



DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (DBE)

Contractors' Handbook

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www.nevadadot.com

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Introduction

Purpose of the Handbook

This Disadvantaged Business Enterprise (DBE) Contractors' Handbook (Handbook) provides guidance to the DBE contractor regarding the federal and state requirements of the DBE Program. This guide includes DBE contractor responsibilities and best practices with respect to both federal requirements and state requirements. The handbook has numerous and various resources cited with internet links, in most cases.

This Handbook is not intended to supersede any federal, state, or contract specific requirements. Should a conflict of instructions arise, always refer to the published regulations or the Contract Special Provisions for guidance.

DBE Program Summary

The DBE Program is a legislatively mandated United States Department of Transportation (USDOT) program that applies to federal-aid highway dollars expended on federally-assisted contracts issued by USDOT recipients such as the Nevada Department of Transportation (NDOT).

NDOT has established a DBE Program in accordance with USDOT regulations. The program is administered by the USDOT's three modal administrations: Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). Implementation of the DBE Program is guided by USDOT regulations found at 49 Code of Federal Regulations (CFR), Part 26. (Part 23 for FAA).

NDOT's primary DBE Program objectives are to:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts in NDOT's highway, transit, and airport financial assistance programs.
- Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts.
- Provide appropriate flexibility to recipients of federal financial assistance in establishing and providing opportunities for DBEs.
- Ensure that NDOT's DBE Program is narrowly tailored in accordance with applicable law.
- Ensure that only firms that fully meet 49 CFR, Part 26 eligibility standards are permitted to participate as DBEs.
- Help remove barriers to the participation of DBEs in USDOT-assisted contracts.
- Promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

- Assist the development of firms so they can compete successfully in the market place outside of the DBE Program.

Small Business Enterprise Program (SBE)

49 CFR 26.39 requires a state Department of Transportation to include a small business element in its DBE program to facilitate participation by small businesses generally, not just DBEs. As part of the DBE Program, small businesses are certified without regard to race, gender, color, sex, religion, national or ethnic origin, age, disability or geographic location as Business Enterprises (SBEs). The intent of this element of the DBE Program is designed to include all segments of the business community in order to create a level playing field on which small businesses can compete fairly. The purpose of this requirement is to assist state DOTs in attaining race-neutral DBE participation.

The certification process for the SBE is identical to the DBE certification process. New SBE applicants must:

- Complete an SBE Application Form;
 - firms currently certified by the SBA as an 8(a), Small Business (SDB) or DBE automatically qualify to participate in the SBE Program.
- Once a firm's SBE status is verified, the certification is valid as long as there is no change in ownership, control, business size or personal net worth.
- SBE-certified firms must annually submit a No-Change Affidavit (NCA) and applicable Business Tax Returns.

Chapter 1 – Resources

There are numerous and diverse business-oriented resources for DBEs available in the local communities and on the internet, therefore, we list only a few examples in this handbook (see Appendices). Additionally, you may find references throughout this handbook that you may find useful.

NDOT Web Page

There are a variety of resources provided on the internet for companies who wish to be involved in NDOT's Business Development Program (BDP). Opportunities are listed under the tab "Doing Business" at www.nevadadot.com. Many documents regarding NDOT's DBE program (and related subjects) are placed in the Civil Rights section of the "Doing Business" page that subcontractors and Primes alike should find helpful. Some interesting items you'll find there are:

- DBE Permanent Program Plan.
- DBE Trucking Guidelines.
- A list of our community partners.
- Triennial goal and methodologies for FHWA and FTA.
- Contact information for our DBE staff.
- Mentor-Protégé Program Guidelines: Companies who work in highway construction-related industries and who are interested in NDOT's DBE Mentor/Protege program, should review the Mentor/Protégé Program found on the web-site.

Even if you have visited our web-site many times, please feel free to drop in to our site at: www.Nevadadot.com.

USDOT Resources

Below are web resources from the USDOT and FHWA on the DBE Program:

- DBE Program at the [US DOT](#).
- DBE Program Overview at the [FHWA](#).

Compliance and Certification Management System (CCMS)

Much information is provided our DBEs through the web-based program B2GNow. It is the program NDOT utilizes to certify and maintain certification, monitor contracts, track contract payments under the prompt payment provisions, and provide information on DBEs through what we call the Compliance and Certification Management System (CCMS). The External Civil Rights Division (ECRD) utilizes the system to announce training, meetings, opportunities, or other items that may be of interest to our DBEs.

Below is a list of vendor resources that can be found in CCMS: www.nevadadbe.com

- Program support staff.

- Vendor Handbook.
- Vendor Training Manual.
- Utilization Plans (Found on page titled Utilization Plans).
- Video Tutorials.
- Bidding, Procurement, Training and Outreach Opportunities.
- Certified DBE Vendors' List.

Training

As part of its induction of newly certified DBEs, NDOT strongly encourages DBEs to complete an on-line training and development needs survey (Skills-gap Analysis Assessment). Upon completing the survey, DBEs are encouraged to develop an Individualized Company Development Plan (ICDP) in order to formalize their development as business owners in order to strengthen their company (see sample of ICDP in Appendix 4).

DBE Supportive Services Program (DBE/SS)

The DBE/SS program is the linchpin of the NDOT Business Development Program (BDP) which is discussed in the next section. The primary purpose of the DBE/SS is to provide training, assistance, and services to DBEs certified in the DBE program, to increase their activity in the program, and to facilitate the firms' development into viable, self-sufficient organizations capable of competing for, and performing on federally-assisted highway projects as well as other business communities.

NDOT is committed to assisting DBEs in their efforts to work with NDOT and other state agencies. To this end, the Department provides a variety of training programs and technical assistance provided by the DBE Supportive Services program staff to assist DBEs in meeting these goals.

- **Events and workshops** - various vendor fairs, conventions, conferences, workshops, and seminars held throughout the state.
- **Mentor/Protégé Program** – NDOT matches more experienced contractors in road construction and related areas with DBEs in order to provide guidance and assistance in developing effective business practices and knowledge of acquiring and successfully completing contracts. The BDP provides networking opportunities, project matching assistance between subcontractors and primes, and access to training in the areas of business development, business management, and construction management.

NDOT Business Development Program (NBDP)

NDOT's BDP Program works to increase disadvantaged-owned business participation in

the highway construction industry. The Program provides DBEs with needs assessments and firm-specific targeted-skills training and guidance to help them become competitive within the heavy highway or construction marketplace. The NDOT BDP program assists all DBEs in preparing DBE's to move into non-traditional areas of work and to compete in the marketplace outside the DBE program.

To receive information on current activities in Supportive Services and the NBDP, contact the DBE Manager at (702) 730-3317 or the Assistant DBE Manager at (702) 730-3305.

DBE Program Authorities

The following is a list of the DBE contract regulations and provisions that contractors must comply with:

- USDOT DBE regulations [49 CFR Part 26](#) and Part 23.
- NDOT Standard Specifications for Road and Bridge Construction.
- NDOT DBE Contract Special Provisions.

Condition of Federal Funding

NDOT receives federal financial assistance from USDOT through programs of the FHWA, FAA, and FTA. As such, NDOT becomes a recipient of federal funds and is responsible for administering its DBE Program and is legally accountable for expenditures of USDOT financial assistance in accordance with federal requirements.

As a condition of receiving this assistance, NDOT has signed an assurance that it will comply with 49 CFR, Part 26 in the establishment and administration of a DBE Program.

Prime contractors, subcontractors, suppliers, manufacturers, and consultants all become sub-recipients of USDOT federal funds when they enter into federally-assisted contracts, subcontracts, and agreements with NDOT.

As a recipient of federal funds, NDOT requires sub-recipients comply with the requirements of 49 CFR, Part 26, NDOT DBE Program, and DBE contract provisions.

As sub-recipients of federal funds, and as a condition of contract award, prime contractors, subcontractors, suppliers, manufacturers, and consultants must affirm that they will carry out their DBE obligations, and will work with NDOT and the federal government in their review of its activities under the contract.

What is NDOT's largest project, ever? <http://ndotprojectneon.com/learn/overview/>

Acronyms

Acronym	Description
B2Gnow™	Business to Government Now
CCMS	Compliance and Certification Management System
CFR	Code of Federal Regulations
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DE	District Engineer
ECRD	External Civil Rights Division
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GFE	Good Faith Effort
ICDP	Individualized Company Development Plan
JV	Joint Venture
LPA	Local Public Agency
NAC	Nevada Administrative Code
NAICS	North American Industry Classification System
NDOT	Nevada Department of Transportation
NUCP	Nevada Unified Certification Program
RE	Resident Engineer
SBE	Small Business Enterprise
USDOT	U.S. Department of Transportation

Terms and Definitions

Business to Government Now (B2GNow) – See CCMS below.

Code of Federal Regulations (CFR) – Guidelines issued by the federal government by which a program of function is administered.

Commercially Useful Function (CUF) - A DBE performs a CUF when it is responsible for execution of a distinct element of work of a contract or subcontract and carries out its responsibilities by actually performing, managing, and supervising the work involved.

Disadvantaged Business Enterprise (DBE) - A for-profit, small business concern where socially and economically disadvantaged individuals own at least a fifty-one percent interest and also control management and daily business operations.

Compliance and Certification Management System (CCMS) - A web-based software program used to collect, verify and manage payment information for prime contractors and subcontractors working on federal-aid projects.

External Civil Rights Division (ECD) – A Division in NDOT responsible for ensuring Title VI and accompanying programs are followed.

Federal Aviation Administration (FAA) – A Division of USDOT.

Federally-Assisted Contract - Any contract between NDOT and a contractor which is paid for, in-whole or in-part, with USDOT financial assistance.

Federal Highway Administration (FHWA) – A Division of USDOT.

Federal Transit Administration (FTA) – A Division of USDOT.

Goal Credit - The value of DBE participation on a project that qualifies towards the DBE goal.

Good Faith Effort (GFE) - A contractor's efforts to achieve a DBE goal by its scope, intensity, and appropriateness to the objective can reasonably be expected to fulfill the program requirement.

Handbook - DBE Contractors' Handbook.

Individualized Company Development Plan (ICDP) – A personalized development plan

that is developed for the individual company owner that specifically targets knowledges, skill, abilities and other characteristics which have been identified through an on-line survey as training and development necessary in order to grow and enhance to company. The owner may complete upon initial entry into the DBE certification or any time thereafter.

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

Local Public Agency (LPA) - A local government entity working in concert with NDOT on a project in which at least one phase of project development is managed by the local government agency for which it is being reimbursed with federal or state funding or a locally-funded project managed by a local government on the state highway system.

Nevada Administrative Code (NAC) – Regulations developed by state agencies to supplement the statutes and provide direction and guidance in administering the law (see NRS below).

Nevada Department of Transportation (NDOT) – A department of Nevada government responsible for building and maintaining Nevada’s road and highway system.

Nevada Revised Statutes (NRS) – Laws resulting from action in the Nevada legislature and signed by the governor.

Nevada Unified Certification Program (NUCP) - A certification program for the federal DBE Programs in Nevada.

North American Industry Classification System (NAICS) – NDOT uses the NAICS codes as indicators of the type of work a contractor performs. The primary industry

classification system which best describes the primary business of a firm. The NAICS is used by federal agencies for the purpose of collecting, analyzing, and publishing statistical data related to the US economy (<http://www.census.gov/eos/www/naics/>).

Race-Conscious - Measures taken to meet DBE Program objectives that focus specifically on assisting only DBEs.

Race-Neutral - Measures taken to meet DBE Program objectives that are tailored to assist all small businesses including DBEs and do not single out a specific minority group.

Resident Engineer (RE) - Manager responsible for ensuring all contractual requirements are being met throughout the live of a contract.

Shortfall - A contractor's failure to meet a project assigned DBE goal.

