
Federal Aviation Administration

Disadvantaged Business Enterprise Program

Cottonwood Municipal Airport

(P52)



“Inspiring a Vibrant Community”

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CITY OF COTTONWOOD
COTTONWOOD MUNICIPAL AIRPORT (P52)
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 26

POLICY STATEMENT

Objectives/Policy Statement - Section 26.1, 26.23

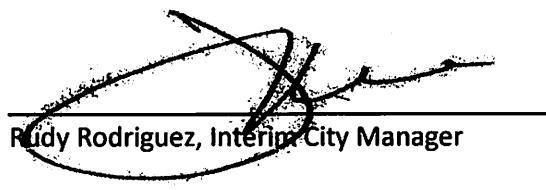
The City of Cottonwood (City) on behalf of the Cottonwood Municipal Airport has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The city has received Federal financial assistance from the DOT,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

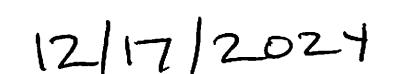
It is the City of Cottonwood's policy to ensure that DBEs as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in U.S. DOT-assisted contracts. The city's policy also includes the following:

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

The DBELO, Kirsten L. Lennon, Financial Services Director, is the designated DBE Liaison Officer for the Cottonwood Municipal Airport. In this capacity, he is responsible for overseeing and managing all aspects of the Airport DBE Program. Implementation of the Airport DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the City of Cottonwood in its financial assistance agreements with DOT.

The city has disseminated this policy statement to the City of Cottonwood Management and all of the appropriate divisions of the organization. This policy statement is made available to DBE and non-DBE companies that perform work on U.S. DOT-assisted contracts. Distribution channels include trade associations, online publications, and electronic notification via stakeholder distribution lists and The City of Cottonwood's website.


Rudy Rodriguez, Interim City Manager


Date

SUBPART A - GENERAL REQUIREMENTS

Objectives – Section 26.1

The Objectives are found in the POLICY STATEMENT of this program document. The complete 49 CFR Part 26 can be found at <https://www.ecfr.gov/current/title-49/subtitle-A/part-26> (**Attachment 1**).

Applicability – Section 26.3

As a recipient of funds from the Federal Aviation Administration (FAA), the City has established this DBE Program in accordance with **49 CFR Part 26** and commits to ensuring compliance on all FAA- funded transportation projects through monitoring, reporting, and goal setting. Where DBE goal setting is not necessary or practicable, the City will encourage race-neutral DBE participation.

Federal aviation funds are authorized by Federal Aviation Laws in Title 49, U.S. Code 47101, *et seq.*

Definitions – Section 26.5

The City, on behalf of Cottonwood Municipal Airport (P52) has adopted and uses the definitions related to the DBE Program found in 49 CFR Part 26.5. **For the purposes of this document, the City will be used to denote the City and the P52 (jointly).**

Non-Discrimination Requirements – Section 26.7

The City 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.

In administering this DBE Program, the City 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.

Data Collection and Reporting Requirements – Section 26.11

The City will report DBE participation to DOT as directed by DOT operating administrations:

Reporting to DOT – Section 26.11(b)

- The City will report DBE participation on the **FAA CIVIL RIGHTS CONNECT WEBSITE** at <https://faa.civilrightsconnect.com/FAA/login.asp> to indicate DBE Awards or Commitments and Payments to the FAA as follows:
- DBE activity will be an accumulation of the entire Federal Fiscal Year (FFY) from October 1st through September 31st and will be submitted by December 1st.
- The City will include DBE Contractor firm's contact information on the FAA DBE Contractor's Form or another approved similar format.

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Bidders Lists: - Section - 26.11(c)

The City will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on federally assisted contracts for use in setting overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved. ([Attachment 2 - Bidder's List Collection Form](#)).

The City will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- 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
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.
- Firms that do not submit the Bidder's list information will be deemed non-responsive.

The City will collect the data from all bidders for our federally assisted contracts by requesting the information in paragraph (c)(2) of this Section to be submitted with their bids or initial responses to negotiated procurements. The City will enter this data into the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a “design-build” contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), the City, will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Records Retention: - Section - 26.11(d)

The City will maintain records documenting a firm's compliance with the requirements of this part. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Assurances Recipients and Contractors Must Make – Section 26.13

The City has signed the following assurances, applicable to all DOT-assisted contracts and their administration. the City shall use the following language verbatim:

Federal Financial Assistance Agreement Assurance: 26.13(a)

“The City 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 City shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT- assisted

Cottonwood Municipal Airport – Disadvantaged Business Enterprise

contracts. The City'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 City, of its failure to carry out its approved program, the Department may impose sanction 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: 26.13(b)

The City will ensure that the following clause is placed in every DOT-assisted contract and subcontract signed and each subcontract the prime contractor signs with a subcontractor:

"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 City 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."*

SUBPART B - ADMINISTRATIVE REQUIREMENTS

DBE Program Updates – Section 26.21

The City 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 with a cumulative total value that exceeds \$250,000 in FAA funds in a federal fiscal year.

The City is not eligible to receive DOT financial assistance unless DOT has approved the DBE Program and the Airport is in compliance with it and this Part. The City will continue to carry out the program until all funds from DOT financial assistance have been expended. The City, as the Sponsor, 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.

DBE Policy Statement – Section 26.23

The City has issued a signed and dated Policy Statement that expresses our commitment to our DBE program, states its objectives, and outlines responsibilities for its implementation. This Policy has been circulated throughout our organization and to the DBE and non-DBE business communities that perform work on our DOT-assisted contracts. The Policy Statement is provided on the first page of this DBE Program.

