

RENO-TAHOE AIRPORT AUTHORITY

DISADVANTAGED BUSINESS ENTERPRISE

(DBE) POLICY AND PROGRAM



DECEMBER 1, 2024

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POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

RTAA (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. RTAA has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, RTAA has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of the 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 RTAA policy to engage in the following actions on a continuing basis:

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

Gary Probert, Chief of Planning & Infrastructure has been delegated as the DBE Liaison Officer. In that capacity, Gary Probert 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.

RTAA has disseminated this policy statement to the (RTAA) Board of Trustees and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on RTAA DOT-assisted contracts. The distribution was accomplished by posting on the Airport website at: [www.Business Diversity - Reno-Tahoe International Airport \(renoairport.com\)](http://www.Business Diversity - Reno-Tahoe International Airport (renoairport.com)) and distribution at pre-bid meetings.



Daren A. Griffin, A.A.E.
President/CEO

11/26/2024
Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

RTAA will use terms in this program that have their meanings defined in Part 26, § 26.5. A link to 49 CFR part 26 is provided as Attachment 1.

Section 26.7 Non-discrimination Requirements

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, 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.

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

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

DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

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 Part 26. RTAA will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA's designated reporting system.

Bidders List

RTAA will collect bidders list information (See Attachment 3) as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE

contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

RTAA will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and gender information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

RTAA will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

RTAA will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), RTAA will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

RTAA will maintain records documenting a firm's compliance with the requirements of this part. Other certification or 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 Assurances Recipients and Contractors Must Make

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

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

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

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

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

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

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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.

RTAA is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and RTAA is in compliance with it and Part 26. RTAA will continue to carry out this program until all funds from DOT financial assistance have been expended. 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 to the relevant operating administration for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Gary Probert
Chief of Planning & Infrastructure
PO Box 12490
Reno, NV 89510-2490
(775) 328-6459
gprobert@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 Daren Griffin, CEO/President concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 1 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of four (4) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Directs CMs to review third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments 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) and monitors results.
6. Analyzes RTAA's progress toward attainment and identifies ways to improve progress.
7. Ensures the DBE program is discussed in all pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids.
11. Acts as liaison to the Uniform Certification Process.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of 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. Availability of such institutions will be investigated on an annual basis.

There are currently no certified DBE Financial Institutions listed in the Nevada Unified Certification Program (“NUCP”) Directory. Reno Tahoe Airport Authority will monitor the Nevada UCP Directory quarterly to determine if any financial institutions are added to the DBE list. Reno Tahoe Airport Authority also monitors quarterly the FDIC list of Minority Owned Banks, the Bureau of the Fiscal Service, Office of the Comptroller of the Currency and other internet sources such as Forbes and Investopedia to locate minority and women owned banks. Banks identified are contacted and encouraged to apply for certification and to provide information for distribution at pre-bid conferences. Information on the availability of such institutions, if any, will be made at pre-bid conferences.

Section 26.29 Prompt Payment Mechanisms

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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

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 10 days from the prime contractor's receipt of each payment from the RTAA.

RTAA ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, RTAA has selected the following method to comply with this requirement:

RTAA will hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after RTAA payment to the prime contractor.

For every airport construction project funded under Federal grant assistance programs, RTAA includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to “30 days” will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

RTAA clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt

payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, RTAA undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through posting prime contractor payments to a spreadsheet and notifying subcontractors via email requesting verification of payment.

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 RTAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- RTAA proactively reviews contract payments to subcontractors including DBEs on a monthly basis. Prime contractors are required to provide evidence of payment to subcontractors monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to RTAA by the prime contractor.

Prompt Payment Dispute Resolution

Payment to Subcontractors (NRS 624.624)

A contractor must pay a lower-tiered subcontractor as follows:

1. If the subcontract is in writing and contains a schedule for payments, the earlier of: (a) The date the payment is due; or (b) Within ten (10) days of the date the contractor receives payment for all or a portion of the subcontractor's work and materials.
2. If no schedule for payments exists or the contract is oral, the earlier of:
(a) Thirty (30) days of the date the subcontractor submits a progress or retainage payment bill; or (b) Within ten (10) days of the date the contractor receives payment for all or a portion of the subcontractor's work and materials.

Monies a Contractor May Withhold (NRS 624.624)

1. The retention amount authorized by subcontract;
2. The value of any work, labor, materials and/or equipment that has not been furnished for which payment is being sought;
3. The costs reasonably necessary to correct or repair any work that is the subject of a progress or retainage bill, but only to the extent that such costs exceed fifty-percent (50%) of the amount of retention being withheld; and/or

4. The amount the contractor may reasonably be liable for and which the contractor has paid or is required to pay on behalf of the subcontractor or his lower-tiered subcontractors, as a result of a demand for payment from an official state agency or employee benefit trust fund.

