

RESOLUTION NO. 25-3800

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF LAKE HAVASU CITY,
MOHAVE COUNTY, ARIZONA, ADOPTING THE REVISED LAKE HAVASU CITY
MUNICIPAL AIRPORT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
AND REPEALING RESOLUTION NO. 24-3794**

RECITALS: In accordance with the U.S. Department of Transportation's (DOT) regulations (49 CFR Part 26), recipients of DOT funding are required to develop and implement a Disadvantaged Business Enterprise (DBE) Program. The purpose of this Program is to ensure that DBEs have an equal opportunity to receive and participate in federally assisted projects. The City Council adopted a DBE Program by Resolution No. 24-3794. The Federal Aviation Administration recommended changes to the submitted Program and it is therefore necessary to adopt a revised DBE Program.

IT IS RESOLVED that the Mayor and City Council of Lake Havasu City, Arizona, adopt the revised Lake Havasu City Municipal Airport Disadvantaged Enterprise Program dated January 14, 2025, attached as Exhibit "A," authorize the City Manager to execute the policy statement on behalf of the City, and repeal Resolution No. 24-3794.


PASSED AND ADOPTED by the City Council of Lake Havasu City, Arizona, on January 14, 2025.

APPROVED:



Cal Sheehy, Mayor

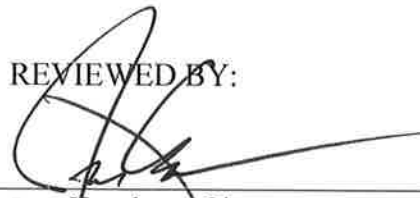
ATTEST:


Kelly Williams, City Clerk

APPROVED AS TO FORM:


Kelly Garry, City Attorney

REVIEWED BY:


Jess Knudson, City Manager

Lake Havasu City
Lake Havasu City Municipal Airport



Disadvantaged Business Enterprise
Program

49 CFR Part 26

January 14, 2025

Section 26.1, 26.23 Objectives/Policy Statement

Lake Havasu City ("City"), owner of the Lake Havasu City Municipal Airport, 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 received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the City signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

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

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

The Lake Havasu City Airport Manager, is delegated as the DBE Liaison Officer. In that capacity, the Airport Manager is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the City in its financial assistance agreements with the Department of Transportation.

The City disseminated this policy statement to the City Council and all of the components of the organization. This statement was distributed to DBE and non-DBE business communities that may perform work on the City's DOT-assisted contracts. The distribution was accomplished by <https://www.lhcaz.gov/public-works/airport>.



Jess Knudson
City Manager

1.14.25
Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

In administering its DBE program, the 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, or national origin.

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

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

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

The City will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments," as described in Part 26. The City will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

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 the City's federally assisted contracts for use in helping set the overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved. See Attachment 3 for example.

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.

The City will collect the data from all bidders for the federally assisted contracts by requiring 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).

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.

Section 26.13 Assurances Recipients and Contractors Must Make

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

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

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 contracts. The City 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 sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

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

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The 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, cumulative total value of which 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 this DBE program and the City is in compliance with it and Part 26. The City will continue to carry out this program until all funds from DOT financial assistance are expended. The City 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 to the relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The following individual is designated as the DBE Liaison Officer for the City:

Robert Kane
Airport Manager
Lake Havasu City
928-854-0755 (x 4821)
cell: 928-490-0179
airport@lhcaz.gov

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

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 8 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes the City's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the City 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. Availability of such institutions will be investigated on an annual basis.

As part of this DBE Program, the City investigated services offered by banks owned and controlled by socially and economically disadvantaged individuals in the local area by contacting the U.S. Treasury Department and reviewing its June 30, 2024, listing of Minority Bank Deposit Program. Based on this search, there are no banks defined by the Treasury located in the Arizona area.

As of October 8, 2024, depository institutions that participate in the Federal Deposit Insurance Corporation's (FDIC) Minority Depository Institutions Program have been added to the Treasury's Minority Bank Deposit Program. By researching the Federal Reserve System and reviewing its listing of minority-owned depository institutions, DBE banks located in the market area can be identified. Based on this search, there are no minority-owned depository institutions located in Arizona.

