

# BOULDER CITY MUNICIPAL AIRPORT



## DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

*Prepared for:*

**Boulder City Municipal Airport**  
1201 Airport Rd, Suite 200  
Boulder City, NV 89005

*Prepared by:*

**Kimley»»Horn**

**Kimley-Horn and Associates, Inc.**  
6671 Las Vegas Boulevard South  
Suite 320  
Las Vegas, NV 89119

January 2025



**TABLE OF CONTENTS**

**1. OBJECTIVES/POLICY STATEMENT (§26.1, §26.23) ..... 1**

**2. GENERAL REQUIREMENTS ..... 2**

    2.1. Objectives (§26.1)..... 2

    2.2. Applicability (§26.3) ..... 2

    2.3. Definitions (§26.5)..... 2

    2.4. Non-Discrimination Requirements (§26.7) ..... 2

    2.5. Data Collection and Reporting Requirements (§26.11) ..... 2

        2.5.1. Reporting to DOT ..... 2

        2.5.2. Bidders List..... 2

    2.6. Assurances Recipients and Contractors Must Make (§26.13)..... 3

        2.6.1. Assurance..... 3

        2.6.2. Contract Assurance..... 4

**3. ADMINISTRATIVE REQUIREMENTS ..... 5**

    3.1. DBE Program Updates (§26.21)..... 5

    3.2. Policy Statement (§26.23) ..... 5

    3.3. DBE Liaison Officer (DBELO) (§26.25) ..... 5

    3.4. DBE Financial Institutions (§26.27) ..... 6

    3.5. Prompt Payment Mechanisms (§26.29)..... 6

        3.5.1. Prompt Payment Monitoring for DBEs and Non-DBEs..... 7

        3.5.2. Prompt Payment Dispute Resolution ..... 7

        3.5.3. Prompt Payment Complaints ..... 8

        3.5.4. Enforcement Actions for Noncompliance of Participants..... 8

    3.6. Directory of Certified Firms (§26.31) ..... 9

    3.7. Over-Concentration (§26.33)..... 10

    3.8. Business Development and Mentor-Protégé Programs (§26.35) ..... 10

    3.9. Monitoring Responsibilities (§26.37) ..... 10

        3.9.1. Monitoring Contracts and Work Sites ..... 10

    3.10. Fostering Small Business Participation (§26.39) ..... 10

**4. GOALS, GOOD FAITH EFFORTS, AND COUNTING ..... 12**

    4.1. Set-Asides or Quotas (§26.43)..... 12

    4.2. Overall Goals (§26.45)..... 12

        4.2.1. Project Goals..... 13

        4.2.2. Prior Operating Administration Concurrence ..... 13

    4.3. Failure to Meet Overall Goals (§26.47) ..... 14



- 4.4. Means Recipients Use to Meet Overall Goals (§26.51) ..... 14
  - 4.4.1. Breakout of Estimated Race-Neutral & Race-Conscious Participation ..... 14
  - 4.4.2. Contract Goals ..... 15
- 4.5. Good Faith Efforts Procedures in Situations where there are Contract Goals (§26.53)..... 15
  - 4.5.1. Demonstration of Good Faith Efforts (Pre-Award)..... 15
  - 4.5.2. Administrative Reconsideration of Good Faith Efforts Determinations ..... 17
  - 4.5.3. Good Faith Efforts Procedural Requirements (Post-Solicitation/Award)..... 18
- 4.6. Counting DBE Participation (§26.55) ..... 19
- 5. CERTIFICATION STANDARDS .....21**
  - 5.1. Certification Process (§26.61- §26.73).....21
- 6. CERTIFICATION PROCEDURES .....22**
  - 6.1. Unified Certification Programs (§26.81) .....22
- 7. COMPLIANCE AND ENFORCEMENT .....23**
  - 7.1. Compliance Procedures Applicable to the Boulder City Municipal Airport (§26.101)..... 23
  - 7.2. Enforcement Actions Applicable to FHWA and FTA Programs (§26.103).....23
  - 7.3. Enforcement Actions Applicable to FAA Programs (§26.105) .....24
  - 7.4. Enforcement Actions Applicable to Participating Firms (§26.107).....24
  - 7.5. Confidentiality, Cooperation, and Intimidation or Retaliation (§26.109).....25



## LIST OF ATTACHMENTS

Attachment 1	Regulations: Link to 49 CFR Part 26 (eCFR)
Attachment 2	Organizational Chart
Attachment 3	Bidder's List Collection Form
Attachment 4	Nevada DBE Directory (Web Link)
Attachment 5	Overall DBE Three-Year Goal Methodology
Attachment 6	Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1, 2, and 3
Attachment 7	DBE Monitoring and Enforcement Mechanisms
Attachment 8	DBE Certification Application Form and Personal Net Worth Statement (Web Links)
Attachment 9	Nevada Unified Certification Program Agreement
Attachment 10	Small Business Element



## 1. OBJECTIVES/POLICY STATEMENT (§26.1, §26.23)

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

It is the policy of the 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 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.

Marissa Adou, Airport Manager, has been 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 Airport Manager has disseminated this policy statement to the CITY and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Boulder City Municipal Airport DOT-assisted contracts. The distribution was accomplished by posting it on the official website of the Boulder City Municipal Airport.

A handwritten signature in black ink, appearing to read "Marissa Adou", is written over a horizontal line.

Marissa Adou  
Airport Manager

City of Boulder City, Nevada

Date: 1-15-2025



## 2. GENERAL REQUIREMENTS

### 2.1. Objectives (§26.1)

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

### 2.2. Applicability (§26.3)

#### Federal Aviation Administration (FAA) Recipients

Boulder City Municipal Airport and the CITY are recipients of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### 2.3. Definitions (§26.5)

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

### 2.4. Non-Discrimination Requirements (§26.7)

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.