Notice of Withholding (NRS 624.624)

On or before the date a payment is due a subcontractor, the contractor must give the subcontractor written notice of any withholding.

The written notice must:

1. Identify the amount to be withheld;
2. Identify the reason for the withholding, including a specific reference to the relevant subcontract provision; and
3. Be signed by an authorized representative of the contractor.

The RTAA requires all contractors to comply with the Nevada statute. The requirement complies with 49 CFR Part 26.29.

Prompt Payment Monitoring for DBEs and Non-DBEs

RTAA clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor's failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, RTAA undertakes proactive monitoring and oversight of prime contractors' compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

RTAA reviews all payments to Prime Contractors and tracks such payments through monthly payment verification reports submitted by the Prime Contractor accompanied by evidence of payment to subcontractors.

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 RTAA or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

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

Prompt Payment Dispute Resolution

RTAA will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

The Chief Diversity Officer will review records. For payments that appear to be late, the Chief Diversity Officer will meet with the subcontractor to gather information. The Chief Diversity Office will then meet with the Prime Contractor, If issues remain, the Chief Diversity Officer will meet with both parties together. If the Chief Diversity Officer determines that the Prime Contractor is late on making a payment, the Chief Diversity Officer will advise the Prime Contractor to immediately pay the subcontractor and, if payment is not made within 5 calendar days, the Chief Diversity Officer will issue a finding of non-compliance which will result in the Prime Contractor being subject to a breach of contract action.

Prompt Payment Complaints

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

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

Enforcement Actions for Noncompliance of Participants

RTAA provides appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met

RTAA will actively implement the enforcement actions detailed above.

Section 26.31 Directory of Certified Firms

RTAA is a non-certifying member of the Nevada Unified Certification Program (NUCP). The NUCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31 (See Attachment 4). The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the NUCP directory includes the following details about the firm:

- Business address
- Business phone number
- Firm website(s)

- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 Over-concentration

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

Section 26.35 Business Development and Mentor-Protégé Programs

RTAA has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26.

Section 26.37 Monitoring Responsibilities

RTAA implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants and describes and sets forth these mechanisms in this DBE program.

RTAA actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally for overall goal monitoring will be maintained through monthly reports with project-to-date totals submitted by Prime Contractors and compared to original commitments and goals. This mechanism to maintain a running tally of overall goal attainment will be used to inform RTAA's decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

RTAA actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by creating a spreadsheet with all required data that is updated as each contract invoice is received. A form is provided to each contractor/consultant prior to the start of a job along with an explanation. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

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, and such work is counted according to the requirements of § 26.55. Work site monitoring for counting and commercially useful function review is performed by the owner's representative's construction manager. The monitoring of work sites to assess commercially useful functions will include interviews with staff members and supervisors at the job site, photographic documentation of people and equipment performing the work, reviews of invoices and supply payments, vehicle and equipment ownership or lease verification (such as registration or lease agreements), and any other supporting documents necessary to determine the business is performing a commercially useful function.

Contracting records are reviewed by the project manager. RTAA will require prime contractors provide copies of subcontracts for review. Reviews of contracting records will include verifying mandatory contract language is included in prime and subcontracts, verifying prohibited terms and conditions are not present, and to confirm the type and amount of work described in a subcontract aligns with representations made by the prime and subcontractor in any related letters of intent. RTAA will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

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 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. RTAA acknowledges that implementation of the small business element is

required for us to be considered by DOT as implementing our DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

RTAA does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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), RTAA will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If 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 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. RTAA will use DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45 as a method to determine the base figure. 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. 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, 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 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 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 RTAA engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, RTAA will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on 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 FAA, the revised goal will be posted on RTAA's official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how RTAA considered and responded to any comments and information received before finalizing the goal.

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

Project Goals

If permitted or required by the FAA, 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 it must meet all the substantive and procedural requirements 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.

Prior Operating Administration Concurrence

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 RTAA for calculating goals is inadequate, FAA may, after consulting with RTAA, adjust the overall goal or require that the goal be

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

Section 26.47 Failure to meet overall goals

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 RTAA fails to administer its DBE program in good faith.

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.

