



FHWA DBE Program Plan

ARIZONA DEPARTMENT OF TRANSPORTATION

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Table of Contents

I. POLICY STATEMENT	1
A. Objectives/Policy Statement.....	1
II. GENERAL REQUIREMENTS	2
A. Applicability.....	2
B. Definitions.....	2
C. Non-Discrimination Requirements	2
D. Recordkeeping Requirements.....	3
1. Reporting to DOT	3
2. Bidders Lists	3
3. Federal Financial Assistance Agreement	4
III. ADMINISTRATIVE REQUIREMENTS	4
A. DBE Program Updates	4
B. DBE Liaison Officer (DBELO)	5
C. DBE Financial Institutions.....	8
D. Prompt Payment Mechanisms	8
E. Arizona Unified Transportation Registration and Certification System (AZ UTRACS)	9
F. Overconcentration	10
G. ADOT Business Development Program (DBE Supportive Services).....	10
H. Mentor-Protégé Program.....	10
I. Fostering Small Business Participation (26.39)	10
J. Monitoring and Enforcement Mechanisms	12
IV. GOALS, GOOD FAITH EFFORT, AND COUNTING	12
A. Set-asides or Quotas.....	12
B. Overall Goals	12
C. Contract Goals.....	13
D. Counting DBE Participation	16
V. COMPLIANCE AND ENFORCEMENT.....	21
A. Information, Confidentiality, Cooperation.....	21
B. Contract Performance	21
C. Non-Performance by DBEs	23

D.	Subcontractor Payment Monitoring:	23
E.	Joint Checks	23
F.	Certification of Payment	25
G.	Sanctions	25
VI.	DBE CERTIFICATION	26
A.	Certification Process.....	26
VII.	CERTIFICATION PROCEDURES	26
A.	Arizona Unified Certification Program	26
B.	BProcedures for Certification Decisions.....	26
VIII.	SUBRECIPIENT/SUBBGRANTEE & LOCAL PUBLIC AGENCY COMPLIANCE	29
A.	Policy	29
B.	Objectives.....	29
C.	Non-Discrimination	30
D.	DBE Program Compliance Required Activities	30
IX.	ATTACHMENT A: Business Engagement & Compliance Office Organizational Chart	32

I. POLICY STATEMENT

A. Objectives/Policy Statement

The Arizona Department of Transportation (ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. ADOT has received Federal financial assistance from the Department of Transportation, and as a condition of receipt of funding, ADOT has signed an assurance that it will comply with 49 CFR Part 26.

It is ADOT's policy to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in DOT-assisted contracts. ADOT's objectives are to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's construction, procurement, and professional services contracts in the areas of highway, transit, and airport financial assistance;
- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- Ensure that the DBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
- Help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- Assist in the development of firms that can compete successfully in the market place outside the DBE program; and
- Facilitate and encourage participation by Small Business Concerns (SBC) in ADOT contracts. ADOT encourages firms to take reasonable steps to eliminate obstacles to SBC's participation and to utilize SBCs in performing contracts.

The ADOT DBE program is managed and administered by the Business Engagement & Compliance Office (BECO). The Business Engagement & Compliance Office Manager has been designated as the DBE Liaison Officer (DBELO). In that capacity, the BECO Manager 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 ADOT in its financial assistance agreements with the U.S. Department of Transportation.

ADOT has disseminated this policy statement to the Arizona State Transportation Board, all affected divisions, and all Arizona Subrecipient/Subgrantees and Local Public Agencies (LPAs). This policy statement is made available to DBE and non-DBE companies that perform on DOT-assisted contracts. Distribution channels include trade associations, online publications, and electronic notification via stakeholder distribution lists and the *Arizona Unified Transportation Registration and Certification System* ([AZ UTRACS](#)) web portal.

John S. Halikowski
Director
Arizona Department of Transportation
October 29, 2013

II. GENERAL REQUIREMENTS

A. Applicability

As a recipient of funds from the Federal Highway Administration (FHWA), ADOT has established its DBE program in accordance with 49 CFR Part 26 and has committed to ensuring compliance on all federal-aid transportation projects through monitoring, reporting, and goal-setting on FHWA projects. Where DBE goal setting is not necessary or practicable, ADOT will encourage race-neutral DBE participation. Further, ADOT distributes federal transportation funds to local public agencies (LPAs) throughout the state of Arizona. As a condition of receipt of funding, these Subrecipient/Subgrantees and LPAs must adopt the ADOT FHWA DBE Program Plan and follow the same guidelines and procedures developed by ADOT to implement its DBE program.

Federal-aid highway funds are authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107).

B. Definitions

Disadvantaged Business Enterprise or DBE means:

- A for-profit small business concern;
- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Subrecipient/Subgrantee: Any legal entity to which a sub-award of federal financial assistance is made and which is accountable to the recipient for the use of the funds provided (49 CFR 19.2).

Local Public Agency: Any city, county, township, municipality, or other political subdivision that may be empowered to cooperate with the State transportation department in highway matters ([23 CFR 635.102](#)).

ADOT has adopted and uses the definitions related to the DBE program found in 49 CFR Part 26.5.

C. Non-Discrimination Requirements

ADOT will not 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, national origin, age, or disability.

In administering its DBE program, ADOT 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, national origin, age, or disability.

D. Recordkeeping Requirements

1. Reporting to DOT

ADOT will report DBE participation on the Uniform Report of DBE Awards or Commitments and Payments to the appropriate operating administration within DOT as follows:

- DBE activity from October 1st through March 31st will be submitted by June 1st
- DBE activity from April 1st through September 31st will be submitted by December 1st

Subrecipients/Subgrantees and LPAs must report its contract awards, DBE commitments, prime and subcontract payments and other requested information to ADOT monthly. ADOT will include sub-recipient activity in its semi-annual reports based on project data provided through the Local Public Agency DBE Reporting System. Semi-annual report data includes:

- Awards
- Commitments
- Payments to prime contractors and consultants
- Payments to DBE subcontractors and subconsultants
- Payments to lower-tier DBE subcontractors and subconsultants

ADOT and its Subrecipients/Subgrantees and LPAs will also monitor payments to non-DBE subcontractors and subconsultants, including lower-tier activity, to ensure prompt payment, although non-DBE information is not included in semi-annual reports.

2. Bidders Lists

ADOT and its Subrecipients/Subgrantees and LPAs as required by 49 CFR 26.11, will collect Bidders' List information, regarding all DBE and non-DBE firms that bid and quote on DOT-assisted contracts. Bidders' List information will be used in support of overall goal-setting calculations, but will not be used exclusively to substantiate availability or the "ready, willing, and able" status of affected Arizona DBEs. Data gathered will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

Subrecipients/Subgrantees and LPAs will collect Bidders' List form from all bidders/offerors within their agency and submit to ADOT Business Engagement and Compliance Office after contract execution.

