



**TUCSON**  
**AIRPORT AUTHORITY**  
TUCSON INTERNATIONAL AIRPORT • RYAN AIRFIELD

**TUCSON AIRPORT AUTHORITY**  
**DBE PROGRAM (Effective 9/30/24)**  
**49 CFR PART 26**

APPROVED BY: *D. Bewley*  
Danette M. Bewley, A.A.E., President/CEO



**Tucson Airport Authority  
 Disadvantaged Business Enterprise  
 Program (DBE) Policy Statement**

Policy No.	2024-09
Effective Date	9/30/2024
Authorized By	President/CEO
Supersedes Board Adoption	12/08/2021

The Tucson Airport Authority (TAA), certified operator of Tucson International Airport (TUS) and Ryan Airfield (RYN), has received Federal financial assistance from the U.S. Department of Transportation ("USDOT") and, as a condition of receiving this assistance, has signed an assurance that it will comply with the requirements of USDOT regulations (49 CFR Part 26; hereinafter, the "DBE Regulations") concerning the participation of disadvantaged business enterprises ("DBEs") in DOT programs.

It is the policy of TAA to comply with the requirements of the DBE Regulations and to ensure that DBEs, as defined in the DBE Regulations, have a fair and equal opportunity to participate in TAA's USDOT-assisted projects or concession contracts. To the extent reasonably possible and consistent with other legal requirements, it is the goal of TAA:

- a) To ensure nondiscrimination in the award and administration of TAA's USDOT-assisted contracts as per **49 CFR 26.1(a)**;
- b) To create a level playing field on which DBEs can compete fairly for TAA's USDOT-assisted or concession contracts as per **49 CFR 26.1(a)**;
- c) To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- d) To ensure that only firms that fully meet eligibility standards are permitted to participate as DBEs at our airport;
- e) To help remove barriers to the participation of DBEs in TAA's USDOT assisted contracts and opportunities as per **49 CFR 26.1(a)**;
- f) To promote the use of DBEs in all types of federally assisted contracts and procurement activities; and
- g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- h) To provide appropriate flexibility to our airports in establishing and providing opportunities for DBEs.

The Compliance Administrator has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Compliance Administrator is responsible for implementing all aspects of the DBE program. The DBE Liaison Officer shall report directly to the CEO with respect to the implementation of the TAA DBE Program. Implementation of the DBE program is accorded the





same priority as compliance with all other legal obligations incurred by TAA in its financial assistance agreements with the United States Department of Transportation.

TAA has disseminated this policy statement to the TAA Board of Directors and all the components of our organization. TAA has distributed this statement to DBE and non-DBE business communities in our area. The statement was distributed at the public comment meeting for the DBE program and via the TAA website. A copy of this policy statement shall be available through the solicitation processes for all USDOT-assisted or concession contracts.

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Authorized by:

A handwritten signature in blue ink that reads "Danette Bewley".

Danette Bewley  
President/CEO

9/30/24

Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

TAA will use terms in this program that have their meaning defined in Part 26, §26.5.

"CEO" means TAA's Chief Executive Officer.

"DBE" means a disadvantaged business enterprise as defined in the DBE Regulations.

"DBE Program" means TAA's DBE Program.

"DBE Regulations" means 49 CFR Parts 26.

"DOT" means the United States Department of Transportation.

"FAA" means the United States Federal Aviation Administration.

"DBELO or Liaison Officer" means the DBE Liaison Officer appointed by the CEO pursuant to the Policy. The name, address, and telephone number of the Liaison Officer is listed under Section 26.25 of this document.

"Policy Statement" means the policy statement dated September 30, 2024, a copy of which is included in the front of this document.

"TAA" means Tucson Airport Authority.

"UCP" means the unified certification program being developed by DOT grant recipients in the State of Arizona, including TAA.

"AZUCP" means the Arizona Unified Certification Program being developed by grant recipients within the State of Arizona, including TAA.

Other capitalized terms used herein and not otherwise defined shall have the meanings given in the DBE Regulations.

## **Section 26.7 Non-discrimination Requirements**

TAA 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, TAA 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 Program with respect to individuals of a particular race, color, sex, or national origin.

## **Section 26.11 Record Keeping Requirements**

### Reporting to DOT: 26.11(b)

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

DBE participation will be reported to the FAA as follows:

TAA 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. TAA will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to the FAA as instructed thereby.

### Race-Neutral and Race-Conscious Participation

TAA is in the 9<sup>th</sup> Circuit and doesn't not use race-conscious goals. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### Bidders List: 26.11(c)

TAA will create and maintain a Bidders List collected via the “Tucson Airport Authority Bidder List Form” and enter it into a system designated by DOT. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on TAA DOT-assisted contracts, for use in helping to set TAA's overall goals. The Bidders List form will include the firm name, firm address including ZIP code, the firm's status as DBE or non-DBE, race and gender of firm's majority owner, NAICS codes

applicable to each scope of work the firm sought to perform in its bid, age of firm, and annual gross receipts of firm.

This information will be collected in the following way(s):

TAA will collect DBE and non-DBE contractor and subcontractor information from the Tucson Airport Authority Bidder List Form, found under Attachment 3, which every bidder is required to fill out and submit with their bids or initial responses to negotiated procurements as per 49 CFR 26.11(c)(3). This form is also available on the TAA website and can be filled out by anyone desiring to perform work for TAA.