### 2.5. Data Collection and Reporting Requirements (§26.11)

#### 2.5.1. 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.

#### 2.5.2. 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 our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

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 our 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 in 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.

## **2.6. Assurances Recipients and Contractors Must Make (§26.13)**

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

### **2.6.1. Assurance**

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

The City of Boulder 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 of Boulder 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 Boulder City Municipal Airport DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to The City of Boulder 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.).

### 2.6.2. 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.



### 3. ADMINISTRATIVE REQUIREMENTS

#### 3.1. DBE Program Updates (§26.21)

The CITY is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, 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 have been 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.

#### 3.2. Policy Statement (§26.23)

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

#### 3.3. DBE Liaison Officer (DBELO) (§26.25)

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

Marissa Adou  
1201 Airport Road, Suite 200  
Boulder City, Nevada 89005  
(702) 293-9405  
Madou@bcnv.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the CITY complies with all provisions of 49 CFR Part 26. 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 consultant engineers to assist in the administration of the program. The duties and responsibilities include the following:

- Gathers, compiles and reports statistical data and other information that may be required by DOT, FAA, or the State of Nevada.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual DBE goals.
- Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
- Reviews contracts and procurements to ensure that DBE goals are included in solicitations and monitors results.



- Analyzes the CITY’s progress toward goal attainment and, if necessary, identifies ways to improve progress.
- Ensures participation of appropriate the CITY personnel in pre-bid meetings.
- Advises the CITY governing body on DBE matters and achievement.
- Participates with appropriate management (i.e. legal counsel, project manager, etc.) to determine contractor compliance and good faith efforts.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars, as required.
- Provides outreach to DBEs and community organizations to advise them of opportunities.

### 3.4. DBE Financial Institutions (§26.27)

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.

The State of Nevada DBE database will be searched for financial institutions in and around the CITY, and surrounding counties. To date, there are no financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Nevada.

### 3.5. Prompt Payment Mechanisms (§26.29)

The CITY requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law. 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 30 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 30 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 30 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.

### 3.5.1. 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 CITY staff requires each pay application submitted identify work performed and payments owed to subcontractors, including DBE subcontractors. Subcontractors are notified via email when payment has been made to the Prime Contractor by the CITY.

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 to ensure compliance. 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.

### 3.5.2. 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.

The CITY will require each party to document its position and will hold a meeting with the Project Manager present to discuss a possible resolution. If the parties cannot agree, the Project Manager and the CITY staff will review the documentation and work element to determine if the work meets the CITY requirements. The CITY will take the necessary action to either have the work satisfactorily completed or will instruct payment to be made if the work is already satisfactorily completed.

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 a dispute, controversy or disagreement ("Dispute") arises between the Contractor and any subcontractor in connection with the Prompt Payment for work performed under the terms of the Contract and applicable subcontract, then the Dispute shall be presented to the CITY for consideration and resolution. Disputes that cannot be resolved in this manner shall be settled by arbitration administered by the American Arbitration Association.



- (2) Failure to pay subcontractors within the specified time limit will be considered a breach of contract which may result in any of the remedies provided for under the contract.

### 3.5.3. Prompt Payment Complaints

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

- Complaints may be initially made to the Prime Contractor or to the DBELO.
- In the event that the subcontractor has contacted the Prime Contractor and is unable to resolve the issue, the subcontractor should initiate a complaint with the DBELO.
- The DBELO will investigate the complaint within 5 days and will make an effort to resolve the matter through contact with the Prime Contractor.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the CITY to resolve the dispute, the affected subcontractor may contact the FAA Regional Civil Rights Officer for the FAA Western Pacific Region.
- 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.

### 3.5.4. Enforcement Actions for Noncompliance of Participants

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

- (1) The CITY will 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.
- (2) The CITY will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
- (3) The CITY will 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 as follows:
  - a. Prime Contractors working on projects containing a DBE goal shall be required to file monthly reports listing contract work awarded to and performed by DBE subcontractors/suppliers. These reports will be compared to bid commitments and discrepancies or questions will be followed-up in writing by the DBELO.
  - b. The DBELO or the Project Manager will periodically visit the job site to ensure that DBE firms listed in bid documents are performing the work. These visits will be documented in the appropriate project files.



- c. For each payment made to the prime contractor, the prime contractor will be required to report payments made to DBE firms for a specific project and to identify invoice numbers, dates, amounts, and check numbers for payments made to the DBE firm.
- d. After the above information is received from the prime contractor, DBEs will be required to verify information. If there is a discrepancy reported by the DBE firm, the matter is investigated through written correspondence with the Prime Contractor and the DBE firm and actual levels of participation are confirmed.
- e. Once all information has been received from Prime Contractor and verified by DBE firms, the information is recapped and compared to original commitments.

The CITY will actively implement the enforcement actions detailed above.

### 3.6. Directory of Certified Firms (§26.31)

The CITY is a non-certifying member of the Nevada 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.



### 3.7. Over-Concentration (§26.33)

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

### 3.8. Business Development and Mentor-Protégé Programs (§26.35)

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

### 3.9. Monitoring Responsibilities (§26.37)

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

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 preparing on an annual basis the Uniform Report of DBE Commitments/Awards and Payments. 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 our 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 contract goal monitoring will be maintained by a DBE Participation Progress Report which will be submitted with each contractor payment request. 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).

#### 3.9.1. 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 the DBELO or the project manager. Contracting records are reviewed by the DBELO or the project manager. 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.

### 3.10. Fostering Small Business Participation (§26.39)

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



The small business element is incorporated as **Attachment 10** to this DBE Program. The program elements will be actively implemented to foster small business participation. 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.