ADOT will collect information in support of the overall DBE goal via Bidders List Forms from individual contracts and via the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) Vendor Registration. Bidders List forms shall be submitted by all bidders/offerors to ADOT, Subrecipients/Subgrantees and LPAs. ADOT contracting groups, Subrecipients/Subgrantees and LPAs must submit forms to the Business Engagement and Compliance Office (BECO). Bidders' List forms shall contain name, address, and DBE or non-DBE status. Instructions for the completing Bidders List form are contained in the ADOT DBE Specification, EPRISE. Company age and annual gross receipts data will be collected via the AZ UTRACS Vendor Registration system. Therefore, all bidders on ADOT, Subrecipients/Subgrantees and LPAs projects must register in the AZ UTRACS Vendor

Registration module, which can be accessed via www.adot.dbesystem.com/vendorstart.asp. All contractors, consultants, subcontractors, and sub-consultants, DBEs and non-DBEs are required to complete the AZ UTRACS Vendor Registration for all ADOT-administered and Subrecipients/Subgrantees and LPAs federal-aid projects.

3. Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

ADOT 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. ADOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. ADOT'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 [Recipient] of its failure to carry out its approved program, the Department may impose sanction 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.).

This language will appear in all financial assistance agreements with Subrecipients/Subgrantees and LPAs.

Assurance: 26.13(b)

ADOT will ensure that the following clause is placed in every DOT-assisted contract and subcontract let by ADOT and its Subrecipients/Subgrantees and LPAs.

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 state deems appropriate. The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this nondiscrimination assurance.

III. ADMINISTRATIVE REQUIREMENTS

A. DBE Program Updates

As a condition of receipt of FHWA funding, ADOT and its Subrecipients/Subgrantees and LPAs will continue to carry out the requirements defined in this Program Plan until all funds from DOT financial assistance have been expended. Further, ADOT will provide updates to the DOT regarding any significant changes in the program.

B. DBE Liaison Officer (DBELO)

ADOT has designated the Manager of its Business Engagement & Compliance Office as its DBE Liaison Officer (DBELO).

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has professional and technical staff to assist in the administration of the program. The staff duties and responsibilities include the following:

ADOT DBE Liaison Officer (DBELO)

- Advises the ADOT Director regarding DBE matters and achievement.
- Supervises and coordinates activities of DBE Program Managers and Technicians.
- Coordinates ADOT DBE Task Forces and subcommittees.
- Serves as mediator when appropriate for issues that require escalation.
- Works with all departments to set triennial and project goals as required.

Contractor Compliance Program Manager & Support Technician(s)

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third-party contracts and purchase requisitions for compliance with DBE program.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations via race-neutral and race-conscious methods.
- Oversees the DBE goal-setting process for ADOT and Subrecipient/Subgrantee/LPA federal-aid projects.
- Monitors project-specific goal/commitment attainment and identifies ways to improve process.
- Analyzes ADOT's progress toward overall goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Develops comprehensive training programs to address the compliance education needs of internal and external ADOT customers, major program areas, and Subrecipients/Subgrantees and LPAs.

DBE Supportive Services Program Manager & Support Technician(s)

- Manages the ADOT DBE Supportive Services Program.
- Provides DBE with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training activities.
- Provides outreach to DBEs and community organizations to advise them of contracting opportunities.
- Addresses overconcentration of DBEs in specific trades.
- Addresses underrepresentation of specific gender/ethnicities to ensure that pool of certified DBEs accurately reflects the demographics of the state.
- Coordinates dissemination of bid notices, plans, and requests for proposals to DBEs.
- Researches and maintains information regarding financial institutions owned by socially and economically disadvantaged individuals and disseminates information to affected parties.

Field Compliance & Training Program Manager and Specialist(s)

- Establishes procedures to ensure DBE requirements are met on design and construction projects.
- Trains ADOT construction field office staff and Subrecipients/Subgrantees and LPAs related to DBE program requirements, Commercially Useful Function (CUF) and Trucking related regulations and procedures.
- Attends Pre-Construction Meetings to ensure Contracts and subconsultants are aware of DBE requirements.
- Manages Regional Field Compliance staff that conducts onsite CUF and Truck reviews of all DBEs on all construction contracts statewide.
- Assists with ensuring that all required DBE data is entered in DBE tracking system.
- Investigates and facilitates resolution of DBE Prompt Pay related issues identified in the field.

Certification Program Manager & Support Technician(s)

- Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Program (UCP) in Arizona.
- Certifies SBEs according to the criteria contained herein and in accordance with guidance provided by 49 CFR Part 26.
- Maintains and updates ADOT's directory of certified DBEs.
- Serves as the ADOT representative as a lead agency in the Arizona UCP.
- Manages the content of the Arizona UCP website.
- Conducts certification training, workshops, and presentations.

Subrecipient/Subgrantee/Local Public Agency Program Manager

- Ensures Subrecipients/Subgrantees and LPAs compliance with DBE requirements.
- Provides training to Subrecipients/Subgrantees and LPAs related to DBE program regulations and requirements.
- Ensures that all Subrecipient/Subgrantee and LPA projects are assessed for DBE goals.

- Works with Subrecipients/Subgrantees and LPAs to ensure required DBE contract language is included in their project solicitations and contracts.
- Ensures that Subrecipient/Subgrantees and LPA submit all required pre and post award DBE Affidavits, Bidders List forms and other required documents to the Business Engagement and Compliance Office.
- Trains and coordinate with Subrecipients/Subgrantees and LPAs to ensure that they report DBE commitments and payments and enter required DBE utilization data in in the LPA DBE tracking system.

State Engineer's Office, including all Deputy State Engineers, Project Managers, Program Area Managers, and District Engineers are responsible for ensuring compliance with DBE contract requirements on federal-aid construction projects. This includes subrecipient DBE compliance via ADOT Statewide Project Management.

Contracts and Specifications (C&S) Manager is responsible for assisting in the development of DBE construction specifications, ensuring that all federal-aid projects are submitted to ADOT Business Engagement and Compliance Office for DBE goal assessment, and ensuring that the appropriate DBE specifications are included in all construction contracts.

Engineering Consultant Services (ECS) Manager is responsible for implementing DBE contract requirements for engineering and design-related consulting contracts, compliance with DBE provisions, and data collection related to DBE participation. This individual is also responsible for assisting with enforcing subrecipient DBE compliance for the pre-award phase of design projects.

ADOT Chief Procurement Officer is responsible for ensuring that appropriate DBE contract language is included in all federal-aid procurement contracts, compliance with DBE provisions, and data collection related to DBE participation.

