



# *Resolution*

NO. 1142

OFFICE OF THE  
MAYOR  
CITY OF SAN LUIS

A RESOLUTION OF THE MAYOR AND COUNCIL OF THE CITY OF SAN LUIS, ARIZONA APPROVING AND ADOPTING THE ARIZONA DEPARTMENT OF TRANSPORTATION FEDERAL TRANSIT ASSISTANCE DISADVANTAGED BUSINESS ENTERPRISES PROGRAM PLAN

**WHEREAS**, Arizona Department of Transportation (ADOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation, 49 CFR Part 26; and

**WHEREAS**, ADOT has received Federal financial assistance from the U.S. Department of Transportation; and

**WHEREAS**, as a condition of receipt of funding, ADOT has signed an assurance that it will comply with 49 CFR Part 6; and

**WHEREAS**, the City of San Luis is applying for a grant from said funding through ADOT called the Coordinated Mobility Program, Federal Transit Assistance (FTA) Grant Section 5310 in order to purchase vehicles to transport the elderly and disabled of all ages through the City's Senior Citizens Center programs; and

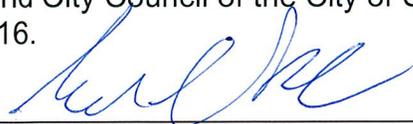
**WHEREAS**, it is the policy of the City of San Luis to ensure that Disadvantaged Business Enterprises as defined in 49 CFR Part 26 have an equal opportunity to receive and participate in U.S. Department of Transportation assisted contracts.

**NOW THEREFORE BE IT RESOLVED**, by the Mayor and Council of the City of San Luis, State of Arizona, as follows:

**Section 1:** In connection with the ADOT Coordinated Mobility Program – FTA Grant Section 5310 for the Senior Center vehicles, the City of San Luis hereby approves and adopts the Arizona Department of Transportation Federal Transit Assistance Disadvantaged Business Enterprises Program Plan also known as the ADOT FTA DBE Program Plan in substantially the form and substance attached hereto Exhibit A and incorporated herein by reference.

**Section 2:** The appropriate staff are hereby authorized and directed to cause the implementation of the ADOT FTA DBE Program Plan and to take all steps necessary to carry out the purpose and intent of this Resolution.

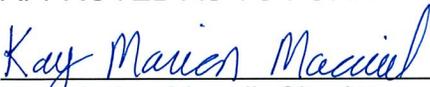
PASSED AND ADOPTED by the Mayor and City Council of the City of San Luis, Arizona, on this 27<sup>th</sup> day of April, 2016.

  
\_\_\_\_\_  
Gerardo Sanchez, Mayor

ATTEST:

  
\_\_\_\_\_  
Sonia Cornelio, City Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Kay Marion Macuil, City Attorney

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# *FTA DBE Program Plan*

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ARIZONA DEPARTMENT OF TRANSPORTATION

*Updated: February 2012*





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## **POLICY STATEMENT**

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### **Objectives/Policy Statement**

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

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

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's construction, procurement, and professional services contracts in the areas of highway, transit, and airport financial assistance;
- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
- To assist in the development of firms that can compete successfully in the market place outside the DBE program.

The ADOT Civil Rights Administrator has been designated as the DBE Liaison Officer. In that capacity, she is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by ADOT in its financial assistance agreements with the U.S. Department of Transportation.

ADOT has disseminated this policy statement to the Arizona State Transportation Board, all affected divisions, and all Arizona sub-recipients. This policy statement is made available to DBE and non-DBE companies that perform on DOT-assisted contracts. Distribution channels include trade associations, online publications, and electronic notification via stakeholder distribution lists and the Arizona Unified Certification Program directory.