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) RTAA will 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. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

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

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

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

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

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

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

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

Demonstration of good faith efforts (pre-award)

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

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

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:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1). (See Attachment 6).
 - f. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor

- quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by RTAA. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor RTAA will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, RTAA will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which RTAA solicits proposals to design and build a project with minimal project details at time of letting, RTAA may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, RTAA will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. RTAA and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

RTAA will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, RTAA **will count** the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within 7 days of being informed by RTAA that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Tom Luria
Associate General Counsel
Reno-Tahoe Airport Authority
PO Box 12490
Reno, NV 89510-2490
(775) 328-6484
tluria@renoairport.com

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

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

Good Faith Efforts procedural requirements (post-solicitation/award)

RTAA will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that RTAA deems appropriate if the prime contractor fails to comply with the requirements of this section.

RTAA will require the awarded contractor 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.

RTAA will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g))

without our prior written consent, unless RTAA causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

RTAA will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains RTAA's written consent as provided in § 26.53(f); and
- (2) Unless RTAA's consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

RTAA may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that he prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of § 26.53(f)(3), good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- (6) RTAA has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to RTAA written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and
- (10) Other documented good cause that RTAA determines compels the termination of the DBE subcontractor;

Before transmitting to RTAA the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to RTAA sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising RTAA and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why RTAA should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), RTAA may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If RTAA requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. RTAA shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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).

For FAA-funded projects only, firms that exceed the business size standard in §26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

RTAA is a non-certifying member of the Nevada Unified Certification Program (NUCP) and relies upon the UCP's determinations of certification eligibility. 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 contact:

David Eclips
5757 Wayne Newton Blvd
Las Vegas, NV 89119
Phone - (702)261-5226
Email: davide@lasairport.com

or

NDOT
123 E. Washington Ave.
Las Vegas Nevada 89101
(775) 888-7497

Application Portal: <https://ndot.dbesystem.com/Default.asp?TN=ndot>

The Uniform Certification Application form, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>.

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full NUCP agreement. The full NUCP agreement can be found attached as Attachment 9.

Section 26.81 Unified Certification Programs

RTAA is a member of a Unified Certification Program (UCP) administered by the Nevada Department of Transportation. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to RTAA

RTAA understands that if it fails to comply with any requirement of this part, 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 FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. **ONLY** paragraph (2) of this section is also applicable in FAA programs.

- (1) **Noncompliance complaints.** Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of this part. In response to a complainant's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of a complainant's identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (2) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (3) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that RTAA is in noncompliance with part 26, the appropriate DOT office will promptly send RTAA, return receipt requested, a written notice advising that there is reasonable cause to find RTAA in noncompliance. The notice states the reasons for this finding and directs RTAA to reply within 30 days concerning whether you wish to begin conciliation.

(4) Conciliation.

- a. If RTAA requests conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
- b. If RTAA and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and RTAA is regarded as complying. The conciliation agreement sets forth the measures RTAA has taken or will take to ensure compliance. While a conciliation agreement is in effect, RTAA remains eligible for FHWA or FTA financial assistance.
- c. The concerned operating administration shall monitor the implementation of the conciliation agreement and ensure that its terms are complied with. If RTAA fail to carry out the terms of a conciliation agreement, RTAA is in noncompliance.
- d. If RTAA does not request conciliation, or a conciliation agreement is not signed within the time provided earlier in this section, then enforcement proceedings begin.

(5) Enforcement actions.

- a. Enforcement actions are taken as provided in this subpart.
- b. Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 26.105 Enforcement Actions Applicable to FAA Programs

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

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

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

Section 26.107 Enforcement Actions Applicable to Participating Firms

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

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

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

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

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

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

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, 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).

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.

ATTACHMENTS

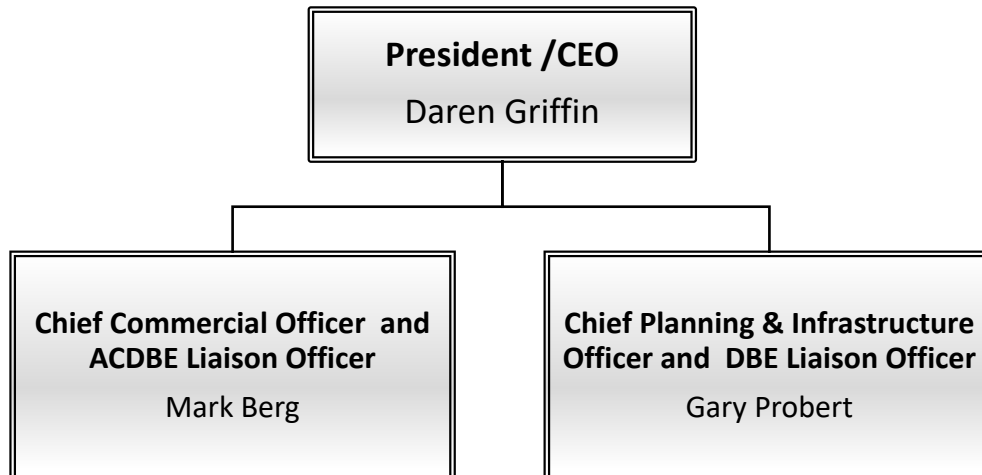
- Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to UCP Directory of Certified Firms
- Attachment 5 Overall Goal Methodology
- Attachment 6 Demonstration of Good Faith Efforts Forms
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to Certification Application Form and Personal Net Worth Statement
- Attachment 9 Nevada UCP Agreement
- Attachment 10 Small Business Element