DBE Liaison Officer (DBELO) – Section 26.25

Cottonwood Municipal Airport has designated the following individual as the DBE Liaison Officer (DBELO):

Name: Kirsten L. Lennon, Financial Services Director
Address: City of Cottonwood
821 North Main Street
Cottonwood, AZ 86326
Phone: (928) 340-2712
Fax: (928) 634-3727
Email: Klennon@Cottonwoodaz.gov

In this capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the **Interim City Manager** concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 3** to this Program.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO is assisted by professional and technical staff, with Airport Consultant Engineers and Planning Consultants assistance as required in the administration of the program.

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The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by U.S.DOT
2. Reviews third party contracts and purchase requisitions for compliance with this program
3. Works with consultants 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. Participates in pre-bid meetings.
7. Advises the Purchasing Manager and Airport Manager on DBE matters, requirements, and achievement.
8. Participates with legal, construction and contracts and specifications to determine contractor compliance with Good Faith Efforts.
9. Coordinates dissemination of bid notices, plans, and requests for proposals to DBEs.
10. The use of virtual tools, such as web conferencing, in our Small Business Outreach.
11. Reviews third party contracts and purchase requisitions for compliance with DBE Program in concert with the City and Airport if required.
12. Implements DBE contract requirements for airport construction contracts and compliance with DBE provisions.
13. Enforce sub-consultant DBE compliance for construction and planning projects.
14. Verify DBE status using the ADOT Uniform Certification Program directory of certified DBEs.
15. An Attorney from the City will be available to assist with the implementation of the DBE Program.

DBE Financial Institutions Section - 26.27

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

The Arizona Department of Financial Institutions is utilized to identify such institutions. Socially and economically disadvantaged owned and controlled financial institutions have not been identified in Arizona. The City investigates the availability of such institutions at least annually, and/or prior to accepting new grants for federal programs.

Prompt Payment Mechanisms Section - 26.29

The City requires that all subcontractors performing work on DOT-assisted contracts be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

In accordance with 49 CFR § 26.29(b), the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 7 days from the prime contractor's receipt of each payment from the City.

The City will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. The City will use the following method to comply with this requirement:

Hold retainage from prime contractors and provide for prompt, 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 7 days after payment to the prime contractor.

The City will consider a subcontractor's work satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the City. When the City 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. The City will provide appropriate means to enforce the requirements of this section. These means include:

1. The Arizona Revised Statutes Section 34-221 Paragraph G. requires that prime contractors pay their subcontractors within seven (7) days of receipt of payment by the City. All prime contractors and consultants are required to pay their subcontractors/consultants within seven days of receipt of payment from the City.
2. For every airport construction project funded under Federal grant assistance programs, the City will include the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to "30 days" will be revised accordingly.

The City will include the following clause in each DOT-assisted prime contract:

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the prime contractor receives from the City. The prime contractor agrees further to return retainage payments to each subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of the City. This clause applies to both DBE and non-DBE subcontractors."

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Prompt Payments to DBEs and non-DBEs

The City clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, the City undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- The City actively monitors participation by utilizing the MINUS Software application to monitor and report running tallies of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.
- The City will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. These audits will occur on an as needed basis.
- The City reviews contract payments to all subcontractors. Payment reviews will evaluate if the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City. These reviews will occur at each monthly request for payment.

The City 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 City's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the City or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The City proactively reviews contract payments to subcontractors including DBEs monthly, since most prime contractors also invoice on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the City by the prime contractor.

Prompt Payment Dispute Resolution

The City will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

1. Alternative Dispute Resolution (ADR) as noted in 49 CFR 26.29(g)(1). The City will require a contract clause that mandates the prime contractor to submit a detailed alternative dispute resolution plan for the City's approval prior to the issuance of any Notice to Proceed
2. A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
3. Meetings between prime and subcontractor, with resident project representative and/or project manager presence as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including the subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

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Prompt Payment Complaints

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

- If the affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the City to resolve prompt payment disputes, affected subcontractors may contact the FAA Civil Rights regional office.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The City provides appropriate means to enforce the requirements of § 26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
- Other penalties for failure to comply, up to and including contract termination.

The City will actively implement the enforcement actions detailed above. The City will implement and carry out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, and other mechanisms as set for in the City's DBE Program.

Arizona DBE Directory – Section 26.31 (a – e)

The City is a “non-certifying” member of the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) but utilizes the DBE Directory ([Attachment 4](#)), maintained by the Arizona Department of Transportation (ADOT).

In the directory required under [§ 26.81\(g\)](#), a list all firms eligible to participate as a DBE and/or ACDBE is publicly available. Included in the listing for each firm is the business address, business phone number, firm website(s), and the types of work the firm has been certified to perform as a DBE and/or ACDBE.

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(b) Each type of work a DBE and/or ACDBE is eligible to perform is stated by the most specific NAICS code available to describe each type of work the firm performs. Pursuant to [§ 26.73\(a\)](#), the directory must allow for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

(c) The directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Prequalification's, and Bonding capacity.

(d) The directory is an online system that permits the public to search and/or filter for DBEs by:

(1) Physical location;

(2) NAICS code(s).

(3) Work descriptions; and

(4) Optional information added pursuant to [paragraph \(c\)](#) of this section. The directory must include a prominently displayed disclaimer (e.g., large type, bold font) that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

(e) Changes to the current directory entries must be made by November 5, 2024.

The directory is available online at <https://utracs.azdot.gov>. Paper copies of the DBE directory are made available upon request by contacting the ADOT Civil Rights Office at (602) 712-7761 or via email at the following address:

[https://azdot.gov/business/business-engagement-and-compliance/disadvantaged-business-enterprise be-program/dbe](https://azdot.gov/business/business-engagement-and-compliance/disadvantaged-business-enterprise-be-program/dbe)

A link to the DBE Certification Application Form for firms not currently certified but seeking information on certification is provided in [Attachment 4](#).