You must collect the data from all bidders for your 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. TAA 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 data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Records retention and reporting:

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

**Section 26.13 Federal Financial Assistance Agreement**

Assurance: 26.13(a)

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

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

The Tucson Airport Authority 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. TAA 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 TAA 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 TAA of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

Contract Assurance:

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

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

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

**ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

TAA 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. TAA is not eligible to receive DOT financial assistance unless DOT has approved TAA's DBE program and TAA is in compliance with it and Part 26. TAA will continue to carry out the DBE program until all funds from DOT financial assistance have been expended. TAA does not have to submit regular updates of its DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

**Section 26.23 Policy Statement**

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

**Section 26.25 DBE Liaison Officer (DBELO)**

TAA has designated the following individuals as DBE Liaison Officers:

DBE Program Liaison Officer

Bert Resimont  
Compliance Administrator  
7250 S. Tucson Blvd, Suite 300  
Tucson, AZ 85756  
Telephone Number: (520) 573-4892  
Fax Number: (520) 573-8029  
E-mail Address: bresimont@flytucson.com

Assistant DBE Program Liaison Officer

Carolyn Laurie, Director  
Grants & Compliance  
7250 S. Tucson Blvd., Suite 300  
Tucson, AZ 85756  
Telephone Number: (520) 573-4859  
Fax Number: (520) 573-8029  
E-mail Address: claurie@flytucson.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TAA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the President/Chief Executive Officer of Tucson Airport Authority concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials and TAA staff. The DBELO works closely with the Procurement and Legal Departments in the administration of the program. The duties and responsibilities of the group include the following:

- Gathers and reports statistical data and other information as required by DOT.



- Reviews third party contracts and purchase requisitions for compliance with this program.
- Analyzes available data regarding DBE participation and works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes TAA's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the CEO\governing body on DBE matters and achievement.
- Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars and events.
- Acts as liaison to the Uniform Certification Program in Arizona.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Verifies DBE status using the Uniform Certification Program directory of certified DBEs.

### **Section 26.27 DBE Financial Institutions**

It is the policy of TAA 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.

### **Section 26.29 Prompt Payment Mechanisms**

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

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

TAA 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, TAA has selected the following method to comply with this requirement:

TAA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contracts, 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 TAA's payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, TAA 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.

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

- TAA proactively reviews contract payments to subcontractors including DBEs *on a monthly basis*. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to TAA by the prime contractor.

### **Section 26.31 Directory**

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

### **Section 26.33 Over-concentration**

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

### **Section 26.35 Business Development Programs**

TAA has not established a business development program.

### **Section 26.37 Monitoring Responsibilities**

TAA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in TAA's DBE program.

TAA actively monitors participation by utilizing the online B2Gnow software application to monitor and report running tallies of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments.

#### Monitoring Payments to DBEs and Non-DBEs

TAA 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, TAA 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):

- Posting prime contractor payments to an online database called B2Gnow (Fly Tucson Diversity Compliance) that is accessible to subcontractors to alert them to the start of the 7-day clock for payment
- Use of an automated system (PMWeb) that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system
- Conducting monthly audits of TAA payments to prime contractors and payments prime contractors make to subcontractors for accuracy and timely pay

TAA undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. Implement a monitoring and enforcement mechanism to ensure that work committed to DBES at contract award or subsequently (*i.e.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Conduct quarterly Commercially Useful Function (CUF) reviews, investigations and document verification of actual contracted work/tasks performed by DBEs.
2. Implement a monitoring and enforcement mechanism that will include written certification that TAA has reviewed contracting records and monitored work sites for this purpose. Monitoring and enforcement will include virtual and in-person meetings

with contractors and documenting results in TAA's online diversity compliance system B2Gnow.

3. Utilize an online diversity compliance system (B2Gnow) that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, TAA will show both commitments and attainments, as required by the DOT uniform reporting form.

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

TAA proactively reviews contract payments to subcontractors including DBEs monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to TAA by the prime contractor.

#### Prompt Payment Dispute Resolution

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

A meeting between the prime contractor and applicable subcontractors, also to include staff from TAA, such as project manager and DBELO shall begin the dispute resolution process.

TAA has established, as part of its DBE program, the following mechanisms(s) to ensure prompt payment and return of retainage [*examples of mechanisms include the following*]:

(1) Alternative dispute resolution (ADR)

The Prime Contractor, prior to TAA issuing the Notice to Proceed, must submit to TAA a detailed alternative dispute resolution plan for approval.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the Prime Contractor ensures that the subcontractors are promptly paid for the work they have performed.

The Prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 7 days from the receipt of each payment the Prime Contractor receives from TAA. Failure by the Prime 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 TAA 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 Prime Contractor from future bidding as non-responsible.

### Prompt Payment Complaints

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

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

### Enforcement Actions for Noncompliance of Participants

TAA will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime

- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
- Termination of contract

TAA will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

TAA 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 is performed by the DBELO with the assistance of project managers and consultants. TAA will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose. Monitoring of worksites includes:

- Interviews conducted with prime and subcontractor employees, including worksite photographic documentation and verification of equipment ownership;
- Monthly reviews of invoices received for project work to verify accuracy of invoice amounts and work being completed per the contract;
- Ensuring that prime contractors are conducting and documenting their own CUF reviews of subcontractors per TAA's requirements, and TAA reviews for accuracy and files for historical documentation.

#### **Section 26.39 Fostering small business participation.**

TAA 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.

TAA's Small Business Program Element is incorporated as Attachment 10 to this DBE Program. The program element will be actively implemented to foster small business participation. Implementation of the small business element is required in order for TAA to be considered by DOT as implementing this DBE program in good faith.

**SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

**Section 26.43 Set-asides or Quotas**

TAA does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

TAA will establish an overall DBE goal covering a three-year federal fiscal year period if TAA anticipates awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) TAA will submit its Overall Three-year DBE Goal to FAA by August 1 of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA at

[DBE and ACDBE Reporting Requirements for Airport Grant Recipients- Sept. 2021](#)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If TAA 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 TAA will seek to fulfill the objectives outlines 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. TAA will use DBE Directory information and Census Bureau Data as a method to determine the base figure. TAA 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. TAA 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 TAA’s market.

In establishing the overall goal, TAA will provide for consultation and publication. This includes consultation with minority, women, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by TAA 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 methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which TAA 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, TAA will publish a notice announcing the proposed overall goal before submission to the FAA on August 1<sup>st</sup>. The notice will be posted on TAA 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 official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of TAA. This notice will provide that TAA and FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. **The public comment period will not extend beyond the August 1<sup>st</sup> deadline.**

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

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

### Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the



regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

#### Prior Operating Administration Concurrence

TAA 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 TAA for calculating is inadequate, FAA may, after consulting with TAA, adjust the overall goal or require that the goal be adjusted by TAA. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

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

#### **Section 26.47            Failure to meet overall goals**

TAA 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 TAA fails to administer its DBE program in good faith.

