

ARIZONA

— DEPARTMENT OF —
TRANSPORTATION



DBE Program Plan

Arizona Department of Transportation

Applicable to FHWA, FTA and FAA US DOT-Assisted Projects

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I. GENERAL REQUIREMENTS – SUBPART A

1. DBE Program Objectives and Policy Statement (49 CFR 26.1, 26.23)

The Arizona Department of Transportation (ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the United States Department of Transportation (US DOT), 49 CFR Part 26. ADOT has received Federal financial assistance from the U.S. 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 US DOT-assisted contracts. ADOT's objectives for its DBE program are to:

- Ensure nondiscrimination in the award and administration of US DOT-assisted contracts in ADOT's and its Subrecipients' construction, procurement, professional service highway, transit, and airport financial assistance programs;
- Create a level playing field on which DBEs can compete fairly for US DOT assisted contracts;
- Ensure that ADOT's DBE program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in US DOT-assisted contracts;
- Promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by ADOT and its Subrecipients.
- Assist in the development of firms that can compete successfully in the market place outside of the DBE program; and
- Provide appropriate flexibility to ADOT and its Subrecipients in establishing and providing opportunities for DBEs

It is also ADOT's policy to facilitate and encourage participation of Small Business Concerns (SBCs), in US DOT-assisted contracts, as a component of its DBE program. ADOT encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

ADOT conducts DBE Availability and Disparity Studies at regular intervals and has established a narrowly-tailored DBE program in accordance with applicable laws. ADOT has established Disadvantaged Business Enterprise Policy SUP-3.05, which provides guidelines for the implementation of the DBE program.

ADOT will take all necessary and reasonable steps under 49 CFR Part 26, its DBE Policy SUP-3.05 and the DBE Program Plan to implement the DBE Program within its applicable departments and with its subrecipients, consultants, contractors, subcontractors and DBEs in a manner that shall not discriminate on the basis of race, color, national origin, sex, age, or disability in the award and performance of US DOT-assisted contracts or in the administration of its DBE program or the requirements 49 CFR part 26.

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.

This policy statement shall be posted on the ADOT website and distributed to all affected ADOT divisions, and all Arizona Subrecipient/Subgrantees and Local Public Agencies (LPAs). This policy statement will also be made available on the ADOT website for consultants, contractors, DBE and non-DBE companies that perform on US DOT-assisted contracts.

2. Applicability (49 CFR Part 26.3)

As a recipient of Federal funds ADOT is required to administer a DBE Program in compliance with all laws, regulations, Executive Orders, and guidance. ADOT's DBE program applies to ADOT and all its Subrecipients that directly or indirectly receive the following:

- a. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94, and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA), Public Law 117-58.
- b. Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Public Law 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Public Law 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Public Law 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Public Law 112-141, 126 Stat. 405; Titles I, II, III, and VI of the Fixing America's Surface Transportation Act (FAST Act) Public Law 114-94; and Divisions A and C of the Bipartisan Infrastructure Law (BIL), enacted as the Infrastructure Investment and Jobs Act (IIJA) (Pub. L. 117-58), Public Law 117-58.
- c. Airport funds authorized by 49 U.S.C. 47101, et seq.

The program covers all US DOT-assisted projects. ADOT distributes Federal transportation funds to Certification Acceptance Agencies, Self-Administration Agencies and other Subrecipients/Grantees throughout the state of Arizona. As a condition of receipt of funding, these Subrecipients/Subgrantees and LPAs must adopt the ADOT DBE Program Plan and follow the same guidelines and procedures developed by ADOT to implement its DBE program.

The DBE program does not apply to non-US DOT assisted projects.

3. Definitions (49 CFR Part 26.5)

ADOT means Arizona Department of Transportation.

ADOT Contracting Departments means Departments/Groups within ADOT that are responsible for procurement and or contract administration function of DOT-assisted contracts.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation or ANC means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, Business Concern or Business Enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Business Engagement and Compliance Office or BECO means the ADOT office responsible for the overall development, management and implementation of the DBE program in coordination with other ADOT Departments and units.

Certification means the process whereby an Arizona Unified Certification Program (UCP) member agency determines if an applicant firm meets the disadvantaged business enterprise eligibility criteria set forth in 49 CFR 26.

Certification Acceptance Agency means an LPA has been approved under the ADOT Certification Acceptance Program to independently manage most aspects of the project development process, with ADOT oversight. A certified LPA retains a significant degree of approval authority at the local level when developing Federally funded transportation projects.

Certifier: The Arizona Unified Certification Program (AZUCP) recognizes that some Partner Agencies/Certifiers may, in addition to administering ADOT's DBE Program, administer a local Small Business Enterprise (SBE) Program that is separate from ADOT's DBE Program. The AZUCP is comprised of three agencies - ADOT, and its two partner agencies the cities of Phoenix and Tucson. Any firm certified under a Partner Agency's local SBE program will not be included in the AZUCP unless they are also certified as a DBE under 49 CFR Part 26. Unless otherwise defined, "certifier" refers to the AZUCP Partner Agency of Record that has obtained a firm's records and reviews that firm for DBE certification. The certifier is the agency responsible for maintenance of certification records for each DBE, and for any future DBE certification actions including annual Declaration of Eligibility submittals, inquiries, etc.

Commercially Useful Function or CUF means a DBE performs a "Commercially Useful Function" when it is responsible for the execution of the work of a contract and is carrying out its responsibility by actually performing, managing and supervising the work involved. With respect to furnishing materials and supplies as part of the DBE contract, the DBE also performs a "Commercially Useful Function" when the DBE is responsible for negotiating price, determining quality and quantity, ordering materials and installing (where applicable) and paying for the material itself. A DBE does not 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. See also 49 CFR 26.55.

Compliance means that a recipient has correctly implemented the requirements of 49 CFR 26.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services, engineering design, planning, etc.) and the buyer to pay for them. A lease is considered to be a contract.

Contractor means a construction, engineering design, professional services or other type of firm that participates, through a contract or subcontract (at any tier), in an US DOT-assisted highway, transit or airport program.

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA) and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern;

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

FTA Tier I Recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier 2 Recipient means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

DOT-Assisted Contract means any contract between ADOT or its Subrecipient and a contractor (at any tier) funded in whole or in part with DOT (Federal Aviation Administration, Federal Highway Administration, and Federal Transit Administration) financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good Faith Efforts or GFE means efforts to achieve a DBE goal or other DBE Program requirements, which by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe or Native American Tribe means any Federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

Joint Venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Local Public Agency or LPA means 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).

NAICS Code means the North American Industry Classification System (NAICS), the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area, which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii, which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient, DBE, non-DBE or contractor has not correctly implemented the requirements of this part.

Notice of decision or NOD means determination that denies a firm's application or decertifies a DBE.

Notice of intent or NOI means recipient's letter informing a DBE of a suspension or proposed decertification.

Non-DBE means any firm that is not certified as a DBE.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal Net Worth means the net value of an individual's reportable assets and liabilities, per the calculation rules in § 26.68.

Primary Industry Classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: [census.gov/naics](https://www.census.gov/naics)

Primary Recipient means a recipient, which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal Place of Business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-Conscious or RC means a measure or program that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-Neutral or RN means a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

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.

Secretary means DOT Secretary of Transportation or the Secretary's designee.

Set-Aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or SBA means the United States Small Business Administration.

SBA Certified Firm means firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small Business Concern or SBC means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and Economically Disadvantaged Owners or SEDO means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

Any individual that ADOT finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if ADOT requires it.

Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- **Black Americans**, which includes persons having origins in any of the Black racial groups of Africa;
- **Hispanic Americans**, which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- **Native Americans**, which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- **Asian-Pacific Americans**, which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- **Subcontinent Asian Americans**, which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal or Sri Lanka;
- Women;

- Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration (SBA), at such time as the SBA designation becomes effective.

Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Subcontractor means an individual firm, or corporation who, with the written consent of ADOT or its Subrecipient/Subgrantee, subcontracts any part of the contract (including, but not limited to, construction and professional services, engineering design, planning etc.). First tier subcontractors are those to whom a contractor subcontracts a portion of the work. Second tier subcontractors are those to whom a first tier subcontractor subcontracts a portion of the work.

Subrecipient/Subgrantee means any legal entity to which a sub-award of federal financial assistance is made and which is accountable to ADOT for the use of the funds provided (49 CFR 19.2), such as Certification Acceptance Agencies, Self-Administration Agencies, Subgrantees and other Local Public Agencies.

Transit Vehicle Manufacturer or **TVM** means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

Tribally-Owned Concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unified Certification Program or **UCP** means all recipients in the same jurisdiction (normally a State) must sign an agreement establishing a UCP and submit the agreement to the Secretary for approval. (§ 26.81)

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

4. **Non-Discrimination Requirements (49 CFR Part 26.7)**

ADOT and its Subrecipients/Subgrantees 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, or national origin.

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, or national origin.

5. Record Keeping and Reporting Requirements (49 CFR Part 26.11)

A. Reporting to DOT (§ 26.11(a))

ADOT will report DBE utilization data outlined on the Uniform Report of DBE Awards/Commitments and Payments Form, as outlined in Appendix B of 49 CFR Part 26, to the appropriate DOT operating administration as follows:

- FHWA and FTA - DBE utilization from October 1st through March 31st will be submitted by June 1st
- FHWA and FTA - DBE utilization from April 1st through September 30th will be submitted by December 1st
- FAA - DBE utilization from October 1st through September 30th will be submitted by December 1st

Uniform Report of DBE Awards/Commitments and Payments data will include:

- Awards and Commitments made during the reporting period
- Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs during the period
- Payments on Ongoing Contracts during the reporting period
- Total Payments on Contracts Completed during the reporting period

ADOT Contracting Departments and Subrecipients/Subgrantees must report its contract awards, DBE commitments, prime and subcontract payments, including lower-tier activity, and other requested information monthly to ADOT Business Engagement & Compliance Office (BECO). ADOT BECO will aggregate all data into semi-annual and annual reports that will be submitted to the various DOT operating administrations within the prescribed timeframes noted above.

Compile and maintain a monthly report of awards/commitments and attainment, which is reported monthly to the ADOT Director's Office, ADOT divisions, DBE Task Forces, and at various regular transportation industry meetings and reported semi-annually to FHWA and FTA and annually to FAA. A list of projects awarded with DBE commitment amounts are posted monthly on the ADOT BECO website at azdot.gov/business/business-engagement-and-compliance/dbe-goals-and-reports

Keep a running tally in the ADOT online contract management system, DBE & OJT Online Reporting System (DOORS) of DBE utilization/attainment, including race-neutral DBE participation, as well as payments to DBE firms for work committed to them at the time of contract award. Crosschecks of DOORS reports with contracting department's databases are conducted monthly to ensure data integrity.

Track and delineate State/Federal funding split to ensure that only the federal share is reported on Uniform Reports to the USDOT. This information is tracked in the ADOT DOORS.

Compare DBE commitment Affidavits submitted at the beginning of each project with DBE Certification of Final Payment forms at the end of the project to determine if DBE goal was met.

B. Bidders Lists (§ 26.11(c))

ADOT and its Subrecipients/Subgrantees are required by 49 CFR 26.11, to collect and submit Bidder's List information, regarding all DBE and non-DBE firms that bid and quote on DOT-assisted contracts. ADOT uses its overall agency Bidder's List information to help calculate the agency's triennial overall FHWA, FTA and FAA DBE goal, as well as individual contract DBE goals for FHWA race-conscious contracts.

ADOT collects and maintains its overall agency bidder's list information by having all firms interested in working on DOT-assisted contracts register online in the Arizona Unified Transportation Registration and Certification System (AZUTRACS) database, which can be accessed at azdot.gov/azutracs

The registration system is a database, which is part of a centralized web portal that contains information about companies that are interested in doing business with ADOT and its Subrecipients. Information collected in the AZUTRACS registration database from firms seeking work on DOT-assisted contracts includes the following required bidder's list information:

- Firm name;
- Firm address including ZIP code;
- Firm's status as a DBE or non-DBE;
- Race and gender information for the firm's majority owner;
- NAICS code applicable to each scope of work the firm sought to perform in its bid;
- Age of the firm; and
- The annual gross receipts of the firm; indicating the gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million; etc.).

Firms must maintain their profile with current and accurate firm information.

For each DOT-assisted contract that is awarded, all Bidders must complete and submit an online contract-specific Bidders/Proposers' List form containing a list of names and the NAICS code that is applicable to each scope of work for DBEs and non-DBE firms that expressed interest in working on each specific contract. Bidders must submit the online contract-specific Bidders/Proposers' List form, whether or not they are the apparent low bidder or awardee, no later than 4:00 PM on the fifth calendar day following the bid opening, or as otherwise stated in the contract advertisement and specifications.

For each DOT-assisted engineering design, professional services or goods and services contract that is awarded, all Bidders must complete and submit an online Bidders/Proposers' List form containing a list of names and AZUTRACS registration numbers and/or the required information above (if a firm is not registered in AZUTRACS) for DBEs and non-DBE firms that expressed interest in working on each specific contract. Bidders/Proposers or Offerors must submit the online Bidder/Proposers' List

form, whether or not they are the apparent awardee, with Statement of Qualifications Proposal or Request for Proposal or as outlined in the contract specifications.

Prior to awarding a DOT-assisted contract, ADOT's contracting departments and Subrecipients/Subgrantees are required to verify:

- That consultants, subconsultants, contractors, subcontractors (including DBEs) are registered in AZUTRACS; and
- Bidders/Proposers' List form from all bidders/offerors for each contract are submitted electronically in ADOT's AZUTRACS database in accordance with contract specifications.

C. Maintenance and Retention of Records (§ 26.11(d))

ADOT maintains records documenting a firm's compliance with DBE Program requirements. ADOT keeps and maintains a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews in the secured and confidential contract management system DOORS. Older files prior to use of the online DOORS have been scanned and are stored electronically on an ADOT secured server. Only authorized Certification staff has access to view or review certification records. These records are retained in accordance with applicable record retention requirements in accordance with ADOT's financial assistance agreement with DOT. Other certification or compliance related records are retained for a minimum of three (3) years.

D. Arizona Unified Certification Program (AZ UCP) Directory Reporting (§ 26.11(e))

ADOT, as the lead agency for the Arizona Unified Certification Program (AZ UCP), will submit to the DOT Office of Civil Rights, a DBE "MAP-21 Data" report each year. The report will detail the statistical information related to the number and demographics of DBE certified instate and interstate firms listed in the AZUCP DBE Directory.

E. Assurances/Financial Assistance Agreements (49 CFR Part 26.13)

Each financial assistance agreement ADOT signs with a DOT operating administration will include the following assurance:

The recipient 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 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient'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, ADOT may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Every DOT-assisted contract and subcontract ADOT and its Subrecipients/Subgrantees let and sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

Assurances of Non-Discrimination are included in each of the applicable DBE contract provisions inserted into contracts with prime contractors/consultants; **DBE Construction, Professional Services, and On Call Contract Language**. The applicable DBE contract provisions are contained in all engineering design/professional services, construction, transit and aviation DOT-assisted contracts and this DBE Program Plan. Contractors must also include the following, in all of their DOT-assisted subcontracts to ensure that applicable DBE requirements flow down from contracts to subcontracts:

- The applicable DBE contract provisions: or,
- The applicable DBE Program Compliance Assurances for Subcontracts; Construction, or Professional Services/Design.

DBE Program Compliance Assurances for Subcontracts language, which addresses issues such as non-discrimination assurance and prompt payment, is available on the BECO Website, under **DBE Program Compliance Assurances for Subcontracts, for Construction, and for Professional Services/Design contracts**.

F. Exemptions or Waivers (49 CFR Part 26.15)

ADOT is not currently operating under any exemptions or waivers to 49 CFR Part 26. If ADOT determines that any exemptions or waivers become necessary, ADOT will apply through the concerned operating administration using the procedures outlined in 49 CFR Part 26.15.

II. ADMINISTRATIVE REQUIREMENTS – SUBPART B

1. DBE Program Requirement (49 CFR Part 26.21)

ADOT developed a DBE Program in compliance with 49 CFR Part 26.21 as a result of:

- a. ADOT is a primary recipient of funds from FHWA
- b. ADOT receives FAA airport funds exceeding \$250,00 each federal fiscal year

ADOT receives FTA funds exceeding \$670,000 each federal fiscal year, therefore ADOT is designated as an FTA Tier 1 recipient, per 49 CFR Part 26.21(a). ADOT and its Subrecipients/Subgrantees will continue to carry out the requirements defined in 49 CFR Part 26 and this Program Plan as a condition of receiving federal funds. All ADOT Subrecipients/Subgrantees of DOT funds must comply with ADOT's DBE Program Plan and may not have a plan independent from ADOT.

As rules pertaining to 49 CFR Part 26 are changed, or if ADOT implements significant changes in its oversight and monitoring procedures outlined in this DBE Program Plan, ADOT will update its Plan and submit to DOT for review and approval. Any changes in rules pertaining to 49 CFR Part 26 made by DOT, that are not a part of this DBE Plan, will become effective on the date of the change by DOT, whether or not ADOT has updated its DBE Program Plan with those changes, as long as the changes have been incorporated into DBE contract specifications and/or are widely communicated and disseminated to DBEs, contractors, Subrecipients/Subgrantees, and other affected stakeholders. ADOT's DBE Program Plan will be updated as soon as possible to reflect any changes to 49 CFR Part 26 or guidance from DOT related to DBE regulations.

Forms, programs, training and other procedures related to the DBE Program are available on the ADOT website at [azdot.gov/business/business-engagement-and-compliance](https://www.azdot.gov/business/business-engagement-and-compliance) and are subject to modification from time to time. Customers are encouraged to check the website periodically for the most current versions of forms to be used for business pertaining to the DBE program or contact the ADOT Business Engagement and Compliance Office at 602-712-7761.

