

10/16/2026

ADDENDUM

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TO ALL CONTRACTORS AND OTHERS INTERESTED IN PROJECT
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TOL-0(200)T
CITY OF TOLLESON
VAN BUREN AT 96TH AVE, TOLLESON

SCHEDULED FOR BID OPENING ON
FRIDAY, NOVEMBER 06, 2026, AT 11:00 A.M. (M.S.T.)

REVISIONS TO THE SPECIAL PROVISIONS:

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DISADVANTAGED BUSINESS ENTERPRISES: is hereby deleted in its entirety and replaced with the following:

(EPRISENGL-IFR)

DISADVANTAGED BUSINESS ENTERPRISES:

1.0 Policy:

The Arizona Department of Transportation (hereinafter the Department) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (USDOT), 49 Code of Federal Regulation Part 26 (49 CFR Part 26), as revised by the USDOT DBE Interim Final Rule

(IFR) issued October 3, 2025 (hereinafter referred to as IFR).

The Department has received Federal financial assistance from the U.S. Department of Transportation and as a condition of receiving this assistance, the Department has signed an assurance that it will comply with 49 CFR Part 26, as revised by the IFR.

It is the policy of the Department to ensure that DBEs (hereinafter DBE or DBE firm), as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also the policy of the Department:

(A) To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;

(B) To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

(C) To ensure that the DBE program operates in a nondiscriminatory manner and without regard to race or sex, while maximizing efficiency of service;

(D) To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are counted as DBEs;

(E) To help remove barriers to the participation of DBEs in USDOT-assisted contracts,

(F) To assist in the development of firms that can compete successfully in the market place outside the DBE program; and

(G) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities.

It is also the policy of the Department to facilitate and encourage participation of Small Business Concerns (SBCs), as defined herein, in USDOT-assisted contracts. The Department encourages contractors to take reasonable steps to eliminate obstacles to SBCs' participation and to utilize SBCs in performing contracts.

2.0 Assurances of Non-Discrimination:

The contractor, subrecipient, or subcontractor shall not discriminate on the basis of race, color, sex or national origin in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 as revised by the IFR in the award and administration of USDOT-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 State deems appropriate, which may include, but are not limited to:

(A) Withholding monthly progress payments;

(B) Assessing sanctions; and/or

(C) Disqualifying the contractor from future bidding as non-responsible.

The contractor, subrecipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

3.0 Definitions:

(A) Commercially Useful Function (CUF): Commercially Useful Function is defined in 49 CFR Part 26.55. That definition is incorporated herein by reference.

(B) Disadvantaged Business Enterprise (DBE): A DBE, as defined in 49 CFR Part 26.5, is a for-profit small business concern which meets both of the following requirements:

(1) Is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged; and,

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(C) Joint Check: a two-party check between a subcontractor, DBE and/or non-DBE, a prime contractor and the regular dealer of material supplies.

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

(E) NAICS Code: The North American Industry Classification System (NAICS) is the standard used by Federal statistical agencies in classifying business establishments for the purpose of collecting, analyzing, and publishing statistical data related to the US business economy.

(F) Non-DBE: any firm that is not a DBE.

(G) DBE Conscious: a measure or program that is focused specifically on assisting only DBEs.

(H) DBE Neutral: a measure or program that is, or can be, used to assist all small businesses.

(I) Small Business Concern: a business that meets all of the following conditions:

1. Operates as a for-profit business.

2. Operates a place of business primarily within the U.S. or makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor.

3. Is independently owned and operated.

4. Is not dominant in its field on a national basis; and

5. Does not have annual gross receipts that exceed the Small Business Administration size standards average annual income criteria for its primary North American Industry Classification System (NAICS) code.

(J) Socially and Economically Disadvantaged Individuals: Socially and Economically Disadvantaged Individuals is defined in 49 CFR Part 26.5, as revised by the IFR. That definition is incorporated here.

(1) Any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who a certifier finds to be socially and economically disadvantaged on an individual basis.

(2) A determination that an individual is socially and economically disadvantaged must not be based in whole or in part on race or sex. For that reason, all applicants shall qualify as socially and economically disadvantaged if they can demonstrate that they can meet the relevant criteria described in 49 CFR Part 26.67.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily socially and economically disadvantaged.

