

# **HOLBROOK MUNICIPAL AIRPORT**

Holbrook, Arizona

## **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE Program)**

Prepared for  
City of Holbrook, Arizona  
and the Federal Aviation Administration



**ARMSTRONG**

751 Horizon Court, Suite 255

Grand Junction, CO 81506

O: 970.242.0101

[www.armstrongconsultants.com](http://www.armstrongconsultants.com)

# TABLE OF CONTENTS

---

<b>POLICY STATEMENT .....</b>	<b>1</b>
Section 26.1, 26.23 Objectives/Policy Statement .....	1
<b>SUBPART A – GENERAL REQUIREMENTS .....</b>	<b>2</b>
Section 26.1 Objectives .....	2
Section 26.3 Applicability.....	2
Section 26.5 Definitions.....	2
Section 26.7 Non-discrimination Requirements.....	2
Section 26.11 Record Keeping Requirements .....	2
<b>SUBPART B – ADMINISTRATIVE REQUIREMENTS.....</b>	<b>4</b>
Section 26.21 DBE Program Updates .....	4
Section 26.23 Policy Statement.....	4
Section 26.25 DBE Liaison Officer (DBELO) .....	4
Section 26.27 DBE Financial Institutions .....	5
Section 26.29 Prompt Payment Mechanisms .....	5
Section 26.31 Directory .....	6
Section 26.33 Over-concentration .....	6
Section 26.35 Business Development Programs .....	6
Section 26.37 Monitoring Responsibilities.....	7
Section 26.39 Fostering Small Business Participation .....	9
<b>SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING.....</b>	<b>10</b>
Section 26.43 Set-asides or Quotas.....	10
Section 26.45 Overall Goals.....	10
Section 26.47 Failure to Meet Overall Goals.....	12
Section 26.51 Means Recipients Use to Meet Overall Goals .....	13
Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals.....	14
Section 26.55 Counting DBE Participation .....	18
<b>SUBPART D – CERTIFICATION STANDARDS .....</b>	<b>18</b>
Section 26.61 – 26.73 Certification Process .....	18

<b>SUBPART E – CERTIFICATION PROCEDURES .....</b>	<b>18</b>
Section 26.81 Unified Certification Programs .....	18
Section 26.83 – 26.89 .....	19
<b>SUBPART F – COMPLIANCE AND ENFORCEMENT .....</b>	<b>19</b>
Section 26.101 Compliance Procedures Applicable to Sponsor.....	19
Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation .....	19
<b>ATTACHMENT 1 REGULATION: 49 CFR PART 26 WEBSITE LINK .....</b>	<b>21</b>
<b>ATTACHMENT 2 ORGANIZATIONAL CHART .....</b>	<b>22</b>
<b>ATTACHMENT 3 BIDDER’S LIST COLLECTION FORM .....</b>	<b>23</b>
<b>ATTACHMENT 4 DBE DIRECTORY LINK .....</b>	<b>24</b>
<b>ATTACHMENT 5 OVERALL GOAL CALCULATIONS.....</b>	<b>25</b>
<b>ATTACHMENT 6 DEMONSTRATION OF GOOD FAITH EFFORTS FORMS .....</b>	<b>26</b>
FORM 1: .....	26
FORM 2: .....	27
<b>ATTACHMENT 7 DBE MONITORING AND ENFORCEMENT MECHANISMS .....</b>	<b>29</b>
<b>ATTACHMENT 8 DBE CERTIFICATION APPLICATION LINK.....</b>	<b>30</b>
<b>ATTACHMENT 9 STATE’S UCP AGREEMENT .....</b>	<b>31</b>
<b>ATTACHMENT 10 SMALL BUSINESS ELEMENT PROGRAM .....</b>	<b>32</b>

**DEPARTMENT OF TRANSPORTATION  
DBE PROGRAM – 49 CFR PART 26**

**POLICY STATEMENT**

---

**Section 26.1, 26.23 Objectives/Policy Statement**

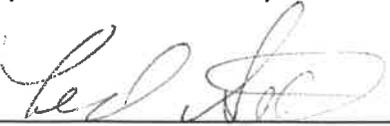
The City of Holbrook, Arizona, hereafter referred to as the Sponsor, owner of Holbrook Municipal Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Sponsor has received Federal financial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

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

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

Tim Kelley, Facilities Manger has been delegated as the DBE Liaison Officer. In that capacity, Tim Kelley is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Sponsor in its financial assistance agreements with the Department of Transportation.

