

December 2019

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

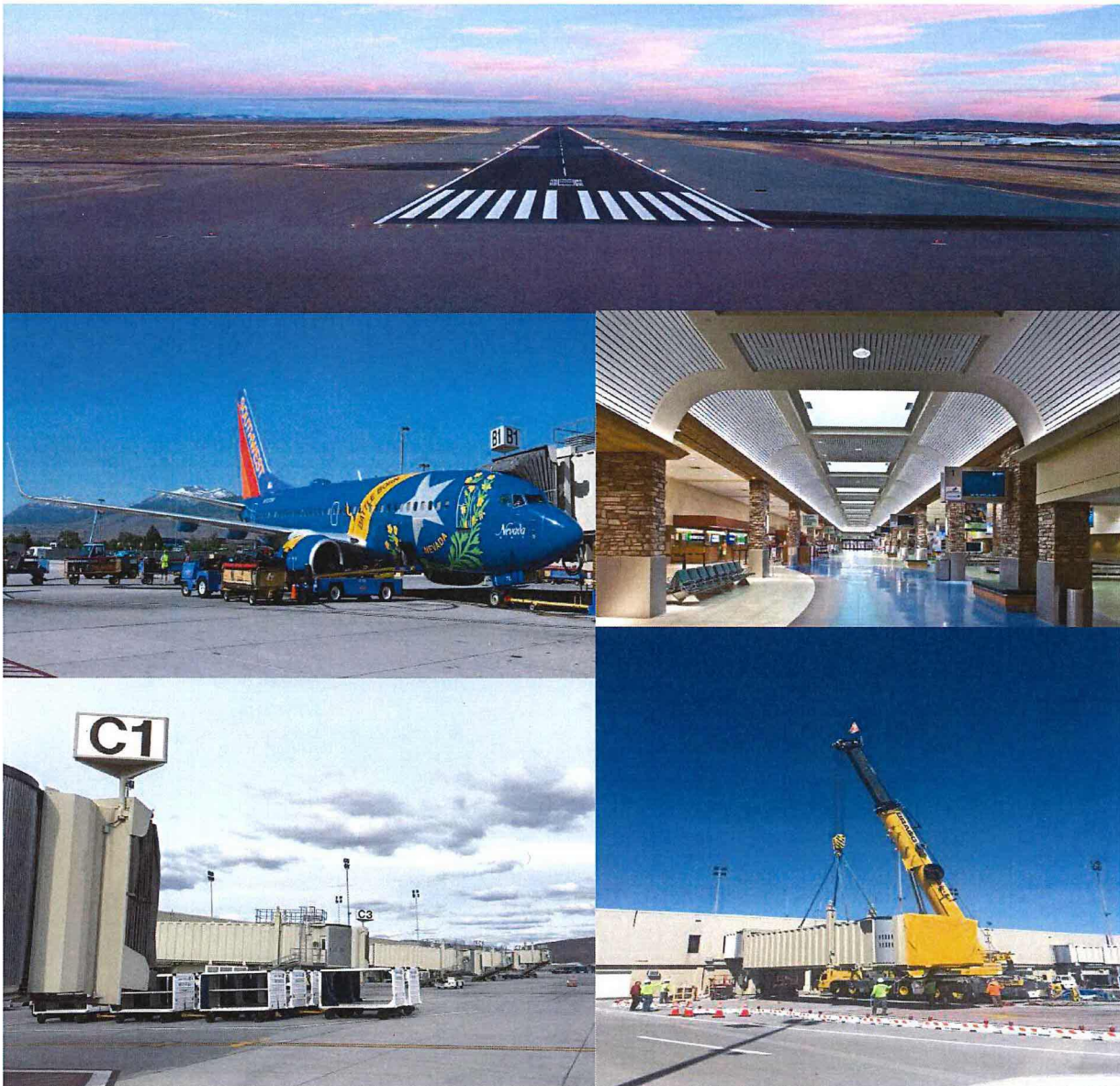


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INTRODUCTION

The Reno-Tahoe Airport Authority (“RTAA”) has developed this Disadvantaged Business Enterprise (“DBE”) Program in accordance with Title 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The Department of Transportation regulations for the DBE Program are intended to remedy past and current discrimination against DBEs, ensure a “level playing field” and foster equal opportunity in DOT-assisted contracts. A link to 49 CFR Part 26 may be found in Attachment I.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Reno-Tahoe Airport Authority (“RTAA”), owner of Reno-Tahoe International Airport (“RNO”) and Reno Stead Airport (“RTS”), has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The RTAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the RTAA has signed an assurance that it will comply with 49 CFR Part 26.