TAA understands that to be considered as being 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.

TAA 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:

- Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- Establish specific steps and milestones to correct the problems identified in the analysis to enable us to meet the goal for the new fiscal year;
- Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of section 26.47. TAA will retain a copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

## **Section 26.51 Means Recipients Use to Meet Overall Goals**

### Breakout of Estimated Race-Neutral & Race-Conscious Participation

TAA intends to 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 may include, but are not limited to the following:

- 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.
- Plan or participate in community outreach activities for the purpose of informing potential contractors of available business opportunities.
- Maintain a current DBE Directory, through the AZUCP, as a source of identifying all DBEs currently recognized by TAA; provide access information to the DBE Directory to prospective proposers and contractors at all pre-submittal meetings; and provide access information to the DBE Directory with all solicitation documents.
- Make plans and specifications available for inspection by contractors at no cost during regular office hours of TAA.
- Establish prompt payment clauses in all contracts to facilitate the receipt of timely progress payments by subcontractors for work completed, following requests for payment.
- Maintain an "Interest List" of all consultants, contractors, suppliers and DBEs who have expressed an interest in contracting with TAA. This interest list form is located on TAA's website and can be completed and submitted online. This interest list is part of TAA's community outreach efforts and involves sharing information on how to complete/submit the online form at events, and for general business interest phone calls and emails. When procurement solicitations occur, email notifications are sent to firms on the interest list who have expressed interest in specific NAICS code or work categories.
- Utilization, when possible, of intergovernmental purchasing agreements that incorporate participation of DBEs, such as State of Arizona Procurement, Mohave Educational Services Cooperative and Western States Contracting Alliance.

- Development of a TAA website link that contains all contracting and procurement opportunities.
- Development of links on the TAA website which will enable access to the AZUCP website, which contains the DBE Directory, DBE certification application and instructions, contact information for certifying agencies, Arizona DBE calendar for training and special events.
- Direct mail campaign via email to chambers of commerce and other local trade associations for distribution of TAA procurement opportunity notices directly to their membership.
- Hold annual meetings with interested parties to discuss TAA's goal setting process and procurement opportunities, and to provide time for any questions about working with TAA.

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

TAA will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

### **Contract Goals**

TAA is in the 9<sup>th</sup> Judicial Circuit and does not establish contract goals for its DBE Program.

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

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

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

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

### **Demonstration of good faith efforts (pre-award)**

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

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

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

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - i. The names and addresses of DBE firms that will participate in the contract;
  - ii. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - iii. The dollar amount of the participation of each DBE firm participating;
  - iv. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - v. Written confirmation from each listed DBE firm that 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 SS 26.53 (c)(1).
  - vi. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;



(3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:

(4) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by TAA. 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 TAA 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, TAA 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 TAA solicits proposals to design and build a project with minimal project details at time of letting, TAA 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, TAA will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. TAA 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.

TAA 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, TAA

**will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

### **Administrative Reconsideration of Good Faith Efforts Determinations**

Within 5 business days of being informed by TAA that its bid/proposal 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: Tucson Airport Authority, Carolyn Laurie, 7250 South Tucson Boulevard, Suite 300, Tucson, Arizona 85756, 520-573-4859, claurie@flytucson.com. 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 TAA Reconsideration Official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

### **Good Faith Efforts procedural requirements (post-solicitation)**

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

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

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

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

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

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [*bid/solicitation*] response to perform the work and supply the materials for which

each is listed unless the contractor obtains prior written consent of TAA as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

### **Section 26.55 Counting DBE Participation**

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

In the case of post-award substitution or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of Part 26 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).

### **Section 26.65 Business Size Determinations**

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.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

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

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

City of Tucson - <https://tucsonaz.diversitycompliance.com/>

City of Phoenix - <https://phoenix.diversitycompliance.com/>

Arizona Department of Transportation - <https://adotdoors.dbesystem.com/>

Links to partner websites for Arizona Uniform Certification application forms and documentation requirements are found in Attachment 8 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

TAA is a member of the Unified Certification Program (UCP) administered by The State of Arizona. The UCP will meet all of the requirements of Section 26.81.

TAA is not a certifying agency; therefore, Sections 26.83 through 26.89 are being omitted.

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Section 26.101 Compliance Procedures Applicable to TAA**

TAA understands that if it fails to comply with any requirement of this part, TAA 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.

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

**Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs**

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 TAA is in noncompliance with part 26, the appropriate DOT office will promptly send TAA, return receipt requested, a written notice advising that there is reasonable cause to find TAA in noncompliance. The notice states the reasons for this finding and directs TAA to reply within 30 days concerning whether you wish to begin conciliation.



**(4) Conciliation.**

- a. If TAA 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 TAA and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and TAA is regarded as complying. The conciliation agreement sets forth the measures TAA has taken or will take to ensure compliance. While a conciliation agreement is in effect, TAA 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 TAA fail to carry out the terms of a conciliation agreement, TAA is in noncompliance.
- d. If TAA 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.

**Section 26.105 Enforcement Actions Applicable to FAA Programs**

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

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

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

**Section 26.107 Enforcement Actions Applicable to Participating Firms**

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

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that

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

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

### **Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation**

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

TAA will ensure that entity identifying information and personal identifying information (as such terms are defined in A.R.S. § 13-2001) is secure and cannot be accessed, viewed or acquired unless authorized or required by law. TAA will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local 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. 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 Tucson Airport Authority, 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. TAA understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENTS**