Overconcentration – Section - 26.33

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

Business Development Program – Section 26.35

The City has not established a business development program.

Monitoring Responsibilities – Section 26.37

The City implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

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The City actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by **the MUNIS Software System**. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

The City 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, and such work is counted according to the requirements of § 26.55.

Work site monitoring for counting and commercially useful function review is performed by DBELO, Construction Manager, Project Manager, and/or Consultant. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Review of Contract Records

Contracting records are reviewed by City DBELO, Construction Manager, Project Manager, and/or Consultant. The City will require prime contractors to provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. The City will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Fostering Small Business Participation Strategies - Section 26.39

The City has created a specific Small Business element within its contracting structures, utilizing the requirements of 49 CFR Part 26, Section 26.39. In addition, the City takes all reasonable steps to eliminate obstacles to small business participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The City's small business element is incorporated as **(Attachment 9)** to this DBE Program. The City will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of the DBE Program.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Set-Asides or Quotes – Section 26.43

The City does not use quotas in any way in the administration of its DBE Program.

Overall Goals – Section 26.45

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it is anticipating awarding FAA-funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f), The City will submit its overall three-year DBE Goal to FAA by **August 1 of each Triennial year as required by the schedule established by and posted to the FAA website:**

<https://www.faa.gov/about/dbe-and-acdbe-program-reporting-requirements-recipients>

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45 and outlined below. If the City does not anticipate awarding DOT/FAA-funded prime contracts, the cumulative total value of which exceeds \$250,000 during any of the years within the three-year reporting period, we will not develop an Overall Goal; however, this DBE Program will remain in effect and The City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

STEP 1

The first step is to determine the relative availability of DBEs in the market area, “base figure.” The City will use the AZ UTRACS DBE Directory, maintained by ADOT and Census Bureau Data, with comparisons to any recent Statewide Disparity Study and/or the goals of other comparable airport DOT recipients in the market area as reasonable methods to determine our base figure.

Any methodology the City chooses 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 our market. The City 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 Section 26.45 (c) and is not an acceptable alternative means of determining the availability of DBEs.

STEP 2

The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the City would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

Once the City has calculated a base figure, the City will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our Overall Goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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In establishing the Overall Goal, the City will provide 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 City's efforts to establish a level playing field for the participation of DBEs. The consultation will include an interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to The City goal setting process, and it will occur before the City submits our goal methodology to the DOT/FAA for review pursuant to Section 26.45(f). The City will document in the goal submission the consultation process that was engaged. Notwithstanding Section 26.45(f), we will not implement our proposed goal until we have complied with this requirement.

In addition, the City will publish a notice announcing our proposed Overall Goal before submission to the DOT/FAA. The notice will be posted on our official internet web site and may be posted in any other sources. If the proposed goal changes following review by the DOT/FAA, the revised goal will be posted on our official internet web site. We will inform the public that the proposed Overall Goal and its rationale are available for inspection during normal business hours at our principal office and that the City and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

The City's Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation (Attachment 5) process and the responses.

The City will begin using our Overall Goal on October 1 of the reporting period unless we have received other instructions from DOT/FAA. If the City establishes a goal on a project basis, the City will begin using the goal by the time of the first solicitation for a DOT/FAA assisted contract for the project.

Project Goals

If permitted or required by the FAA, 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 City understands that it is not required to obtain prior DOT/FAA concurrence with the

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Overall Goal. However, if the DOT/FAA's review suggests that the Overall Goal has not been correctly calculated or that the method for calculating goals is inadequate, then DOT/FAA may, after consulting with the City's, adjust our Overall Goal or require that we do so. The adjusted Overall Goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the Overall Goal, DOT/FAA will be guided by the goal setting principles and best practices identified in guidance issued pursuant to 49 CFR Part 26.9 ([Attachment 5](#)) of this Report provides a sample of the methodology used to calculate the Overall Triennial Goal

Failure to Meet Overall Goals – Section 26.47 (a through c)

- (a) The City cannot be penalized or treated by the Department as being in noncompliance with this rule, because DBE participation falls short of the overall goal, unless there is failure to administer the program in good faith.
- (b) The City will maintain an approved DBE Program, and Overall DBE Goal, if applicable, as well as administer the DBE Program in good faith to be considered to be in compliance with this Part.
- (c) If the City awards and commitments shown on our 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 City will do the following in order to be regarded by the Department as implementing our DBE Program in good faith:
 - (1) Analyze in detail the reasons for the difference between the Overall Goal and awards and commitments in that fiscal year.
 - (2) Establish specific steps and milestones to correct the problems the City has identified in its analysis and to enable it to meet fully the goal for the new fiscal year.
 - (3) The City will prepare, within 90 days of the end of the fiscal year, the short fall analysis and corrective actions and submit them to the FAA upon request. The analysis and corrective actions developed will include the information from paragraph (c)(1) and (2) of this section. The City will retain the copies for 3 years and submit them to FAA upon request.

Breakout of Estimated Race-Neutral/Race-Conscious Participation – Section 26.51

The City 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. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of 49 CFR Part 26.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of

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surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing).

3. Providing 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 the City 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. Implementing a supportive services program 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 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.
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low.
8. Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

Contract Goals

The City is in the 9th Judicial Circuit and does not establish contract goals for its DBE Program.

If the City's approved projection in the previous section Breakout of Estimated Race-Neutral and Race-Conscious Participation (paragraph c) of Section 26.51 estimates that the City can meet their entire Overall Goal for a given year through race-neutral means, the City will implement their program without setting contract goals during that year, unless it becomes necessary in order to meet the Overall Goal.