Attachment 1 – DBE Regulation

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

Attachment 2 - Organizational Chart



Attachment 3 Bidder's List Form

This form is required to be submitted with the bid/proposal. Failure to submit this form may result in a finding of non-responsiveness. The form must include information for every sub bidder/supplier that provided a verbal or written quote to the bidder for this project.

Prime Contractor (Bidder) Name	Bidder Address/ Phone #	DBE or Non-DBE Status	Race and Gender of Firm's Majority Owner(s)	NAICS Code Applicable to the Work Bid for this Contract	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other		<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million

Subcontractor/ Supplier Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Race and Gender of Firm's Majority Owner(s)	NAICS Code Applicable to the Work Bid for this Contract (see NAICS.com)	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other		<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million

Subcontractor/ Supplier Firm Name	Firm Address/ Phone #	DBE or Non- DBE Status (verify via State's UCP Directory)	Race and Gender of Firm's Majority Owner(s)	NAICS Code Applicable to the Work Bid for this Contract (see NAICS.com)	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other		<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other		<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million
		<input type="checkbox"/> DBE <input type="checkbox"/> Non-DBE	<input type="checkbox"/> Female <input type="checkbox"/> Male <input type="checkbox"/> Black American <input type="checkbox"/> Hispanic American <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific American <input type="checkbox"/> Subcontinent Asian American <input type="checkbox"/> Other		<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 \$1 million <input type="checkbox"/> \$1-3 million <input type="checkbox"/> \$3-6 million <input type="checkbox"/> \$6-10 million <input type="checkbox"/> Greater than \$10 million

(add pages as necessary)

Attachment 4 – UCP Directory

Nevada UCP Directory may be found here:

www.ndot.dbesystem.com/Default.asp?TN=ndot

Attachment 5 – DBE Goals

Overall DBE Three-Year Goal Methodology for Reno-Tahoe International Airport

<https://www.renoairport.com/wp-content/uploads/2022/09/RNO-2023-2025-Overall-Goals-Final-072622.pdf>

Overall DBE Three-Year Goal Methodology for Reno Stead Airport

<https://www.renoairport.com/wp-content/uploads/2022/09/RTS-2023-2025-Overall-Goals-Final-072622.pdf>

Attachment 6 - Forms

Demonstration of Good Faith Efforts - Forms 1, 2, and 3

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

Legal name of bidder/offeror's firm:

Bidder/Offeror Representative:

—

Name & Title

Signature

Date

FORM 2: LETTER OF INTENT

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

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Manufacturer/Regular Dealer/Distributor/Broker**</i>

**Percentage is to be used only in negotiated procurements*

***For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.*

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

Signature of Bidder/Offeror's Authorized Representative

Date: _____

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

Signature of DBE's Authorized Representative

Date: _____

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

Submit this page for each DBE subcontractor.

Form 3: DBE Regular Dealer/Distributor Affirmation Form

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

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

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? ☐ YES² ☐ NO³

- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

Attachment 7 Administrative Enforcement Mechanisms

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

Breach of contract action, pursuant to the terms of the contract, as follows:

Any violation or breach of terms of this Agreement on the part of the Consultant or its subconsultants may result in the suspension or termination of this Agreement or such other action that may be necessary to enforce the rights of the parties of this Agreement.

The RTAA will provide Consultant with written notice that describes the nature of the breach and corrective actions the Consultant must undertake in order to avoid termination of the Agreement. The RTAA reserves the right to withhold payments to Consultant until such time the Consultant corrects the breach or the RTAA elects to terminate the Agreement. The RTAA's notice will identify a specific date by which the Consultant must correct the breach. The RTAA may proceed with termination of the Agreement if the Consultant fails to correct the breach by the deadline indicated in the RTAA's notice.

The duties and obligations imposed by the Agreement and the rights and remedies available thereunder are in addition to, and not a limitation of, any duties, obligations, rights, and remedies otherwise imposed or available by law.

