



DBE Program Plan August 2024



**Nevada Department of Transportation
Disadvantaged Business Enterprise Program
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Nevada Department of Transportation Disadvantaged Business Enterprise Program

POLICY STATEMENT

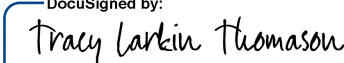
The Nevada Department of Transportation (NDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. NDOT receives Federal financial assistance from USDOT, and as a condition of receiving this assistance, NDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of NDOT to ensure DBE firms, as defined in part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is our policy:

- To ensure nondiscrimination in the award and administration of USDOT assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in USDOT assisted contracts;
- To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients;
- To assist in the development of disadvantaged firms so that they can compete successfully in the marketplace outside the DBE Program; and
- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The External Civil Rights Officer has been designated as NDOT DBE Liaison Officer. In that capacity, the External Civil Rights Officer 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 NDOT in its financial assistance agreements with the USDOT.

NDOT will ensure that this policy statement will be disseminated via NDOT's SharePoint site where it is available to all employees. It will also be posted on NDOT website where it is available to all members of the public.

DocuSigned by:

Tracy Larkin Thomason, Director

General

The Nevada Department of Transportation (NDOT) recognizes the responsibility to ensure that Disadvantaged Business Enterprise (DBE) firms have equal opportunity to participate in the performance of USDOT assisted contracts administered by NDOT. As part of NDOT's continued effort to fulfill this responsibility, NDOT has revised the DBE Program Plan to reflect the requirements and guidance contained in Title 49 Code of Federal Regulations Part 26. All recipients of FHWA funding in Nevada will utilize this DBE Program Plan as required.

NDOT's DBE program applies to all types of firms working on USDOT- funded contracts:

- Contractors and Consultants
- Professional Service Agreements (training, computer, etc.)
- Architectural/Engineering Contracts and Agreements

§ 26.1 What are the objectives of this part?

NDOT seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.5 Definitions.

Terms used in the NDOT DBE Plan have the same meaning as terms used in [49 CFR Part 26](#), which are included as [Exhibit C](#).

Acronyms used in this plan:

ANC - Alaska Native Corporation
BDP - Business Development Program
CCM - Contract Compliance Manager
CFR - Code of Federal Regulations
CUF - Commercially Useful Function
DBE - Disadvantaged Business Enterprise
DBELO - Disadvantaged Business Enterprise Liaison Officer
DBESS - Disadvantaged Business Enterprise Supportive Services
DOCR - Department of Civil Rights
DOE – Declaration of Eligibility
DOT - United States Department of Transportation
FAA - Federal Aviation Administration
FHWA - Federal Highway Administration
FTA - Federal Transit Administration
GFE - Good Faith Efforts
NAICS - North American Industrial Classification System
NDOT - Nevada Department of Transportation
NOD – Notice of Decision
NOI – Notice of Intent
NSBDC - Nevada Small Business Development Center
OA - Operating Administration
PNW – Personal Net Worth
RC – Race Conscious
RN – Race Neutral
RE - Resident Engineer
SBA - Small Business Administration
SBE - Small Business Enterprise
SBEC - Small Business Enterprise Concessionaire
SEDO – Socially and Economically Disadvantaged Owner
STIP - State Transportation Improvement Plan
TVM – Transit Vehicle Manufacturer
UCP - Unified Certification Program
USDOT - United States Department of Transportation

§ 26.7 What discriminatory actions are forbidden?

(a) The purpose of the DBE Program Plan is to provide guidance to NDOT personnel in implementing 49 CFR Part 26 and provide DBEs and other contractors information on responsibilities for USDOT assisted contracts and NDOT's implementing procedures. The Plan assures USDOT that NDOT 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.

(b) In administering the DBE program, NDOT 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 program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.11 What records do recipients keep and report?

(a) NDOT will submit a report on DBE participation to the concerned Operating Administration containing all the information described in the Uniform Report to this part. This report will be submitted at the intervals required by, and in the format acceptable to, the concerned Operating Administration, June 1 & December 1 annually.

(b) NDOT will continue to provide data about NDOT's DBE program to USDOT as directed by DOT Operating Administrations.

(c) NDOT will obtain bidders list information as described in [paragraph \(c\)\(2\)](#) of this section and enter it into a system designated by USDOT. Bidders list information will be collected at the time of bid, maintained on an ongoing basis, and reported by NDOT's Administrative Services Division at times and intervals as directed by USDOT.

(1) The purpose of this bidders list information is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on NDOT federally assisted contracts for use in helping NDOT to set NDOT's overall goals, and to provide USDOT with data for evaluating the extent to which the objectives of [§ 26.1](#) are being achieved.

(2) NDOT will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each NDOT federally assisted contract:

(i) Firm name;

(ii) Firm address including ZIP code;

(iii) Firm's status as a DBE or non-DBE;

(iv) Race and gender information for the firm's majority owner;

(v) NAICS code applicable to each scope of work the firm sought to perform in its bid;

(vi) Age of the firm; and

(vii) The annual gross receipts of the firm as a bracket they fit into (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.

(3) NDOT Administrative Services Division will collect the data from all bidders for NDOT 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. NDOT Administrative Services Division will enter this data in USDOT'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\(e\)](#), the data will be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

(d) NDOT will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, NDOT will keep a complete application package for each certified firm and all Declarations of Eligibility, change notices, and on-site visit reports. These records will be retained in accordance with applicable record retention requirements for NDOT's financial assistance agreement. 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 NDOT's financial assistance agreement, whichever is longer.

(e) NDOT will report to USDOT's Departmental Office of Civil Rights each year, the following information:

(1) The number and percentage of in-state and out-of-state DBE certifications by gender and ethnicity (Black American, Asian-Pacific American, Native American, Hispanic American, Subcontinent-Asian Americans, and non-minority);

(2) The number of DBE certification applications received from in-state and out-of-state firms and the number found eligible and ineligible;

(3) The number of decertified firms:

(i) Total in-state and out-of-state firms decertified;

(ii) Names of in-state and out-of-state firms decertified because SEDO exceeded the personal net worth cap;

(iii) Names of in-state and out-of-state firms decertified for excess gross receipts beyond the relevant size standard.

(4) The number of in-state and out-of-state firms summarily suspended;

(5) The number of in-state and out-of-state applications received for an individualized determination of social and economic disadvantage status;

(6) The number of in-state and out-of-state firms certified whose owner(s) made an individualized showing of social and economic disadvantaged status.

§ 26.13 What assurances will recipients and contractors make?

(a) NDOT has signed the following assurance, applicable to all USDOT-assisted contracts and their administration: NDOT 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 [49 CFR part 26](#). NDOT shall take all necessary and reasonable steps under [49 CFR part 26](#) to ensure nondiscrimination in the award and administration of DOT-assisted contracts. NDOT's DBE program, as required by [49 CFR part 26](#) and as approved by USDOT, 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 NDOT of its failure to carry out its approved program, USDOT 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.).

(b) Each contract NDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance: 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 NDOT 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.

Any person who believes that NDOT has failed to comply with obligations under this program may file a written complaint with the appropriate USDOT Modal Administration as listed under 49 CFR 26.103.

NDOT will not intimidate, threaten, coerce, or discriminate against any individual or firm for any reason.

Administrative Requirements for DBE Programs for Federally Assisted Contracting

§ 26.21 Who will have a DBE program?

(a) Recipients in one of these categories and let DOT-assisted contracts, must have a DBE program meeting the requirements of this part:

- (1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) All FTA recipients receiving planning, capital and/or operating assistance will maintain a DBE program.

(i) FTA Tier I recipients will have a DBE program meeting all the requirements of this part.

(ii) Beginning 180 days after the publication of the final rule, FTA Tier II recipients will maintain a program locally meeting the following requirements of this part:

(A) Reporting and recordkeeping under [§ 26.11](#);

(B) Contract assurances under [§ 26.13](#);

(C) Policy statement under [§ 26.23](#);

(D) Fostering small business participation under [§ 26.39](#); and

(E) Transit vehicle procurements under [§ 26.49](#).

(3) FAA recipients receiving grants for airport planning or development that will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.

(b)

(1) NDOT will submit a conforming DBE program to the concerned Operating Administration (OA). Once the OA has approved NDOT program, the approval counts for all of NDOT's DOT-assisted programs (except goals that are reviewed by the relevant OA).