The bank participants in the Minority Bank Deposit Program and Minority Depository Institutions Program do change periodically and updates can be found at the following website locations, respectively:

<https://www.fiscal.treasury.gov/mbdp/participants.html>

<https://www.fdic.gov/regulations/resources/minority/mdi.html>

Section 26.29 Prompt Payment Mechanisms

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, 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 ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 7 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, the City has selected the following method to comply with this requirement:

The City will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 7 days after the City payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, the City includes 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.

Prompt Payment Monitoring for 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 Monthly Payment Report found in Attachment 11 is required to be submitted on a monthly basis throughout the entirety of the project. This report monitors the payments by providing a running tally of actual DBE attainments and compares this to the commitments.

- Each subcontractor, DBE and non-DBE firms, are required to complete the Subcontractor's Prompt Payment Certification, found in Attachment 12. A completed copy of this form shall be submitted to the Sponsor's representative, the Prime Contractor and the Contractor you are working for at least 7 days prior to an application for payment. This form is to be submitted with each payment application. Any delay in the submitting the required certification will cause a delay in payments being processed. The intent of this form is verification of timely payment to the Subcontractors
- The Disadvantaged Business Enterprise (DBE) Participation Summary Form, found in Attachment 13, must be completed and signed by the DBE firm upon completion of the project. A final payment will not be processed without the required form. The intent of this form is to confirm total payments made to DBE firms.

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. 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.

If the subcontractor is unable to resolve payment discrepancies with the prime contractor or is uncomfortable contacting the prime contractor directly regarding the discrepancy, the parties' shall participate in a voluntary mediation with the resident engineer.

The City has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR)

If the above resolution does not resolve the complaint, then the subcontractor should contact the DBELO to inquire further.

- (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.

The contract clause is within the City's General Conditions, Section 00700, paragraph 22.7 states:

22.7 The Contractor shall indemnify and save the Owner or the Owner's agents harmless from all claims growing out of the lawful demands of Subcontractors, laborers, workmen, mechanics, materialmen, and furnishers of machinery and parts thereof, equipment, tools, and all supplies, incurred in the furtherance of the performance of the Work. The Contractor shall furnish satisfactory evidence, in the form of lien releases or other documents deemed appropriate by the Owner, that all obligations of the nature designated above have been paid, discharged, or waived. If the Contractor fails to do so the Owner may, after having notified the Contractor, either pay unpaid bills or withhold from the Contractor's unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the Contractor shall be resumed, in accordance with the terms of the Contract Documents, but in no event shall the provisions of this sentence be construed to impose any obligations upon the Owner to either the Contractor, his Surety, or any third party. In paying any unpaid bills of the Contractor, any payment so made by the Owner shall be considered as a payment made under the Contract Documents by the Owner to the Contractor and the Owner shall not be liable to the Contractor for any such payments made in good faith.

Prompt Payment Complaints

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

- If 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 subcontractor may contact the responsible FAA contact.

- 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:

- 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

The City will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

The City is a non-certifying member of the Arizona Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by § 26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP 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
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work. See Attachment 4.

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

The City has not established a Business Development Program, or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

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.

The City actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained by calculating a running tally utilizing an excel spreadsheet and monthly payment reports collected from all Primes. This mechanism to maintain a running tally of overall goal attainment will be used to inform the City's decisions to implement goals on contracts to be advertised, according to the established contract goal-setting process.

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 overall goal monitoring will be maintained by calculating a running tally utilizing an excel spreadsheet and monthly payment reports collected from all Primes. 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 or designee. 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.

Contracting records are reviewed by DBELO or designee. The City will require prime contractors 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.

Section 26.39 Fostering Small Business Participation

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

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

GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The City will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value

of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the City will submit its Overall Three-year DBE Goal to FAA by August 1 of the year in which the goal is due, as required by the schedule established by FAA.

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The City will use *a Bidders List, a Disparity Study, the goal of another DOT Recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with § 26.45* as a method to determine the base figure. 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 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

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

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

In establishing the overall goal, the City will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the City to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the City is required to submit the goal methodology to the operating administration for review pursuant to § 26.45(f). The goal submission will document the consultation

process in which the City engaged. Notwithstanding paragraph (f)(4) of § 26.45, the proposed goal will not be implemented until this requirement is met.