Sub-recipient - Any entity, public or private, to which USDOT financial assistance is extended through a recipient, through programs of the FHWA, FAA, or FTA.

Special Provision - Additions or revisions to standard specifications or special specifications of the contract.

United States Department of Transportation (USDOT) – A department of the federal government charged with all matters of transportation services in the united states of which FHWA, FAA, and FTA are divisions.

Utilization Plan - The Utilization Plan identifies which DBEs the prime contractor intends to use to satisfy the project DBE Goal.

Chapter 2 – External Civil Rights Division

Overview

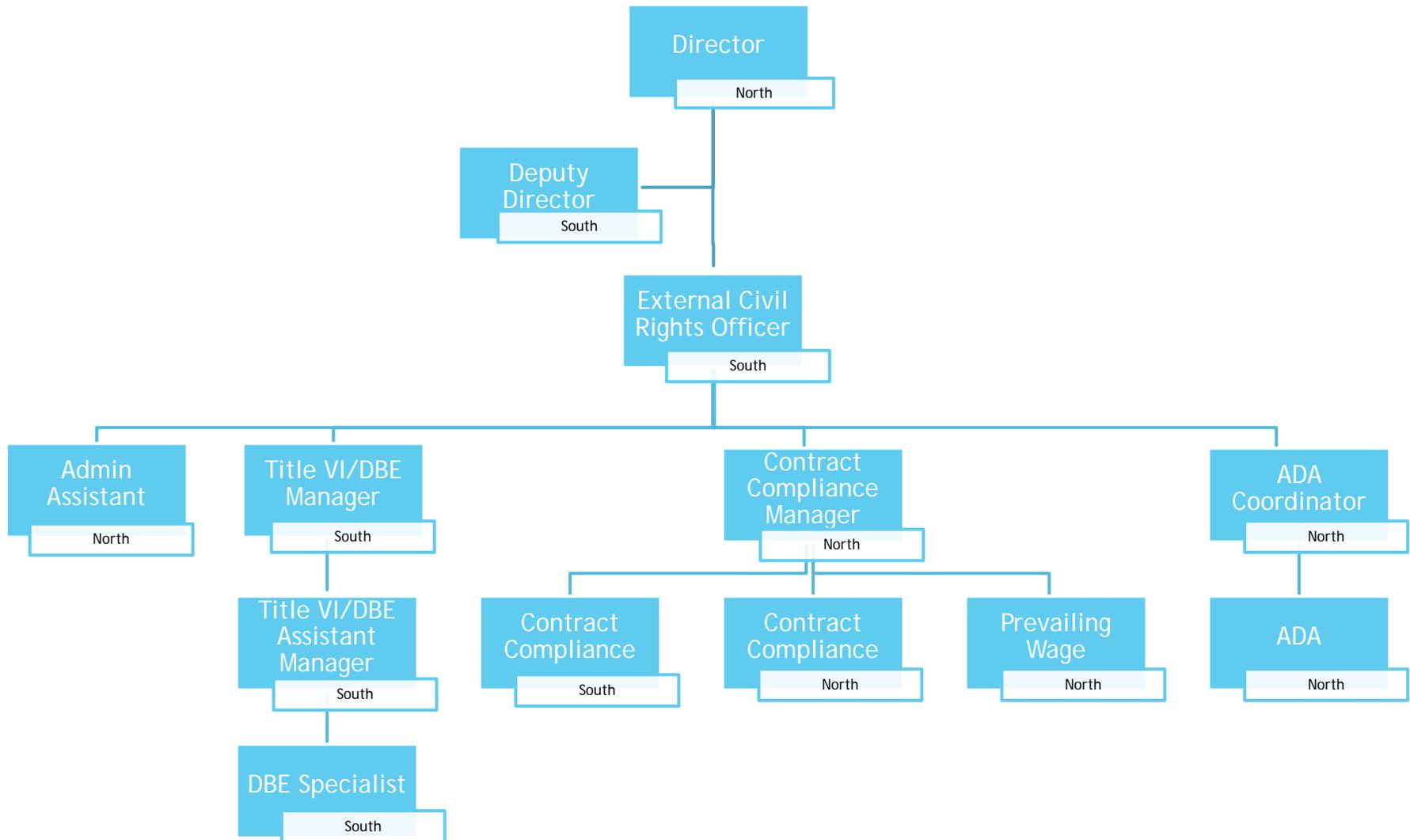
NDOT's DBE Program is established under NDOT's External Civil Rights Division (ECRD). The ECRD is responsible for implementing all aspects of the DBE Program and ensuring that NDOT complies with all provisions of 49 CFR, Part 26. The ECRD accomplishes this responsibility through a tiered approach of contract oversight, program administration, and verification of contractor compliance at division and district levels. The division has three sections: American Disabilities Act (ADA) Section; Contract Compliance Section; and The Disadvantaged Business Enterprise Section (see Organization Chart below). To learn more about the ADA and Contract Compliance sections, visit www.nevadadot.com.

DBE Section Staff

The DBE Section is located in Las Vegas, Nevada but is responsible for the Department's DBE program. Under the general guidance of the External Civil Rights Officer, the DBE Manager and staff are responsible for:

- Implementation and oversight of NDOT's DBE Program;
 - outreach
 - certification and approval of No Change Affidavit and documents (NCA)
 - Approval of additions of North American Industry Classification System (NAICS) codes to DBEs' certification. and
 - program administration.
- Recommending and establishing policy and procedure in administration of the DBE Program.
- Coordination of DBE Program requirements with the Districts, FHWA, and all sub-recipients.
- Setting overall DBE state participation goal.
- Setting specific DBE project or contract goals.
- Administering the Department's DBE Supportive Services Program.
- Annual reporting requirements to FHWA.
- Providing training on DBE Program requirements, processes, and procedures.
- Providing support and guidance to Districts, divisions and sub-recipients.
- Conducting DBE Program compliance audits on, local governments, and other entities that are recipients of federal funds.
- Participation in the Nevada Unified Certification Program (NUCP).

ORGANIZATION CHART OF NDOT EXTERNAL CIVIL RIGHTS DIVISION



Chapter 3 – NDOT Districts

NDOT is organized into three (3) Districts. The Districts oversee the construction and maintenance of state highways. The oversight responsibility includes monitoring contractor compliance with the DBE Program requirements as it relates to the projects the District Engineers supervise. District offices are the initial and primary contact for prime contractors and subcontractors and provide oversight for construction division projects. Resident Engineers (under the District office) support the District office during different stages of the project. Their oversight responsibility includes monitoring contractor compliance with the DBE Program requirements.

DISTRICT 1

LAS VEGAS

123 E. Washington Avenue

Las Vegas, Nevada 89101

Office Hours: Monday-Friday 8 a.m. to 5 p.m.

(702) 385-6500

DISTRICT 2

RENO

310 Galletti Way

Sparks, Nevada 89431

Office Hours: Monday-Friday 8:00 a.m. to 5 p.m.

(775) 834-8300

DISTRICT 3

ELKO

1951 Idaho Street

Elko, Nevada 89801

Office Hours: Monday-Friday 8 a.m. to 5 p.m.

(775) 777-2700

Do you know? You can discover the most recent bidding opportunities offered by NDOT by visiting the ["Doing Business"](#) section under "vendor opportunities."

District Engineer Responsibilities

Each of the three (3) districts are managed by a District Engineer (DE) who generally oversees the building, operation, and maintenance of the state transportation system within a single District. Through the guidance and assistance of the ECRD, the DE will perform the following DBE-related functions:

- Know and understand federal-aid contract DBE provisions included in the contract.
- Ensure a DBE utilization plan has been developed by the Prime on federally-assisted projects and the plan has been communicated to contractors prior to issuance of the Notice to Proceed.
- Discuss DBE provision requirements at the pre-construction conference.
- Ensure all DBE subcontractors on the plan and those subsequently added to the contract are in the CCMS.
- Review and approve termination and substitution requests.
- Ensures prompt payment in accordance with regulations.
- Review joint check requests.
- Perform Commercially Useful Function (CUF) reviews.
- Verify final DBE participation dollar amounts or determine adequate good faith efforts.
- Maintain records in accordance with FHWA records retention requirements.
- Coordinate with the ECRD if a contractor does not provide prompt payment to DBE subcontractors in accordance with the regulations or prime does not request appropriate substitution or does not provide adequate good-faith efforts during the project.
- Seek direction and guidance from External Civil Rights staff on DBE Program compliance issues.

Do you Know? Districts may issue contracts for under \$100,000.00 without advertising.

Chapter 4 – DBE Contractor

DBE Contractor Staff

Being fully aware of resources available to you and understanding the DBE Program requirements is the most effective way to ensure compliance with all provisions of 49 CFR, Part 26 or Part 23.

DBE Contractor Responsibilities

- Market your firm presenting its capabilities to prime contractors and aggressively seek education on NDOT contracting processes as well as each prime contractor's practices.
- Take maximum advantage of training opportunities and educational programs offered by the DBE Support Services office and industry partners.
- Participate in project outreach programs for DBE firms initiated by the DBE Supportive Services staff.
- Maintain up-to-date DBE certification.
- Review contracting resources beginning with the NDOT web site: <https://www.nevadadot.com/doing-business/contractors-construction/contract-services>.
- Thoroughly review plans and specifications prior to submitting a quote;
- Promptly respond to prime contractor solicitation expressing your intention/interest in quoting or not.
- Seek appropriate assistance and ask questions of prime contractors in a timely manner.
- Consistent with effective business practices, submit quotes clearly noting which items of work your firm is certified to perform.
- Maintain a log of all quotes and file of all prime contractor solicitations until contract execution.
- Review bid tabs and contact prime contractor, as appropriate to your quote or business type, after contract award is complete.
- Should a prime reject a bid, consider negotiating to do a smaller portion of work quoted.
- Before signing a DBE commitment, talk to the prime contractor and review contract documents to determine if there are special requirements, such as expedited progress schedules or non-standard items that will impact your work.
- Do not agree to a commitment if you do not have the expertise, ability, or financial and equipment resources needed to complete the job.
- A DBE commitment is not a contract, it is a commitment to work.
- Perform work for which you are certified. If you perform work for which you do not have an assigned NAICS code, your work cannot qualify as part of DBE procurement and the Prime will not receive DBE credit for that portion of work performed (contact the DBE

section if you believe you are qualified to perform the work but do not have the NAICS code in your certification).

- Meet performance standards as established by contract specifications;
- Understand your responsibility and consequences of performing a commercially useful function.
- Promptly submit verification of all payments received by prime contractor into the CMMS System.

Do you know? This is the link to a complete list of NAICS Codes:
<http://www.census.gov/eos/www/naics/>

Chapter 5 – The Nevada Unified Certification Program (NUCP)

Background

49 CFR, Part 26.81(b)(2) states: “The UCP shall provide ‘one-stop shopping’ to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.” In support of this requirement, the State of Nevada established a NUCP Committee that certifies DBEs for participation in USDOT federal contracting projects across the State of Nevada.

NUCP Members

There are six (6) active members on the NUCP. Of those, three (3) are certifying agencies. The NUCP makes all certification decisions in accordance with 49 CFR, Part 23, Part 26, and the NUCP Memorandum of Agreement. NDOT must keep complete files on applicants and provide information as required and annually requires the DBE firms it has processed to submit an affidavit of no change form, due on their certification anniversary date.

A business' DBE certification received from any of the NUCP certifying agencies is valid and can be relied upon by any Nevada entity that receives US DOT funds.