(2) NDOT does not have to submit regular updates of NDOT DBE program plan if NDOT remains in compliance with this part. However, NDOT will submit significant changes to the relevant OA for approval.

(c) NDOT is not eligible to receive DOT financial assistance unless DOT has approved NDOT's DBE program and NDOT is in compliance with it and this part. NDOT will continue to carry out NDOT's DBE program until all funds from DOT financial assistance have been expended.

§ 26.23 What is the requirement for a policy statement?

NDOT has issued a signed and dated policy statement that expresses our commitment to the DBE program, states its objectives, and outlines responsibilities for its implementation, which is located on page 3 of this plan. NDOT circulates the statement throughout our organization and to the DBE and non-DBE business communities that perform work on DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

NDOT has a DBE liaison officer (DBELO), who has direct, independent access to NDOT's Director concerning DBE program matters. The DBELO is responsible for implementing all aspects of NDOT's DBE program. NDOT will ensure adequate staff to administer the program in compliance with this part.

DBE program objectives are implemented and monitored by the External Civil Rights Division personnel under the direction of the External Civil Rights Officer (CRO), who is designated as the DBELO with overall responsibility for the program.

The CRO has direct independent access to the Director concerning DBE program matters as reflected on the attached ([Exhibit: A](#)) organizational chart.

CRO Duties and responsibilities include, but are not limited to:

- Advising the Director and the Transportation Board on DBE matters and achievements;
- Providing direction and guidance to the External Civil Rights Division and other staff on implementing all aspects of NDOT's DBE Program.
- Gathering and reporting statistical data and other information required by USDOT;
- Working with all internal and external entities to set overall annual goals;
- Identifying contracts and procurements so that DBE goals are included, when possible, in solicitations and monitor results;
- Analyzing NDOT's progress toward goal attainment and identifies ways to improve progress;
- Processing applications for DBE certification timely and in accordance with 49 CFR Part 26;
- Participating in the UCP Certification Committee certifying DBEs according to the criteria set by USDOT and act as liaison to the Uniform Certification Program in Nevada;
- Maintaining NDOT's directory of certified DBEs, ensuring the list is up-to- date and posted publicly;
- Reviewing Good Faith Effort Documents as required on bids and proposals, and as related to DBE goal non-attainment;
- Planning and participating in DBE training seminars;
- Providing outreach to DBEs and community organizations to advise them of opportunities;
- Ensuring that bid notices and requests for proposals contain the appropriate DBE goals and contractual language;
- Ensuring that first-line bid review of DBE documentation are performed, ensuring appropriate reports and commitment letters are present and DBEs are properly certified;
- Participating in pre-bid and pre-construction meetings; and
- In collaboration with Contract Compliance, project managers and Resident Engineers, collecting monthly reports of payments to subcontractors and supporting documentation (check stubs, invoices, etc.), determining contractor compliance with commercially useful function requirements, and conducting on-site visits and interviews.

- Evaluation of workload to ensure adequate staffing and consultants to administer the program according to regulation.

NDOT DBELO contact information is as follows:

Sonnie Braih
External Civil Rights Officer
(702) 730-3301
sbraih@dot.state.nv.us

§ 26.27 What efforts will recipients make concerning DBE financial institutions?

NDOT has determined that there are no financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Nevada. NDOT will check on the availability of DBE financial institutions on an ongoing basis. If any financial institutions owned and controlled by socially or economically disadvantaged individuals are identified, NDOT will make reasonable efforts to use these institutions and encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms will recipients have?

(a) NDOT has established, as part of NDOT's DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 15 calendar days from receipt of each payment NDOT makes to the prime contractor.

“The contractor shall pay each subcontractor for satisfactory performance of its contract items no later than fifteen (15) calendar days from receipt of each payment the contractor receives from the Department. The contractor shall return retainage payments to each subcontractor within fifteen (15) calendar days after the subcontractor's work is satisfactorily completed. The contractor shall certify that payment to each subcontractor has been made on certification forms provided by the Department.”

All sub-contracts between the prime contractor and subcontractors must include this provision. These requirements shall apply to all subcontractors at all tiers, and contracts/subcontracts in any form.

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, NDOT Resident Engineers or their designee perform Commercially Useful Function (CUF) Reviews on each DBE on each project and submit the completed CUF review to NDOT Contract Compliance for monitoring and enforcement purposes.

(b) NDOT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed. NDOT uses the following methods to comply with this requirement:

(1) NDOT holds retainage from prime contractors and provides for prompt and regular incremental acceptances of portions of the prime contract, pays retainage to prime contractors based on these acceptances, and requires a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 15 days after NDOT's payment to the prime contractor. Any delay or postponement of payment among the parties may take place only for good cause, with prior written approval of NDOT. The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by NDOT. When NDOT has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) NDOT's DBE program includes mechanisms NDOT uses for proactive monitoring and oversight of a prime contractor's compliance with subcontractor prompt payment and return of retainage requirements.

NDOT maintains an electronic database to actively monitor contracts obtained by DBE firms. This database provides a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), which includes a means of comparing these attainments to commitments. The prime contractor provides a notice through the electronic database that payment has been made to the DBE firms and all other subcontractors on a monthly basis, after which subcontractors are sent an electronic notice to verify payments as part of a compliance audit. Subcontractors may verify payments (dates, amounts, and scope covered in payment) to prime contractors on NDOT's website. NDOT Contract Compliance Section staff manually conduct audits on a sampling of contracts to ensure our proactive electronic monitoring efforts are effective.

(e) NDOT's DBE program provides appropriate means to enforce the requirements of this section.

Penalties for a contractor's failure to comply with the terms and conditions of this part may include but are 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.

NDOT will take all necessary steps resolve payment disputes that are not able to be resolved between the prime contractor and subcontractor during the electronic verification process.

Resolution to disputes concerning a subcontractor's performance will be governed by the terms of the contract documents between the prime contractor and subcontractor.

NDOT will take all necessary steps to resolve performance disputes that are not able to be resolved between the prime contractor and subcontractor which are not governed by contractual means.

(f) Prompt payment and return of retainage requirements in this part also apply to all lower-tier subcontractors.

§ 26.31 What information will a UCP include in its DBE/ACDBE directory?

(a) In the directory required under [§ 26.81\(g\)](#), NDOT lists all firms eligible to participate as a DBE and/or ACDBE in NDOT's program. In the listing for each firm, NDOT includes the business address, business phone number, firm website(s), and the types of work the firm has been certified to perform as a DBE and/or ACDBE.

(b) NDOT lists each type of work a DBE and/or ACDBE is eligible to perform by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to [§ 26.73\(a\)](#), NDOT's directory allows for NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.

(c) [NDOT's 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; and
- (4) 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.

§ 26.33 What steps will a recipient take to address overconcentration of DBEs in certain types of work?

(a) If the DBE Liaison Officer, in coordination with other NDOT personnel, determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in a particular type of work, NDOT will devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which NDOT has determined that non-DBEs are unduly burdened. NDOT may also consider varying NDOT's use of contract goals, to the extent consistent with [§ 26.51](#), to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) Any determinations of overconcentration shall be forwarded to the Operating Administration (OA) for approval.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) As part of NDOT's approved DBE Supportive Services Program, NDOT has established a DBE business development program (BDP) to assist DBE firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

(b) Additionally, NDOT has established a Mentor – Protégé Program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm. A copy of the approved Mentor-Protégé Program is attached as [Exhibit D](#).

(1) Only firms NDOT has certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) In the mentor-protégé relationship, NDOT will:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by NDOT; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, NDOT will not treat protégé firms as affiliates of mentor firms when both firms are participating under an approved mentor-protégé program. See [Appendix D of this part](#) for guidance concerning the operation of mentor-protégé programs.

(c) NDOT's BDPs and mentor-protégé programs are approved by the concerned operating administration before NDOT implements them.

§ 26.37 What are a recipient's responsibilities for monitoring?

(a) NDOT will bring to the attention of the FHWA or USDOT any false, fraudulent, or dishonest conduct in connection with the program so that USDOT may initiate steps (e.g., referral to Justice Department or USDOT Inspector General) provided in 26.107. NDOT will also consider similar action under its own legal authority.

(b) When the DBE subcontractor begins work on the project, the Resident Engineer or appointee reviews the DBE's operation and completes form 052-073, Commercial Useful Function Determination.