The Sponsor has disseminated this policy statement to the City Council and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the Sponsor's DOT-assisted contracts. The distribution was accomplished by advertising the policy statement on the City website.

  
\_\_\_\_\_  
Ted Soltis, City Manager  
City of Holbrook

5/24/21  
\_\_\_\_\_  
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**

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

### **Section 26.5 Definitions**

The Sponsor will use terms in this program that have the meaning defined in Part 26, §26.5.

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

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

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

### **Section 26.11 Record Keeping Requirements**

#### Reporting to DOT

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

DBE participation will be reported to FAA as follows:

The Sponsor will transmit to the FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to Part 26. The Sponsor 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.

### Bidders List

The Sponsor will create and maintain a bidders list. 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 the Sponsor's DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way:

The Sponsor will place a clause in all bid solicitations requiring prime bidders to report the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms to be submitted as part of the bid package. A copy of the bidders list template can be reviewed in Attachment 3.

### Records Retention and Reporting

Omitted. The Sponsor is not a certifying agency nor a certifying member of the UCP.

### Assurance

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

The Sponsor shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Sponsor 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 Sponsor 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 Sponsor of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

### Contract Assurance

The Sponsor 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.

## **SUBPART B – ADMINISTRATIVE REQUIREMENTS**

---

### **Section 26.21 DBE Program Updates**

The Sponsor is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Sponsor is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Sponsor is in compliance with it and Part 26. The Sponsor will continue to carry out this program until all funds from DOT financial assistance have been expended. The Sponsor does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

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

The following individual has been designated as the DBE Liaison Officer for the Sponsor:

Tim Kelley, Facilities Manager  
City of Holbrook  
465 N 1<sup>st</sup> Avenue  
PO Box 970  
Holbrook, AZ 86025  
(928) 241-2438  
Email: timkelley@ holbrookaz.gov

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

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

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.

5. Analyzes the Sponsor's progress toward attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the governing body on DBE matters and achievement.
8. Chairs the DBE Advisory Committee.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

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

It is the policy of the Sponsor 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. To date the Sponsor has been unable to identify and use any such institutions. The State DBE Directory was used to try and locate DBE Financial Institutions, but none were found. The Sponsor makes an effort annually to investigate the availability of such institutions.

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

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

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

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

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

To implement this measure, the Sponsor includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

1. From the total of the amount determined to be payable on a partial payment, up to 10% percent of such total amount will be deducted and retained by the Owner for protection of

the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

- a. Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.
  - b. In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.
2. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than seven (7) days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
  3. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Section 26.31            Directory**

The Sponsor is a non-certifying member of the Arizona Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBE's, which contains all the elements required by §26.31.

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

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

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

The Sponsor has not established a business development program.

## **Section 26.37            Monitoring Responsibilities**

The Sponsor 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 the Sponsor's DBE program.

The Sponsor actively monitors participation by maintaining a running tally 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

The Sponsor 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):

- Performing interim audits of contract payments to DBE's. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

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

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

### Prompt Payment Dispute Resolution

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

1. The Sponsor will host initial meeting for prime and sub to present evidence to a Sponsor representative who has authority to settle the relevant dispute with individuals authorized to bind each interested party.
2. The Sponsor will review evidence from both sides and issue a determination.

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

1. Alternative Dispute Resolution (ADR) Clause

Depending on the type of contract, one of the following contract clauses will be used requiring the prime contractor to engage in ADR for any prompt payment and return of retainage to the subcontractor:

- a. Any controversy or claim arising out of or relating to prompt payment under a construction contract, or the breach thereof, shall be settled by arbitration administered

by the American Arbitration Association under its Construction Industry Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

- b. Any controversy or claim arising out of or relating to prompt payment under a contract that is not a construction contract, or the breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial [or other] Arbitration Rules, and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## 2. Prompt Payment Contract Clause

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:

- a. Contractor will not be reimbursed for work performed by subcontractors unless and until the contractor ensures that the subcontractors are promptly paid for the work performed. Contractor shall include a prompt payment clause that complies with local, state, and federal prompt payment requirements in all subcontractors entered into under this contract. Should contractor fail to meet subcontractor prompt payment requirements for two (2) consecutive subcontractor payments without good cause, the Sponsor may impose appropriate penalties for failure to comply with prompt payment requirements.