The following agencies are members of the NUCP:

Certifying members are –

- Reno/Tahoe Airport, Reno, Nevada
- McCarran International Airport, Las Vegas, Nevada
- Nevada Department of Transportation (NDOT)

Non-Certifying Members are –

- Regional Transportation Commission, (RTC), Southern Nevada
- Regional Transportation Commission (RTC), Washoe County
- Carson Area Metropolitan Planning Organization (CAMPO)

DBE Certification Specifics

Overview

Certification procedures are designed to ensure all businesses participating in the NDOT DBE program meet the eligibility standards defined in US DOT regulations at 49 CFR Part 26. A business certified as a DBE can bid on all projects in the state of Nevada provided individual agency requirements that apply to all firms, DBE and non-DBE alike, also have

been met. Firms wishing to be considered for DBE certification must complete the NUCP DBE Certification Application and submit all information requested on the application. The application is designed to solicit information to determine whether an applicant business is eligible for certification as a DBE under 49 CFR Part 26. To complete a “No Change Certification” form, go to: www.nevadadbe.com.

Interstate Certification

A DBE whose primary business is not based in Nevada must be DBE-certified in their home state before they are eligible to apply for certification in Nevada.

In the State of Nevada all businesses are required to obtain a business license within the county/city in which they will operate or perform work. Depending on location and type of business you may be required to obtain a County license as well as a city license(s). In Southern Nevada for example, if you perform work in several jurisdictions within Clark County you may be required to obtain a city license from multiple jurisdictions. Clark County is made up of six jurisdictions, each with its own licensing agency-the City of Las Vegas, the City of North Las Vegas, the City of Henderson, Boulder City, the City of Mesquite and Unincorporated Clark County.

There are other special permits required in Nevada from Health, Police, Fire or Building Departments. Additionally, there are permit requirements for liquor, gaming, health permits, home occupation permits, cosmetology and others. Check with the local jurisdiction in which you plan to operate your business to determine the licensing/permit requirements.

Interstate-registered DBEs (as well as Nevada-based start-ups) should visit Nevada’s one-stop business portal, “SilverFlume,” Nevada’s online one-stop business portal consolidates the forms and information needed to start and run your company. SilverFlume eliminates redundancy and improves accountability by collecting your information one time and using that information in transactions with the appropriate agencies. SilverFlume allows you to concentrate on growing and operating a successful company.

On-site Visits and Field Monitoring

Visits are conducted at the applicant’s principal place of business with firms seeking first-time certification. During the on-site visit, the firm’s principal officers and key employees must respond to questions designed to clarify information contained either in the application package or received at the on-site visit. Questions are designed to verify whether or not the applicant meets DBE certification standards. During the on-site visit, certification staff may review a firm’s financial, corporate, payroll and other records. Following the on-site visit, a report based on facts contained in the applicant’s file will be developed and presented for review and a certification eligibility decision by the NUCP Committee. NUCP Meetings are held monthly unless otherwise determined by the Committee.

Completion of Application Process

The report of the on-site visit is completed by certification staff and a recommendation is made in the report on whether the applicant meets or not eligibility standards established in federal regulations and state law.

Denial Process

If grounds for a determination of certification ineligibility are sufficient, the certifying agency will mail the firm a Notice of Certification Denial, which will contain reasons for the decision and advises the applicant of its right to appeal to the US DOT.

NUCP Directory

The firms listed in the NUCP directory meet the DBE certification requirements to perform the specific work codes assigned at certification. All requests for additional work codes must be approved prior to the execution of any contract the DBE firm wishes to perform work on as a DBE. The NUCP DBE Directory should be relied upon as the sole source for soliciting DBEs. There sometimes is confusion regarding the term "DBE" and it is always safer to check the current status of a DBE by accessing the list when verification is necessary. A list of all certified DBE firms in Nevada is available online at the: [DBE Directory](#). The NUCP directory includes a list of certified DBE firms; including the DBE's company name, address, telephone, and NAICS codes.

No Change Affidavit (NCA)

DBE/SBE certification does not expire, however certified DBE/SBE firms are required to update their certification by completing and submitting an annual No Change Affidavit Application. Therefore, the DBE/SBE Certification requires annual submittal of No Change Affidavit and applicable Business Tax Returns. Complete and submit the NCA Application by logging into your account at www.nevadadbe.com. (Airport Concession DBEs are to submit their updates in accordance with instructions from DBE staff from the airport agencies.)

NOTE: Please remember to submit your NCA Application **prior** to the deadline date or your business will not be visible in the system to contractors. You will be notified by e-mail at least 30 days prior to your anniversary date. Next time you are in the system, please remember to check your e-mail address.

Do you know? In Nevada, the NUCP monthly meetings are open to the public.

Chapter 6 – Commercially Useful Function (CUF)

Overview

A DBE firm performs a commercially useful function (CUF) when it is responsible for execution of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. The regulations provide that in regard to materials and supplies, the DBE must be responsible for negotiating price, determining quality, quantity, ordering the material, installing (where applicable), and paying for the material itself.

In summary, the DBE should:

- Possess the required experience.
- Be financially independent.
- Employ its own laborers.
- Own or rent its own equipment.
- Handle its own payroll, invoicing, and negotiations.

To count toward the DBE goal, a DBE firm's work must serve a CUF. This means that the DBE firm has a necessary and useful role in the project. For example, the DBE firm supplies the material and performs, manages and supervises the work.

Prime contractors are responsible for determining that the subcontractors they are using to claim DBE credit meet this requirement. It is incumbent on prime contractors who work on projects with DBE participation requirements to hire independent, certified DBE firms to perform a CUF. Prime contractors should adopt a DBE compliance program to closely monitor its DBE subcontractor relationships.

A DBE firm's appearance at NUCP does not confirm that it is ready or capable of performing a CUF on a project. The prime contractor should ask potential DBE firms these questions to confirm that the DBE is ready and able to perform a CUF.

- How long has your company been in business?
- Will the DBE manage and supervise the work with its own managers and superintendents?
- Will the DBE perform the work with its own forces?
- Will the DBE be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, installing (where applicable) and paying for the material itself?
- What work, if any, does the DBE intend to subcontract and is that amount consistent with industry practice?

The regulations make clear that a DBE firm does not perform a CUF 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. If the DBE firm serves only to provide the appearance of DBE participation, the work cannot count toward the DBE

goal. CUF violations may indicate possible fraud and abuse of public funds and are subject to investigation.

Counting DBE Participation

Counting Overview

Once NDOT determines that work on a project qualifies as a CUF, it then calculates the amount it can count toward its DBE goal. Only the value of the work performed by the DBE firm counts toward the goal. Depending on the nature of the work, different guidance applies.

The following is guidance for counting participation when a DBE firm is:

- DBE Subcontractor
- Manufacturer
- Regular Dealer
- Packager, Broker, Manufacturer's Representative
- Trucking Firm
- Joint Venture

DBE Subcontractor

When a DBE firm is a subcontractor, it must perform at least thirty percent (30%) of its contract using its own employees, equipment, materials, and resources. When this condition is met, all DBE work performed counts toward the DBE goal. A DBE subcontractor typically furnishes and installs the work item. One hundred percent (100%) of the prime contractor's payment to the DBE firm will count toward the contract goal. This includes payment for labor and materials.

When a DBE subcontracts to another DBE firm, the value of the subcontracted work may be counted toward the DBE goal. However, work subcontracted to non-DBE firms does not count toward the goal.

- **Manufacturer**

A prime contractor purchases materials or supplies from a DBE manufacturer. A DBE manufacturer produces, on its premises, materials or equipment used for a project. A DBE manufacturer can also take product and alter it to meet contract specifications. NDOT counts one hundred percent (100%) of the value of manufactured materials and equipment toward the DBE goal.

- **Regular Dealer**

A prime contractor purchases material or supplies from a DBE regular dealer. There are two ways a DBE firm can perform as a regular dealer.

- A DBE firm may have a store or warehouse out of which it sells or leases products to the public.
- For bulk items such as petroleum, steel, cement, gravel, stone, or asphalt, a DBE firm must own and operate distribution equipment for the product it is supplying. Any supplementing of regular dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad-hoc or contract-by-contract basis. The DBE must lease the equipment itself, as well as operate the equipment with its own workforce.

If a DBE firm is acting as a regular dealer, sixty percent (60%) of the value of items sold to the project counts toward the DBE goal. NDOT determines the amount of credit on a contract-by-contract basis.

- **Packager, Broker, Manufacturer's Representatives**

A prime contractor purchases material or supplies from a DBE firm, which is neither a manufacturer nor a regular dealer. NDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies. Goal credit will be granted if the fees or commissions are reasonable.

- **Differences between a Manufacturer, Regular Dealer, and Broker**

The following example shows the difference under the requirements of the DBE Program between a manufacturer, a regular dealer, and a broker. The example is the furnishing of crushed aggregate meeting a state DOTs specification for such items as aggregate base course.

- **Manufacturer (100%)** - A DBE as its principal business and under its name produces on its premises crushed aggregate and meets state standard specifications would be considered a manufacturer and the cost of the crushed aggregate produced can be credited 100% towards meeting the goal.
- **Regular Dealer (60%)** - A DBE is considered a regular dealer of crushed aggregate if the material is purchased in its name, and it engages as its principal business, the purchase and sale of crushed aggregate to the general public, or owns and operates the necessary distribution equipment (since aggregate is considered a bulk item) to deliver the crushed aggregate. Under these circumstances, the DBE can be considered a regular dealer and 60% of the cost of the crushed aggregate purchased is credited towards the goal.
- **Packager, Broker, or Manufacturer's Representative - (100% Fees or Commissions)** - If the DBE firm does not meet all or any of the functions presented in defining a manufacturer or regular dealer in crushed aggregate but arranges or expedites transactions consistent with industry practice in the delivery of such materials, then the services in the amounts of fees or

commissions charged in the procurement and/or delivery of such materials can be credited towards the goal.

- **Trucking Firm**

In order to explain how a contractor is to receive DBE credit for trucking on a project, we have extracted some of the guidelines provided in 49 CFR, Part 26.55. For purposes of this discussion, 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 clearly display the name and identification number of the DBE.

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates 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 lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

EXAMPLE OF APPLICATION OF REGULATION:

DBE Firm X uses two of its own trucks on a 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. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

Remember that it is not the intent of the regulation to prohibit the use of trucks other than DBE trucking operations on a project. However, if a contractor is solely reliant upon trucking to meet the DBE goal, it may not be in compliance if the contractor has counted non-DBE trucks to the degree the DBE company has not fulfilled its obligation (performed a full service). Further, this type of issue may not appear until NDOT is closing the contract. Therefore, the contractor should monitor the process through the duration of the hauling operation.

Please contact Contract Compliance at (775) 888-7497 should you have questions regarding DBE trucking operations and the CUF on your project.

Joint Venture

A joint venture is defined as an association of a DBE firm and one or more other firms to carry out single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills, and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. When a DBE firm performs as a participant in a joint venture, NDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward the DBE goal.

NDOT will assess each joint venture agreement proposed to meet all or a portion of a DBE participation goal by using the following criteria:

- Does the relationship, or any aspect of such, between the DBE and non-DBE conflict with the ownership and control requirements specified in contract provisions?
- Is the DBE an independent business concern apart from the non-DBE partner in the proposed agreement?
- Is the DBE's share in the ownership, control, management responsibilities, risks, and profits of the joint venture commensurate with the DBE's ownership in a joint venture?
- Does the agreement clearly define the work to be performed by the DBE?
- Is the work to be performed by the DBE in conformance with the contractual and statutory provisions governing the DBE's performance of a Commercially Useful Function?

Types of Work a DBE Can Perform on a Contract

The types of work a firm can perform is described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to. Multiple NAICS codes are assigned where appropriate.

NDOT checks carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information NDOT needs to make an appropriate NAICS code designation. Work performed without the correct NAICS code is considered not creditable toward the DBE goal attainment on a contract and is not considered a CUF for the DBE.

