



City of Cottonwood Cottonwood Municipal Airport Disadvantaged Business Enterprise DBE Program



COTTONWOOD MUNICIPAL AIRPORT

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of Cottonwood (Airport), owner of Cottonwood Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Airport has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the Airport to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Airport policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Kirsten L. Lennon, Accounting/Budget Manager has been delegated as the DBE Liaison Officer. In that capacity, the Accounting/Budget Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Airport in its financial assistance agreements with the Department of Transportation.

The Airport has disseminated this policy statement to the Airport Commission and all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Airport DOT-assisted contracts. The distribution was accomplished by email with return receipt acknowledgement.



Robert Winiecke, Public Works Director

12.18.19
Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are elaborated in the policy statement on the first page of this program.

Section 26.3 Applicability

The Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Airport will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The Airport will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Airport 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.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The Airport will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to the FAA as follows:

The Airport will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The Airport will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

Bidders List

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

This information will be collected in the following way(s): Our bidder's list collection form is entitled "Contract Participants form. A copy is shown in Attachment 3. The Contract Participants form is a part of each RFP/RFQ/RFI. The form covers all the requirements for the Bidder's List, as well as, providing the data for Section 1 of the current award year and detailed backup data for the project closing year of the Uniform Report of DBE Commitments/Awards and Payments.

Records retention and reporting:

The Airport will maintain records documenting a firm's compliance with the requirements of this part.

Section 26.13 Federal Financial Assistance Agreement

The Airport has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the Airport signs with a DOT operating administration (or a primary recipient) will include the following assurance:

[Note: The following language is to be used verbatim, as stated in 26.13(a)]

The Airport shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Airport 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 Airport 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 Airport of its failure to carry out its approved program, the Department 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.*).

Contract Assurance: The Airport will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

[Note: The following language is to be used verbatim, as stated in 26.13(b)]

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.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Airport is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Airport is in compliance with it and Part 26. The Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. The Airport does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the Airport:

Kirsten L. Lennon
Accounting/Budget Manager
City of Cottonwood
816 N. Main St.
Cottonwood, AZ 86326
928-340-2712
928-634-3727
klennon@cottonwoodaz.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Airport complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of two (2) and works with other offices and consultants including the Purchasing Manager, legal and engineers to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Airport's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts.
10. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

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

No such banks exist in Arizona at this time. The Airport encourages prime contractors to investigate such institutions through the Business Programs Office at www.osdbu.dot.gov/financial/stlp.cfmm. The Federal Reserve Board website at www.federalreserve.gov 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.

Section 26.29 Prompt Payment Mechanisms

The Airport requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Airport will include the following contract clause in each DOT-assisted contract:

"The prime contractor agrees to submit for payment by the Airport for satisfactory performance of all subcontractors as soon as possible. This clause applies to both DBE and non-DBE subcontractors."

To implement this measure, the Airport includes the following clause from FAA Advisory Circular 150/5370-10G (Section 90-06) in each DOT-assisted prime contract:

Option 3: The Airport may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after the Airport's payment to the prime contractor. The percent withheld may not exceed 10%. The Airport will insert the following clause and specify amounts where indicated:

"The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Airport must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented

as required by the Airport. When the Airport has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed."

From the total of the amount determined to be payable on a partial payment, 10 percent of such total amount will be deducted and retained by the Airport until the final payment is made, except as may be provided (at the Contractor's option) in the subsection titled PAYMENT OF WITHHELD FUNDS of this section. The balance {{insert balance}} of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise his/her option, as provided in the subsection titled PAYMENT OF WITHHELD FUNDS of this section, no such percent retainage shall be deducted.

When at least 95 percent of the work has been completed, the Engineer shall, at the Airport's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Airport may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

Section 26.31 Directory

The Airport is a non-certifying member of the Arizona Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

Section 26.33 Over-concentration

The Airport has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Airport has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

Monitoring Payments to DBEs and Non-DBEs

The Airport implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements and undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- Currently the Airport maintains a manual system entering payments to, and receipts by, prime contractors and all subcontractors. The Airport regularly monitors that system.
- The Airport works closely with the Prime Contractor to ensure payments to all subcontractors is made for work performed.
- The Airport requires Prime Contractors to submit a statement of all subcontractor payments with each request for payment along with evidence of resolution for previous non-payment requests.
- The Airport actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.
- The Airport will review all payment statements to DBE and non-DBE subcontractors provided by the prime contractor on a quarterly basis.

