

**ARIZONA DEPARTMENT OF TRANSPORTATION
POLICIES AND PROCEDURES**

SUP-3.05 DISADVANTAGED BUSINESS ENTERPRISE POLICY

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Responsible Office: Business Engagement and
Compliance Office (602) 712-4071

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5.01 PURPOSE

To provide guidelines for the implementation and application of Arizona Department of Transportation’s (ADOT) Disadvantaged Business Enterprise (DBE) Program.

5.02 SCOPE

The following standards and regulations apply to all U.S. Department of Transportation [U.S. DOT (DOT)] assisted federally-funded contracts administered by ADOT, all ADOT employees, Subrecipients, Local Public Agencies (LPAs), prime contractors and consultants, subcontractors, subconsultants, Disadvantaged Business Enterprises (DBEs), Non-Disadvantaged Business Enterprises (DBEs), Small Business Concerns (SBCs), or any other vendor entities that do business with ADOT on DOT-assisted contracts.

5.03 AUTHORITY

Arizona Revised Statutes [\(A.R.S.\)§ 28-411](#)
Arizona Revised Statutes [\(A.R.S.\)§ 32-1129.02](#)
[Title 49, Code of Federal Regulations \(CFR\) Part 26](#)

5.04 DEFINITIONS

Disadvantaged Business
Enterprise (DBE)

A firm certified through the Arizona Unified Certification Program in accordance with [49 CFR Part 26](#) which is a for-profit small business concern:

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged individuals or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

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

Disadvantaged Business Enterprise (DBE) Liaison Officer

Arizona Department of Transportation (ADOT) representative responsible for implementing all aspects of ADOT's Disadvantaged Business Enterprise (DBE) Program who shall have direct, independent access to ADOT Director concerning DBE program matters. The Manager of the Business Engagement and Compliance Office (BECO) shall serve as ADOT's DBE Liaison Officer.

DOT-Assisted/Federally-Funded Contract

Any contract between a recipient and a contractor (at any tier) funded in whole or in part with the U.S. Department of Transportation (DOT) financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good Faith Efforts

When a Disadvantaged Business Enterprise (DBE) goal is established on a contract, the contract must be awarded only to firms who make good faith efforts to meet the DBE goals. Good faith efforts have been made if the bidder/offer does one of the following:

(1) documents that it has obtained enough Disadvantaged Business Enterprise (DBE) participation to meet the goal; or

(2) documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough Disadvantaged Business Enterprise (DBE) participation to do so. If the bidder/offeror does document adequate good faith efforts, Arizona Department of Transportation (ADOT) must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. Appendix A of 49 CFR Part 26 provides guidance in determining the adequacy of a bidder/offeror's good faith efforts.

Local Public Agency	A legal entity (e.g., cities, counties, towns, tribal, etc.) to which a funding sub-award is made by the Recipient [Arizona Department of Transportation (ADOT)] and is accountable to the Recipient (ADOT) for the use of the fund. May also be referred as Subrecipient.
Non-DBE Firm	A firm that does not meet the requirements to be certified as a DBE in accordance with 49 CFR Part 26.
Race-Conscious	A measure or program, such as the use of individual contract goals that focuses on specifically assisting Disadvantaged Business Enterprises (DBEs) A contract containing a DBE goal is considered a race-conscious contract.
Race-Neutral	Activities or program used to assist all small businesses equally, including Disadvantaged Business Enterprises (DBEs). For the purposes of this part, race-neutral includes gender-neutrality. Race-Neutral contracts have no DBE goals and race-neutral participation on a contract means that the bidder/offeror has voluntarily chosen to utilized DBEs on a contract. A race-neutral contract is also one in which a DBE firm is the prime consultant or contractor and DBE status did not play a part in the awarding of the contract.
Recipient	An organization, like Arizona Department Of Transportation (ADOT), that receives financial assistance directly from Federal awarding agencies to carry out transportation related projects or programs.
Small Business Concern	A small business concern is defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations (<u>13 CFR Part 121</u>), as a company that does not exceed the size cap for average annual gross income for its primary <u>North American Industry Classification System</u> (NAICS) code.

Subrecipient

A legal entity, such as a Local Public Agency (LPA), to which a funding sub-award is made by the Recipient (Arizona Department Of Transportation – [ADOT]) and which is accountable to the Recipient (ADOT) for the use of the fund.

5.05 BACKGROUND

The United States Congress has made a determination that certain classes of businesses, described as Disadvantaged Business Enterprises (DBEs), have been underutilized based on past discrimination. Congress authorized and U.S. Department of Transportation (DOT) has implemented rules to promote utilization of DBEs in projects utilizing federal funding. DOT implemented the DBE Program in 1982 and today the program is carried out by State and local transportation agencies under the rules and guidelines established in Title 49 CFR Part 26. The DBE program is unique to the transportation industry and covers DOT-assisted contracts awarded by ADOT and its Subrecipients. As required by law, ADOT receiving certain types of federal Transportation funding from DOT must implement a DBE Program and establish triennial DBE participation goal as required by federal regulations.