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

The Overall Three-Year DBE Goal submission to *FAA* will include any information and comments received, who provided the comment, and how the City considered and responded to any comments and information received before finalizing the goal.

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

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 it must meet all the substantive and procedural requirements 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.

Prior Operating Administration Concurrence

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

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

Section 26.47 Failure to meet overall goals

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

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

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

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

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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 facilitates DBE, and other small businesses, participation;
2. Carrying out information and communications programs on contracting procedures and specific contract opportunities;

3. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

The City will arrange 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.

Contract Goals

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

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

Demonstration of good faith efforts (pre-award)

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

DBELO or designee 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 this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.
- (3) The bidder/offer or 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 a 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. Where the DBE supplier does not affirm that its 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.

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 paragraph (b) of § 26.53(b). 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 amounts) 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 will 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, e.g., 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.

The City will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, the City 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.

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by the City that it is not *responsive* because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Anthony Kozlowski, Assistant City Manager, CityManager@lhcaz.gov, 928-412-5275. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The

bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation/award)

The City will include in each prime contract the contract clause required by § 26.13(b) 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 § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our 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's 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 City may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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 he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), 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 worthiness;
- (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 1200 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 to the City 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; and
- (10) Other documented good cause that the City determines compels the termination of the DBE subcontractor.

Before transmitting to the City the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the City sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising the City and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why the City should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), the City may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is 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 seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. The City shall provide a written

determination to the contractor stating whether or not good faith efforts have been demonstrated.

Section 26.55 Counting DBE Participation

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

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

For FAA-funded projects only, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals 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.

CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The City is a **non-certifying member** of the Arizona Unified Certification Program (UCP) 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
1801 West Jefferson Street
Suite 101
Phoenix, AZ 85007
602.712.7761
602.712.8429**

**DBESupportiveServices@azdot.gov
<https://utracs.azdot.gov/Home>**

<https://utracs.azdot.gov/Account/Login?ReturnUrl=%2FRegistration%2F>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Arizona UCP agreement. The full UCP agreement can be found at: <https://azdot.gov/sites/default/files/2023-12/ADOT-326-MOU-Final-Signed.pdf>

Section 26.81 Unified Certification Programs

The City is a member of a Unified Certification Program (UCP) administered by the Arizona Department of Transportation. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to The City

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 § 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.

Section 26.103 Enforcement Actions

- (1) **Compliance reviews.** The concerned operating 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.

Section 26.105 Enforcement Actions Applicable to FAA Programs

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.

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

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.

Section 26.107 Enforcement Actions Applicable to Participating Firms

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 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.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

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.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under § 26.89 or to any other state to which the individual's firm has applied for certification under § 26.85.

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

The City, 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 that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidders List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program
- Attachment 11 Monthly Payment Report
- Attachment 12 Subcontractor's Prompt Payment Certification
- Attachment 13 DBE Final Participation Form

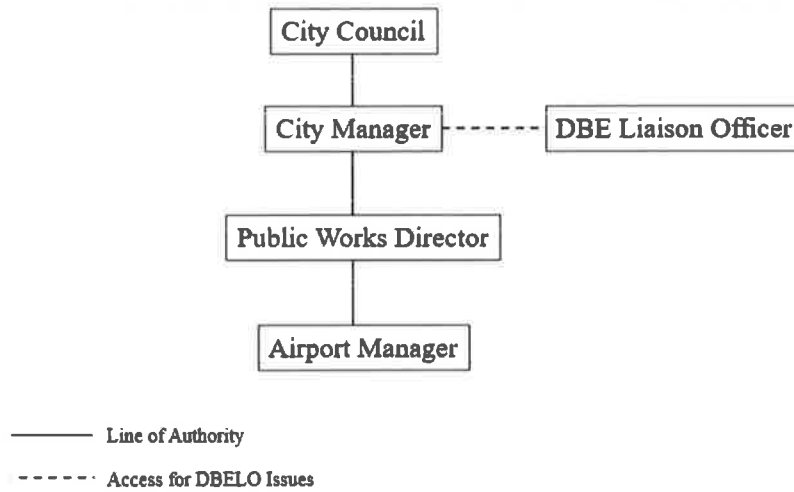
ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

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

ATTACHMENT 2
ORGANIZATIONAL CHART

Lake Havasu City DBE Program Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

The sponsor is required by CFR Title 49, Subtitle A, Part 26, subpart A, § 26.11(c) to collect bidders list information from all bidders at the time of bid submittal. The data must be collected for all firms who bid as prime contractors or subcontractors (successfully or not).