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

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

To ensure adherence to this policy, the Reno-Tahoe Airport Authority Board of Trustees has assigned the coordination of the DBE program to the President-CEO. The President-CEO has delegated this responsibility to the Vice-President of Planning, Engineering & Environmental Management (DBE Liaison). In that capacity, the DBE Liaison is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the RTAA in its financial assistance agreements with the Department of Transportation. It is the expectation of the Reno-Tahoe Airport Board of Trustees that the provisions of this DBE Program will be adhered to both in spirit and letter by all RTAA personnel.

RTAA has disseminated this policy statement to the RTAA Board of Trustees and all of the components of the organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on RTAA DOT-assisted contracts. The distribution was accomplished via email, hand-outs at pre-bid conferences, and website posting.

12/19/19
Date

Marilyn Mora
Marilyn Mora, A.A.E.
President-CEO

Section 26.1 Objectives

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

Section 26.3 Applicability

The RTAA is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq., therefore 49 CFR part 26 is applicable to airport projects funded in whole, or in part, by federal funds.

Section 26.5 Definitions

The terms used in this program have the meanings as defined in 49 CFR 26, §26.5.

Section 26.7 Non-discrimination Requirements

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

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

Record Keeping Requirements (26.11)

Reporting to DOT

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

The RTAA will report DBE participation to FAA as follows:

The RTAA will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments" as described in Appendix B to Part 26. The RTAA will similarly report the required information about participating DBE firms. All reporting will be done through the FAA official reporting system, or another format acceptable to FAA as instructed thereby.

Bidders List

The RTAA will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on RTAA DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms. The form used is included as Attachment II.

The RTAA will require this information be submitted by all bidders for a DOT-assisted contract at the time of bid.

Records retention and reporting

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

Section 26.13 Federal Financial Assistance Agreement**Assurance**

The RTAA has accepted the following assurance, applicable to all DOT-assisted contracts and their administration.

The Reno-Tahoe Airport Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The Reno-Tahoe Airport Authority shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Reno-Tahoe Airport Authority DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement.

Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Reno-Tahoe Airport Authority of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance

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

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Gary Probert
Vice President of Planning, Engineering & Environmental Management
Reno-Tahoe Airport Authority
P.O. Box 12490
Reno, NV 89510
775-328-6459
e-mail: dbe@renoairport.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the RTAA complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the President-CEO concerning DBE program matters. An organization chart displaying the DBELO position in the organization is found in Attachment III to this program.

The DBE Liaison Officer is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate executives and consultants. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA and DOT.
2. Reviews DOT-assisted contracts and subcontracts and purchase requisitions for compliance with this program.
3. Works with other Airport Divisions and community organizations to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals).
6. Analyzes RTAA progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid, project information and pre-construction meetings.
8. Advises the President-CEO on DBE matters and goal achievement.
9. Chairs project status meetings to obtain information concerning upcoming projects.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE technical assistance programs.
12. Acts as liaison for the RTAA to the Nevada Uniform Certification Program (NUCP).
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Ensures RTAA DBE participants are certified by the Nevada Unified Certification Program and appropriately listed in the Directory maintained by NDOT.

Section 26.27 DBE Financial Institutions

It is the policy of the RTAA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. The RTAA has made the following efforts to identify and use such institutions:

There are currently no certified DBE Financial Institutions listed in the Nevada Unified Certification Program (“NUCP”) directory. The RTAA has identified minority- and women-owned banks located in the State of Nevada through the Federal Reserve Board. A listing of these institutions is provided in Attachment IV. While these firms are not certified as DBE firms, it has been determined through the Federal reserve listing that all firms on the list meet the size requirements for certification and self-identify as being owned by a member(s) of one of the presumed group. These firms are therefore good candidates for participation in the RTAA DBE Program. Participating firms or firms identified as potential participants in a DOT-assisted project will be encouraged to apply for certification through the Nevada UCP. The RTAA updates this list annually. Information on the availability of such institutions will be made available at pre-bid conferences.

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR §26.29, the RTAA established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 15 days from the prime contractor’s receipt of each payment from the RTAA.

The RTAA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, The RTAA has selected the following method to comply with this requirement:

- The RTAA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 15 days after the RTAA’s payment to the prime contractor.

The RTAA will include the following assurance in each DOT-assisted prime contract:

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 15 days after the Contractor has received a partial payment. The RTAA must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the RTAA. When the RTAA has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

Enforcement Actions for Noncompliance of Participants

The RTAA will provide appropriate means to enforce the requirements of § 26.29.

These means include:

- Assessing liquidated damages, in accordance with the Contract, against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.

- Advising subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.

- Other penalties for failure to comply, up to and including contract termination.

- Prime shall submit to the RTAA with each pay application a list of all DBE submitting invoices for said pay period with the invoice amounts previously and currently submitted and the amounts paid to date.

RTAA will actively implement the enforcement actions detailed above.