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 the total amount of a DOT-assisted contract.

Good Faith Efforts Procedures - Contract Goals– Section 26.53

Pre-Award Demonstration of Good Faith Effort ([Attachment 6](#)) for complete 49 CFR Part 26 Appendix A)
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

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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.

The City DBELO is 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 City 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 Section 49 CFR 26.53(b)(2).
- (2) All bidders or offerors will be required to submit the following information to the City, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract.
 - b. A description of the work to be performed
 - c. To count toward a goal, the firm must be certified in a NAICS code applicable to the kind of work they would perform on the contract,
 - d. The dollar amount of the participation of each DBE firm
 - e. Written documentation of the bidder/offeror's commitment
 - f. Written confirmation from each listed DBE firm that it is participating in the contract in kind and amount of work provided in the prime contractor's commitment.
 - g. Each DBE listed to perform work as regular dealer or distributor must confirm participation according to Section 26.53 (c)(1),
 - h. If contract goal is not met, evidence of good faith efforts as elaborated in Attachment 6.
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section.
- (4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals under contract negotiation procedures. Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City.

This paragraph (b)(3)(ii) does not apply to design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor the City will 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), (C), and (3) under the contract at issue.

The preliminary determination will 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. Were the DBE supplier does not affirm that its

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participation will meet the specific requirements of either a regular dealer or distributor, the City will 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.

Design Build – Proposers Commitment

In a design-build contracting situation, in which the City solicits proposals to design and build a project with minimal-project details at time of letting, the City may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal.

The OEPP replaces the requirement to provide the information required in Section 26.53 (b) Bidders Information. To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform.

The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, the City must provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule.

The City and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, such as replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Administrative Reconsideration

Within 5 calendar days of being informed by the City that it is *not responsive* because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror's should make this request in writing to the following reconsideration official:

Mr. Jeff Cook, Accounting Manager
City of Cottonwood
821 N Main Street
Cottonwood, AZ 86326
928-340-2714
jcook@cottonwoodaz.gov

- (1) As part of this reconsideration, the bidder/offeror must 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.
- (2) The City's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) The City must send the bidder/offeror a written decision on reconsideration, explaining the basis for

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finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation, Section 26.53(d)

Post Award Procedural Requirements for Good Faith Effort Section 26.53(b)

The City will include in each prime contract the contract clause required by Section 26.13(b) (Pages 2 and 3 of this Program) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that the City deems appropriate if the prime contractor fails to comply with the requirements of this section.

The City will require the awarded contractor to make available upon request a copy of all DBE subcontracts. 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.

The City will require that a prime contractor not terminate a DBE, or any portion of its work listed in response to Section 26.53(b)(2) (or an approved substitute DBE firm per Section 26.53(g)) without the City's prior written consent, unless the City causes 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 the recipient. This requirement applies to instances that include but are not limited to when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The City will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains the City's written consent as provided in § 26.53(f); and
- (2) Unless the City consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. 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 Section 26.53

Good Faith Efforts when a DBE is replaced on a contract – Section 26.53(f)

The City 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, to the extent needed to meet the contract goal. The City will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, the City will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. The City will provide such written consent only if we agree, for the reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good

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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 City has determined that the listed DBE subcontractor is not a responsible contractor.
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the City with 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 we have 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 City its 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 City, of its intent to request to terminate and/or substitute, and the reason for the request. The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise the City and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the City should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), we may provide a response period shorter than five days.

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.

When a DBE subcontractor or any portion of its work is terminated by the prime contractor as provided in of this section, 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 shall be documented by the contractor. If the City requests documentation under this provision, the contractor shall submit the documentation within 7

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days, which may be extended for an additional 7 days, if necessary, at the request of the contractor, and the recipient 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 at the time specified, the City will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the City may issue a termination for default notice.

Counting DBE Participation – Section 26.55

DBE participation will be counted toward overall and contract goals as provided in Section 26.55. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 ([Attachment 6](#)), to meet the contract goal for DBE participation in the performance of this contract.

The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its ([Attachment 7](#)) DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

Firms Exceeding Business Size - Section 26.65 (b)

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Certification Process Section 26.61 – 26.73

The City is a **non-certifying member** of the Arizona Unified Certification Program (AZUCP) and relies upon the UCP's determinations of certification eligibility. 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 (BECO) 1801 West Jefferson Street, Suite 101
Phoenix, Arizona 85007
(602) 712-8429
<http://adotdoors.dbesystem.com>.

SUBPART E – UNIFIED CERTIFICATION PROGRAMS

Unified Certification Programs Section 26.81

The City is a member and utilizes the Unified Certification Program (UCP) administered by Arizona Department of Transportation (ADOT). ADOT is the lead agency for maintaining the UPC database now known as AZ UTRACS (Arizona Unified Transportation Registration and Certification System). The Arizona UCP/AZUTRACS meets all the certification standards and procedures required of 49 CFR, Subparts D and E of Part 26. The UCP is comprised of ADOT, the City of Phoenix, and the City of Tucson. Information regarding the Arizona UCP can be found at <http://adotdoors.dbesystem.com>.

Certification application information and forms may be obtained from the Arizona Department of Transportation <http://adotdoors.dbesystem.com>. DBE Certification applications must be submitted to the proper certifying entity (ADOT, City of Phoenix or City of Tucson) based on the firm's primary location/address. Applications submitted to the incorrect certifying entity will not be processed. Firms will have to reapply to the correct certifying entity as indicated below to have their application reviewed and processed.

- Firms located in Maricopa County must submit their certification application to the City of Phoenix, <https://phoenix.diversitycompliance.com>
- Firms located in Pima County (including City) must submit their certification application to the City of Tucson, <https://tucsonaz.diversitycompliance.com>
- Firms located in any other locations in Arizona or out of state must submit their application to ADOT. <http://adotdoors.dbesystem.com>.