1. Policy Statement (49 CFR Part 26.23)

ADOT's Policy Statement that expresses its commitment to the DBE program, states its objectives, and outlines responsibilities for its implementation is incorporated on the website [ADOT's Guides and Policies](#). This policy statement will be posted on the ADOT website and distributed to all affected ADOT divisions, and all ADOT Subrecipient/Subgrantees. This policy statement will also be made available to consultants, contractors, DBE and non-DBE companies that perform on DOT-assisted contracts via the ADOT website.

2. DBE Liaison Officer (DBELO) (49 CFR Part 26.25)

ADOT has designated Florentina Samartinean, EBD Administrator, as its DBE Liaison Officer (DBELO).

fsamartinean@azdot.gov

1801 W. Jefferson St., Suite 101, Mail Drop 154
Phoenix, AZ 85007
(602) 712-7761

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that ADOT and its Subrecipients/Subgrantees comply with all provisions of 49 CFR Part 26.

The DBELO reports to the Deputy Director/Chief Operating Officer who reports to the ADOT Director. However, the DBELO has access to the ADOT Director on DBE related matters, as needed. An organization chart displaying the DBELO's position in the organization is available on the BECO Website at azdot.gov/business/business-engagement-and-compliance.

The DBELO is responsible for oversight of the developing, implementing and monitoring of ADOT's DBE program, in coordination with other appropriate ADOT officials listed below in accordance with

49 CFR Part 26, **ADOT's DBE Policy SUP-3.05** and this DBE Program Plan. The duties of the ADOT DBELO include, but are not limited to:

- Advising the ADOT Director regarding DBE matters and accomplishments.
- Communicating with the concerning DOT operating administration, Federal Highway Administration Arizona Division Office and other external stakeholders concerning the operation of ADOT's DBE program.
- Completes final review and approval of all DBE program documents submitted to DOT to ensure compliance with 49 CFR Part 26.

The DBELO delegated authority to the Employee and Business Development Assistant Administrator/DBE Program Administrator to manage professional and technical staff and to work with other key ADOT Division staff to administer the DBE program. Primary staff duties and responsibilities include the following, but are not limited to:

Employee and Business Development Assistant Administrator:

- Supervising the activities of DBE Program Managers and Technicians.
- Review DBE reports required by each DOT operating administration.
- Support the coordination of ADOT DBE Task Forces and Subcommittees to reduce barriers to entry to DBE firms.
- Serve as approver and mediator for DBE issues that require escalation.
- Support the coordination of the Arizona Unified Certification Program (UCP).
- Coordinate Disparity Studies and DBE triennial and project goals setting process, as required.
- Ensuring compliance with 49 CFR Part 26, ADOT DBE Policy SUP-3.05 and this DBE Program Plan.

Contract Compliance & Training Officer, DBE Compliance Program Managers & Compliance Technician(s):

- Gather and report statistical DBE accomplishment data and other information as required by DOT.
- Review third-party contracts and purchase requisitions for compliance with the DBE program.

- Identify contracts and procurements so that DBE goals are included in solicitations via race-neutral and race-conscious methods.
- Oversee the DBE goal-setting process for ADOT and Subrecipient/Subgrantee/Certification Acceptance Agencies/LPA Federal-aid projects.
- Monitor project-specific goal/commitment attainment and identifies ways to improve the process.
- Analyze ADOT's progress toward overall goal attainment and identifies ways to improve progress.
- Develop comprehensive training programs to address the compliance education needs of internal and external ADOT customers, major program areas, and Subrecipients/Subgrantees.
- Establish procedures to ensure DBE requirements are met on design and construction projects.
- Train ADOT construction field office staff and Subrecipients/Subgrantees related to DBE program requirements, Commercially Useful Function (CUF) regulations and procedures.
- Attend Pre-Construction Meetings to ensure contractors and subcontractors are aware of DBE requirements.
- Collaborate and provide DBE program guidance to the Regional Field Compliance staff that conducts onsite CUF reviews of all DBEs on all construction contracts statewide.
- Assist with ensuring that all required DBE data is entered in ADOT's contract management system DOORS.
- Investigate and facilitate resolution of prompt payment related issues identified in the field.
- Complete DBE goal shortfall analysis and corrective action plan, as applicable,

Subrecipient/Subgrantee/Local Public Agency Program Manager:

- Ensures Subrecipients/Subgrantees compliance with DBE requirements.
- Provides training to Subrecipients/Subgrantees related to DBE program regulations and requirements.
- Ensures that all Subrecipient/Subgrantee FHWA projects are assessed for DBE goals.
- Works with Subrecipients/Subgrantees to ensure required DBE contract language is included in their project solicitations and contracts.
- Ensures that Subrecipient/Subgrantees 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 coordinates with Subrecipients/Subgrantees to ensure that they report DBE commitments and payments and enter required DBE utilization data in the LPA DBE tracking system.

Alternative Delivery Project Manager:

- Provides oversight and monitoring of large Design/Build projects where DBE utilization is not identified at the beginning of the projects (open ended performance plans).

- Participates in review and evaluation of technical proposals for alternative delivery projects.
- Works with ADOT representatives to ensure current DBE Special Provisions are included in alternative delivery project solicitations.
- Works with ADOT's Major Projects Group and/or Project Management Group, ADOT Construction Field Office and General Engineering Consultant (GEC) to ensure compliance with DBE requirements.
- Oversees DBE-related bid verification following ADOT construction project bid openings. Includes working with ADOT's Contracts & Specifications Manager and representative(s) from the State Attorney General's office in cases of DBE-related bid irregularities.

Small Business & Workforce Development Officer, DBE Supportive Services Program Manager & Support Specialist(s):

- Manage the ADOT DBE Supportive Services Program.
- Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plan and participate in DBE outreach and educational programs and training activities.
- Provide outreach to DBEs and community organizations to advise them of contracting opportunities.
- Address overconcentration of DBEs in specific trades.
- Address underrepresentation of specific gender/ethnicities to ensure that the pool of certified DBEs accurately reflects the demographics of the state.
- Coordinate dissemination of bid notices, plans, and requests for proposals to DBEs.
- Research and maintain information regarding financial institutions owned by socially and economically disadvantaged individuals and disseminate information to affected parties.

Small Business & Workforce Development Officer, Certification Program Manager & Support Specialist(s):

- Certify DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Program (UCP) in Arizona.
- Maintain and update ADOT's directory of certified DBEs.
- Serve as the ADOT representative as a lead agency in the Arizona UCP.
- Manage the content of the Arizona UCP website.
- Conduct certification training, workshops, and presentations.

The Employee and Business Development Assistant Administrator and the BECO staff identified above work with other key ADOT Division staff to administer the DBE program, as needed. Primary duties and responsibilities of ADOT Division staff to ensure compliance with ADOT's DBE program include the following, but are not limited to:

State Engineer's Office and District Offices, including all Deputy State Engineers, Project Managers, Program Area Managers, and District Engineers:

- Ensures compliance with DBE contract requirements, including Commercially Useful Function reviews and prompt payment enforcement, on Federal-aid design and construction projects, including Subrecipient/Subgrantee DBE compliance through ADOT's Local Public Agency Section.

Contracts and Specifications (C&S) Manager:

- Assists in the development of DBE construction specifications for FHWA funded-contracts.
- Ensures that all Federal-aid projects are submitted to ADOT Business Engagement and Compliance Office for a DBE goal assessment, and that the construction contracts bidding process meets requirements of 49 CFR Part 26 as outlined in the DBE Program Plan and ADOT DBE Policy SUP-3.05.
- Ensures that the appropriate DBE contract specifications are included in all construction bid letting as well as contracts, data collection, and monthly reporting related to DBE participation.

Field Reports Manager:

- Manages the receiving, processing and approving of subcontracts from prime contractors and ensures all subcontracts are in compliance with DBE requirements on ADOT construction contracts awarded by the State Transportation Board.

Engineering Consultant Section (ECS) Manager:

- Manages and assists in the development and implementation of DBE contract requirements for US-DOT assisted engineering, design-related and professional services consulting contracts as required by 49 CFR Part 26 and as outlined in the ADOT DBE Program Plan and Policy SUP-3.05.
- Ensures compliance with applicable DBE contract provisions, data collection, and monthly reporting related to DBE participation on ECS contracts. Responsible for assisting with enforcing Subrecipient/Subgrantee DBE compliance for the pre-award phase of engineering design projects.
- Reviews and approves the agencies written procurement of consultant procedures to ensure the incorporation of DBE contract requirements for FHWA funded engineering and design-related consulting contracts as required by 49 CFR Part 26 for Certification Acceptance Agencies and for Self-Administered projects.

ADOT Chief Procurement Officer:

- Manages and assists in the development and implementation of DBE contract requirements and ensures compliance with 49 CFR Part 26 as outlined in the ADOT DBE Program Plan and Policy SUP-3.05 related to FHWA, FTA and FAA-funded contracts that are governed by the State of Arizona Procurement Code.
- Ensures the appropriate DBE contract language is included in all DOT-assisted procurement contracts, compliance with DBE contract provisions, and data collection and monthly reporting related to DBE participation.

Grand Canyon Airport Manager:

- Manages the Grand Canyon National Park Airport and ensures compliance with 49 CFR Part 26 as outlined in the ADOT DBE Program Plan and Policy SUP-3.05, that appropriate DBE contract language and requirements are included in Grand Canyon Airport construction, professional services, procurement, and concessionaire contracts, data collection, and monthly reporting related to DBE participation.

Aeronautics Group Manager:

- Manages FAA-assisted contracts and ensures compliance with 49 CFR Part 26 as outlined in the ADOT DBE Program Plan and Policy SUP-3.05, that appropriate DBE contract language and requirements are included in FHWA and FAA airport construction, professional services, procurement contracts, data collection, and monthly reporting related to DBE participation.
- Ensures compliance of the ADOT DBE program plan for Subrecipients/Subgrantees of FAA funds (i.e., they have adopted the ADOT DBE program plan and are in compliance or have separate FAA approved DBE program plans).

Multimodal Planning Division (MPD) Director:

- Ensures compliance with 49 CFR Part 26 as outlined in the ADOT DBE Program Plan, Policy SUP-3.05 and DBE contract specifications 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).
- Ensures the appropriate DBE contract language is included in all DOT-assisted contracts, compliance with DBE provisions, data collection, and monthly reporting related to DBE participation and enforcing FHWA, FTA and FAA Subrecipient/Subgrantee DBE compliance.

Assistant Attorney(s) General (one or more) from the Transportation Division of the State Attorney General's Office:

- Assists the Business Engagement & Compliance Office and other ADOT Departments to provide counsel on the DBE program.

ADOT Local Public Agency Section Manager:

- Manages the LPA section and is responsible for providing oversight and monitoring to help ensure that Subrecipients/Subgrantees operate in compliance with the ADOT DBE Program Plan, Policy and DBE EPRISE contract specifications.

Subrecipients/Subgrantees:

- Ensures compliance of the same guidelines and procedures developed by ADOT to implement its DBE program and compliant with DBE program requirements on its DOT-assisted contracts in accordance with 49 CFR Part 26, as outlined in the ADOT DBE Program Plan and Policy SUP-3.05.
- Ensures compliance with applicable DBE contract provisions and ensures data collection and monthly reporting related to DBE participation is submitted to ADOT as prescribed in this Section VIII of this DBE Program Plan.
- Ensures contract provision compliance with Form FHWA 1273 and provides written approval to prime contractors.

2. DBE Financial Institutions (49 CFR Part 26.27)

ADOT thoroughly investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. ADOT encourages prime contractors to use such institutions on US DOT assisted contracts. However, use of DBE financial institutions will not be counted toward the DBE contract goal.

Although no such banks exist in Arizona at this time, ADOT encourages prime contractors to continually research for the availability of such institutions through the Business Programs Office at osdbu.dot.gov/financial/stlp.cfmm. Another source is the Federal Reserve Board website at federalreserve.gov, which can be used to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

3. Prompt Payment Mechanisms (49 CFR Part 26.29)

A. Prompt Payment (§ 26.29(a))

ADOT and Subrecipient/Subgrantee contract specifications require that prime contractors and each subcontractor of any tier must make prompt partial payment to their subcontractors within seven (7) days from receipt of payment by ADOT. The contractor and each subcontractor of any tier must make prompt final payment of all monies due to its subcontractor within seven (7) days of receipt of payment by ADOT or Subrecipients/Subgrantees. Information contained in the ADOT DOORS and LPA DBE System online reporting and tracking tool is used as a mechanism to help monitor and enforce prompt pay requirements.

B. Retainage and Completion of Work (§ 26.29(b-c))

As a general practice, ADOT and its Subrecipient/Subgrantees will not hold retainage from prime contractors and prime contractors must not hold retainage from subcontractors.

However, if, in the opinion of the Engineer, progress is unsatisfactory after 75 percent of the contract time has expired, the Department reserves the right to withhold 10 percent of payments due the contractor until progress is determined to be satisfactory. If retention is withheld from the prime contract in this circumstance, the prime contractor and each subcontractor of any tier shall not retain a higher percentage than the Department retains under the prime contract. The contractor and each subcontractor of any tier shall pay all monies, due to its subcontractor within seven (7) days of receipt of payment from ADOT or its Subrecipient/Subgrantees for work that is satisfactorily completed.

If satisfactory progress is being made on a project, a construction contractor will receive a payment each month based on the amount of work completed during the preceding month. ADOT will prepare a draft monthly estimate for review by the contractor. The contractor must work with the Engineer to finalize the monthly estimate. When the Engineer and the contractor have reached agreement, the final monthly estimate will be prepared and signed by the contractor and the Engineer. The contractor's signature constitutes a certification that the work was satisfactorily performed, meets the specifications, and the quantities reported are accurate regardless of whether the work was performed

by the contractor or a subcontractor. A subcontractor's work for all types of ADOT contracts is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, documented, and accepted by ADOT.

C. DBE Payment Reporting and Sanctions (§ 26.29(d))

ADOT requires contractors to electronically report payments to all subcontractors, including DBEs, in its online DOORS (accessible at adotdoors.dbesystem.com) on a monthly basis indicating the amounts actually paid to subcontractors of any tier, including each DBE subcontractor, DBE material supplier and non-DBE subcontractor working on a project. Contractors for Subrecipient/Subgrantee projects report this information in the LPA DBE System (accessible at arizonalpa.dbesystem.com).

No later than 15 calendar days after the preconstruction conference, the contractor must log into the appropriate DOORS and enter or verify the name, contact information, and subcontract amounts for Reportable Contracts on each project. As Reportable Contracts are approved over the course of the contract, the contractor must enter the contract information in the system. Reportable contract information must be entered into the system no later than five calendar days after approval by ADOT or the Subrecipient/Subgrantee.

The contractor must report on a monthly basis indicating the amounts actually paid and the dates of each payment under any Reportable Contract on the project. The contractor must also ensure that all Reportable Contract activity is reported, including all lower-tier Reportable Contracts. In addition, the contractor must require that all subcontractors/participants in any Reportable Contract electronically verify receipt of payment on the contract in the DOORS by the last day of the month. The contractor must actively monitor the DOORS to ensure that the subcontractor verifications are made. The contractor is also responsible for proactively working to resolve any payment discrepancies in the DOORS between payment amounts it reports and payment confirmation amounts reported by subcontractors/participants. The contractor must ensure that all Reportable Contract activity is reported to ADOT or Subrecipients/Subgrantees, including all lower-tier Reportable Contracts.

The contractor must maintain records for each payment explaining the amount requested by the subcontractor, and the amount actually paid pursuant to the request, which may include but are not limited to, estimates, invoices, payment requests, copies of checks or wire transfers, and lien waivers in support of the monthly payments reported in the DOORS.

The contractor must report information for payments made on all Reportable Contracts during the previous month by the 15th day of the current month; or for Certification Acceptance Agencies, contractor payment information must be reported by the last day of the current month. In the event that no payments were made during a given month, the contractor shall identify that by entering a dollar value of zero. If the contractor does not pay the full amount of any invoice from a subcontractor, the contractor shall note that and provide the reasons in the comment section of the Monthly Payment Audit of the DOORS.

For each month in which the contractor fails to submit timely and complete payment information, \$5,000.00 will be retained as sanctions, from the monies due to the contractor. Sanctions will be deducted each month in which the contractor fails to submit payment information until the contractor provides the required information. After 90 consecutive days of non-reporting, the sanctions will

increase to \$10,000.00 for each subsequent month which the contractor fails to report until the information is provided. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

The contractor must ensure that a copy of these payment reporting and prompt payment requirements is included in every Reportable subcontract of every tier.

D. Prompt Payment Monitoring, Disputes Resolution and Sanctions (§ 26.29(e))

ADOT and its Subrecipients/Subgrantees will not rely only on subcontractor complaints to monitor and enforce prompt payment, which is applicable to all lower tier subcontractors, DBE and non-DBE subcontractors. ADOT Resident Engineers, Engineering Consultants Section (ECS), BECO, Construction Group, Right of Way, Transportation Systems Management and Operations (TSMO), Multimodal Planning Division (MPD), Contracts Group, and Communications Department, or other applicable contract administration staff or equivalent staff of Certification Acceptance Agencies or other Subrecipients/Subgrantees that procures and/or manages DOT-assisted contracts will monitor the applicable DOORS, or LPA DBE System for discrepancies between payment reported by prime contractors and verification of payments made by all subcontractors including DBEs. These staff/entities will investigate any prompt payment discrepancies in the DOORS and any complaint regarding prompt payment to DBEs and other subcontractors.

If there is a discrepancy between what is reported by the contractor in the ADOT DOORS and what the subcontractor indicates in its payment verification, an alert email will automatically be sent to the contractor. The email will be sent to the email address provided by the contractor in DOORS. The contractor must provide a verifiable explanation of the discrepancy in the DOORS as early as practicable. It is the contractor's responsibility to ensure that the email address in the DOORS is kept current.

The Engineer or other applicable ADOT contract administration staff or equivalent staff of Subrecipients/Subgrantees will determine whether the contractor has acted in good faith concerning any such explanations. ADOT reserves the right to request and receive documents from the contractor and all subcontractors of any tier, in order to determine whether prompt payment requirements are met.