Aeronautics Group Manager is responsible for the Grand Canyon National Park Airport and ensures that appropriate contract language and DBE requirements are included in airport construction, professional services, procurement, and concessionaire contracts. This individual is also responsible for enforcing ADOT DBE program plan compliance for Subrecipients/Subgrantees and LPAs of FAA funds (i.e., they have adopted the ADOT DBE program plan and are in compliance or have separate USDOT approved DBE program plan).

Multi-modal Planning Division (MPD) Director is responsible for ensuring DBE compliance on all federal-aid transportation projects related to long-range transportation planning, public transportation, Elderly and Persons with Disabilities Transportation, and Rural Public Transportation Programs (Section 5310 and 5311 grant programs, respectively). This individual is also responsible for enforcing transit subrecipient DBE compliance.

Assistant Attorney General from the Transportation Division of the Attorney General's Office has been assigned to the Business Engagement & Compliance Office to provide counsel on the DBE program.

Subrecipients/Subgrantees and LPAs Compliance and Responsibilities

- Sign Compliance Statement with ADOT that Subrecipient/Subgrantee and LPA will adhere to ADOT's DBE Program Plan and concomitant procedures.
- Follow the same guidelines, procedures, and contract specifications developed by ADOT to implement its DBE the program.

- Participate in training conducted by ADOT related to DBE requirements and program regulations.
- Submit all federally-assisted contracts to ADOT to be assessed for a DBE goal.
- Include DBE contract goal and DBE language as provided by ADOT in contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents
- Collect DBE Affidavits, Bidders' List forms from all bidders/offers, Notice of Contract Award and all other ADOT required forms and submit to ADOT Business Engagement and Compliance Office in accordance with the FHWA Compliance Checklist Subrecipient/Subgrantee/Local Public Agency Federal-Aid Contracts available at:
<http://azdot.gov/docs/default-source/beco-library/fhwa-subrecipientSubrecipient/Subgrantee-and-lpa-compliance-checklist.pdf?sfvrsn=2>
- Enter contract award, DBE commitment, prime and subconsultants payments, and other requested data in the LPA DBE tracking system in accordance with the FHWA Compliance Checklist Subrecipient/Subgrantee/Local Public Agency Federal-Aid Contracts available at:
<http://azdot.gov/docs/default-source/beco-library/fhwa-subrecipientSubrecipient/Subgrantee-and-lpa-compliance-checklist.pdf?sfvrsn=2>
- Provide monthly and semi-annual reports on awards and DBE utilization as requested by ADOT.

Note: ADOT reserves the right to audit Subrecipients/Subgrantees and LPAs contractor compliance procedures and project files and conduct onsite reviews to ensure compliance with DBE regulations.

C. DBE Financial Institutions

It is ADOT's policy 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.

The Arizona Department of Financial Institutions is utilized to identify such institutions. To date, socially and economically disadvantaged owned and controlled financial institutions have not been identified in Arizona.

D. Prompt Payment Mechanisms

ADOT and its Subrecipients/Subgrantees and LPAs will include the following clause in each DOT-assisted prime contract:

The Arizona Revised Statutes Section 28-6924 Paragraph A.2 and ADOT Specifications require that prime contractors and consultants pay their subcontractors and subconsultants within seven (7) days from receipt of payment by ADOT.

It is ADOT policy not to hold retention from prime contractors. Prime contractors are permitted, however, to hold retention from subcontractors. Prime contractors must make prompt and final

payment to each subcontractor all monies, including retention, due the subcontractor within fourteen (14) days after the subcontractor has satisfactorily completed all of its work.

If prompt partial or prompt final payment, including any retention, is not made within the established timeframes, ADOT retains two thousand dollars (\$2,000) per subcontractor, per occurrence. The amount withheld is released after the issue is resolved.

E. Arizona Unified Transportation Registration and Certification System (AZ UTRACS)

ADOT serves as the lead agency for the Arizona Unified Certification (UCP) Program. In this role, the agency maintains the statewide directory (AZ UTRACS) which identifies all firms eligible to participate as DBEs. The AZ UTRACS DBE directory lists the firm's name, address, phone number, fax number, email address, gender, ethnicity, certification source, NAICS codes, and the type of work the firm has been certified to perform as a DBE. The directory is available online at www.azdbe.org. Paper copies of the DBE directory are available upon request by contacting the ADOT Business Engagement & Compliance Office at (602) 712-7761 or via email at dbesupportiveservices@azdot.gov.

The AZ UTRACS is a centralized database that serves as a “one-stop shop” that allows companies to perform a variety of transactions, including:

1. Registering on line as an AZ UTRACS Vendor - For companies that are ready, willing and able to perform work on federally funded transportation projects in Arizona. ALL companies must register as an AZ UTRACS Vendor to bid on or conduct business with ADOT on federally funded projects.
2. Updating AZ UTRACS Vendor Registration online - For companies that want to update their AZ UTRACS Vendor Registration information or if they want to modify their company information. All companies must update their AZ UTRACS Vendor Registration every three (3) years or their registration will be deactivated.
3. Registering online as a Small Business Concern (SBC) - For companies that meet the Small Business Administration size standard average annual income criteria for their primary North American Industry Classification System (NAICS) code.
4. Applying online for Disadvantaged Business Enterprise (DBE) Certification - For companies that meet the requirement found in 49 Code of Federal Regulations (CFR) Part 26. Firms that qualify for DBEs are automatically registered as SBCs.
5. Annually Submitting Updates DBE Materials - For companies that are certified DBEs and need to complete an annual update to maintain their DBE certification.
6. Search the AZ UTRACS for DBEs & SBCs - To locate and identify certified DBEs and registered SBCs in the system.
7. Searching the AZ UTRACS for Transportation Vendors - To locate and identify registered prime consultants, contractors and other registered vendors in the system.
8. DBE & Labor Compliance Reporting - Planning, Design and Construction companies that have federally-funded contracts with ADOT can use the system to report DBE utilization, and payments, as well as upload and track certified payroll and other labor compliance requirements. ADOT Subrecipients/Subgrantees and LPAs shall encourage firms that conduct

business with them to register as Vendors and SBCs or certify as DBEs, as applicable, via the AZ UTRACS web portal.

F. Overconcentration

ADOT has not identified that overconcentration exists in the types of work that DBEs perform. However, if ADOT finds that DBE overconcentration has occurred to such an extent as to unduly burden the opportunity of non-DBE firms to participate in the highway design or construction program, it will develop procedures to address this. The procedures will be submitted to the appropriate operating administration for review and approval prior to implementation.