4.0 Working with DBEs:

The Department works with DBEs and assists them in their efforts to participate in the highway construction program. All bidders should contact the Department's Small Business and Workforce Development (SBWD) by phone, through email, or at the address shown below, for assistance in their efforts to use DBEs in the highway construction program of the Department. SBWD contact information is as follows:

Arizona Department of Transportation
Small Business and Workforce Development

1801 W. Jefferson Street, Ste. 101, Mail Drop 154A
Phoenix, AZ 85007
Phone (602) 712-7761
Email: ContractManagement@azdot.gov
Website:www.azdot.gov/business/small-business-and-workforce-development

4.01 Business Development Program:

The Department has established the Business Development Program as an initiative to encourage and develop disadvantaged businesses in the highway construction industry. The Department is committed to providing new, emerging, developmental and transitional DBEs with general and firm-specific training and technical assistance. The Department intends for this assistance to aid DBEs to become competitive within the heavy highway and construction industry market places. In particular, the Department's Small Business Services(SBS) is designed to work in collaboration with stakeholder organizations (including departments and agencies of State and Federal Governments, small business organizations, tribal governments, profit and nonprofit corporations) to help DBEs to successfully compete for highway construction projects and become self-sufficient. The program provides educational opportunities for DBEs regarding current market conditions, Federal regulatory compliance, and best business practices. These efforts are reinforced with one-on-one business counseling for DBEs certified in areas that directly support Federal-aid highway projects, small group workshops, conferences, business expositions, regular in-person training opportunities, and regular virtual training opportunities. For guidance regarding this program, refer to the Business Development Program Guidelines available on the SBWD website at https://azdot.gov/business/small-business-and-workforce-development/dbe-supportive-services/business-development-program/disadvantaged-business-enterprise-dbe-program/dbe

The Business Development Program is intended to increase legitimate DBE activities. The program operates in conformity with the Federal DBE rules and regulations. The Department's DBE/SS participants may not circumvent the Federal DBE rules or regulations.

5.0 Applicability:

During the transition period, the IFR provides that until the Arizona Unified Certification Program (UCP) completes the recertification process, the Department may not 1) set any DBE contract goals or 2) count any participation towards its overall DBE goal.

The Department has established an overall annual goal for DBE participation on Federal-aid contracts. The Department intends for the goal to be met with a combination of DBE conscious efforts and DBE neutral efforts once the DBE recertification process is completed in accordance with the IFR. DBE conscious participation occurs where the contractor uses a percentage of DBEs, as defined herein,

to meet the contract-specified goal. DBE neutral efforts are those that are, or can be, used to assist all small businesses or increase opportunities for all small businesses. The regulation, 49 CFR 26, as revised by the IFR describes DBE neutral participation as when 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.

The provisions are applicable to all bidders.

6.0 Certification and Registration:

6.01 DBE Certification:

Certification as a DBE shall be predicated on:

(A) The completion and execution of an application for certification as a "Disadvantaged Business Enterprise".

(B) The submission of documents pertaining to the firm(s) as stated in the application(s), including but not limited to a statement of social disadvantage and a personal financial statement.

(C) The submission of any additional information which the Department or the applicable Arizona Unified Certification (UCP) agency may require to determine the firm's eligibility to participate in the DBE program.

(D) The information obtained during the on-site visits to the offices of the firm and to active job-sites.

Application Submission. Applications for Disadvantaged Business Enterprise (DBE) certification may be filed with the Department or the applicable UCP agency at any time through the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) website at https://utracs.azdot.gov/Home.

Implementation of Revised Federal Standards. Effective October 3, 2025, all certification applications and renewals shall be reviewed and processed in accordance with the 49 CFR Part 26 as revised by the IFR. The revised rule modifies certification standards, documentation, and evidentiary requirements applicable to determinations of social and economic disadvantage, business size, ownership, and control.

Transition Period. During the transition period in which the Department and participating UCP agencies are updating internal procedures and the AZ UTRACS system to implement the revised rule, certification applications may continue to be submitted through the existing online platform. Applicants submitting applications during this period may be required to furnish additional or supplemental documentation consistent

with the revised certification criteria upon system update or upon request by the certifying agency.

All applicants, whether filing initial or renewal applications, shall comply with any new or amended federal documentation requirements that become effective under 49 CFR Part 26 as revised by the IFR, including but not limited to personal narrative statements, financial disclosures, and supporting affidavits required to demonstrate eligibility under the revised standards.