If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that NDOT, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. NDOT is not precluded from changing a certification classification or description if there is a factual basis in the record. However, NDOT will not make after-the-fact statements about the scope of a certification that is not supported by evidence in the record of the certification action.

Evaluating a CUF

To ensure each DBE firm is performing a CUF, NDOT must monitor contract activity and certify in writing that DBE firms are performing a CUF. To determine whether a DBE firm is performing a CUF, five elements must be considered: management, workforce, equipment, materials, and performance.

A CUF review is required for all DBE firms on all federally-funded projects, including projects with no DBE goal. This also includes DBE truckers, suppliers and other vendors where a subcontract is not required.

NDOT field personnel conduct CUF reviews and inspect jobsites to verify that the DBE firm is performing and managing the work. The reviewer's activities include making observations and interviewing DBE personnel.

Field staff review project-related documents such as:

- Executed subcontracts.
- Certified payrolls.
- Invoices.
- Purchase orders.
- Delivery tickets and equipment title of ownership or lease agreements.

These documents identify and support who is paying and supervising employees, ordering and paying for materials, and whose equipment is used on the project.

If a DBE firm is presumed not to be performing a CUF, NDOT will notify the DBE firm and offer the opportunity to provide rebuttal information. If the presumption prevails, no work performed by the DBE will count as eligible participation. The denial of goal credit may occur before or after a CUF determination has been made by NDOT.

If the denial of goal credit results in a goal shortfall, the prime contractor will be required to obtain a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable. CUF determinations are not subject to administrative appeal to USDOT.

CUF and Certification

Certification and CUF are separate and distinct issues. Certification decisions address the nature of a firm's ownership and structure while CUF primarily concerns the role a firm has played in a transaction. **See the NDOT Contract Compliance Manual for information regarding checking for CUF.**

A DBE firm's repeated failure to perform a CUF may raise questions regarding the firm's control, as it relates to independence, and perhaps ownership. If there is evidence of a pattern of failing to perform a CUF that raises serious issues with the firm's ability to control the work and its independence from the non-DBE firm, NDOT must address this matter and may initiate a proceeding under 49 CFR, Part 26.87 to determine the continued eligibility of the DBE firm.

If a DBE firm is a mere pass-through or middle man between two performing parties, the contractor seeking participation credits may be exposing itself to serious criminal and civil liability as well as not receiving the credits toward project work. In cases of deliberate attempts to circumvent the intent of the DBE Program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE.

DBE Fraud Indicators

NDOT will report any false, fraudulent, or dishonest conduct in connection with the DBE program to the USDOT Office of the Inspector General (OIG) for appropriate action. The OIG looks at ten key indicators, or "red flags," in determining whether to investigate a contractor for DBE fraud. These red flags include:

- DBE firm's owner lacking background, expertise or equipment to perform subcontract work.
- Employees shuttling back and forth between prime contractor and DBE-owned business payrolls.
- Business names on equipment and vehicles covered with paint or magnetic signs.
- Orders and payment for necessary supplies made by individuals not employed by DBE-owned business.
- Prime contractor facilitated purchase of DBE-owned business;
- DBE owner never present at job site.
- Prime contractor always uses the same DBE.
- Financial agreements between prime and DBE contractors.
- Joint bank accounts (prime/DBE).
- Absence of written contracts.

Under 49 CFR, Part 26.107, businesses working in the DBE program who engage in the conduct may be subject to suspension or debarment, or other enforcement actions under 49 CFR Part 31, Program Fraud and Civil Remedies, or criminal prosecution. USDOT OIG makes investigating and prosecuting DBE fraud a priority. The OIG, working with U.S. Attorneys' offices has helped to create successful criminal prosecution for fraudulent conduct in the DBE program. Anyone who becomes aware of fraud, false, or dishonest behavior in these programs should inform the OIG as well as NDOT staff.

Reporting Fraud

Individuals may anonymously report suspected unethical and illegal activities within the agency. Should you become aware of possible fraud or abuse, you may report it by contacting:

- External Civil Rights Office at (775) 888-7497.
- USDOT Inspector General's office at (202) 366-1959 or write to the USDOT Inspector General, 1200 New Jersey Ave SE, 7th Floor, Washington, DC 20590. Web-site: <https://www.oig.dot.gov/about-oig/contact-us>

Do you know? You can find more information on CUF at: "[FHWA Tips on Evaluating a Commercially Useful Function.](#)"

Chapter 7 – Contract Letting and Setting DBE Goals

Overview

The ECRD reviews agreements and all construction-related contracts over \$250,000,000 prior to the issuance of the Request for Proposals (RFPs). Depending upon various factors, a DBE project goal will be set on the individual projects. These goals set on individual projects align with a “Triennial Goal” NDOT is required to calculate and have approved by the Authority (for NDOT, either FTA or FHWA). You may review the current goal and methodology at www.nevadadot.com (click on “Doing Business” then “Civil Rights” then “DBE Program”). See Appendix 7 for a flow chart of the process of setting individual project goals.

DBE Goals

Overall goal -- Most States have overall goals that include a combination of race-conscious and race-neutral goals. (A discussion on race-neutral participation is found in Chapter 9 below.) Where a disparity exists, the DBE program regulations require the State to establish an overall DBE goal. The goal is based upon a disparity study which is designed to measure the amount of the disparity that exists (if any) and to determine an appropriate overall goal which includes race-conscious and race-neutral elements. You may review past disparity studies involving NDOT at www.nevadadot.com (click on “Doing Business” then “Civil Rights” then “DBE Program.”)

NDOT’s overall DBE goal is comprised of both as is indicated in the “Triennial Goal and Methodology.” The overall goal represents the gap, or disparity, between the current percentage of DBE participation on transportation projects and the percentage of DBE participation that would be expected based upon availability of DBEs in the relevant market area.

Project goals -- After the overall goal has been approved by the Authority (FTA or FHWA), ECRD reviews each project and most agreements to determine the goal on the project or agreement. Although not all inclusive, NDOT ECRD considers the following:

- Availability of qualified DBEs for specific scopes of work.
- Location of the project.
- Type of project.
- Estimated total cost of the project, or portions of the project.
- Number of contract line items with the most DBE subcontracting, service, or supplier potential.

Upon projects with an assigned specified percentage DBE goal, prime contractors may comply with the regulations in two ways:

- Meet the goal by contracting to DBEs sufficiently to at least equal the percentage of the goal set on the project any commitment above the goal is counted as “race-neutral).
- At bid time, if a prime contractor/consultant does not meet the DBE contract goal, it must provide NDOT with documentation to show that it used “good faith efforts” (GFE Justification) in attempting to meet the goal.

Pre-Estimate Actions

It is recommended the DBE takes the following pre-estimate actions:

- Know the contractors you want to work with. Connect with them before an RFP is issued. The better they know you, the more likely they will want to work with your company if you offer a service or material the Prime can use.
- Ensure your firm’s status is active and information is current by visiting www.nevadadbbe.com, because, if your certification is “inactive” for some reason, or your contact information is incorrect, the prime contractor will not be able to see your firm in the system or even contact you.
- Review contracting resources beginning with the NDOT web site: <https://www.nevadadot.com/doing-business/contractors-construction/contract-services>.
- Thoroughly review plans and specifications prior to submitting a quote.
- Promptly respond to prime contractor solicitation expressing your intention/interest in quoting or not.
- Seek appropriate assistance and ask questions of prime contractors in a timely manner.
- Consistent with effective business practices, submit quotes clearly noting which items of work your firm is certified to perform.
- If a prime contractor rejects a bid, consider negotiating to do a smaller portion of work quoted.

Do you know? A “No Change Affidavit” (NCA) must be completed annually in order to remain certified.

Chapter 8 – Good-Faith Effort Process

Overview

When there is a specified goal on a project, when submitting its bid, the Prime must submit a plan to utilize DBEs on the contract in order to meet the goal or its justification for not meeting the goal. If the Prime meets the goal and a plan is submitted, the plan must include the scope of work for each DBE on the project as well as a commitment letter from the DBE (on the DBE's letterhead) to perform that work with a break-out for an agreed upon price. This is not a contract but a commitment by the DBE to perform an estimated scope of work at an estimated price.

Good-Faith Efforts

The following procedures apply to USDOT-assisted Contracts.

1. If a contractor or proposer provides a bid or proposal and does not meet the DBE goal stated in the bidding documents, the bidder/proposer must provide detailed documentation of the steps they took to meet the DBE goal along with commitment letters for the DBE subcontractors. For low bid contracts, these documents must be provided no later than the next working day after the opening of the bids or with the proposal in the case of a Request for a Proposal.

NDOT includes language in all contracts that requires subcontracts to be made available upon request. The prime contractor must provide NDOT a copy of all subcontracts.

2. If the apparent low bidder's DBE commitment(s) do not meet the contract goal, the bidder must provide a detailed document outlining the steps they took to meet the DBE goal. These steps must have been **aggressive and designed to meet the goal**. The Civil Rights Staff will evaluate information submitted by the bidder to determine what efforts were made, when they were made, and how intensely those efforts were undertaken.

These efforts may include but are not limited to whether the bidder:

- Solicited DBEs through all reasonable and available means, allowing adequate time for response, and following up on initial solicitations.
- Selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation).
- Provided interested DBEs with information about the plans, specifications, and requirements of the contract in a timely manner.
- Negotiated in good faith with interested DBEs.
- Did not reject DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities.

- Made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by NDOT or the bidder.
- Made efforts to assist interested DBEs in obtaining equipment, supplies, materials, or related assistance or services.
- Effectively used the services of available minority/women community organizations, contractors' groups, government business assistance offices, or others that might assist in identifying DBE firms.

NOTE: The Prime must not use just a “checklist” or some other “Pro Forma” method to prepare it’s GFE. It must be an “aggressive” and genuine effort.

3. After evaluation of the bidder's good faith efforts, the Civil Rights Staff with the approval of the Civil Rights Officer, will notify the bidder that either:
 - The bidder’s explanation/documentation has been accepted and will forward the "Notice to Proceed."
 - The bidder's GFE, has been rejected and state the reason(s) for the rejection, in writing, and offer the bidder an opportunity for administrative reconsideration by providing written documentation or oral hearing.
4. If the apparent low bidder fails to respond within five (5) days from the date of the rejection, the bid will be considered non-responsive. NDOT will then follow Department procedures regarding non-responsive bids.
5. If the bidder requests reconsideration, a meeting will be scheduled with a reconsideration official (who was not involved in the original decision) knowledgeable of the DBE program at a time and place convenient for both participants.
6. The reconsideration official will advise the bidder in writing of his/her decision within ten (10) working days of the meeting. If the re consideration official determines that good faith effort was not made, the letter will state the reasons for that decision. The decision of the reconsideration official is administratively final.
7. In a “design-build” contracting situation, in which NDOT lets a master contract to a prime contractor, who in turn lets subsequent subcontracts for the work of the project, NDOT establishes a goal for the project. The design-build prime contractor then establishes contract goals, as appropriate, for the subcontracts it lets. NDOT maintains oversight of the design-build prime contractor's activities throughout the course of the contract.

Note: The Prime may meet with you prior to its announcement of the opportunity in which you are interested. A Design-build contract will have bidding opportunities virtually for the life of the contract.

8. In the event of change orders, the prime contractor is required to identify additional DBE subcontracting opportunities to fulfill the DBE Goal or provide GFE.
9. When a DBE bidder/offeror for a prime contract has met a contract goal, NDOT counts the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Do you know when a DBE graduates? Answer: When you exceed the requirements of reaching a Personal Net Worth of \$1.32 million and a company 3-year average gross revenue of \$23.98 million.

Chapter 9 – Termination and Substitution Requests

Overview

The prime contractor shall not terminate for convenience, in whole or part, a DBE subcontractor listed on the Utilization Plan without the written concurrence of NDOT. 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 with another DBE firm. Unless consent is provided, the prime contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE subcontractor.