Attachment 8 – Certification Application

DBE Certification Application Form and Personal Net Worth Statement:

<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>

Attachment 9 – Nevada UCP Agreement

Nevada UCP Agreement

NOTE: This Agreement is in the process of being signed by all parties. We will attach the executed Agreement once signed. It is final except for signature and has incorporated all changes requested by the parties.

AMENDED AND RESTATED AGREEMENT FOR UNIFIED CERTIFICATION OF DISADVANTAGED BUSINESS ENTERPRISES IN THE STATE OF NEVADA

THIS AGREEMENT, is made and entered into as of this 15th day of November 2024, by and between the Clark County Department of Aviation, hereafter referred to as CCDOA; Reno-Tahoe Airport Authority, hereinafter referred to as RTAA; Nevada Department of Transportation, hereinafter referred to as NDOT; Regional Transportation Commission of Southern Nevada, hereinafter referred to as RTCN; Regional Transportation Commission of Washoe County, hereinafter referred to as RTCWC; and the Carson Area Metropolitan Planning Organization, hereinafter referred to as CAMPO.

WHEREAS, 49 CFR Part 26.81 requires federal transportation fund recipients in a state to create a Unified Certification Program as part of the Disadvantaged Business Enterprise (“DBE”) and Airport Concession Disadvantaged Business Enterprise (“ACDBE”) programs; and

WHEREAS, the parties entered into an Original Agreement in 2001 which was superseded by an Amended and Restated Agreement in 2018 and desire to amend and restate the agreement with respect to the operation of the Nevada Unified Certification Program, from and after the date hereof, said 2018 Amended and Restated Agreement to be superseded in its entirety by this Agreement; and

WHEREAS, the parties have each implemented a small business element of the DBE Program in accordance with 49 CFR part 26, section 26.39, and as a result have decided to implement Small Business Enterprise certification through the UCP; and

WHEREAS, any other recipient of federal transportation funds in this state that is covered by the requirements of 49 CFR Part 26 is also required to participate in a Unified Certification Program; and

WHEREAS, NRS section 277.180 authorizes two or more governmental units, by agreement, to jointly or cooperatively exercise any power common to the contracting parties or any similar powers;

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive here from, the parties agree as follows:

ARTICLE I PURPOSE

1.1 The parties have executed this Agreement for the sole purpose of creating a Unified Certification Program (“UCP”) and designating the Committee to determine the process and procedures for processing DBE, ACDBE and SBE certification applications for the state of Nevada. “Committee” means the joint group created by this document that administers the Nevada UCP, in accordance with 49 CFR parts 26 and 23.

1.2 This agreement is entered solely for the benefit of the signatories and is not intended to create a public document.

ARTICLE II DEFINITIONS

2.1 Agreement

“Agreement” means this document, the Nevada Unified Certification Program Agreement

2.2 Certifying Agency

“Certifying Agency” means the specific UCP Agency to which a firm applies for DBE/ACDBE or SBE/SBEC certification. Certifying agencies of the Nevada UCP are the Nevada Department of Transportation for DBE and SBE applicants and Harry Reid International Airport for ACDBE and SBEC applicants.

2.3 Committee

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

2.4 Member

“Member” means an individual designated to serve as a representative of a Member Agency on the Committee.

2.5 Member Agency

“Member Agency” means any recipient of federal transportation funds and designated as a member Agency in this agreement.

2.6 Regulation

“Regulation” means 49 CFR Parts 26 and 23 as amended from time to time and any revisions, additions, deletions, or replacements. Any Guidance issued by USDOT related to the regulation is also considered part of the regulation.

2.7 Recipient

“Recipient” means a recipient of Department of Transportation funds.

2.8 Small Business Enterprise

A small business enterprise (SBE) is a for-profit business that meets the definition of a small business under and that is at least 51% owned by an individual(s) who meets the criteria defined in 49 CFR part 26 to be considered economically disadvantaged. SBEs

need not be owned and controlled by socially and economically disadvantaged individuals.

2.9 Small Business Enterprise Concession

A small business enterprise concession (SBEC) is a for-profit business that meets the definition of a small business under 49 CFR part 23 and that is at least 51% owned by an individual(s) who meets the criteria defined in 49 CFR part 23 to be considered economically disadvantaged. SBECs need not be owned and controlled by socially and economically disadvantaged individuals.

2.9 State

“State” means the State of Nevada.

2.10 Unified Certification Program or UCP

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

Unless otherwise defined herein, terms in this Agreement shall have the same meaning as defined in 49 CFR Parts 26 and 23.