The contractor must implement and use the dispute resolution process outlined in the subcontract, as described in ADOT Standard Specifications, Subsection 108.01, to resolve payment disputes. Certification Acceptance Agencies and other Subrecipient/Subgrantee contractors may use the Subrecipients/Subgrantees' dispute resolution process.

Additional monitoring and enforcement mechanisms to ensure prompt payment and retainage requirements, include ADOT contract administration staff in the Engineering Consultant Section, Field Reports and Procurement groups randomly reviewing at least 20% of DOT-assisted subcontracts after they are awarded to ensure that subcontracts contain the appropriate prompt payment, retention language and other federally required language.

Failure to make prompt partial payment, or prompt final payment including any retention, within the time frames established above, will result in remedies, as ADOT or, when applicable, its Subrecipients/Subgrantee deems appropriate, which may include but are not limited to:

- a. Sanctions. These sanctions will be in addition to all other retention or liquidated damages provided for elsewhere in the contract.
 - (i) ADOT or its Subrecipients/Subgrantees will withhold two times the dollar amount not paid to each subcontractor.
 - (ii) If full payment is made within 30 days of ADOT or its Subrecipients/Subgrantees payment to the contractor, the amount withheld by ADOT or its Subrecipients/Subgrantees will be released.
 - (iii) If full payment is made after 30 days of ADOT or its Subrecipients/Subgrantee payment to the contractor, ADOT or its Subrecipients/Subgrantees will release 75 percent of the funds withheld. ADOT will retain 25 percent of the monies withheld as sanctions.
- b. Additional Remedies. If the contractor fails to make prompt payment for three consecutive months, or any four months over the course of one project, or if the contractor fails to make prompt payment on two or more projects within 24 months, ADOT or its Subrecipients/Subgrantee may, in addition, invoke the following remedies:
 - (i) Withhold monthly progress payments until the issue is resolved and full payment has been made to all subcontractors, subject to the sanctions described in paragraph (a) above,
 - (ii) Terminate the contract for default in accordance with Subsection 108.10 of the Standard Contract Specifications or according to ADOT's Subrecipient/Subgrantee specifications, and/or
 - (iii) Disqualify the contractor from future bidding, temporarily or permanently, depending on the number and severity of violations.

In determining whether the sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, ADOT staff will make recommendations to the ADOT State Construction Engineer, who will consider whether there have been other violations on the contract in question or other contracts, whether the failure to make prompt payment was due to circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the State Construction Engineer, escalate the decision to the State Engineer. If the contractor does not escalate the decision of the State Construction Engineer, in writing to the State Engineer, within 15 calendar days of receipt of the decision, the contractor will be deemed to have accepted the decision and there will be no further remedy for the contractor. If the contractor escalates the decision to the State Engineer, and the contractor does not agree with the State Engineer's decision, the contractor may initiate litigation, arbitration or mediation pursuant to Subsection 105.21(D) and (E) of the Standard Contract Specifications.

In determining whether sanctions will be assessed, the extent of the sanctions, or additional remedies assessed, the Certification Acceptance Agency will consider whether there have been other violations on this or other Federal-aid contracts, whether the failure to make prompt payment was due to

circumstances beyond the contractor's control, and other circumstances. The contractor may, within 15 calendar days of receipt of the decision of the Certification Acceptance Agency, escalate the decision according to the contract's escalation process.

E. Set-Offs Arising from Other Contracts

If a subcontractor is performing work on multiple contracts for the same contractor or subcontractor of any tier, the contractor or subcontractor of any tier shall not withhold or reduce payment from its subcontractors on the contract because of disputes or claims on another contract.

4. DBE Directory/AZ Unified Transportation Registration & Certification System (AZUTRACS) Web Portal (49 CFR Part 26.31)

A. DBE/ACDBE Directory

ADOT serves as the lead agency for the Arizona Unified Certification Program (AZUCP). In this role, the agency maintains the statewide DBE/ACDBE directory as one feature of its Arizona Unified Transportation Registration and Certification System (AZUTRACS) web portal. The DBE/ACDBE directory contains an online searchable list of all firms doing business with ADOT, including certified DBE firms, and ACDBE firms, from all AZUCP certifying agencies. The directory includes the firm's name, address, location, phone number, fax number, email address, gender, ethnicity, certification source, type of work the firm has been certified to perform as a DBE, or ACDBE, and the most specific NAICS codes available to describe each type of work. The directory is available online at utracs.azdot.gov/DBECertification. Paper copies of the DBE/ACDBE 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 Department's certification of a DBE, or ACDBE, is not a representation of qualifications and/or abilities; only that the firm has met the criteria for DBE certification as outlined in 49 CFR Part 26.

B. Arizona Unified Certification Program (AZ UCP) Directory Reporting

The AZUTRACS transportation web portal serves as ADOT's and the AZUCP's centralized "one-stop shop," which allows companies to perform a variety of transactions, including the following, but not limited to:

- a. Completing AZUTRACS Registration – ADOT's overall agency Bidder's List of companies that are interested in performing work on DOT-assisted transportation projects in Arizona. All companies must register and have an AZUTRACS registration number to bid on or work on ADOT and its Subrecipient/Subgrantee agency DOT-assisted projects. All companies must maintain their profile with current and accurate firm information, and update their AZUTRACS Registration every three (3) years or their registration will be deactivated.
- b. Completing contract-specific Online Bidder's/Proposer's Lists – to ensure all bidders on each DOT-assisted contracts are reported and maintained by ADOT for use in overall and contract DBE goal setting.
- c. Applying online for Disadvantaged Business Enterprise (DBE) Certification - for companies that meet the requirement found in 49 CFR Part 26. Certified DBEs are automatically AZUTRACS registered and meet the requirements to be registered as Small Business Concerns (SBCs).

- d. Submitting DBE Annual Update/No-Change Affidavits - for companies that are certified DBEs and need to complete an annual update to maintain their DBE certification.
- e. 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
- f. American Industry Classification System (NAICS) code.
- g. Searching for certified DBE firms – DBE Directory to locate and identify DBEs certified in Arizona
- h. Searching for certified ACDBE firms – ACDBE Directory to locate and identify ACDBEs certified in Arizona
- i. Searching for registered SBC firms – SBC Directory to locate and identify registered SBCs registered in Arizona
- j. Searching for AZUTRACS registered firms - to locate and identify ADOT's Bidder's List of registered prime consultants, contractors and others interested in doing business with ADOT and its Subrecipients/Subgrantees
- k. Accessing the **DOORS** or **LPA DBE System** - to report DBE and subcontractor awards and payments on all DOT-assisted contracts with ADOT or its Subrecipients/Subgrantees

5. Overconcentration (49 CFR Part 26.33)

ADOT conducts Disparity Studies approximately every 5 years in which a statistical analysis is done to determine and identify whether overconcentration exists in certain types of work in a manner that causes undue burden to the opportunity of non-DBE firms to participate in these types of work. The Disparity Study completed in 2020 and the Availability Study completed in 2022 found no overconcentration of DBEs in any categories.

However, ADOT will continue to monitor its contracts and its Subrecipients/Subgrantee contracts for any overconcentration. If ADOT determines 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, or any allegations of overconcentration is substantiated, ADOT will develop appropriate measures and procedures to address the overconcentration, supportive services and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which it has been determined that non-DBEs are unduly burdened. ADOT will forward any allegations or determination of overconcentration to the applicable US DOT Operating Administration for consultation and seek approval prior to implementation of any countermeasures.

6. ADOT Business Development (49 CFR Part 26.35)

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-case basis with priority given to DBE/SBCs working directly on Federal-aid heavy highway projects.

A. Business Development Program (§ 26.35(a))

As part of its DBE Supportive Services Program, ADOT has developed and implemented a multi-tiered Business Development Program framework to provide new and emerging, developmental and transitional DBEs and SBCs with general and firm-specific training and technical assistance to help them to become competitive and successful within and outside of the transportation industry. The program was approved by FHWA in 2014.

The process for selecting DBE and SBC participant firms for each tier of the Business Development Program include targeted recruitment and a detailed application/selection process based on the following general criteria:

Selection Criteria	New & Emerging DBE/SBCs (Orientation Program)	Developmental DBE/SBCs (Pacesetters Program)	Transitional DBE/SBCs (Masters Program)
Total ADOT Projects awarded over last 2 years	0-1	2-9	10+
Gross Receipts	n/a	\$100,000-\$750,000	Above \$750,000
Total number of employees (FTE)	n/a	Less than 10	10+
Years certified as a DBE or self-registered as an SBC	Less than 1 year	2-10	10+

Selection of DBE/SBC firms for the Developmental Pacesetter's Program and the Transitional Master's Program is done by a panel of ADOT DBE Supportive Services Staff and Consultants. Selection criteria includes: DBE certification (and/or SBC self registration) completion of a preliminary business assessment, an expressed commitment to complete a current one page business plan, and expressed commitment to attend class sessions and complete the program. Preference is given to highway construction and engineering design DBE/SBC firms.

Program elements for each tier of the program may include, but are not limited to:

New & Emerging DBE/SBCs (Orientation Program)	Developmental DBE/SBCs (Pacesetters Program)	Transitional DBE/SBCs (Masters Program)
<ul style="list-style-type: none"> • Working with ADOT Workshop Series-featuring meetings with key ADOT Departments and Staff • Bidding Opportunities website • Business Workshops • Networking events for large projects • Elevator Pitch Basics • One-Page Company Bio Marketing Flyer • Participation in Expo to market DBE/SBC firms to Prime Contractors • Regional Conferences 	<ul style="list-style-type: none"> • Participation in a variety of business related workshops such as bidding & estimating, marketing, employee recruitment and retention and financial management • Development of firm specific goals • Working with ADOT Workshop Series-featuring meetings with key ADOT Departments and Staff • In-Depth Small Group Business Workshops • Panel Discussions • On-on-One Meetings with Prime Contractors • Intensive targeted One-on-One Coaching and Technical Assistance • Expo to market DBE/SBC firms to Prime Contractors • Regional Conferences • Company Marketing Video as incentive for participating in 65% of activities and completing the program • Formal Graduation Ceremony 	<ul style="list-style-type: none"> • Participation in a variety of business related workshops such as bidding & estimating, marketing, employee recruitment and retention and financial management • Develop firm specific goals • Explore business expansion/growth into other NAICS codes, other states, etc. • Explore what it takes to successfully compete outside DBE program • All other services provide to Pace setters in a more individualized and targeted manner

ADOT follows-up quarterly with graduating firms to provide additional technical assistance, assess number of bids/contracts won and increase in gross receipts since graduation from the program.

7. Monitoring and Enforcement Mechanisms (49 CFR Part 26.37)

A. Monitoring Mechanisms:

ADOT implements a proactive, collaborative and educational focus in its approach to successfully implement the DBE program while following the directives of the regulations.

On a regular basis, BECO collaborates with internal and external stakeholders to provide education and training to all stakeholders to understand the benefits of ADOT's DBE program, and the procedures developed to ensure compliance with monitoring and enforcement requirements. This includes, but is not limited to:

- Lead internal annual training at ADOT's Project Delivery Academy to provide a high level overview of ADOT's DBE program, program requirements, and offer follow up in-depth training to ADOT staff.
- Lead bi-monthly collaboration meetings with ADOT departments awarding, or administering DOT assisted contracts to discuss monitoring and oversight of US DOT assisted contracts, and offer training to ADOT staff.
- Participate in ADOT and Arizona Association of General Contractors (AZ AGC) Cooperative meetings to provide DBE program updates, offer training, and introduce DBE and small business firms to AZ AGC members, to network and highlight their firms capabilities.
- Collaborate with ADOT Departments to provide training at quarterly Task Force Meetings, Annual DBE and Small Business Conference, and the ADOT EXPO to help contractors, subcontractors, DBEs, and small businesses with understanding the various ADOT department roles and responsibilities, and its requirements.
- Developed standard work, including offering training to DBE goal requesters on how to correctly submit a DBE goal assessment.
- Developed standard work, to assist bidders with pre-award processes such as submission of their Bidders List, DBE Goal Assurance form, and DBE Intended participation Affidavit forms, as applicable.
- Provide proactive email notifications at time of contract award to prime contractors to remind their staff of the project's DBE goal, provide DBE program resources, and offer training to understand program requirements.
- Developed standard work, including offering recurring training to external stakeholders on how to report prompt payment to lower tier subcontractors in ADOT's contract management systems DOORS or LPA DBE System.
- Monitor reported payments to lower tier subcontractors and subcontractors confirmation of prompt payment and providing follow up training to industry as needed on the importance of reporting prompt payment, and confirming prompt payment.

B. Enforcement Mechanisms:

If ADOT determines there is willful non-compliance of DBE Program requirements, ADOT will take appropriate action using enforcement mechanisms, which includes but is not limited to:

- Applying sanctions for requirement violations such as: Payment Reporting, Prompt Payment, Termination/Substitution, or not meeting the project's assessed DBE goal, if applicable.

- 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.

The monitoring and enforcement mechanisms also apply to Subrecipients/Subgrantees, Certification Acceptance Agencies and LPAs Federal-aid contracts. ADOT works collaboratively with Subrecipients/Subgrantees, Certification Acceptance Agencies and LPAs to ensure monitoring and enforcement mechanisms take place on each Federal-aid project. See **Section VII** of this DBE Program Plan for Subrecipient/Subgrantee monitoring and enforcement mechanisms.

ADOT's detailed monitoring and enforcement mechanisms processes are captured throughout this plan in various sections. This includes, but is not limited to:

- Implement enforcement and monitoring processes/procedures outlined in DBE Contract Provisions; **DBE Construction, Professional Services, and On Call Contract Language (All)** contained in all engineering design/professional services, construction, transit and aviation DOT-assisted contracts and this DBE Program Plan.
- Processes for Good Faith Efforts review and approval. See **Section Good Faith Efforts**
- Monitoring and enforcing prompt payment. See **Section Prompt Payment Mechanisms**
- Review and approval of termination and substitution of DBEs on projects. See **Section Good Faith Effort Pertaining to DBE Termination**
- Requiring payment certifications from DBEs and Prime contractors attesting to total amounts paid to DBE firms. See **Section Certification of Final Payments**
- Implement procedures to verify that work committed to DBEs at contract award is actually performed by the DBEs through Commercially Useful Function (CUF) reviews. See **Section Counting DBE Participation towards goal**
- Compile and maintain a monthly report of awards/commitments and attainment, which is reported semi-annually to FHWA and FTA and annually to FAA. See **Section Record Keeping and Reporting Requirements**
- 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.

8. Fostering Small Business Participation (49 CFR Part 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 adhere to any Small Business Concern (SBC) participation requirements set forth in contract specifications and other documents.

A. 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.

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.

- a. The SBC component of the DBE program was implemented jointly with UCP partners; the cities of Phoenix and Tucson.
- b. ADOT, in conjunction with its UCP Partners, has implemented a Small Business Concern (SBC) registration process to verify that a firm is in fact a small business concern and to minimize fraud and abuse (see “Small Business Registration Requirement” below).
- c. 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.
- d. ADOT has included language in its contract solicitations and contracts to encourage prime consultants and contractors to foster small business inclusion. ADOT's Subrecipients/Subgrantees are required to include similar language in their contract solicitations and contracts.
- e. ADOT will conduct outreach to SBCs and encourage them to participate in DBE related business development, training, bidding and matchmaking program opportunities, with the exception of extending DOT financial assistance for direct business technical assistance for SBCs.

B. Small Business Concern (SBC) Registration

ADOT has implemented a simplified registration process for SBCs. Registration requirements include conditions that a firm must be:

- a. For-profit business registered to conduct business in Arizona
- b. Independently owned and operated
- c. Not dominant in its field on a national basis
- d. 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 AZUTRACS web portal at utracs.azdot.gov/Home.

ADOT does not conduct site visits as a condition of SBC registration. In-depth desk reviews and/or onsite audit reviews are conducted on a random basis, at ADOT's discretion 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 has published an online directory of available SBCs as part of the AZUTRACS web portal, similar to the DBE Directory.

III. GOALS, GOOD FAITH EFFORT, AND COUNTING – SUBPART C

1. Role of Statutory 10% National DBE Goal (49 CFR Part 26.41)

The statutes authorizing the federal DBE program provide that, except to the extent the Secretary of Transportation determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs on a national level. This 10 percent goal is an aspirational goal at the national level, used by DOT as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts nationwide. The national 10 percent goal does not authorize or require ADOT to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

2. Set-Asides or Quotas (49 CFR Part 26.43)

ADOT does not use set-asides or quotas in any way in the administration of its DBE program.

3. Overall Goals (49 CFR Part 26.45)

ADOT sets a separate and distinct overall DBE goal for each DOT operating administration: Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). Given the significant differences between the distribution and utilization of these funds, separation of the DBE goals allows ADOT to appropriately tailor the DBE program to the relative industry.

ADOT is required to submit overall goals every three years to each Operating Administration. The submission schedule and ADOT's current DBE goals for the three Operating Administrations are available on the website [**DBE Goals and Reports | Department of Transportation**](#)

ADOT sets its overall goals based upon the relative availability of DBEs in an attempt to generate the DBE participation one would expect absent the effects of discrimination. ADOT reviews, sets and submits its overall DBE goals triennially on August 1st of the three-year cycles established by FHWA, FTA and FAA.

[**ADOT's Approach to Setting Overall DBE Goals**](#) is a detailed description of ADOT's methodology for establishing its FHWA, FTA, and FAA overall goals.

4. Failure to meet Overall Goals (49 CFR Part 26.47)

ADOT cannot be penalized or treated by DOT as being in noncompliance with the 49 CFR Part 26 if ADOT's annual DBE participation falls short of the overall goal set by ADOT and approved by the relevant Operating Administration, unless:

- a. ADOT has failed to implement and administer the DBE program in good faith;
- b. ADOT does not have an approved DBE program; or
- c. ADOT does not have an overall DBE goal.