John S. Halikowski, Director

Arizona Department of Transportation

February 28, 2012

## GENERAL REQUIREMENTS

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### Applicability

As a recipient of funds from the Federal Transit Administration (FTA) ADOT has established its DBE program in accordance with 49 CFR Part 26 and has committed to ensuring compliance on all FTA funded transportation projects through monitoring, reporting, and goal-setting. Where DBE goal setting is not necessary or practicable, ADOT will encourage race-neutral DBE participation. Further, ADOT distributes federal transportation funds to local public agencies throughout the state of Arizona. As a condition of receipt of funding, these sub-recipients must adopt the ADOT DBE Program Plan.

*Federal transit* funds are authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

### Definitions

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

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

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

### Non-Discrimination Requirements

ADOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In administering its DBE program, ADOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, age, or disability.

### Record Keeping Requirements

#### Reporting to DOT

ADOT will report DBE participation on the Uniform Report of DBE Awards or Commitments and Payments to the FTA as follows:

- DBE activity from October First through March 31<sup>st</sup> will be submitted by June 1<sup>st</sup>
- DBE activity from April First through September 31<sup>st</sup> will be submitted by December 1<sup>st</sup>
- The second report will be an accumulation of the entire Fiscal Year

ADOT will include sub-recipient activity in its semi-annual reports based on project data provided through the Local Public Agency DBE Reporting System.

Semi-annual report data includes:

- Awards;
- Commitments;
- Payments to prime contractors and consultants;
- Payments to DBE subcontractors and sub-consultants;
- Payments to non-DBE subcontractors and sub-consultants; and
- Payments to lower-tier DBE and non-DBE subcontractors and sub-consultants.

### Bidders Lists:

ADOT, and ADOT sub-recipients, will collect bidders list information, consisting of data regarding DBE and non-DBE firms that bid or quote on DOT-assisted contracts. Bidders list information will be used in support of annual goal-setting calculations but will not be used exclusively to substantiate availability or the “ready, willing, and able” status of affected Arizona DBEs. Data gathered will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

ADOT will collect this information via completed Bidders List Forms and Civil Rights Vendor Registration. Bidders List Forms shall be received by the ADOT Civil Rights Office at the time of bid opening or cost proposal submission. Bidders List Forms shall be submitted by all bidders. Bidders List Forms will contain name, address, and DBE or non-DBE status. Instructions for completing Bidders List Forms are contained in the ADOT DBE Specification, EPRISE. Age and annual gross receipts data will be collected via the Civil Rights Vendor Registration system.

Civil Rights Vendor Registration can be accessed via [www.adot.dbesystem.com/vendorstart.asp](http://www.adot.dbesystem.com/vendorstart.asp). All contractors, consultants, subcontractors, and sub-consultants, DBE and non-DBE, are required to complete the Civil Rights Vendor Registration for all ADOT-administered and sub-recipient federal aid projects.

### Federal Financial Assistance Agreement

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

#### Assurance: 26.13(a)

ADOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. ADOT's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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This language will appear in all financial assistance agreements with sub-recipients.

Assurance: 26.13(b)

ADOT will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the state deems appropriate. The contractor, sub-recipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

ADMINISTRATIVE REQUIREMENTS

DBE Program Updates

ADOT receives funding from the FTA in excess of \$250,000 each federal fiscal year for planning capital, and or operating assistance. As a condition of receipt of funding, ADOT will continue to carry out the requirements defined in this Program Plan until all funds from DOT financial assistance have been expended. Further, ADOT will provide updates to the DOT regarding any significant changes in the program.

DBE Liaison Officer (DBELO)

ADOT has designated its Civil Rights Administrator as its DBE Liaison Officer.

