o DBE driver	_____	_____

3. (Brokerage) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Total Min Contract Amount \$ _____ Fees/Commissions Portion of Bid \$ _____ or _____ %

4. The undersigned will **sublet** and/or award \$ _____ of work bid to a **non-DBE firm**.

5. The undersigned will **sublet** and/or award \$ _____ of work to another **certified DBE firm**.

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should the prime contractor receive award of this contract form the Purchaser.

I, _____ confirm that _____
(Authorized DBE firm officer, print name and title) (Name of DBE firm)

will be participating in the above project.

The DBE firm will be performing the scope as describe above for _____
(Total DBE Credit Dollar Value)

(Authorized DBE firm officer, Signature)

(Date)

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Construction:

- **DBE Intended Participation Affidavit – Summary Form 106C**
 - Identify required DBE goal
 - Prime AZUTRACS Registration Number
 - DBE Liaison's Name
 - Identify all DBEs utilized to meet goal
 - Calculate percentages to two decimal places
- Instructions for completing form on second page

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary**

TRACS No(s): _____ Project/Contract No.: _____ Required DBE Goal _____
 Prime Name: _____ AZ UTRACS Registration No.: _____
 DBE Liaison Name: _____ Contact Phone Number: _____

Note: When completing the calculations table, enter the Contract Bid Amount (F) to avoid Javascript warning message.

A	B	C	D	E
Name of DBE Firm	Scope of Work	Total Contract Amount	Adjustments	Total DBE Credit Dollar Value
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
				0.00
Total DBE Credit Dollar Value				0.00
(F) Contract Bid Amount				
Total % of DBE Commitment				0.00%

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Professional Services:

➤ DBE Intended Participation Affidavit Form 205PS

- One for each DBE: consultant, subconsultant, lower-tier, vendor or broker
- List NAICS code - DBE is certified in the NAICS code for work the DBE will be performing on the project
- Adjustments: any deductions from the DBE's total amount due to subletting or DBE credit less than 100%

Appendix C Section 13.01

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Professional Services:

➤ DBE Intended Participation Affidavit Form 205PS

- Broker Only – Identify total broker amount as well as fees and commissions
- DBE Subletting work
- Complete form for whole contract or task order
- Confirmation of Participation: DBE signature

➤ Instructions for completing form on second page

Appendix C Section 13.01



ARIZONA DEPARTMENT OF TRANSPORTATION

PROFESSIONAL SERVICES DISADVANTAGED BUSINESS ENTERPRISE (DBE) Intended Participation Affidavit

Clear

Contract No.: TRACS No.: Mod No.: Task No.:

DBE Firm Name: AZ UTRACS Registration No.:

Type of Firm: ☐ Consultant ☐ Subconsultant ☐ Lower-tier Subconsultant ☐ Vendor ☐ Broker (Fees/Commission)

1. The undersigned is prepared to perform the following scope(s) of work on the above referenced project.

- Total Contract/Task Amount must include the original and any additional amount applied to the Contract or Task Order
- DBE firm listed above must complete at least 30% of its own contract amount

A	B	C	D	E
NAICS Code	Work Description	Total Contract/ Task Amount	Adjustments	Total Amount Toward DBE Goal
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
				\$ 0.00
Total Amount Toward DBE Goal				\$ 0.00

2. (Broker Only) The undersigned affirms that the amount of fees and commissions for work quoted above are as follows:

Total Contract Amount Fees/Commissions Assessed on Award .

3. The undersigned will **sublet** and/or award of work bid to a **non-DBE firm**.

Firm Name(s)

4. The undersigned will **sublet** and/or award of work to another **certified DBE firm**. (Attach signed DBE affidavit.)

Firm Name(s)

Confirmation of Participation

By signature below, the undersigned agrees to enter into a formal agreement/subcontract for the work cited herein should this contract/task be awarded.

I, confirm that

(Authorized DBE firm officer, print name and title)

(Name of DBE firm)

will be participating in the above project.