ARTICLE III NEVADA UNIFIED CERTIFICATION PROGRAM

3.1 Nevada Unified Certification Program

The Nevada Unified Certification Program is established according to this Agreement and in accordance with 49 CFR Part 26, section 26.81, to make all administrative decisions on behalf of all member agencies in the State with respect to participation in the DOT DBE/ACDBE Program and Member Agency SBE/SBEC Programs. Certification decisions made by the UCP certifying agencies shall be binding on all member agencies within the state.

3.2 Resources. This agreement shall commit member agencies to ensuring that the Committee has sufficient resources and expertise to carry out the requirements of this agreement.

3.3 Nevada Unified Certification Committee

The Nevada Unified Certification Committee is established to implement and administer the Nevada Unified Certification Program (UCP). The UCP shall follow all certification procedures and standards of 49 CFR Parts 26 and 23 (“regulations”) attached hereto as Attachments 1 and 2 and shall comply with all certification and nondiscrimination requirements of the Regulation. The Committee shall consist of the following members:

- Director of the State of Nevada Department of Transportation or designee;
- Director of Aviation of the Clark County Department of Aviation, Harry Reid International Airport, or designee;
- President/CEO of the Reno-Tahoe Airport Authority, or designee;
- General Manager of the Regional Transportation Commission of Southern Nevada, or designee;

- Executive Director of Regional Transportation Commission of Washoe County, or designee;
- Transportation Manager of the Carson Area Metropolitan Planning Organization or designee

Any Agency within the state of Nevada that becomes a direct recipient of United States Department of Transportation funding shall be added as a member of the UCP Committee. At the time the Agency is admitted to the UCP, the Agency will have the option of being a voting or non-voting member of the committee. To be a voting member of the Committee, an agency must commit to attendance at a minimum of 4 committee meetings annually. Failure to attend a minimum of 4 committee meetings annually will result in forfeiture of voting rights at which time the Agency will become a non-voting member.

3.3.1 Regular Committee Meetings. A regular meeting of the Committee shall be held once each quarter at such time and place as the Committee, by resolution, may direct unless dispensed with by the members.

3.3.2 Notice of Meetings. Notice of meetings shall be given by the Secretary in writing, via email, to committee members entitled to vote. An agenda for each meeting shall be published and distributed by the secretary to each Committee member not less than five (5) calendar days before the date of the meeting.

3.3.3 Quorum. A majority of members entitled to vote, present in person or by phone or other electronic means, shall constitute a quorum.

3.3.4 Voting. Each voting Agency of the Committee shall be entitled to one vote on any matter that comes before the committee. A majority of votes of members in attendance at a meeting shall be required to pass an item.

3.3.5 Committee Officers. Committee officers shall be elected by a vote of the committee. Elections shall take place annually at the December meeting of the Committee or at such other meeting designated by the Committee. Officers may be nominated by any member of the Committee. Members may nominate themselves for an Officer position. Officer positions and duties are:

3.3.5.1 Chairperson. The Chairperson of the Committee shall be responsible for chairing the Committee meetings, planning meetings, developing the agenda in conjunction with the Secretary and providing leadership to the Committee.

3.3.5.2 Vice-Chairperson. The Vice-Chairperson shall assist the Chairperson and shall discharge the duties of the Chairperson in the absence of the Chairperson.

3.3.5.3 Secretary. The Secretary shall prepare and distribute the agenda for all Committee meetings. The Secretary shall also be responsible for managing Committee meeting logistics, attending and recording the minutes of all Committee meetings, and maintaining records of meetings.

3.3.5.6 Term Limits. Committee Officers shall be representatives of one of the voting Member Agencies. Each Agency may fill one officer position in any year. Each Agency may fill any of the Officer positions for a maximum of two consecutive one-year terms. At the completion of the second term, each Agency shall be required to complete a one-year break from any Officer position held for two years but may elect a representative to a different Officer position. For example, if an Agency representative serves as Chairperson for two years, that Agency may not have a representative from their Agency elected as Chairperson following that two-year term until one year has passed but may have a representative serve as Vice-Chairperson or Secretary.

3.3.6 Removal of Officers. An officer may be removed at any time, either with or without cause, by a majority vote of the Committee. An officer may resign at any time.

3.3.7 Special Election. In the event that an officer is removed or resigns, candidates for the open position created by such removal or resignation shall be nominated within 30 days of the officer's removal or resignation. A special election shall be held within 30 days of the date that nominations for the position are closed. The elected officer shall take office immediately following the announcement of the result of such election. In the event that the Chairperson is removed or resigns, the Vice-Chairperson shall preside until a new Chairperson is elected.