As such, it is the responsibility of the bidder to complete the following information as a condition of submitting a proposal for this project. The sponsor will consider incomplete information to be an irregular proposal.

Airport Name: _____ **Bid Date:** _____

Project Name: _____

Bidders and potential subcontractors / suppliers Information:

Firm Name	Firm Address (including ZIP code)	DBE or Non-DBE Status	NAICS Code(s) of Scope(s) Bid	Race/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 GENDER: <input type="checkbox"/> Female <input type="checkbox"/> Male	<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 GENDER: <input type="checkbox"/> Female <input type="checkbox"/> Male	<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 GENDER: <input type="checkbox"/> Female <input type="checkbox"/> Male	<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 GENDER: <input type="checkbox"/> Female <input type="checkbox"/> Male	<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 GENDER: <input type="checkbox"/> Female <input type="checkbox"/> Male	<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

If additional space is needed, copy this form and submit with your original proposal. **This form must list all firms that supplied a quote (successful or not) and submitted with the proposal.**

ATTACHMENT 4

Arizona UCP Directory may be found here:

[Search - AZ UTRACS \(azdot.gov\)](#)

ATTACHMENT 5

Overall DBE Three-Year Goal Methodology

Submitted Separately

**ATTACHMENT 6
DEMONSTRATION OF GOOD FAITH EFFORTS FORMS 1,2, AND 3.**

CONTRACTOR'S DBE PLAN

(Submit this form and attach one DBE Letter of Intent Form for each DBE Subcontractor, Supplier or manufacturer.)

Airport Name: _____

Project Name: _____

Name of Bidder's Firm _____

Street Address _____

City: _____ State: _____ Zip: _____

Printed Name of Signer: _____

Email Address: _____

Total Bid Amount: _____ DBE CONTRACT GOAL: _____

DBE UTILIZATION SUMMARY

DBE Contract Amount			DBE Value	DBE %
DBE Prime Contractor		x 1.00 =		
DBE Subcontractors		x 1.00 =		
* DBE Suppliers:				
Dealer		x 0.60 =		
Distributor		x 0.40 =		
DBE Manufacturers		x 1.00 =		
**Total Proposed DBE Participation				

* DBE Suppliers must complete the USDOT Dealer / Distributor classification form. This form must be included with the submission of the DBE plan.

**If the total proposed DBE participation is less than the established DBE goal, Bidder must provide adequate written documentation of good faith efforts as required by 49 CFR Part 26, Appendix A.

Affirmation:

The undersigned hereby assures that the information included herein is true and correct, and that the DBE firm(s) listed on the attached DBE Letter of Intent Forms have agreed to perform a commercially useful function in the work items noted for each firm. The undersigned further understands that no changes to this plan may be made without prior approval from the Airport.

By:

Signature of Bidder's Representative

Title

FORM 2: LETTER OF INTENT

DBE LETTER OF INTENT FORM

(Submit one form for each DBE subcontractor, supplier or manufacturer.)

Project Name/Location: _____
 Name of Bidder's Firm: _____
 Street Address: _____
 City: _____ State: _____ Zip: _____
 Name of DBE firm: _____
 Street Address: _____
 City: _____ State: _____ Zip: _____
 Contact Person: _____ Email: _____
 Certifying Agency: _____

(DBE firm and bidder/offeror must be registered with the state certifying agency)

Classification: ☒ Prime Contractor ☐ Subcontractor ☐ Joint Venture
☒ Supplier / Dealer ☐ Supplier / Distributor ☐ Manufacturer

Disadvantaged Group (check one):

Black American <input type="checkbox"/>	Hispanic American <input type="checkbox"/>	Native American <input type="checkbox"/>	Subcont. Asian American <input type="checkbox"/>
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>
Asian Pacific American <input type="checkbox"/>	Non-Minority <input type="checkbox"/>	Other (not of any group listed here) <input type="checkbox"/>	
Male <input type="checkbox"/>	Male <input type="checkbox"/>	Male <input type="checkbox"/>	
Female <input type="checkbox"/>	Female <input type="checkbox"/>	Female <input type="checkbox"/>	

SUMMARY OF WORK ITEMS

NAICS	Description of Work Item	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. 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

 Signature of Bidder/Offeror's Authorized Representative Date: _____

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

 Signature of DBE's Authorized Representative Date: _____

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

Submit this page for each DBE subcontractor/DBE Supplier.