Civil Rights Administrator  
1135 N. 22<sup>nd</sup> Avenue, Mail Drop 154  
Phoenix, AZ 85009  
(602) 712-7761  
mboyles@azdot.gov

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

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

DBE Liaison Officer

- Advises the ADOT Director regarding DBE matters and achievement
- Supervises and coordinates activities of DBE/compliance program managers and technicians
- Participates on ADOT DBE Task Forces

- Serves as mediator when appropriate for issues that require escalation
- Works with all departments to set overall annual goals

#### Contractor Compliance Program Manager & Support Technician(s)

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

#### DBE Supportive Services Program Manager & Support Technician(s)

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

#### DBE Certification Program Manager & Support Technician(s)

- Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Program in Arizona
- Maintains the ADOT's updated directory of certified DBEs.
- Serves as the ADOT representative as a lead agency in the Arizona UCP
- Manages the content of the Arizona UCP website
- Conducts certification training, workshops, and presentations

The State Engineer's office, including all Deputy State Engineers, Project Managers, Program Area Managers, and District Engineers are responsible for ensuring compliance with DBE contract

requirements on Federal aid construction projects. This includes sub-recipient DBE compliance via ADOT Statewide Project Management.

The Contracts and Specifications Manager is responsible for assisting in the development of DBE construction specifications, ensuring that all federal aid projects are submitted to ADOT Civil Rights for DBE goal assessment, and ensuring that the appropriate DBE specifications are included in all construction contracts.

The Engineering Consultant Services Director is responsible for implementing DBE contract requirements for engineering and design-related consulting contracts, compliance with DBE provisions, and data collection related to DBE participation. This individual is also responsible for enforcing sub-recipient DBE compliance for design projects.

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

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

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

An Assistant Attorney General from the Transportation Division of the Attorney General's Office has been assigned to the Civil Rights Office to provide counsel on the DBE program.

### DBE Financial Institutions

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

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

### Prompt Payment Mechanisms

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

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

It is ADOT policy not to hold retention from prime contractors. Prime contractors are permitted, however, to hold retention from subcontractors. Prime contractors must make prompt and final payment to each subcontractor all monies, including retention, due the subcontractor within fourteen (14) days after the subcontractor has satisfactorily completed all of its work.

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

### Arizona UCP Directory

ADOT serves as the lead agency for the Arizona Unified Certification Program. In this role, the agency maintains the statewide directory which identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, fax number, email address, gender, ethnicity, certification source, NAICS codes, and the type of work the firm has been certified to perform as a DBE. The directory is available online at [www.azdbe.org](http://www.azdbe.org). 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 [dbesupportiveservices@azdot.gov](mailto:dbesupportiveservices@azdot.gov).

### Overconcentration

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

### ADOT Business Development Program (DBE Supportive Services)

The ADOT DBE Supportive Services Program provides outreach and educational programs regarding the benefits of DBE certification for minority and women owned businesses. The purpose of the program is to provide education, access, and visibility for the DBE community to aid in business development and eventual self-sufficiency. Training, conferences, and workshops are open to any interested party. Detailed information regarding the ADOT DBE Supportive Services program can be found at [www.adotdbe.com](http://www.adotdbe.com).

### Mentor-Protégé Program

ADOT has implemented a mentor-protégé program. Mentor Protégé guidelines are published at [http://azdot.gov/inside\\_adot/CRO/DBEP.asp](http://azdot.gov/inside_adot/CRO/DBEP.asp).

### Fostering Small Business Participation (26.39)

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

ADOT shall require all sub-recipients to adhere to the Small Business Enterprise (SBE) participation requirements in the same way as ADOT's overall DBE program requirements.