- i. The Resident Engineer ensures that DBE owners, supervisory personnel and employees are distinguishable from other personnel on the job.
- ii. If the Resident Engineer determines that a DBE firm is not performing a commercially useful function, he/she will notify the DBE Office to make a final CUF determination. If it is determined that no CUF exists, the Resident Engineer will contact the CCM and prime contractor in writing, specifying those actions which violate the terms of the contract.

- iii. If the contractor fails to remedy the violation, the Resident Engineer in conjunction with the Contract Compliance Office shall impose one or more sanctions, and the payments made to that DBE will not be credited toward the contract goal.
- iv. At the request of the Resident Engineer, the DBE Section will investigate the non-performing DBE to determine if the DBE's job performance contains a pattern of relationships with non-minority businesses that brings the DBE's independence and control, and therefore its eligibility to participate, into question.
- v. All subcontracts are uploaded by the prime contractor to NDOT's electronic record, they are then reviewed by the Contract Compliance Office for quality assurance and approval before the subcontractor may be permitted to begin work on the project.
- vi. To facilitate accurate reporting and oversight, all subcontracts for DBE firms (weather being counted for credit or not) are uploaded by the prime contractor to NDOT's electronic record within 30 days of project award, they are then reviewed by the Contract Compliance Office for quality assurance and approval before the subcontractor may be permitted to begin work on the project.
- vii. All compliance monitoring records are stored via electronic or hard copy in NDOT's Contract Compliance Office. NDOT maintains an electronic database to actively monitor contracts obtained by DBE firms. This database provides a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), which includes a means of comparing these attainments to commitments, annual goal attainment, and tracks information for accurate federal reporting. 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, NDOT Resident Engineers or their designee perform Commercially Useful Function (CUF) Reviews on each project and submit the completed CUF review to Contract Compliance for monitoring and enforcement purposes.

(c) NDOT will effectively implement the following running tally mechanisms:

(1) With respect to achieving NDOT's overall goal, NDOT uses a running tally through our electronic system that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether NDOT's current implementation of contract goals is projected to be sufficient to meet NDOT's annual goal. This mechanism guides NDOT's decisions to implement goals on contracts to be advertised according to NDOT's established contract goal-setting process.

To facilitate accurate federal oversight, state reporting, and narrowly tailored project goal setting, all USDOT funded contracts and agreements will be entered into NDOT's electronic certification and compliance system by NDOT's Contract Compliance Section and prime contractors within 30 days of project/agreement award. Information entered will include, but not be limited to:

- i. Prime contractor.

- ii. All certified subcontractors (regardless of for credit status).
- iii. Commitment values for all certified firms (regardless of for credit status).
- iv. NAICS codes applicable to the type of work the prime and subcontractors will perform on the project.
- v. The project goal as set, and as committed.
- vi. An executed contract with the prime contractor.
- vii. Executed contracts or agreements, and commitment letters for all certified firms.

(2) With respect to each DBE commitment, NDOT uses a running tally through our electronic system 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 to determine whether the contractor is on track with meeting its individual and overall 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\(g\)](#).

§ 26.39 Fostering small business participation.

(a) NDOT's DBE program includes 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.

NDOT fosters small business participation by providing race-neutral small business goals on state funded projects. SBE goals will be set on State funded contracts and agreements at the same rate as their DBE goal counterpart on federally funded projects and agreements. For purposes of this program, criteria for certification as an SBE is consistent with those associated with DBE certification without the race and gender components. Nevada certified SBE firms are required to submit tax documents (for each tax year) and an affidavit of no change to NDOT every 3 years for continued SBE certification.

NDOT will verify a firm's eligibility to participate in the SBE program. First, to ensure that a firm is in fact eligible for an SBE contract and to minimize fraud and abuse, NDOT will outline SBE goal requirements in bid documents. NDOT will then verify the eligibility of the apparent low bidder in meeting these requirements before the contract is awarded.

SBE contracts will not be restricted to any particular type of contract. SBE contracts are a subset within the DBE program; therefore, any contract opportunity funded through the Nevada Department of Transportation will be evaluated as a candidate for a DBE or SBE contract goal depending on the funding type of the project. SBE contracts can be prime contracts or subcontracts.

- (1) SBE contract amounts are not size limited. Contracts with an SBE goal will not have DBE contract goals. SBE contracts and SBE goals will be a size that small businesses, including DBEs, can reasonably expect to perform.
- (2) On NDOT federally assisted prime contracts not having DBE contract goals, NDOT may examine the feasibility of setting SBE goals that require the prime contractor to

provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all of the work involved.

(3) NDOT will track the total dollar amount and number of SBE contracts awarded each year and will monitor to help ensure to meet or exceed the internal goal.

(4) The number of SBE contracts awarded each year will depend on the number and dollar amount of funding available.

(b) As part of this program element NDOT may include the following strategies:

(1) 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.

(2) 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.

(c) NDOT will actively implement NDOT’s program elements to foster small business participation. Doing so is a requirement of good faith implementation of NDOT’s DBE program.

Goals, Good Faith Efforts, and Counting

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) NDOT will not use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) NDOT will not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, NDOT may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a) **General rule.**

(1) Except as provided in [paragraph \(a\)\(2\)](#) of this section, NDOT sets an overall goal for DBE participation in NDOT DOT-assisted contracts.

(b) NDOT’s overall goal will be based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on NDOT’s DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal will reflect NDOT’s determination of the level of DBE participation NDOT would expect absent the effects of discrimination. NDOT will not rely on either the 10 percent national goal, NDOT’s previous overall goal or past DBE participation rates in NDOT’s program without reference to the relative availability of DBEs in NDOT’s market.

Overall DBE goals are submitted to the operating administration triennially, by August 1st.

NDOT implemented the use of race-conscious goals in May 2010, pursuant to a directive from FHWA. Race conscious goals are required when DBE program goals cannot be met through race neutral measures alone.

Federal courts that have reviewed USDOT's DBE program, the 9th Circuit panel held that 49 CFR Part 26 and the authorizing statute for the DBE program are constitutional. The court affirmed that Congress had determined that there was a compelling need for the DBE program and that Part 26 was narrowly tailored.

However, the court said that race conscious elements of a national program, to be narrowly tailored as applied, must be limited to those parts of the country where its race-based measures are demonstrably needed.

Accordingly, NDOT will commission a disparity study at least every 5 years to use as a basis for setting race conscious overall and project specific goals. Contract goals will be used to meet the portion of the overall goal not projected to be met by race-neutral means and will be expressed as a percentage of the federal portion of USDOT-assisted contracts.

(c) **Step 1.** NDOT will begin NDOT's goal setting process by determining a base figure for the relative availability of DBEs.

(1) **Use data from a disparity study.** NDOT will use a percentage figure derived from data in a valid, applicable disparity study.

(d) **Step 2.** Once NDOT has calculated a base figure, NDOT will examine all of the evidence available in NDOT's jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at NDOT's overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

(1) There are many types of evidence that will be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in NDOT DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within NDOT's jurisdiction, to the extent it is not already accounted for in NDOT's base figure; and

(iii) If NDOT's base figure is the goal of another recipient, NDOT will adjust it for differences in NDOT's local market and NDOT's contracting program.

(2) If available, NDOT will consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in NDOT's program;

(ii) Data on employment, self-employment, education, training, and union apprenticeship programs, to the extent NDOT can relate it to the opportunities for DBEs to perform in NDOT's program.

(3) If NDOT attempts to make an adjustment to NDOT's base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment will be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once NDOT has determined a percentage figure in accordance with [paragraphs \(c\) and \(d\)](#) of this section, NDOT will express NDOT's overall goal as follows:

(1) As a percentage of all Federal-aid highway funds NDOT will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) As a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that NDOT will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require NDOT to express NDOT's overall goal 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.

(i) A project goal is an overall goal and will meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which NDOT's regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(1)

(i) NDOT may adjust NDOT's three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. NDOT will submit such an adjustment to the concerned operating administration for review and approval.

(ii) The operating administration may direct NDOT to undertake a review of NDOT's goal if necessary to ensure that the goal continues to fit NDOT's circumstances appropriately.