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

**ATTACHMENT 1**  
**Regulations: 49 CFR Part 26**

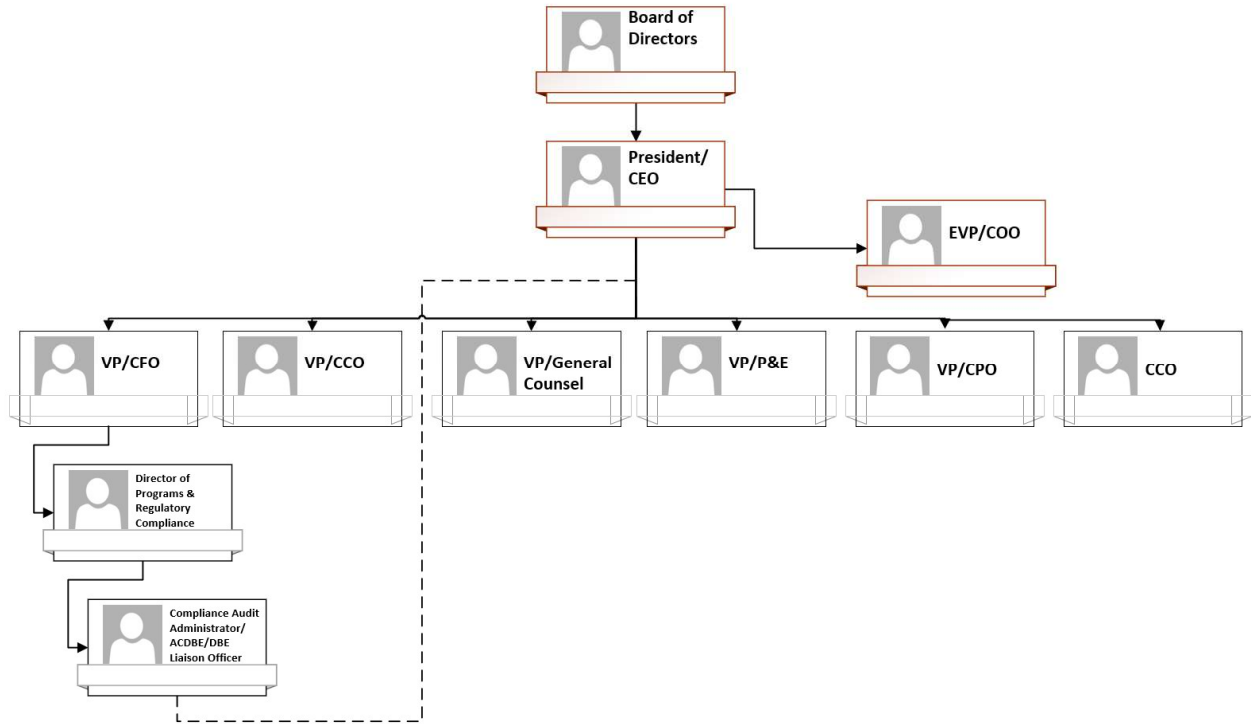
**Title 49 Subtitle A Part 26**

<https://www.ecfr.gov/cgi-bin/text-idx?SID=69edb4528b8ac03be84ff9af9fe902f&mc=true&node=pt49.1.26&rgn=div5>



**ATTACHMENT 2**  
**Organizational Chart**

**Tucson Airport Authority Organizational Chart**



**ATTACHMENT 3**  
**Bidder List Collection Tools**





**TUCSON AIRPORT AUTHORITY  
 BIDDER INFORMATION FORM (Completion Required)**

The Tucson Airport Authority ("TAA"), in compliance with USDOT regulations, requires completion of the following information about firms submitting bids for federally funded projects or airport concession business. Please complete the form and submit with your bid/proposal.

Firm understands and agrees that the following information will be submitted to the United States Department of Transportation for statistical tracking.
Name of Firm: _____
Contact Person: _____
Address of Firm: _____
Telephone: _____
Fax: _____
Email Address: _____
Specialty of Firm: _____

Is the firm currently certified as a Disadvantaged Business Enterprise (DBE), Airport Concession Disadvantaged Enterprise (ACDBE), Small Business Enterprise (SBE) by any partner of the Arizona Unified Certification Program (City of Tucson, City of Phoenix, Arizona Department of Transportation)?

**DBE:** \_\_\_ Yes \_\_\_ No      **ACDBE:** \_\_\_ Yes \_\_\_ No      **SBE:** \_\_\_ Yes \_\_\_ No

If yes, please state from which certifying agency the firm received certification: \_\_\_\_\_

Age of firm (number of years since commencing business): \_\_\_\_\_

Firm Majority Owner Race: \_\_\_\_\_ Firm Majority Owner Gender: \_\_\_\_\_

NAICS code(s) applicable to each scope of work the firm seeks to perform in this bid:  
 \_\_\_\_\_

Annual gross receipts of the firm:

- |                                   |                                   |
|-----------------------------------|-----------------------------------|
| _____ Less than \$500,000         | _____ \$15,000,000 - \$20,000,000 |
| _____ \$500,000 - \$999,999       | _____ Over \$20,000,000           |
| _____ \$1,000,000 - \$1,999,999   |                                   |
| _____ \$2,000,000 - \$4,999,999   |                                   |
| _____ \$5,000,000 - \$9,999,999   |                                   |
| _____ \$10,000,000 - \$14,999,999 |                                   |

**ATTACHMENT 4**  
**Arizona DBE Directory**

<https://utracs.azdot.gov>



**ATTACHMENT 5**

**49 CFR § 26.45: Overall DBE Three-Year Goal Methodology**

**TUCSON AIRPORT AUTHORITY  
GOAL FOR PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES  
ON FEDERALLY FUNDED PROJECTS  
FISCAL YEARS 2024-2026**

The Tucson Airport Authority (“TAA”), as a recipient of funds administered by the United States Department of Transportation for use on approved airport projects, is required to develop goals for participation of disadvantaged business enterprises (“DBEs”) in those projects. The goal is expressed in terms of a percentage of DOT assisted contracts awarded by TAA that are paid to DBEs.

TAA anticipates awarding approximately \$250 million in federal funds for projects at Tucson International Airport and Ryan Airfield during Fiscal years 2024-2026.

*Methodology.* The first step in developing a goal is identifying the marketplace from which TAA obtains its contractors. The second step is to determine the general availability of DBEs in that marketplace doing the kind of work for which TAA will be contracting on federally funded projects during this fiscal year. The final step is to refine that base figure as appropriate to arrive at the overall goal.