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

Administrative Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to applicable Arizona law and regulations.

49 CFR 26.13(b): Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

Reference Lake Havasu City Contracts General Conditions – Section 00700 (page 00700-31), of standard template for all Arizona Revised Statutes (A.R.S.) Title 34 construction-related solicitations and subsequent contracts.

33.0 ARBITRATION

33.1 Provided both parties mutually agree, all claims, disputes and other matters in question arising out of, or relating to, the Contract Documents or the breach thereof, except for claims which have been waived by the making and acceptance of final payment as provided by Section 23, may be decided by arbitration in accordance with the American Arbitration Association or any other similar body. The foregoing Contract to arbitrate shall be specifically enforceable under the prevailing arbitration law (Arizona Revised Statutes Sections 12-1501, *et seq.*) of the State of Arizona. The award rendered by the arbitrators shall be final, and judgment may be entered upon it in any court having jurisdiction thereof.

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

suspension or debarment proceedings (49 CFR Part 26), enforcement action (49 CFR Part 31), and prosecution (18 USC 1001).

ATTACHMENT 8

DBE Certification Application Form and Personal Net Worth Statement:

[https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-
apply](https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply)

ATTACHMENT 9

Arizona State's UCP Agreement can be found here:

ATTACHMENT 10

SMALL BUSINESS ELEMENT

49 CFR PART 26.39

OBJECTIVE: FOSTERING SMALL BUSINESS PARTICIPATION

DBE program regulations, CFR § 26.39, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, including DBEs, taking reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. All small businesses, including DBE firms are eligible for this program.

DEFINITION

For the purpose of Lake Havasu City's (The City) Small Business Element, a small business is defined as: **A company and/or firm whose annual revenue does not exceed the cap on average annual gross receipts specified in § 26.25(b).** To be seen as a small business, a firm must meet SBA size criteria and have average annual gross receipts not to exceed \$23.98 million. All businesses meeting this criterion will be considered to be small businesses, without regard to race or gender.

STRATEGIES

In compliance with this policy, the City's DBE program in regard to § 26.39 Fostering Small Business Participation may include, but is not limited to, the following strategies:

- Ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform;
- Arranging quantities, specifications, and delivery schedules to facilitate small business participation; and
- Dividing large contracts into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract.
- In large contracts, require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;

- On prime contracts not having DBE contract goals, require 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; and
- Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

VERIFICATION

All firms participating in small business contracting opportunities are verified by the City as to meeting the eligibility criteria of this program. This is accomplished using the state business records that list any certifications a firm might have, including DBE certification, as well as annual sales volume.

MONITORING / RECORD KEEPING

The City will actively monitor the small business element on an annual basis to see if the objectives are being met. The City will monitor the dollar amounts attained from small businesses specific to this element.

ASSURANCES

The following Assurances apply to this Small Business Element:

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

IMPLEMENTATION

In order to actively implement the City's program elements to foster small business participation and to comply with the requirement of good faith implementation of our DBE program, the City will require for FAA funded projects without a DBE contract goal, that the prime fill out and submit the FOSTERING SMALL BUSINESS PARTICIPATION form for construction work items as well as for professional services work items. The forms shall be completed and submitted to the Sponsor at time of bid or for negotiated projects, prior to receiving the Notice to Proceed. SEE THE FOSTERING SMALL BUSINESS PARTICIPATION FORM FOLLOWING THIS SECTION.