### Prompt Payment Complaints

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

1. Prime: Subcontractor shall first contact prime contractor in writing regarding late payments. If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime after several attempts to resolve prompt payment issue, subcontractor should contact DBELO to initiate complaint.
2. Sponsor: If subcontractor is unable to timely resolve prompt payment issue after contacting prime contractor, subcontractor shall submit prompt payment complaint in writing to DBELO and include the prime contract number, copy of subcontractor or purchase order, and a summary of payment issues. Subcontractor should provide any copies of checks, and correspondence, including emails, that may assist in understanding the facts of any payment issues.
3. FAA: If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Sponsor to resolve prompt payment disputes, affected subcontractor may contact FAA.

### Enforcement Actions for Noncompliance of Participants

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

- Prior to the Sponsor's issuance of progress payments, commencing with the second invoice, the Prime Contractor shall provide the Sponsor with evidence that the Prime Contractor has paid all Subcontractors all amounts due for work that the subcontractor has performed.
- The Sponsor may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts committed.
- 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 the contract.
- Pay subcontractors directly and deduct this amount from the retainage owned to the prime.
- In accordance with the contract, the Sponsor may withhold payments up to a specific amount against the prime contractor for non-compliance, or impose other penalties as determined by the Sponsor, up to and including termination.

The Sponsor will actively implement the enforcement actions detailed above.

The Sponsor will bring to the attention of the FAA any false, fraudulent, or dishonest conduct in connection with the Program, so that the FAA can take steps provided in 49 CFR (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, take action under suspension and debarment or Program Fraud and Civil Penalties rule). Additionally, the Sponsor will consider similar action under its own legal authorities, including responsibility determination in future contracts.

#### Monitoring Contracts and Work Sites

The Sponsor 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. Work site monitoring is performed by the Consultant. Contracting records are reviewed by the Consultant. The Sponsor will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39            Fostering Small Business Participation**

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

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. **Implementation of the small business element is required in order for the Sponsor 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

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

### Section 26.45 Overall Goals

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

FAA:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DBE\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

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

- Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Sponsor will use [*a Bidders List, a Disparity Study, the goal of another DOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45*] as a method to determine the base figure. The Sponsor understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.
- Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Sponsor will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the Sponsor will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the Sponsor to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Sponsor is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Sponsor engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

The Sponsor 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

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

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

#### **Section 26.47 Failure to Meet Overall Goals**

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

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

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

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

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

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

The Sponsor will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
6. Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

### Contract Goals

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

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.

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

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

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

1. Award of the contract will be conditioned on meeting the requirements of this section;
2. All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
  - a. The names and addresses of DBE firms that will participate in the contract;
  - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - c. The dollar amount of the participation of each DBE firm participating;

- d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
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;
    - a. Provided that, in a negotiated procurement, including a design-build procurement, 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 (2) of this section before the final selection for the contract is made by the Sponsor.

#### Administrative reconsideration

Within five (5) days of being informed by Sponsor that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Jason Foutz  
Economic Development Director  
City of Holbrook  
465 N 1<sup>st</sup> Avenue  
PO Box 970  
Holbrook, AZ 86025  
Office: (928) 524-6225  
Email: jfoutz@ holbrookaz.gov

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do so. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The

result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts Procedural Requirements (post-solicitation)

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 the Sponsor. 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 the Sponsor agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes 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. The Sponsor determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides the Sponsor 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 the Sponsor 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 to the Sponsor, a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Sponsor, 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 (5) days to respond to the prime contractor's notice and advise the Sponsor 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 (5) 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 the Sponsor 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.

The Sponsor 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 the contractor. If the Sponsor requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary, at the request of the contractor. The Sponsor 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 the Sponsor 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 substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

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

## **SUBPART D – CERTIFICATION STANDARDS**

---

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

The Sponsor 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. The Sponsor makes all certification decisions based on the facts as a whole.

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

Arizona Department of Transportation  
Business Engagement and Compliance Office  
1801 W. Jefferson #101, MD154A  
Phoenix, AZ 85007  
(602) 712-7761

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

---

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

The Sponsor is a non-certifying member of a Unified Certification Program (UCP) administered by the Arizona Department of Transportation. The UCP will meet all of the requirements of this section. The UCP document may be found in Attachment 9.

## **Section 26.83 – 26.89**

Omitted. The Sponsor is not a certifying agency.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

---

### **Section 26.101 Compliance Procedures Applicable to Sponsor**

The Sponsor understands that if it fails to comply with any requirement of this part, the Sponsor 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.