3.4 DBE/ACDBE/SBE/SBEC Directory

The DBE/ACDBE/SBE/SBEC Directory will be maintained in electronic format by the Agency designated by the Committee and will be available to the public through the designated Agency's website or through a jointly maintained Nevada Unified Certification Program website. The Directory shall be updated in real time to include all approved DBE/ACDBE/SBE/SBEC firms by the Agency assigned by the Committee to maintain the Directory. The directory listings shall comply with 49 CFR part 26, section 26.31.

3.5 Liability

Nothing contained in this Agreement shall imply any relationship between any of the signing parties beyond the implementation and administration of the UCP in accordance with 49 CFR parts 26 and 23.

3.5.1 It is specifically agreed between the parties executing this agreement that it is not intended by any of the provisions of any part of the agreement to create in the public or any member thereof a third-party beneficiary status hereunder, or to authorize anyone not a party to this agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this agreement.

3.5.2 Each party agrees to keep and maintain full, true, and complete records and documents pertaining to this Agreement and present, at any reasonable time, such information for inspection, examination, review, audit, and copying at any office where such records and documentation are maintained. Each Certifying Agency of the Committee shall comply with record-keeping requirements contained in 49 CFR part 26, section 26.11(d) and (e).

3.5.3 The parties are associated with each other only for the purposes and to the extent set forth in this Agreement. Each party is and shall be a public agency separate and distinct from the other party and shall have the right to supervise, manage, operate, control, and direct performance of the detail's incident of its duties under this Agreement. Nothing contained in this Agreement shall be deemed or construed to create a partnership or joint venture, to create relationships of an employer-employee or principal-agent, or to otherwise create any liability for one agency whatsoever with respect to the indebtedness, liabilities, and obligations of the other agency or any other party.

3.6 Confidentiality of Data

All financial information received regarding the certification of an applicant may be shared among the parties signing this agreement but shall not be shared with the public, in accordance with 49 CFR, Part 26.109.

ARTICLE IV NEVADA UNIFIED CERTIFICATION PROGRAM POLICIES

4.1 (a) The Nevada UCP Certifying Agencies shall:

(1) Make all certification decisions on behalf of all member agencies in the state with respect to participation in the DOT DBE/ACDBE and Member Agencies' SBE/SBEC Programs. Certifying agencies will ensure that all staff processing certification applications on behalf of the UCP shall have completed the USDOT certification training available on the National Highway Institute's (NHI) website or any subsequent DOT required training. Completion certificates must be filed with the UCP Secretary.

(i) Certification decisions by the UCP certifying agencies shall be binding on all recipients within the state.

(ii) The UCP shall provide 'one-stop shopping' to applicants for certification, such that an applicant is required to apply only once for a DBE/ACDBE/SBE/SBEC certification and any other program that may be implemented from time to time by US DOT. Certification decisions made by the Certifying Agencies will be honored by all member agencies in the state of Nevada.

(3) Follow all certification procedures and standards of the regulation.

(4) Cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations.

(5) Implement USDOT directives and guidance concerning certification matters.

(6) Process interstate applications in accordance with 49 CFR Part 26, section 26.85

4.2 NDOT, on behalf of the UCP shall:

(1) Maintain a Unified DBE/ACDBE/SBE/SBEC Directory in compliance with 49 CFR part 26, section 26.31. The directory shall be maintained in an electronic format and shall be updated as changes occur, including the addition of new firms and changes to existing firms. The Directory will be made available to the public on the internet and will be searchable.

(2) Comply with Directory reporting requirements included in 49 CFR part 26, including requirements in section 26.11(e).

(3) Implement DOT directives and guidance concerning certification and reporting matters.

The UCP shall:

(1) Make all decisions regarding the administration of the UCP.

(2) Ensure that the Committee has sufficient resources and expertise to carry out the requirements of this agreement.

ARTICLE V NEVADA UNIFIED CERTIFICATION PROGRAM PROCEDURES

5.1 Certification Procedures. Certification decisions will be made by the Certifying members in accordance with standards and procedures found in 49 CFR part 26, Subparts D and E and, in the case of ACDBE in accordance with 49 CFR part 23, Subpart C.

5.2 Certification Application. To become DBE or SBE certified, a firm must submit an application to State of Nevada Department of Transportation (NDOT). To become ACDBE or SBEC certified, a firm must submit an application to the Clark County Department of Aviation (CCDOA). For DBE/ACDBE certification, the Certifying Agencies shall use the Uniform Certification Application published by US DOT, without alteration, as required by 49 CFR Part 26. For SBE or SBEC Certification, the Committee shall use an application approved by the Committee. The Certification Application will be made available through the official websites of the designated Certifying Agencies and on the Nevada UCP website at such time as a Nevada UCP website has been developed and is operating.