The Department is a member of the AZ Unified Certification Program (AZUCP). During the transition period, the list of firms listed in AZ UTRACS were certified prior to October 3, 2025, not in accordance with the IFR, and therefore do not count for DBE credit, unless otherwise noted in AZ UTRACS. The list indicates contact information and specialty for each DBE firm and may be sorted in a variety of ways. However, the Department does not guarantee the accuracy and/or completeness of this information, nor does the Department represent that any licenses or registrations are appropriate for the work to be done.

The Department's certification of a DBE is not a representation of qualifications and/or abilities only that the firm has met the criteria for DBE certification as outlined in 49 CFR Part 26, as revised by the IFR. The contractor bears all risks of ensuring that DBE firms selected by the contractor are able to perform the work.

6.02 SBC Registration:

To comply with 49 CFR Part 26.39, the Department's DBE Program incorporates contracting requirements to facilitate participation by Small Business Concerns (SBCs) in federally assisted contracts. SBCs are for-profit businesses registered to do business in Arizona that meet the Small Business Administration (SBA) size standards for average annual revenue criteria for its primary North American Industry Classification System (NAICS) code.

While the SBC component of the DBE program does not require utilization goals on projects, the Department encourages contractors to utilize small businesses that are registered in AZ UTRACS on their contracts, in addition to DBEs meeting the certification requirement in accordance with the IFR. However, SBCs that are not DBEs will not be counted toward DBE participation.

SBCs can register online at the AZ UTRACS website at http://utracs.azdot.gov/Home/. The Department's registration of SBCs is not a representation of qualifications and/or abilities. The contractor bears all risks of ensuring that SBC firms selected by the contractor are able to perform the work.

7.0 DBE Financial Institutions:

The Department thoroughly investigates the full extent of services offered by financial

institutions owned and controlled by socially and economically disadvantaged individuals in its service area and makes reasonable efforts to use these institutions. The Department encourages prime contractors to use such institutions on USDOT assisted contracts. However, use of DBE financial institutions will not be counted toward DBE participation.
The Department encourages prime contractors to research the Federal Reserve Board website at www.federalreserve.gov to identify minority-owned banks in Arizona derived from the Consolidated Reports of Condition and Income filed quarterly by banks (FFIEC 031 and 041) and from other information on the Board's National Information Center database.

8.0 Time is of the Essence:

TIME IS OF THE ESSENCE IN RESPECT TO THE DBE PROVISIONS.

9.0 Computation of Time:

In computing any period of time described in this DBE special provision, such as calendar days, the day from which the period begins to run is not counted. When the last day of the period is a Saturday, Sunday, or Federal or State holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal or State holiday. When the Department's offices are closed for all or part of the last day, the period extends to the next day on which the Department's offices are open.

10.0 Contractor and Subcontractor Requirements:

10.01 General:

The contractor shall establish a DBE program that will ensure nondiscrimination in the award and administration of contracts and subcontracts.

Agreements between the bidder and a DBE in which the DBE promises not to provide subcontracting quotations to other bidders are prohibited.

10.02 Blank:

11.0 Bidders/Proposers List and AZ UTRACS Registration Requirement:

Under 49 CFR Part 26.11, DOTs are required to collect certain information from all contractors and subcontractors who seek to work on federally-assisted contracts in order to set overall and contract DBE goals. The Department collects this information through a Bidders/Proposers List when firms register their companies on the Arizona Unified Transportation Registration and Certification System (AZ UTRACS) web portal at http://utracz.azdot.gov/Home/ a centralized database for companies that seek to do business with the Department. This information will be maintained as confidential to the extent allowed by Federal and State law.

All prime contractors, subcontractors, and DBEs shall: 1) register in AZ UTRACS, and 2) maintain their profile with current and accurate firm information. Bidders may verify that their firm and each subcontractor is registered using the AZ UTRACS website.

Bidders may obtain additional information at the AZ UTRACS website or by contacting SBWD.

Bidders shall create the Bidders/Proposers List in the AZ UTRACS by selecting all subcontractors, service providers, manufacturers and suppliers that expressed interest or submitted bids, proposals or quotes for this contract. The Bidders/Proposers List form must be complete and must include the names for all subcontractors, service providers, manufacturers and suppliers regardless of the bidders' intentions to use those firms on the project.