### **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.

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

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

The Sponsor, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in

any manner in an investigation, proceeding, or hearing under this part. The Sponsor understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENT 1      REGULATION: 49 CFR PART 26 WEBSITE LINK**

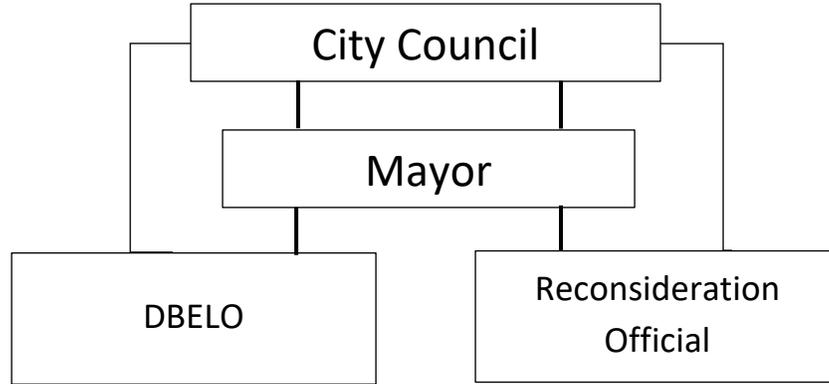
---

Regulation: 49 CFR Part 26 can be found at the following website:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

**ATTACHMENT 2 ORGANIZATIONAL CHART**

---



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

Project Title: \_\_\_\_\_

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

Prime Contractor: \_\_\_\_\_

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

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

Name of Firm	Address/ Phone #	Type of Work to be Performed on Contract	Certified DBE		Age of Firm	Annual Gross Receipts
			YES	NO		
					<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
					<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
					<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
					<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
					<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

**ATTACHMENT 4      DBE DIRECTORY LINK**

---

The Arizona DBE directory can be found at the following website:

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

**ATTACHMENT 5      OVERALL GOAL CALCULATIONS**

---

Submitted as a separate document, according to the schedule identified in Section 26.45.

**ATTACHMENT 6 DEMONSTRATION OF GOOD FAITH EFFORTS FORMS**

---

The following, Form 1: Disadvantaged Business Enterprise (DBE) Utilization, and Form 2: Letter of Intent, are for purposes of assessing bidders'/offerors' good faith efforts and are provided as part of the solicitation documents.

**FORM 1:**

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

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

- Bidder/offeror has met the DBE contract goal.  
The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.
  
- Bidder/offeror has not met the DBE contract goal.  
The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

---

Legal name of bidder/offeror's firm

Bidder/Offeror Representative:

---

Name & Title

---

Signature

---

Date

**FORM 2:**

**LETTER OF INTENT FORM**

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

\_\_\_\_\_  
Name of Bidder/Offeror's Firm

\_\_\_\_\_  
Name & Title of Firm's AR

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Name of DBE Firm

\_\_\_\_\_  
Name & Title of DBE Firm's AR

\_\_\_\_\_  
Phone

\_\_\_\_\_  
Email

\_\_\_\_\_  
Address

\_\_\_\_\_  
City

\_\_\_\_\_  
State/ Zip

*Work to be performed by DBE firm:*

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %<sup>1</sup></i>	<i>Dealer/Manufacturer<sup>2</sup></i>

<sup>1</sup> Percentage is to be used only in negotiated procurements, including design-build contracts

<sup>2</sup> For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55

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

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

\_\_\_\_\_  
Date

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

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

\_\_\_\_\_  
Date

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

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

## **ATTACHMENT 7      DBE MONITORING AND ENFORCEMENT MECHANISMS**

---

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

1. Breach of contract action, pursuant to the terms of the contract.
2. Breach of contract action, pursuant to State Code.