## 4. GOALS, GOOD FAITH EFFORTS, AND COUNTING

### 4.1. Set-Asides or Quotas (§26.43)

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

### 4.2. Overall Goals (§26.45)

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 1st of the year in which the goal is due, as required by the schedule established by FAA.

Boulder City Municipal Airport’s Triennial DBE Goal Periods

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Hub Primary	All Regions	August 1, 2024 (2025, 2026, 2027)	August 1, 2027 (2028, 2029, 2030)

FAA Schedule:

[https://www.faa.gov/sites/faa.gov/files/about/office\\_org/headquarters\\_offices/acr/DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Schedule\\_Final.pdf](https://www.faa.gov/sites/faa.gov/files/about/office_org/headquarters_offices/acr/DBE_and_ACDBE_Reporting_Requirements_Schedule_Final.pdf)

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 DBE Directory information and Census Bureau Data 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’s 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 1st. 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 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.

#### 4.2.1. 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.

#### 4.2.2. 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.



### 4.3. Failure to Meet Overall Goals (§26.47)

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 to be 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 paragraphs (1) and (2) of this section. The CITY 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.

### 4.4. Means Recipients Use to Meet Overall Goals (§26.51)

#### 4.4.1. 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 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.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on



prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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.

#### 4.4.2. Contract Goals

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

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

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

### 4.5. Good Faith Efforts Procedures in Situations where there are Contract Goals (§26.53)

#### 4.5.1. 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.



The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as **responsive**.

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of 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; and
  - 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/offeror will be required to present the information stipulated in paragraph (2) of this section:
  - a. 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.

#### 4.5.2. 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:

Paul Sikora  
401 California Avenue  
Boulder City, Nevada 89005  
(702) 293-9293  
psikora@bcnv.org

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.

#### 4.5.3. 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's 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.

#### **4.6. Counting DBE Participation (§26.55)**

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.



## 5. CERTIFICATION STANDARDS

### 5.1. Certification Process (§26.61- §26.73)

The CITY is a non-certifying member of the Nevada Unified Certification Program (NUCP) and relies upon the NUCP's determinations of certification eligibility. NUCP 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 NUCP members make all certification decisions based on the facts as a whole.

The certifying members of the NUCP are the Nevada Department of Transportation (NDOT), Harry Reid International Airport, and the Reno-Tahoe Airport Authority. The NUCP is administered by the Nevada Department of Transportation (NDOT).

Firms may apply for DBE Certification using the NUCP website:

***[www.nevadadbe.com](http://www.nevadadbe.com)***

For information about the certification process firms should contact:

**Nevada Department of Transportation**

**External Civil Rights Division**

123 E. Washington Ave.

Las Vegas Nevada 89101

Phone: (775) 888-7497

E-Mail: [ndot@dbesystem.com](mailto:ndot@dbesystem.com)

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>***.



## 6. CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full NUCP agreement, which is included as **Attachment 9** to this program.

### 6.1. Unified Certification Programs (§26.81)

There are six (6) active members on the NUCP Committee. Of those, three (3) are certifying agencies. The NUCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26. The NUCP makes all certification decisions in accordance with 49 CFR, Part 23, Part 26, and the NUCP Memorandum of Agreement.

The NUCP consists of the following six (6) committee member agencies:

Certifying NUCP Committee Members:

- The Nevada Department of Transportation (NDOT),
- The Harry Reid International Airport, and
- The Reno-Tahoe Airport Authority.

Non-Certifying NUCP Committee Members:

- The Regional Transportation Commission of Washoe County,
- The Regional Transportation Commission of Southern Nevada, and
- The Carson Area Metropolitan Planning Organization,

The NUCP is administered by NDOT. NDOT must keep complete files on applicants and provide information as required and annually requires the DBE firms it has processed to submit an affidavit of no change form, due on their certification anniversary date. A business' DBE certification received from any of the NUCP certifying agencies is valid and can be relied upon by any Nevada entity that receives USDOT funds.



## 7. COMPLIANCE AND ENFORCEMENT

### 7.1. Compliance Procedures Applicable to the Boulder City Municipal Airport (§26.101)

The CITY understands that if it fails to comply with any requirement of this part, the CITY may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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.

### 7.2. Enforcement Actions Applicable to FHWA and FTA Programs (§26.103)

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY paragraph (2) of this section is also applicable in FAA programs.**

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **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.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that the CITY is in noncompliance with part 26, the appropriate DOT office will promptly send the CITY, return receipt requested, a written notice advising that there is reasonable cause to find the CITY in noncompliance. The notice states the reasons for this finding and directs the CITY to reply within 30 days concerning whether you wish to begin conciliation.



**(4) Conciliation.**

- a. If the CITY requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
- b. If the CITY and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and the CITY is regarded as complying. The conciliation agreement sets forth the measures the CITY has taken or will take to ensure compliance. While a conciliation agreement is in effect, the CITY remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If the CITY fail to carry out the terms of a conciliation agreement, the CITY is in noncompliance.
- d. If the CITY does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

**(5) Enforcement actions.**

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

**7.3. Enforcement Actions Applicable to FAA Programs (§26.105)**

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.

**7.4. Enforcement Actions Applicable to Participating Firms (§26.107)**

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

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility 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.

### **7.5. Confidentiality, Cooperation, and Intimidation or Retaliation (§26.109)**

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

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.