G. ADOT Business Development Program (DBE Supportive Services)

ADOT DBE Supportive Services Program provides outreach and educational programs regarding the benefits of DBE certification for minority and women-owned businesses. The purpose of the program is to provide education, access, and visibility for the DBE community to aid in business development and eventual self-sufficiency. Training, conferences, and workshops are open to any interested party. Business technical assistance is provided on a case-by-cases basis with priority given to DBEs working directly on federal-aid heavy highway projects. Visit www.adotdbe.com for detailed information regarding the ADOT DBE Supportive Services program.

H. Mentor-Protégé Program

The elements of the Mentor-Protégé program guidelines are incorporated in the Business Development program to help DBEs build their capacity to compete for, win and perform on transportation projects.

I. Fostering Small Business Participation (26.39)

ADOT has implemented strategies to foster small business participation and recognizes this as a requirement of good faith implementation of its DBE program.

ADOT shall require all Subrecipients/Subgrantees and LPAs to adhere to any Small Business Concern (SBC) participation requirements in the same way as ADOT's overall DBE program requirements.

1. *Small Business Concern (SBC) Participation Strategies*

ADOT has identified and/or implemented the following strategies in response to the Final Rulemaking issued January 28, 2011, which modified 49 CFR Part 26 and states that all recipients must include "an element to structure contracting requirements to facilitate competition by small business concerns" in their DBE program plans.

- (a) ADOT has implemented the Small Business participation requirement as a component of its DBE program aimed at helping to foster additional race-neutral participation and not as a standalone program.
- (b) The SBC component of the DBE program was implemented jointly with UCP partners; the cities of Phoenix and Tucson.

- (c) ADOT, in conjunction with its UCP Partners, has implemented a Small Business Concern (SBC) registration program to verify that a firm is in fact a small business concern and to minimize fraud and abuse (see “Small Business Registration Requirement” below).
- (d) ADOT has taken reasonable steps to eliminate obstacles to SBC participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. ADOT Business Engagement & Compliance Office has and will continue to work with affected program areas to ensure that technical staff members are aware of and have given consideration to eliminating obstacles to small business participation.
- (e) ADOT has included language in its contract solicitations and contracts to encourage prime consultants and contractors to foster small business inclusion. ADOT Subrecipients/Subgrantees and LPAs will be required to include similar language in their contract solicitations and contracts.
- (f) ADOT has encouraged SBCs to participate in most DBE business development program opportunities, with the exception of expending federal financial assistance for direct business technical assistance for SBCs.
- (g) Firms can register online as an SBC via the AZ UTRACS web portal.
- (h) ADOT has published an online directory of available SBCs as part of the AZ UTRACS web portal, similar to the DBE Directory.

2. Small Business Verification Requirement

ADOT has implemented a simplified registration process for SBCs. Registration requirement include, firm must be:

- For-profit business registered to conduct business in Arizona
- Independently owned and operated
- Not dominant in its field on a national basis
- Meets the Small Business Administration (SBA) size standard for annual income for its primary North American Industry Classification System (NAICS) code

Firms can register online via the AZ UTRACS web portal.

ADOT does not conduct site visits as a condition of registration. In-depth desk reviews and/or onsite reviews will be conducted, at the discretion of the State or as circumstances warrant. ADOT will make its registration decisions based on self-verification and the facts as a whole. Registered SBCs must update their registration every three years. ADOT’s Subrecipients/Subgrantees and LPA shall encourage small firms that conduct business with them to register as an SBC via the AZ UTRACS web portal.

J. Monitoring and Enforcement Mechanisms

ADOT will implement appropriate mechanisms, including sanctions, suspension, debarment, and application of legal and contractual remedies available under Federal, state, and local laws, as deemed appropriate and necessary, to ensure compliance with the requirements by all program participants. Such monitoring and enforcement mechanisms will apply to Subrecipients/Subgrantees and LPAs.

Specifically, ADOT will take the following monitoring and enforcement steps to ensure compliance with 49 CFR Part 26:

- Bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
- Consider similar action under its own legal authorities, including responsibility determinations in future contracts.
- Provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished via onsite visits conducted by ADOT Business Engagement and Compliance Office and construction field personnel. A written certification of compliance will be provided for each DBE performing work on the project.
- Keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

ADOT Subrecipients/Subgrantees and LPAs shall work collaboratively with ADOT to ensure monitoring and enforcement mechanisms take place on every federal-aid project.

IV. GOALS, GOOD FAITH EFFORT, AND COUNTING

A. Set-asides or Quotas

ADOT does not use quotas in any way in the administration of its DBE program.

B. Overall Goals

The overall FHWA DBE Goal is 7.76%. The race-conscious portion of the goal is 5.08% and the race-neutral portion of the goal is 2.68%. ADOT will use this goal until its next triennial goal submission is made (August 1, 2014) and approved by FHWA implementation effective October 1, 2014.

1. Methodology

ADOT used the following methodology to set overall DBE goals:

1. Identified all anticipated federal-aid projects for the period in which the overall goal will be in effect.

2. Based on historical data, identified work categories, supported by NAICS code and ADOT contracting data, relative to each type of project and/or activity.
3. Determined DBE availability for each work category based on census data, bidders' list data, and data from AZ UTRACS.
4. Weighted the calculation: 25% AZ UCP/Census data for the previous year, 50% UCP/Census data for the current year, and 25% DBE/bidders list data.
5. The race-neutral portion of the goal is derived from the median DBE participation from the previous five federal fiscal years.
6. Potential DBE participation is determined by the review of 8(a) certified firms in Arizona, solicited input from women and minority trade associations, and assessed registered vendors in the AZ UTRACS Vendor Registration system.

C. Contract Goals

ADOT will use contract goals to meet any portion of the overall goal ADOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

All ADOT DOT-assisted contracts with subcontracting opportunities shall be assessed for goal. ADOT may not establish a contract goal on every federal-aid contract. ADOT, for each contract, takes into consideration the size of the contract, type and location of work, availability of DBEs to perform the particular type of work when determining the goal. ADOT will state contract goals as a percentage of the total amount of a DOT-assisted contract.

Effective April 2011, ADOT reinstated its race-conscious DBE program. DBE goals are assessed on all federal-aid construction, professional services, and procurement projects/contracts. DBE goals are also assessed on all federal-aid Subrecipient/Subgrantee and LPA projects. ADOT, Subrecipient/Subgrantee and LPA personnel shall access current goal request forms via the online portal <https://adot.dbesystem.com/frontend/welcome.asp>.

Completed goal request worksheets are submitted to adotgoals@dbesystem.com. Goal assessments are completed within 10 business days upon receipt of a completed, accurate goal request form.

1. *Good Faith Efforts Procedures*

Good Faith Efforts Pre-Award:

ADOT will award a contract with an established contract goal to a responsible and/or responsive bidder. ADOT will determine that a bidder/offeror is responsible and/or responsive if the bidder/offeror does either of the following:

1. Document that it has obtained enough DBE participation to meet the goal (DBE Affidavits); or
2. Document that it made adequate good faith efforts to meet the goal, even though it did not obtain enough DBE participation to do so.