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

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

**ATTACHMENT 8      DBE CERTIFICATION APPLICATION LINK**

---

The DBE Application Request for the state of Arizona can be found at the following link:

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

## ATTACHMENT 9 STATE'S UCP AGREEMENT

---

All Non-certifying members of the State's Unified Certification Program (UCP) are identified on the following website:

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

Small Business Element

**1. Objective/Strategies**

The Airport as part of this program element has included, but is not limited to, the following strategies:

- a. Prime contracts under \$25,000 will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.
- b. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- c. On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- d. Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
- e. To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

The Airport will use a combination of the strategies listed above and will continue ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform. Quantities, specifications, and delivery schedules are arranged to facilitate small business participation. Large contracts are divided into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract. The Airport will put into place monitoring of consultant-design projects for possible small business participation and encouraging use of small businesses in projects. The Airport will seek out ways to include all available contractors in its contracts. This may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases, jobs usually performed by subcontractors can be performed as an unbundled contract as a prime contract, especially if the outcome of the overall project will not be affected by the unbundled contracting opportunity. The Airport will also encourage prime contractors to provide subcontracting opportunities to small business firms on projects which do not have DBE contract goals. Encouraging participation of small business firms has potential to increase the number of certified DBE firms and DBE participation.

**2. Definition**

The Airport will review the guidelines below, and §26.39, and develop your own definitions, making note of the following:

- a. DBE firms are eligible for the program. There is no DBE micro-small business program element in place.
- b. 49 CFR Part 26.5 states, “Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing

it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).”

- c. Size standards will be classified as stated in 49 CFR Part 26.65, “As a recipient, you must apply current SBA business size standard(s) found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.” Small firms and DBE firms, which are eligible for the program, shall be similarly sized to reduce competitive conflict.
- d. Each individual owner of a participating firm may not have a personal net worth that exceeds \$1.32 million as in accordance with 49 CFR Part 26.67.

### **3. Verification**

- a. The Airport will diligently attempt to minimize fraud and abuse in the Small Business element of its DBE program by verifying program eligibility of firms.
- b. The Airport will accept DBE certification for participation in the Small Business Element.

### **4. Monitoring/Record Keeping**

- a. The Airport is required to track and report any participation by certified DBE’s achieved through our Small Business Program for three years, using the same reporting mechanisms implemented in our DBE program through 49 CFR Part 26.37. We will report DBE participation achieved through the Small Business Program annually utilizing the FAA’s Uniform Report.
- b. The Small Business Element will be reasonably monitored by the Airport.

### **5. Assurance**

The Airport has included the following assurances in their small business program:

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

**End of Document**

## ATTACHMENT 5 OVERALL GOAL CALCULATIONS

---

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** Holbrook, Arizona (Holbrook Municipal Airport)

**Goal Period:** FY-2022-2023-2024 – October 1, 2021 through September 30, 2024

<b>DOT-assisted Contract Amount:</b>	FY-2021	\$	0
	FY-2022	\$	0
	FY-2023	\$	2,004,000
	<b>Total</b>	<b>\$</b>	<b>2,004,000</b>

**Overall Three-Year Goal:** 2.08%, to be accomplished through 0% RC and 2.08% RN

**Total Dollar Amount to be Expended on DBEs:** \$41,684

### Describe the Number and Type of Contracts that the Airport Anticipates Awarding:

Contracts Fiscal Year 2022 – No grants anticipated for award during this period.

Contracts Fiscal Year 2023 – No grants anticipated for award during this period.

Contracts Fiscal Year 2024

1. Reconstruct Taxiway A (5,877 ft x 35 ft) and Connector Taxiways - \$2,004,000

**Market Area:** The market area was identified as the counties of:

- Maricopa (85032, 85281, 85225, 85308, 85142, 85383, 85251, 85282, 85022, 85301, 85345, 85204, 85008, 85255, 85326, 85338, 85201, 85205, 85351, 85374, 85248, 85207, 85254, 85016, 85224, 85375, 85283, 85260, 85209, 85018, 85382, 85206, 85044, 85041, 85029, 85295, 85234, 85020, 85286, 85296, 85208, 85021, 85249, 85202, 85015, 85226, 85027, 85051, 85379, 85086, 85210, 85033, 85302, 85212, 85042, 85035, 85213, 85233, 85037, 85257, 85023, 85339, 85395, 85258, 85323, 85048, 85298, 85014, 85050, 85392, 85268, 85203, 85009, 85396, 85331, 85340, 85353, 85017, 85053, 85085, 85024, 85335, 85297, 85013, 85040, 85381, 85259, 85304, 85388, 85303, 85306, 85006, 85373, 85043, 85250, 85028, 85215, 85031, 85019, 85284, 85118, 85262, 85253, 85387, 85139, 85310, 85083, 85239, 85266, 85004, 85305, 85007, 85054, 85390, 85003, 85012, 85355, 85087, 85307, 85378, 85361, 85045, 85363, 85354, 85034, 85263, 85377, 85309, 85285, 85252, 85211, 85064, 85080, 85256, 85358, 85244, 85318, 85327, 85082, 85063, 85267, 85246, 85329, 85312, 85261, 85299, 85069, 85342, 85066, 85337, 85236, 85216, 85380, 85269, 85277, 85076, 85274, 85068, 85067, 85060, 85385, 85311, 85071, 85372, 85046, 85275, 85001, 85005, 85036, 85545, 85280, 85264, 85376, 85214, 85320, 85078, 85061, 85011, 85322, 85271, 85219, 85079, 85074, 85333, 85070, 85010, 85127, 85002, 85343, 85030, 85072, 85290, 85289, 85287, 85313, 85227, 85099, 85098, 85077, 85075, 85073, 85065, 85062, 85055, 85039, 85038, 85026, 85025, 85096, 85097, 85190)
- Pima (85710, 85705, 85711, 85719, 85706, 85713, 85712, 85716, 85745, 85704, 85730, 85614, 85718, 85746, 85741, 85750, 85742, 85743, 85641, 85629, 85737, 85756, 85747,