All bidders must complete the Bidders/Proposers List online at AZ UTRACS whether they are the apparent low bidder or not. A confirmation email will be generated by the system. The bidders shall submit to SBWD a copy of the email confirmation no later than 4:00 p.m. on the fifth calendar day following the bid opening. Faxed copies are acceptable.

FAILURE TO SUBMIT THE REQUIRED BIDDERS/PROPOSERS LIST CONFIRMATION EMAIL TO SBWD BY THE STATED TIME AND IN THE MANNER HEREIN SPECIFIED SHALL BE CAUSE FOR THE BIDDER BEING DEEMED INELIGIBLE FOR AWARD OF THE CONTRACT.

12.0 DBE Goals:

During the transition period, the IFR provides that until the UCP completes the recertification process, the Department may not 1) set any DBE contract goals or 2) count any participation towards its overall DBE goal. The Department will not be counting any DBE conscious or DBE neutral efforts towards its overall DBE goal during this transitional period.

The Department has not established contract goals for DBE participation in this contract. Contractors are still encouraged to employ reasonable means to obtain DBE neutral efforts. Contractors must retain records in accordance with these DBE specifications. The contractor is notified that this record keeping is important to the Department so that it can track DBE participation where only DBE neutral efforts are employed.

13.0 Payment Reporting:

The contractor shall report on a monthly basis indicating the amounts paid to all subcontractors, of all tiers, working on the project. Reporting shall be in accordance with Subsection 109.06(B)(5) of the specifications.

14.0 Crediting DBE Participation:

14.01 General Requirements:

During the transition period, the IFR provides that until the UCP completes the recertification process, the Department may not count any participation towards its overall DBE goal. This applies to both DBE conscious and DBE neutral efforts.

To count toward DBE participation, the DBE firm must be certified in each NAICS code applicable to the kind of work the firm will perform on the contract. NAICS for each DBE can be found on the AZ UTRACS under the Firm Directory. General descriptions of all NAICS codes can be found at www.naics.com.

The entire amount of a contract that is performed by the DBE's own forces, including the cost of supplies and materials purchased by the DBE for the work on the contract and equipment leased by the DBE will be credited toward DBE participation. Supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate will not be credited toward DBE participation.

The contractor bears the responsibility to determine whether the DBE possesses the proper contractor's license(s) to perform the work.

The Department's certification is not a representation of a DBE's qualifications and/or abilities. The contractor bears all risks that the DBE may not be able to perform its work for any reason.

A DBE may participate as a prime contractor, subcontractor, joint venture partner with either a prime contractor or a subcontractor, or as a vendor of materials or supplies. A DBE joint venture partner shall be responsible for a clearly defined portion of the work to be performed, in addition to meeting the requirements for ownership and control.
The dollar amount of work to be accomplished by DBEs, including partial amount of a lump sum or other similar item, shall be on the basis of agreements such as: subcontract, purchase order, hourly rate, and rate per ton.

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

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

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

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

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

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

The contractor may credit second-tier subcontracts issued to DBEs by non-DBE subcontractors. Any second-tier subcontract to a DBE must meet the requirements of a first-tier DBE subcontract.

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

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

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

14.02 Effect of Loss of DBE Eligibility:

If a DBE or a DBE prime contractor is deemed ineligible, decertified, or suspended by the Department in accordance with 49 CFR Part 26.87 and 49 CFR Part 26.88, the following provisions shall apply:

(A) If a DBE firm loses its DBE eligibility because the DBE firm was acquired by a non-DBE firm, no work performed by the DBE firm after the Decision Date will be counted toward DBE participation.

(B) If a subcontract, contract, or supplier arrangement has been executed before the Decision Date, work performed by the DBE firm will be counted toward DBE participation.

(C) If neither paragraph (A) nor paragraph (B) above applies, the work performed by the DBE firm after the Decision Date will be counted toward DBE participation.

(D) If the contractor extends or adds work to the DBE firm's subcontract, that work will not be counted towards DBE participation unless the contractor has obtained prior approval from the Department for DBE credit. Any requests to extend or add work to the DBE firm's subcontract to count towards DBE participation shall be submitted using the request form, made available on SBWD's website at https://azdot.gov/business/small-business-and-workforce-development/dbe-contract-compliance/contract-specs-and-forms

(E) The Department will consent to such DBE credit only if the added work is within the foreseeable range of added work, given the circumstances of the original DBE contract.