If the awards and commitments shown on ADOT's Uniform Report of Awards or Commitments and Payments at the end of any federal fiscal year are less than the overall goal applicable to that fiscal year, ADOT will do the following in order to be regarded by the DOT as implementing its DBE program in good faith:

- a. Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year by reviewing factors such as: effectiveness of its DBE contract goal methodology, i.e., percentage of goal set compared to goal achieved; effectiveness of efforts to promote race neutral participation; efficacy of training and outreach efforts for contractors, DBE, and other stakeholders; percentage of contracts not meeting DBE goals; percentage of good faith efforts awards approved; DBE termination and substitutions approved; and new DBE certification and retention rates.
- b. Establish specific steps and milestones to correct the problems ADOT identifies in its analysis and to enable it to meet fully its goal for the new fiscal year;
- c. Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed in accordance with sections (a) and (b) above to the appropriate OA for approval. If the OA approves the report, ADOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

FHWA, FTA or FAA may impose conditions on ADOT as part of its approval of ADOT's analysis and corrective actions including, but not limited to, modifications to its overall goal methodology, changes in its race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

ADOT may be regarded as being in noncompliance with 49 CFR Part 26 and therefore subject to the remedies in 49 CFR 26.103 or 26.105 and other applicable regulations, for failing to implement its DBE Program in good faith if any of the following occurs:

- a. ADOT did not submit its analysis and corrective actions to the OA in a timely manner as required under paragraph (c)(3) of this section;
- b. The OA disapproves ADOT's analysis or corrective actions; or
- c. ADOT does not fully implement the corrective actions to which it has committed or conditions that the OA has imposed following review of ADOT's analysis and corrective actions.

If ADOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of the OA, demonstrates that current trends make it unlikely that ADOT will achieve DBE awards and commitments that would be necessary to allow it to meet its overall goal at the end of the fiscal year, the OA may require ADOT to make further good faith efforts, such as by modifying its race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

5. Establishment of Overall Goals for Transit Vehicle Manufacturers (49 CFR Part 26.49)

ADOT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Recipients may establish project-specific goals for DBE participation in the procurement of transit vehicles from specialized manufacturers when a TVM cannot be identified.

6. Meeting Annual Overall Goals (49 CFR Part 26.51(a-c))

ADOT's overall annual goals provide for participation by all certified DBEs and are not limited to specific groups. ADOT endeavors to meet the maximum feasible portion of its overall goals using race-neutral methods. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts). The race-neutral means ADOT intends to use include, but are not limited to, the following:

- a. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
- b. Requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces;
- c. Providing DBEs, through ADOT's DBE Supportive Services Programs, with assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as, providing education and services to help DBEs, and other small businesses to obtain bonding and financing, developing and improving immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- d. Disseminating information and implementing communications programs on contracting procedures, specific contract opportunities and details on how to do business with ADOT;
- e. Providing services to help DBEs and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- f. Ensuring distribution of ADOT's DBE directory, through electronic means, to the widest possible universe of potential prime contractors; and

- g. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Each time ADOT submits its overall goal for review and approval by each OA, it will submit its projection of the portion of the goal that it expects to meet through race-neutral means and the basis for that projection.

7. **Contract Goals (49 CFR Part 26.51(d-g))**

Based on the most current Disparity Study or Availability Study, overall DBE participation goals for ADOT's FTA and FAA DOT-assisted contracts can be found here: [**Disparity Study & DBE Availability Study | Department of Transportation**](#)

When race-conscious means are identified in overall DBE goals, ADOT will use contract goals to meet any portion of the overall goal for DOT-assisted contracts that it does not project being able to meet using race-neutral means. DBE contract goals are only set on contracts with subcontracting opportunities.

Prior to contract advertisement, ADOT and Subrecipient/Subgrantee staff must submit a request for each applicable DOT-assisted contract to be assessed for a DBE goal through (click link) [**ADOT's Online DBE Goal Setting**](#) System. The online DBE Contract goal setting system calculates preliminary project goals based on subcontracting opportunities, DBE availability, and location of the project. A DBE Contract Goal Setting committee of DBE Compliance staff from the ADOT Business Engagement and Compliance Office meet weekly to evaluate goals generated by the online goal setting system and make any adjustments based on historical data and other factors. The DBE Contract Goal Setting Committee often consults engineering, construction and planning staff for technical expertise, as needed, to help set contract goals. Once a contract is assessed a DBE goal, ADOT or its Subrecipients/Subgrantees have up to 120 calendar days to advertise their project. If not advertised within 120 calendar days, ADOT, or its Subrecipients/Subgrantees are required to submit a request for reassessment of a DBE Goal on the contract. See ADOT's [**DBE Contract Goal Setting Methodology**](#) for DBE contract goal methodology. DBE contract goals provide for participation by all certified DBEs and are not subdivided into group-specific goals.

ADOT and its Subrecipients/Subgrantees must state assessed DBE contract goals determined by the DBE Contract Goal Setting Committee in applicable DOT-assisted contract advertisement and contracts that are awarded, as a percentage of the total amount of the contract.

ADOT will not establish a contract goal on every DOT-assisted contract and will not set each contract goal at the same percentage level as the overall goal. The goal set for a specific contract may be higher or lower than that percentage level of the overall goal, taking into consideration such factors as the size of the contract, type and location of work, availability of DBEs to perform the particular type of work.

If ADOT determines that the contractor has, without justification, not met the established DBE goal set for a project, ADOT will, at its discretion, deduct up to two times the amount of the unattained portion of established DBE goal from monies due or becoming due the contractor as sanctions, based on the circumstances of the noncompliance.

In determining whether sanctions will be assessed and the amount of the sanctions, the ADOT State Construction Engineer or Subrecipient/Subgrantee will consider whether there have been other

violations of the contract or on other DOT-assisted contracts, whether the failure was due to circumstances beyond the control of the contractor, whether the contractor has made good faith efforts to meet the goal, and other appropriate circumstances.

In addition to any other sanctions, willful failure of the contractor, DBE or other subcontractor to comply with DBE contract terms and conditions or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in DOT-assisted projects.

The contractor may, within 15 calendar days of receipt of the decision of the ADOT State Construction Engineer or Subrecipient/Subgrantee, escalate the decision to the State Engineer. If the contractor does not escalate the decision of the State Construction Engineer, in writing, within 15 calendar days of receipt of the decision, the contractor will be deemed to have accepted the decision and there will be no further remedy for the contractor. If the contractor escalates the decision to the State Engineer, and the contractor does not agree with the State Engineer's decision, the contractor may initiate litigation, arbitration or mediation pursuant to Subsection 105.21(D) and (E) of the Standard Contract Specifications.

To help ensure that ADOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, ADOT will adjust its use of contract goals as follows:

- a. For DOT-assisted contracts, if ADOT's approved DBE goal projection estimates that it can meet its entire overall goal for a given year through race-neutral means, ADOT will implement its program for those given operating administration DOT-assisted contracts without setting contract goals during that year, unless it becomes necessary in order to meet its overall goal.
- b. For DOT-assisted contracts, if during the course of any year in which ADOT is using contract goals ADOT determines that it will exceed its overall goal, ADOT will reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If ADOT determines that it will fall short of its overall goal, then ADOT will make appropriate modifications in its use of race-neutral and/or race-conscious measures to allow it to meet the overall goal
- c. If the DBE participation ADOT has obtained by race-neutral means alone meets or exceeds its overall goals for two consecutive years, ADOT is not required to make a projection of the amount of its goal it can meet using such means in the next year. ADOT will not set contract goals on any contracts in the next year. ADOT will continue using only race-neutral means to meet its overall goals unless and until it does not meet its overall goal for one year.

If ADOT obtains DBE participation that exceeds its overall goal in two consecutive years using contract goals (i.e., not through the use of race-neutral means alone), it will reduce its use of contract goals proportionately in the following year.

In any year in which ADOT projects that it will meet part of its DBE goal through race-neutral means and the remainder through contract goals, ADOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. ADOT will report this data to the concerned OA as provided in 49 CFR Part 26.11.

8. Good Faith Efforts Procedures (49 CFR Part 26.53)

A. Pre-Award Good Faith Effort (§ 26.53(a))

ADOT will only award a contract with an established contract DBE goal to a responsible and/or responsive bidder/offeror that has demonstrated good faith efforts to meet the goal. 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; 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 an 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 (GFE) requirements and details about how a GFE will be determined by ADOT and its Subrecipients/Subgrantees is detailed in the applicable contract specifications for Construction contracts, Professional Service (PS) contracts, and Local Public Agency (LPA) contracts. The applicable contract specifications with GFE requirements can be found on the **ADOT Contract Specifications and Forms** website, and the **LPA Contract Specifications and Forms** website.

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 BECO will conduct the initial review and make a final recommendation to the applicable contracting department for ADOT contracts. Subrecipients/Subgrantees will confer with ADOT in making good faith effort determinations when a bidder/offeror has indicated that it will not meet a DBE contract goal.

B. Information to be Submitted (§ 26.53(b))

Under sealed bid procedures for which a contract goal has been established for construction and procurement contracts, the lowest three bidders must submit the following information on the DBE Intended Participation Affidavit (one for each DBE firm) and the DBE Intended Participation Affidavit Summary Form, as a matter of responsibility, no later than 5 calendar days after bid opening, to be considered eligible for contract award:

- The names and contact information of certified DBE firms that will participate in the contract;
- A description of the work that each DBE will perform and its corresponding NAICS code;
- The final 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. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation in accordance with section 8 (B) below, and

- If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Copies of the forms are available on the **ADOT Contract Specifications and Forms** website, and the **LPA Contract Specifications and Forms** website.

All Bidders are required to submit the information above. In the event that the low bid is rejected, ADOT or its Subrecipients/Subgrantees will consider awarding the contract to the next responsible and responsive bidder. To be considered responsive, the bidder must have submitted the above information no later than five calendar days after bid opening. Failure by any bidder to submit the required information within the specified timeframe will cause a firm to be ineligible for contract award.

For engineering design, professional services or other negotiated procurements, this information must be submitted as a matter of responsibility with the cost proposal and is evaluated during the contract negotiations phase of the selection process. This paragraph does not apply to a design-build procurement, which must follow the provisions in section 8(E) Design Build, below.

In some negotiated procurement, including design-build and Public-Private Partnership procurement, multiple DBE contract goals may be set on a project for the different components of the project, such as engineering design/professional services and construction. In these types of contracts, as well as On-Call engineering/professional services negotiated procurements, the bidder/offeror may make a contractually binding commitment to meet the goal or make good faith efforts at the time of bid submission or the presentation of initial proposals but provide the information required in Section B above during contract negotiations or before the final selection or execution of the contract or task order/task assignment is made by ADOT and its Subrecipients/Subgrantees, as stated in the advertisement/solicitation documents.

ADOT and its Subrecipients/Subgrantees will apply the requirements of this section to DBE bidders for prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, ADOT and its Subrecipients /Subgrantees will count the work the DBE has committed to performing with its own forces as well as any work that it has committed to be performed by DBE subcontractors and DBE suppliers.

ADOT and its Subrecipients/Subgrantees will ensure that all information is complete, accurate, adequately documented and the bidder/offer's good faith efforts are approved before a contract award and commitment to the performance of the contract by the bidder/offeror is made.

For each DBE listed as a regular dealer or distributor ADOT and its Subrecipients/Subgrantees must make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in § 26.55(e)(2)(iv)(A), (B), and (C) and (e)(3) under the contract at issue. ADOT and its Subrecipients/Subgrantees preliminary determination shall be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, ADOT and its Subrecipients/Subgrantees are required to make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

C. Good Faith Efforts Determination (§ 26.53(c))

If the apparent low bidder indicates in its bid or proposal that they are unable to meet the advertised DBE goal for a contract, they must submit good faith effort (GFE) documentation to ADOT within five calendar days of the bid opening date. Good faith effort documentation may be submitted electronically through email to the Business Engagement and Compliance Office (BECO), which is responsible for evaluating and making written good faith effort determinations. Good faith effort documentation submitted after the time specified will not be accepted. For Subrecipients/Subgrantees, the good faith effort documentation is submitted to the agency.

In order to be awarded a contract on the basis of good faith efforts, a bidder must show that it took all necessary and reasonable steps to achieve the DBE goal, which by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful. ADOT will consider the quality, quantity, and intensity of the different kinds of efforts the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to make if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE goal. Mere pro forma efforts are not sufficient good faith efforts to meet the DBE contract requirements and a promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts. The bidder shall, at a minimum, seek DBEs in the same geographic area in which it generally seeks subcontractors for a given project. If the bidder cannot meet the goals using DBEs from this geographic area, the bidder, as part of its effort to meet the goals, shall expand its search to a reasonably wider geographic area.

The following is a list of types of efforts a bidder must address when submitting good faith effort documentation:

- Contacting ADOT BECO prior to the submission of bids, either by email, or telephone, to inform BECO of the firm's difficulty in meeting the DBE goals on a given project, and requesting assistance. The bidder must document its contact with BECO, and indicate the type of contact, the date and time of the contact, the name of the person(s) contacted, and any details related to the communication. The contact must be made in sufficient time before bid submission to allow BECO to provide effective assistance. The bidder will not be considered to have made good faith efforts if the bidder failed to contact BECO.
- Conducting market research to identify small business contractors and suppliers, and soliciting, through all reasonable and available means, the interest of all certified DBEs who have the capability to perform the work of the contract. This may include attendance at pre-bid meetings and business matchmaking meetings and events, advertising and/or providing written notices, posting of "Notices of Sources Sought" and/or "Requests for Proposals" at reasonable locations, including the contractor's website, written notices or emails to all DBEs listed in the AZUTRACS directory of transportation firms that specialize in areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project. The bidder should solicit this interest as early in the acquisition process as practicable to allow DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow-up initial solicitations.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible time frames for performance and delivery schedules in a manner that encourages and facilitates DBE participation.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist DBEs in responding to solicitations.
- Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to the DBE subcontractors and suppliers, and to select those portions of work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided from the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform work. Mailings to DBEs requesting bids are not alone sufficient to constitute a good faith effort.
- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. However, prime contractors are not required to accept higher quotes from DBEs if the price difference is excessive or unreasonable. Documentation, such as copies of all other bids or quotes, must be submitted.
- Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- Effectively using the services of available minority/women community organizations; minority/women contractors groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE's.

Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. The contractor must submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract. A generalized assertion that the contractor has received multiple quotes is not sufficient unless copies of those quotes are provided. ADOT may contact rejected DBEs as part of its investigation. However, nothing in this paragraph shall be

construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

In determining whether a bidder has made good faith efforts, BECO will review and analyze the documented efforts of the contractor in accordance with the criteria stated above and of those found in 49 CFR Part 26 Appendix A, and will also take into account the ability of other bidders in meeting the contract DBE goal. The BECO will send a written memo of determination related to good faith efforts to the ADOT or Subrecipient department that advertised or procured the contract.

D. Administrative Reconsideration (§ 26.53(d))

The bidder/offeror or any interested party for an ADOT or Subrecipient/Subgrantee contract may appeal the BECO determination regarding good faith effort to the State Engineer's Office. That appeal must be in writing and personally delivered or sent by certified mail, return-receipt requested, to the State Engineer Office. The State Engineer Office must receive the protest no later than seven calendar days after the initial decision was made by BECO. 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 a 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 bidder/offeror has the opportunity to meet in person with the State Engineer to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The State Engineer Office shall promptly consider any appeals under this subsection and notify all bidders in writing of its findings and decision. In accordance with 49 CFR 26.53(d)(5), the result of the State Engineer's decision is not subject to administrative appeal to the US DOT.

For ADOT construction contracts only, 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. In accordance with 49 CFR 26.53(d)(5), the result of the Board's Decision is not subject to administrative appeal to the US DOT.

E. Design-Build (§ 26.53(e))

In a Design-Build (D/B), or Public-Private Partnership (P3) contracting situation, ADOT awards a master contract to a contractor, developer or joint venture (Developer). The selected developer then awards subsequent subcontracts for the work of the project. ADOT will maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this section and 49 CFR Part 25.53 (e). These contracts, if they are DOT-assisted contracts, may have one DBE goal or multiple DBE goals for work elements such as Professional Services, Construction and/or Maintenance, which are tracked separately to determine goal attainment of each element. Maintenance DBE goals are only applicable to the P3 contracting method, when the developer will be responsible for the maintenance phase of the contract.

The letting process for these contracts often follow a two-step qualification based selection process. The first phase involves requesting a Statement of Qualifications (SOQ) or issuing a Request for Qualifications (RFQ) from all interested Proposers and developing a short-list of (three, but no more

than five) Proposers from all the responsive submittals. The second phase involves requesting Technical and Price Proposals from the short-list of Proposers, and selecting a developer based on evaluation of each Technical Proposal and Price Proposal. Good faith efforts to meet DBE goals on these contracts are required throughout the entire course of these projects in accordance with stated contract specifications.

ADOT has recently increased the use of alternative delivery methods (anything other than design-bid-build contracts) for completing construction projects and, as a result, the BECO added a full-time Alternative Delivery Project Manager position for the oversight and monitoring of those types of projects.

Due to the sheer size and complexity of D/B and P3 projects, ADOT utilizes General Engineering Consultants (GEC) to assist with the oversight and monitoring of all activities before and after award of these projects. This includes the engineering company using their own employees or subcontracting with an outside consulting firm to perform oversight and monitoring of DBE activities throughout the project. These large projects require specific qualifications for the individuals performing DBE oversight and monitoring and these qualifications have been defined by BECO and are communicated to the engineering firms during the GEC selection process by ADOT. Throughout the duration of these large projects, BECO's Alternative Delivery Project Manager works closely with the GEC's representative(s) to ensure compliance with all DBE requirements.

On P3 and D/B projects, ADOT requires the use of DBE Open-Ended Performance Plans (OEPP) due to minimal project details being known at the time of letting. The OEPP must provide details of anticipated types of subcontracting work or services and identify the estimated dollar value of those types of work to be solicited by the proposers following award of the project. ADOT establishes separate DBE goals for Professional Service work and Construction work and the proposers must indicate they will meet both individual goals at the time of submitting their technical proposals and OEPP. In addition, the OEPP must include an estimated time frame in which the actual DBE subcontracts would be awarded. The initial OEPP, evaluated with the proposal, will continue to be used as the basis for any approved changes to the OEPP following award. Throughout the project, the OEPP may be revised to reflect changes in the type(s) of work available to DBEs, increase or decrease in DBE subcontract dollar value, or the project schedule if changes are made. These changes must be in writing and approved by ADOT. The developer will continue to identify committed DBEs with the use of DBE Affidavits and to document good faith efforts to meet the goals.