The Airport requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Airport's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Airport or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

Prompt Payment Dispute Resolution

The Airport will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

In case of dispute, the Airport DBELO and Contract Manager will meet with the Prime's and Subcontractor's representatives with authority to bind each party to resolve the dispute. If dispute includes more than one subcontractor, separate meetings will be held for each subcontractor's dispute.

Should the meetings not bring resolution to the dispute, the Airport may impose liquidated damages, terminate the contract for default and/or disqualify the contractor from bidding, temporarily or permanently, depending on the number and severity of violations.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure

- The DBELO will review the contractor and subcontractor payment statements
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Should resolution of the complaint be attained, the Airport may impose liquidated damages, terminate the contract for default and/or disqualify the contractor from bidding, temporarily or permanently, depending on the number and severity of violations.

Enforcement Actions for Noncompliance of Participants

Should the mechanisms stated above not bring resolution the Airport will consider all other remedies either civil, administrative, or criminal as outlined in Attachment 7.

Monitoring Contracts and Work Sites

The Airport reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Airport Project Manager and Consultants. Contracting records are reviewed by project managers and consultants. The Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation

The Airport has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required for the Airport to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Airport does not use set-asides or quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Airport will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), The Airport will submit its Overall Three-year DBE Goal to the FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA at https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Airport does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the Airport will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Airport will use the DBE Directory and the American Factfinder County Business Database as a method to determine the base figure. The Airport understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Airport will examine all the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Airport market.

Public Participation

In establishing the overall goal, the Airport will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the Airport to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Airport is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Airport engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

[Note: The persons or groups with whom this consultation occurred should be listed specifically in the goal methodology and calculation attachment.]

In addition to the consultation described above, the Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the Airport's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to the FAA will include a summary of information and comments received, if any, during this public participation process and Airport responses.

The Airport will begin using the overall goal on October 1 of the relevant period, unless other instructions from the FAA have been received.

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

Prior Operating Administration Concurrence

The Airport understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Airport for calculating goals is inadequate, the FAA may, after consulting with the Airport, adjust the overall goal or require that the goal be adjusted by the Airport. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals

The Airport cannot be penalized or treated by the Department as being in noncompliance with Part 26 because DBE participation falls short of an overall goal unless the Airport fails to administer its DBE program in good faith.

The Airport understands that to be considered in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The Airport understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) The Airport will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to the FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The Airport will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Expanding scope of work, scheduling pre-bid conferences and scheduling due dates to maximize participation of DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39;
- (2) Providing references upon request to overcome limitations such as inability to obtain bonding or financing;
- (3) Providing references upon request for technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Providing references upon request to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing references upon request to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds or work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Providing references upon request for programs available for new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and,
- (9) Providing DBEs, and other small businesses, references upon request to develop their capability to utilize emerging technology and conduct business through electronic media.

The Airport will establish the estimated overall goal by reviewing the historic DBE participation percentages, the local, regional and statewide market for DBEs vs. all firms

experienced and qualified to perform the work required and other relevant issues effecting DBE participation. The estimated overall goal will be reflected as entirely race-neutral or a combination of race-neutral and race conscious percentages.

The Airport will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures, DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Upon determination of the triennial overall Base Goal, an analysis will be conducted to ascertain the use of project goals and/or race-neutral, race-conscious or combination goals.

Areas to be analyzed will be the detailed scope of work for all projects anticipated in the next three years, historic goal achievements, the similarity between past projects and current projects, changes in the airport's market, the economy and the availability of DBEs. DBE availability can vary based on the increase/decrease of actual DBE firms, the availability of experienced/qualified employees and the amount of work in the airport's market area in competition for the firms and/or employees required in the next three years.

Current goals will be reviewed as ACIPs are changed to determine if the changes are so different as to warrant amended goals.