**ATTACHMENT 1**  
**REGULATIONS: LINK TO 49 CFR PART 26 (ECFR)**



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:

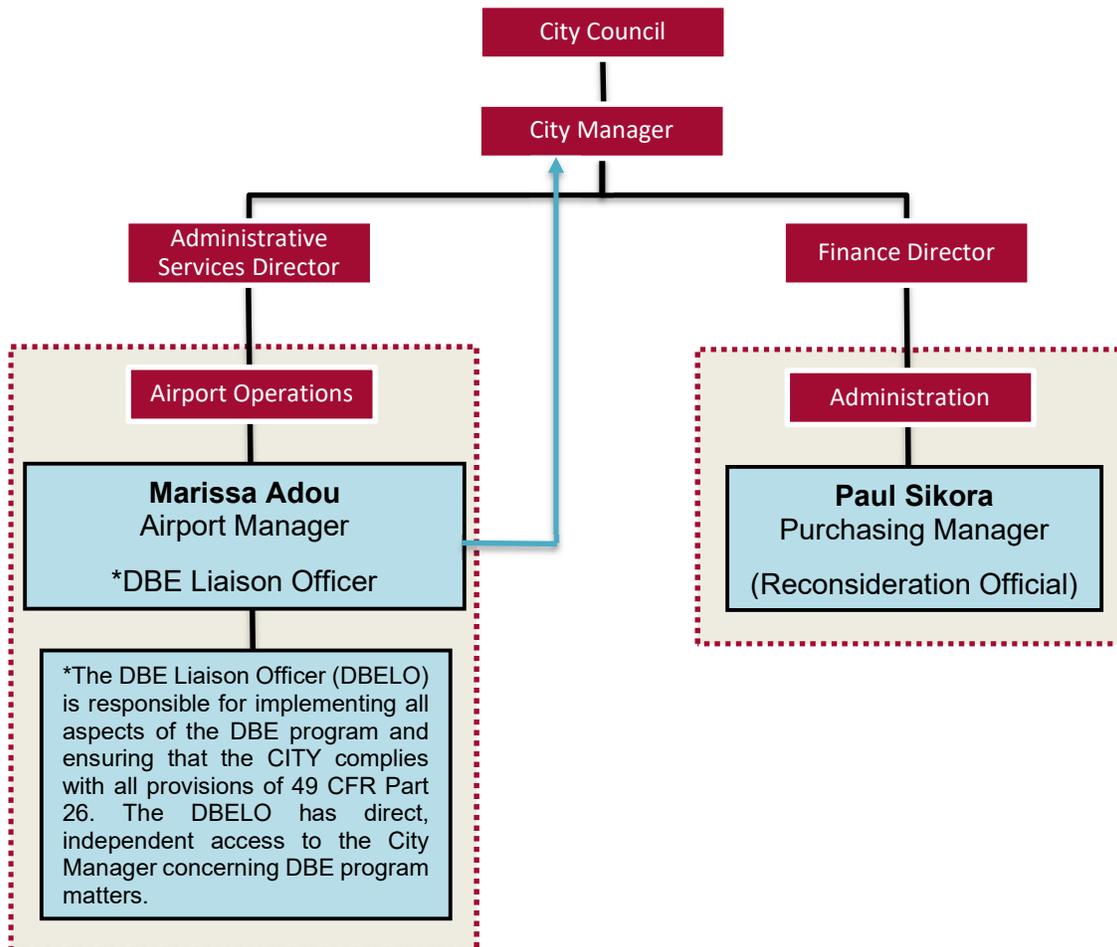
***<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>***



**ATTACHMENT 2**  
**ORGANIZATIONAL CHART**



Organizational Chart





**ATTACHMENT 3**  
**BIDDER’S LIST COLLECTION FORM**





**ATTACHMENT 4**  
**NEVADA DBE DIRECTORY**  
**(WEB LINK)**



The DBE directory is available to view electronically online at:

***<http://www.nevadadb.com>***



**ATTACHMENT 5**  
**OVERALL DBE THREE-YEAR GOAL METHODOLOGY**



Attachment 5 is prepared as a separate document and is updated every three years.

The most current Overall DBE Three-Year Goal Methodology for the Boulder City Municipal Airport will be available on the Airport's website:

***<https://www.flybouldercity.com/721/Doing-Business>***



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



**Demonstration of Good Faith Efforts - Forms 1, 2, and 3**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

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

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

Legal name of bidder/offeror's firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date



**FORM 2: LETTER OF INTENT**

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

Name of bidder/offeror's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

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

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

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

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

Date: \_\_\_\_\_

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

\_\_\_\_\_  
Signature of DBE's Authorized Representative

Date: \_\_\_\_\_

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

**Submit this page for each DBE subcontractor.**



**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)(v)(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: <input style="width:95%;" type="text"/>	Total Subcontract/Purchase Order Amount: <input style="width:95%;" type="text"/>
Authorized DBE Representative (Name and Title): <input style="width:95%;" type="text"/>	NAICS Code(s) Related to the Items to be Sold/Leased: <input style="width:95%;" type="text"/>

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  NO<sup>1</sup>  
 (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.**)

<sup>1</sup> 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 manufacture's facility)?  YES<sup>2</sup>  NO<sup>3</sup>

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased?  YES<sup>2</sup>  NO<sup>3</sup>

<sup>2</sup> 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%.

<sup>3</sup> 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**  
**DBE MONITORING AND 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 49 CFR Part 26.
3. The CITY 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.

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

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



**ATTACHMENT 8**  
**DBE CERTIFICATION APPLICATION FORM**  
**AND PERSONAL NET WORTH STATEMENT**  
**(WEB LINKS)**



Firms applying for DBE Certification in Nevada should visit the Nevada Unified Certification Program (NUCP) website. Application forms for DBE Certification in Nevada are completed online and submitted at no charge electronically to NDOT.