Monthly compliance oversight meetings are held with ADOT (including BECO's Alternative Delivery Project Manager), the GEC representative(s), and the developer to discuss current DBE utilization as well as anticipated DBE additions toward meeting both DBE goals (Construction and Professional Services) by the end of the project. These monthly meetings are valuable to help ensure the Developer is on schedule to achieve the required DBE goals as well as to provide an opportunity for all participants to discuss any areas of concern. In addition, these meetings also provide an opportunity for the Developer to identify all efforts undertaken to recruit additional DBE participation and any areas where ADOT may be able to assist the Developer in meeting their DBE goals.

F. Other Alternative Delivery (AD) contract methods

ADOT utilizes the Construction Manager At Risk (CMAR) contracting method for a few projects where the DBE commitments are identified and approved prior to construction. The oversight and monitoring of DBE utilization for those projects is done as described in Section II. ADMINISTRATIVE REQUIREMENTS – SUBPART B, subsection **Monitoring and Enforcement Mechanisms (49 CFR Part 26.37)** of this DBE program plan.

G. Good Faith Effort Pertaining to DBE Termination (§ 26.53(f))

ADOT and its Subrecipient/Subgrantee require that prime contractors not terminate a committed DBE subcontractor listed on the DBE Affidavits for convenience (or an approved substitute DBE firm), in whole or in part, without the prior written consent of ADOT's Business Engagement & Compliance Office (BECO), unless ADOT or its Subrecipient/Subgrantee cause the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by ADOT or its Subrecipient/Subgrantee. This requirement applies to instances that include, but are not limited to, instances when 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.

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

ADOT's BECO must approve in writing all terminations, substitutions, and reductions in scope of work to be performed by DBEs committed to the project at time of contract award to meet the contract goal on ADOT and all Subrecipient/Subgrantees contracts.

Before submitting a formal request to ADOT for DBE termination/substitution, the contractor must give written notice to the DBE subcontractor with a copy sent concurrently to ADOT BECO of its intent to terminate the DBE identifying the reason for the proposed action. The notice must include the deadline for the DBE to submit a written response advising the contractor and BECO of its position, which must be a minimum of five calendar days after the notice is given, unless as a matter of public necessity (e.g. safety), a response period shorter than five calendar days is appropriate. Notice is deemed to have been given on the date of hand delivery or email to the DBE, or five calendar days after deposit in the mail. ADOT will consider both the contractor's request and the DBE firm's response before approving the contractor's termination request.

The contractor must formally request the termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary to meet the contract goal by submitting the DBE Termination/Substitution/Reduction (TSR) Request form, available from the ADOT BECO website, along with other supporting documentation to BECO or the applicable Subrecipient/Subgrantee. The submission shall include the following information:

- a. The date the contractor determined the DBE to be unwilling, unable or ineligible to perform.

- b. A brief statement of facts describing the situation and citing specific actions or inaction by the DBE firm giving rise to the contractor's assertion that the DBE firm is unwilling, unable, or ineligible to perform.
- c. A brief statement of the good faith efforts undertaken by the contractor to enable the DBE firm to perform.
- d. The total dollar amount currently paid for work performed by the DBE firm.
- e. The total dollar amount remaining to be paid to the DBE firm for work completed, but for which the DBE firm has not received payment, and over which the contractor and the DBE firm have no dispute.
- f. The projected date that the contractor requires a substitution or replacement DBE to commence work, if consent is granted to the request.
- g. A copy of the DBE's response to the notice of intent to terminate. If there is no response from the DBE within the time allowed in the notice of intent to terminate, the contractor shall explain the circumstances.

Written consent for terminating the performance of any DBE listed on the DBE Intended Participation Affidavit Summary will be granted only where the contractor can demonstrate good cause showing that the DBE is unable, unwilling, or ineligible to perform. Termination or substitution of a DBE listed on the DBE Intended Participation Affidavit Summary will not be allowed based solely on a contractor's ability to negotiate a more advantageous contract with another subcontractor.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

ADOT BECO will consider both the contractor's request and DBE's response before approving the contractor's termination request. ADOT BECO will make the determination of good cause by providing written consent to the contractor after evaluating the contractor's good cause to terminate a committed DBE subcontractor listed on the DBE Affidavits. Good cause for this purpose includes the following in relation to the listed DBE subcontractor:

- a. Fails or refuses to execute a written contract.
- b. Fails or refuses to perform the work of its subcontract in a way consistent with normal industry practice 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.
- c. Fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond/insurance requirements.
- d. Becomes bankrupt, insolvent, or exhibits credit unworthiness.
- e. Is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to Federal or State law.

- f. Is not a responsible contractor.
- g. Voluntarily withdraws from the project and provides written notice of its withdrawal to ADOT or the applicable Subrecipient/Subgrantee.
- h. Is ineligible to receive DBE credit for the type of work required.
- i. A DBE owner dies or becomes disabled with the result that the firm is unable to complete its work on the contract.
- j. Other documented good cause that ADOT determines compels the termination of the DBE subcontractor.

H. Good Faith Effort Pertaining to DBE Substitution (§ 26.53 (g-h))

If ADOT BECO approves the termination of a DBE, the contractor must make good faith efforts to find another DBE subcontractor to substitute for the original DBE. When a DBE subcontractor or any portion of its work is terminated by the prime contractor as provided in section (G) Good Faith Effort Pertaining to DBE termination, or the firm fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts to find another DBE subcontractor to substitute for the original DBE must be documented and submitted to ADOT within seven (7) calendar days from the date the termination request was approved.

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

The termination of a DBE firm will not relieve the contractor of its obligations to meet the DBE goal, but the unpaid portion of the terminated DBE firm's subcontract will not be counted toward the DBE goal. If for any reason it becomes apparent that the DBE goal will not be met then the contractor shall: (1) immediately notify the ADOT Engineer, BECO or the applicable Subrecipient/Subgrantee of the potential or actual decrease in DBE compensation, and (2) make good faith efforts to obtain DBE participation to meet or exceed the project DBE goal. BECO will evaluate the circumstances in consultation with the applicable Engineer, Field Office, Procurement Group, Engineering Consultants Section or Subrecipient/Subgrantee staff and approve or deny the contractor's good faith efforts. Good faith efforts required may vary, depending on the time left in the contract, the nature of the change, who initiated the change (including ADOT), and other factors as determined by BECO. The contractor is not required to take work already committed to another subcontractor and assign it to a DBE subcontractor in order to meet the committed DBE percentage.

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

When a DBE substitution is necessary, the contractor shall submit an amended DBE Intended Participation Affidavit and Intended Participation Affidavit Summary to ADOT BECO or the applicable Subrecipient/Subgrantees for approval with the substitute DBE's name, description of work, NAICS code, AZUTRACS registration number, and dollar value of work to the Engineer, applicable

Subrecipient/Subgrantee and ADOT's BECO. Approval from BECO must be obtained prior to the substituted DBE beginning work.

The contractor must not be entitled to any payment for work or material unless it is performed or supplied by the committed DBE without ADOT's written consent. Furthermore, failure by the contractor to carry out the requirements of ADOT or Subrecipient/Subgrantees DBE Termination/Substitution contract specifications is a material breach of contract and will result in such remedies as ADOT or Subrecipient/Subgrantee deems appropriate, which will include, but are not limited to the assessment of sanctions. ADOT or Subrecipient/Subgrantee will deduct from monies due or becoming due to the contractor, the dollar amount of the wrongfully substituted/replaced DBE subcontract plus 25 percent of the amount remaining to be paid to the DBE as sanctions. These sanctions shall be in addition to all other retention or liquidated damages provided for elsewhere in the contract.

I. DBE Bidders/Offerers for Prime Contracts (§ 26.53(i))

The requirement in Section 8 above pertaining to good faith efforts also applies to DBE bidders/proposers. When a certified DBE firm bids on a contract that contains a DBE goal, the DBE firm is responsible for meeting the DBE goal on the contract or making good faith efforts to meet the goal, just like any other bidder. In most cases, a DBE bidder on a contract will meet the DBE goal by virtue of the work it performs on the contract with its own forces. 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.

J. DBE Subcontracts (§ 26.53(j))

Contractors must also include DBE Program Compliance Assurances for Subcontracts language in their DBE subcontracts to ensure that applicable DBE requirements flow down from contracts to subcontracts and that all subcontracts be performed in accordance with 49 CFR Part 26. DBE Program Compliance Assurances for Subcontracts language, which address issues such as prompt payment, is under **DBE Program Compliance Assurances for Subcontracts, for Construction, and for Professional Services/Design contracts.**

Contractors awarded ADOT and Subrecipients/Subgrantees construction contracts are required to provide to the Engineer, at the Pre-Construction conference, copies of all completed and signed subcontracts, purchase orders, invoices, etc., for all committed DBEs. For engineering design, professional services, planning, transit, aviation and other DOT-assisted contracts awarded by ADOT and Subrecipients/Subgrantees, firms are required to upload executed DBE subcontractor in the ADOT DOORS before the first payment is made to the DBE. ADOT and Subrecipients/Subgrantees also reserve the right to inspect all records pertaining to DBEs subcontract. Contractors must ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with these requirements.

Contractors executing agreements with subcontractors, DBE or non-DBE, that materially modify Federal regulation and State statutes such as, prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as the Engineer deems appropriate which may include, but not limited to:

1. Withholding monthly progress payments;
2. Assessing sanctions; and/or
3. Disqualifying the contractor from future bidding as non-responsible.

ADOT reserves the right to conduct random reviews of DBE and non-DBE subcontractor documentation to ensure compliance with federal requirements.

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

9. Counting DBE Participation Towards Goal (29 CFR Part 26.55)

A. Commercially Useful Function (§ 26.55(a-d))

When a DBE participates in a DOT-assisted construction, engineering design, professional services or any other contract, ADOT will count only the value of the work performed by the DBE toward DBE goals. ADOT will count the entire amount of that portion of a contract that is performed by the DBE's own forces and will include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

ADOT will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided ADOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontractor to a non-DBE firm does not count toward DBE goals.

When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

A prime contractor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a Commercially Useful Function (CUF). A DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, 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 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 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 workforce, or if the DBE subcontracts a greater portion of the work of a contract than would be expected within 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. ADOT will determine if the firm is performing a CUF given the type of work involved and normal industry practices. Note that ADOT and its Subrecipients will not withhold payment if a DBE firm does not perform a CUF as CUF pertains to counting and does not affect payment.

ADOT/Subrecipient field compliance, inspection staff and /or consultants will monitor worksites and conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and ADOT/Subrecipient staff will make every effort not to disrupt work on the project. A Sample Construction CUF form/information reviewed to determine CUF is included in BECO's website at **Contract Specifications and Forms**. Engineering Design/Professional Services CUF form and procedures are completed by BECO and the DBEs that performed work on the project. The consultant shall cooperate with ADOT/BECO compliance staff and will make every effort not to disrupt work on the project.

ADOT BECO staff or the applicable Subrecipient/Subgrantee will review field compliance or inspection staff CUF reports and contract documents, including DBE Commitment Affidavits and payments, and make written CUF determinations. ADOT BECO or the applicable Subrecipient/Subgrantee will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of ADOT/Subrecipient/Subgrantee decision. CUF determinations will be documented in the DOORS and LPA DBE Systems.

ADOT BECO's decisions on CUF may be appealed to the State Engineer. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The appeal must be received by the State Engineer no later than seven calendar days after the decision of BECO. BECO's decision remains in place unless and until the State Engineer reverses or modifies BECO's decision. The State Engineer will promptly consider any appeals and notify the contractor of the State Engineer's findings and decisions. Appeal of Subrecipient/Subgrantee staff CUF decisions may be appealed to the ADOT BECO Manager and follow the same general process as above. Decisions on CUF matters are not administratively appealable to US DOT.

B. Trucking (§ 26.55(d))

For construction contracts, 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 lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks with drivers from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE leased trucks with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks with drivers receives 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 a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers 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. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a contract. It leases three additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all five trucks.

A lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. Credit will be allowed only for those lease costs related to the time each truck is devoted to the project.

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.

A general trucking plan is submitted by contractors on DBE Commitment Affidavit forms prior to contract execution, including number of trucks owned by the DBE, number to be used on the contracts, number to be subcontracted to DBE and non-DBE firms and dollar amounts. Inspectors working on projects monitor DBE trucking participation to ensure compliance with CUF requirements.

C. Materials and Supplies (§ 26.55(e))

ADOT will credit expenditures with DBEs for construction material and supplies towards the DBE goal as follows:

- a. 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 owns (or leases) and operates 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.
 - Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.
- b. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies, including transportation costs is credited.
 - A DBE regular dealer is defined as a firm that owns, or leases operates 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 sufficient quantities, and regularly sold or leased to the public in the usual course of business.
 - Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.
 - 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 DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.
 - A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone or asphalt without owning and operating a place of business, as provided above, if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment must be by a long-term operating lease, and not on an ad-hoc or contract-by-contract basis.
 - A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per this section.
 - If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer. Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

- c. If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs) for credit.
- A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance.
 - A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.
- d. With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, ADOT will credit the entire amount of the fees or commissions charged by the DBE, provided the fees are determined to be reasonable and not excessive, including transportation charges for the delivery of materials or supplies. The cost of the materials and supplies themselves may not be counted toward the DBE goal.
- e. ADOT BECO will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) towards the DBE goal on a contract-by-contract basis.
- f. The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer, distributor or supplier) for one contract does not mean it will qualify for the same classification on another contract.
- g. The bidder shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer, distributor, or supplier by submitting copies of leases or other documentation, as requested by ADOT BECO. The bidder may contact ADOT BECO for assistance in this determination.

D. Police Officers

DBE credit will not be permitted for procuring Arizona Department of Public Safety Police 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.

E. Counting DBE Participation in Joint Check Situations

The DOT has provided guidance concerning counting DBE participation in Joint Checks situations. A DBE subcontractor and a material supplier (or equipment supplier) may request ADOT 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.

- a. 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.
- b. 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.
- c. A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.
- d. 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.
- e. 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.
- f. 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.
- g. The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.
- h. 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.

ADOT BECO must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor must submit a DBE joint check request form, available from the BECO website, along with the joint check agreement, to BECO through email within seven calendar days from the time the subcontract is executed. ADOT BECO must also approve joint check agreement for Subrecipient/Subgrantee contracts.

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. Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to BECO, and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to ADOT in the case of any change from the approved joint check arrangement.

Any failure to comply will result in loss of DBE credit and will be considered by the ADOT 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. A similar process is monitored and followed by Certification Acceptance Agencies and or Subrecipients/Subgrantees for joint checks agreements.

F. DBE Decertification (49 CFR Part 26.55(f-g)) and (49 CFR Part 26.87(j))

If a firm is not currently certified as a DBE in accordance with the standards of 49 CFR Part 26, subpart D, at the time of the execution of the contract, ADOT will not count the firm's participation toward any DBE goals, except as provided for in 49 CFR Part 26.87(j), and listed below.

ADOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward its overall DBE goal.

If a DBE or a DBE prime contractor is deemed ineligible, decertified, or suspended by the Department in accordance with 49 CFR Part 26.87 and 49 CFR Part 26.88, the following provisions shall apply:

- a. If a DBE firm loses its DBE eligibility because the DBE firm was acquired by a non-DBE firm, no work performed by the DBE firm after the Decision Date will be counted toward the DBE goal.
- b. If a subcontract, contract, or supplier arrangement has been executed before the Decision Date, work performed by the DBE firm will be counted toward the DBE goal.
- c. If neither paragraph (a) nor paragraph (b) above applies, the work performed by the DBE firm after the Decision Date will be counted toward the DBE goal.
 1. If the contractor extends or adds work to the DBE firm's subcontract, that work will not be counted toward the DBE goal unless the contractor has obtained prior approval from the Department for DBE credit. Any requests to extend or add work to the DBE firm's subcontract to count towards the DBE goal shall be submitted using the request form, made available on BECO's website at azdot.gov/business/business-engagement-and-compliance/dbe-contract-compliance/contract-specs-and-forms, to extend De-certified DBE contract for DBE credit.
 2. The Department will consent to such DBE credit only if the added work is within the foreseeable range of added work, given the circumstances of the original DBE contract.
- d. After the Department has issued a Decision, the DBE firm shall immediately send notice to the contractor in writing that the DBE firm has become ineligible, decertified, or suspended as a DBE.

1. Even if the DBE firm does not notify the contractor under Paragraph (D), the work performed by the DBE firm after the Decision Date will not be counted toward the DBE goal where provided in Subsection 18.03.
2. Even if the DBE firm does not notify the contractor under Paragraph (D), the contractor must fulfill its responsibilities under Subsection 18.03.
- e. If eliminating the DBE credit of the DBE firm will affect the contractor's ability to meet the DBE goal, the contractor must meet the DBE goal with an eligible DBE firm or firms or demonstrate good faith efforts. The contractor must submit the appropriate documentation to BECO within thirty calendar days of the Decision Date.
- f. For the purposes of this subsection, "Decision Date" means the date the Department notifies the DBE that it has become ineligible, decertified, or suspended under 49 CFR Part 26.87(c) (4), (g).

G. Certification of Final DBE Payments (49 CFR Part 26.55(h))

ADOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the contractor has paid the DBE the amount being counted. The contractor must submit the "Certification of Final DBE Payments" form for each DBE firm working on the contract within 30 days of the DBE completing work on the project. This form shall be signed by the contractor and each relevant DBE, and submitted to the Resident Engineer (RE) at the end of the DBE's work on the contract or as otherwise stated in the contract specifications.