Details will be shown in DBE Goals and Methodology Report document in Attachment 5.

Public Notice

In addition to the consultation described in §26.45 above, the Airport will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the Airport's official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the FAA, the revised goal will be posted on the official internet web site.

Comments on the DBE goal will be accepted for 30 days from the date of this publication.

Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals are most commonly used in two instances: 1) The base goal is close to but exceeding previous goal attainment for a similar project(s); or, 2) The project is to be performed over several years with a future RFP(s) being released. Should an early award/commitment not be at a level to achieve the overall goal, setting race-conscious DBE contract goals for the remainder of the project would be part of the Airport's obligation to implement the DBE Program in good faith.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

Contract goals will be expressed as a percentage of Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

DBELO and Project Manager are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive.

The Airport will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;

- (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). 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; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section on the Contract Participant's form in accordance with the manner defined in item (4) below.
 - (4) Responsiveness.

Good Faith Efforts Administrative Reconsideration

Within 5 days of being informed by the Airport that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Steve Horton
City Attorney
City of Cottonwood
824 N. Main St.
Cottonwood, AZ 86326
928-606-0808
shorton@cottonwoodaz.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

In the event the bidder's appeal is successful, the remaining bidder's packages, including their Good Faith Efforts, will be re-evaluated to determine the winning bid.

Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all subcontracts, DBEs and Non-DBEs. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Airport. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Airport agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The Airport determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Airport written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that the Airport has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE 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.

Before transmitting to the Airport a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Airport, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise the Airport and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five (5) days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Airport as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Airport will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The Airport shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the Airport may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

Section 26.55 Counting DBE Participation

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of Subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Airport is a non-certifying member of the Airport Unified Certification Program (UCP). The Arizona UCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying Arizona UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Arizona Department of Transportation
Business Engagement and Compliance Office
1801 W. Jefferson #101, MD154A
Phoenix, AZ 85007
602.712.7761
Fax: 602-712-8429

<https://adot.dbesystem.com/FrontPage/VendorMain.asp?XID=2942>

The Uniform Certification Application form and documentation requirements are found in Attachment 8 of this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Airport is the member of a Unified Certification Program (UCP) administered by AZUTRACS. The UCP will meet all of the requirements of this section. A copy of the Airport's AZDOT UCP Agreement is found in Attachment 9 of this program.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Airport.

The Airport understands that if it fails to comply with any requirement of this part, the Airport 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.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties. Arizona FOIA laws exempt Adoption records; disciplinary records of some professional groups; some medical records; some corrections department records; band records; and trade secrets. For complete documentations, see: §39-121 et seq. at <https://www.azleg.gov/arsDetail/?title=39>,

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT 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.

All participants in the Department's 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 recipient 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 recipients, 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).

The Airport, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a

complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory or link to DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan-Forms 1 & 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