(iii) While NDOT is required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(2) NDOT will include with NDOT's overall goal submission a description of the methodology NDOT used to establish the goal, including NDOT's base figure and the evidence with which it was calculated, and the adjustments NDOT made to the base figure and the evidence NDOT relied on for the adjustments. NDOT will also include a summary listing of the relevant available evidence in NDOT's jurisdiction and, where applicable, an explanation of why NDOT did not use that evidence to adjust NDOT's base figure. NDOT will also include NDOT's projection of the portions of the overall goal NDOT expects to meet through race-neutral and race-conscious measures, respectively (see [§ 26.51\(c\)](#)).

(3) NDOT is not required to obtain prior operating administration concurrence with NDOT's overall goal. However, if the operating administration's review suggests that NDOT's overall goal has not been correctly calculated or that NDOT's method for calculating goals is inadequate, the operating administration may, after consulting with NDOT, adjust NDOT's overall goal or require that NDOT do so. The adjusted overall goal is binding on NDOT. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by USDOT in guidance issued pursuant to [§ 26.9](#).

(f)

(1) In establishing an overall goal, NDOT will provide for consultation and publication. This includes:

(i) 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 NDOT's efforts 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 NDOT is required to submit NDOT's methodology to the operating administration for review pursuant to [paragraph \(f\)](#) of this section. NDOT will document in NDOT's goal submission the consultation process NDOT engaged in. Notwithstanding [paragraph \(f\)\(4\)](#) of this section, NDOT may not implement NDOT's proposed goal until NDOT has complied with this requirement.

(ii) A published notice announcing NDOT's proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on NDOT's official Internet Web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on NDOT's official Internet Web site.

(2) At NDOT's discretion, NDOT may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at NDOT's principal office and for a 30-day comment period. Notice of the comment period will include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in [paragraph \(f\)](#) of this section.

(g) NDOT's overall goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) NDOT cannot be penalized or treated by USDOT as being in noncompliance with this rule because NDOT's DBE participation falls short of NDOT's overall goal, unless NDOT has failed to administer NDOT's program in good faith.

(b) If NDOT does not have an approved DBE program or overall goal, or if NDOT fails to implement NDOT's program in good faith, NDOT is in noncompliance with this part.

(c) If the awards and commitments shown on NDOT's 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, NDOT will do the following in order to be regarded by USDOT as implementing NDOT's DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and NDOT's awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems NDOT has identified in NDOT's analysis and to enable NDOT to meet fully NDOT's goal for the new fiscal year;

(3) FHWA, FTA, or FAA may impose conditions on NDOT as part of its approval of the NDOT's analysis and corrective actions including, but not limited to, modifications to NDOT's overall goal methodology, changes in NDOT's race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) NDOT may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in [§ 26.103](#) or [§ 26.105 of this part](#) and other applicable regulations, for failing to implement NDOT's DBE program in good faith if any of the following things occur:

(i) NDOT does not submit NDOT's analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under [paragraph \(c\)\(3\)](#) of this section;

(ii) FHWA, FTA, or FAA disapproves NDOT's analysis or corrective actions; or

(iii) NDOT does not fully implement the corrective actions to which NDOT has committed or conditions that FHWA, FTA, or FAA has imposed following review of NDOT's analysis and corrective actions.

(d) If NDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that NDOT will achieve DBE awards and commitments that would be necessary to allow NDOT to meet NDOT's overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require NDOT to make further good faith efforts, such as by modifying NDOT's race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

§ 26.51 What means do recipients use to meet overall goals?

(a) NDOT will meet the maximum feasible portion of NDOT's 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.

(b) 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 of this part](#).

(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 NDOT 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 NDOT's DBE directory, through 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.

(c) Each time NDOT submits NDOT's overall goal for review by the concerned operating administration, NDOT will also submit NDOT's projection of the portion of the goal that NDOT expects to meet through race-neutral means and NDOT's basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of NDOT's overall goal.

(d) NDOT will establish contract goals to meet any portion of NDOT's overall goal NDOT does not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) NDOT will use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) NDOT is not required to set a contract goal on every USDOT-assisted contract. NDOT is not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by NDOT's overall goal, NDOT will set contract goals so that they will cumulatively result in meeting any portion of NDOT's overall goal NDOT does not project being able to meet through the use of race-neutral means.

(i) To ensure narrow tailoring of contract goals intended to fulfill NDOT's overall goal, all project goals will be set by NDOT's External Civil Rights Division staff independently of any outside influence or other NDOT division input.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal NDOT establishes.

(4) NDOT's contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

(f) To ensure that NDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, NDOT will adjust NDOT's use of contract goals as follows:

(1) If NDOT's approved projection under [paragraph \(c\)](#) of this section estimates that NDOT can meet NDOT's entire overall goal for a given year through race-neutral means, NDOT will implement NDOT's program without setting contract goals during that year, unless it becomes necessary in order meet NDOT's overall goal.

(g) In any year in which NDOT projects meeting part of NDOT's goal through race-neutral means and the remainder through contract goals, NDOT will maintain data separately on DBE achievements in those contracts with and without contract goals,

respectively. NDOT will report this data to the concerned operating administration as provided in [§ 26.11](#).

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When NDOT has established a DBE contract goal, NDOT will award the contract only to a bidder/offeror who makes good faith efforts to meet it. NDOT will determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

- (1) Documents that it has obtained enough 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 DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, NDOT will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal.

(b) In NDOT solicitations for USDOT-assisted contracts for which a contract goal has been established, NDOT will require the following:

- (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 NDOT, at the time provided in [paragraph \(b\)\(3\)](#) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm will be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment. Each DBE listed to perform work as a regular dealer or distributor will confirm its participation according to the requirements of [paragraph \(c\)\(1\)](#) of this section.
 - (vi) If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts will include copies of **each** DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)

(i) If a contractor or proposer provides a bid or proposal and does not meet the DBE goal stated in the bidding documents, the bidder/proposer must provide detailed documentation of the steps they took to meet the DBE goal. For low bid contracts these initial GFE documents must be provided no later than the next working day after the opening of the bids by 5:00pm or with the proposal in the case of a Request for a Proposal.

NDOT External Civil Rights Staff will request additional information if necessary and will evaluate information submitted by the bidder to determine what efforts were made, when they were made, and how intensely those efforts were undertaken. Good faith information evaluated may be in the form of written documents or verbal accounts as directed by NDOT.

(c) NDOT will make sure all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before committing NDOT to the performance of the contract by the bidder/offeree.

(1) For each DBE listed as a regular dealer or distributor, NDOT 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\(e\)\(2\)\(iv\)\(A\), \(B\), and \(C\)](#) and [\(e\)\(3\)](#) under the contract at issue. NDOT's preliminary determination shall 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, NDOT is required to 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.

(2) [Reserved]

(d) If NDOT determines that the apparent successful bidder/offeree has failed to meet the requirements of [paragraph \(a\)](#) of this section, NDOT will, before awarding the contract, provide the bidder/offeree an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeree 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.

(2) NDOT's decision on reconsideration will be made by an official who did not take part in the original determination that the bidder/offeree failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror will have the opportunity to meet in person with NDOT reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) NDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is final and not administratively appealable to USDOT.

(e) In a design-build contracting situation, NDOT will set a DBE goal that proposers will 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 this section that applies to design-bid-build contracts. To be considered responsive, the OEPP will include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amount) that the proposer will solicit DBEs to perform. The OEPP will include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, NDOT will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. NDOT 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.

(f)

(1)

(i) NDOT will require that a prime contractor not terminate a DBE or any portion of its work listed in response to [paragraph \(b\)\(2\)](#) of this section (or an approved substitute DBE firm per [paragraph \(g\)](#) of this section) without NDOT's prior written consent, unless NDOT 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 NDOT. This requirement applies to instances that include, but are not limited to, when a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) NDOT will include in each prime contract a provision stating that:

(A) The contractor will utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains NDOT's written consent as provided in this [paragraph \(f\)](#); and

(B) Unless NDOT's consent is provided under this [paragraph \(f\)](#), the prime contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) NDOT will provide such written consent only if NDOT agrees, for reasons stated in NDOT's concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work.

(3) Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it 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 the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of this [paragraph \(f\)\(3\)](#), good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) 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;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) 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;

(vi) NDOT has determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to NDOT written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) 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

(x) Other documented good cause that NDOT determines compels the termination of the DBE subcontractor.

(4) Before transmitting to NDOT External Civil Rights its request to terminate a DBE subcontractor or any portion of its work, the prime contractor will give notice in writing to the DBE subcontractor, with a copy to NDOT sent concurrently, of its intent to request to terminate and the reason for the proposed request.