*Marketplace.* Based on TAA’s existing bidders list, 43% of the bidders that have expressed an interest in TAA projects come from Pima County, which includes the Tucson metropolitan area. The rest come from counties across the State of Arizona, primarily from Maricopa County, which includes the Phoenix area. Twenty-one percent of the bidders are from out of state. TAA enters into agreements, on federally funded projects, in the areas of construction as well as professional services such as architectural/engineering services, surveying, and consulting. The relevant market for which TAA must determine DBE availability is therefore focused towards these types of businesses within the state of Arizona as a whole.

*Base Availability Figure.* In order to determine general DBE availability within TAA’s marketplace, TAA, in accordance with DOT regulations, relies primarily on relevant DBE directories, and census bureau data.

As described in DOT regulations, one method is to express the number of DBEs available to TAA as a percentage of the firms available in the relevant market area, based on census information obtained from the NAICS codes. After consultation with FAA representatives, it is apparent that the following method is the most appropriate for TAA in determining DBE availability.

Each DBE business in the AZ Unified Certification Program directories indicate a work specialty. Because out-of-state certified DBEs have performed only minimal work at TAA, only in-state contractors were considered in the analysis. The number of DBEs in each specialty was then compared to statewide registered businesses having a similar NAICS code listing. This statewide analysis of registered businesses was obtained from the NAICS County Business Patterns Code Comparison.

To obtain an overall base figure TAA then totaled the number of “DBE” businesses in those specialties in which TAA intends to perform work for federally funded projects in fiscal years 2024-2026 (numerator). This number was 1,786. We then totaled the “TOTAL BUSINESSES” in these same codes (obtained from the NAICS listings). This number was 53,983 (denominator). By dividing 1,786 by 53,983, the base figure of 3.31% emerged.

Adjustment.

TAA believes it is appropriate to adjust the base figure of 3.31% to give consideration of area experience regarding DBE availability and participation. As described above, the base figure of 3.31% is an estimate of the general availability of DBEs in the relevant marketplace. TAA’s last 3 years of DBE participation levels on federally funded projects, as reported to the FAA under Part 26, averaged 9.70%.

Averaging the availability of DBE firms and TAA’s past participation achievement result in 6.50%.

$$(3.31\% + 9.70\%) / 2 = 6.50\%$$

Based on these factors, we have concluded that a reasonable aspirational goal for TAA DBE participation would be approximately 7%. After seeking public participation as discussed hereafter, we set TAA’s overall goal at 7% for each of the fiscal years beginning on October 1, 2023 and running through September 30, 2026. We will express our contract goals as a percentage of the total amount of a DOT-assisted contracts awarded.

Based on the Ninth Circuit Court of Appeals decision in *Western States Paving v. Washington State Department of Transportation*, TAA has implemented a race-neutral program to meet the overall goal of 7%. Since eliminating race-conscious measures in its DBE program in response to *Western States*, TAA has increased DBE participation each year, and expects to continue to build on its successful race-neutral outreach program in order to meet its goals.

For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures and DBE participation through a subcontract on a prime contract that does not carry a DBE goal.

Public Consultation.

On Friday, April 21, 2023, at 2:00 p.m. at the Tucson Airport Authority Executive Conference Room, 7250 South Tucson Boulevard, TAA held a public meeting in-person and via Microsoft TEAMS for the purpose of gathering comments regarding the availability of disadvantaged and non-disadvantaged businesses, opportunities for DBEs and others in TAA contracting, and TAA’s efforts under Part 26 to establish a level playing field for DBE participation. TAA invited the Associated Minority Contractors of America, the Arizona Commerce Authority, the Arizona Alliance of Construction Trades, and posted a notice of the meeting with Reproductions, Inc.,

Shirley's Plan Service and Arizona Plan Room, which invited anyone else interested in attending the meeting and commenting upon or reviewing TAA's DBE plan and goal setting procedures. TAA received numerous inquiries from DBE firms as a result of the notice. The meeting was conducted in-person and also virtually via Microsoft Teams. Following the consultation meeting, TAA published a notice and request for comments regarding the proposed Part 26 goal of 7%. No comments were received.

Overall Goal.

After considering all of the above, TAA's overall aspirational goal for the fiscal years 2024-2026 is 7%.

TAA Race-Neutral Activities.

TAA will meet its overall goal by using race-neutral means of facilitating DBE participation. As a responsible corporate citizen, TAA encourages DBE participation to the extent reasonably possible and consistent with other legal requirements. The following measures are being taken with respect to all contracting and purchasing opportunities:

- Participate in outreach events such as:
  - DBE & Small Business Expos and Networking Events  
Sponsored by Arizona Department of Transportation
  - Reverse Trade Shows (Spring and Fall)  
Sponsored by National Institute of Governmental Purchasing Chapters
  - Southern Arizona Procurement Fair  
Sponsored by Southern Arizona Procurement Fair
  - DBE Outreach Meeting  
Sponsored by Tucson Airport Authority
- Maintain a DBE Directory, through the AZUCP, as a source of identifying all DBEs currently certified by TAA; provide access information to the DBE Directory to prospective proposers and contractors at all pre-submittal and pre-bid meetings; and provide access information to the DBE Directory with all solicitation documents.
- Make plans and specifications available for inspection by contractors at no cost during regular office hours of TAA.

- Establish prompt payment clauses in all contracts to facilitate the receipt of timely progress payments by subcontractors for work completed, following requests for payment.
- Include instructions for obtaining DBE certification applications and instructions in all proposal and bid documents.
- Maintain an “Interest List” of all consultants, contractors and suppliers who have expressed an interest in contracting with TAA. The list will identify the DBE status of the firm. The interest list is made available at all outreach activities and at all pre-submittal and pre-bid meetings.
- Utilization, when possible, of intergovernmental purchasing agreements that incorporate participation of DBE’s, such as: State of Arizona procurement, Mohave Educational Services Cooperative and Western States Contracting Alliance.
- Links on the TAA website that contains all contracting and procurement opportunities.
- Links on the TAA website, which will enable access to the AZUCP website, which contains the DBE Directory, DBE certification application and instructions; contact information for certifying agencies; Arizona DBE calendar for training and special events.
- Notification/outreach to the Associated Minority Contractors of America–Arizona (AMCA), various Chambers of Commerce and other agencies that would connect to the TAA website to access procurement opportunity notices.
- Direct mail campaign via email to the Associated Minority Contractors of America–Arizona (AMCA), Alliance of Construction Trades, Tucson Hispanic Chamber of Commerce, and Tucson Black Chamber of Commerce contacts so they can then distribute TAA procurement opportunity notices directly to their membership.
- Direct mail campaign via email to all firms listed on TAA’s interests lists of all procurement opportunities at TAA.
- Advertisements of procurements are published in The Daily Territorial, AAE Airport Report, Arizona Airports Association and AAE websites, and ANTN Digicast Aviation News.
- Hold annual meetings with interested parties to discuss TAA’s goal setting process; procurement opportunities; and to provide time for any questions about working with TAA.