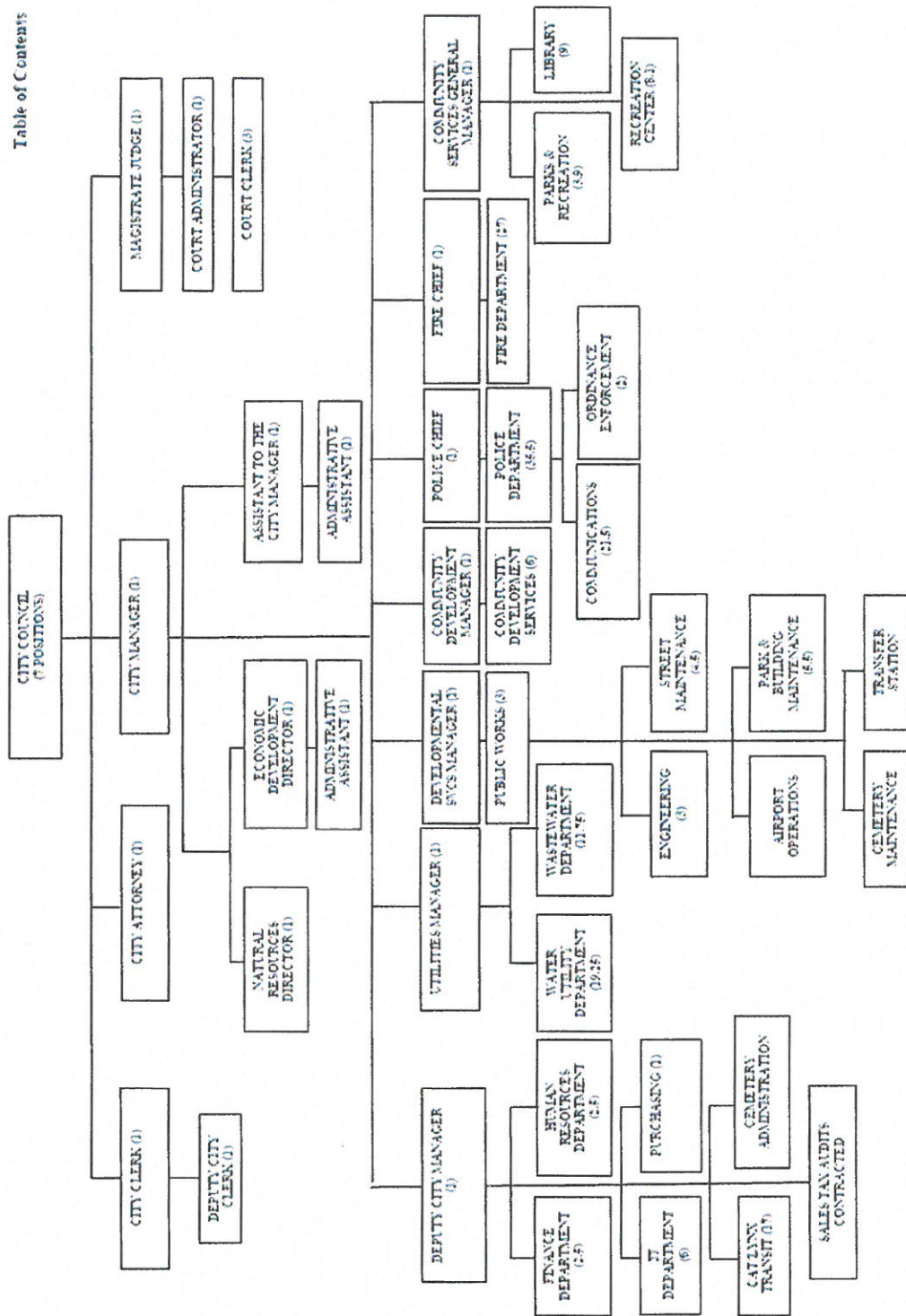
ATTACHMENT 1

49 CFR Part 26 link to website

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT 2
Organizational Chart

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Attachment 5a - Contract Participants Form

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ATTACHMENT 4

Arizona (ADOT) DBE Directory web link

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

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

The Airport's next DBE Triennial Goals is due on August 1, 2018. Upon submission of the FY 2019/2020/2021 Goals and Methodology Report and all future triennial Goals, all DBE Program Amendments and/or Addendums will be attached as addendums to the document. All addendums will be consistent with the latest updates and amendments reflected in 49 CFR Part 26.

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- ☐ Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.
- ☐ Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract and has submitted [*or "will submit," if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Dealer/Manufacturer**

**Percentage is to be used only in negotiated procurements, including design-build contracts*

***For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above and is properly certified to be counted for DBE participation therefore.

Signature of DBE's Authorized Representative

Date: _____

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void.

Submit this page for each DBE subcontractor

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The Airport has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract, as described in Subpart F-Compliance and Enforcement of 49 CFR 26.107 and 2 CFR §200 Appendix II(A).
2. Breach of contract action, pursuant to Arizona A.R.S. §12.552
3. Arizona State Public Prompt Payment Regulations - Ariz. Rev. Stat. —§§34-221, 41-2576, 41-2577.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

ATTACHMENT 8

NOTE: Firms located in Maricopa County must submit their DBE certification to the City of Phoenix, those in Pima County must submit their DBE certification application to the City of Tucson while all other firms must submit their DBE certification to the Arizona Department of Transportation.