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

(6) 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.

(g) When a DBE subcontractor or any portion of its work is terminated by the prime contractor as provided in [paragraph \(f\)](#) of this section, or the firm fails to complete its work on the contract for any reason, including when work committed to a DBE is not countable or reduced due to overestimations made prior to award, the prime contractor will 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 NDOT requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days, if necessary, at the request of the contractor, and NDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) NDOT 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 NDOT deems appropriate if the prime contractor fails to comply with the requirements of this section.

(i) NDOT 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, NDOT counts 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.

(j) NDOT requires the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with provisions.

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, NDOT counts only the value of the work performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by [paragraph \(a\)\(2\)](#) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except

supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided NDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE will also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, NDOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is performing, and the DBE credit claimed for its performance of the work, and other relevant factors.

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

(3) If a DBE does not perform or exercise responsibility for at least 51 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected within normal industry practice for the type of work involved, NDOT will presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in [paragraph \(c\)\(3\)](#) of this section, the DBE may present evidence to rebut

this presumption. NDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) NDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration but are not administratively appealable to USDOT.

All official NDOT determinations of no GFE will be made by NDOT External Civil Rights staff.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE will be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE will itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

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

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If NDOT chooses this approach, it will obtain written consent from the appropriate DOT operating administration.

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

(7) For purposes of this [paragraph \(d\)](#), a lease will indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks will display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)

(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies.

(ii) For purposes of this [paragraph \(e\)\(1\)](#), a manufacturer is a firm that owns (or leases) and operates a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. Manufacturing includes blending or modifying raw materials or assembling components to create the product to meet contract specifications. When a DBE makes minor modifications to the materials, supplies, articles, or equipment, the DBE is not a manufacturer. Minor modifications are additional changes to a manufactured product that are small in scope and add minimal value to the final product.

(2)

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

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

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

(iv) NDOT will determine if a DBE regular dealer per [paragraph \(e\)\(2\)\(iv\)\(A\)](#) of this section, over a reasonable period of time, keeps sufficient quantities and regularly sells the items in question. This system will also ensure that a regular dealer of bulk items per (e)(2)(iv)(B) of this section owns/leases and operates distribution equipment for the products it sells. NDOT External Civil Rights as part of an onsite review, as part of a complaint, and/or at other times it may so choose, or Contract Compliance as part of a contract compliance review will conduct questionnaires, inventory records reviews, or other methods to determine whether each DBE supplier has the demonstrated capacity to perform a commercially useful function (CUF) as a regular dealer prior to its participation. This system, along with the required USDOT DBE regular dealer/distributor affirmation form that is completed for each DBE/project will be maintained and used to identify all DBE suppliers with capacity to be eligible for 60 percent credit, contingent upon the performance of a CUF.

(A) To be a regular dealer, the firm will be an established business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. A DBE supplier performs a CUF as a regular dealer and receives credit for 60 percent of the cost of materials or supplies (including transportation cost) when all, or at least 51 percent of, the items under a purchase order or subcontract are provided from the DBE's inventory, and when necessary, any minor quantities delivered from and by other sources are of the general character as those provided from the DBE's inventory.

(B) A DBE may be a regular dealer in such bulk items as petroleum products, steel, concrete or concrete products, gravel, stone, or asphalt without owning and operating a place of business as provided in [paragraph \(e\)\(2\)\(ii\)](#) of this section if the firm both owns and operates distribution equipment used to deliver the products. Any supplementing of regular dealers' own distribution equipment will be by a long-term operating lease and not on an ad hoc or contract-by-contract basis.

(C) A DBE supplier of items that are not typically stocked due to their unique characteristics (e.g., limited shelf life or items ordered to specification) should be considered in the same manner as a regular dealer of bulk items per [paragraph \(e\)\(2\)\(iv\)\(B\)](#) of this section. If the DBE supplier of these items does not own or lease distribution equipment, as described above, it is not a regular dealer.

(D) Packagers, brokers, manufacturers' representatives, or other persons who arrange, facilitate, or expedite transactions are not regular dealers within the meaning of [paragraph \(e\)\(2\)](#) of this section.

(3) If the materials or supplies are purchased from a DBE distributor that neither maintains sufficient inventory nor uses its own distribution equipment for the products in question, count 40 percent of the cost of materials or supplies (including transportation costs). A DBE distributor is an established business that engages in the regular sale or lease of the items specified by the contract. A DBE distributor assumes responsibility for the items it purchases once they leave the point of origin (e.g., a manufacturer's facility), making it liable for any loss or damage not covered by the carrier's insurance. A DBE distributor performs a CUF when it demonstrates ownership of the items in question and assumes all risk for loss or damage during transportation, evidenced by the terms of the purchase order or a bill of lading (BOL) from a third party, indicating Free on Board (FOB) at the point of origin or similar terms that transfer responsibility of the items in question to the DBE distributor. If these conditions are met, DBE distributors may receive 40 percent for drop-shipped items. Terms that transfer liability to the distributor at the delivery destination (e.g., FOB destination), or deliveries made or arranged by the manufacturer or another seller do not satisfy this requirement.

(4) With respect to materials or supplies purchased from a DBE that is neither a manufacturer, a regular dealer, nor a distributor, count the entire amount of fees or commissions charged that NDOT deems to be reasonable, including transportation charges for the delivery of materials or supplies. Do not count any portion of the cost of the materials and supplies themselves.

(5) NDOT will determine the amount of credit awarded to a firm for the provisions of materials and supplies (*e.g.*, whether a firm is acting as a regular dealer, distributor, or a transaction facilitator) on a contract-by-contract basis.

(f) 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, do not count the firm's participation toward any DBE goals, except as provided for in [§ 26.87\(j\)](#).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward NDOT's overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the contractor has paid the DBE the amount being counted.

Certification Standards **§ 26.61 Burden of proof**

(a) In determining whether to certify a firm, NDOT will apply the standards of 26.61 through 26.73 inclusive. Unless the context indicates otherwise, singular terms include their plural forms and vice versa.

(b) The firm has the burden of demonstrating, by a preponderance of the evidence, *i.e.*, more likely than not, that it satisfies all of the requirements in this subpart. In determining whether the firm has met its burden, NDOT will consider all the information in the record, viewed as a whole.

(1) **Exception 1.** In a decertification proceeding NDOT bears the burden of proving, by a preponderance of the evidence, that the firm is no longer eligible for certification under the rules of this part.

(2) **Exception 2.** If NDOT has a reasonable basis to believe that an individual who is a member of a group in § 26.67(a) of this section is not, in fact, socially and/or economically disadvantaged, NDOT bears the burden of proving, by a preponderance of the evidence, that the individual is not socially and/or economically disadvantaged.

§ 26.63 General certification rules.

(a) **General rules.** Except as otherwise provided:

(1) The firm must be for-profit and engaged in business activities.

(2) In making eligibility determinations, NDOT may not consider whether a firm performs a commercially useful function (CUF), or the potential effect on goals or counting.

(3) NDOT cannot condition eligibility on State prequalification requirements for bidding on contracts.

(4) Certification is not a warranty of competence or suitability.

(5) NDOT determines eligibility based on the evidence it has at the time of its decision, not on the basis of historical or outdated information, giving full effect to the “curative measures” provisions of this part.

(6) Entering into a fraudulent transaction or presenting false information to obtain or maintain DBE certification is disqualifying.

(b) **Indirect ownership.** A subsidiary (*i.e.*, S) that SEDOs owns, and controls indirectly is eligible, if it satisfies the other requirements of this part and only under the following circumstances.

(1) **Look-through.** SEDOs own at least 51 percent of S through their ownership of P (*i.e.*, the parent firm) as shown in the examples following.

(2) **Control.** SEDOs control P, and P controls S.

(3) **One tier of separation.** The SEDOs indirectly own S through P and no other intermediary. That is, no applicant or DBE may be more than one entity (P) removed from its individual SEDOs.

(c) **Indian Tribes, NHOs, and ANCs** —

(1) **Indian Tribes and NHOs.** A firm that is owned by an Indian Tribe or Native Hawaiian organization (NHO), rather than by Indians or Native Hawaiians as individuals, is eligible if it meets all other certification requirements in this part.