Section 26.31 Directory

The RTAA is a non-certifying member of the Nevada Unified Certification Program ("NUCP"). The Nevada Department of Transportation ("NDOT") maintains the DBE/ACDBE Directory on behalf of the NUCP. For each certified DBE or ACDBE, the directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE or ACDBE. The NUCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements

required by §26.31. The NUCP Directory website is included in bid specifications for DOT-assisted contracts. The website address is: <http://www.nevadadbe.com/dbe-vendors>.

Section 26.33 Over-concentration

The RTAA has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The RTAA has not established a Business Development Program at this time.

Monitoring and Enforcement Mechanisms (26.37)

The RTAA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment. These mechanisms are described herein.

The RTAA actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Prompt Payment Monitoring

The RTAA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements, including prompt payment requirements.

Monitoring Payments to DBEs and Non-DBEs

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

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

The RTAA requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the RTAA's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the FAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The RTAA proactively reviews contract payments to subcontractors, including DBEs, quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the RTAA by the prime contractor.

Prompt Payment Dispute Resolution

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

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

The RTAA has established the following mechanism(s) to ensure prompt payment and return of retainage:

(1) Alternative dispute resolution (ADR) Contract Clause

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

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

Prompt Payment Complaints

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

- Complaints may be initially made to the Prime Contractor or to the RTAA DBELO.
- In the event that the subcontractor has contacted the Prime Contractor and is unable to resolve the issue, the subcontractor should initiate a complaint with the RTAA DBELO.

- The RTAA DBELO will investigate the complaint within 5 days and will make an effort to resolve the matter through contact with the Prime Contractor.
- If filing a prompt payment complaint with the RTAA DBELO does not result in timely and meaningful action by the RTAA to resolve the dispute, the affected subcontractor may contact the FAA Regional Civil Rights Officer for the FAA Southwest Region.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported to FAA in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

When the contractor is found to be in non-compliance, and informal resolution procedures have failed to demonstrate that the contractor has made every effort to resolve the issue(s) of non-compliance, the RTAA will employ all necessary and reasonable actions under its contracting authority to ensure that the DBE requirements are enforced.

Enforcement Actions for Noncompliance of Participants

The RTAA has several remedies available to enforce the DBE requirements contained in its contracts, including, but not limited to breach of contract action, pursuant to the terms of the contract.

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

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

Additionally, the RTAA will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The RTAA will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The RTAA will consider similar action under its own legal authorities, including responsibility determinations in future contracts.
3. The RTAA will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished as follows:
 - a. Prime contractors working on projects containing a DBE goal shall be required to file monthly reports listing contract work awarded to and performed by DBE subcontractors/suppliers. These reports will be compared to bid commitments and discrepancies or questions will be followed-up in writing by the DBELO.

- b. The DBELO or the Project Manager will periodically visit the job site to ensure that DBE firms listed in bid documents are performing the work. These visits will be documented in the appropriate project files.
- c. For each payment made to the prime contractor, the prime contractor will be required to report payments made to DBE firms for a specific project and to identify invoice numbers, dates, amounts, and check numbers for payments made to the DBE firm.
- d. After the above information is received from the prime contractor, DBEs will be required to verify information. If there is a discrepancy reported by the DBE firm, the matter is investigated through written correspondence with the prime contractor and the DBE firm and actual levels of participation are confirmed.
- e. Once all information has been received from Prime contractors and verified by DBE firms, the information is recapped and compared to original commitments.

Monitoring Contracts and Work Sites

The RTAA reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (*e.g.*, as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the RTAA project construction manager.

Contracting records are reviewed by the Capital Improvements & Grant Coordinator, Planning & Engineering. The RTAA will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose. Monitoring forms are included as Attachment V.

Section 26.39 Fostering small business participation

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

The small business element is incorporated as Attachment VI to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for the RTAA to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The RTAA will use one of the methods described in 49 CFR part 26, §26.45 as a method to determine the base figure. The RTAA understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The RTAA will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

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

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

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

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

Project Goals

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

are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

Prior Operating Administration Concurrence

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

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

Section 26.47 Failure to meet overall goals

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

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

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

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

Section 26.51 Means Recipients Use to Meet Overall Goals**Breakout of Estimated Race-Neutral & Race-Conscious Participation**

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

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

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

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in the Overall Goal Methodology. A link to the methodology may be found in Attachment VII to this program.

Pursuant to the 2017 Disparity Study, a portion of the RTAA overall goal for RNO and RTS will be achieved using race conscious measures in the form of contract goals.

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

Contract Goals

The RTAA will use contract goals to meet any portion of the overall goal it does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

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

The RTAA will express contract goals as a percentage of the total amount of a DOT-assisted contract.

Adjusting the Use of Contract Goals

To ensure that the DBE program continues to be narrowly tailored to overcome the effects of discrimination, the RTAA will adjust the use of contract goals as follows:

(1) If the approved projection of the portion of the goal to be met through race-neutral means estimates that the entire overall goal for a given year can be met through race-neutral means, the RTAA will implement the program without setting contract goals during that year, unless it becomes necessary in order to meet the overall goal.