ADOT will not deny award to a bidder/offeror that documents adequate good faith efforts.

ADOT has adopted the examples of good faith efforts found in 49 CFR Appendix A to Part 26. A full explanation of Good Faith Effort requirements is detailed in ADOT DBE Specification, EPRISE.

ADOT is responsible for determining whether a bidder/offeror has not met the contract goal or has documented sufficient good faith efforts to be regarded as responsive. The Business Engagement and Compliance Office will conduct the initial review and make a final recommendation to the State Engineer's Office.

ADOT will ensure that all information is complete and accurate and adequately documented the bidder/offeror's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

Information to be submitted:

ADOT recognizes bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information on DBE Affidavits:

- The names and contact information of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
- If the contract goal is not met, evidence of good faith efforts.

Administrative Reconsideration:

The bidder/offeror may appeal the determination regarding good faith effort to the State Engineer Office. That appeal must be in writing and personally delivered or sent by certified mail, return-receipt requested, to the State Engineer Office. The protest must be received by the State Engineer Office no later than seven calendar days after the initial decision was made. Copies of the protest shall be sent by the protestant to every bidder, at the same time the protest is submitted to the State Engineer Office. Any other interested party may submit a response to the appeal no later than seven calendar days after the appeal is requested. Responses from other interested parties must also be in writing and personally delivered or sent by certified mail, return-receipt requested, to the State Engineer Office. Any interested party submitting such response shall also provide a copy of its response to every bidder, at the same time the protest is submitted to the State Engineer Office. The State Engineer Office shall promptly consider any appeals under this subsection and notify all bidders of the State Engineer's Office findings and decision.

Any interested party may protest the State Engineer's Office decision to the State Transportation Board, pursuant to the requirements of Subsection 103.10 of the ADOT Standard Specifications.

Good Faith Efforts Post-Award:

Contractors, consultants, or vendors may not terminate DBEs listed on the DBE Affidavits to meet the DBE goal for convenience, in whole or in part, except to the extent that ADOT, Subrecipient/Subgrantee and LPA or Grantee has eliminated items of work (change of scope/order) subcontracted to the DBE.

ADOT requires prime contractors not to terminate a DBE subcontractor listed on the DBE Affidavits in response to the "Goals" and "Good Faith Efforts" sections listed above (or an approved substitute DBE firm) without the Business Engagement & Compliance Office's prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

ADOT requires the prime contractor to notify the Business Engagement and Compliance Office and ADOT Resident Engineer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. ADOT requires the contractor to obtain prior written approval from Business Engagement and Compliance Office to substitute the DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

ADOT requires a contractor to make good faith efforts to replace a DBE with another certified DBE, to the extent needed to meet the contract goal. If the contractor is unable to replace the DBE with another certified DBE to meet the contract goal, the contractor shall submit good faith effort documentation to the Business Engagement and Compliance Office. A full explanation of Good Faith Effort requirements is detailed in ADOT DBE Specification, EPRISE.

Prior to prime contractor submitting to ADOT the request to terminate and/or substitute a DBE subcontractor listed on the DBE Affidavits in response to the "Goals" and "Good Faith Efforts" sections listed above, the contractor must notify, in writing, the DBE subcontractor, with a copy to Business Engagement and Compliance Office, of its intent to request to terminate and/or substitute, and the reason for the request.

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

ADOT may provide a written approval only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. For the purposes of this section, good cause includes, but not limited to 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 unworthiness;

5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
6. ADOT 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 ADOT 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;
10. Other documented good cause that ADOT determines compels the termination of the DBE subcontractor.

If ADOT determines that the prime contractor's failure to meet the contract goal is not cause to terminate the contract, an amount equal to the value of the contract goal established by ADOT will be deducted from the payment due to the contractor. However, if the failure is the contractor's first occurrence, and ADOT determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced to one-half (1/2) of the value of the un-obtained contract goal. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in ADOT projects.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The requirements of this section will also be applied to prime bidders/offerors that are DBE certified. In determining whether a bidder/offeror that is DBE certified has met a contract goal, ADOT 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.

If ADOT determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or otherwise carry out these DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as ADOT deems appropriate. The contractor may appeal the decision regarding good faith effort with the State Engineer in accordance with the administrative reconsideration process mentioned previously. ADOT will include administrative remedies in each prime contract which it will invoke if the prime contractor fails to comply with the requirements of this section.

All above mentioned Good Faith Efforts, pre and post award shall be followed and implemented by ADOT's Subrecipients/Subgrantees and LPAs.

D. Counting DBE Participation

ADOT will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55 as follows:

- Only the value of the work actually performed by the DBE can be credited toward DBE participation.
- Credit towards DBE goal attainment is given only after the DBE has been paid for the work performed.
- Only the category of work for which the DBE is certified will be counted toward DBE participation.

The prime contractor, consultant, or vendor bears the responsibility to determine whether the DBE possesses the proper credentials to perform the work. If a DBE cannot complete its work due to failure to obtain or maintain its credentials, the prime contractor, consultant, or vendor bears the responsibility for immediately requesting approval to replace the DBE with another DBE by following the above mentioned procedures. AZ UTRACS is not a representation of the DBEs' qualifications and/or abilities. The prime contractor, consultant, or vendor bears all risks in the selection of subcontractors/consultants.

A DBE may participate as a prime contractor, subcontractor, or joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.

In a "design-build" or "turnkey" contracting situation, in which ADOT lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, ADOT may establish a goal for the project. ADOT Business Engagement & Compliance Office will determine DBE availability as appropriate for the subcontracting areas such design services in the case of a design-build. ADOT will maintain oversight of the prime contractor's activities and DBE participation to ensure compliance with this section.

With the exception of bond premiums, all work must be attributed to specific bid items. Where work applies to several items, the DBE contracting arrangement must specify unit price and amount attributable to each bid item. DBE credit for any individual item of work performed by the DBE shall be the lesser of the amount to be paid to the DBE or the prime contractor's bid price. If the amount bid by the DBE on any item exceeds the prime contractor's bid amount, the prime contractor may not obtain credit by attributing the excess to other items.

Where more than one DBE is engaged to perform parts of an item (for example, supply and installation), the total amount payable to the DBEs will not be considered in excess of the prime contractor's bid amount for that item.

Bond premiums may be stated separately, so long as the arrangement between the prime contractor and the DBE provides for separate payment not to exceed the price charged by the bonding company.

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.

If a DBE performs part of an item (for example, installation of materials purchased by a non-DBE), the DBE credit shall not exceed the lesser of (1) the DBE's contract or (2) the prime contractor's bid for the item, less a reasonable deduction for the portion performed by the non-DBE.