Good cause for termination of the DBE includes, but is not limited to, the following circumstances:

- The listed DBE subcontractor fails or refuses to execute a written contract;
- 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.
- The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness.
- The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR, Parts 180 and 1200 or applicable state law.
- The prime contractor has determined that the listed DBE subcontractor is not a responsible contractor.
- The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal.
- The listed DBE firm is ineligible to receive DBE credit for the type of work required.
- A DBE firm owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract.
- Other documented good cause that the prime contractor determines may compel the termination of the DBE subcontractor.

Good cause does not exist if the prime contractor seeks to terminate a DBE subcontractor it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE subcontractor was engaged or so that the prime contractor can substitute another DBE or non-DBE subcontractor after contract award.

Commitment Reductions

A prime contractor cannot reduce the amount of work committed to a DBE at contract award without good cause. A reduction is considered a partial termination of the DBE's contract with the prime contractor.

Termination Procedures

Step 1: The prime contractor shall submit a request and justification for DBE termination to NDOT.

- The prime contractor shall first give notice in writing to the DBE firm of its intent to terminate and the reason for the termination.
- The prime contractor will copy NDOT on the Notice of Intent to Terminate correspondence.
- The DBE has five calendar days to respond to the prime contractor's notice and will advise the prime contractor and NDOT of the reasons, if any, why it objects to the proposed termination of its subcontract and why NDOT should not approve the prime contractor's request for termination.

Step 2: NDOT will review the termination request and related information and, if necessary, seek additional information to formulate its response.

Step 3: NDOT will provide written consent to the termination request within seven days only if NDOT agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. NDOT may provide a shorter response time if required in a particular case as a matter of public necessity.

Step 4: If NDOT does not approve the request, the prime contractor shall continue to use the committed DBE in accordance with the contract.

If Termination Does Not Result in DBE Shortfall

If termination of a DBE firm does not result in a DBE contract goal shortfall, the prime contractor is not required to find a substitute DBE firm.

If Termination Results in a DBE Shortfall

When a termination of a DBE firm results in a shortfall, the prime contractor must make good-faith efforts to find, as a substitute for the original DBE, another DBE to perform, at least to the extent needed to meet the established contract goal. The prime contractor will document its good-faith efforts to find and secure a substitute DBE within seven days, which may be extended for an additional seven days, if necessary, at the request of the contractor. The prime contractor will request, in writing, approval from NDOT to utilize the substitute DBE.

NDOT will respond in writing to the prime contractor's request to use the substitute DBE and may seek additional information as necessary to formulate its response.

If the substitution request is approved, the prime contractor will process the DBE substitution in CCMS.

The substitute DBE cannot work on the contract until its work eligibility has been confirmed and required subcontracts, supply, trucking commitments, or other services have been approved by NDOT.

Process When a Contractor Fails to Secure a Substitute DBE

If a substitute DBE firm is not found that can perform at least the same amount of work as the terminated DBE, the prime contractor shall submit good-faith effort documenting the steps taken.

Such documentation shall include, but not be limited to, the following:

- Copies of written notification soliciting DBEs.
- Proof of efforts to negotiate with DBEs to include at a minimum;
 - The names, addresses, and telephone numbers of DBEs who were contacted; and
 - A description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed.
- A list of reasons why DBE firm quotes were not accepted.

NDOT will provide the prime contractor with a written response either accepting or rejecting the prime contractor's good faith efforts. If the prime contractor's good faith efforts are rejected, NDOT shall assess whether administrative remedies are appropriate.

Chapter 10 – Change Orders

Overview

Circumstances may arise during construction requiring changes to the scope of the work contained in the contract; these are referred to as change orders. The prime contractor should closely monitor change orders to verify if adjusted items or work will impact DBE subcontracted items. The DBE goal applies to the final value of a contract to include all change orders.

Increases of Scope of Work

If NDOT, issues a change order which increases or adds new work items, the prime contractor must ensure that it has obtained sufficient DBE participation to meet the contract goal on the final contract value or has made good-faith efforts to do so.

If the prime contractor determines that additional DBE participation cannot be obtained, the prime contractor shall request a waiver of the participation after submitting documentation of good-faith efforts to meet the DBE goal.

Reduction of Scope of Work

If a change order eliminates work designated in a DBE commitment, the prime contractor must follow the termination procedures and must make a good-faith effort to meet the DBE goal on the final contract value.

NOTE: All administrative contract actions must be routed through the RE in charge of the contract.

Chapter 11– Race-Neutral Participation

The Federal DBE Program requires state transportation agencies to meet the maximum feasible portion of their overall DBE goals using race-neutral measures. Race-neutral measures are initiatives that encourage the participation of all businesses, or all small businesses, and are not specifically limited to DBEs. As part of doing so, agencies must project the portion of their overall DBE goals that they expect to meet through race-neutral and race-conscious programs.

Below is a brief description of how NDOT tracks both, race-conscious and race-neutral participation on NDOT contracts:

- NDOT uses a combination of race-neutral and race-conscious measures to meet its overall DBE goals. NDOT projects that some portion of its overall DBE goal would be met through race-neutral means and that the remainder would be met through race-conscious means.
- NDOT uses CCMS to track race-conscious and race-neutral participation on federal-aid projects.
- Prime contractors must report race-neutral participation, in CCMS, on federal-aid contracts on which the assigned goal is 0% or on projects with goals greater than 0%.
- Any work done by a race-neutral DBE regardless of NAICS codes may be counted provided they are performing a CUF.
- Termination and substitution policy and procedures do not apply to race-neutral participation.
- CUF reviews must be performed on all race-neutral participation on projects with and without goals.

To obtain the maximum feasible portion of its overall DBE Goal through race-neutral means NDOT External Civil Rights Division uses the following methods:

- Implementation of the SBE program which will include the use of SBE goals on federally assisted contracts without DBE goals.
- Publicizing construction project notices and consulting requests for proposal in order to encourage DBEs and other small businesses to participate.
- Implementing a supportive services program for DBEs and other small businesses to develop recordkeeping and business management skills.
- Providing training to DBEs and other small businesses to improve management, record keeping, financial and accounting capabilities.
- Providing services to DBEs and other small businesses to improve long-term development, ability to handle increasingly significant projects, and achieve eventual self-sufficiency.
- Assisting DBEs and other small businesses to develop their capability by utilizing emerging technology and conducting business through electronic media.
- Providing other technical assistance to DBEs and other small businesses as needed.

- Review and identify projects that can be unbundled (reduced to smaller packages of economic size) in order to promote small businesses including DBEs to perform as a prime.

When a DBE goal is set on a project, how does a prime contractor know I'm an active certified DBE? Answer: Your company's name will be visible when the prime contractor accesses the NUCP DBE Directory at www.nevadadbe.com.

Chapter 12 – Assistance to DBE Firms

According to 49 CFR, Part 26, Appendix A, it is appropriate for prime contractors to provide assistance to DBEs in a variety of areas, such as bonding, credit, insurance, equipment, materials, and supplies.

In providing such assistance, a prime contractor should be careful not to provide so much assistance to a particular DBE in so many areas that NDOT would conclude that the DBE is not viable without the relationship to the prime contractor. This assistance should be transparent and arms-length. As part of its contract performance oversight functions, NDOT will continue to scrutinize the independence of DBEs as they work on projects.

Do you know? The DBE/SBE Supportive Services Program provides you many opportunities for training and development in support of Nevada's small businesses.

Chapter 13 – Design-Build Projects

Design-build (DB) is a construction project contract that combines engineering design services, construction services, and sometimes maintenance services into a single contract. The design-builder is usually the general construction contractor, but in some cases, it is the engineering design firm.

Federal regulations recognize the difficulties associated with achievement of project goals before the design has been completed and permits use of an alternative DBE compliance approach for design-build projects. Each proposer for a NDOT design-build contract will be required to submit a DBE Performance Plan as part of a responsive proposal.

Following award of a design-build contract, and during both the design and construction portions of the project, the DB contractor will be required to submit documentation, in the form of commitments and monthly progress reports to show that the DB contractor is meeting the contract goal. If the goal is not being met, the DB contractor must submit satisfactory good faith efforts.

Do you know? A list of certified DBE/SBEs may be found at www.nevadadbe.com, "Certified DBE/SBE Vendors List."

Chapter 14 – Local Public Agencies

The term “local public agency,” (LPA) includes municipalities, counties, county and regional authorities, metropolitan planning organizations (MPOs). An LPA is required to manage and monitor federal-aid projects to ensure that prime contractor and their subcontractors comply with DBE Program provisions.

Prior to letting a construction project, a DBE goal will be set by NDOT. Prior to contract execution, the LPA will ensure the prime contractor’s DBE commitments meet the goal and, if not, reviews and evaluates the prime contractor’s good faith efforts.

During construction, the LPA is responsible for managing and monitoring the project to ensure DBE Program compliance. This includes conducting CUF reviews and ensuring the prime contractor does not terminate or substitute the DBE without its written approval. And finally, in the post-award phase, payments made to DBE subcontractors should equal the DBE goal commitment.

NDOT is responsible for ensuring such projects are completed in conformance with the DBE requirements in 49 CFR, Part 26.

Chapter 15 – Monitoring DBE Activity

It is the prime contractor's responsibility to monitor its progress towards meeting the project goal. Progress towards meeting the established DBE goal should be monitored on a monthly basis during the course of the project.

CCMS includes information to monitor DBE goal attainment to include:

- DBE commitment amounts.
- Payments to DBE subcontractors.
- Modifications to the original contract amount by change order.

The prime contractor should contact NDOT should a concern arise that it will not meet the contract DBE goal and seek options available to meet the goal.

NDOT will be monitoring the DBE project goal as well. If a prime contractor is not meeting the project's DBE goal, NDOT will send a "Not Meeting the Goal Letter" in CCMS. The letter will notify the prime contractor to review its DBE goal attainment progress and provide a corrective action plan to meet the goal or provide good faith efforts.

Chapter 16 – Joint Checks

A joint check is a two-party check between a DBE subcontractor and a prime contractor to submit to a materials supplier of the DBE. The prime contractor issues a check as payer to the DBE subcontractor and the materials supplier jointly to guarantee payment to the supplier for the materials or supplies used by the DBE subcontractor.

The use of joint checks for payment of materials or supplies is acceptable when the following conditions are met:

- The prime contractor issuing the check acts solely as guarantor;
- the DBE subcontractor must release the check to the supplier;
- The DBE subcontractor (not the prime contractor) negotiates the quantities, price and delivery of materials;
- the DBE subcontractor is responsible for both furnishing and installing the materials or supplies;
- the prime contractor cannot require the subcontractor to use a specific supplier or the prime contractor's negotiated price; and
- The arrangement is short-term with the purpose being the DBE subcontractor's establishment or increase of a credit line with the material supplier.

Any joint check arrangement must be in writing and pre-approved by the NDOT External Civil Rights Officer before the arrangement or transaction takes place. The prime contractor needs to attach to the joint check agreement signed by both parties, justification for the arrangement (i.e., correspondence showing the rejection of a line of credit from the material supplier to the DBE subcontractor).

The DBE subcontractor and the prime contractor must keep records of paid invoices and canceled checks as NDOT will regularly be requesting them to ensure compliance.

Chapter 17 – Payment

NDOT's Standard Specifications for Road and Bridge Construction, Subsection 109.8 provides:

“The prime contractor shall pay each subcontractor for satisfactory performance of the subcontractor’s contract no later than fifteen (15) calendar days from receipt of each payment the contractor receives from the NDOT. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed in accordance with 49CFR 26.29(b)(2). For the purposes of this subsection, satisfactory completion is defined as the following conditions: (a) Satisfactory completion of the subcontractor’s scope of work as described in the contract documents; (b) Receipt of payment or subcontractor’s scope of work; (c) Release of claims from subcontractor’s laborers, material and equipment suppliers, and lower tier subcontractors; (d) Payment, if applicable, of all union benefits or to employee trust accounts.