(2) If, during the course of any year in which contract goals are being used, the RTAA determines that the overall goal will be exceeded, the use of contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined

that there will be a short fall of the overall goal, then the RTAA will make appropriate modifications in the use of race-neutral and/or race-conscious measures to allow the overall goal to be met.

(3) If the DBE participation obtained by race-neutral means alone meets or exceeds the overall goals for two consecutive years, contract goals will not be set on any contracts in the next year. Only race-neutral means will be used to meet the overall goals unless and until the overall goal is not met.

(4) If DBE participation exceeds the overall goal in two consecutive years through the use of contract goals (*i.e.* not through the use of race-neutral means alone), the RTAA will reduce the use of contract goals proportionately in the following year.

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

Demonstration of good faith efforts (pre-award)

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

The Capital Improvements & Grant Coordinator in the Planning & Engineering Department is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

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

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

- (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section no later than 5 days after bid opening as a matter of responsibility.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 3 days of being informed by the RTAA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration.

Bidder/offeror should make this request in writing to the following:

Gary Probert
Vice President of Planning, Engineering & Environmental Management
Reno-Tahoe Airport Authority
P.O. Box 12490
Reno, NV 89510
775-328-6459
e-mail: dbe@renoairport.com

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

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

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

Good Faith Efforts procedural requirements (post-solicitation)

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

The RTAA requires that a prime contractor not terminate a DBE subcontractor listed in its bid, or a previously approved substituted DBE, without the prior written consent of the RTAA. 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.

The RTAA will only provide such written consent if it has been determined that the prime contractor has good cause to terminate the DBE firm. Good cause may include the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (6) The RTAA has determined that the listed DBE subcontractor is not a responsible subcontractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the RTAA written notice of its withdrawal;
- (8) The listed DBE subcontractor is ineligible to receive DBE credit for the type of work required;

- (9) A DBE subcontractor owner dies or becomes disabled with the result that the listed DBE subcontractor is unable to complete its work on the contract;
- (10) Other documented good cause that the RTAA determines compels the termination of the DBE subcontractor. Provided, that 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.

Before seeking approval to terminate and/or substitute a DBE subcontractor, the RTAA will require the prime contractor to give notice in writing to the DBE subcontractor, with a copy to the RTAA, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's [bid/solicitation] response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the RTAA as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The RTAA will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the RTAA requests documentation from the contractor under this provision, the contractor shall submit the documentation within seven days, which may be extended for an additional seven days, if necessary, at the request of the contractor. The RTAA shall provide a

written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

[Note: The provisions of the foregoing section apply only when a contract goal is established.]

Section 26.55 Counting DBE Participation

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

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm’s participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The RTAA is a non-certifying member of the Nevada Unified Certification Program (“NUCP”). A copy of the NUCP Agreement is included as Attachment VIII.

The NUCP will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying NUCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should refer to: ndot.dbesystem.com.

The electronic Uniform Certification Application form and documentation requirements are found on ndot.dbesystem.com. Alternatively, a paper version of the application may

be found at:

<https://www.mccarran.com/Business/Development/DisadvantagedBusinessProgram>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The RTAA is the member of a Unified Certification Program (UCP) administered by NDOT for the State of Nevada. The UCP will meet all of the requirements of this section. The NUCP Agreement is included as Attachment VIII.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to RTAA

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

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

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

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

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

debarment).

The RTAA, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. RTAA understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENT I
49 CFR Part 26**

The DOT DBE Program implementing regulation is:

**49 CFR PART 26
PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN
DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