When a DBE performs as a partner in a joint venture, only that portion of the total dollar value of the contract which is clearly and distinctly performed by the DBE's own forces can be credited toward the DBE goal.

The contractor, consultant, or vendor may credit lower-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE used to meet the goal must meet the requirements of a first-tier DBE subcontract.

All DBE and non-DBE subcontracting activity must be reported by the contractor, consultant, or vendor and counted toward participation. This includes lower-tier subcontracting regardless of whether or not the DBE is under contract with another DBE.

DBE prime contractors, consultants, and vendors must meet the DBE participation goal or demonstrate good faith efforts. This is determined by counting 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, including purchase orders for DBE suppliers.

A prime contractor, consultant, or vendor may credit the entire amount of that portion of the 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 contractor, consultant, or vendor 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 subcontractor 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 contractor, consultant, or vendor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bonafide service, such as professional, technical, consultant, 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.

1. Law Enforcement Off-duty 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.

2. Commercially Useful Function:

As a prime contractor, consultant, or vendor, a DBE shall perform of its contract work with its own work force in accordance with Subsection 108.01 Subletting of Contract of the Standard Specifications.

A prime contractor, consultant, or vendor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a contract and is carrying 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. To determine whether a DBE is performing a commercially useful function, ADOT 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, ADOT 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, ADOT will presume that the DBE is not performing a commercially useful function.

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. Decisions on commercially useful function matters are subject to review by FHWA, but are not administratively appealable to U.S. DOT.

ADOT will monitor and conduct on-site visits to ADOT, Subrecipients/Subgrantees and LPAs projects to conduct commercially useful function reviews to help ensure compliance.

3. Trucking

ADOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract on every day that credit is to be given for trucking.

The contractor will receive credit for the total value of transportation services provided by the DBE using trucks it owns, insures and operates, and using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE owned trucks on the contract. Additional participation by non-DBE lessees results in credit only for the fee or commission paid to the DBE as a result of the lease agreement.

Example: DBE Firm X uses two of its own trucks on contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would only be awarded for the total value of

transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

ADOT will monitor and conduct onsite visits to ADOT Subrecipients/Subgrantees and LPAs projects to conduct reviews to help ensure trucking firms are performing a commercially useful function on projects.

4. Materials and Supplies

ADOT will credit expenditures with DBEs for material and supplies towards the DBE goal as follows. If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited. A manufacturer is defined as a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the Department will credit the entire amount of the fees or commissions charged by the DBE for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. The cost of the materials and supplies themselves may not be counted toward the DBE goal.

DBE credit for supplying paving grade asphalt and other asphalt products will only be permitted for standard industry hauling costs, and only if the DBE is owner or lessee of the equipment and trucks. Leases for trucks must be long term (extending for a fixed time period and not related to time for contract performance) and must include all attendant responsibilities such as insurance, titling, hazardous waste requirements, and payment of drivers.

V. COMPLIANCE AND ENFORCEMENT

A. Information, Confidentiality, Cooperation

ADOT and all its Subrecipients/Subgrantees and LPAs will safeguard from disclosure to third parties any 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, ADOT and all its Subrecipients/Subgrantees and LPAs 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.

B. Contract Performance

Contract items of work designated by the contractor, consultant, or vendor to DBEs shall be performed by the designated DBE or an ADOT-approved DBE substitute. DBE contract work items shall not be performed by the contractor, consultant, vendor, or a non-DBE subcontractor without prior written approval by the Business Engagement & Compliance Office. The DBE must perform a commercially useful function. At project initiation (preconstruction meeting, kick-off meeting, etc.), contractors, consultants, or vendors shall provide copies of completed and signed DBEs' (listed on the DBE Affidavits) subcontracts, purchase orders, invoices, etc.

Within five business days of the preconstruction conference or kick-off meeting, the contractor or consultant shall enter all subcontractors' information (DBEs and non-DBEs) into the Business Engagement & Compliance Office web-based payment tracking system (<https://adot.dbesystem.com>). Contractors shall be required to enter into the system subcontractors' name, contact information, and subcontract amounts for all subcontractors and vendors performing on the project as verification that scopes of services and commitments made via DBE documentation submitted as a condition of contract award are being met.

All subcontract agreements (DBEs and non-DBEs) shall include all required assurances contained within the DBE Special Provisions (EPRISE, 03/15/11). This is not meant to be an exhaustive list of ADOT/Federal contract requirements. Contractors must refer to the full ADOT contract specifications for complete requirements.

The following provisions must be included in all ADOT, Subrecipient/Subgrantee and LPA Federal-aid contracts:

1. Assurance of Nondiscrimination (EPRISE – 1/17)

The contractor and subcontractor agreements shall include language to support the following statement:

The contractor or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 state deems appropriate. The contractor or subcontractor shall ensure that all subcontract agreements contain this nondiscrimination assurance.

2. Subcontractor Payment Reporting (EPRISE – 5/17)

The contractor or subcontractor agreements shall include language to support the following statement:

The contractor shall provide all such required information for the current month by the 5th of the following month. The required information shall be submitted electronically through the Department's web based payment tracking system (<https://adot.dbesystem.com>).

3. Lower-Tier Activity (EPRISE – 6/17)

The contractor or subcontractor agreements shall include language to support the following statement:

Subcontractor and lower-tier(s) of subcontractor agree to fully comply with the federal aid contract provisions which are hereby fully incorporated into and made part of this subcontract. Subcontractor shall include these required contract provisions in all its lower-tier subcontracts.

4. Form FHWA-1273 (EPRISE – 16/17)

The contractor or subcontractor agreements shall include FHWA Form 1273 as an attachment.

5. Prompt Payment (EPRISE – 16/17)

The contractor or subcontractor agreements shall include language to support the following statement:

The Arizona Prompt Payment statute requires a contractor to pay "within seven days of receipt by the contractor or subcontractor of each progress payment or final payment, the full amount received for such subcontractor's work and materials supplied based on work completed or materials supplied under the subcontract." See A.R.S. 32-1129.02(B). As long as a subcontractor or supplier submits an invoice or pay request, and as long as there is no dispute over the quality of the work or materials, then the law demands that payment be made within seven days after the general contractor has been paid.

6. Return of Retention Requirements (EPRISE – 16/17)

The contractor or subcontractor agreements shall include language to support the following statement specified in subsection 109.06(B) of the standard specifications:

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or 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 Engineer deems appropriate.

7. Certification of Payments to DBE Firms (EPRISE – 17/17)

The contractor or subcontractor agreements shall include language to support the following statement:

The contractor shall submit at the completion of the project the "Certification of Payments to DBE Firms" affidavit for each DBE firm working on the project.