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

IV. DBE CERTIFICATION STANDARDS – SUBPART D

1. Burdens of Proof in Certification Process (49 CFR Part 26.61)

In determining the eligibility of a firm, ADOT and its AZUCP partners will apply the standards of Subpart D. AZUCP partners will conduct cursory reviews of all applications submitted for DBE/ACDBE certification to ensure that the socially and economically disadvantaged owner/s (SEDO/s) have provided all required information and documentation. When an application is found to be complete, it will be received in the DOORS DBE system and assigned to a certification specialist for a detailed review. If an application is not submitted complete, ADOT and its UCP partners will contact the SEDO/s to advise what missing information must be provided in order for an eligibility determination to be made.

The firm has the burden of demonstrating, by a preponderance of the evidence, i.e., more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, ADOT and AZUCP partners must consider all the information in the record, viewed as a whole.

Exception 1: In a decertification proceeding the certifier bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

Exception 2: If a certifier has a reasonable basis to believe that an individual who is a member of a group in § 26.67(a) of this section is not, in fact, socially and/or economically disadvantaged, the certifier bears the burden of proving, by a preponderance of the evidence, that the individual is not socially and/or economically disadvantaged.

2. General Certification Rules (49 CFR Part 26.63)

ADOT and its AZUCP partners will adhere to the general certification rules set forth in this section, except as otherwise provided.

- The firm must be for-profit and engaged in business activities.
- In making eligibility determinations, a certifier may not consider whether a firm performs a commercially useful function (CUF) or the potential effect on goals or counting.
- A certifier cannot condition eligibility on State prequalification requirements for bidding on contracts.
- Certification is not a warranty of competence or suitability.
- A certifier determines eligibility based on the evidence it has at the time of its decision, not on the basis of historical or outdated information, giving full effect to the “curative measures” provisions of this part.
- Entering into a fraudulent transaction or presenting false information to obtain or maintain DBE certification is disqualifying.

A subsidiary (S) that SEDOs own and control indirectly is eligible, if it satisfies the other requirements of this part and:

SEDOs own at least 51 percent of S through their ownership of P (i.e., the parent firm) as shown in the examples following.

- SEDOs control P, and P controls S.
- The SEDOs indirectly own S through P and no other intermediary. That is, no applicant or DBE may have more than one entity (P) removed from its individual SEDOs. The following examples assume that S and its SEDOs satisfy all other requirements in this part:
- SEDOs own 100 percent of P, and P owns 100 percent of S. S is eligible for certification. Same facts as Example 1, except P owns 51 percent of S. S is eligible.
- SEDOs own 80 percent of P, and P owns 70 percent of S. S is eligible because SEDOs indirectly own 56 percent of S. The calculation is 80 percent of 70 percent or $.8 \times .7 = .56$.
- SEDOs own and control P, and they own 52 percent of S. However, a non-SEDO controls S. S is ineligible.
- SEDOs own 60 percent of P, and P owns 51 percent of S. S is ineligible because SEDOs own just 31 percent of S.

- P indirectly owns and controls S and has other affiliates. S is eligible only if its gross receipts, plus those of all of its affiliates, do not exceed the applicable small business size cap of § 26.65. Note that all of P's affiliates are affiliates of S by virtue of P's ownership and/or control of S.

Indian Tribes and NHOs. A firm that is owned by an Indian Tribe or Native Hawaiian organization (NHO), rather than by Indians or Native Hawaiians as individuals, is eligible if it meets all other certification requirements in this part.

Alaska Native Corporations (ANCs). A subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification if it meets all the following requirements:

1. The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
2. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
3. The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

As a certifier to whom an ANC-related entity applies for certification, ADOT and its UCP partner agencies must not use the Uniform Certified Application. The certifier must obtain from the firm documentation sufficient to demonstrate that the entity meets eligibility requirements of this section and allow the certifier to list the firm in its UCP directory.

3. Business Size Determinations (49 CFR Part 26.65)

In determining whether a firm meets the business size standards required for eligibility, ADOT and its AZUCP partners will make their determination by applying the SBA business size limit which corresponds to the applicable primary industry classifications (NAICS codes). The firm is ineligible when its affiliated "receipts" (computed on a cash basis) and averaged over the firm's preceding five fiscal years, exceed the applicable NAICS code cap(s).

Even if a firm is a small business meeting the NAICS code limits, it is ineligible to perform DBE work on FHWA or FTA assisted contracts if its affiliated annual gross receipts, averaged over the firm's previous three fiscal years exceed \$30.72 million (as of March 1, 2024). USDOT will adjust this amount annually and post the adjusted amount on its website at [transportation.gov/DBESizeStandards](https://www.transportation.gov/DBESizeStandards).

4. Social and Economic Disadvantage (49 CFR Part 26.67)

ADOT and its AZUCP partners will comply with all provisions of this section in evaluating the group membership of an individual. Citizens of the United States (or lawfully admitted permanent residents) who are women, Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American, or other minorities found to be disadvantaged by the SBA, are rebuttably presumed to be socially and economically disadvantaged (SED). A firm owner must specify of which groups in this she or he is a member of on the Declaration of Eligibility (DOE).

An owner claiming Native American group membership must submit a signed DOE as well as proof of enrollment in a Federally or State-recognized Indian Tribe. An owner claiming Native Hawaiian or Alaska Native group membership must submit documentation legally recognized under State or Federal law attesting to the individual's status as a member of that group. ADOT and its AZUCP partner agencies do not question claims of group membership as a matter of course and will not impose a disproportionate burden on members of any particular group.

If ADOT or an AZUCP partner agency has a well-founded reason to question an owner's claim of membership in a group in this section, the individual will receive a written explanation of our reason, using the most recent email address provided. The firm bears the burden of proving, by a preponderance of the evidence, that the owner is a member of the group in question. The certifier will advise the individual to submit evidence demonstrating that the individual has held herself out publicly as a member of the group for a long period of time prior to applying for DBE certification, and that the relevant community considers the individual a member. The certifier will email the owner a decision no later than 30 days after receiving timely submitted evidence. If the certifier determines that an individual has not demonstrated group membership, the certifier's response will provide a detailed explanation for the decision and inform the individual of the right to appeal, as provided in **§ 26.89(a)**

If ADOT or an AZUCP partner has a reasonable basis to rebut the presumption of economic disadvantage, even if a Personal Net Worth (PNW) statement claimed economic disadvantage, the certifier must prove that a reasonable person would not consider the individual economically disadvantaged. The certifier may consider assets and income, free use of them or ready access to their benefits, and any other trappings of wealth that the certifier considers relevant. The certifier need only demonstrate “ballpark” values based on available evidence, and consider the owner's overall circumstances and lifestyle. The certifier will then proceed as provided in **§ 26.87**.

An owner who is not presumed to be SED as defined above may demonstrate that he is SED based on his own experiences and circumstances that occurred within American society. To prove individual SED, the owner provides a Personal Narrative (PN) describing in detail specific acts or omissions by others, which impeded his progress or success in education, employment, and/or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

- The PN must identify at least one objective basis for the discrimination. The basis may be any identifiable status or condition. The PN must describe this objective distinguishing feature(s) (ODF) in sufficient detail to justify the owner's conclusion that it prompted the prejudicial acts or omissions.
- The PN must describe in full how and to what extent the discrimination caused the owner harm.
- The owner must establish that he is economically disadvantaged in fact and that he is economically disadvantaged relative to similarly situated non-disadvantaged individuals.

- The owner must attach to the PN a current PNW statement and any other financial information he considers relevant.
- This rule does not prescribe how the owner must satisfy his burden of proving disadvantage. He need not, for example, have filed any formal complaint, or prove discrimination under a particular statute.

5. Personal Net Worth (49 CFR Part 26.68)

In determining an individual's personal net worth, ADOT and its AZUCP partners will comply with all provisions of this section. An owner whose PNW does not exceed \$2,047,000 is presumed economically disadvantaged. The USDOT will adjust the PNW cap periodically, with the next adjustment to take place May 9, 2027.

Each owner on whom the firm relies for certification must submit a DOE and a PNW statement, including required attachments. The owner must report PNW on the form, available at [Transportation.gov/DBEForms](https://www.transportation.gov/DBEForms). A certifier may ask an owner to provide additional information on a case-by-case basis to verify the accuracy and completeness of the PNW statement. The certifier must have a legitimate and demonstrable need for the additional information.

The owner must report all assets and liabilities that she owns, excluding her ownership interest in the firm. The owner also excludes her share of the equity in her primary residence. There is no exclusion when the SEDO does not own the home.

The owner must include assets transferred to relatives or related entities within the two years preceding any DBE application or DOE, if the assets are valued at \$20,000 or more. Relatives include the owner's spouse or domestic partner, children, and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other revocable trusts of which the owner or any relative is grantor, trustee, or beneficiary.

The owner excludes direct payments, on behalf of immediate family members or their children, to unrelated providers of healthcare, education, or legal services. The owner excludes direct payments to providers of goods and services directly related to a celebration of an immediate family member's or that family member's child's significant, normally non-recurring life event.

The owner also excludes from net worth all assets in qualified retirement accounts but must report those accounts, value of assets in them, and any significant terms and restrictions concerning the assets' use, to the certifier.

ADOT and its UCP partner agencies will not release an individual's PNW statement nor any pertinent documents to any third party without the written consent of the submitter except as requested by USDOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

6. Ownership (49 CFR Part 26.69)

In determining the ownership of a firm applying for DBE/ACDBE certification, ADOT and its UCP partners will apply the standards set forth in this section. The rules that will be applied are:

- A SEDO must own at least 51 percent of each class of ownership of the firm. Each SEDO whose ownership is necessary to the firm's eligibility must demonstrate that her ownership satisfies the requirements of this section. If not, the firm is ineligible.
- A SEDO's acquisition and maintenance of an ownership interest meets the requirements of this section only if the SEDO demonstrates that the SEDO acquires ownership at fair value and by one or more "investments," as defined below, and:
 1. No owner derives benefits or bears burdens disproportionate to their ownership shares.
 2. The SEDO must maintain her investment and its proportion relative to those of other owners after acquiring the firm and after becoming DBE certified.
 3. The SEDO may not withdraw or revoke her investment.
 4. The SEDO must increase her own investment to a level proportionate to a non-SEDO's investment if an existing co-owner contributes significant additional cash or property to the firm, after the SEDO's acquisition.

Investments. A SEDO may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts. Investments must meet the following criteria:

- Investments are unconditional and at full risk of loss.
- Investments include a significant outlay of the SEDO's own money.

Ownership of assets used for investments and of ownership interests themselves must be held proportionately by the SEDO. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

If the SEDO jointly (50/50) owns an investment of cash or property, the SEDO may claim at least a 51 percent ownership interest only if the other joint owner formally transfers to the SEDO enough of his ownership in the invested asset(s) to bring the SEDO's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described below.

Purchases and capital contributions. A purchase of an ownership interest is an investment when the consideration is monetary and not a trade of property or services.

Capital that the SEDO contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

Contributions of time, labor, services, and the like are not investments.

Loans are not investments. The proceeds of loans may be investments to the extent that they finance the SEDO's qualifying purchase or capital contribution. Debt-financed purchases or capital contributions are investments when they comply with the rules in this section and in § 26.70.

Guarantees are not investments.

- The firm's purchases or sales of property, including ownership in itself or other companies, are not the SEDO's investments.
- Other persons' or entities' purchases or capital contributions are not the SEDO's investments.

Gifts. A gift to the SEDO is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the SEDO invests. The following requirements apply to gifts on which the SEDO relies for her investment:

1. The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;
2. The transferor does not derive undue benefit; and
3. There is a writing that documents the gift. When the SEDO cannot reasonably produce better evidence, a receipt, canceled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

Curative measures. The rules of this section allow for transactions that establish compliance with the provisions of this part. A SEDO or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

- ADOT and its UCP partners may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.
- The firm may, of its own volition, take curative action up to the time of the certifier's decision. However, it must present evidence of curation before the certifier's decision.
- The certifier may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.
- While the certifier may not impede attempts to cure, it may establish its decision timeline and make its decision based on available evidence.
- The certifier must deny or remove certification when the firm's efforts or submissions violate the rules in **paragraph (g)** of this section.
- The substance and not the form of transactions drives the eligibility determination.
- The certifier must deny applications based on sham transactions or false representations, and it must decertify DBEs that engage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.
- Fraud renders the firm ineligible and subjects it to sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

7. Debt-Financed Investments (49 CFR Part 26.70)

ADOT and its AZUCP partners will evaluate the investments made by a SEDO to ensure compliance with the provisions of this section. A SEDO may borrow money to finance an investment entirely or partially if the SEDO has paid, on a net basis, at least 15 percent of the total value of the investment by the time the firm applies for certification if the following conditions are met.

- The SEDO pays the net 15 percent portion of the investment to the seller or applicant from her own, not borrowed, money.
- Money that the SEDO receives as a gift as defined above is her own money.
- The firm, whether a new applicant or DBE, does not finance any part of the investment, directly or indirectly.
- The loan is real, enforceable, in good standing, not offset by another agreement, and on standard commercial, arm's length terms. The following conditions also apply.
 - The SEDO is the sole debtor.
 - The firm is not a party to the loan in any capacity.
 - The SEDO does not rely on the company's credit or resources to repay any part of the debt or otherwise to finance any part of her investment.
 - The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule, at least until the SEDO satisfies the 15 percent requirement as listed above.
 - The loan agreement permits prepayments, including by refinancing.

If the creditor forgives or cancels all or part of the debt, or the SEDO defaults, the entire debt-financed portion of the SEDO's purchase or capital contribution is no longer an investment.

8. Control (49 CFR Part 26.71)

In evaluating whether a firm meets the requirements that a SEDO or SEDOs control a firm, ADOT and its AZUCP partners will consider all pertinent facts viewed as a whole. The following general rules regarding control will be considered in context.

- One or more SEDOs of the firm must control it.
- Control determinations must consider all pertinent facts, viewed together and in context.
- A firm must have operations in the business for which it seeks certification at the time it applies. Certifiers do not certify plans or intentions, or issue contingent or conditional certifications.
- A SEDO must be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.
- Governance provisions may not require that any SEDO obtain agreement or consent from a non-SEDO to transact business on behalf of the firm.
- A SEDO must hold the highest officer position in the company (e.g., chief executive officer or president).
- A SEDO must control the firm's board of directors, or other governing body, through the number of eligible votes.

- Quorum requirements must not block the SEDO from calling a meeting to vote and transact business on behalf of the firm.
- A SEDO's authority to change the firm's composition via shareholder action does not prove control within the meaning of paragraph (c) of this section.
- In a partnership, at least one SEDO must serve as a general partner, with control over all partnership decisions.
- At least one SEDO must have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. The requirements of this paragraph may vary with type of business, degree of technological complexity, and scale.
- The firm must show that the SEDO critically analyzes information provided by non-SEDOS and uses that analysis to make independent decisions.
- A SEDO may delegate administrative activities or operational oversight to a non-SED individual as long as at least one SEDO retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

While non-SED owners may participate under these rules, no non-SED participant may have power equal to or greater than that of a SEDO. Non-SED participants may not make non-routine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the SEDO's consent. Written provisions or policies that specify the terms under which non-SED participants may sign or act on the SEDO's behalf with respect to recurring matters generally do not violate this requirement, as long as they are consistent with the SEDO having ultimate responsibility for the action.

- The firm must demonstrate that it operates independently of any other firm. If the firm receives from or shares personnel, facilities, equipment, financial support, or other essential resources, with another business (whether a DBE or non-DBE firm) on commercially reasonable terms. The firm must prove that it would be viable as a going concern without the arrangement. The firm must not regularly use another firm's business-critical vehicles, equipment, machinery, or facilities to provide a product or service under contract to the same firm or one in a substantially similar business.
- The firm is not precluded from providing services to a single customer or to a small number of customers, provided that the firm is not acting as a conduit, or on behalf of, another firm or individual. Similarly, providing a volume discount to such a customer does not impair viability unless the firm repeatedly provides the service at a significant and unsustainable loss. A firm may share essential resources and deal exclusively with another firm that a SEDO controls and of which the SEDO owns at least 51 percent ownership.
- A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, ADOT and its AZUCP partners will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

9. NAICS Codes (49 CFR Part 26.73)

ADOT and its AZUCP partners will grant certification to a firm only for specific types of work that the SEDO controls. To become certified in an additional type of work, the firm must demonstrate to the certifier only that its SEDO controls the firm with respect to that type of work. ADOT and its partner agencies will not require that the firm be recertified or submit a new application for certification, but will verify the SEDO's control of the firm in the additional type of work.

A correct NAICS code is the one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.

If there is not a NAICS code that fully, clearly, or sufficiently narrowly describes the type(s) of work for which the firm seeks certification, ADOT and its UCP partners must supplement or limit the assigned NAICS code(s) as needed with a clear, specific, and concise narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is insufficient.

Firms and certifiers must check carefully to make sure that the NAICS codes cited in a firm's certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information that ADOT and its AZUCP partners need to make an appropriate NAICS code designation.

ADOT and its UCP partners may change a certification classification or description if there is a factual basis in the record, in which case it must notify the firm 30 days before making the change. Such changes will not be applied retroactively.

In addition to applying the appropriate NAICS code, ADOT and its UCP partners may apply a descriptor from a classification scheme of equivalent detail and specificity. Such a descriptor (e.g., a "work code") does not supersede or limit the types of work for which a DBE is eligible under an appropriate NAICS code

V. CERTIFICATION PROCEDURES (49 CFR Part 26, Subpart E)

1. Arizona Unified Certification Program (49 CFR Part 26.81)

ADOT is the lead agency for the Arizona Unified Certification Program (AZUCP). The AZUCP is comprised of ADOT, City of Phoenix, and City of Tucson. AZUCP Partners have assigned statewide DBE certification application processing as follows:

- City of Phoenix - certifier to any firm within Maricopa County, and all firms applying for ACDBE Certification.
- City of Tucson - certifier to any firm within Pima County.
- ADOT - certifier to any firm outside of Maricopa and Pima Counties, and all firms applying for Interstate DBE Certification.