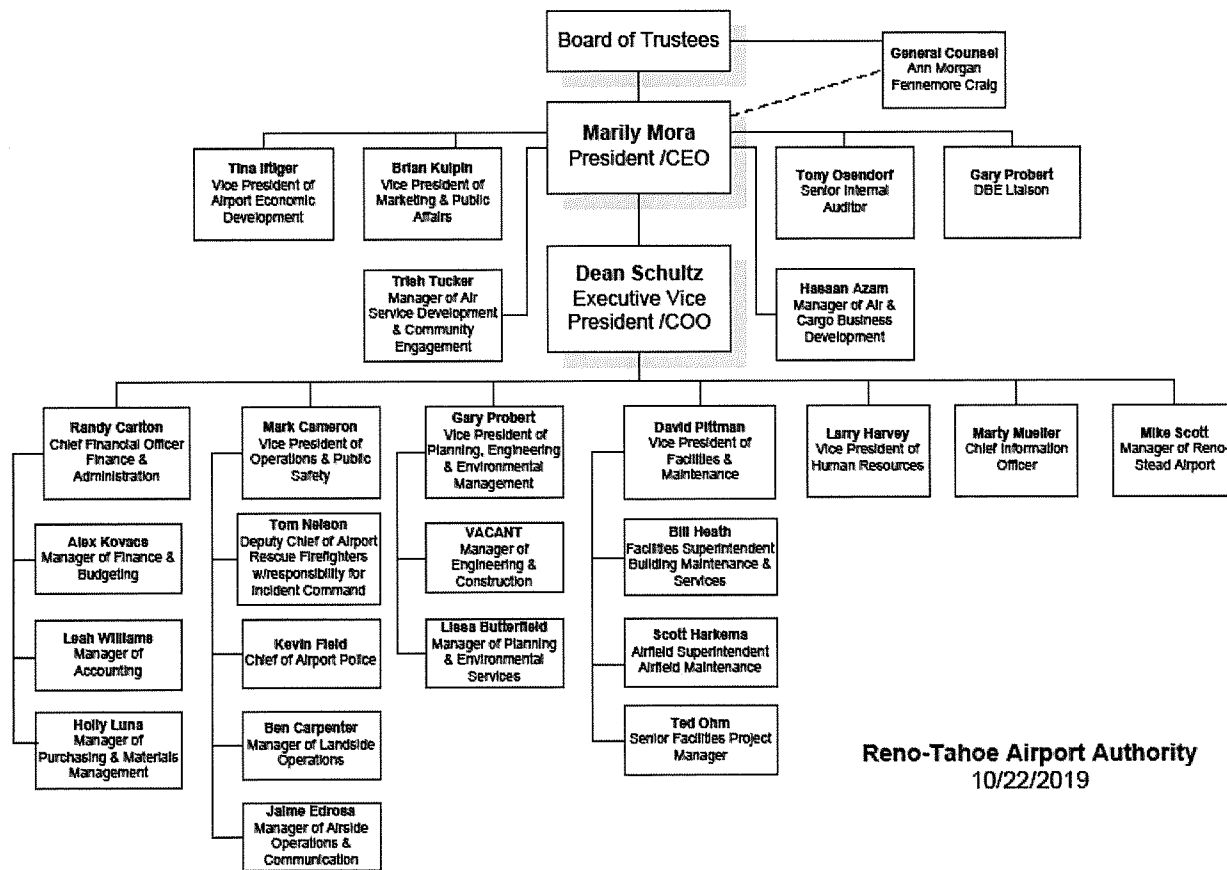
The text of 49 CFR Part 26 can be found at the link below.

https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

**ATTACHMENT II
Bidder's List Form**

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million
			<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 years	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 million

ATTACHMENT III ORGANIZATION CHART



Reno-Tahoe Airport Authority
10/22/2019

ATTACHMENT IV

Minority Owned Banks – State of Nevada

(as of 3/19/19)

Bank/Branch Name	Location	Minority Ownership Date	Established Date	Assets	Deposits
Cathay Bank	Las Vegas, NV	4/19/62	4/19/62	\$16,577,133	\$13,765,947
East West Bank	Las Vegas, NV	12/23/13	12/23/13	\$39,594,603	\$34,039,172
American FNB	Pahrump, NV	9/30/11	7/25/07	\$1,678,456	\$1,470,1087
American FNB	Las Vegas, NV	9/30/11	8/22/08	\$1,678,456	\$1,470,1087
American FNB	Amargosa Valley, NV	9/30/11	7/25/07	\$1,678,456	\$1,470,1087
Royal Business Bank	Las Vegas, NV	3/31/15	10/1/07	\$2,977,247	\$2,234,986

**ATTACHMENT V
Monitoring Forms**

	Project Name/No:	Reviewer:
		Review Date:
	Prime Contractor:	
Subcontractor	DBE (Check box)	Scope of Work
		<u>Nondiscrimination</u> <u>Language</u> Title VI Language
		ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
		ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
		ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
		ND - <input type="checkbox"/> Yes <input type="checkbox"/> No

			Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
			ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
			ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
			ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
			ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No
			ND - <input type="checkbox"/> Yes <input type="checkbox"/> No Title VI - <input type="checkbox"/> Yes <input type="checkbox"/> No

I, _____, hereby certify that DBE contracting records for the above referenced project have been monitored on the date indicated above.

REGARDING DBE'S WORK PERFORMANCE

Has any other Contractor performed work that was to be performed by the DBE?

Yes No

Identify the contractor who performed the work:

What work items were performed by the identified contractor? (If more than two, write on back of form)

Has the DBE performed work not listed on their subcontract?

Yes No

Has the DBE owner been present on the job site?

Yes No

Does the DBE appear to have control over their work?

Yes No

Does the DBE appear to have control over their equipment?

Yes No

Does the DBE appear to have control over their employees?

Yes No

Based upon the above, do you believe this DBE contractor is an independent business, is executing a distinct element of work, and is actually performing, managing, and supervising the work specified in the DBE's contract?

Yes _____

No _____

If a CUF is not being performed by the DBE subcontractor, what action was taken to correct the deficiency?