Arizona Department of Transportation DBE Certification Application Form

<https://adot.dbesystem.com/FrontPage/VendorMain.asp?XID=2942>

ATTACHMENT 9 Arizona UCP Agreement



[Search \(DBE\) Firm Directory](#) | [Log in](#)

[Home](#)

[Register / Renew](#)

[Contract Compliance](#)

[Tools / Resources](#)

Unified Certification Program (UCP)

In compliance with [49 CFR Part 25.81](#) Arizona has established a Unified Certification Program (UCP). ADOT is the lead agency for the Arizona Unified Certification Program (AZUCP). The AZUCP provides "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a Disadvantaged Business Enterprise (DBE) or Airport Concessionaire Disadvantaged Business Enterprise (ACDBE) certification that is honored by all recipient agencies in the state. Therefore, certifications by all AZUCP Partner agencies are binding on all agencies receiving federal USDOT funds in the State of Arizona.

The AZUCP is comprised of three certifying agencies: ADOT, City of Phoenix, and City of Tucson.

AZUCP Partners are assigned statewide geographical areas for DBE certification application processing as follows:

- City of Phoenix – Firms located in Phoenix and greater Maricopa County, AZ
- City of Tucson – Firms located in Tucson and greater Pima County, AZ
- ADOT – All other cities and counties in the state of Arizona and all interstate certifications

AZUCP Partners have assigned all ACDBE Certification application processing to City of Phoenix.

All three entities have a signed Operating Agreement to manage the certification program in a consistent manner.

ATTACHMENT 10

Small Business Element

The Airport has established a Small Business Participation Plan (SBPP) in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

It is the policy of the Airport to ensure that small businesses, as defined by the SBA, have an equal opportunity to receive and participate in DOT-assisted contracts at the Airport. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of DOT assisted contracts;
2. Create a level playing field on which small businesses can compete fairly for DOT-assisted contracts;
3. Ensure that the Small Business Participation Plan is narrowly tailored in accordance with applicable law;
4. Ensure that Small Business firms are certified under the ADOT Small Business Certification Program or are verified by the Airport as meeting SBA standard 13 CFR 121;
5. Help remove barriers to the participation of ADOT Certified Small Businesses in DOT-assisted contracts;
6. Assist the development of firms that can compete successfully in the market place outside the Small Business Participation Plan.

It is the policy of the Airport that the SBPP will be guided by their DBE Program with the following unique elements or exceptions:

1. In multi-year design-build contracts or other large contracts:
 - a. Bidders on the prime contract will be required to identify all subcontractors, specifying whether they are large businesses, ADOT DBEs or ADOT SBEs.
 - b. The Airport will identify elements of the contract where unbundling might be considered in the future without impeding continual performance toward project completion.
2. On prime contracts not having DBE goals, prime contractors are required to specify elements that are of a size that small businesses can reasonably perform.
3. Identified small businesses will require the same replacement procedure by like entities as is required of DBEs.

Definition

The Airport's SBPP is an element of its DBE Program. The definitions are noted as relative to DBEs and SBEs and the SBPP:

1. DBE firms should be identified in the Small Business element of the recipient's

DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.

2. Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.
3. Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.

Verification

The Airport uses the ADOT SBE Program's list of certified firms as the accepted list of SBEs within Arizona. All DOT-assisted project bids require the bidder list all participants within their bid specifically identifying the DBE and SBE certified firms. As part of the initial review of all bids, each of the DBE and SBE firms listed is checked against the ADOT Certified DBE and SBE Directories to verify eligibility.

Monitoring/Record Keeping

1. The Airport uses the Contract Participants form (Attachment 3) as the vehicle of confirming participation of all firms and identifying certified DBEs and SBEs.
2. Copies of the winning bidder's form continues to be used throughout the life of the project. It is used to tally the original and final contract amounts for each participant for the annual Uniform Report of DBE Commitments/Awards and Payments. It also provides the data for updating the Airport's Bidder's List.
3. The SBE firms are included in the Monitoring and Compliance procedures, where applicable, to ensure compliance with 49 CFR Part 26.39.

Assurance

The Airport includes the following assurances as part of their small business program.

1. The program is authorized under state law;
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
4. Steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).