5.3 Certification Decisions

5.3.1 All certification decisions shall be made by NDOT or CCDOA. In the event that a certifying agency has a backlog and requires assistance or requires an expedited certification review, the certifying agencies shall work together in good faith to ensure the efficiency and effectiveness of the certification processes and procedures.

5.3.2 In the event that a non-certifying firm, in the course of monitoring its program, has reason to question a certification or has questions about the certification, the member

shall contact the certifying agency. The certifying agency shall cooperate in investigating any issues that arise with respect to a firm's certification eligibility.

5.3.3 Waiting Period. When a certifying Agency makes an administratively final denial of certification concerning a firm, the firm may re-apply for certification only after twelve months have elapsed.

5.4.3 Withdrawal. Applicants for DBE, ACDBE, SBE, or SBEC certification may withdraw their application at any time prior to the certification decision for that firm is rendered. There will be no waiting period imposed for firms who have withdrawn to re-apply, however, the reapplication may be placed at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. The twelve-month waiting period may be imposed, upon vote by the Committee, to firms that have established a pattern of frequently withdrawing applications.

5.5 Certification Reviews

Each Certifying Agency shall conduct a certification review, including a recorded site visit, not more than every three years or less than every five years for each DBE/ACDBE/SBE/SBEC that the certifying Agency has certified. The review shall take place within 30 days of the applicable anniversary date for each certified firm, or at such other time designated by the Committee. Certification review forms shall be uniform for each certifying Agency and shall be approved by a vote of the Committee.

5.6 Eligibility Removals

5.6.1 Eligibility Removal Procedures. The Committee shall utilize the procedures of 49 CFR Part 26, Section 26.87 to remove the eligibility of any certified DBE or ACDBE firm.

5.6.2 Review Agency. Any review of a firm for potential removal shall be conducted by the Certifying Agency that originally processed the application.

5.6.3 Hearing. When the Certifying Agency notifies a firm that there is reasonable cause to remove its eligibility, it shall give the firm an opportunity for a hearing with a third party who 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.

5.7 Summary Suspension of Certification

5.7.1 Suspension Procedures. The Committee shall adhere to the procedures of section 26.88 of the Regulation regarding the summary suspension of certification.

5.8 Confidentiality

Notwithstanding any provision of Federal or state law, the Committee will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information.

This includes applications for DBE/ACDBE or SBE/SBEC certification and supporting information. However, the Committee will transmit this information to DOT in any certification appeal proceeding under 49 CFR Part 26, section 26.89 of this part or to any other state to which the individual's firm has applied for certification under section 26.85.

ARTICLE VI TERMS OF AGREEMENT

6.1 Term. This agreement shall be effective immediately upon its approval and execution by all the parties hereto: shall be for a term related to the rules for administering the DBE/ACDBE Program or to the maximum extent permitted by Nevada State Law, whichever occurs first. The term shall coincide with a material change to the DBE/ACDBE Program.

6.2 Termination. This agreement shall be in effect until the DBE/ACDBE program terminates or changes its requirements as to any of the parties of this agreement or as permitted by Nevada State Law.

6.3 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof, all oral and written prior to contemporaneous discussions and agreements being merged herein and superseded hereby.

6.4 Conflict in Terms. In the event of any conflict or inconsistency in the definition or interpretation of any words, terms or phrases relating to certification between this Agreement and the Regulation, such conflict or inconsistency shall be resolved by giving precedence first to the Regulation.

WHEREOF, the parties have executed this agreement on the dates indicated below.

APPROVED AS TO LEGALITY AND
FORM:

BY: _____
Deputy Attorney General

STATE OF NEVADA Acting By and Through
its DEPARTMENT OF TRANSPORTATION

BY: _____
Tracy D. Larkin-Thomason
Director
Date: _____

CLARK COUNTY, NEVADA

BY: _____
Rosemary A. Vassiliadis
Director of Aviation
Date: _____

REGIONAL TRANSPORTATION
COMMISSION OF SOUTHERN NEVADA

BY: _____
Justin Jones
Chairman
Date: _____

REGIONAL TRANSPORTATION
COMMISSION OF WASHOE COUNTY

BY: _____
William A. Thomas, AICP
Executive Director
Date: _____

RENO-TAHOE AIRPORT AUTHORITY

BY: _____
Darren Griffin, AAE
President and CEO
Date: _____

CARSON AREA METROPOLITAN
PLANNING ORGANIZATION

BY: _____
Chris Martinovich, PE
Transportation Manager
Date: _____

Attachment 1 – 49 CFR part 26

Attachment 2 – 49 CFR part 23

Attachment 10 – Small Business Element

**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.