Did the action taken as described above, correct the deficiency? Yes No

Comments: (any comments pertaining to the performance or conduct of the DBE company)

I, _____, hereby certify that DBE participation in the above referenced agreement/
subagreement was monitored on the date indicated above.

Signature:

COMMERCIALLY USEFUL FUNCTION CHECKLIST/SITE VISIT

Project Name and Number: _____

Prime Contractor: _____

DBE Firm's Name: _____

Type of Operation:

- Contractor Trucker Manufacturer Regular Dealer

Date Contract/Subcontract/Agreement Approved: _____

Start Date(s) of DBE's Work: _____ Date DBE to Complete Work: _____ Date of review: _____

Describe the type of work observed:

Three horizontal lines for describing work observed.

Check off each item used in conducting this review. The documents checked need not be attached to the review report, but should be filed with the report for easy reference if needed. If the answer is no to any of the following questions provide an explanation in the general notes at the end of the report.

1. Management:

- a. Is there a legal contract executed by the DBE to perform a distinct element of work?
b. Name of the on-site DBE representative:
c. On-site representative reports to:
d. Has the on-site representative been identified as an employee of the DBE?
e. Has this individual ever appeared on any other contractor's payroll?
f. Does the DBE on-site representative effectively manage the job without interference from any other non-DBE contractor?
g. Who does the DBE on-site representative contact for hiring, firing, or to modify

the contract? _____

- h. Has the DBE owner been present on the jobsite? Yes No
- i. Does the DBE appear to have control over methods of work on its contract items? Yes No
- j. Is the DBE maintaining its own payroll? Yes No
- k. Who prepares the DBEs certified payroll? _____
- l. Is the DBE actually scheduling work activities, material deliveries and other related actions required for prosecution of the work? Yes No
- m. Did the DBE subcontract any items or portions of the work to any other firm? Yes No

If yes, what % was subcontracted? _____% Name of the Subcontractor _____

2. Equipment

- a. List the major equipment used by the DBE: _____
- b. Does the equipment have the DBE's markings or emblems? Yes No

If another firm's markings are discernible, note the name: _____

- c. Is the DBE's equipment? Owned Leased from _____
- d. If leased, is there a formal agreement identifying the terms and parties? Yes No
- e. Is the equipment under the direct supervision of the DBE? Yes No
- f. Is the operator of the leased equipment the DBE's employee? Yes No

If not the DBE's, whose employee is he/she? _____

- g. If the equipment is leased, is the payment for the equipment deducted from the work performed? Yes No

3. Workforce:

- a. List the name of DBE's crew as observed during the operation described above:

- b. Has any of this crew ever shown up on any other contractors' payroll? Yes No
- c. Does the DBE's workforce know who they work for? Yes No

4. Materials:

- a. Is the DBE contracted to furnish and install a contract item? Yes No
- b. Is the quality and quantity of the materials controlled by the DBE? Yes No
- c. If two party checks used, who are the parties identified as payable to:

- d. Who makes arrangements for delivery of materials? _____
- e. Material Invoices made out to: _____
- f. Who scheduled delivery of materials? _____
- g. In whose name area materials shipped? _____
- h. Does the prime contractor direct whom the DBE is to obtain the material from and at what price? Yes No

5. Performance:

- a. Does the DBE appear to have control over methods of work on its contract items? Yes No
- b. Has any other contractor performed any amount of work specified in the DBE contract?
Yes No

6. Other Work categories: Truckers:

- a. Are DBE trucks present on the job site? Yes No
- Are they: Owned Leased from _____

- b. If leased, is there a formal agreement identifying the terms and parties? Yes No
- c. Are the rates appropriate? Yes No
- d. Is there an approved subcontract or written agreement? Yes No
- e. Who are the parties? _____
- f. Are DBE employees shown on the certified payroll? Yes No

Regular Dealers:

- a. Does the regular dealer have an established storage facility and inventory? Yes No
- b. Does the dealer have a business that sells the product being supplied to the public on a routine basis? Yes No
- c. Does the business stock the product being supplied as a normal stock item? Yes No
- d. Is the quantity and quality of the materials controlled by the DBE? Yes No
- e. In whose name are the materials shipped? _____
- f. Who is delivering and unloading the material? _____
- g. Is the distribution equipment used in delivering the product the DBE's? Yes No
If so, is it: Owned Leased
- h. If leased, is it a long term lease and not a lease developed specifically for the project?
Yes No

7. Manufacturer

- a. Is the business's primary function to manufacturer construction products? Yes No
- b. Does the business stock the product manufactured or altered for this project as a normal stock item? Yes No
- c. Is the quality of the materials controlled by the DBE? Yes No

General Notes:

I, _____, hereby certify that DBE participation in the above referenced agreement/
subagreement was monitored on the date indicated above.