**Public Notice**

**TUCSON AIRPORT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
PUBLISHED NOTICE RE OVERALL DBE GOAL**

***For publication in Pima County:***

The Tucson Airport Authority (TAA) as a result of the 9<sup>th</sup> Circuit Court Decision in Western States Paving Company v. Washington State Department of Transportation has determined that it will only use race-neutral measures for the Disadvantaged Business Enterprise (DBE) Program for U.S. Department of Transportation funded projects during fiscal years 2024 – 2026. TAA has set an aspirational goal of 7% for fiscal years beginning October 1, 2023 through September 30, 2026.

A written explanation of how the aspirational goal was determined will be available for inspection at the offices of the Authority at the Tucson International Airport, 7250 South Tucson Boulevard, for a period of thirty (30) days following the date of this notice. Written comments with respect to the goal and rationale for it will be accepted for a period of forty-five (45) days following the date of this notice. Please send written comments to: Tucson Airport Authority, Attention: DBE Liaison Officer, 7250 South Tucson Boulevard, Suite 300, Tucson, Arizona 85756.

It is TAA policy to ensure that DBE firms have a fair and equal opportunity to participate in TAA DOT-assisted contracts. TAA is a member of the Arizona Unified Certification Program and accepts DBE certifications issued by the Arizona Department of Transportation, The City of Phoenix, and The City of Tucson. If your firm is not currently certified and you would like further information on becoming a certified DBE firm, please contact the DBE Liaison Officer at the above-mentioned address.



**PUBLIC NOTICE**

TUCSON AIRPORT AUTHORITY

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

PUBLISHED NOTICE RE OVERALL DBE GOAL

For publication in Pima County:

The Tucson Airport Authority (TAA) as a result of the 9th Circuit Court Decision in Western States Paving Company v. Washington State Department of Transportation has determined that it will only use race-neutral measures for the Disadvantaged Business Enterprise (DBE) Program for U.S. Department of Transportation funded projects during fiscal years 2024 – 2026. TAA has set an aspirational goal of 7% for fiscal years beginning October 1, 2023 through September 30, 2026.

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Publish: The Daily Territorial

Date: April 25, 2023

Tucson International Airport (TUS) / Ryan Airfield (RYN)

	Project Number	Total	Federal
<b>FAA -2024</b>			
Project 1	Airfield Safety Enhancement Program - CMAR GMP 3B (TUS)	10119102 \$ 18,614,964	\$ 16,950,786
Project 2	Airfield Safety Enhancement Program - CMAR GMP 3C (TUS)	10119102 \$ 6,746,358	\$ 6,143,234
Project 3	Airfield Safety Enhancement Program - Sound Insulation (TUS)	10119125 (802) \$ 4,000,000	\$ 3,642,400
Project 4	Airfield Safety Enhancement Program - DBB 2 (ECM and Fencing) (TUS)	10119102 (816) \$ 4,735,820	\$ 4,312,438
Project 5	Terminal Expansion - EA and Schematic Design (TUS)	10122471 (801) \$ 5,603,283	\$ 5,102,349
Project 6	Conduct EA for New ATCT (RYN)	2120298 \$ 250,000	\$ 227,650
Project 7	Ryan Tower Equipment - Phase 2 (Equipment Purchase) (RYN)	20119088 \$ 647,924	\$ 590,000
<b>Total</b>		<b>\$ 40,598,349</b>	<b>\$ 36,968,857</b>

		Total	Federal
<b>FAA -2025</b>			
Project 1	ASE Program CMAR GMP 4 (Construction) Base Bid (TUS) PART A	10119102 (814) \$ 51,748,121	\$ 47,121,839
Project 2	ASE Program CMAR GMP 4 (Construction) Alternate 1 (TUS) PART B	10119102 (814) \$ 6,746,358	\$ 6,143,234
Project 3	Terminal Expansion - Design (TUS)	10122471 (802) \$ 13,728,043	\$ 12,500,756
Project 4	Conduct Environmental Assessment (EA) for 6R/24L Extension (RYN)	20120303 \$ 425,000	\$ 387,005
Project 5	Design New RYN ATCT (RYN)	20109030 \$ 2,450,000	\$ 2,230,970
<b>Total</b>		<b>\$ 75,097,522</b>	<b>\$ 68,383,804</b>

		Total	Federal
<b>FAA -2026</b>			
Project 1	ASE Program CMAR GMP 4 (Construction) Base Bid (TUS) PART C	10119102(?) \$ 51,748,121	\$ 47,121,839
Project 2	ASE Program CMAR GMP 4 (Construction) Alternate 1 (TUS) PART D	10119102(?) \$ 6,746,358	\$ 6,143,234
Project 3	Terminal Expansion - Construction CMAR GMP 1 (TUS)	10122471 (803) \$ 93,283,333	\$ 84,943,803
Project 4	Construct New RYN ATCT (RYN)	20109030 \$ 7,000,000	\$ 6,374,200
Project 5	Design Extension of RWY 6R/24L	20120304 \$ 488,689	\$ 445,000
<b>Total</b>		<b>\$ 159,266,501</b>	<b>\$ 145,028,076</b>

**Total TUS and RYN**    \$ 274,962,372    \$ 250,380,736

Tucson International Airport & Ryan Airfield Relative Availability

	Total Census	Total AZDBE	%
2024 TUS / RYN	22,984	685	<b>2.98%</b>
2025 TUS / RYN	13,673	540	<b>3.95%</b>
2026 TUS / RYN	17,326	561	<b>3.24%</b>
<b>Total</b>	<b>53,983</b>	<b>1,786</b>	<b>3.31%</b>