Each page of each required attachment must be dated and initialed by the DBEs listed on the DBE Affidavits in order for the subcontract to be considered valid. Contractors, consultants, or vendors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal

regulation and state statutes, or 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 ADOT deems appropriate.

Use of a DBE listed on the DBE Affidavits is a condition of award. Substitution of DBEs listed on the DBE Affidavits will not be allowed without written approval from the Business Engagement and Compliance Office. All terminations, substitutions, and reductions in scope must be approved by the Business Engagement & Compliance Office as previously outlined in the Good Faith Efforts Procedures section above.

C. Non-Performance by DBEs

In accordance with 49 CFR Part 26 and the Good Faith Effort section of this document, in the event a DBE is unable or unwilling to fulfill its agreement, the contractor, consultant, or vendor will immediately notify ADOT and provide all facts surrounding the matter. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE goal on the contract. The contractor, consultant, or vendor shall immediately make reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work to the extent needed to meet the DBE goal.

D. Subcontractor Payment Monitoring

ADOT will require prime contractors, consultants, and vendors to maintain records and documents of payments to DBE and non-DBE subcontractors for five years following performance of the contract. These records will be made available for inspection upon request by any authorized representative of the ADOT Business Engagement & Compliance Office. Subcontractors are required to maintain payment information for any lower tier subcontractors for the same three-year duration.

ADOT, Subrecipients/Subgrantees and LPAs are required to collect data on DBE and non-DBE participation to report to FHWA on federal aid projects. Contractors, consultants, and vendors are notified that such record keeping is required for tracking DBE participation.

Contractors, consultants, and vendors performing on federal aid transportation projects are required to report monthly amounts awarded and paid to all DBEs and non-DBEs. All DBE and non-DBE subcontractors working on federal aid transportation projects are required to verify receipt of payment.

Further, first-tier subcontractors are required to report amounts awarded and paid to all lower-tier DBE and non-DBE subcontractors. Lower-tier subcontractors are required to verify receipt of payment.

Contractors, consultants, and vendors shall provide the required information for the current month by the 5th of the following month. The required information shall be submitted electronically through the web-based payment tracking system <https://adot.dbesystem.com>.

E. Joint Checks

1. *Requirements*

A DBE subcontractor and a material supplier (or equipment supplier) may request permission for the use of joint checks for payments from the prime contractor to the DBE subcontractor and the supplier. Joint checks may be issued only if all the conditions in this subsection are met.

1. The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.
2. The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.
3. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
4. There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.
5. Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.
6. The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.
7. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.
8. The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

2. *Procedure and Compliance*

ADOT Business Engagement & Compliance Office must approve the agreement for the use of joint checks in writing.

1. After obtaining authorization for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement.
2. Copies of canceled checks must be submitted with the payment information for the period in which the joint check was issued. Certificates of payment must indicate whether or not joint checks were used.

3. The prime contractor, DBE, and supplier each have an independent duty to report to the Department in the case of any change from the approved joint check arrangement.
4. Any failure to comply will be considered by the Department to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, reduction or loss of prequalification, debarment, or other remedies which may prevent future participation by the offending party.

F. Certification of Payment

Achievement of the DBE goal by a contractor is measured by actual payments made to the DBEs. The contractor, consultant, or vendor shall submit at substantial completion of the project the "Certification of Payment" affidavit for each DBE firm working on the project. This affidavit shall be signed by the prime contractor, consultant, or vendor and the relevant DBE, and submitted to ADOT Business Engagement & Compliance Office or Subrecipient/Subgrantee and LPA.

G. Sanctions

If ADOT determines that a contractor, consultant, or vendor has failed to make sufficient reasonable efforts to meet contract DBE goal established by ADOT, or to otherwise carry out DBE special provisions herein, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as deemed appropriate by ADOT.

If it is determined that failure to meet the contract goal established by ADOT is not cause to terminate the contract, an amount equal to the value of the contract goal will be deducted from the payment due the contractor, consultant, or vendor. However, if the failure is a first occurrence by the contractor, and ADOT determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced to one-half (1/2) of the value of the un-obtained contract goal. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in ADOT projects.

VI. DBE CERTIFICATION

A. Certification Process

ADOT 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. ADOT will inform applicants within 30 days of receipt of an application whether the information is complete or additional documentation is required. ADOT will make its certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact ADOT Certification Program Manager at (602) 712-7761.

Certification application forms and documentation requirements can be found at www.azdbe.org.

VII. CERTIFICATION PROCEDURES

A. Arizona Unified Certification Program

ADOT is the lead agency for the Arizona Unified Certification Program (UCP). The Arizona UCP meets all of the requirements of 49 CFR Part 26. The UCP is comprised of ADOT, City of Phoenix, and City of Tucson. Information regarding the Arizona UCP can be found at www.azdbe.org.

B. BProcedures for Certification Decisions

Annual Updates /“No Change” Affidavits and Notices

Once a DBE has been certified, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of section 26.87. DBEs are not required to reapply for certification. However, ADOT may conduct a certification review of a certified DBE firm, including a new onsite review, three years from the date of the firm’s most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm’s eligibility. If ADOT finds that the firm’s eligibility is questionable, it may conduct an onsite review on an unannounced basis, at the firm’s offices and jobsites. These reviews will include the following components:

- The most recent company taxes will be collected and evaluated to ensure that the company continues to meet the size standard requirement
- The most recent Personal taxes and Personal Financial Statement for the qualifying DBE(s) will be collected and evaluated to ensure the Personal Net Worth requirement continues to be met.
- Companies will be required to submit any contact information changes or structural changes that may affect eligibility requirements. In addition, certified DBE companies will be required to submit any major purchase agreements or loan agreements signed into after the initial certification review was conducted.

ADOT requires all DBEs to inform the agency within 30 days of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with ADOT's application for certification.

On an annual basis, ADOT will also require all certified DBEs to submit a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the [Recipient] under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million."

Along with the affidavit, DBEs are required to submit their last year's federal taxes documenting annual gross receipts.

ADOT will notify all currently certified DBE firms of these obligations every April 1st. The DBE will have until June 30th of that year to submit the required documentation. This notification will inform DBEs to submit the "no change" affidavit and their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

The annual update process is completed via BECO's online DBE application. DBEs are required to log into a user account, provide the necessary information, and certify that the information is complete and accurate. The online application is tied directly to vendor registration and can be accessed at www.azdbe.org.

Denials of Initial Requests for Certification

If ADOT denies a firm's application or de-certifies a firm, the firm may not re-apply until 12 months have passed from the action. If a firm submits and then withdraws its DBE application, the firm may do so at any time and does not have to wait 12 months.