The NDOT will also review payments to DBE/SBE subcontractors to ensure that the actual amount paid to subcontractors is consistent with the dollar amounts stated in the schedule of DBE/SBE participation.”

NDOT maintains an electronic database to actively monitor contracts obtained by DBE firms. Subcontractors are to verify payments using this system. For more information regarding these provisions, please refer to the Contract Compliance Manual.

APPENDICES

Appendix 1: Business-related Resource List

Appendix 2: US DOT- and NDOT-related Websites and Document Sites

Appendix 3: Business-related Reading List

Appendix 4: Personalized Development Plan

Appendix 5: Federal Highway Administration Q & A for the DBE Program

Appendix 6: NDOT External Civil Rights Division Prime Contractor Post-contract Interview

Appendix 7: Process for setting a DBE goal on a project (flow chart)

APPENDIX 1

Business-related Resource List

Access the internet and find these sites available to reference for your business needs:

- [SBA](#) – The U.S. Small Business Administration (SBA) was created in 1953 as an independent agency of the federal government to aid, counsel, assist and protect the interests of small business concerns, to preserve free competitive enterprise and to maintain and strengthen the overall economy of our nation.
- [SBA Online Training](#) – The U.S. Small Business Administration offers a variety of online courses, publications and other forms of technical assistance. Courses are self-paced and take about 30 minutes to complete. A brief online registration is required.
- [SBA Business Loan Programs](#) – Whether you are just starting a small business or expanding to take advantage of new opportunities, your business needs the right financing at the right time in order to succeed. Working closely with a wide range of lending partners across the country, SBA has developed a number of financial programs that address the various needs of small businesses. **Please note that SBA does not offer grants to start or expand small businesses. Those grant programs that SBA does offer are primarily designed to expand and enhance organizations that provide small business management, technical, or financial assistance.**
- [SBA Office of Advocacy](#) – The voice for small business in the federal government and the source for small business statistics.
- [Southern Nevada Resource Links](#) – This booklet contains valuable links and contact information for 16 resource partners who assist small businesses in the development, growth and sustainability of their businesses.
- [IRS Small Business and Self-Employed Tax Center](#) – Whether opening a business, closing a business, or staying current with laws and procedures, let this site help make your tax responsibilities less taxing each year.
- [SilverFlume, Nevada's One-stop business portal](#) – Nevada's online one-stop business portal consolidates the forms and information needed to start and run your company. SilverFlume eliminates redundancy and improves accountability by collecting your information one time and using that information in transactions with the appropriate agencies. SilverFlume allows you to concentrate on growing and operating a successful company.
- [Government Contracting Opportunities with Procurement Outreach Program](#) – The Nevada Procurement Technical Assistance Center (PTAC) is part of a nationwide network of business counselors committed to helping Nevada businesses improve upon their marketing skills for both prime contract as well as sub-contract opportunities across all types of government agencies – federal, state and local.
- [HispanicBusinessNevada.com](#) is a source of information... the site is a gateway for anyone looking for information on the “vitality of the Hispanic community” in Nevada. This innovative portal allows you to find information on Hispanic data (for example search for Hispanic demographic data in Nevada), purchase a Hispanic

business lists for either Reno or Las Vegas, profile Hispanic businesses throughout the state, ask for help and look for business resources, read important news, find export/import links, among other things.

- [Will it fly?](#) – Avoid the cost of failure. With expert prep modules designed to speed up knowledge transfer and support users at their time of need, Willitfly.com provides a quick way to find out if you are ready to perform according to best practices for important business tasks.
- [Nevada Inventors Association](#) – By helping others with this thing called a “patent”, they share and learn, with your ideas and their ideas, they offer privacy, testimony and witness, trust, confidentiality (don’t trust anyone), respect, experience, successes and failures, and in turn the result the NIA helps this world one inventor at a time.... At times they can consider themselves a small think tank and group of pioneers, performers, doers, testers, bit twiddlers, thinkers, engineers, socializers, reporters, farmers, business owners, leaders, and denizens, etc.
- [NIREC| Nevada Institute for Renewable Energy Commercialization](#) The Nevada Institute for Renewable Energy Commercialization (NIREC) is a nonprofit public-private partnership that integrates researchers, experienced entrepreneurs, business executives, and financial capital to identify, fund and accelerate the development of renewable energy technologies.
- [Nevada Small Business Development Center](#)
- [Nevada State Data Center](#) – A cooperative effort of the U.S. Census Bureau and the states to improve public access to census statistics and information. The objectives of the program are twofold: to provide access to and extend the use of Census Bureau statistical resources, and to provide training and technical assistance in accessing and using the data.
- [Nevada State Demographer’s Office](#) – Produces the official estimates of persons living in cities, counties, and townships in the state, and forecasts county, city and township populations.
- [State of Nevada Law Library](#) – Provides online access to Nevada’s Revised Statutes, Administrative Code, and the Nevada Register
- [U.S. Department of Agriculture Rural Development](#) – Loan and grant programs for rural businesses.
- [Nevada Department of Business & Industry](#) – The Department of Business and Industry is a cabinet level agency in Nevada State government. Our objective is to encourage and promote the development and growth of business and to ensure the legal operation of business in order to protect consumers by maintaining a fair and competitive regulatory environment. The Director’s office manages a number of programs and initiatives to address the needs of small businesses and consumers including small business advocacy, bond programs, access to capital, constituent services, new market tax credits and fraud prevention and education. Our Business Resource Center is a one-stop online portal dedicated to providing easy access to the most comprehensive statewide resources, information and education that businesses need to succeed. Visit business.nv.gov to explore these Business Resource Center features and more: The Learning Center, Access to Capital Directory, Resource Directory, Video and Article Libraries and a calendar of events.

- **Directory of Small Business Loan Programs in Nevada** – BusinessLoanFunds.com is the largest resource of non-traditional sources for Washoe small business financing programs including; business development loans, micro loans, revolving loans, low interest loans, incentive loans and loan guarantees. These funds are available primarily through economic development agencies, state & federal government and not-for-profits.
- [Nevada Development Capital Corporation](#) – The SBA 504 Loan Program provides an opportunity for business owners to purchase commercial real estate and long-term equipment at reasonable rates and terms.
- [Nevada Commission on Economic Development](#) – The NCED’s mission is to promote a robust, diversified and prosperous economy, enriching the quality of life for Nevada citizens by stimulating business expansion and retention, encouraging entrepreneurial enterprise, attracting new businesses and facilitating community development to enable economic growth and prosperity. Links to economic development agencies throughout the state are available on their website.
- [Rural Nevada Development Corporation](#) – Headquartered in Ely, Nevada, RNDC is 501(c)3 non-profit development corporation that provides business loans for start-up and expanding business in the fifteen counties of Rural Nevada as well as the rural portions of Clark and Washoe Counties and the twenty-seven Indian Tribes of Nevada.
- [IRS Business Tax Center](#) – Offers a broad range of resources across federal and state agencies, as well as industry/profession specific information for self-employed entrepreneurs, employers and businesses.

Statistical Information

- [Bureau of the Census](#)
- [American Fact Finder](#)
- [EPA EJ Screen](#)

Women's Resources

- [American Business Women Association](#)
- [e-Women’s Network](#)

Minority Resources

- [Asian Chamber of Commerce](#)
- Diversity in Construction Employment (DICE)
- [Hispanic Business Network](#)
- [Latin Chamber of Commerce](#)
- [National Association of Minority Contractors \(NAMC\)](#)
- Nevada Minority Business Council
- Southern Nevada International Business Council
- [Veterans Business Outreach Center](#)

Las Vegas/Southern Nevada Resources

- [Boulder City Chamber of Commerce](#)
- [City of Henderson Economic Development](#)
- [City of Henderson Redevelopment](#)
- [City of Las Vegas](#)

- [City of North Las Vegas Economic Development](#)
- [Clark County Business Development Advisory Council](#)
- [Henderson Business Action Committee](#)
- [Henderson Chamber of Commerce](#)
- [Henderson Convention and Visitors Authority](#)
- Henderson Economic Development Resource Partners
- [Henderson Resource Center](#)
- Las Vegas Business Network
- [Laughlin Chamber of Commerce](#)
- North Las Vegas Chamber of Commerce
- [Pahrump Valley Chamber of Commerce](#)
- [Pahrump Valley Community Action Team](#)
- Southern Nevada Certified Development Corporation
- Southern Nevada International Business Council
- [Urban Chamber of Commerce](#)

Rural Resources

- [Douglas County](#)
- [Business Council of Douglas County](#)
- [Caliente Chamber of Commerce](#)
- [Dayton Chamber of Commerce](#)
- Economic Development Authority of Esmeralda/Nye Counties
- [Economic Development Authority of Western Nevada](#)
- Elko County Economic Diversification Authority
- [Fallon Area Chamber of Commerce](#)
- [Eureka County Economic Development Program](#)
- [Humboldt County](#)
- [Humboldt County Chamber of Commerce](#)
- [Humboldt Development Authority](#)
- [Lincoln County Regional Economic Development Authority](#)
- [Lyon County Economic Development Authority](#)
- [Mesquite Chamber of Commerce](#)
- [Mineral County Economic Development Authority](#)
- [Moapa Valley Chamber of Commerce](#)
- [Nevada Rural Development Council](#)
- [Nevada Rural Housing Authority](#)
- Nye Development Corporation
- [White Pine Chamber of Commerce](#)
- White Pine County Economic Diversification Council
- [Winnemucca Visitors and Convention Authority](#)

Northern Nevada Resources

- [Boys and Girls Club of Northern Nevada](#)
- [Builders Association of Northern Nevada](#)
- [Carson City](#)
- [City of Reno](#)
- [City of Sparks](#)
- [Incline Village Chamber of Commerce](#)

- [Lake Tahoe South Shore Chamber of Commerce](#)
- [Northern Nevada Business Weekly](#)
- [Northern Nevada Chamber of Commerce](#)
- [Northern Nevada Development Authority](#)
- [Reno-Sparks Chamber of Commerce](#)
- [Reno Gazette Journal](#)
- [Tahoe Douglas Chamber of Commerce and Visitors Authority](#)

Western Nevada Resources

- Builders Association of Western Nevada
- [Western Nevada Development District](#)
- Western Rural Development Center
- [Western Sustainability and Pollution Prevention Network](#)

Nevada Statewide Resources

- [Desert Research Institute](#)
- Nevada Association of Economic Developers
- [Nevada Association of Employers](#)
- Nevada Association of Purchasing Management Suppliers
- Nevada Business Connections
- [Nevada Center for Entrepreneurship & Technology \(NCET\)](#)
- [Nevada Commission on Economic Development \(NCED\)](#)
- [Nevada Department of Employment, Training and Rehabilitation](#)
- [Nevada Department of Business and Industry](#)
- [Nevada Department of Veterans' Affairs](#)
- Nevada Economic Development Association
- Nevada Institute for Renewable Energy Commercialization
- [Nevada Job Connect](#)
- [Nevada Manufacturers Association](#)
- [Nevada MicroEnterprise Initiative](#)
- [Nevada Procurement Outreach Program](#)
- [Nevada Rural Development Council](#)
- [Nevada Rural Housing Authority](#)
- [Nevada State Development Corporation](#)

National Resources

- [Associated General Contractors](#)
- [Association of Small Business Development Centers \(ASBDC\)](#)
- [Farm Service Agency](#)
- [Service Corps of Retired Executives \(SCORE\)](#)
- [U.S. Bureau of Land Management](#)
- [U.S. Department of Commerce, Las Vegas ITA](#)
- [U.S. Department of Veterans Affairs](#)
- [U.S. Department of Agriculture Rural Development](#)
- [U.S. Forest Service](#)
- [U.S. Internal Revenue Service Education Division](#)
- [Western Sustainability and Pollution Prevention Network](#)

Incorporated Cities Business Licensing

- [City of Henderson Business Licensing](#)
- [City of Las Vegas Business Licensing](#)
- [City of North Las Vegas Business Licensing](#)
- [City of Boulder City](#)
- [City of Mesquite](#)

Training and Information

- [State of Nevada Dept. of Business and Industry, Division of Industrial Relations](#)

Research & Industrial Outreach

- [Center for Business & Economic Research](#)
- [The University of Nevada, Las Vegas](#)

Economic Business Development and Training Resources

[Las Vegas Chamber of Commerce](#)

- [Las Vegas Convention and Visitors Authority \(LVCVA\)](#)

Small Business Development and Training Resources

- [Nevada Small Business Development Center \(NSBDC\)](#)
- [Nevada Small Business Development Center \(NSBDC\) - After the Business License](#)
- [Service Corps of Retired Executives \(SCORE\)](#)
- [SCORE Southern Nevada Chapter](#)
- [U.S. Small Business Administration \(SBA\)](#)
- [Nevada Chambers of Commerce](#)
- [Nevada Department of Transportation, Disadvantaged Business Enterprises Program](#)
- [Nevada Governor's Office of Economic Development](#)

Other Economic Development Resource Links

- [Nevada Development Authorities](#)
- [Secretary of State](#)

APPENDIX 2

DBE-related links on the DBE Web Page

This appendix has a list of helpful links from our web page.