***<http://www.nevadadbe.com/website/dbe-program.php>***

A copy of the Uniform Certification Application as found in Appendix F of 49 CFR Part 26, and the and Personal Net Worth Statement are available to view online through the US Department of Transportation website at:

***<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>***



**ATTACHMENT 9**  
**NEVADA UNIFIED CERTIFICATION PROGRAM AGREEMENT**

# NEVADA UNIFIED CERTIFICATION PROGRAM AGREEMENT

## NEVADA UNIFORM CERTIFICATION PROGRAM

### **Section 1. Definitions**

### **Section 2. Administration**

2.1 Nevada Uniform Certification Program

2.2 Nevada Uniform Certification Committee

2.3 Non-applicable Contracts

### **Section 3. Procedures**

3.1 Policy for Processing Applications

3.2 Application and Decision

3.3 Denials

3.4 Removals

3.5 Appeals

3.6 Result of Appeal

### **Section 4. Standards**

4.1 Generally

4.2 Business Size

4.3 Confidentiality

### **Section 5. Cooperation**

## **SECTION 1. DEFINITIONS**

### **1.1 Agreement**

“Agreement” means this document, the Nevada Uniform Certification Program agreement.

### **1.2 Committee**

“Committee” means the Committee created by this document to administer and implement the UCP.

### **1.3 Contract**

“Contract” means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

### **1.4 Contractor**

“Contractor” means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

### **1.5 Department or DOT**

“Department” and “DOT” mean the United States Department of Transportation.

### **1.6 Disadvantaged Business Enterprise or DBE**

“Disadvantaged Business Enterprise” and “DBE” mean a for-profit small business concern --  
(a) 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

- (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it; and
- (c) Meets all certification criteria under 49 CFR, Part 26.

### **1.7 Processing Agency**

“Processing Agency” means the specific UCP agency to which a firm applies for DBE certification.

### **1.8 Joint Venture**

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

### **1.9 Operating Administration**

“Operating administration” means the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA).

### **1.10 Personal Net Worth**

“Personal net worth” means the net value of the assets of an individual remaining after total liabilities are deducted as defined in the Regulation.

## **1.11 Primary Industry Classification**

“Primary industry classification” means the North American Industry Classification System (NAICS) code designation which best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U. S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).

## **1.12 Recipient**

“Recipient” means a Nevada recipient of any of the following types of funds:

- (a) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the intermodal Surface Transportation Efficiency Act of 1991 (ISTEA). Pub L. 102-240, 105 Stat.1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat.107.
- (b) Federal transit funds authorized by titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or be Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21 Pub. L. **105-178**.
- (c) Airport funds authorized by 49 U.S.C. 47101, et. seq.

## **1.13 Regulation**

“Regulation” means 49 CFR, Parts 26 and 23, and any revisions, additions, deletions, or replacements.

## **1.14 Secretary**

“Secretary” means the Secretary of the United States Department of Transportation.

## **1.15 Socially and Economically Disadvantaged Individual**

Socially and economically disadvantaged individual” means any individual who is a citizen (or lawfully admitted permanent resident) of the United States as set forth in 49 CFR, Part 26.

**1.16 State**

“State” means the State of Nevada.

**1.17 Uniform Certification Program or UCP**

“Uniform Certification Program” and “UCP” mean the program created by this agreement.

**SECTION 2. ADMINISTRATION**

**2.1 Nevada Uniform Certification Program**

The Nevada Uniform Certification Program is established according to this agreement to certify all DBEs on DOT-assisted contracts in Nevada.

**2.2 Nevada Uniform Certification Committee**

The Nevada Uniform Certification Committee is established to implement and administer the Nevada Uniform Certification Program (UCP). The UCP shall follow all certification procedures and standards of 49 CFR Part 26, and shall comply with all certification and nondiscrimination requirements of the regulation. The Committee shall consist of the Director of the State of Nevada Department of Transportation or designee; the Director of Aviation of the Clark County Department of Aviation, McCarran International Airport, or designee; the President-CEO for Reno-Tahoe Airport Authority, or designee; the General Manager of Regional Transportation Commission of Southern Nevada, or designee; the Executive Director of Regional Transportation Commission of Washoe County, or designee; and any agencies within the state of Nevada who may become recipients of DOT-assisted contracts. Any subsequent agencies will be invited to participate through a memorandum of Understanding. The agency shall have the option to participate as a certifying agency, a non-certifying Committee member, or may participate solely as a user of the UCP Directory.

(a) The Committee shall:

- (1) Make all certification decisions on behalf of all recipients in the state with respect to participation in the DOT DBE Program;

- (i) Certification decisions by the Committee shall be binding on all recipients within the state.
- (ii) The Committee shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state of Nevada.
- (iii) The Committee shall carry out all obligations of recipients with respect to certification.

(2) Ensure that only firms certified as eligible DBEs under this section participate as DBEs in each recipient’s program by only re/certifying eligible DBEs as DBEs (This does not require the Committee to monitor the recipients);

(3) Maintain a Uniform DBE directory containing, for all firms certified by the Committee (including those from other states certified under the provisions of this section), in the listing for each firm, its address, phone number, and the types of work the firm has been certified to perform as a DBE. The Committee shall also:

- (i) print the directory at least annually;
- (ii) make updated information available to contractors and the public on request;
- (iii) make the directory available to the public electronically, on the internet, as well as in print; and

a) the electronic directory will be maintained by the Agency designated by this Committee on their website for public viewing.

(b) the electronic directory will be updated as needed by the designated Agency.

(4) Follow all certification procedures and standards of this agreement, on the same basis as recipients;

(5) Cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations;

(6) Implement DOT directives and guidance concerning certification matters; and

(7) Make all decisions administering and implementing the UCP.