(F) For the purposes of this subsection, "Decision Date" means the date the Department notifies the DBE that it has become ineligible, decertified, or suspended under 49 CFR Part 26.87(c)(4), (g).

14.03 Notifying the Contractor of DBE Certification Status:

Each DBE contract of any tier shall require any DBE subcontractor or supplier that is either decertified or certified during the term of the contract to immediately notify the contractor and all parties to the DBE contract in writing, with the date of decertification or certification. The contractor shall require that this provision be incorporated in any contract of any tier in which a DBE is a participant.

14.04 Police Officers:

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

14.05 Commercially Useful Function:

A prime contractor can credit expenditures to a DBE subcontractor only if the DBE

performs a commercially useful function (CUF) on the contract.

In conformity with 49 CFR Part 26.55(c), a DBE performs a CUF when it is responsible for execution of the work of a contract and carries out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself that it uses on the project. To determine whether a DBE is performing a commercially useful function, the Department will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

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

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

When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to rebut this presumption. The Department will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

The Department will notify the contractor, in writing, if it determines that the contractor's DBE subcontractor is not performing a CUF. The contractor will be notified within seven calendar days of the Department's decision.

Decisions on CUF may be appealed to the State Engineer. The appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the State Engineer. The appeal must be received by the State Engineer no later than seven calendar days after the decision of SBWD. SBWD's decision remains in effect unless and until the State Engineer reverses or modifies SBWD's decision. The State Engineer will promptly consider any appeals under this subsection and notify the contractor of the State Engineer's findings and decisions. Decisions on CUF matters are not appealable to USDOT.

The Department will conduct project site visits on the contract to confirm that DBEs are performing a CUF. The contractor shall cooperate during the site visits and the

Department's staff will make every effort not to disrupt work on the project.

14.06 Trucking:

In conformity with 49 CFR Part 26.55(d), the Department will use the following factors in determining whether a DBE trucking company is performing a commercially useful function. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract.

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

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

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

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

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

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example: DBE Firm X uses two of its own trucks on a contract. It leases three additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all five trucks.

For purposes of this section, a lease must indicate that the DBE has exclusive use of

and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE. DBE participation will be allowed only for those lease costs related to the time each truck is devoted to the project.

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

14.07 Materials and Supplies:

In conformity with 49 CFR Part 26.55(e), the Department will credit expenditures with DBEs for material and supplies towards DBE participation as follows:

(A) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies is credited.

(1) A DBE manufacturer is defined as: a firm that owns, or leases, and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract, and of the general character described by the specifications.

(2) Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

(B) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies, (including transportation costs), is credited.

(1) A DBE regular dealer is defined as: a firm that owns, or leases, and operates, or maintains a store or warehouse or other establishment in which the materials, supplies, articles, or equipment of the general character described by the specifications and required under the contract are bought, kept in sufficient quantities, and regularly sold or leased to the public in the usual course of business.

(a) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the

purchase and sale or lease of the products in question.

(b) Items kept and regularly sold by the DBE are of the “general character” when they share the same material characteristics and application as the items specified by the contract.

(2) A firm may be a DBE regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, stone or asphalt without owning and operating a place of business, as provided above, if the person both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers’ own distribution equipment must be by a long-term operating lease, and not on an ad-hoc or contract-by-contract basis.

(3) A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies, including transportation cost, when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

(4) A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items as described above. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.

(5) Packagers, brokers, manufacturers’ representatives, or other persons who arrange, facilitate or expedite transactions are not regular dealers within the meaning of this paragraph and the paragraph above.

(C) If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, 40 percent of the cost of materials or supplies (including transportation costs) count for credit.

(1) A DBE distributor is defined as: an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance.

(2) A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE

distributor.

(3) If paragraph (1) and paragraph (2), above, are met, DBE distributors may receive 40 percent for drop-shipped items.

(4) Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(D) With respect to materials or supplies purchased from a DBE which is neither a manufacturer, a regular dealer, nor a distributor, the following standards shall apply:

(1) The Department will credit the entire amount of the fees or commissions charged by the DBE for: (1) assistance in the procurement of the materials and supplies, or (2) fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE participation.

(2) The Department will only credit the fees or commissions charged by the DBE if the Department determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) The cost of the materials and supplies themselves may not be counted toward DBE participation.