(2) **Alaska Native Corporations (ANCs).**

(i) Notwithstanding any other provisions of this subpart, a subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification if it meets all the following requirements:

(A) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(B) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(C) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(ii) NDOT will not use the Uniform Certified Application for ANC-related entities applying for certification. NDOT will obtain from the firm documentation sufficient to demonstrate that the entity meets the requirements of [paragraph \(c\)\(2\)\(i\)](#) of this section. NDOT will also obtain sufficient information about the firm to allow NDOT to administer its program (e.g., information that would appear in a UCP directory).

(iii) If an ANC-related firm does not meet all the conditions of [paragraph \(c\)\(2\)\(i\)](#) of this section, then it will meet the requirements of [paragraph \(c\)\(1\)](#) of this section in order to be certified.

§ 26.65 Business Size Determinations.

(a) **By NAICS Code.** A firm (including its affiliates) will be a small business, as defined by the Small Business Administration (SBA). NDOT will apply the SBA business size limit in [13 CFR part 121](#) which corresponds to the applicable primary industry classifications (NAICS codes). The firm is ineligible when its affiliated “receipts” (computed on a cash basis), as defined in [13 CFR 121.104\(a\)](#) and averaged over the firm's preceding five fiscal years, exceed the applicable SBA size cap(s).

(b) **Statutory Cap.** Even if a firm is a small business under [paragraph \(a\)](#) of this section, it is ineligible to perform DBE work on FHWA or FTA assisted contracts if its affiliated annual gross receipts, as defined in [13 CFR 121.104](#), averaged over the firm's previous three fiscal years exceed \$30.72 million (as of March 1, 2024). USDOT will adjust this amount annually and post the adjusted amount on its website available at <https://www.transportation.gov/DBESizeStandards>.

§ 26.67 Social and economic disadvantage.

(a) **Group membership** —

(1) **General rule.** Citizens of the United States (or lawfully admitted permanent residents) who are women, Black American, Hispanic American, Native American, Asian Pacific American, Subcontinent Asian American, or other minorities found to be disadvantaged by the Small Business Administration (SBA), are rebuttably presumed to be socially and economically disadvantaged. A firm owner claiming the presumption will specify of which groups in this [paragraph \(a\)\(1\)](#) she or he is a member on the Declaration of Eligibility (DOE).

(2) **Native American group membership.** An owner claiming Native American group membership will submit a signed DOE as well as proof of enrollment in a **federal or State-recognized** Indian Tribe. An owner claiming Native Hawaiian or Alaska Native group membership will submit documentation legally recognized under State or Federal law attesting to the individual's status as a member of that group.

(3) **Questioning group membership.** (1) NDOT may not question claims of group membership as a matter of course. NDOT will not impose a disproportionate burden on members of any particular group. Imposing a disproportionate burden on members of a particular group could violate Title VI of the Civil Rights Act of 1964, [paragraph \(b\)](#) of this section, and/or [49 CFR part 21](#).

(i) If NDOT has a well-founded reason(s) to question an owner's claim of membership in a group in [paragraph \(a\)\(1\)](#) of this section, it will provide the individual a written explanation of its reason(s), using the most recent email address provided. The firm bears the burden of proving, by a preponderance of the evidence, that the owner is a member of the group in question.

(ii) NDOT's written explanation will instruct the individual to submit evidence demonstrating that the individual has held herself/himself/themself out publicly as a member of the group for a long period of time prior to applying for DBE certification, and that the relevant community considers the individual a member. NDOT may not require the individual to provide evidence beyond that related to group membership.

(iii) The owner will email NDOT evidence described in [paragraph \(a\)\(3\)\(ii\)](#) of this section no later than 20 days after the written explanation. NDOT will email the owner a decision no later than 30 days after receiving timely submitted evidence.

(iv) If NDOT determines that an individual has not demonstrated group membership, NDOT's decision will specifically reference the evidence in the record that formed the basis for the conclusion and give a detailed explanation of why the evidence submitted was insufficient. It will also inform the individual of the right to appeal, as provided in [§ 26.89\(a\)](#), and of the right to reapply at any time under [paragraph \(d\)](#) of this section.

(b) *Rebuttal of social disadvantage.*

(1) If NDOT has a reasonable basis to believe that an individual who is a member of a group in [paragraph \(a\)\(1\)](#) of this section is not, in fact, socially disadvantaged, NDOT will initiate a [§ 26.87](#) proceeding, regardless of the firm's DBE status. As is the case in all section [§ 26.87](#) proceedings, NDOT will prove ineligibility.

(2) If NDOT finds that the owner is not socially disadvantaged, its decision letter will inform the firm of its appeal rights.

(c) *Rebuttal of economic disadvantage* —

(1) ***Personal net worth.*** If NDOT has a reasonable basis to believe that an individual who submits a PNW Statement that is below the currently applicable PNW cap is not economically disadvantaged, NDOT may rebut the individual's presumption of economic disadvantage.

(i) NDOT will not attempt to rebut presumed economic disadvantage as a matter of course and it will avoid imposing unnecessary burdens on individual owners or disproportionately impose them on members of a particular group.

(ii) NDOT will proceed as provided in [§ 26.87](#).

(2) *Economic disadvantage in fact.*

(i) To rebut the presumption, NDOT will prove that a reasonable person would not consider the individual economically disadvantaged. NDOT may consider assets and income, free use of them or ready access to their benefits, and any other trappings of wealth that NDOT considers relevant. There are no assets (including retirement assets), income, equity, or other exclusions and no limitations on inclusions. A broad and general analysis suffices in most cases: the owner has, or enjoys the benefits of, income of X; two homes worth approximately Y; substantial interests in outside businesses Q, R, and S; four rental properties of aggregate value Z; etc. NDOT need only demonstrate “ballpark” values based on available evidence. The reasonable person is not party to detailed financial information. S/he considers the owner's overall circumstances and lifestyle.

(ii) NDOT will proceed as provided in [§ 26.87](#).

(d) ***Non-presumptive disadvantage.*** An owner who is not presumed to be SED under [paragraph \(a\)](#) of this section may demonstrate that he is SED based on his own experiences and circumstances that occurred within American society.

(1) To attempt to prove individual SED, the owner provides NDOT a Personal Narrative (PN) that describes in detail specific acts or omissions by others, which impeded his progress or success in education, employment, and/or business, including obtaining financing on terms available to similarly situated, non-disadvantaged persons.

For information on writing a personal narrative applicants may find general information on NDOT's website: <https://www.dot.nv.gov/doing-business/external-civil-rights/db-program>. This information, which was adapted from the SBA guidance, is not meant to be all inclusive, nor a guarantee of certification, but may work as a tool to assist the applicant in getting started.

(2) The PN will identify at least one objective basis for the detrimental discrimination. The basis may be any identifiable status or condition. The PN will describe this objective distinguishing feature(s) (ODF) in sufficient detail to justify the owner's conclusion that it prompted the prejudicial acts or omissions.

(3) The PN will state how and to what extent the discrimination caused the owner harm, including a full description of type and magnitude.

(4) The owner will establish that he is economically disadvantaged in fact and that he is economically disadvantaged relative to similarly situated non-disadvantaged individuals.

(5) The owner will attach to the PN a current PNW statement and any other financial information he considers relevant.

(6) NDOT does not prescribe how the owner will satisfy his burden of proving disadvantage.

§ 26.68 Personal net worth.

(a) **General.** An owner whose PNW exceeds the PNW cap is not presumed economically disadvantaged. USDOT will adjust the PNW cap pursuant to [paragraph \(d\)](#) of this section.

(b) **Required documents.** Each owner on whom the firm relies for certification will submit a DOE and a corroborating personal net worth (PNW) statement, including required attachments. The owner will report PNW on the form, available at <https://www.Transportation.gov/DBEFORMS>. NDOT may require an owner to provide additional information on a case-by-case basis to verify the accuracy and completeness of the PNW statement. NDOT will have a legitimate and demonstrable need for the additional information.

(c) **Reporting.** The following rules apply without regard to State community property, equitable distribution, or similar rules. The owner reports assets and liabilities that she owns or is deemed to own. Ownership tracks title to the asset or obligor status on the liability except where otherwise provided or when the transaction results in evasion or abuse.