Removal of a DBE's Eligibility

In the event that ADOT proposes to remove a DBE's certification, ADOT will follow procedures consistent with 26.87. If a certified company is determined to no longer be eligible for the DBE program, ADOT will send a propose to remove letter stating the reasons the company no longer meets the DBE requirements. The DBE can request an informal hearing or choose to submit additional information for review. If a company requests an informal hearing ADOT will take action to begin the proceeding per 26.87.

To ensure separation of functions in a de-certification, ADOT has determined that the Nevada DOT Compliance Officer will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure the Nevada DOT Compliance Officer will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Interstate Certification

When ADOT receives a DBE application from a company certified in another state, ADOT may, at its discretion, certify that company without further procedures. If an out-of-state company wants to obtain certification in this manner, the firm must provide ADOT a copy of its certification notice from the home-state DOT. ADOT will be responsible for verifying the validity of the out-of-state certification.

If ADOT chooses not to accept certification based on the home-state DOT evaluation, the applicant firm must provide a complete copy of the application form, all supporting documents and any other information that needs to be submitted. Once ADOT receives all of the necessary information, ADOT must request a copy of the home-state onsite report within seven days of receipt of the application.

If ADOT agrees with the home-state determination, ADOT must send the applicant firm a notice that it is certified and place the firm on the AZUCP directory of DBE certified firms within 60 days from the date on which ADOT received all the requested information.

If ADOT has good reason and does not agree with the determination of the home state ADOT must send a notification to the applicant company within 60 days stating the reasons why ADOT is denying certification. This notice must state with particularity the specific reasons why ADOT believes that the firm does not meet the DBE requirements and must offer the applicant firm an opportunity to respond to ADOT with respect to the reasons.

If the applicant firm elects to request an in-person meeting with ADOT's decision maker to discuss ADOT's objections to the firm's eligibility, ADOT must schedule the meeting to take place within 30 days of receiving the firm's request. ADOT must issue a written decision within 30 days of the receipt of the written response from the applicant firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. A decision may be appealed to the Department of Transportation Office of Civil Rights (DOCR).

When ADOT denies a firm's application, rejects the application of a firm certified in another state, or decertifies a firm, ADOT must make an entry in the Department of Transportation Office of Civil Rights Ineligibility Determination Online Database. The following information must be submitted:

1. The name of the firm
2. The name of the firm's owner(s)
3. The type and date of this action
4. The reason for the action

ADOT must check the website at least once every month to determine whether any firm that is applying for certification by ADOT, or that ADOT has already certified, is in the database. For any such firm that is in the database, ADOT must promptly request a copy of the listed decision from the UCP that made it. If ADOT receives such a request, ADOT will provide a copy of the decision within seven days of receiving the request. Notwithstanding any provision of Federal or state law, ADOT must not release any information that may reasonably be construed as confidential business information. This includes application for DBE certification and supporting information. However, ADOT must transmit this information to DOT in any certification appeal proceeding or to any other state to which the individual's firm has applied for certification.

Certification Appeals

Any firm or complainant may appeal ADOT's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs Division (S-33)
1200 New Jersey Ave., S.E.
Washington, DC 20590
Phone: (202) 366-4754
TTY: (202) 366-9696
Fax: (202) 366-5575

ADOT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs on DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

VIII. SUBRECIPIENT/SUBGRANTEE & LOCAL PUBLIC AGENCY COMPLIANCE

A. Policy

Subrecipient/Subgrantees and Local public agencies (LPAs) receiving federal-aid transportation funds through ADOT must adopt ADOT's DBE Program Plan, related procedures and contract specifications herein as a condition of receiving federal funds.

B. Objectives

Subrecipients/Subgrantees and LPAs must commit to supporting the following ADOT DBE Program Objectives:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's construction, procurement, and professional services contracts in the areas of highway, transit, and airport financial assistance;
- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT 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 counted as DBEs;
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
- To assist in the development of firms that can compete successfully in the market place outside the DBE program.

C. Non-Discrimination

Subrecipients/Subgrantees and LPAs will not 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, national origin, age, or disability.

In compliance with the ADOT DBE Program Plan, Subrecipients/Subgrantees and LPAs 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, national origin, age, or disability.

D. DBE Program Compliance Required Activities

In accordance with the Subrecipient/Subgrantee/Local Public Agency DBE Program Plan Compliance Statement, all ADOT Subrecipients/Subgrantees and LPAs shall designate a Disadvantaged Business Enterprise Liaison Officer (DBELO), responsible for adopting and implementing ADOT's DBE Program Plan, related procedures and contract specifications to include but not limited to:

- Each Subrecipient/Subgrantee and LPA must complete and have its executive officer sign ADO's Subrecipient/Subgrantee and LPA DBE Program Compliance Statement, assuring adherence to ADOT DBE Program Plan and concomitant procedures
- Follow the same guidelines, procedures, and contract specifications developed by ADOT to implement its DBE the program.
- Participate in training conducted by ADOT related to DBE requirements and program regulations
- Submit all federally-assisted contracts to ADOT to be assessed for a DBE goal
- Include DBE contract goal and DBE language as provided by ADOT in contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents
- Collect DBE Affidavits, Bidders' List forms from all bidders/offers, Notice of Contract Award and all other ADOT required forms and submit to ADOT Business Engagement and Compliance Office in accordance with the FHWA Compliance Checklist Subrecipient/Subgrantee/Local Public Agency Federal-Aid Contracts available at:
<http://azdot.gov/docs/default-source/beco-library/fhwa-subrecipientSubrecipient/Subgrantee-and-lpa-compliance-checklist.pdf?sfvrsn=2>
- Enter contract award, DBE commitment, prime and subconsultants payments, and other requested data in the DBE tracking system in accordance with the FHWA Compliance Checklist Subrecipient/Subgrantee/Local Public Agency Federal-Aid Contracts available at:
<http://azdot.gov/docs/default-source/beco-library/fhwa-subrecipientSubrecipient/Subgrantee-and-lpa-compliance-checklist.pdf?sfvrsn=2>

- Submit contract data in support of monthly, semi-annual and annual federal reporting submission made by ADOT. Subrecipients/Subgrantees and LPAs are required to use the ADOT Local Public Agencies DBE Reporting System, via www.arizonalpa.dbesystem.com.
- Provide monthly and semi-annual reports on awards and DBE utilization as requested by ADOT.

Note: ADOT reserves the right to audit Subrecipients/Subgrantees and LPAs contractor compliance procedures and project files and conduct onsite reviews to ensure compliance with DBE regulations.

Contract data shall be reviewed by, Subrecipients/Subgrantees and LPAs for accuracy and completeness by May 1st and November 1st of each year. Semi-annual reports will be prepared by ADOT and reviewed with Subrecipients/Subgrantees and LPAs on an as-needed basis.

IX. ATTACHMENT A: Business Engagement & Compliance Office Organizational Chart