Alternatively, the US DOT has available a DBE Certification Application at:

<https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/dbe-uniform-certification-application>

The Federal Unified Certification Program (UCP) allows applicants for the Disadvantaged Business Enterprise (DBE) program to apply only once for a DBE certification that will be honored by all recipients in the state.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Compliance Procedures Applicable to the City of Cottonwood - Section 26.101

The City understands that if it fails to comply with any requirement of this part, the City may be subject to formal enforcement action under **Section 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 FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

The City understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

Compliance Reviews (FAA) Section 26.103

The Federal Aviation Administration may review the recipient'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 operating administration to initiate a compliance review based on complaints received.

Enforcement Actions Applicable to FAA Programs Section 26.105

- a. Compliance with all requirements of this part 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.
- b. The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.
- c. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Enforcement Actions Applicable to Participating Firms Section 26.107

If a firm that does not meet the eligibility criteria of subpart D of this part 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 Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If 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 eligibility

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criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department 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.

The Department 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](#).

The Department 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.

Information, Confidentiality, Cooperation, Intimidation, Retaliation Section 26.109

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts ([5 U.S.C. 552](#) and [552a](#)). The Department may make available to the public any information concerning the DBE program, release of which is not prohibited by Federal law.

The City will safeguard from disclosure to third party's information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Such Arizona State Laws as ARS 39-121 et seq. may apply in defining records available to the public.

Notwithstanding any provision of Federal or state law, the City 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, the City transmits this information to DOT in any certification appeal proceeding under § 26.89 of this Part or to any other state to which the individual's firm has applied for certification (§ 26.85).

All participants in the Department's DBE Program (including, but not limited to, the City, 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 City 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 City on behalf of, 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 City understands

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that it is in noncompliance with Part 26 if it violates this prohibition."

ATTACHMENTS

ATTACHMENT 1 REGULATIONS: 49 CFR PART 26 WEBSITE LINK

ATTACHMENT 2 BIDDER'S LIST COLLECTION FORM (Form Requirement)

ATTACHMENT 3 CITY OF COTTONWOOD ORGANIZATION CHART

ATTACHMENT 4 ARIZONA UNIFIED TRANSPORTATION REGISTRATION AND CERTIFICATION SYSTEM (AZ UTRACS) DBE DIRECTORY WEBSITE

ATTACHMENT 5 GOALS METHODOLOGY – EXAMPLE

ATTACHMENT 6 GOOD FAITH EFFORT AND FORMS 1,2,3

ATTACHMENT 7 DBE MONITORING AND ENFORCEMENT MECHANISM

ATTACHMENT 8 DBE CERTIFICATION – LINK TO UCP WEBSITES

ATTACHMENT 9 SMAILL BUSINESS ELEMENT

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ATTACHMENT 1: REGULATIONS: 49 CFR PART 26 WEBSITE LINK

Regulations: 49 CFR Part 26:

at website <https://www.ecfr.gov/current/title-49 subtitle-A/part-26>

ATTACHMENT 2: BIDDER'S LIST COLLECTION FORM

EXAMPLE BIDDER'S LIST COLLECTION FORM

[Note: § 26.11(c) requires Recipients to collect bidders list information from all bidders at the time of bid submittal, and to enter it into USDOT's designated system. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not). The form below is NOT mandatory. If you use an electronic system to collect this information, you may instead provide a screenshot or other example showing how the system collects all the required data.]

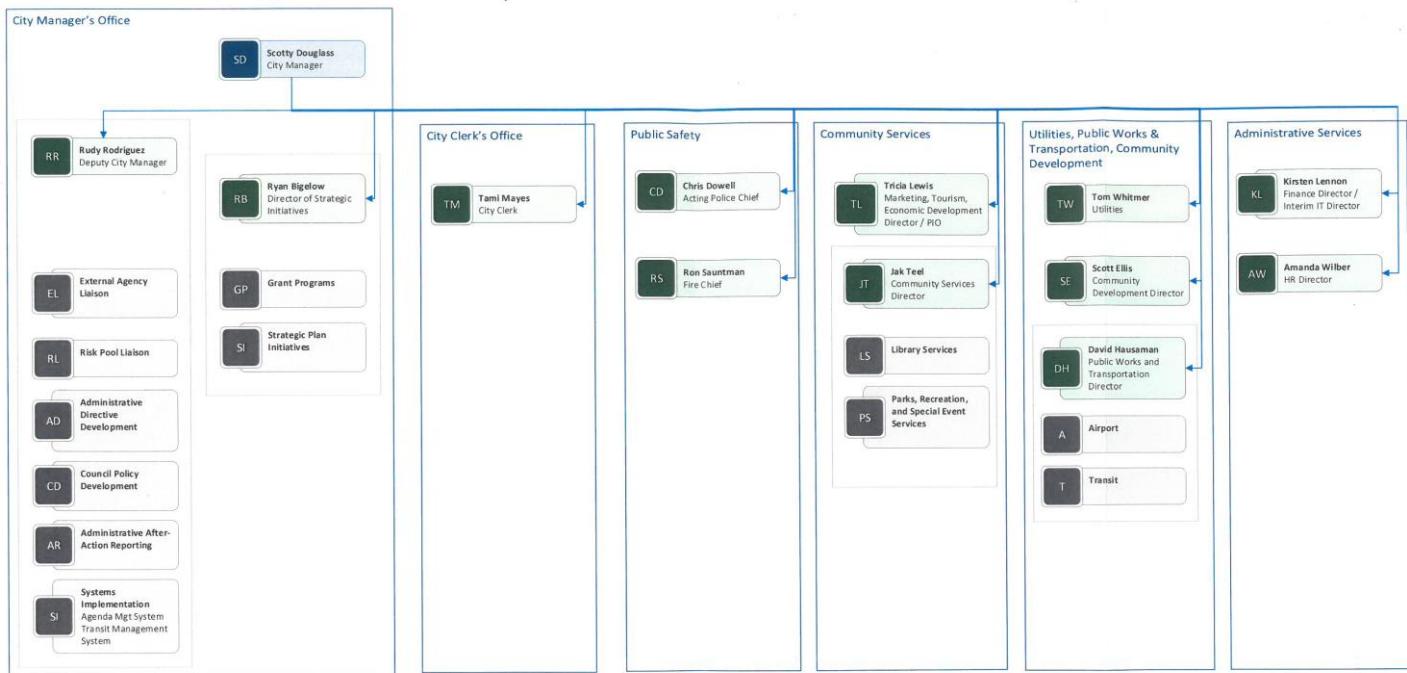
Firm Name	Firm Address (including ZIP code)	DBE or non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race of Majority Owner	Gender of Majority Owner	Age of Firm	Annual Gross Receipts
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than 1 million <input type="checkbox"/> 1-3 million <input type="checkbox"/> 3-6 million <input type="checkbox"/> 6-10 million <input type="checkbox"/> Over 10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than 1 million <input type="checkbox"/> 1-3 million <input type="checkbox"/> 3-6 million <input type="checkbox"/> 6-10 million <input type="checkbox"/> Over 10 million
				<input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Asian-Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Native American <input type="checkbox"/> Non-minority Woman <input type="checkbox"/> Other	<input type="checkbox"/> Male <input type="checkbox"/> Female	<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than 1 million <input type="checkbox"/> 1-3 million <input type="checkbox"/> 3-6 million <input type="checkbox"/> 6-10 million <input type="checkbox"/> Over 10 million