### *Small Business Participation Strategies*

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

- (a) ADOT will implement an SBE verification requirement to ensure that a firm is in fact a small business concern and to minimize fraud and abuse (see “Small Business Verification Requirement” below).
- (b) ADOT will take all reasonable steps to eliminate obstacles to SBE participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. The ADOT Civil Rights Office will work with affected program areas to ensure that technical staff members are aware of and have given consideration to eliminating obstacles to SBE participation.
- (c) ADOT will pursue establishing race-neutral small business threshold contracting opportunities in accordance with Arizona Executive Order 2007-21 which states in part and restricts, where practicable, procurements of less than \$50,000 to small businesses. Threshold contracting opportunities may be similar in nature to on-call, job-order-contracting, or preferred vendor lists.
- (d) ADOT will modify its selection criteria where appropriate, in accordance with guidance from the Office of Small and Disadvantaged Business Utilization (OSDBU) issued July 20, 2011, to allow for no more than an additional 10% of the total evaluation criteria for geographic preference and S/DBE inclusion.
- (e) ADOT will expand its DBE business development program to include small business concerns, exclusive of expending federal financial aid for direct business technical assistance for SBEs.
- (f) ADOT will gather data necessary to determine SBE availability via its Civil Rights Vendor Registration System. SBE availability will be assessed using a methodology similar to that used to determine DBE availability. SBE availability will be included in solicitation documents as appropriate. ADOT does not propose to implement SBE goals at this time.
- (g) ADOT will publish an online directory of available SBEs similar to the Arizona UCP directory of DBEs.

### *Small Business Verification Requirement*

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To ensure that a firm is in fact a small business concern and to minimize fraud and abuse, ADOT shall take steps to verify eligibility of a firm to participate in its program. ADOT shall not allow firms to self-certify/verify as small businesses. ADOT will expand its DBE certification program to include SBE certification.

ADOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as SBEs in DOT-assisted contracts, exclusive of gender, ethnicity, personal net worth, and criteria specific to a “qualifying owner.” Additionally, SBE certified firms must be owned by individuals and not other legal entities.

ADOT will not conduct site visits as a condition of certification. Onsite reviews will be conducted, at the discretion of the state, as circumstances warrant. ADOT will make its certification decisions based on the facts as a whole. All requirements of maintaining status as a certified firm shall apply.

## Monitoring and Enforcement Mechanisms

ADOT will implement appropriate mechanisms, including sanctions, suspension, debarment, and application of legal and contractual remedies available under Federal, state, and local law, as deemed appropriate and necessary, to ensure compliance with the requirements by all program participants.

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

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

ADOT sub-recipients agree to work collaboratively with ADOT to ensure monitoring and enforcement mechanisms take place on every federal aid project.

## GOALS, GOOD FAITH EFFORT, AND COUNTING

### Set-asides or Quotas

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

### Overall Goals

This section of the program will be updated on a triennial basis in accordance with triennial goal submissions. The next triennial FTA goal submission will be made on August 1, 2013. The current overall FTA DBE goal is 3.83%.

### Methodology

The overall DBE goal of 3.83% was established using the following methodology.

Data Sources:

Three (3) work classifications have been identified for DBE goal setting and potential DBE participation by ADOT. These work classifications are:

- Transit and Ground Passenger Transportation (NAICS Code 485000)

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- Other Professional Scientific and Technical Services (NAICS Code 541900)
- Bus Facility Construction (NAICS Code 236220)

Work classifications were identified by ADOT Multimodal Planning Division based on projected FTA grant funding.

DBE availability was determined utilizing the Arizona Unified Certification Program database and 2010 Census data.

Work Category	Anticipated Funding	Relative DBE Availability	Project DBE \$ Value
485000 Transit and Ground Passenger Transportation	\$4,155,806.48	3.77%	\$156,673.90
541900 Other Professional Scientific and Technical Services	\$949,993.68	3.92%	\$37,239.75
236220 Bus Facility Construction	\$947,489.71	4.02%	\$38,089.09
<b>Total Funding</b>	<b>\$6,053,289.87</b>	<b>Total DBE Opportunity</b>	<b>\$232,002.74</b>
<b>Projected Overall Goal</b>		<b>3.83%</b>	

#### Historical Data

The chart below shows DBE participation on FTA funded projects over the previous four semi-annual reporting periods.