(b) All certifications by the Committee shall be pre-certifications; i.e., certifications that have been made final before the opening date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(c) The Committee is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs certifying under 49 CFR 26 that are considering the firm's application.

(d) The Committee may accept the certification of any other UCP or DOT recipient. The Committee may also enter into written reciprocity agreements with other UCPs.

(e) This agreement shall commit recipients to ensuring that the Committee has sufficient resources and expertise to carry out the requirements of this agreement.

(1) Each Recipient shall allocate sufficient funding to ensure the implementation of this Program. No significant additional funding or shifting of resources is required to carry out the requirements of the UCP.

(f) The UCP will be fully operational immediately upon the approval of the agreement by the Secretary.

## **2.3 Non-applicable Contracts**

(a) If a recipient is letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this agreement does not apply to the contract.

(b) If the recipient is letting a contract in which DOT financial assistance does not participate, this agreement does not apply to the contract.

## **SECTION 3. PROCEDURES**

### **3.1 Policy for Processing Applications**

Certification applications are not processed for:

(a) Not for profit firms.

Firms who have been determined as ineligible to participate in the DBE program

and have been denied certification based on 49 CFR, Parts 26 and 23 shall not reapply for certification for twelve (12) months from date of denial

In order to mitigate the administrative and processing costs incurred by the Processing Agency, firms who withdraw their applications shall not reapply for certification for six (6) months from date of withdrawal.

### **3.2 Application and Decision**

(a) To become a DBE a firm must submit an application to the Committee through one of the designated Processing Agencies of the Committee. The designated Processing Agencies are: Clark County Department of Aviation (DOA), Reno-Tahoe Airport Authority (RTAA), or State of Nevada Department of Transportation (NDOT). The Committee shall:

- (1) Use the uniform application required by 49 CFR Part 26;
- (2) Ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(b) The Processing Agency shall review all information on the form and associated documentation provided by DBE applicant.

(c) The Processing Agency shall conduct an onsite visit to the principal offices of the firm. Any other Committee Member(s), or designee, may also attend. The Processing Agency shall be responsible to:

- (1) Interview the principal officers of the firm and review their resumes and/or work histories; and
- (2) Perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the local area. The Committee may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(d) The Processing Agency shall report its findings and make a recommendation to the Committee relative to an applicant firm's eligibility. The Committee shall meet monthly, either in person, by phone, electronically or any combination thereof, to review and determine certification eligibility.

(e) Three (3) Committee members, or designee(s), shall constitute a quorum, and the approval of the quorum regarding certification decisions shall be binding on the entire Committee.

(f) The Committee shall take all the following steps in determining whether a DBE firm meets the standards of section 3 of this agreement:

- (1) If the firm is a corporation, analyze the ownership of stock in the firm;
- (2) Analyze the bonding and financial capacity of the firm;
- (3) Determine the work history of the firm, including contracts it has received and work it has completed;
- (4) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- (5) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (6) Follow the on-site reporting form and standards set forth by the Committee.

(g) The Processing Agency shall maintain the files of DBEs processed by that agency. When a Committee member, in connection with its consideration of the eligibility of a firm, makes a written request for certification information the Processing Agency has obtained about that firm (e.g., including application materials or the report of a site visit, if the Processing Agency has made one to the firm), the Processing Agency shall promptly make the information available to that member.

(h) The Committee, including the Processing Agency, shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential, personal financial or business information, consistent with applicable DBE rules, Federal, state, and local law.

(i) Once the Committee has certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of subsection 3.4 of this agreement. The Committee may elect not to require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(j) Every DBE certified by the Committee shall inform the Processing Agency, in writing, of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this agreement or any material change in the information provided in the Committee's application form.

- (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
- (2) The DBE shall attach supporting documentation describing in detail the nature of such changes.
- (3) The notification of changes shall take the form of an affidavit sworn to by the owners of the firm before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE shall provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, it may be deemed to have failed to cooperate in accordance with section 26.83(l)(3) of the Regulation.

(k) Every DBE shall provide to the Committee, via the Processing Agency, on the anniversary of the date of the DBE's certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit shall affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified the Committee under paragraph (e) of this section. The affidavit, which shall be provided by the Processing Agency, shall specifically affirm that the firm continues to meet the size standards for a small business as established by SBA business size criteria, the subpart of 49 CFR Part 26 governing concession size standards, or any other cap provided in 49 CFR Part 26, documenting this affirmation with supporting documentation of the firm's size and gross receipts. If the DBE fails to provide this affidavit in a timely manner, it shall be deemed to have failed to cooperate under section 5(a) of this agreement.

(h) The Processing Agency shall present applications for certification to the Committee within 90 days of receipt of all information required under this part from the applicant firm. The Processing Agency may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. The Committee shall make certification decisions at the time the application is presented to the Committee by the Processing Agency unless specific additional information is deemed to be required by the Committee to assist in rendering a decision on an applicant's eligibility. The Processing Agency shall request such additional information from applicant within thirty (30) days, and shall re-present the case to the Committee at the next meeting of the UCP, immediately following receipt of information. The Committee's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under section 3.5 of this

agreement.

### **3.3 Denials**

(a) When the Committee denies a request by a firm to be certified as a **DBE**, which is not currently certified by the recipients or the Committee, the Processing Agency shall provide the firm a written explanation of the Committee's reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant, on request.

(b) When the Committee makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under section 3.5 of this agreement. Firms may reapply for Certification in as specified in Section 3.1

### **3.4 Removals**

Consideration for removal of eligibility may occur via internal review of the Processing Agency per 49CFR, Part 26.87 (3)(b), DOT/FHWA/FTNFAA directive to initiate a proceeding per 49CFR Part 26.87 (3)(c), or a third party complaint. Third party complaints shall be processed by the UCP Committee as follows:

(a) Ineligibility complaints by a third party.