Cottonwood Municipal Airport – Disadvantaged Business Enterprise

ATTACHMENT 3: ORGANIZATION CHART

City of Cottonwood , Arizona

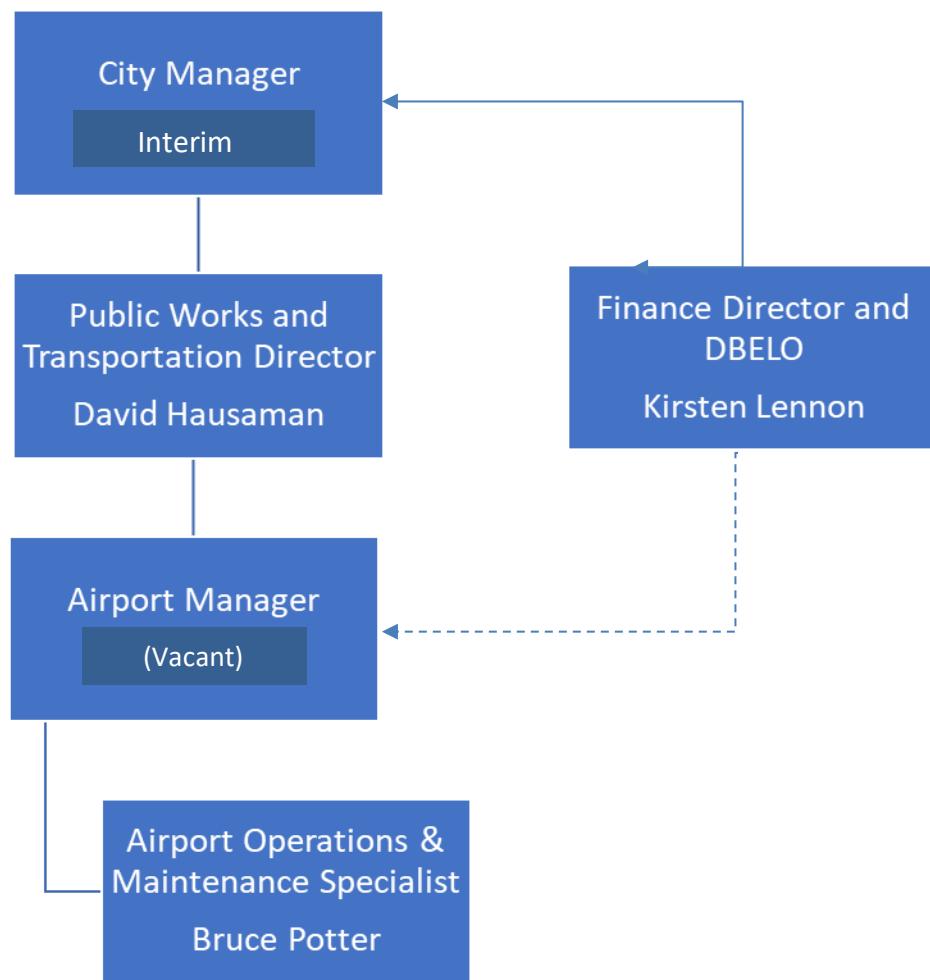
Organization Chart 2024



ATTACHMENT 3: ORGANIZATION CHART

Cottonwood Municipal Airport

Organization Chart 2024



Cottonwood Municipal Airport – Disadvantaged Business Enterprise

ATTACHMENT: 4 AZ UTRACS

**STATE OF ARIZONA, DEPARTMENT OF TRANSPORTATION (ADOT)
ARIZONA UNIFIED TRANSPORTATION REGISTRATION AND CERTIFICATION SYSTEM (AZ UTRACS) DBE
DIRECTORY WEBSITE LINK
Arizona Unified Certification Program Directory - utracs.azdot.gov**

The City through the Arizona Unified Certification Program (UCP) maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The AZ UTRACS agreement is stated in compliance with 49 CFR Part 26.81.