All provisions of 29 CFR Part 26 Subpart D and E pertaining to ADOT also apply to the AZUCP.

The AZUCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.

All three AZUCP certifiers have signed an Operating Agreement to manage their certification programs in a consistent manner. The AZUCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for DBE certification that is honored by all AZUCP agencies. Certifications by any AZUCP partner agency are binding on all USDOT recipients in the State of Arizona.

The AZUCP agreement is reviewed for updates every three years or when changes to regulations are made. The agreement specifies that the AZUCP will follow all certification procedures and standards of Subpart E; that the AZUCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations; and that the AZUCP shall implement USDOT directives and guidance concerning all certification matters.

AZUCP partners agree to provide inter-agency support in processing DBE certification applications. The AZUCP provides “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that is honored by all recipient agencies in the state. Therefore, certifications by all AZUCP Partner agencies are binding on all DOT recipients in the State of Arizona. Any firm requesting to have a certification application expedited will be reviewed on a case by case basis and discussed among the AZUCP. In the event an AZUCP partner may not meet the goal of 90 days, they are encouraged to request inter-agency support to help process the DBE certification application when it is 60 days from the date of submission. It is recognized that business disruptions within an agency may occur or factors negatively impacting operations on a community-wide level in which a firm may seek certification on an expedited basis. AZUCP partners are encouraged to seek out, as well as provide support to partners experiencing such disruptions, in the interest of maintaining the highest level of customer service to firms. The certification manager for each partner agency will monitor the need for support and manage the transfer of records necessary to meet the need. Each partner agency will determine criteria to determine if support from partner agencies is in the best interests of the AZUCP as a whole to maintain the highest level of customer service. Certifiers may choose to expedite applications based on business needs.

Subject to DOT approval, the AZUCP may enter into written reciprocity agreements with other state UCPs to approve and accept DBE firms certified in other states as part of the AZUCP. Such an agreement must outline the specific responsibilities of each participant.

All certifications by AZUCP are pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

The AZUCP maintains a unified DBE directory, administered by ADOT, containing all DBE firms certified by AZUCP partners agencies (including those from other states that have been certified in Arizona) and contains the information required by 49 CFR Part 26.31. The AZUCP will make the directory available to the public electronically on the internet at utracs.azdot.gov. The AZUCP will update the directory by including additions, deletions, and other changes when they are made by AZUCP certifying agencies.

2. Procedures for Making Certification Decisions (49 CFR, Part 26.83)

A firm applying for DBE and Airport Concessions DBE (ACDBE) certification through ADOT and its AZUCP partner agencies is required to submit an online DBE Uniform Certification Application. The online application form is identical to the one provided at [transportation.gov/DBEFORMS](https://www.transportation.gov/DBEFORMS)

Access to the online Uniform Certification Application (UCA) and supporting documents for ADOT and its AZUCP partner agencies is found at utracss.azdot.gov. ADOT and the AZUCP agencies do not currently charge an application fee to process DBE certifications.

ADOT will process DBE certification applications for firms whose scopes indicate capability to conduct work on highway, transit, and aviation transportation related DOT-assisted contracts. ADOT reserves the right to request information from applicant firms to establish that they have performed past services or have future business plans to bid or perform work on highway, transit and aviation related DOT-assisted contracts. Other AZUCP certifying agencies (Cities of Phoenix and Tucson) will process certification applications for all firms that apply because they also review those applications for certification in their local preference Small Business Enterprise (SBE) programs funded with local city monies.

ADOT and its AZUCP partner agencies will advise each applicant within 30 calendar days from receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required, as described below.

New DBE Application Process: ADOT and its AZUCP partner agencies will determine the eligibility of firms as DBEs in accordance with 49 CFR Part 26, Subparts D & E, this DBE Program Plan and the UCP Operating Agreement. DBE certification decisions are made independently by each AZUCP partner agency's DBE certification staff within its assigned geographic areas and decisions are binding on all UCP members.

The online DBE application system decision tree will advise applicants which AZUCP certifying agency the application will be submitted to based on the geographical location of the firm, and if they are applying for DBE, ACDBE or both certifications. Decisions will be made in less than 90 days of receiving from the applicant firm all information required as described by 49 CFR Part 26. The time limit for decision may be extended once, for no more than an additional 30 days, upon written notice to the firm explaining fully and specifically the reasons for the extension, as per 49 CFR 26.83(l)(i). AZUCP partners will support each other as necessary to expedite applications to meet business needs. ADOT and its AZUCP Partner agencies' failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to the United States Department of Transportation (USDOT) under 49 CFR Part 26.89.

Once an application has been submitted, ADOT and its AZUCP partner agencies will follow the process below in determining whether a DBE firm meets the standards of 49 CFR Part 26, 26.83 (a-n).

- A cursory review of the application will be conducted
- If the cursory review affirms that evidence supporting the basic eligibility criteria for certification under 49 CFR Parts 26 & 23 are met, the certifier will officially receive the application in the online system and conduct a detailed review for eligibility determination as follows.

- Review the entire record and compile a list of questions, if any, for the SEDO.
- Contact the SEDO to resolve questions/concerns by sending a “Q&A” from the record in the DBE system and complete the detailed review.
- Conduct an in person or virtual on-site review (OSR) with the SEDO/s and all key personnel. A complete written report and an audio recording of the OSR will be maintained with the certification record.
- For interstate requests the certifier will verify active certification status in the firm's Jurisdiction of Original Certification (JOC) The certifier will also check the USDOT Denial Database to determine if the firm was previously decertified or denied.
- The certifier completes a thorough review of the application and makes a certification determination. As part of this process the certifier will:
 - Analyze documentation related to the legal structure, ownership, and control of the applicant firm.
 - Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
 - Obtain a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program. Obtain complete federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the SEDO for the last 3 years. A complete return includes all forms, schedules, and statements as filed.
 - For interstate certification requests, the certifier will review the electronic image of the firm's JOC directory listing submitted by the firm, the firm's statement of the type of work it prefers to perform as part of the DBE program, and verify active certification in the firm's Jurisdiction of Original Certification (JOC.) The certifier will also check the USDOT Denial Database to determine if the firm was previously decertified or denied. The interstate request for certification will be granted within 10 days. Once the firm is certified, the AZUCP agency may request any or all information deemed necessary from the firm's JOC.

Once certification is granted, the firm will remain certified until and unless the certifier removes the certification, in whole or in part (i.e., NAICS coder removal), as per the requirements of 26.87. The AZUCP will not require a DBE to reapply or renew its certification or undergo a recertification. The certifier may, however, conduct a certification review at any reasonable time and/or at regular intervals of at least two years. The certification review may, at the certifier's discretion, include a new OSR. The firm will receive the following:

- Emailed notification of approval
- Welcome letter inviting the firm to participate in the DBE Supportive Services program
- The firm will be listed as a DBE (ACDBE if applicable) certified firm in the DBE directory located at utracs.azdot.gov

ADOT and its partner agencies will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or impose any functionally equivalent requirement. The certifier may, however, conduct a certification review at any reasonable time and/or at regular intervals of at least two years. The certification review may, at the certifier's discretion, include a new OSR.

If an applicant for DBE certification withdraws its application before ADOT or an AZUCP partner agency have issued a decision on the application, the applicant can resubmit the application at any time. ADOT and AZUCP partner agencies will not apply the waiting period provided under 49 CFR Part 26.86(c) before allowing the applicant to resubmit its application. However, ADOT and AZUCP partner agencies may place the reapplication at the “end of the line,” behind other applications that have been made since the firm's previous application was withdrawn.

When another state DOT or UCP, in connection with its consideration of the eligibility of a firm, makes a written request for certification information ADOT and its AZUCP partner agencies has obtained about that firm (e.g., including application materials or the report of a site visit), ADOT and its AZUCP partner agencies will promptly make the information available to the other recipient/state DOT.

Expansion Request Process for Certified Firms: A certified firm can request additional NAICS Code(s) at any time after certification. To request an additional NAICS code or a removal of an existing code the SEDO must submit an expansion application and supporting documents online through the DBE System.

Declaration of Eligibility Submittal (DOE) On the annual anniversary date of a firm's original certification in their jurisdiction (JOC) the AZUCP will require all certified DBE firms to submit a Declaration of Eligibility (DOE) including:

- A new DOE form signed by the firms SEDO/s
- Documentation of its gross receipts for its most recently completed fiscal year, calculated on a cash basis. The following documents may generally be considered “safe harbors,” provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed federal income tax returns as filed. Non-compliance, whether full or partial, is a § 26.109(c) failure to cooperate with program requirements.
- For interstate certified firms, the DOE will be due on the JOC anniversary date.

If the DBE firm fails to submit its DOE and gross receipts documentation by the due date specified by the certifier, the agency may either send an Notice of Intent (NOI) notifying the firm that the agency intends to remove their certification within 14 days of the date of the letter; OR may elect to suspend the firm's certification. Whether the certifier elects to send an NOI or suspension notice (SSN) to the DBE the NOI must explain the reason for the action, and the consequences. A SSN must ask the DBE to show cause why it should remain certified and advise that documents can be submitted and/or a virtual hearing will be held at a stated time between 15 and 25 days from the date of the notice. Within 30 days of the SSN the certifier must issue a Notice of Decision (NOD) to either remove the DBE's certification or lift the suspension. The DBE may appeal the decision to remove but may not appeal the suspension itself. The certifier will provide information regarding the appeal process. Summary suspension may be applied only one time in a 12 month period

Decision Letters: When a certifier denies a firm's request for certification or decertifies the firm, the certifier must provide the firm a Notice of Decision (NOD) explaining the reasons for the decision, specifically referencing the evidence in the record that supports each reason.

In addition the certifier must:

- Include the instructions for filing an appeal found on the USDOT Departmental Office of Civil Rights' web page, available at [transportation.gov/dbeappeal](https://www.transportation.gov/dbeappeal). An appeal does not extend the waiting period.
- Provide copies of all documents and other information on which it based the denial if the applicant requests them.
- Establish a waiting period for reapplication of no more than 12 months. That period begins to run the day after the date of the decision letter is emailed. After the waiting period expires, the denied firm may reapply to any member of the UCP that denied the application. The certifier must inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

3. Decertification Process (49 CFR Part 26.87)

ADOT and its AZUCP partner agencies bear the burden of proving, by a preponderance of the evidence, that the DBE does not meet the certification standards of this part. A firm's decertification proceeding may be initiated either directly by the certifier or at the direction of an Operating Administration (OA) which may be the Federal Highway Administration (FHWA), FAA (Federal Aviation Administration) or FTA (Federal Transit Administration).

If an OA determines that there is reasonable cause to believe that a DBE does not meet the eligibility criteria of this part, the OA may direct the certifier to initiate a proceeding to remove the DBE's certification. The certifier must then immediately commence a proceeding to decertify the DBE.

Any person may file a written complaint specifically explaining why the certifier should decertify a DBE. The certifier need not act on a general allegation or an anonymous complaint. The certifier must keep complainants' identities confidential and respond as follows:

- The certifier must review its records concerning the DBE, any material the DBE and/or complainant provides, and any other available information.
- The certifier may request additional information from the DBE or conduct any other investigation that it deems necessary.
- If the certifier determines that there is reasonable cause to decertify the DBE, it initiates a decertification proceeding. If it determines that there is not reasonable cause, it notifies the complainant and the DBE in writing of its decisions and the reasons for it.
- When a determination has been made to remove a DBE firm's existing certification, a notice of intent (NOI) will be sent to the firm. The notice is to be sent electronically and must cite the reasons for removal and provide the firm with information on the process to dispute the decision.
- The NOI must notify the DBE of its right to respond in writing, at an informal hearing, or both. If the DBE wishes, they may submit a written response rebutting the reasons stated in the NOI. If appropriate the OA and any other person initiating the complaint must also receive a copy of the NOI.

- The NOI must inform the DBE of the hearing to be scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI. If the DBE wants a hearing, it must email the certifier within 10 days of the NOI or the opportunity for a hearing is lost. The date can be negotiated for the convenience of the DBE or agency.
- If the DBE firm elects not to respond, the certifier will send an electronic NOD to the DBE firm notifying the business owner that the firm's certification has been removed, and an NOD will also be sent to the OA and other party involved. In accordance with 49 CFR, Part 26, 26.87 the notice will include the instructions for appealing the decision to the USDOT, available at <https://www.transportation.gov/dbeappeal>.
- If the ground for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, the certifier issues a NOD decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response
- AZUCP partner agencies will establish a waiting period of 12 months for reapplication, and notify the denied firm of that date. After the waiting period expires the denied firm may reapply.

4. Informal Hearing Process (49 CFR 26.87(e))

A DBE firm that has been issued an NOI may request an informal hearing from ADOT and its AZUCP partners to dispute the decision to remove eligibility by submitting an emailed response. The request must be made within 10 days from the date of the NOI. The hearing is an informal proceeding with rules set by the hearing officer. The SEDO's attorney, a non-SEDO, or other individuals involved with the DBE may attend the hearing and answer questions related to their own experience or more generally about the DBE's ownership, structure and operations. The hearing officer will be an individual who is knowledgeable about the certification requirements of the DBE program and will be selected in the following order:

1. DBE Certification Managers from other source agencies.
2. Former DBE Certification Program Managers from AZUCP partner agencies or other public agencies that are knowledgeable about the DBE program and are not subject to the direction of the office that took part in making certification decisions.
3. State of Arizona Hearing Officers secured externally by contract, who are knowledgeable about the DBE program.

If the DBE firm chooses to present information and arguments in writing without attending a hearing, the certifier will transmit the relevant documents to the hearing officer. The Hearing Officer may request additional relevant information from ADOT or the AZUCP Partner agency or the firm, will review all information submitted and will consider all relevant factors in rendering a decision.

The certifier must maintain a complete audio recording of the hearing. If the DBE appeals to USDOT under 26.89, the certifier must provide the informal hearing record to USDOT and to the DBE.

The certifier must maintain separation of functions to ensure that the decision in a decertification case is made by an individual who did not take part in actions leading to or implementing the proposal to decertify the DBE and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

If the DBE firm requests an informal hearing by email, the certifier will designate a hearing officer within 7 days of receipt of request from the firm. The certifier will notify the firm of the hearing officer's contact information. The firm's record will be made available to the hearing officer via the online DBE system. To ensure impartiality of the hearing officer, once an informal hearing request has been received no discussion of the firm or the circumstances of removal will take place between partner agencies. If previous discussion of the SEDO has taken place between partner agencies, the hearing officer cannot be affiliated with either agency and must be selected from one of the other groups identified below. The hearing officer must not be subject to direction from the office or personnel who took part in the decertification decision.

The AZUCP partner agency bears the burden of proving to the Hearing Officer by a preponderance of the evidence that the firm does not meet DBE certification standards. When a request for an informal hearing by telephone or in person is received from a firm, the certifier will use the procedures below to conduct an Informal Hearing:

- The AZUCP partner agency will work with the firm and Hearing Officer to determine a mutually acceptable mode (virtual or in-person), date, and time for the Informal Hearing.
- The certifier will provide a "Notice of Hearing" to the firm and Hearing Officer to include:
 - Date, time and mode/location for hearing
 - Copy of the NOI
 - The evidence the agency used to make the decision
 - The firm's response/rebuttal letter with reasons as to why it should remain certified

The Hearing date will be at least 20 days after the date of the "Notice of Hearing" letter unless the DBE firm requests an earlier date.

An attorney may represent the firm at the hearing. The firm must notify the certifier in its written request for an Informal Hearing if it will be represented by an attorney. The certifier reserves the right to be represented in the Hearing by its own legal counsel whether the firm is or is not represented by an attorney.

Agency staff will attend the hearing proceedings, in- person or virtually, to present the evidence supporting the removal of the firm's DBE certification. The DBE firm must attend, in- person or virtually, to provide information and arguments concerning why it should remain certified.

The Hearing Officer will preside over the hearing. During the hearing, the certifier shall present its case and evidence for decertification, followed by the DBE firm. The DBE firm may submit relevant documentation that supports their case for certification and provides information contrary to the decision. This information becomes part of the record. New information may be submitted by the DBE firm that was not available at the time the decision to decertify was made, and may be part of the record but cannot be used by the Hearing Officer in the decision making process.

The evidence and arguments provided by the certifier and the DBE firm must focus only on the facts relevant to the stated reason(s) for decertification.

Both parties will be provided the opportunity for a rebuttal/closing statement, the certifier will present its closing statement last since it has the burden of proving, by preponderance of the evidence, why the firm no longer meets the certification standards in the DBE regulations. Informal hearings will generally last no more than a few hours to one day depending on the complexity of the issues. The Hearing Officer will review all information presented and consider all relevant factors in rendering a decision.

The hearing will be recorded and an audio recording will be provided to USDOT, if the firm chooses to appeal to USDOT. The recording will also be provided to the firm upon request. The firm shall maintain its DBE certification status until the informal hearing process is concluded. The firm does not become ineligible until a Hearing Notice of Decision (NOD) is issued.

If the DBE firm elects not to respond and does not present information and arguments in writing to dispute the decision to remove its eligibility within the 10 day timeframe, the certifier will send a NOD by certified mail and an email to the DBE firm notifying the SEDO that the firm's certification has been removed.

5. Withdrawal Process

A firm may choose to withdraw its application or its active certification from the DBE program at any time by providing notice to ADOT or its AZUCP partner agencies. The withdrawal will be effective as of the date of the request to withdraw. Firms will receive an electronic notification when their certification status has been updated.

6. Summary Suspension (49 CFR 26.88)

Summary suspension is an extraordinary remedy for lapses in compliance that cannot reasonably or adequately be resolved in a timely manner by other means. A firm's certification is suspended under this part as soon as the certifier transmits electronic notice to its owner at the last known email address.

During the suspension period, the DBE's participation may not be considered towards contract or participation goal on any contracts executed during the suspension period.