Arizona Department of Transportation (ADOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the 49 CFR Part 26. ADOT has received Federal financial assistance from U.S. Department of Transportation (DOT) and as a condition of receiving funding assistance, ADOT has signed an assurance that it will comply with 49 CFR Part 26.

The policy covers the Disadvantaged Business Enterprise (DBE) Program for three U.S. Department of Transportation (DOT) administrations: Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). The policy was reviewed and updated on February 9, 2003, as a result of 1999 revised regulations. In 2013, the policy was updated to reflect comprehensive changes in federal regulation requirements outlined in 49 CFR Part 26.

5.06 POLICY**ADOT Policy Statement**

- A. It is ADOT's policy to ensure that Disadvantaged Business Enterprise (DBE)s, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in U.S. Department of Transportation (DOT) -assisted contracts. It is also ADOT's policy to:
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 counted as Disadvantaged Business Enterprises (DBEs);
5. Help remove barriers to the participation of DBEs in U.S. Department of Transportation (DOT)-assisted contracts; and
6. Assist in the development of firms that can compete successfully in the market place outside the DBE program.

DBE Certification and Development

- B. Implementation of the Disadvantaged Business Enterprise (DBE) Program is accorded the same priority as compliance with all other legal obligations incurred by Arizona Department of Transportation (ADOT) in financial assistance agreements with U.S. Department of Transportation (DOT).
- C. All ADOT Divisions, Sections/Group and Subrecipients that procure/advertise, utilize or administer contracts with federal aid funding are responsible for ensuring that DBE requirements are met.
- D. The Business Engagement and Compliance Office (BECO) shall establish and oversee the implementation of the DBE Program, as required, for each federal agency that provides transportation funding to ADOT (Federal Highway Administration, Federal Transit Administration, and Federal Aviation Administration).
- E. Business Engagement and Compliance Office (BECO) is responsible for recruiting and registering vendors, certifying Disadvantaged Business Enterprises (DBEs) and registering Small Business Concerns (SBC) in accordance with eligibility requirements and guidelines outlined in 49 CFR Part 26.
- F. Business Engagement and Compliance Office (BECO) has implemented the *Arizona Unified Transportation Registration and Certification System* (AZ UTRACS) website, which includes a statewide centralized database of Disadvantaged Business Enterprise (DBE) companies and (registered Small Business Concerns [SBCs], as well as a vendor database of Prime Consultants and Contractors) that have indicated that they are ready, willing and able to perform work on federally-funded ADOT and local government transportation projects in the state of Arizona, as required by 49 CFR Part 26. Prime Consultants and Contractors, must register as a vendor through AZ UTRACS to work on federally-funded contracts.
- G. Business Engagement and Compliance Office (BECO) in collaboration with other Arizona Department of Transportation (ADOT) Divisions and Sections is also responsible for conducting business development, education, training, and outreach programs to help remove barriers to entry and assist Disadvantaged Business Enterprises (DBEs) and other small businesses to successfully participate in federally-funded contracts statewide.
- H. Arizona Department of Transportation (ADOT) is responsible for submitting and securing approval of a statewide triennial Disadvantage Business Enterprise (DBE) goal from DOT. Business Engagement and Compliance Office (BECO) will coordinate with other ADOT Divisions

and Sections, as well as with external stakeholders, to implement a DBE Availability and Disparity Study about every 5 years, as required by the Ninth Circuit Court of Appeals and develop and secure approval of the ADOT's triennial DBE goal through DOT.

DBE Compliance and Reporting

- I. The Business Engagement and Compliance Office (BECO) Manager is the designated Arizona Department of Transportation (ADOT), Disadvantaged Business Enterprise (DBE) Liaison and is responsible for implementing, monitoring and enforcing all aspects of the DBE Program.
- J. The Disadvantaged Business Enterprise (DBE) Liaison shall coordinate with the Business Engagement and Compliance Office (BECO) staff, ITD management, ADOT contracting groups, Subrecipients, Local Public Agencies (LPAs), DBEs, Consultants, Contractors and other relevant parties to implement the program and work to ensure that DBE goals and regulations are met.
- K. ADOT Project Managers (for design contracts), Contracts and Specifications Engineers (for construction contracts), Local Public Agency (LPA) DBE Liaison Officers and others requesting the procurement/letting of contracts are responsible for submitting the DBE goal requests for all federally-funded contracts to BECO and ensuring that DBEs and small businesses are utilized as outlined in the contracts under their supervision.
- L. Prime Consultants and Contractors involved in federally-funded contracts are responsible for utilizing DBEs to meet contract goals as outlined in their contracts. Prime Consultants and Contractors must contact Business Engagement and Compliance Office (BECO) for approval before making any changes to DBEs listed on contracts to meet contract goals. Failure to do so could result in sanctions as outlined in the contract.
- M. Arizona Department of Transportation (ADOT) contracting related departments (including Engineering Consultants Section, Contracts and Specifications, Field Reports, Multimodal Planning Division, Procurement Group and the Grand Canyon Airport), Subrecipients and LPAs administering federally-funded contracts must ensure compliance with ADOT's Disadvantaged Business Enterprise (DBE) Program by ensuring that:
 1. A designated Disadvantaged Business Enterprise (DBE) staff liaison is identified and assigned for its unit or department that will interface with Business Engagement and Compliance Office (BECO) to implement and administer DBE Program requirements and ensure that DBE contract provisions are met by consultants/contractors during contract advertisement/procurement, administration, and closeout.
 2. All federally-funded contracts are submitted to Business Engagement and Compliance Office (BECO) for Disadvantaged Business Enterprise (DBE) goal assessment. The goal will be assessed appropriately depending on the federal funding agency's DBE Program Plan.
 3. Nondiscrimination assurances, Disadvantaged Business Enterprise (DBE) regulation related contract language, forms, and special provisions are included in all federally-funded