Unified Certification Program (UCP) <https://utracs.azdot.gov/UnifiedCertificationProgram/>

In compliance with 49 CFR Part 26.81 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.

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

Bidders on Federal Aviation Administration (FAA), Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) contracts can use DBEs certified by the Arizona UCP to meet established goals on city construction projects.

Contact information

- AZUTRACS is available on the Web: <https://utracs.azdot.gov>
- AZUTRACS – United Certification Program: <https://utracs.azdot.gov/UnifiedCertificationProgram/>

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ATTACHMENT: 5 - EXAMPLE

**OVERALL DBE THREE-YEAR GOAL METHODOLOGY
(A SEPARATE SUBMISSION)**

In addition to this example methodology, the FAA has an electronic goal-setting tool that Recipients may use to assist in developing their overall goal methodologies. The FAA Goal Setting Tool, along with training and instructions for its use, are available in the FAA Civil Rights Connect system: <https://faa.civilrightsconnect.com>.]

Name of Recipient:

Goal Period: [Indicate appropriate goal period, reference schedule,

DOT-assisted contract amount: FY-20XX \$_____
FY-20XX \$_____
FY-20XX \$_____
Total \$_____

Overall Three-Year Goal: ____ %, to be accomplished through ____ % RC and ____ % RN

Total dollar amount to be expended on DBEs: _____ [multiply goal % x DOT-assisted amount]

Describe the Number and Type of Contracts that the airport anticipates awarding:

List all contracts for which you anticipate receiving funding; only include the DOT-funded portion of the contract.

Contracts Fiscal Year #1

1. e.g., Apron Rehabilitation - \$30,000,000
2. e.g., Electrical Upgrade – \$4,700,000
- 3.

Contracts Fiscal Year #2

- 1.
- 2.

Contracts Fiscal Year #3

- 1.
- 2.

Market Area:

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The Step 1 Figure for The Relative Availability Was Calculated as Follows:

Method: Use DBE Directories <https://utracs.azdot.gov/Search/>
and Census Bureau Data from <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

Fiscal Year #1

For FY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Director y	DBE (%)	DBE (\$) (=Trade \$ x DBE %)
[Contract #1 - i.e., Apron Rehab]	Asphalt, Concrete, Dust Control, Striping	Highway & Street Construction	237310	\$17,100,000	57	5	8.8%	\$1,504,800
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$5,500,000	11	0	0%	0
	Electrical	Electrical Contractors	238210	\$2,400,000	602	25	4.2%	\$100,800
	Fuel Piping	Oil and gas Pipeline and Related Structures	237120	\$4,000,000	307	9	2.9%	\$116,000
	Utility Piping	Water and sewer line and related structures	237110	\$1,000,000	94	2	2.1%	\$21,000
Total Contract #1				\$30,000,000			5.8%	\$1,742,600 (5.8% of 30,000,000)
[Contract #2 i.e., Electrical]	Electrical	Electrical Contractors	238210	\$1,200,000	602	15	2.5%	\$30,000
	Demolition, Excavation, Earthwork	Site Preparation	238910	\$3,500,000	307	13	4.2%	\$147,000
Total Contract #2				\$4,700,000				\$177,000 (3.8% of 4,700,000)
Total FY-[20XX]				\$34,700,000				\$1,919,600

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								(5.5%)
--	--	--	--	--	--	--	--	--------

Federal Fiscal Year #2

For FFY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Director y	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Total Contract #								
Total Contract #								
Total FFY-[20XX]								

Federal Fiscal Year #3

For FFY-[20XX], award of the following is anticipated:

Contract Name	Trade Description	NAICS Description	NAICS	Trade (\$)	Census	Director y	DBE (%)	DBE (\$) (= Trade \$ x DBE %)
Total Contract #								
Total Contract #								
Total FFY-[20XX]								

- Sum of Weighted DBE Availability for [FFY20xx-20xx]: \$
- Sum of All Trades for [FFY20xx-20xx]: \$

Dividing the weighted DBE totals by the total estimate for all trades gives an initial DBE availability figure for the projects anticipated during the goal-setting period (This figure is expressed as a percentage and serves as the basis for the three-year overall goal.

Weighted DBE Goal at Step 1: x%

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Unweighted Availability of DBE Firms:

[NOTE: Use unweighted availability approach ONLY if weighting is infeasible. Weighted availability is the preferred approach and will result in a more accurate picture of availability. If using weighted availability, do not include this unweighted availability section.]

[For each Contract and each fiscal year, please provide the following information]

NAICS	Type of Work	Total DBEs	Total All Firms
<i>Total</i>			

The data source or demonstrable evidence used to derive the numerator was: [*Identify data source*]

The data source or demonstrable evidence used to derive the denominator was: [*Identify data source*]

Dividing the total number of DBEs by the total number of All Firms gives a base DBE availability figure for each contract. The availability figures for all contracts were then combined and calculated to provide the basis for the three-year overall goal.

The base goal projections are as follows:

- Fiscal Year #1 – a%
- Fiscal Year #2 – b%
- Fiscal Year #3 – c%

Average of unweighted availability: $(a\% + b\% + c\%) / 3 = x\%$

Unweighted DBE Goal at Step 1: x%

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Step 2: Adjustments To Step 1 Base Figure

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what, if any, adjustment to the base figure was needed in order to arrive at the overall goal. Factors include:

- If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.
- Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

- It is advisable to use three to five years of data if projects are similar in nature to upcoming work.