(1) Any person may file with the Committee, through any one of the member agencies, a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The Committee is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. Confidentiality of complainants' identities shall be protected as provided in section 26.109(b) of the Regulation.

(2) Once acknowledged by the Committee the complaint will be referred to the Processing Agency who shall review its records concerning the firm, any material provided by the firm and the complainant, and other available information, and present its results and recommendations to the Committee. The Processing Agency, either independently or under recommendation by the Committee, may request additional information from the firm or conduct any other investigation that it deems necessary to render a decision.

(3) If the Committee determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it shall instruct the Processing Agency to provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the Committee determines that such reasonable cause

does not exist, it shall instruct the Processing Agency to notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

**Committee or Processing Agency-initiated proceedings.** If, based on other information that comes to the attention of the Committee or a Processing Agency, it determines that there is reasonable cause to believe that a currently certified firm is ineligible, the Processing Agency shall conduct an investigation and inform the Committee of its actions. If the Processing Agency finds evidence that the firm should be considered ineligible, the information shall be provided to the Committee. Once the Committee makes a determination, the Processing Agency shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(b) Hearing. When the Processing Agency notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraph (a) or (b) of this section, it shall give the firm an opportunity for a hearing with a third party Reviewing Agency identified in 3.4(d) of this agreement, at which time the firm may respond to the reasons for the recommendation to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, the Committee bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) The Committee shall maintain a complete record of the hearing and will retain the original record of the hearing at the site of the Processing Agency. The Committee may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the Committee bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

(4) The decision of the reviewing agency shall be binding upon the UCP.

(c) Separation of functions. The Committee shall ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision maker shall be an individual who is knowledgeable about the certification requirements of the DBE program and this agreement as agreed upon by mutual consent by the Committee. The Committee has currently agreed to utilize the following reviewing agencies: Contracting: Arizona Dept. of

Transportation and Alaska Dept. of Transportation DBE Program Managers.  
Concessions: Director of Clark County Department of Aviation. The Processing Agency shall facilitate the hearing, by telephone, at no cost to the DBE.

(d) Grounds for Decision. The decision to remove eligibility shall not base a on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. Such a decision shall be based only on one or more of the following:

- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available to the Committee at the time the firm was certified;
- (3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
- (4) A change in the certification standards or requirements of the Department since the Committee certified the firm; or
- (5) A documented finding that the Committee's determination to certify the firm was factually erroneous.

(e) Notice of decision. Following the final decision, The Committee/Processing Agency shall provide the firm written notice of the decision not later than ten (10) working days of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice shall inform the firm of the consequences of the decision and of the availability of a final appeal to the U.S. Department of Transportation as stated in 3.5 of this agreement.

(f) Status of firm during proceeding.

- (1) A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (f) of this section.

(g) Effects of removal of eligibility. When the Committee removes a firm's eligibility, it shall take the following action:

- (1) The firm shall not be a DBE even though the firm's name may remain in the directory until the next update.
- (2) When a prime contractor has made a commitment to use the ineligible firm, or a Recipient has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before the Committee issues the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal

or overall goal. The Recipient shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to the Recipient that it has made a good faith effort to do so.

(3) If a prime contractor has executed a subcontract with the firm before the Committee has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard or Personal Net Worth cap during the performance of the contract, the Recipient may continue to count its participation on that contract toward overall and contract goals.

(h) Availability of appeal. A firm may appeal the removal of eligibility under this section to the Department under section 3.5 of this agreement.

### **3.5 Appeals**

A firm denied certification or whose eligibility is removed by the Committee, may make an administrative appeal to the Department.

(a) A complainant in an ineligibility complaint to the Committee may appeal to the Department if the Committee does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding as outlined in Section 3.4, above, determines that the firm is eligible.

(b) Send appeals to the following address:  
U.S. Department of Transportation  
Office of Civil Rights  
400 7th Street, S.W., Room 5414  
Washington, D.C. 20590

(c) Pending the Department's decision in the matter, the Committee's decision remains in effect. The Department does not stay the effect of the Committee's decision while it is considering an appeal.

(d) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

### **3.6 Result of Appeal**

(a) The decision of an appeal under section 3. of this agreement is binding on all recipients party to the UPC.

(b) The UCP shall take action as described in the Regulation to implement the result of the appeal.

## **SECTION 4. STANDARDS**

### **4.1 Generally**

- (a) In determining whether to certify a firm as eligible to participate as a DBE, the Committee shall apply the standards set forth in 49 CFR, Part 26.
- (b) The Committee may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
- (c) The Committee shall evaluate the eligibility of a firm on the basis of the requirements set forth in the Regulation.

### **4.2 Business Size**

- (a) To be an eligible DBE, a firm (including its affiliates) shall be an existing small business, as defined by Small Business Administration (SBA) standards or as determined by governing Department regulations. The Committee shall apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts where not otherwise revised by conditions of the Regulation limiting overall size standards or in determining size standards for Airport Concessions.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$17,420,000. The Secretary may adjust this amount for inflation from time to time.

### **4.3 Confidentiality**

The Committee shall safeguard from disclosure to unauthorized persons information that may reasonably be considered as confidential personal-financial or business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, the Committee shall not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without written consent of the submitter.

## **SECTION 5. COOPERATION**

All participants in the Department's DBE program (including, but not limited to, the Committee, 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 Committee 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.)



**ATTACHMENT 10**  
**SMALL BUSINESS ELEMENT**



## Small Business Element

### 1. Objective/Strategies

In accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23 and Part 26, The City of Boulder City (CITY) has established a race-neutral Small Business Element (SBE) to provide for the structuring of contracting requirements and concession opportunities in effort to facilitate competition and expand opportunities for small businesses at the Boulder City Municipal Airport.