- (1) The owner excludes her ownership interest in the applicant or DBE.
- (2) The owner excludes her share of the equity in her primary residence. There is no exclusion when the SEDO does not own the home.
- (3) The owner includes the full value of the contents of her primary residence unless she cohabits with a spouse or domestic partner, in which case she excludes only 50 percent of those assets.
- (4) The owner includes the value of all motor vehicles, including watercraft and ATVs, titled in her name or of which she is the principal operator.
- (5) The owner excludes the liabilities of any other party and those contingent on a future event or of undetermined value as of the date of the PNW Statement.
- (6) The owner includes her proportional share of the balance of a debt on which she shares joint and severable liability with other primary debtors.
- (7) The owner includes assets transferred to relatives or related entities within the two years preceding any UCA or DOE, when the assets so transferred during the period have an aggregate value of more than \$20,000. Relatives include the owner's spouse or domestic partner, children (whether biological, adopted or stepchildren), siblings (including stepsiblings and those of the spouse or domestic partner), and parents (including stepparents and those of the spouse or domestic partner). Related entities include for-profit privately held companies of which any relative is an owner, officer, director, or equivalent; and family or other trusts of which the owner or any relative is grantor, trustee, or beneficiary, except when the transfer is irrevocable.

(8) The owner excludes direct payments, on behalf of immediate family members or their children, to unrelated providers of healthcare, education, or legal services.

(9) The owner excludes direct payments to providers of goods and services directly related to a celebration of an immediate family member's or that family member's child's significant, normally non-recurring life event.

(10) The owner excludes from net worth all assets in qualified retirement accounts but will report those accounts, the value of assets in them, and any significant terms and restrictions concerning the assets' use, to NDOT.

(d) **Regulatory adjustments.**

(1) USDOT will adjust the PNW cap by May 9, 2027 by multiplying \$1,600,000 by the growth in total household net worth since 2019 as described by “Financial Accounts of the United States: Balance Sheet of Households (Supplementary Table B.101.h)” produced by the Board of Governors of the Federal Reserve (<https://www.federalreserve.gov/releases/z1/>), and normalized by the total number of households as collected by the Census in “Families and Living Arrangements” (<https://www.census.gov/topics/families/families-and-households.html>) to account for population growth. USDOT will adjust the PNW cap every 3 years on the anniversary of the adjustment date described in this section. USDOT will post the adjustments on the Departmental Office of Civil Rights' web page, available at <https://www.Transportation.gov/DBEPNW>. Each such adjustment will become the currently applicable PNW limit for purposes of this regulation.

(e) **Confidentiality.** Notwithstanding any provision of Federal or State law, NDOT will not release an individual's PNW statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that NDOT will transmit this information to USDOT 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](#).

§ 26.69 Ownership.

(a) **General rule.** A SEDO will own at least 51 percent of each class of ownership of the firm. Each SEDO whose ownership is necessary to the firm's eligibility will demonstrate that her ownership satisfies the requirements of this section. If not, the firm is ineligible.

(b) **Overall Requirements.** A SEDO's acquisition and maintenance of an ownership interest meets the requirements of this section only if the SEDO demonstrates the following:

(1) **Acquisition.** The SEDO acquires ownership at fair value and by one or more “investments,” as defined in [paragraph \(c\)](#) of this section.

(2) **Proportion.** No owner derives benefits or bears burdens that are clearly disproportionate to their ownership shares.

(3) **Maintenance.** This section's requirements continue to apply after the SEDO's acquisition and the firm's certification. That is, the SEDO will maintain her investment and its proportion relative to those of other owners.

(i) The SEDO may not withdraw or revoke her investment.

(ii) When an existing co-owner contributes significant, additional, post-acquisition cash or property to the firm, the SEDO will increase her own investment to a level not clearly disproportionate to the non-SEDO's investment.

(iii) An organic increase in the value of the business does not affect maintenance because the value of the owners' investments remains proportional.

(c) **Investments.** A SEDO may acquire ownership by purchase, capital contribution, or gift. Subject to the other requirements of this section, each is considered an "investment" in the firm, as are additional purchases, contributions, and qualifying gifts.

(1) Investments are unconditional and at full risk of loss.

(2) Investments include a significant outlay of the SEDO's own money.

(3) For purposes of this part, title determines ownership of assets used for investments and of ownership interests themselves. This rule applies regardless of contrary community property, equitable distribution, banking, contract, or similar laws, rules, or principles.

(i) The person who has title to the asset owns it in proportion to her share of title.

(ii) However, the title rule is deemed not to apply when it produces a certification result that is manifestly unjust.

(4) If the SEDO jointly (50/50) owns an investment of cash or property, the SEDO may claim at least a 51 percent ownership interest only if the other joint owner formally transfers to the SEDO enough of his ownership in the invested asset(s) to bring the SEDO's investment to at least 51 percent of all investments in the firm. Such transfers may be gifts described in [paragraph \(e\)](#) of this section.

(d) **Purchases and capital contributions.**

(1) A purchase of an ownership interest is an investment when the consideration is entirely monetary and not a trade of property or services.

(2) Capital that the SEDO contributes directly to the company is an investment when the contribution is all cash or a combination of cash and tangible property and/or realty.

(3) Contributions of time, labor, services, and the like are not investments or components of investments.

(4) Loans are not investments. The proceeds of loans may be investments to the extent that they finance the SEDO's qualifying purchase or capital contribution.

(5) Debt-financed purchases or capital contributions are investments when they comply with the rules in this section and in [§ 26.70](#).

(6) Guarantees are not investments.

(7) The firm's purchases or sales of property, including ownership in itself or other companies, are not the SEDO's investments.

(8) Other persons' or entities' purchases or capital contributions are not the SEDO's investments.

(e) **Gifts.** A gift to the SEDO is an investment when it meets the requirements of this section. The gift rules apply to partial gifts, bequests, inheritances, trust distributions, and transfers for inadequate consideration. They apply to gifts of ownership interests and to gifts of cash or property that the SEDO invests. The following requirements apply to gifts on which the SEDO relies for her investment.

(1) The transferor/donor is or immediately becomes uninvolved with the firm in any capacity and in any other business that contracts with the firm other than as a lessor or provider of standard support services;

(2) The transferor does not derive undue benefit; and

(3) A writing documents the gift. When the SEDO cannot reasonably produce better evidence, a receipt, cancelled check, or transfer confirmation suffices, if the writing identifies transferor, transferee, amount or value, and date.

(f) **Curative measures.** The rules of this section do not prohibit transactions that further the objectives of, and compliance with, the provisions of this part. A SEDO or firm may enter into legitimate transactions, alter the terms of ownership, make additional investments, or bolster underlying documentation in a good faith effort to remove, surmount, or correct defects in eligibility, as long as the actions are consistent with this part.

(1) NDOT may notify the firm of eligibility concerns and give the firm time, if the firm wishes, to attempt to remedy impediments to certification.

(2) The firm may, of its own volition, take curative action up to the time of NDOT's decision. However, it will present evidence of curation before NDOT's decision.

(3) NDOT may provide general assistance and guidance but not professional (legal, accounting, valuation, etc.) advice or opinions.

(4) While NDOT may not affirmatively impede attempts to cure, it may maintain its decision timeline and make its decision based on available evidence.

(5) NDOT will deny or remove certification when the firm's efforts or submissions violate the rules in [paragraph \(g\)](#) of this section.

(g) *Anti-abuse rules.*

(1) The substance and not the form of transactions drives the eligibility determination.

(2) NDOT will deny applications based on sham transactions or false representations, and it will decertify DBEs that engage in or make them. Transactions or representations designed to evade or materially mislead subject the firm to the same consequences.

(3) Fraud renders the firm ineligible and subjects it to sanctions, suspension, debarment, criminal prosecution, civil litigation, and any other consequence or recourse not proscribed in this part.

§ 26.70 Debt-financed investments.

(a) Subject to the other provisions of this subpart, a SEDO may borrow money to *finance* a [§ 26.69\(c\)](#) investment entirely or partially if the SEDO has paid, on a net basis, at least 15 percent of the total value of the investment by the time the firm applies for certification.

(1) The SEDO pays the net 15 percent portion of the investment to Seller or Applicant (as the case may be) from her own, not borrowed, money.

(2) Money that the SEDO receives as a [§ 26.69\(e\)](#) gift is her own money.

(3) The firm, whether Applicant or DBE, does not finance any part of the investment, directly or indirectly.

(b) The loan is real, enforceable, not in default, not offset by another agreement, and on standard commercial, arm's length terms. The following conditions also apply.

(1) The SEDO is the sole debtor.

(2) The firm is not party to the loan in any capacity, including as a guarantor.