**3.31% is the relative availability of DBE Firms to All Firms**

Tucson International Airport & Ryan Airfield Historical Participation  
(Dollars Represented in Federal Share)

	Contract	DBE	%
2022 TUS	\$ 30,733,932	\$ 3,730,860	<b>12.14%</b>
2022 RYN	\$ -	\$ -	<b>0.00%</b>
<b>2022</b>	<b>\$ 30,733,932</b>	<b>\$ 3,730,860</b>	<b>12.14%</b>

	Contract	DBE	%
2021 TUS	\$ 21,428,506	\$ 1,456,270	<b>6.80%</b>
2021 RYN	\$ -	\$ -	<b>0.00%</b>
<b>2021</b>	<b>\$ 21,428,506</b>	<b>\$ 1,456,270</b>	<b>6.80%</b>

	Contract	DBE	%
2020 TUS	\$ 5,634,309	\$ 428,633	<b>7.61%</b>
2020 RYN	\$ 407,308	\$ 29,621	<b>7.27%</b>
<b>2020</b>	<b>\$ 6,041,617</b>	<b>\$ 458,254</b>	<b>7.58%</b>

**Historical Average Participation**    \$ 58,204,055    \$ 5,645,384    **9.70%**

Tucson International Airport & Ryan Airfield Goal Calculation

	Contract	DBE	%
Step 1 Calculation	53,983	1,786	<b>3.31%</b>
TAA Historical Participation	\$ 58,204,055	\$ 5,645,384	<b>9.70%</b>

**Goal Calculation**    **6.50%**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., APPROVING TAA'S FAA PART 26 DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM POLICY STATEMENT AND PARTICIPATION GOAL FOR FISCAL YEARS 2024 – 2026.**

**WHEREAS** the U.S. Department of Transportation (USDOT) requires entities receiving grants from the Federal Aviation Administration (FAA) under 49 CFR Part 26 to ensure that DBEs are afforded a fair opportunity to compete for federally funded transportation contracts; and

**WHEREAS** TAA desires to apply for and receive such grants from the FAA for its various construction projects; and

**WHEREAS** USDOT regulations require TAA to periodically adopt and circulate a policy statement expressing its commitment to the DBE program, stating its objectives and outlining responsibilities for its implementation; and

**WHEREAS** TAA conducted a review and analysis and solicited feedback from interested parties regarding its goal of 7% DBE participation in federally-funded projects for fiscal years 2024 – 2026; and

**WHEREAS** the Board of Directors accepts the staff recommendations as outlined in the attached Policy Statement and the Board Memorandum.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE TUCSON AIRPORT AUTHORITY, INC., AS FOLLOWS:**

The President/CEO or her designee[s]) is hereby authorized to adopt the Disadvantaged Business Enterprise (DBE) participation overall goal for federally funded projects at 7% for fiscal years 2024 – 2026, to execute the updated DBE policy statement (attached hereto as Exhibit A and incorporated by reference herein), to submit this goal to the Federal Aviation Administration (FAA), and to take any further actions which are necessary to comply with applicable federal regulations.

**PASSED AND ADOPTED** by the Board of Directors of the Tucson Airport Authority, Inc., this sixth day of September, 2023.

*Keri Silvyn*

Keri Silvyn (Sep 8, 2023 08:39 PDT)

Keri Silvyn, Chair of the Board

ATTEST:

*Phil Swaim*

Phil Swaim (Sep 7, 2023 16:57 PDT)

Phil Swaim, Secretary

APPROVED AS TO FORM:

*Chris Schmaltz*

Chris Schmaltz (Sep 8, 2023 12:45 PDT)

Christopher Schmaltz, Vice President  
and General Counsel

**Attachment 6**  
**Demonstration of Good Faith Efforts - Forms 1 - 4**



**FORM 3: Letter of Intent**

**TUCSON AIRPORT AUTHORITY  
DISADVANTAGED BUSINESS ENTERPRISE  
AGREEMENT PARTICIPATION CERTIFICATION**

Project Number: \_\_\_\_\_

Project Name: \_\_\_\_\_

This form must be completed and signed by each DBE Subconsultant/Subcontractor/Supplier/Manufacturer participating in the above referenced project and submitted by the Design Professional/Consultant/Prime Contractor/Vendor.

I, \_\_\_\_\_, certify that \_\_\_\_\_  
*(DBE Representative Printed Name)* *(DBE Firm Name)*

will be participating in the above referenced project as indicated on the Statement of Proposed DBE Utilization Form submitted by \_\_\_\_\_.  
*(Official Name of Design Professional/Consultant/Prime Contractor/Vendor)*

Type of work to be performed: \_\_\_\_\_

Dollar Value of Work: \_\_\_\_\_

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title


\_\_\_\_\_  
Date

DBE Agreement Participation Certification Form



**FORM 4: DBE Regular Dealer/Distributor Affirmation Form**

OMB Approval Pending 04/17/2024



U.S. Department of  
Transportation

**DBE Regular Dealer/Distributor  
Affirmation Form**

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.  
**DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.**

DBE Name: <input style="width: 95%; height: 15px;" type="text"/>	Total Subcontract/Purchase Order Amount: <input style="width: 95%; height: 15px;" type="text"/>
Authorized DBE Representative (Name and Title): <input style="width: 95%; height: 15px;" type="text"/>	NAICS Code(s) Related to the Items to be Sold/Leased: <input style="width: 95%; height: 15px;" 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 manufacturer'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 Tucson Airport Authority 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 and A.R.S. § 32-1185, as follows;
  - Withholding of payments to the contractor under the contract until the contractor complies; and/or
  - Deduction from the contract funds due or to become due the contractor; and/or
  - Disqualification of the contractor as non-responsible, and/or
  - Cancellation, termination, or suspension of the contract in whole or in part. TAA will make prompt compliance determinations regarding its prime contractor. A letter of noncompliance will include the specific areas in which the contractor failed to comply. Failure by a contractor to carry out commitments and policies set forth herein shall constitute a breach of contract and may result in termination of the contract or whatever corrective action TAA considers appropriate.