The DBE firm will be performing the scope as describe above for a DBE credit of

(Total Amount Toward DBE Goal)

11/11/1111

(Authorized DBE firm officer, Signature)

(Date)

Pre-Award Submittals

DBE Affidavits – Revisions to the form



Professional Services:

- **DBE Intended Participation Affidavit – Summary Form 206PS**
 - Prime AZUTRACS Registration Number
 - DBE Liaison's Name
 - Total Contract or Task Amount
 - Identify required DBE goal
 - Identify all DBEs utilized to meet goal
 - Adjustments: any deductions to DBE's total amount

- Instructions for completing form on second page

Appendix C Section 13.01

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
Intended Participation Affidavit – Summary**

Clear

Contract No.: TRACS No.: Mod No.: Task No.:

Consultant Name: AZ UTRACS Registration No.:

DBE Liaison Name: Contact Phone Number:

Contract or Task Amount: Contract DBE Goal %:

- Total Contract/Task Amount must include the original and any additional amount applied to the Contract or Task Order Assignment.

A	B	C	D	E	F	G
DBE Firm Name	Vendor Type	Work Description	Total Contract/ Task Amount	Adjustments	Total Amount Toward DBE Goal	DBE performing at least 30%? Y/N
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
					\$ 0.00	
(H) Total Amount Toward DBE Goal					\$ 0.00	
(I) Total % of DBE Commitment					0.00%	
(J) Contract DBE Goal %						

Pre-Award Submittals

GFE



- If a Prime indicates that it will not meet the DBE goal on a contract, it must submit GFE documentation to BECO within the 7th calendar day (LPAs – 5th calendar day) after bids are opened or in the initial cost proposal
 - GFE Submission should be in accordance with items in DBE specifications of the contract
 - Submission will be evaluated based on the 9 items listed in the DBE specifications

Pre-Award Submittals

GFE – Rejection of DBEs



- Prime must not reject DBE because its quotation wasn't the lowest
 - However, Prime is not required to accept unreasonable quotes
 - All quotes (DBE & non-DBE) must be retained by Prime
 - Quotes must be submitted with GFE when a non-DBE was selected over a DBE for work on the contract

Pre-Award Submittals

GFE Appeal



- Bidders rejected for not meeting GFE requirements may meet in person with the State Engineer to appeal GFE determination
- Project awards made by State Transportation Board are not subject to administrative appeal to USDOT



Post-Award Payment Reporting



- Enter all “Reportable Contracts” in the ADOT DBE System
- **Reportable Contracts** means:
any subcontract, of any tier, DBE or non-DBE, by which work shall be performed on behalf of the contractor and any contract of any tier with a DBE material supplier.

Section 4.33(b)(5)

109PAY/RET

Post-Award Payment Reporting



- Reportable Contracts must be entered into ADOT DBE System:
 - No later than 15 calendar days after preconstruction conference or notice to proceed date
 - Contractor will enter information in the **Subcontractor** tab in the DBE System
 - Any additional subcontract shall be added within 5 days of ADOT approval

Section 4.33(b)(5)

109PAY/RET

Post-Award Payment Reporting



- Payments must be reported by prime contractors and subs with lower-tiers:
 - No later than the 15th of the month for the prior month
 - If no payment made, zero dollar value must be entered
 - Use *Comments* and *Payment Details* section to explain why invoices weren't fully paid or any other issues concerning payment
- Resolve payment discrepancies with subs



Section 4.33(b)(5)

109PAY/RET

Post-Award Payment Reporting (continued)



- Subcontractor Payment Verification
 - Must be completed by subcontractors by the last day of the month
 - Contractor shall actively monitor DBE System to ensure verifications were completed
 - If subcontractors do not verify payments within 45 days of Prime reporting payment, ADOT will accept that prompt payment was made



Post-Award Payment Reporting (continued)



- The key is to report payments monthly!
- If payments are reported, and primes encourage subs to verify payments, contractor will be in compliance



Post-Award Sanctions for Inadequate Reporting



If payments are not reported monthly, the following sanctions will apply:

- \$1000 retained (Liquidated damages)
 - deducted each month for each reportable contract the contractor fails to submit payment information for
- \$2000 retained (Liquidated damages) after 90 consecutive days of non-reporting
 - Deducted each month for each reportable contract that contractor fails to submit payment information for



Post-Award Prompt Payment



- Partial Payment
 - Monthly estimate to be signed by ADOT and contractor
- Retention
 - Since ADOT contracts do not provide for retention—subcontracts cannot provide for retention
- No Set-offs
 - Cannot reduce or withhold payments from subcontractor for disputes on another contract
- Partial and Final Payment
 - Paid to subcontractors within 7 calendar days of payment from ADOT

Section 4.33(b)(1-4)

109PAY/RET

Post-Award Prompt Payment



- The key is to promptly pay subcontractors within 7 calendar days of payment by ADOT!
- If payments are made promptly, contractor will be in compliance



Post-Award

Sanctions for Prompt Pay Non-Compliance



Liquidated Damages

- Two times the dollar amount not paid to each subcontractor
- If full payment is made within 30 days of the Department's payment to the contractor, the amount withheld will be released
- If full payment is made after 30 days of the Department's payment to the contractor, will release 75 percent of the funds withheld
 - 25 percent of the monies withheld as liquidated damages

Post-Award

Sanctions for Prompt Pay Non-Compliance



- Egregious prompt payment non-compliance is defined as:
 - 3 consecutive months of failure to pay subs promptly
 - 4 months of not paying promptly over the course of a single project
 - Sanctioned for prompt pay issues on 2 or more projects in a 24 month time period

Post-Award

Sanctions for Prompt Pay Non-Compliance



- Remedies for egregious lack of prompt payment can include:
 - Withhold monthly progress payments until payments made
 - Terminate contract for default
 - Disqualify from future bidding (temporarily or permanently)
- Assessed by State Construction and Material Engineer
- Decision can be appealed to the State Engineer's Office within 15 calendar days of decision by State Construction and Material Engineer

Post-Award Loss of DBE Eligibility



If a DBE is deemed ineligible, decertified or suspended and **Contract is not Executed:**

- Ineligible DBE does not count toward contract goal
- Prime must meet goal with eligible DBE firm(s) or, demonstrate good faith effort

Appendix C Section 17.03

EPRISE Section 18.03

Post-Award Loss of DBE Eligibility



If a DBE is deemed ineligible, decertified or suspended and **the Prime Contract is Executed, but Subcontract is Not Executed:**

- Ineligible DBE does not count toward contract goal
- Prime must meet goal with eligible DBE firm(s) or, demonstrate good faith effort

Appendix C Section 17.03

EPRISE Section 18.03

Post-Award Loss of DBE Eligibility



If a DBE is deemed ineligible, decertified or suspended and **the Prime Contract is Executed, and the Subcontract is Executed:**

- Ineligible DBE continues to count toward contract goal
- Does not count toward ADOT's overall annual goal

Appendix C Section 17.03

EPRISE Section 18.03

Post-Award DBE Prime Contractors



- A DBE firm bidder is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other bidder
- The DBE bidder shall list itself along with any DBE subcontractors and suppliers, on the DBE Intended Participation Affidavit and Summary in order to receive credit toward the DBE goal.

Appendix C Section 17.02

EPRISE Section 18.02

Post-Award

AZ UTRACS Website Review



- Firm Search
 - Registration Number
 - DBE Firm Search
 - NAICS Code Search
- Agency staff should look up certification in DBE System to get gender/race information for reporting
- DBEs should look themselves up to review information
 - Contact certifying agency to see about adding NAICS codes for DBE certification

Appendix C Section 17.02

EPRISE Section 18.02

Post-Award DBE System Review



- Add Subcontractor Request
 - Type of Participation for DBE firms
 - Work Codes for DBE firms
- Prime payment reporting
 - Adding Subs to Audits
 - Bulk Reporting
 - Comments if payment is partial or if withholding for lien release or certified payroll completion
- Subcontractor payment verification
- Discrepancy Resolution

Post-Award Websites



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

<https://utracs.azdot.gov/Search>

Questions and Answers