- contract. All such contract language shall be approved by Business Engagement and Compliance Office (BECO) prior to inclusion in contracts.
4. All DBEs on executed contracts are certified in the work category for which they are contracted to work on projects.
 5. All appropriate forms including Bidders List/Proposers List, Disadvantaged Business Enterprise (DBE) Assurances and Affidavits are submitted to the Business Engagement and Compliance Office (BECO) office as listed in Arizona Department of Transportation's (ADOT's) DBE Program Plan.
 6. All ADOT DBE compliance supporting forms are submitted to Business Engagement and Compliance Office (BECO) at contractorcompliance@azdot.gov.
 7. All federally-funded contract awards, DBE commitments, subconsultant information and contract payments for all contracts initiated by their Group or Agency are reported (created/entered, audited, monitored and closed) in the *Disadvantaged Business Enterprise (DBE) System database*:
 - a. Arizona Department of Transportation's (ADOT's) Departments:
ADOT DBE System
(<https://adot.dbesystem.com/FrontEnd/Vendors.asp?TN=adot&XID=6575>)
 - or
 - b. Subrecipients and Local Public Agencies: LPA System
(<https://arizonalpa.dbesystem.com/>)
 8. Good Faith Efforts requests with documentation are submitted promptly to the Business Engagement and Compliance Office (BECO) for approval.
 9. Ensure compliance with prompt payment of prime Consultants, Contractors, Disadvantaged Business Enterprises (DBEs), Small Business Concerns (SBCs) and other subcontractors pursuant to (A.R.S.)§ 28-411 and (A.R.S.)§ 32-1129.02
 10. Submit Federal Highway Administration (FHWA) Contract Awards and Disadvantaged Business Enterprise (DBE) Commitments Report monthly to Business Engagement and Compliance Office (BECO) at contractorcompliance@azdot.gov, by the 7th of each month.
 11. Monitor contracts and clear up all incomplete contract audits in the ADOT *Disadvantaged Business Enterprise (DBE) System* before May 1st and November 1st of each year to ensure timely and accurate semi-annual reporting to the federal agencies.
 12. Submit Certification of Final Payment form and documents that detail all payments made to Disadvantaged Business Enterprises (DBEs) for every federally-assisted contract to contractorcompliance@azdot.gov prior to contract closeout.

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- N. Business Engagement and Compliance Office (BECO) Field Compliance staff shall coordinate with Construction District staff and applicable sections/groups and Subrecipients to conduct Commercially Useful Function (CUF) onsite project reviews on ADOT and selected Local Public Agency (LPA) projects to determine if DBEs are the performing work as outlined in the contract.
- O. Business Engagement and Compliance Office (BECO) shall coordinate with Arizona Department of Transportation (ADOT) and Subrecipient contracting entities to ensure that all Disadvantaged Business Enterprise (DBE) regulations are met and when necessary, apply sanctions and other remedies for noncompliance in accordance with contract terms and conditions and 49 CFR Part 26.
- P. Business Engagement and Compliance Office (BECO) shall coordinate with ADOT contracting groups and Subrecipients to collect contract award, DBE commitment, contract payment and closeout data for reporting to Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) monthly and/or semi-annually in accordance with federal requirements.

This policy shall be disseminated to all Arizona Department of Transportation (ADOT) Divisions, Subrecipients and Local Public Agencies (LPAs). The Disadvantaged Business Enterprise (DBE) policy statement signed by ADOT with U.S. Department of Transportation (DOT) must also be distributed to DBE and non-DBE business communities that perform work on ADOT DOT-assisted contracts, per 49 CFR Part 26.

5.07 CORRESPONDING POLICIES

[PER-9.02 ADOT Nondiscrimination Policy](#)