The SBE program will operate in a race and gender-neutral manner. The program will not be used to discriminate against any company or groups of companies. It has been designed to include all segments of the business community and is open to participation without regard to race, color, sex, religion, national or ethnic origin, age or disability. The CITY's SBE program is open to small businesses regardless of their location. There will be no geographic preference or limitation imposed on small businesses participating in federally funded contracts.

The CITY is committed to taking all reasonable steps to eliminate obstacles for small businesses that may preclude their participation in procurements as contractors or subcontractors. The CITY will meet its objectives using a combination of the following strategies:

- **Small Business Set-Asides:** Prime contracts under \$50,000 will be reviewed as a potential set-aside for small businesses. Only those firms meeting the definition of a small business, will be eligible for award of these contracts.
- **Unbundling:** For large prime contracts and agreements over \$250,000, the CITY will seek opportunities to unbundle projects. Unbundling projects entails separating large contracts into smaller contracts, making the contracting opportunity more suitable for small business participation.
- **Small Business Participation:** Prime contractors/concessionaires should make every effort to solicit small businesses, including DBEs and ACDBEs, to participate as sub-contractors, service providers, suppliers, etc. The CITY will encourage prime contractors to provide subcontracting opportunities to small businesses rather than self-performing all the work involved.

### 2. Definition

A *small business concern* is defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR part 26, §26.65(b).

A business meeting the above requirements is eligible to participate as a small business in the CITY's SBE program. The CITY's SBE program does not take into consideration race or gender when determining eligibility of participation in the SBE program.

For additional information pertaining to the Small Business Size Act and size regulations, visit the U.S. Small Business Administration website, <http://www.sba.gov>.

*Personal Net Worth* standards will be consistent with 49 CFR 26 thresholds.



### 3. Verification

The CITY will accept small business participation in the SBE program from those businesses (DBEs and non-DBEs) that have had their small business status verified. The CITY does not take into consideration race or gender in the determination of meeting the small business requirement.

Businesses that are currently certified as one of the following automatically qualify to participate in the CITY's SBE program since they meet the prescribed definitions for small business eligibility:

- By the Nevada UCP as an **ACDBE** or **DBE**,
- By the U.S. Small Business Administration as one of the following:
  - Small Disadvantaged Business (**SBD**)
  - Women-Owned Small Business/Economically Disadvantaged Women-Owned Small Businesses (**ED/WOSB**)
  - Veteran-Owned Small Business/Service-Disabled Veteran-Owned Small Business (**SD/VOSB**)
  - 8(a) Small Business Development Program (**8(a)**)
  - SBA Mentor-Protégé Program (**SBA MP**)
  - HUBZone Program (**HUBZone**)
- By the Nevada Emerging Small Business (**ESB**) Program, as either ESB Tier 1 or ESB Tier 2

Businesses not certified under any of the programs listed above but believe that their business qualifies as a small business in accordance with 13 CFR Part 121 or 49 CFR Parts 23 and 26 are required to submit all documentation to the CITY for verification. Non-certified small business will also be referred to the appropriate certifying agency to pursue certification.



Small Business Certifications Accepted for Participation in the CITY’s SBE Program

Jurisdiction	Certification	Link
Federal	Disadvantaged Business Enterprise (DBE)	<a href="http://www.nevadadbe.com/website/dbe-program.php">http://www.nevadadbe.com/website/dbe-program.php</a>
Federal	Airport Concessionaire Disadvantaged Business Enterprise (ACDBE)	<a href="http://www.nevadadbe.com/website/dbe-program.php">http://www.nevadadbe.com/website/dbe-program.php</a>
Federal	Small Disadvantaged Business (SBD)	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business">https://www.sba.gov/federal-contracting/contracting-assistance-programs/small-disadvantaged-business</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
Federal	Women-Owned Small Business / Economically Disadvantaged Women-Owned Small Businesses (ED/WOSB)	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/women-owned-small-business-federal-contract-program</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
Federal	Veteran-Owned Small Business / Service-Disabled Veteran-Owned Small Business (SD/VOSB)	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-contracting-assistance-programs">https://www.sba.gov/federal-contracting/contracting-assistance-programs/veteran-contracting-assistance-programs</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
Federal	8(a) Small Business Development Program (8(a))	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/8a-business-development-program</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
Federal	SBA Mentor-Protege Program (SBA MP)	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/sba-mentor-protege-program</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
Federal	HUBZone Program (HUBZone)	Program Information: <a href="https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program">https://www.sba.gov/federal-contracting/contracting-assistance-programs/hubzone-program</a>  Certification Search: <a href="https://dsbs.sba.gov/">https://dsbs.sba.gov/</a>
State	Emerging Small Business Program (ESB)	<a href="https://goed.nv.gov/programs/emerging-small-business-esb/">https://goed.nv.gov/programs/emerging-small-business-esb/</a>



#### 4. Monitoring/Record Keeping

As part of the SBE program, the CITY will monitor and track participation of DBE/ACDBEs and other small businesses in federally-funded projects. Only small businesses that are certified as DBE/ACDBEs will be counted towards the CITY's overall DBE/ACDBE goals. Participation by SBEs who are not certified as DBEs or ACDBEs will be tracked for informational purposes. These 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.

The small business participation will be monitored by reviewing project bidder lists, financial reporting documentation, pay applications for construction projects, or annual ACDBE reports for concessions.

#### 5. Assurances

- The program is permitted under state law;
- Certified DBE/ACDBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
- 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;
- Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE/ACDBE certification to become certified; and
- The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).