- 85739, 85715, 85755, 85748, 85749, 85653, 85658, 85757, 85602, 85622, 85714, 85735, 85701, 85634, 85321, 85736, 85708, 85732, 85754, 85652, 85731, 85734, 85751, 85752, 85341, 85728, 85645, 85637, 85740, 85726, 85717, 85702, 85733, 85601, 85611, 85738, 85703, 85725, 85654, 85619, 85639, 85633, 85709, 85720, 85744, 85721, 85722, 85723, 85775, 85777, 85724, 85707)
- Navajo (85901, 85929, 85937, 86033, 85935, 85933, 86025, 85941, 85902, 85939, 86510, 86505, 85928, 86034, 85926, 86054, 86039, 86032, 86520, 86042, 86043, 85911, 85934, 86031, 85912, 85923, 86029, 85942)
  - Apache (86503, 85925, 85936, 85924, 85938, 86511, 86512, 86514, 85940, 86549, 86507, 85920, 86538, 86556, 86545, 86502, 86544, 86547, 86535, 86506, 85932, 85927, 86508, 86540, 85930, 86028)
  - Coconino (86004, 86001, 85541, 86005, 86047, 86040, 86046, 86045, 86023, 86003, 86024, 86044, 86020, 86053, 86002, 86339, 86018, 86035, 86030, 86015, 85931, 86038, 86036, 86435, 86052, 86016, 86011)

The Sponsor has found that a substantial majority of the contractors and subcontractors who perform work for the Airport are located within these counties, and the Sponsor spends a substantial amount of their contracting dollars within these counties.

## Step 1. Actual Relative Availability of DBEs

The base figure for the relative availability was calculated as follows:

Data was used from DBE Directories and the Census Bureau in order to calculate the base figure for each project. The Arizona DBE Directory was used to determine the number of ready, willing, and able DBEs available in our market area to perform work under the relevant NAICS codes. The Census Bureau's County Business Pattern (CBP) data base was used to determine the ready, willing, and able businesses in our market area to perform work under the same NAICS codes. To determine relative availability, the number of DBEs was divided by the number of all businesses. To determine a base figure, that value was weighted proportionally to the dollar amount of available work specific to each NAICS code.

### Method:

Information from the States DBE Directory and the Census Bureau's County Business Pattern (CBP) data base can be obtained from the following websites:

Arizona DBE Directory      <https://utracs.azdot.gov/Search>

Census Bureau Data      <https://data.census.gov/cedsci/>

Weighted Availability of DBE firms:

For Fiscal Year 2022, no grants are anticipated for award.

For Fiscal Year 2023, no grants are anticipated for award.

For Fiscal Year 2024, award of the following is anticipated:

<i>Contract Name</i>	<i>Trade Description</i>	<i>NAICS</i>	<i>Trade (\$)</i>	<i>Census</i>	<i>Directory</i>	<i>DBE (%)</i>	<i>DBE (\$)</i> <i>(= Trade \$ x DBE %)</i>
<i>Contract No.1 Reconstruct Taxiway A (5,877 ft x 35 ft) and Connector Taxiways</i>	<i>Construction Sand and Gravel Mining</i>	212321	\$200,000	62	1	1.61%	\$3,220
	<i>Highway Street and Bridge Construction (Asphalt Paving)</i>	237310	\$664,000	143	2	1.40%	\$9,296
	<i>Pavement Striping</i>	237310	\$15,000	143	2	1.40%	\$210
	<i>Site Preparation Contractor</i>	238910	\$120,000	501	15	2.99%	\$3,588
	<i>Asphalt Manufacturer</i>	324121	\$250,000	30	0	0.00%	\$-
	<i>Trucking</i>	484110	\$300,000	376	6	1.60%	\$4,800
	<i>Civil Engineering</i>	541330	\$220,000	1263	4	0.32%	\$704
	<i>Drafting Services (CADD)</i>	541340	\$20,000	72	13	18.06%	\$3,612
	<i>Material Testing</i>	541380	\$160,000	148	8	5.41%	\$8,656
	<i>Surveying and Mapping</i>	541370	\$40,000	119	3	2.52%	\$1,008
	<i>Landscaping</i>	561730	\$15,000	1643	10	0.61%	\$91.50
<b>Total Contract No.1</b>			<b>\$2,004,000</b>			<b>1.76%</b>	<b>\$35,185.50</b> <b>(1.76% of 2,004,000)</b>
<b>Total FY- 2024</b>			<b>\$2,004,000</b>				<b>\$35,185.50</b> <b>(1.76%)</b>

$$DBE (\$) = \left( \frac{DBE \text{ Directory}}{Census} \right) * Trade(\$) \quad \text{Weighted Average Goal} = \frac{\sum DBE (\$)}{\sum \text{Contract Amounts} (\$)} * 100 = \frac{\$35,185.50}{\$2,004,000} * 100 = 1.76\%$$

The base goal projection after weighting is as follows:

- Total Weighted DBE Availability: \$35,185.50
- Total for All Trades: \$2,004,000

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

Base of DBE Goal: 1.76%

**Step 2: Adjustments to Step 1 Base Figure**

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

Past History Participation:

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

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RC	RN	Total	RC	RN	Total	
FY 20	\$3,278,030		1.56%	156%		2.40%	2.40%	Runway Reconstruction

Arranging this historical data from low to high, (2.40%) the median is 2.40%.

Step 1 Base averaged with historical median:  $(1.76\% + 2.40\%)/2 = 2.08\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of 2.08%. The Sponsor believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

**Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation**

The Sponsor will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;

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

The Sponsor estimates that, in meeting the overall goal of 2.08% the Sponsor will obtain the entire goal from race-neutral participation. Based on the 9th Circuit Court Decision in *Western States Paving Company v. Washington State Department of Transportation*, the Sponsor has determined that it is appropriate to use a race/gender neutral goal. The Sponsor encourages all bidders to take active race/gender neutral steps to include DBE's in this and other airport contracts. This contract can be awarded without the lowest responsive bidder meeting the goal or demonstrating good faith effort to meet the goal.

## **Public Participation**

### Consultation:

In establishing the overall goal, the Sponsor provided for consultation and publication. This process included consultation with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Sponsor's efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in was teleconference, which was held at May 7, 2021 at 10:00am MST.

No comments were received during the course of the consultation.

A notice of the proposed goal was published on the Sponsor's official website before the methodology was submitted to FAA.

If the proposed goal changes following review by FAA, the revised goal will be posted on Sponsor's official website.

Notwithstanding paragraph (f)(4) of §26.45, the Sponsor's proposed goals will not be implemented until this requirement has been met.

Public Notice Language:

PUBLIC NOTICE

**HOLBROOK MUNICIPAL AIRPORT  
2022 - 2024 DBE PROGRAM  
HOLBROOK, ARIZONA**

The City of Holbrook, Arizona hereby announces its proposed Disadvantaged Business Enterprise (DBE) participation goal of 2.08% for FAA funded contracts/agreements. The proposed goal pertains to federal fiscal years 2022 through 2024.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

Ted Soltis  
City Manager  
City of Holbrook  
465 N 1<sup>st</sup> Avenue  
PO Box 970  
Holbrook, AZ 86025  
Office: (928) 524-6225  
Email: [tsoltis@holbrookaz.gov](mailto:tsoltis@holbrookaz.gov)

AND

Shaun A. Bouy  
DBE/ACDBE Compliance Specialist – Western Pacific Region  
Office of Civil Rights  
Federal Aviation Administration  
U.S. Department of Transportation  
777 S. Aviation Blvd, Suite 150  
El Segundo, CA 90245