Signature: _____

ATTACHMENT VI
SMALL BUSINESS PROGRAM

Reno-Tahoe Airport Authority

Small Business Program
Developed as an Element
of the DBE Program

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I. SMALL BUSINESS PROGRAM POLICY

This Small Business Program was developed by the Reno-Tahoe Airport Authority (RTAA) as an element of the DBE Program to provide additional opportunities for small businesses to participate in contracting at Reno-Tahoe International and Reno-Stead Airports.

The RTAA Small Business Program, as described herein, applies to certain federally funded contracts and expenditures. The Program combines the use of unbundling and small business enterprise goals in an effort to facilitate competition by small business concerns, including Disadvantaged Business Enterprises.

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

The Program will utilize procedures that promote inclusion and opportunity, while maintaining race and gender neutral measures in their operations.

The RTAA is committed to ensuring that small businesses are offered an equitable opportunity to participate in the contracting and procurement process.

II. AUTHORIZATION

In accordance with the regulations governing the U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise (DBE) Program, the RTAA sets tri-annual overall DBE goals for contracts that are funded in whole or in part with federal funds. The RTAA is obligated to meet the maximum feasible portion of its overall goal through race and gender neutral means of facilitating DBE participation. (49 CFR § 26.51).

In January, 2011, 49 CFR part 26 was amended and a section entitled "Fostering Small Business Participation" was added as follows:

§ 26.39 *Fostering small business participation.*

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

This Program has been developed as an element of the RTAA DBE program in compliance with the above stated sections of 49 CFR part 26 and further guidance issued by DOT in December 2011.

III. SMALL BUSINESS ENTERPRISE DEFINITION

For purposes of this Small Business Program, a Small Business Enterprise (SBE) shall be defined as follows:

A small business enterprise, with respect to firms seeking to participate as SBEs in the RTAA Small Business Program, is a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR part 26, §26.65(b).

49 CFR part 26, §26.65(b) states as follows:

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

The SBA size standards may be found at:

www.sbaonline.sba.gov/contractingopportunities/officials/size/table/index.html

IV. SMALL BUSINESS ENTERPRISE VERIFICATION

A firm who wishes to participate as an SBE on a project at Reno-Tahoe International or Reno-Stead Airport and has not been certified as a DBE or verified as an SBE by one of the certifying agencies of the Nevada Unified Certification Program within the preceding 12 months may apply for verification as an SBE by filing a SMALL BUSINESS ENTERPRISE (SBE) VERIFICATION FORM and submitting the form along with all required attachments at the time of bid.

Firms applying for verification as an SBE must provide all required information and documentation necessary to verify that they meet the definition of a Small Business Enterprise.

V. SCOPE OF THE PROGRAM

The intent of the RTAA Small Business Program is to provide full and fair opportunities for equal participation by small businesses in federally-funded Airport contracting and procurement opportunities.

The Small Business Program requires prime contractors to make good faith efforts to use small businesses in certain contracting and procurement opportunities. Good faith efforts will be measured utilizing guidance provided in 49 CFR part 26, Appendix A.

All construction, professional services, goods and general services solicitations that include federal funding shall be reviewed by the DBE Liaison Officer to determine if a Small Business Enterprise (SBE) goal is appropriate for the solicitation. SBE contract goals may be set for a contract when it has been determined that a race conscious contract goal will not be set and that, instead, race neutral measures will be used. An SBE goal may be used as a race neutral measure for contracts that have subcontracting opportunities. SBE goals do not replace DBE goals, but merely provide a race neutral method for achieving race neutral DBE participation which can be used in concert with other established race neutral measures discussed in 49 CFR part 26, 26.51 (a)-(c).

A decision to use race-neutral goals will be made in accordance with 49 CFR part 26.51, including a determination that race neutral methods are sufficient to meet the RTAA overall DBE goal. The RTAA may determine that an SBE goal is an appropriate race neutral measure to be used for certain contracts. The criteria used to set a race neutral SBE goal shall include small business capacity, small business availability, nature of the contract, past experiences with small business participation with similar contracts, price competitiveness, and subcontracting opportunities. Procedures for implementation, including good faith efforts requirements and information submitted with bid and reporting procedures shall be consistent with procedures utilized in the RTAA

DBE Program under a race neutral environment. Good faith efforts to achieve a race neutral goal shall apply only when an SBE goal has been set for a project. Other race neutral methods, including those listed in 49 CFR part 26, §26.51, are not subject to good faith efforts on the part of the bidder.

The program also requires airport staff to consider unbundling of contracts when feasible. The RTAA seeks to avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation in procurements as prime contractors. To achieve this, multi-trade projects estimated to exceed \$5 million will be reviewed for potential unbundling to provide for a reasonable number of small opportunities to facilitate participation by small businesses. The DBE Liaison Officer, in coordination with Engineering and Construction Department, will provide a recommendation for unbundling based on a determination that there are a sufficient number of qualified SBE firms available to compete to perform the contract(s) which would result from unbundling. The Engineering and Construction Department will have the opportunity to review the recommendation for unbundling and either accept the recommendation or provide rationale for rejecting the recommendation.