Reporting Period	Prime Awards	DBE Primes	Sub Awards	DBE Sub Awards	Total DBE %
10/2010 – 3/2011	\$1,415,882	\$279,211	\$238,445	\$0.00	20%
4/2010 – 9/2010	\$237,861	\$0.00	\$0.00	\$0.00	0%
10/2009 – 3/2010	\$2,354,700	\$809,654	\$64,828	\$0.00	34%
4/2009 – 9/2009	\$2,749,641	\$0.00	\$0.00	\$0.00	0%

The only DBE activity over the past four reporting periods has been a rural transit operator that has secured contracts as a prime. The overall net effect is 16% overall DBE participation for the period. DBE participation achieved is substantially higher than the relative availability for the 2011 and 2012. ADOT proposes to continue achieving DBE participation through race-neutral measures.

#### Transit Vehicle Manufacturers Goals

ADOT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, ADOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

## Contract Goals

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ADOT proposes to meet its DBE participation requirements through race-neutral efforts.

## Good Faith Efforts Procedures

When ADOT establishes a contract goal, it will award the contract only to a bidder/offeror that makes good faith efforts to meet the goal. It will be determined that a bidder/offer has made good faith efforts if the bidder/offer does either of the following:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not obtain enough DBE participation to do so. ADOT will not deny award to a bidder/offeror that documents adequate good faith efforts.

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

The ADOT Civil Rights Office is responsible for determining whether a bidder/offeror that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The initial review will be conducted by the Contractor Compliance Program Manager with final review and approval by the Civil Rights Administrator.

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

### Information to be Submitted

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

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

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

### Administrative Reconsideration

The bidder/offeror may appeal the determination of the Civil Rights Office to the State Engineer. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The protest must be received by the State Engineer no later than seven calendar days after the decision of the Civil Rights Office. Copies of the protest shall be sent by the protestant to every bidder, at the same time the protest is submitted to the State Engineer. Any other interested party may submit a response to the appeal no later than seven calendar days after the appeal is requested. Responses from other interested parties must also be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. Any interested party submitting

such response shall also provide a copy of its response to every bidder, at the same time the protest is submitted to the State Engineer. The State Engineer shall promptly consider any appeals under this subsection and notify all bidders of the State Engineer's findings and decision.

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

#### Good Faith Efforts when a DBE is replaced on a contract

ADOT 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. ADOT will require the prime contractor to notify the ADOT Civil Rights Contractor Compliance Program Manager immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, ADOT will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

ADOT may provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. For the purposes of this section, good cause includes the following circumstances:

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

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

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.

ADOT will include administrative remedies in each prime contract which it will invoke if the prime contractor fails to comply with the requirements of this section.

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

If the Contractor Compliance Program Manager determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or to otherwise carry out these DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as the Engineer deems appropriate. The contractor may appeal the decision of the Civil Rights office with the State Engineer in accordance with the administrative reconsideration process mentioned previously.

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

### Counting DBE Participation

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

Specifically;

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

The prime contractor, consultant, or vendor bears the responsibility to determine whether the DBE possesses the proper credentials to perform the work. If a DBE cannot complete its work due to failure to obtain or maintain its credentials, the prime contractor, consultant, or vendor bears the responsibility

for immediately requesting approval to replace the DBE with another DBE via notification to the Civil Rights Office.

Arizona UCP DBE certification is not a representation of qualifications and/or abilities. The prime contractor, consultant, or vendor bears all risks in the selection of subcontractors/consultants.

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

The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of subcontract, purchase order, hourly rate, rate per ton, etc., as agreed to between parties.

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

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

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

DBE credit may be obtained only for specific work done for the project, supply of equipment specifically for physical work on the project, or supply of materials to be incorporated in the work. DBE credit will not be allowed for costs such as overhead items, capital expenditures (for example, purchase of equipment), and office items.

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

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

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

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

DBE prime contractors, consultants, and vendors must meet the DBE participation goal or demonstrate good faith efforts. This is determined by counting the work the DBE has committed to performing with its own forces, as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

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A prime contractor, consultant, or vendor may credit the entire amount of that portion of the contract that is performed by the DBE's own forces. The cost of supplies and materials obtained by the DBE for the work of the contract can be included so long as that cost is reasonable. Leased equipment may also be included. No credit is permitted for supplies purchased or equipment leased from the prime contractor, consultant, or vendor or its affiliate(s).