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

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

**ATTACHMENT 8**

**DBE Certification –**

**Links to DBE Certification Application, Personal Net Worth Statement, AZUCP Partners**

**DBE Certification Application Form:** [Uniform Certification Application \(transportation.gov\)](https://www.transportation.gov/UniformCertificationApplication)

**Personal Net Worth Statement:** [Personal Net Worth Statement \(transportation.gov\)](https://www.transportation.gov/PersonalNetWorthStatement)

For businesses with offices located within Pima County contact the City of Tucson:

Procurement Operations  
City Hall, 255 W. Alameda, 8<sup>th</sup> Floor East  
Tucson, AZ 85701  
520.837.4000

[https://www.tucsonprocurement.com/bidders\\_DBE.aspx](https://www.tucsonprocurement.com/bidders_DBE.aspx)

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For businesses with offices located within Maricopa County contact the City of Phoenix:

City of Phoenix  
Equal Opportunity Department  
Business Relations Division  
251 W. Washington St. 7<sup>th</sup> Floor  
Phoenix, AZ 85003  
602.262.6790 or 602.534.1557/TTY

<https://www.phoenix.gov/eod/programs/sbecertprograms>

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For businesses with offices located in counties other than Maricopa or Pima Counties contact Arizona Department of Transportation:

Arizona Department of Transportation  
Business Engagement and Compliance Office  
1801 W. Jefferson #101, MD154A  
251 W. Washington St. 7<sup>th</sup> Floor  
Phoenix, AZ 85007  
602.712.7761

<https://azdot.gov/business/business-engagement-and-compliance/business-registration-and-certification/dbe>

**ATTACHMENT 9**  
**Arizona UCP Agreement**



**ARIZONA UNIFIED CERTIFICATION PROGRAM  
(AZUCP)**

**Memorandum of Understanding**

This Memorandum of Understanding acknowledges that you (recipient named below) are a recipient of United States Department of Transportation (USDOT) funding and as such, you are a partner in the efforts related to the inclusion of Disadvantaged Business Enterprises (DBE) and Airport Concession Disadvantaged Enterprises (ACDBE) certified in the State of Arizona. The AZUCP, comprised of the Arizona Department of Transportation, City of Phoenix, and City of Tucson, certify firms consistent with the AZUCP Agreement and according to 49 CFR Parts 23 and 26.

**Tucson Airport Authority**

\_\_\_\_\_  
Name of Federal-Aid Recipient

By signing this Memorandum of Understanding, the federal-aid recipient (named above) understands and will agree to all of the following:

1. We will comply with the administration of the DBE Program as prescribed by the regulations and requirements of USDOT and its modal agencies (i.e. Federal Aviation Administration, Federal Highway Administration, and Federal Transit Administration).
2. We will support the efforts of the AZUCP in conducting outreach and certifying firms as DBE and/or ACDBE in accordance with the eligibility requirements and guidelines outlined in 49 CFR Parts 23 and 26.
3. We acknowledge that we are not a DBE/ACDBE certifying agency within the state of Arizona and we agree to accept all firms certified by the AZUCP as DBE's and/or ACDBE's in order to be utilized for DBE credit on all applicable USDOT-assisted contracts.
4. We will ensure non-discrimination in the award and administration of all USDOT-assisted contracts and create a level playing field on which DBE's can compete by removing barriers for the participation of DBE firms.
5. We will provide outreach, education, and/or training to assist in the development of firms to compete in the relevant market area outside of the DBE Program.
6. We herein affirm that we will immediately notify the AZUCP of any firm that does not meet the DBE eligibility criteria or if any firm is suspected or confirmed to have provided false, fraudulent, deceitful statements or representations or any other circumstances that indicate an issue regarding any firm's eligibility to participate in the DBE Program.

On the 5 day of September, 2018, by signature below, the undersigned Federal-Aid Recipient agrees to the terms and conditions cited herein as a matter of compliance with 49 CFR Parts 23 and 26 and the AZUCP Agreement.

Bonnie A. Allin  
Authorized Signature

Bonnie A. Allin, President/CEO  
Name and Title

September 5, 2018  
Date

**ATTACHMENT 10**  
**Small Business Element**



## Small Business Element

### 1. Objective/Strategies

As part of this program element, Tucson Airport Authority will implement the following strategies:

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

### 2. Definition

- DBE firms and small businesses are eligible under the TAA small business program.
- The small business standard must be no larger than the Small Business Administration's size standards.
- The personal net worth standard used in determining eligibility is posted online on the Departmental Office of Civil Rights webpage, available at <https://www.transportation.gov/DBEPNW>.
- All businesses meeting the criteria outlined in this small business element will be considered to be small businesses, without regard to race or gender.

### 3. Verification

- TAA will document proper certifications or small business status and will refer to the State or other proper authority any concerns of potential/suspected fraudulent certifications.
- At time of bid, TAA will verify small business size standards and tax records.
- Small business enterprises that are not certified by the state will be verified by TAA as to their size, ownership, business record, tax records, and any other documentation available from business to prove eligibility as a small business. Verification will be accomplished via owner interview(s) and document verification.

### 4. Monitoring/Record Keeping

TAA will:

- Review contracts by both DBE and SBC (Small Business Concern) status on a quarterly basis via B2Gnow compliance software to monitor participation and achievements.

- Review the Small Business Element Program annually to determine if program objectives are being met, and if not, document actions to be taken to meet objectives.
- Conduct quarterly meetings with departments to discuss non-compliant contracts.
- Maintain a bidders and active participants list for DBE tracking and submissions on solicitations.

## **5. Assurances**

- TAA makes the following assurances:
  1. This program is authorized under state law;
  2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program and will be determined under the guidelines of the Arizona UCP program;
  3. No geographic preferences or limitations will be imposed on any federally assisted procurement included in the program (i.e., there is no local or other geographic preference).
  4. There is no limit on the number of contracts awarded to firms participating in the program, but efforts will be made to avoid creating barriers to the use of new, emerging, or untried businesses;
  5. Steps will be taken to encourage those firms that are eligible for DBE and SBC certification to become certified;