(E) The Department will credit expenditures with DBEs for material and supplies (e.g. whether a firm is acting as a regular dealer, distributor or a transaction facilitator) towards DBE participation on a contract-by-contract basis.

(F) The fact that a DBE firm qualifies under a classification (manufacturer, regular dealer, distributor or supplier) for one contract does not mean it will qualify for the same classification on another contract.

(G) The bidder shall be responsible for verifying whether a DBE qualifies as a DBE manufacturer, regular dealer, distributor or supplier.

(1) For each DBE firm listed as a regular dealer or distributor, the bidder must assess a DBE firm's 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.

(2) To receive credit toward DBE participation, the bidder shall use and submit the form made available on SBWD's website at https://azdot.gov/business/small-business-and-workforce-development/dbe-contract-compliance/contract-specs-and-forms, to affirm the DBE firm's capacity and intent to perform as a regular dealer or distributor.

15.0 Joint Checks:

15.01 Requirements:

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

(A) The DBE subcontractor must be independent from the prime contractor and the supplier, and must perform a commercially useful function. The DBE subcontractor must be responsible for negotiating the price of the material, determining quality and quantity, ordering the materials, installing (where applicable), and paying for the material. The DBE subcontractor may not be utilized as an extra participant in a transaction, contract, or project in order to obtain the appearance of DBE participation.

(B) The use of joint checks will be allowed only if the prime contractor, DBE subcontractor, and material supplier establish that the use of joint checks in similar transactions is a commonly recognized business practice in the industry, particularly with respect to similar transactions in which DBE's do not participate.

(C) A material or supply contract may not bear an excessive ratio relative to the DBE subcontractor's normal capacity.

(D) There may not be any exclusive arrangement between one prime and one DBE in the use of joint checks that may bring into question whether the DBE is independent of the prime contractor.

(E) Any arrangement for joint checks must be in writing, and for a specific term (for example, one year, or a specified number of months) that does not exceed a reasonable time to establish a suitable credit line with the supplier.

(F) The prime contractor may act solely as the payer of the joint check, and may not have responsibility for establishing the terms of the agreement between the DBE subcontractor and the supplier.

(G) The DBE must be responsible for receiving the check from the prime contractor and delivering the check to the supplier.

(H) The prime contractor cannot require the DBE subcontractor to use a specific supplier, and the prime contractor may not participate in the negotiation of unit prices between the DBE subcontractor and the supplier.

15.02 Procedure and Compliance:

(A) The SBWD must approve the agreement for the use of joint checks in writing before any joint checks are issued. The prime contractor shall submit a DBE joint check request form, available from the SBWD website, along with the joint check agreement, to SBWD through email within seven calendar days from the time the subcontract is executed.

(B) After obtaining authorization for the use of joint checks, the prime contractor, the DBE, and the supplier must retain documentation to allow for efficient monitoring of the agreement.

(C) Copies of canceled checks must be submitted, with the payment information for the period in which the joint check was issued, electronically through email to SBWD, and made available for review at the time of the onsite CUF review. The prime contractor, DBE, and supplier each have an independent duty to report to the Department in the case of any change from the approved joint check arrangement.

(D) Any failure to comply will be considered by the Department to be a material breach of this contract and will subject the prime contractor, DBE, and supplier to contract remedies and, in the case of serious violations, a potential for termination of the contract, reduction or loss of prequalification, debarment, or other remedies which may prevent future participation by the offending party.

16.0 Certification of Final DBE Payments:

DBE participation on the contract is measured by actual payments made to the DBEs. The contractor shall submit the “Certification of Final DBE Payments” form for each DBE firm working on the contract. This form shall be signed by the contractor and the relevant DBE, and submitted to the Engineer no later than 30 days after the DBE completes its work.

The contractor will not be released from the obligations of the contract until the ”Certification of Final DBE Payments” forms are received and deemed acceptable by the Engineer and SBWD.

17.0 False, Fraudulent, or Dishonest Conduct:

In addition to any other remedies or actions, the Department will bring to the attention of the USDOT any appearance of false, fraudulent, or dishonest conduct in connection with the DBE program, so that USDOT can take steps such as referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General for possible initiation of suspension and debarment proceedings against the offending

parties or application of “Program Fraud and Civil Penalties” rules provided in 49 CFR Part 31.

Reza Jafari

for/ Brahama Singh, PE,
Group Manager,
Contracts & Specifications

Attachment:
None