When a DBE subcontracts a part of the work of its contract to another firm, the value of the subcontract may be credited towards the DBE goal only if the DBE's subcontractor is itself a DBE and performs the work with its own forces. Work that a DBE subcontracts to a non DBE firm does not count toward a DBE goal.

A prime contractor, consultant, or vendor may credit the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, provided the fees are reasonable and not excessive as compared with fees customarily allowed for similar services.

#### *Police Officers:*

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DBE credit will not be permitted for procuring DPS officers. For projects on which officers from other agencies are supplied, DBE credit will be given only for the broker fees charged, and will not include amounts paid to the officers. The broker fees must be reasonable.

#### *Commercially Useful Function:*

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

A prime contractor, consultant, or vendor can credit expenditures to a DBE subcontractor toward DBE goals only if the DBE performs a commercially useful function on the contract. A DBE performs a commercially useful function when it is responsible for execution of the work of a contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, ADOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

A DBE will not be considered to perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, ADOT will examine similar transactions, particularly those in which DBEs do not participate.

If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or if the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, ADOT will presume that the DBE is not performing a commercially useful function.

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. Decisions on commercially useful function matters are subject to review by FHWA, but are not administratively appealable to U.S. DOT.

### *Trucking*

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

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

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

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

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

Example: DBE Firm X uses two of its own trucks on contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE firm Z. DBE credit would only be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

### *Materials and Supplies*

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

If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is credited. A DBE regular dealer is defined as a firm that owns, operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, cement, stone or asphalt without

owning, operating, or maintaining a place of business, as provided above, if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement, and not on an ad-hoc or contract-by-contract basis. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

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

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

## COMPLIANCE AND ENFORCEMENT

### Information, Confidentiality, Cooperation

ADOT will safeguard from disclosure to third parties any information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

Notwithstanding any contrary provisions of state or local law, ADOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

### Contract Performance

Contract items of work designated by the contractor, consultant, or vendor to be awarded to DBEs shall be performed by the designated DBE or an ADOT-approved DBE substitute. DBE contract work items shall not be performed by the contractor, consultant, vendor, or a non-DBE subcontractor without prior approval by the Civil Rights Office. The DBE must perform a commercially useful function; that is, the DBE must manage, perform, and supervise a distinct element of work.

At project initiation (i.e. preconstruction meeting, kick-off meeting, etc.), contractors, consultants, or vendors shall provide to copies of completed and signed subcontracts purchase orders, invoices, etc., with the appropriate DBEs.

Within five working days of the preconstruction conference or kick-off meeting, the contractor or consultant shall also provide electronic copies of signed subcontract agreements to the Civil Rights Office through the Department's web based payment tracking system (<https://adot.dbesystem.com>). As part of this submittal, contractors shall be required to log into the system and enter the name, contact information, and subcontract amounts for all subcontractors and vendors performing on the project as verification that scopes of services and commitments made via DBE documentation submitted as a condition of contract award are being met.

Subcontract agreements shall include all required assurances including prompt payment and return of retention requirements specified in ADOT Standard Specification Subsection 109.06(B). Each page of each required attachment must be dated and initialed by the DBE in order for the subcontract to be considered valid. Contractors, consultants, or vendors executing agreements with subcontractors, DBE or non-DBE, that materially modify federal regulation and state statutes, or prompt payment and retention requirements, through subcontract terms and conditions will be found in breach of contract which may result in termination of the contract, or any other such remedy as ADOT deems appropriate.

Use of a DBE named on the DBE documentation submitted to the Civil Rights Office pre-award is a condition of award. Substitution will not be allowed without written evidence from the prime contractor, consultant, or vendor and DBE that the DBE is unable or unwilling to perform the work. Contractors, consultants, or vendors may not terminate a DBE subcontract for convenience, in whole or in part, except to the extent that ADOT has eliminated items of work subcontracted to the DBE. All terminations, substitutions, and reductions in scope must be approved by the Civil Rights Office.