[DBE Permanent Program Plan](#)

[NDOT DBE GOAL METHODOLOGY FY 2017-19](#)

[FTA Transit NDOT 3 Year DBE Goal Methodology 2018-2020](#)

[2017-18 NDOT Disparity Study Presentation](#)

[DBE Trucking Guidelines](#)

[Weekly Trucking Report Form](#)

[Annual Equipment List Form](#)

[Mentor Protege Program](#)

[Mentor Application](#)

[Protege Application](#)

[Mentor-Protege MOU](#)

[DBE Affidavit of Certification Form](#)

[DBE Personal Net Worth Form](#)

[Interstate Certification Affidavit](#)

[Annual No Change Affidavit](#)

[Spousal Renunciation](#)

[Nevada Department of Transportation NAICS Code Expansion Request Form](#)

APPENDIX 3

Business-related Reading List

After a review of numerous lists regarding top-selling business books on the internet, the following list is compiled:

1. **Rich Dad Poor Dad** by Robert T. Kiyosaki
Developing business models designed to generate passive income.
2. **The E Myth Revisited** by Michael Gerber
Understanding your characteristics and tendencies in business.
3. **Made to Stick** by Chip Heath and Dan Heath.
Stories that connect us to business.
4. **The 4-Hour Work Week** by Tim Ferriss
It's about how you use your time.
5. **Crossing the Chasm** by Geoffrey A. Moore
On finding your niche market.
6. **Lean Startup** by Eric Ries
A book about saving time in startups.
7. **The 7 Habits of Highly Effective People** by Stephen Covey
An old standard but as applicable now as ever.
8. **Work Simply** by Carson Tate.
On productivity style.
9. **9 Things You Must Do** and **Necessary Endings** by Henry Cloud.
9 Things You Must Do focuses on successful people and their behaviors.
Necessary Endings is about how to end things that waste valuable resources.
10. **Linchpin** by Seth Godin.
Or other books by him for launch and business growth.
11. **Speak and Get Results** by Sandy Linver.
A book about designing a speech or presentation with winning results.
12. **Crush It!** by Gary Vaynerchuk.
On creating a "personal" brand.
13. **Who Moved My Cheese?** by Spencer Johnson.
An easy-reading and humorous book regarding dealing with change.

14. **Virtual Freedom** by Chris Ducker.
About how an assistant can help you gain control of your time.
15. **Raving Fans** by Ken Blanchard and Sheldon Bowles.
How to make your customers raving fans.
16. **Built to Last** by Jim Collins and Jerry Porras.
Building a company by using the knowledge of others.
17. **The 21 Irrefutable Laws of Leadership** by John C. Maxwell.
What do you need to work on as a small business owner? This book may cover it.

SAMPLE

APPENDIX 4

Individualized Company Development Plan ICDP

For (COMPANY NAME)

Objective:

To succeed in attaining your company growth-goals and to increase the company's market competitiveness through developing your (the owner's) knowledge and skills, in order to match your experience and development level to the current industry environment, and standards or other criteria, on a community as well as state- and nationwide level.

Actions to Achieve Objective:

1. Complete a skills-gap survey to determine developmental needs

Skills-gap surveys are completed on-line and are used to determine training and development needs to enhance strengths and eliminate weaknesses you perceive in the company which may be improved through the owner's individualized training and development.

2. Develop a strong business plan or refine an existing business plan

A business plan is the owner's preview of success. A good business plan describes how you expect to run your business, your expectations, rewards, risks and obstacles you expect to encounter. A business plan not only provides a guideline to the owner regarding his/her business, it provides others insight into what the business is about.

3. Develop an effective company capabilities statement

Much like the company itself, the capabilities statement speaks for the company, and its owner, when no other company representative is present. It is a visual image of the company imparting information that must be focused, direct, and impactful to demonstrate the company's capabilities to deliver a quality product or superior service in a timely manner.

4. Complete training and other action items identified in the skills-gap survey

Complete training and/or perform other remedial actions that will eliminate perceived weaknesses noted during the skills-gap survey (see item 1 above).

5. Get involved in the NDOT DBE Mentor-Protégé program

There is no substitute for experience; whether yours or your mentor's. Pairing an inexperienced owner (in general or for a specific need such as lack of experience on

NDOT contracts) with a more experienced company, enables the Protégé to learn more about the nature of work, what competencies need to be developed, and what specific processes must be mastered, especially in the road construction industry. The NDOT DBE Mentorship program representative will match you with the best available mentor consistent with your company's current objectives and goals. Mentors are expected to be hands-on with their proteges in order to provide the protégé first-hand experience and observation of effective business practices.

6. Complete a Final Assessment

A final assessment of your company is always a good idea before starting another IDCP. It should include another skills-gap survey to provide insight as to your next business-growth steps: even, perhaps, to your next PDP. No matter how experienced you are, there usually is always room to grow.

Owner: _____ Counselor/Mentor: _____

Date: _____ Date: _____

APPENDIX 5

Federal Highway Administration Q & A for the DBE Program

Bidders List

Question: Does your DBE Program create and maintain a bidders list of all firms who bid and quote and captures the age and average gross receipts of the firms? (49 CFR 26.11(c))

Answer: You must create and maintain a bidders list that includes the following: Firm name; firm's address; firm's status as a DBE or non-DBE; Age of the firm; and annual gross receipts of the firm. The USDOT has given the flexibility to the State Department of Transportation to determine the most effective means in capturing this information. Most often the identity of bidders and quoters is captured through the handling of bidding documents and/or contract administration procedures. The other information, age and gross receipts may be captured through surveys and questionnaires at a later time from the firms once identified.

Assurance Statement

Question: Do all prime and subcontracts have required DBE program assurance statements incorporated? (49 CFR 26.13(b))

Answer: Each contract a State Transportation Agency (STA) signs with a contractor and sub-recipient must have physically incorporated in it the standardized assurance statement prescribed under 26.13(b) which states that: 1) these parties will not discriminate based on race, color, national origin, or sex in the performance of any DOT-assisted contract; 2) The contractor shall carry out the requirements of 49 CFR 26 in the award and administration of DOT-assisted contracts; and 3) Failure by the contractor to carry out these requirements is a material breach of contract, which may result in contract termination or other remedy as deemed appropriate by the recipient.

Local Agencies

Question: Does the STA's DBE program apply to all sub-recipients? (49 CFR 26.21(a)(1))

Answer: The FHWA's approval of STA's program applies to all of STA's DOT-assisted programs including those federal funds transferred to other state and local agencies (i.e., MPOs, City and County governments) and are expended on federally assisted contracts.

Design-Build Projects

Question: If a goal has been established in a design-build project, does the recipient maintain oversight of the project goal and other requirements? (49 CFR 26.53(e))

Answer: Recipients must maintain oversight of the developer's activities to ensure they are conducted consistent with the requirements of this part. This monitoring is especially important in the case of a design-build project because the developer can only provide a plan of action (DBE performance plan) it intends to take throughout the project since the

exact contracting opportunities and timing of any subsequent awards is unknown at the start of a design-build.

Contract Goals

Question: Does the STA establish contract goals based upon factors such as type of work, location, DBE and availability that cumulatively results in meeting only the portion of the overall goal that cannot be met through race-neutral means? (49 CFR 26.51(e)(2))

Answer: Contract goals can be based upon factors such as type of work, location, and DBE availability. The goal should essentially represent the percent of the dollar amount of contracting opportunities for DBEs that exist on that contract. Goals must be set so they will cumulatively result in meeting that portion of the overall goal not being met through race-neutral means.

Race-Neutral Participation

Question: Does the STA count as race-neutral contracts won by DBE primes, DBE subcontracts when there is no contract goal, and primes that do not consider DBE status? (49 CFR 26.51(a))

Answer: Contracts won by DBE primes, DBE subcontracts when there is no contract goal, and DBE subcontracts where a prime did not consider the DBE status in awarding the subcontract are all methods of race-neutral DBE participation. The measurement of when a prime did not consider the firm's DBE status in its selection, is to count all work going to a DBE above the contract goal figure as race-neutral.

Question: Does a DBE have to be certified with the proper NAICS code if it will be used by the prime contractor as race-neutral DBE participation?

Answer: DBEs must be certified in the work categories in which the Prime wants to count that participation towards the contract goal (race-conscious). However, any work done by a non-committed (race-neutral) DBE regardless of NAICS codes should be counted as race-neutral participation provided they are performing a CUF. Prime contractors may be allowing a DBE to expand its capabilities on projects, the work is legitimate and the DBE could then build its resume to expand its NAICS codes in the future.

Commitments

Question: Are all bidders required to submit DBE information, i.e., name, description of work, and dollar amount before award of the contract? (49 CFR 26.53(b)(2) and (c))

Answer: Dependent on whether STA makes the receipt of the information as a matter of responsiveness or responsibility, you can receive information from all bidders or just the apparent low bidder. The receipt of this information in the form of a commitment, when in the presence of a contract goal, is a condition upon which the award of the contract is

given by the STA. (As a matter of responsibility, NDOT receives information from the apparent low bidder.)

Question: Does the STA require as a condition of award, the submission DBE information including the name, description of work, dollar amount, written

documentation of commitment, and written confirmation from the DBE that it is participating in the contract (49 CFR 26.53(b)(2)(c))

Answer: The STA must make sure all DBE information is complete and adequately document the bidder's good faith efforts as a condition of awarding the contract.

Question: A prime submitted a subcontractor request document. The District found that three (3) of the items on the subcontract agreement were less than what was originally committed. This reduced amount is \$43,503.51. Even with this reduction, the prime contractor is still far over the DBE goal. Can NDOT accept the prime contractor's reduced subcontract amount in this situation?

Answer: Regulations prohibit the reduction of a submitted DBE commitment without the request and written approval of the STA. The District should investigate the matter and contact the DBE to discuss why the subcontract is less than the commitment (and if they were aware). Depending on the findings, NDOT should take appropriate action. At the very least, if the DBE knew and was ok with the reduction in commitment, NDOT should request the Prime contractor to submit something in writing showing the reduced commitment with reasoning for NDOT approval. This will cover both the Prime and NDOT.