Fostering Small Business Participation

Sponsor's Name:	
Airport Name:	
City, State:	
AIP Number:	
Federal Fiscal Year:	

In accordance with Section 26.39 the following detailed list shall be completed by Prime Contractor(s) for Construction Work Items as well as by Prime Contractor(s) for Professional Services Work Items. Note: The firms listed below may or may not be certified DBEs.

Small Business Firms to be Utilized (Name, Address, Phone)		<i>Work to be Performed</i>	Total Estimated Cost of Work
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		
Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

Name			
Address			
City, St, Zip			
Telephone			
Is the firm a Certified DBE?	<input type="checkbox"/> Yes <input type="checkbox"/> No		

(Duplicate form as necessary.)

The following notation is for Sponsor Use Only:

Accepted by: _____ **Date:** _____

ATTACHMENT 11

MONTHLY PAYMENT REPORT

Name of Contractor's Firm: _____

Project Name/Location: _____

FAA AIP Project No : _____

Subcontractor or DBE Supplier Name* and Description of Work	DBE Y/N	Supplier Y/N	Subcontractor Contract Amount	Pay App #	Payment Period Date (From-To)	Amount Invoiced This Period	Total Amount Invoiced	Current Retainage Amount	Total Retainage	Payment	Payment Date	Total Paid to Date	Total Due Sub/DBE Supplier

*ALL Subcontractors Must Be Listed – ONLY DBE Suppliers Must Be Listed

Signature of Contractor's Representative

Print Contractor's Representative

Date

To be submitted to the Airport DBELO or designee by the 10th of each month

ATTACHMENT 12

SUBCONTRACTOR'S PROMPT PAYMENT CERTIFICATION

NOTE: Each Contractor shall provide a copy of this form to each of their Subcontractors (DBE and non-DBE) that are working on or has worked on this project. This certification applies to all tier Subcontractors. A completed copy of this form shall be submitted the Prime Contractor you are working for at least 7 days prior to an application for payment. Any Subcontractor failing to submit a copy of this form shall be cause for the Sponsor's representative to delay the payment application.

Should a Subcontractor indicate that they have not received payment for work they performed in which their Contractor has received payment, the Sponsor shall withhold the delinquent amount indicated unless the Contractor received written approval from the Sponsor of the Contractor's written request justifying withholding payment from the Subcontractor.

Project Title: _____

Airport Name: _____

AIP No.: _____

Company Name: _____

Company Address: _____

Contact Phone No.: _____

Contractor's Name you subcontract to: _____

1. What dates have you performed work on this project? _____

2. Has the work performed been completed and accepted by the Engineer? Yes ☐ No ☐ Not sure ☐

3. Please provide the following information on invoices you have sent the Prime Contractor:

Date of Invoice	Invoice Number	Invoice Amount	Has the invoice been paid?	Date payment received

5. Have you completed all work that you are required to perform on this contract? Yes ☐ No ☐

6. Total Amount owing on for work performed on this project \$ _____

Written Name of Subcontractor's Rep. _____

Signature: _____ Date: _____

ATTACHMENT 13

**DISADVANTAGE BUSINESS ENTERPRISE
FINAL PARTICIPATION SUMMARY**
(Submit one form for each DBE firm)

Project Name: _____ AIP No. _____
Contractor: _____
Address: _____
City _____ State _____ Zip: _____
Contact Name: _____
Email: _____ Phone: _____
DBE Firm: _____
Address: _____
City _____ State _____ Zip: _____
Contact Person: _____
Email: _____ Phone: _____

Each DBE Firm shall submit evidence of their certification status

Classification: Prime Contractor Subcontractor Supplier - Dealer Broker
 Manufacturer Joint Venture Supplier - Distributor Other

Disadvantaged Group (check one):

Black American Hispanic American Native American
Asian Pacific American Subcont. Asian American Non-Minority Female
Other (Please specify) _____

Summary of work performed:

Description of work	NAICS Code	Total Amount Paid

Contractors Affirmation:

The Contractor utilized the above-named DBE Firm for the work items described above.

Initial Contract Amount: _____ Difference: _____

Explanation of difference: (Additional documentation may be requested)

Contractors Signature

Title

Date

DBE Firm's Affirmation:

The above named DBE Firm affirms that it has performed the work it was contracted to perform, as listed above and was paid in full as stated above.

DBE Firm's Signature

Title

Date