#### Non-Performance by DBEs:

In the event a DBE is unable or unwilling to fulfill its agreement, the contractor, consultant, or vendor will immediately notify ADOT and provide all facts surrounding the matter. Such failure on the part of a DBE will not relieve the contractor of responsibility for meeting the DBE goal on the contract. The contractor, consultant, or vendor shall immediately make reasonable good faith efforts to obtain another certified DBE to perform an equal or greater dollar value of work to the extent needed to meet the DBE goal. The substitute DBE's name, description of work, and dollar value of work shall be submitted to the ADOT Civil Rights Office. Approval of the Civil Rights Office must be obtained prior to the substitute DBE beginning work.

In the event a prime contractor, consultant, or vendor is unable, after a substantial good faith effort, to obtain another certified DBE, the ADOT Civil Rights Office may lower the DBE goal on the project. However, the Civil Rights Office must approve this in writing prior to a Non-DBE starting the work which had been subcontracted to the DBE.

#### Subcontractor Payment Monitoring

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

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

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

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

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

## Joint Checks

### Requirements

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

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

### Procedure and Compliance

The ADOT Civil Rights Office must approve the agreement for the use of joint checks in writing.

1. After obtaining authorization for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement.
2. Copies of canceled checks must be submitted with the payment information for the period in which the joint check was issued. Certificates of payment must indicate whether or not joint checks were used.
3. The prime contractor, DBE, and supplier each have an independent duty to report to the Department in the case of any change from the approved joint check arrangement.
4. Any failure to comply will be considered by the Department to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, reduction or loss of prequalification, debarment, or other remedies which may prevent future participation by the offending party.

### Certification of Payment

Achievement of the DBE goal by a contractor is measured by actual payments made to the DBEs. The contractor, consultant, or vendor shall submit at the completion of the project the "Certificate of Payment" affidavit for each DBE firm working on the project. This affidavit shall be signed by the prime contractor, consultant, or vendor and the relevant DBE, and submitted to the Civil Rights Office.

Acceptance and final payment to the contractor, consultant, or vendor will not be made until all "Certificate of Payment" affidavits are received and deemed acceptable by the ADOT Civil Rights Office.

### Sanctions

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

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

### DBE CERTIFICATION

#### Certification Process

ADOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. ADOT will inform applicants within 30 days of receipt of an application whether the

information is complete or additional documentation is required. ADOT will make its certification decisions based on the facts as a whole.

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

Certification application forms and documentation requirements can be found at [www.azdbe.org](http://www.azdbe.org).

## CERTIFICATION PROCEDURES

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### Arizona Unified Certification Program

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ADOT is the lead agency for the Arizona Unified Certification Program. The Arizona UCP meets all of the requirements of 49 CFR 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 [www.azdbe.org](http://www.azdbe.org).

### Procedures for Certification Decisions

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#### Annual Updates / "No Change" Affidavits and Notices

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

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

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

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

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the [Recipient] under 26.83(j). [Name of firm] meets Small Business

Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million."

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

ADOT will notify all currently certified DBE firms of these obligations every April 1st. The DBE will have until 6/30 of that year to submit the required documentation. This notification will inform DBEs to submit the "no change" affidavit and their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

The annual update process is completed via its online DBE application. DBEs are required to log into a user account, provide the necessary information, and certify that the information is complete and accurate. The online application is tied directly to vendor registration and may be accessed at [www.azdbe.org](http://www.azdbe.org).

#### Denials of Initial Requests for Certification

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

#### Removal of a DBE's Eligibility

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

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

### Interstate Certification

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

If ADOT chooses not to accept certification based on the home state evaluation, the applicant firm must provide a complete copy of the application form, all supporting documents and any other information that needs to be submitted. Once ADOT receives all of the necessary information ADOT must request a copy of the home state onsite report within 7 days of receipt of the application.