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			<i>Type of work</i>
		RC	RN	Total	RC	RN	Total	
FY 20					5.2%	2.5%	7.7%	
FY 21					2.7%	1.1%	3.8%	
FY 22					4.1%	0.0%	4.1%	
FY 23					2.3%	0.1%	2.4%	
FY 24					7.0%	1.4%	8.4%	

Arranging this historical data from low to high, (2.4%, 3.8%, 4.1%, 7.7%, 8.4%) the median is 4.1%.

Step 1 Base averaged with historical median: $(x + 4.1\%)/2 = y\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of **[y%]**. **[Recipient]** believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period. **[NOTE: If you have no past DBE participation, do not attempt to adjust your Step 1 base by averaging it with 0%.]**

OR,

Not enough historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; therefore, **[Recipient]** is adopting the Step 1 base figure as the overall goal for this three-year goal period.

OR,

No historical data on DBE participation is available to reference to make an adjustment to the Step 1 base figure; however, **[Recipient]** believes that slightly higher DBE participation can be obtained during the 3-year period because a significant number of additional firms that perform _____ work are expected to be certified in the local market area.

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Therefore, the Airport Authority is increasing its Step 1 base figure by _____% for a total overall goal of _____% for FY20xx - 20xx.

Also include the following if applicable or describe how a relevant disparity study is being used to adjust the Step 1 goal if the study was not already used in Step 1.

Furthermore, there are no relevant disparity studies applicable to [Recipient's] contracting program and market area. If there is a recent disparity study but it is not applicable to the City's program (e.g., disparity study that evaluated only a local program, or did not evaluate airport contracting), clearly identify the study and explain why it is not being referenced or relied upon.

Public Participation

In establishing the overall goal, **the City** will provide consultation and publication. This process will include consultation with minority, women, 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 **City's** efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. In addition, a notice of the proposed goal was published on the **City** official website before the methodology is submitted to the FAA.

ATTACHMENT 6: GOOD FAITH EFFORT

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

- I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it does not meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part 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.
- II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

- III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.
- IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A.

- (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired

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(as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the 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.

B.

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 timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C.

Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D.

(1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the 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 regarding 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 the work.

(2) 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 a sufficient reason for a bidder's failure to meet the contract 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. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E.

(1) 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

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status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. 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. However, nothing in this paragraph should be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not 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 a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the City or Contractor.

G. 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 DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in [§ 26.53\(b\)\(2\)\(vi\)](#), you must also require the contractor to 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 to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts except in design-build procurement.

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FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____

(Signature) _____ Title _____

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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 / %*	Manufacturer/Regular Dealer/Distributor/Broker**

*Percentage is to be used only in negotiated procurements

**For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.

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.

Date: _____

Signature of Bidder/Offeror's Authorized Representative

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.

Date: _____

Signature of DBE's Authorized Representative

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

Submit this page for each DBE subcontractor.

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be invalid. Submit this page for each DBE subcontractor.

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FORM 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor 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 section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to 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. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? YES NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below. If "NO" Continue.)

a) Are you selling bulk items (e.g. petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? YES NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

YES NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. STOP here. Read and sign the affirmation below.

*If 1.,1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

YES NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. STOP here. Read and sign the affirmation below.)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? YES² NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?

YES² NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 7: ENFORCEMENT

ADMINISTRATIVE ENFORCEMENT MECHANISM

The City will implement appropriate mechanisms to ensure compliance with the requirements in this part by all program participants, applying legal and contract remedies available under Federal, State, and local law. The City sets forth these mechanisms in its DBE program:

Breach of contract action, pursuant to the terms of the contract and A.R.S. § 32-1185, as follows:

- Withholding of payments to the contractor under the contract until the contractor complies; and/or
- Deduction from the contract funds due or to become due the contractor; and/or
- Disqualification of the contractor as non-responsible, and/or
- Cancellation, termination, or suspension of the contract in whole or in part. The City will make prompt compliance determinations regarding its prime contractor.

A letter of noncompliance will include the specific areas in which the contractor failed to comply. Failure by a contractor to carry out commitments and policies set forth herein shall constitute a breach of contract and may result in termination of the contract or whatever corrective action City considers appropriate. In addition, the Federal government has available several enforcement mechanisms that it may apply to firms, 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: CERTIFICATION

Links to DBE Certification, AZUCP Partners, Net Work Statement

DBE Certification Application Form: Uniform Certification Application (transportation.gov):

<https://www.transportation.gov/sites/dot.gov/files/2024-05/UCA%204.09.2024.pdf>

AZUTRACS – United Certification Program:

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

ADOT Certification Application:

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

Personal Net Worth Statement:

<https://www.transportation.gov/sites/dot.gov/files/2024-09/Personal%20Net%20Worth%20Statement%204.9.2024%20%28revised%29.pdf>

ATTACHMENT 9: SMALL BUSINESS ELEMENT (SBE)

Objective/Strategies

As part of this program element, the City will implement the following strategies:

1. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
2. When feasible and practical, establish a race-neutral small business set-aside for prime contracts under \$500,000 when there are no DBE contract goals.
3. Provide information on resources to assist and support small businesses in the community.

Definition

The size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration's (SBA) 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. Any business fitting these requirements will be considered a small business, regardless of race and gender.

Verification

All small business enterprises must be certified under the Arizona Small Business Concern, which is part of the ADOT United Certification Program (AZ UTRACS). Other verification methods can include written proof of Small Business SBA size standards.

Monitoring/Record Keeping

The City will track contracts by both Disadvantaged Business Enterprise and Small Business Element status. This tracking requirement will be the responsibility of DBELO. The SBE will be monitored every 3 years to assure that the goals and objectives are being met.

Assurances

The City makes the following assurances:

1. The program is permitted under state law.
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. There is no limit 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 locations (i.e., that there is no local or other geographic preferences).