VI. TRACKING SBE PARTICIPATION

The RTAA will monitor and track participation by small businesses in federally-funded projects. Only small businesses that are also certified as DBEs will be counted towards the RTAA overall DBE goal. Participation by SBEs who are not certified as DBEs will be tracked for informational purposes, but not reported to the FAA. Race- and gender-neutral DBE participation obtained through the SBE Program will be included in the Airport's Annual Reports of Accomplishments and will be calculated by dividing the total dollars to DBEs achieved through the small business program by the total federal dollars.

VII. TECHNICAL ASSISTANCE/BUSINESS DEVELOPMENT RESOURCES

Small businesses may obtain technical assistance through the following resources:

1. Nevada Governor's Office of Economic Development (GOEP) - <http://www.diversifynevada.com/>
2. Procurement Outreach Program (POP) - http://www.diversifynevada.com/divisions/procurement_outreach/
3. U.S. Small Business Administration Nevada Office - <http://www.sba.gov/localresources/district/nv/index.html>
4. SBA – SCORE - <http://www.score-reno.org/>
5. University of Nevada Small Business Development Center - <http://www.nsbdc.org/>

6. Economic Development of Western Nevada (EDAWN) - <http://www.edawn.org/>

VIII. ASSURANCES

The RTAA provides the following assurances regarding the development and implementation of the SBE Program described herein:

- 1) The development of this Small Business Program is not prohibited by Nevada state law.
- 2) Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the RTAA Small Business Program.
- 3) There will be no geographic preferences or limitations imposed on any federally assisted procurement included in the RTAA Small Business Program.
- 4) There will be no limits on the number of contracts awarded to firms participating in the program.
- 5) The RTAA will make every effort to avoid creating barriers to the use of new, emerging, or untried businesses
- 6) The RTAA Small Business Program is open to small businesses regardless of their location. There will be no local or other geographic preference.

ATTACHMENT VII

Link to:

- 1) **RENO-TAHOE AIRPORT AUTHORITY**

**OVERALL DBE GOALS
Reno-Tahoe International Airport**

<https://www.renoairport.com/airport-authority/competitive-solicitations/dbeprogram>

- 2) **RENO-TAHOE AIRPORT AUTHORITY**

**OVERALL DBE GOALS
Reno-Stead Airport**

<https://www.renoairport.com/airport-authority/competitive-solicitations/dbeprogram>

ATTACHMENT VIII
NEVADA UNIFIED CERTIFICATION PROGRAM AGREEMENT

EXHIBIT A

NEVADA UNIFORM CERTIFICATION PROGRAM

Section 1. Definitions

Section 2. Administration

2.1 Nevada Uniform Certification Program

2.2 Nevada Uniform Certification Committee

2.3 Non-applicable Contracts

Section 3. Procedures

3.1 Policy for Processing Applications

3.2 Application and Decision

3.3 Denials

3.4 Removals

3.5 Appeals

3.6 Result of Appeal

Section 4. Standards

4.1 Generally

4.2 Business Size

4.3 Confidentiality

Section 5. Cooperation

SECTION 1. DEFINITIONS

1.1 Agreement

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

1.2 Committee

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

1.3 Contract

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

1.4 Contractor

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

1.5 Department or DOT

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

1.6 Disadvantaged Business Enterprise or DBE

“Disadvantaged Business Enterprise” and “DBE” mean a for-profit small business concern --
(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

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

1.7 Processing Agency

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

1.8 Joint Venture

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

1.9 Operating Administration

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

1.10 Personal Net Worth

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

1.11 Primary Industry Classification

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

1.12 Recipient

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

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

1.13 Regulation

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

1.14 Secretary

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

1.15 Socially and Economically Disadvantaged Individual

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

1.16 State

“State” means the State of Nevada.

1.17 Uniform Certification Program or UCP

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

SECTION 2. ADMINISTRATION

2.1 Nevada Uniform Certification Program

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

2.2 Nevada Uniform Certification Committee

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

(a) The Committee shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.3 Non-applicable Contracts

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

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

SECTION 3. PROCEDURES

3.1 Policy for Processing Applications

Certification applications are not processed for:

(a) Not for profit firms.

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

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

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

3.2 Application and Decision

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

agreement.

3.3 Denials

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

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

3.4 Removals

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

(a) Ineligibility complaints by a third party.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) Status of firm during proceeding.

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

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

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

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

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

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

3.5 Appeals

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

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

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

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

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

3.6 Result of Appeal

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

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

SECTION 4. STANDARDS

4.1 Generally

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

4.2 Business Size

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

4.3 Confidentiality

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

SECTION 5. COOPERATION

All participants in the Department's DBE program (including, but not limited to, the Committee, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and Committee compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a

ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or-suspension and debarment.)