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

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

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

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

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

ADOT must check the website at least once every month to determine whether any firm that is applying for certification by ADOT, or that ADOT has already certified, is in the database. For any such firm that is in the database, ADOT must promptly request a copy of the listed decision from the UCP that made it. If ADOT receives such a request, ADOT will provide a copy of the decision within 7 days of receiving the request. Notwithstanding any provision of Federal or state law, ADOT must not release any information that may reasonably be construed as confidential business information. This includes application for DBE certification and supporting information. However, ADOT must transmit this information to DOT in any certification appeal proceeding or to any other state to which the individual's firm has applied for certification.

## Certification Appeals

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

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

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

Local Public Agency & Sub-Recipient Compliance

## Policy

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Local public agencies (LPAs) and sub-recipients of federal aid transportation funds must adopt the ADOT DBE Program Plan

## Objectives

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LPAs and sub-recipients must commit to supporting the following ADOT DBE Program Objectives:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's construction, procurement, and professional services contracts in the areas of highway, transit, and airport financial assistance;
- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts; and
- To assist in the development of firms that can compete successfully in the market place outside the DBE program.

## Non-Discrimination

LPAs, sub-recipients, and grantees will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age, or disability.

In compliance with the ADOT DBE Program Plan, LPAs, sub-recipients, and grantees will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, national origin, age, or disability.

## DBE Program Compliance

Each LPA, sub-recipient, and grantee must complete and have its executive officer sign the Sub-Recipient DBE Program Compliance Statement which is accessible on the sub-recipient page located at [www.azdot.gov/inside ADOT/CRO](http://www.azdot.gov/inside%20ADOT/CRO).

In accordance with the compliance statement, all LPAs, sub-recipients, and grantees agree to the following:

- Use solicitation language provided by ADOT defining DBE requirements for all construction, professional services, and procurement contracts;
- Submit DBE goal requests via <https://adot.dbesystem.com/frontend/welcome.asp> using the ADOT DBE Goal Request Form(s);
- Conduct post-award monitoring and reporting using the online DBE data collection and reporting system found at <https://arizonalpa.dbesystem.com>;
- Ensure post-award commercially useful function compliance;
- Designate a single point of contact for DBE compliance purposes;

Additionally, all LPAs, sub-recipients, and grantees agree to collect the following information for each solicitation for which a DBE contract goal has been established:

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

LPAs, sub-recipients, and grantees will require prime contractors, consultants, and vendors to maintain records and documents of payments to DBE and non-DBE subcontractors for three years following the performance of a federal aid transportation contract. These records will be made available for inspection upon request by any authorized representative of the ADOT Civil Rights Office.

Subcontractors are required to maintain payment information for any lower tier subcontractors for the same three-year duration.

LPAs, sub-recipients, and grantees are required to collect data on DBE and non-DBE participation to report to ADOT on Federal-aid projects. Contractors and consultants are to be notified that such record keeping is required for tracking DBE participation.

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

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

Contractors, consultants, and vendors shall provide the required information for the current month by the 5th of the following month. The required information shall be submitted electronically through the Department's web based payment LPA tracking system is located online at <https://arizonalpa.dbesystem.com>.

LPAs, sub-recipients, and grantees will submit project data in support of each semi-annual and annual submission made by the state. Sub-recipients are required to use the ADOT Local Public Agencies DBE Reporting System. This system may be accessed via [www.arizonalpa.dbesystem.com](http://www.arizonalpa.dbesystem.com). Semi-annual report data must be audited by LPAs, sub-recipients, and grantees for accuracy and completeness by May First and November First of each year. Semi-annual reports will be run by ADOT and reviewed with LPAs, sub-recipients, and grantees on an as-needed basis.

**Attachment A – Civil Rights Office Organizational Chart**

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