There are two types of summary suspensions that can be imposed:

- **Mandatory:** the certifier must summarily suspend a DBE's certification when the certifier has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity, or if the OA with oversight so directs.
- **Elective:** the certifier may elect to suspend summarily if it has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity.
- The certifier must notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN must explain the action, the reason for it, the consequences, and the evidence on which the certifier relies according to the following:
 - Elective SSNs may not cite more than one reason for the action.
 - Mandatory SSNs may state multiple reasons.

- The SSN, regardless of type, must demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why the certifier should lift the suspension. The SSN must also advise that the DBE may provide written information and arguments in lieu of or in addition to attending the hearing.
- **Hearing:** The hearing date must be a business day that is at least 15 but not more than 25 days after the date of the notice. The DBE may respond in writing in lieu of or in addition to attending the hearing; however, it will have waived its right to a hearing if it does not confirm its attendance within 10 days of the notice and will have forfeited its certification if it does not acknowledge the notice within 15 days. The show-cause hearing must be conducted as a video conference on a standard commercial platform that the DBE may readily access at no cost.
- **Response:** The DBE may provide information and arguments concerning its continuing eligibility until the 15th day following the suspension notice or the day of the hearing, if any, whichever is later. The DBE must email any written response it provides. Email submissions correctly addressed are effective when sent. The certifier may permit additional submissions after the hearing, as long as the extension ends on a business day that is not more than 30 days after the notice.

Scope and Burdens:

- Suspension proceedings are limited to the suspension ground specified in the notice.
- The certifier may not amend its reason(s) for summarily suspending certification, nor may it electively suspend the firm again during the 12-month period following the notice.
- The DBE has the burden of producing information and/or making arguments concerning its continued eligibility, but it need only contest the reason cited.
- ADOT and its partner agencies bear the burden of proving its case by a preponderance of the evidence. The certifier must issue an NOD within 30 days of the suspension notice or lift the suspension. Any NOD must rely only on the reason given in the summary suspension notice.
- The DBE's failure to provide information contesting the suspension does not impair the certifier's ability to prove its case. That is, the uncontested evidence upon which the certifier relies in its notice, if substantial, will constitute a preponderance of the evidence for purposes of the NOD.
- The DBE remains suspended during the proceedings described in this section but in no case for more than 30 days. If the certifier has not lifted the suspension or provided a rule-compliant NOD by 4:30 p.m. on the 30th day, then it must lift the suspension and amend applicable DBE lists and databases by 12 p.m. the following business day.

Recourse:

- **Appeal:** The DBE may appeal a final decision under paragraph (d)(4)(iv), of this section, as provided in § 26.89(a), but may not appeal the suspension itself, unless paragraph (e)(2) of this section applies.

Enforcement:

- The DBE may immediately petition the USDOT for an order to vacate a certifier's action if the certifier sends a second elective SSN within 12 months, or cites multiple reasons in an elective SSN contrary to the requirements as listed above.

- The DBE may also petition to the Department for an order to compel if the certifier fails to act within 30 days.
- In either case, the DBE must email the petition request under the subject line, “REQUEST FOR ENFORCEMENT ORDER” in all caps. The request must be limited to a one-page explanation that includes:
 - The certifier's name and the suspension dates
 - Contact information for the certifier, and the DBE's SEDO/S
 - The general nature and date of the firm's response, if any to the second suspension notice; and
 - The second suspension notice

7. Appeals to USDOT (49 CFR Part 26.89)

Applicants and decertified firms may appeal adverse NODs to USDOT.

An ineligibility complainant or applicable OA may also appeal to USDOT if the certifier does not find reasonable cause to issue an NOI to decertify or determines that the DBE remains eligible.

All appeals must be emailed as directed in the certifier's decision letter within 45 days of the date of the letter. The appeal must at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what pertinent facts the certifier did not consider, and/or what part 26 provisions the certifier misapplied.

The certifier's decision remains in effect until USDOT resolves the appeal or the certifier reverses itself.

When USDOT receives an appeal, it requests a copy of the certifier's complete administrative record including a video, audio, or transcript of any hearing, which the certifier must provide within 20 days of the Department's request. The Department may extend this time period when the certifier demonstrates good cause. The certifier must ensure that the administrative record is well organized, indexed, and paginated and the certifier must provide the appellant a copy of any supplemental information it provides to USDOT.

- USDOT may accept an untimely or incomplete appeal if it determines, in its sole discretion, that doing so is in the interest of justice.
- USDOT may dismiss non-compliant or frivolous appeals without further proceedings
- USDOT will avail itself of whatever remedies for noncompliance it considers appropriate
- USDOT decides only the issue(s) presented on appeal. It does not conduct a new review of the matter, assess all eligibility requirements, or hold hearings. It considers the administrative record and any additional information that it considers relevant.

In responding to the appeal USDOT will take one of the following actions:

- Affirm the certifier's decision if it determines that the decision is consistent with applicable rules and supported by substantial evidence.

- Reverse decisions that do not meet the standard in paragraph (f)(1) of this section. USDOT need not reverse if an error or omission did not result in fundamental unfairness.
- Remand the case with instructions for further action. When USDOT specifies further actions, the certifier must take them without delay.

USDOT generally does not uphold the certifier's decision based on grounds not specified in its decision, and resolves appeals on the basis of facts demonstrated, and evidence presented, at the time of the certifier's decision.

USDOT may summarily dismiss an appeal. Reasons for doing so include, but are not limited to, non-compliance, abuse of process, appellant or certifier request, and failure to state a claim upon which relief can be granted.

All decisions of this section are administratively final unless they say otherwise. Final decisions of appeals are posted to the USDOT website, available at [transportation.gov/DBEDecisions](https://www.transportation.gov/DBEDecisions).

8. Actions the AZUCP Will Take Following USDOT Certification Appeal Decisions

The USDOT decision on an appeal is binding on the certifier that issued the NOD on which the appeal is based. AZUCP partner agencies to which a USDOT determination is applicable must take the following actions as required:

- If USDOT upholds the certifier's decision, no further action is required.
- If USDOT determines that a certifier erroneously certified a firm, the certifier must remove the firm's eligibility on receipt of the determination, without further proceedings.
- If USDOT determines that a certifier erroneously failed to decertify a firm, the certifier must commence a proceeding to determine whether the firm should be decertified.
- If USDOT determines that a certifier erroneously denied or decertified the firm, the certifier must certify the firm, effective on the date of receipt of the written notice of USDOT's determination.
- If USDOT determines that the presumption of social and economic disadvantage was either erroneously rebutted or erroneously presumed, appropriate corrective action will be determined by the USDOT.

Where USDOT has upheld a certifier's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other certifiers with whom the firm is certified may commence a proceeding to remove the firm's eligibility and may not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed a denial of certification to or removal of eligibility from a firm, other certifiers must take the USDOT action into account in any certification action involving the firm. However, other certifiers are not required to certify the firm based on the USDOT decision.

9. AZUCP Partnership Meetings

Certification Managers and staff as appropriate from each AZUCP partner agency will meet no less than three times each year, or more often as needed, to collaborate on certification issues, discuss the progress of the AZUCP, operating procedures, website management, support needs and regulations.

The three agencies will take turns hosting and coordinating the meetings, whether virtually or in-person as the UCP determines. The host agency will prepare the agendas, meeting minutes and chair the meetings. All partners are to be represented at any AZUCP meeting.

If an AZUCP partner requests an additional meeting to discuss a complex file or other certification issue, a meeting may be scheduled with the agreement of all partners. AZUCP partners agree to provide inter-agency support in processing DBE certification applications.

The meetings should be scheduled at least two weeks prior to the meeting date. Emergency meetings are not required to meet these criteria.

10. AZUCP Partnership Trainings

All AZUCP partners and staff are strongly encouraged to attend scheduled USDOT and AZUCP training, as applicable, to ensure that staff administering the DBE program are adequately trained in certification standards and processes. Ad-hoc training may be scheduled to address new regulatory guidance related to 49 CFR Part 26 and/or Part 23. All training will be conducted by a person knowledgeable in the area of study.

11. AZUCP Directory Maintenance

The AZUCP DBE directory is located at <https://utracs.azdot.gov>. The website will be maintained by ADOT as the lead agency for the AZUCP. The online DBE platform utilized by all AZUCP agencies populates the directory information and is updated daily. The AZUCP DBE directory shall include, at a minimum, the following information:

- Firm name
- Owner's name
- Firm address
- Firm phone number
- Firm fax number
- E-mail address
- Website
- All applicable NAICS codes

VI. COMPLIANCE AND ENFORCEMENT – SUBPART F

1. Compliance Procedures That Apply to ADOT (49 CFR Part 26.101)

If ADOT fails to comply with any requirement of 49 CFR part 26, it may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49

U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

ADOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because ADOT has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

2. Enforcement Actions under FHWA and FTA Programs (49 CFR Part 26.103)

There are a number of enforcement actions that can be taken against ADOT related to FHWA and FTA-assisted contracts:

- a) Noncompliance complaints. Any person who believes that ADOT has failed to comply with its obligations under 49 CFR Part 26 may file a written complaint with the concerned operating administration's Office of Civil Rights. An individual wishing to file a complaint must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of DBE regulations. In response to a written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for doing so. The Office of Civil Rights may protect the confidentiality of the complainant's identity as provided in 49 CFR Part 26.109(b). Complaints are limited to allegations of violation of the provisions of 49 CFR Part 26.
- b) Compliance Reviews. The concerned DOT OA may review ADOT's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the OA to initiate a compliance review based on complaints received.
- c) Reasonable cause notice. If it appears, from the investigation of a complaint or the results of a compliance review, that ADOT is in noncompliance with 49 CFR Part 26, the appropriate DOT office promptly notify ADOT in writing advising it that there is reasonable cause to find it in noncompliance. The notice will state the reasons for this finding and will direct ADOT to reply within 30 days concerning whether it wishes to begin conciliation.
- d) Conciliation. If ADOT requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of ADOT's request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

- i) If ADOT and the appropriate DOT office signs a conciliation agreement, then the matter is regarded as closed and ADOT will be regarded as complying. The conciliation agreement will set forth the measures ADOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, ADOT will remain eligible for FHWA or FTA financial assistance.
 - ii) The concerned OA will monitor ADOT's implementation of the conciliation agreement and ensure that its terms are complied with. If ADOT fails to carry out the terms of a conciliation agreement, ADOT will be found to be in noncompliance.
 - iii) If ADOT does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph in the timeframe listed above, then enforcement proceedings may begin.
- e) Enforcement actions. Enforcement actions may be taken as provided in 49 CFR Part 26, Subpart F. Applicable findings in enforcement proceedings are binding on all DOT offices.

3. Enforcement Actions under FAA Programs (49 CFR Part 26.105)

Compliance with all requirements of 49 CFR Part 26 by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation 49 CFR Part 26 by ADOT as any recipient of FAA funds may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

4. Enforcement Actions for Firms Participating in DBE Programs (49 CFR Part 26.107)

If a firm that does not meet the DBE eligibility criteria outlined in 49 CFR Part 26, Subpart D, attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the DOT may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If it comes to ADOT's attention that a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the DBE eligibility criteria, ADOT will bring the matter to the attention of DOT, which may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought against a firm, the concerned operating administration may consider the fact that a purported DBE has been certified by ADOT, an AZUCP member agency or another DOT recipient. Such certification does not preclude the DOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

5. Information, Confidentiality, Cooperation, Intimidation/Retaliation (49 CFR Part 26.109)

Availability of Records:

Notwithstanding any provision of Federal or Arizona Freedom of Information law and statutes, ADOT will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, ADOT must transmit this information to DOT in any certification appeal proceeding under 40 CFR Part 26.89 or to any other state to which the individual's firm has applied for DBE certification.

Confidentiality of Information on Complaints:

The identity of complainants shall be kept confidential, at their request. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege.

Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. For FAA-funded contracts, ADOT will follow the procedures of 14 CFR Part 16 with respect to confidentiality of information in complaints.

Cooperation:

All participants in the DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and ADOT compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to ADOT, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

Intimidation and Retaliation:

ADOT, Subrecipient/Subgrantee, contractor, consultant or any other participant in the DBE program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under the DBE regulations. If ADOT, contractor, consultant, or any other participants in the DBE program violate this prohibition, it will be in noncompliance with 49 CFR Part 26.

VII. SUBRECIPIENT/SUBGRANTEE COMPLIANCE – SUBPART G

1. Policy

Subrecipients/Subgrantees receiving DOT-assisted transportation funds through ADOT must adopt and implement ADOT's DBE Program Plan, ADOT's DBE policy, DBE contract specifications and forms as a condition of receiving federal funds. ADOT Subrecipients/Subgrantees of federal funds must comply with ADOT DBE Plan and may not have a plan independent from ADOT.

If a Subrecipient/Subgrantee has been authorized to have its own approved DBE Program Plan, it may implement the retainage option identified in their Subrecipients/Subgrantees approved DBE program plan only in the rare case that the majority of the project's funding assistance comes directly from USDOT rather than ADOT.

2. Objectives

Subrecipients/Subgrantees must commit to supporting the following ADOT DBE Program objectives to:

- Ensure nondiscrimination in the award and administration of DOT-assisted contracts in ADOT and its Subrecipient/Subgrantee construction, procurement, and professional services contracts in the areas of highway, transit, and airport financial assistance;
- Ensure nondiscrimination in the award and administration of US DOT-assisted contracts;
- Create a level playing field on which DBEs can compete fairly for US DOT 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 permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in US DOT-assisted contracts;
- Promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by Subrecipients/Subgrantees; and
- Assist in the development of firms that can compete successfully in the market place outside the DBE program.
- Provide appropriate flexibility in establishing and providing opportunities for DBEs

3. Non-Discrimination

Subrecipients/Subgrantees 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 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.

4. DBE Program Compliance Required Activities

In accordance with the Subrecipient/Subgrantee DBE Program Plan Compliance Statement, all ADOT Subrecipients/Subgrantees shall designate a Disadvantaged Business Enterprise Liaison Officer (DBELO), responsible for adopting and implementing ADOT's DBE Program Plan, related procedures and contract specifications. Each Subrecipient/Subgrantee must do a minimum of the following:

- 1) Affirm and consent by signing ADOT's Subrecipient/Subgrantee DBE Compliance Statement, or Certification Acceptance Agreement, assuring its adherence to ADOT DBE Program Plan and concomitant procedures.
- 2) Follow the same guidelines, procedures, and use the contract specifications and forms developed by ADOT to implement its DBE Program Plan.
- 3) Participate in training conducted by ADOT related to DBE requirements and program regulations.
- 4) Require firms that work on DOT-assisted contracts to register and secure an AZUTRACS registration number via the AZUTRACS web portal, and maintain their profile with current and accurate firm information.
- 5) Encourage small firms to register as an SBC via the AZUTRACS web portal.
- 6) Utilize certified DBEs found in the AZUTRACS web portal.
- 7) Submit all FHWA DOT-assisted contracts to ADOT to be assessed for a DBE goal. Once a contract is assessed a DBE goal, ADOT's Subrecipients/Subgrantees have up to 120 calendar days to advertise their project. If not advertised within 120 calendar days, ADOT's Subrecipients/Subgrantees are required to submit a request for reassessment of a DBE Goal on the contract.
- 8) Include DBE contract goal as provided by ADOT in FHWA contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents.
- 9) Include applicable DBE contract specifications as provided by ADOT in all DOT-assisted contract bid advertisement, bid package, statement of qualification, request for proposal or other solicitation documents.
- 10) Notify the ADOT PM and ADOT BECO in writing immediately following bid opening of a DOT-assisted design or construction project if the apparent low bidder or selected consultant indicates on the DBE Goal Assurance Form (3102C) that the DBE contract goal cannot be met.
- 11) Submit all Good Faith Effort documentation to ADOT BECO for review and concurrence prior to awarding of DOT-assisted contracts.
- 12) Collect DBE Affidavits (FHWA-funded contracts only), bidder/proposer list confirmation email and all other ADOT required forms and submit to ADOT BECO in accordance with the applicable FHWA Subrecipient/Subgrantee Compliance Checklist available at: **LPA/Subrecipient DBE Compliance**
- 13) Ensure the receipt of Bid Verification Notice from ADOT BECO prior to contract award.

- 14) Enter contract award, DBE commitment/information, prime payments, and other requested data in the LPA DBE System in accordance with the applicable FHWA Subrecipient/Subgrantee Compliance Checklist available at: **LPA/Subrecipient DBE Compliance**
- 15) Submit contract data in support of monthly, semi-annual and annual federal reporting submission made by ADOT. Subrecipients/Subgrantees, Certification Acceptance Agencies and LPAs are required to use the ADOT Local Public Agencies (LPA) DBE System, via the **LPA DBE System**.
- 16) Monitor and enforce that contractors enter and report payments monthly in the LPA DBE System and that Prompt Payment of DBEs and other subcontractors are monitored and enforced.
- 17) Implement monitoring and enforcement mechanisms to enforce the terms of the contract, including application of applicable sanctions, as needed, for payment reporting, prompt payment, DBE termination/substitution and not meeting the DBE contract goal.
- 18) Conduct site reviews to ensure all DBEs (RC and RN) are meeting a Commercially Useful Function on each DOT-assisted contract.
- 19) Follow DBE contract specification to notify ADOT BECO and ADOT PM in writing to secure ADOT BECO's approval prior to any termination, substitution, or reduction of work of a committed DBE firm used to meet the contract goal.
- 20) Monitor DBE utilization on projects and notifying ADOT BECO as soon as Subrecipient/Subgrantee is aware of a potential issue that may affect DBE commitments made at award.
- 21) Ensure that all DBE Certification of Final Payment Forms (COPs) are submitted by contractors, approved by BECO, and submit a copy of the agency's Final Acceptance Letter to ADOT BECO.
- 22) Provide ADOT with monthly reports on awards, payments and DBE utilization. Monthly Reports must be submitted for the previous month by the 7th day of each month.
- 23) Ensure timely contract closeout by ensuring all subcontractor payments are reported in the LPA DBE System, closeout contracts in the LPA DBE System, and complete all mandatory reporting requirements in the LPA DBE System by April 1st and October 1st of each year in order for ADOT to prepare for the Semi-Annual report.

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