Good Faith Efforts – Prior to Contract Execution

Question: Does the evidence of good faith efforts provided by the bidder document those efforts to meet the goal, even though such efforts did not succeed in obtaining enough DBE participation to do so? (49 CFR 26.53(a)(2))

Answer: The STA must not deny award of the contract on the basis that the bidder simply failed to meet the goal if the bidder documents adequate good faith efforts. The adequate good faith efforts are those the bidder undertook prior to submitting its bid on the contract.

Administrative Consideration

Question: Does the STA provide an opportunity for administrative consideration when it determines the apparent successful bidder failed to meet good faith efforts? (49 CFR 26.53(d))

Answer: The STA should have an administrative reconsideration process that affords a bidder the opportunity to seek a further ruling on the adequacy of its good faith efforts.

Question: Are reconsideration decisions made by an official who did not take part in the original good faith effort determinations? (49 CFR 26.53(d)(2))

Answer: An official who did not take part in the initial determinations by the STA of inadequate good faith efforts by the bidder must make reconsideration decisions.

Determining Credit When a DBE Firm is Ineligible – Prior to Subcontract Execution

Question: When the prime contractor executes a subcontract prior to your notification that the DBE firm is ineligible, do you count the subcontract amount toward the prime contractor's goal? (49 CFR 26.87(j)(2))

Answer: If a prime contractor has executed a subcontract with a DBE firm before you

have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work.

Goal Credit – Materials and Supplies

Question: Does the STA count towards the contract goal the value of materials and supplies used on the contract work only if the DBE is responsible for paying for the material and supply? (Factor – joint checks) (49 CFR 26.55(c)(1))

Answer: The DBE must be responsible, with respect to materials and supplies used on the contract, for paying for the material. The use of joint checks has been allowed in the DBE program under certain conditions and/or circumstances. Even under this situation all payments need to be made by the DBE.

Reporting DBE Participation on Contracts With and Without Goals

Question: Does the STA in its running tally capture DBE participation on all contracts with or without contract goals? (49 CFR 26.51(g))

Answer: The STA must report DBE participation in all contracts with and without contract goals awarded during the fiscal year in order to effectively adjust due to both race-neutral and race-conscious achievements to use of contract goals only as necessary to just meet the annual goal. One important consideration in being prepared to make such adjustments is to know the dollar amount that needs to be achieved based on the overall goal before the contract year begins for comparison purposes against the actual RC/RN achievements for making the key decision of when and how much to make any adjustment.

Commercially Useful Function

Question: Does the STA count toward contract goals the value of work only if the DBE performs a Commercially Useful Function (CUF) when a DBE is responsible for a distinct element of the contract work and it carries out its responsibilities by actually performing, managing and supervising the work involved? (49 CFR 26.55(c)(1))

Answer: You count the total contract value of the work the DBE performs itself. The STA needs to have sufficient resources and procedures that effectively determine whether a DBE performs a CUF. In addition to this monitoring responsibility, the STA needs to have appropriate supporting documentation for counting this work as performed by a DBE.

Question: Does the STA count toward contract goals the value of work performed by the DBE's own forces and does not count the DBE's cost of equipment leased from the prime contractor and/or material purchased from the prime contractor? (49 CFR 26.55(a)(1))

Answer: DBE subcontractor's purchases of supplies and equipment and leases from the prime contractor cannot be counted.

Question: Does the STA DBE program require the DBE to perform at least 30% of its work and does not allow DBEs to serve as an extra participant in the contract? (49 CFR 26.55(c)(2)(3))

Answer: A DBE is not performing a CUF when it is not performing the work itself and if the DBE under this rule subs out more than 70% of the work. There are additional instances when a DBE could be considered as serving as an extra participant in the contract or project such as being a pass through in the payment of materials and supplies.

Question: When a STA presumes a DBE is not performing a CUF, do they allow the DBE to present evidence to rebut this presumption? (49 CFR 26.55(c)(4))

Answer: The DBE may present evidence to rebut the presumption of not performing a CUF when a STA has initially determined that a DBE is not performing a CUF. The STA must have a CUF reconsideration process established as part of its normal contract administration procedures.

When a DBE Subcontracts its Work to a Non-DBE

Question: When a DBE subcontracts part of its work to a non-DBE, does the STA have a mechanism to deduct that amount from the overall contract goal? (49 CFR 26.55(a)(3))

Answer: Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals. The STA's normal subcontracting approval procedure is an effective way to monitor such possible situations.

Joint Venture

Question: In a joint venture does the STA count only the defined portion of work a DBE performs with its own forces? (49 CFR 26.55(b))

Answer: Count the dollar value of the contract equal to the defined portion of the work that the DBE performs with its own forces toward the DBE goals.

Termination / Substitution

Question: Does the STA have a procedure that requires STA approval of the substitution and/or replacement of DBEs for good cause when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1)&(2))

Answer: The STA must give written consent prior to a prime contractor terminating a DBE subcontractor (or an approved substitute DBE firm) when that DBE is either unable or unwilling to perform the work. There are procedures in some States that require the DBE to actually signoff on its termination. There are DBE program rules that effectively prohibit termination for convenience and then performing the work by the prime itself or use an affiliate.

Question: Does the STA require prime contractors to make good faith efforts when replacing DBE subcontractors for any reason? (49 CFR 26.53(f)(1)&(2)).

Answer: The STA must require the prime contractors to make good faith efforts to find another DBE subcontractor to substitute for the original DBE when the DBE is either unable or unwilling to perform.

Counting Credit for Manufacturers, Regular Dealers, Packagers and Brokers

Question: Does the STA DBE program allow for appropriate counting for manufacturers, regular dealers and packagers and brokers? (49 CFR 26.55(e)(1)&(2)(ii)(c))

Answer:

- a) If materials and supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies.
- b) If materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of materials or supplies. To be a regular dealer, the firm must be an established, regular dealer that engages as its principal business and under its own name, in the purchase and sale or lease of the products in question.
- c) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers. Often times the definition of what constitutes a manufacturer from a regular dealer and a regular dealer from a broker becomes a matter of circumstances of the particular situation and to be determined on a case-by-case basis.
- d) For example, if the material is crushed aggregate, then in order to be a manufacturer the firm needs to have the prerequisite equipment to crush and screen the aggregate for sell pursuant to the STA's gradation requirements. If no such process is being performed by the DBE, but has the necessary distribution equipment to pick up and drop off as a normal course of business the firm is considered to be a regular dealer.

Trucking – Counting Credit

Question: Does the STA DBE program allow DBE truckers to count leased trucks from DBEs and non-DBE truckers toward the goal appropriately? (49 CFR 26.55(4)(5))

Answer:

- a) The DBE that leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- b) If the STA adopted the revised trucking counting rule in the June 16, 2003 DBE Program Final Rule, the DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract.
- c) Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease agreement.

The appropriate Department Operating Administration must approve this approach.

Goal Credit – Final Compliance (Payment to DBEs)

Question: Does the STA have a process to ensure a contractor's final compliance with DBE obligations based on payments to the DBEs? (49 CFR 26.55(h))

Answer: Until the amount being counted has been paid to the DBE, do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract.

Joint Checks

Question: Does the STA count towards the contract goal the value of materials and supplies used on the contract work only if the DBE is responsible for paying for the material and supply? (Factor – joint checks) (49 CFR 26.55(c)(1))

Answer: The DBE must be responsible, with respect to materials and supplies used on the contract, for paying for the material. The use of joint checks has been allowed in the DBE program under certain conditions and/or circumstances. Even under this situation all payments need to be made by the DBE.

Prompt Payment / Retainage

Question: Does your DBE program provide appropriate means to enforce prompt payment and return of retainage? (49 CFR 26.29(a)(1))

Answer: The STA must have the necessary mechanisms to monitor and enforce the prime contractor's prompt and full payment of retainage. Again, with the flexibility USDOT built into the program, it was the STA to determine its approach towards meeting this and other requirements of the program. The USDOT did not present one prescribed way of meeting it, so there may be various methods employed by a recipient to meet this requirement. The most common enforcement practice is for the prime contractor to provide a payment certification that would certify that all payments have been made and would normally be submitted with a progress estimate for payment. The enforcement of this method is through non-payment of the progress payment, until proper evidence that all previous payments due are paid.

Monitoring - Payments and CUF Reviews

Question: Does the STA conduct compliance reviews, audits and/or assessments of all program participants, (e.g., contractors, and other state and local governments/agencies)? (49 CFR 26.37(a))

Answer: The STA must ensure that all program participants are in compliance with 49 CFR Part 26. NDOT must have appropriate mechanisms for monitoring and enforcement set forth in its DBE program.

Question: Does the STA have a monitoring and enforcement mechanism that ensures work committed to DBE is actually performed? (49 CFR 26.37(b))

Answer: The STA must ensure DBEs do the work committed to them. To ensure this is happening, the STA must in its normal contract administration take the necessary steps to compare actual subcontract awards to commitments and payments to awards.

Unified Certification Program

Question: Does your UCP have a process to determine specific types of work a potential DBE has the ability to control and possess the equipment and key personnel to perform the work? (49 CFR 26.71(m)(n) & 26.83(c)(4))

Answer:

a) The UCP must have a provision that allows the STA or certifying agency to consider whether the firm owns equipment necessary to perform its work. However, the STA or

certifying agency must recognize that leasing equipment is a normal industry practice and should not use this practice to determine that a DBE owner does not control his or her company. The STA or certifying agency must make sure that the leasing of equipment does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

b) You must grant certification only for specific types of work in which the socially and economically disadvantaged owner has been able to demonstrate his or her ability to control the firm. This specific type of work needs to be clearly defined in forms consistent with the type of work such firm will be competing to perform. Such designation as “general contractor” does not fit this definition.

Administrative Remedies

Question: Does the STA contract provisions include administrative remedies that will be invoked if prime contractors fail to comply with good faith efforts? (49 CFR 26.15(b))

Answer: If prime contractors fail to comply with good faith efforts, the STA contract provisions must include appropriate administrative remedies that will be invoked. The most common administrative remedy is to withhold payment to the prime equal to the short fall that occurred since the prime failed to comply with the good faith efforts provision. It is not intended that the STA exercise this oversight activity at the very end of the contract, but should be monitoring the actual participation of DBE firms throughout the contract so any necessary adjustments can be made by the prime in a timely fashion towards meeting the goal.

SAMPLE

APPENDIX 6

NDOT EXTERNAL CIVIL RIGHTS DIVISION
PRIME CONTRACTOR POST-CONTRACT INTERVIEW

CONTRACT DESCRIPTION: _____

PRIME: _____ DBE: _____

PRIME'S REPRESENTATIVE: _____

NDOT'S REPRESENTATIVE: _____

DATE OF INTERVIEW: _____

1. Was the DBE timely in providing deliverables or responses to the Prime's request(s) for information and/or services? If not, please describe the incident(s), situation and resolution.
2. Were the deliverables acceptable upon submittal? If not, what was the Prime's concerns, response and outcome of the incident?
3. Was the DBE firm effective and responsive in dealing with any situations or issues on the project? If not, please describe the incident(s), situation and resolution.
4. Has the Prime delayed or withheld payments to the DBE contractor due to the DBE's nonperformance or neglect? If so, please describe the incident(s), situation and resolution.
5. How does the Prime rate the DBE's performance on the project? (circle one)

Deficient Acceptable Excellent

If "Deficient" is indicated, what are the Prime's reasons for the rating?
6. Does the Prime have any suggestions for improving the DBE's performance or further developing the DBE? If so, what are they and in which areas?

7. Would the Prime be amenable to contracting to the DBE firm in the future? If not, why not, and if, "with conditions," what are the conditions?

APPENDIX 7

Process for Setting a DBE Goal on a Project