(3) The SEDO does not rely on the company's credit or other resources to repay any part of the debt or otherwise to finance any part of her investment.

(4) The loan agreement requires level, regularly recurring payments of principal and interest, according to a standard amortization schedule, at least until the SEDO satisfies requirements in [paragraph \(a\)](#) of this section.

(5) The loan agreement permits prepayments, including by refinancing.

(c) If the creditor forgives or cancels all or part of the debt, or the SEDO defaults, the entire debt-financed portion of the SEDO's purchase or capital contribution is no longer an investment.

(d) Paragraph (c) of the section does not prohibit refinancing with debt that meets the requirements of this section or preclude prompt curation under [§ 26.69\(f\)](#).

§ 26.71 Control.

(a) **General rules.**

(1) One or more SEDOs of the firm will control it.

(2) Control determinations will consider all pertinent facts, viewed together and in context.

(3) A firm will have operations in the business for which it seeks certification at the time it applies. NDOT does not certify plans or intentions, or issue contingent or conditional certifications.

(b) **SEDO as final decision maker.** A SEDO will be the ultimate decision maker in fact, regardless of operational, policy, or delegation arrangements.

(c) **Governance.** Governance provisions may not require that any SEDO obtain concurrence or consent from a non-SEDO to transact business on behalf of the firm.

(1) **Highest officer position.** A SEDO will hold the highest officer position in the company (e.g., chief executive officer or president).

(2) **Board of directors.** Except as detailed in [paragraph \(c\)\(4\)](#) of this section, a SEDO will have present control of the firm's board of directors, or other governing body, through the number of eligible votes.

(i) **Quorum requirements.** Provisions for the establishment of a quorum will not block the SEDO from calling a meeting to vote and transact business on behalf of the firm.

(ii) **Shareholder actions.** A SEDO's authority to change the firm's composition via shareholder action does not prove control within the meaning of [paragraph \(c\)](#) of this section.

(3) **Partnerships.** In a partnership, at least one SEDO will serve as a general partner, with control over all partnership decisions.

(4) **Exception.** Bylaws or other governing provisions that require non-SEDO consent for extraordinary actions generally do not contravene the rules in [paragraph \(c\)](#) of this section. Non-exclusive examples are a sale of the company or substantially all of its assets, mergers, and a sudden, wholesale change of type of business.

(d) **Expertise.** At least one SEDO will have an overall understanding of the business and its essential operations sufficient to make sound managerial decisions not primarily of an administrative nature. The requirements of this [paragraph \(d\)](#) vary with type of business, degree of technological complexity, and scale.

(e) **SEDO decisions.** The firm will show that the SEDO critically analyzes information provided by non-SEDOs and uses that analysis to make independent decisions.

(f) **Delegation.** A SEDO may delegate administrative activities or operational oversight to a non-SED individual as long as at least one SEDO retains unilateral power to fire the delegate(s), and the chain of command is evident to all participants in the company and to all persons and entities with whom the firm conducts business.

(1) No non-SED participant may have power equal to or greater than that of a SEDO, considering all the circumstances. Aggregate magnitude and significance govern; a numerical tally does not.

(2) Non-SED participants may not make non-routine purchases or disbursements, enter into substantial contracts, or make decisions that affect company viability without the SEDO's consent.

(3) Written provisions or policies that specify the terms under which non-SED participants may sign or act on the SEDO's behalf with respect to recurring matters generally do not violate this [paragraph \(f\)](#), as long as they are consistent with the SEDO having ultimate responsibility for the action.

(g) **Independent business.**

(1) If the firm receives from or shares personnel, facilities, equipment, financial support, or other essential resources, with another business (whether a DBE or non-DBE firm) or individual on other than commercially reasonable terms, the firm will prove that it would be viable as a going concern without the arrangement.

(2) The firm will not regularly use another firm's business-critical vehicles, equipment, machinery, or facilities to provide a product or service under contract to the same firm or one in a substantially similar business.

(i) **Exception 1.** [Paragraphs \(g\)\(1\)](#) and [\(2\)](#) of this section do not preclude the firm from providing services to a single customer or to a small number of them, provided that the firm is not merely a conduit, captive, or unnecessary third party acting on behalf of another firm or individual. Similarly, providing a volume discount to such a customer does not impair viability unless the firm repeatedly provides the service at a significant and unsustainable loss.

(ii) **Exception 2.** A firm may share essential resources and deal exclusively with another firm that a SEDO controls and of which the SEDO owns at least 51 percent ownership.

(h) **Franchise and license agreements.** A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, NDOT should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license if the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

§ 26.73 NAICS Codes.

(a) NDOT will grant certification to a firm only for specific types of work that the SEDO controls. To become certified in an additional type of work, the firm will demonstrate to NDOT only that its SEDO controls the firm with respect to that type of work. NDOT will not require that the firm be recertified or submit a new application for certification but will verify the SEDO's control of the firm in the additional type of work.

(1) A correct NAICS code is the one that describes, as specifically as possible, the principal goods or services which the firm would provide to USDOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants will rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.

(2) If there is not a NAICS code that fully, clearly, or sufficiently narrowly describes the type(s) of work for which the firm seeks certification, NDOT will supplement or limit the assigned NAICS code(s) with a clear, specific, and concise narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is insufficient.

(3) Firms and NDOT will check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(4) NDOT may change a certification classification or description if there is a factual basis in the record, in which case it will notify the firm 30 days before making the change. NDOT will not apply such changes retroactively.

(5) In addition to applying the appropriate NAICS code, NDOT may apply a descriptor from a classification scheme of equivalent detail and specificity. Such a descriptor (e.g., a "work code") does not supersede or limit the types of work for which a DBE is eligible under an appropriate NAICS code.

Certification Procedures
§ 26.81 Unified Certification Programs.

(a) As required in 49 CFR Part 26, the Nevada Unified Certification Program consists of six member agencies; NDOT, Washoe County Regional Transportation Commission, Southern Nevada Regional Transportation Commission, Carson Area Metropolitan Planning Organization, LAS Harry Reid International Airport, and Reno, Tahoe Airport Authority.

As the subject matter expert, the State DOT will act as the head of the UCP for all certification issues carried out under 49 CFR Part 26, to include affiliated issues carried out under the regulation including SBE certifications conducted under 26.39.

As the subject matter expert, LAS Harry Reid International Airport will act as the head of the UCP for all certification issues carried out under 49 CFR Part 23, to include affiliated issues carried out under the regulation, including Small Business Enterprise Concessionaire (SBEC) certifications.

The certifying agency that processes the initial application is solely responsible for all certification documents, decisions, and other issues concerning the applicant firm, both pre and post certification.

(1) UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination will be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

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

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The Jurisdiction of Original

Certification UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(g) Each UCP will maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other States certified under the provisions of this part), the information required by [§ 26.31](#). The UCP will make the directory available to the public electronically, on the internet. The UCP will update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and [subpart D of this part](#) pertaining to recipients also apply to UCPs.

§ 26.83 Certification Procedures

(a) NDOT will ensure that only firms certified as eligible DBEs under this section participate as DBEs in NDOT's program.

(b) NDOT will determine the eligibility of firms as DBEs consistent with the standards of [subpart D of this part](#). Nevada's UCP will meet all the requirements of [subpart D of this part](#) and this subpart that recipients are required to meet.

(c)

(1) NDOT will take all the following steps in determining whether a DBE firm meets the standards of [subpart D of this part](#):

(i) NDOT will visit the firm's principal place of business, virtually or in person, and interview the SEDO, officers, and key personnel. NDOT will review those persons' résumés and/or work histories. NDOT will maintain a complete audio recording of the interview. NDOT will also visit one or more active job sites (if there is one). These activities comprise the "on-site review" (OSR), a written report of which NDOT will keep in its files.

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in [§ 26.85 of this part](#).

(2) NDOT will use the application form available at <https://transportation.gov/DBEFORMS> without change or revision. However, NDOT may provide in NDOT's DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) NDOT will ensure that the SEDO signs the Declaration of Eligibility (DOE) at the end of the Uniform Certification Application (UCA), subscribed to as true under penalty of perjury that all information provided is current, accurate, and complete.

(4) NDOT will review all information on the form prior to making a decision about the eligibility of the firm. NDOT may request clarification of information contained in the application at any time in the application process.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information NDOT has obtained about that firm (e.g., including application materials or the report of a site visit, if NDOT has made one to the firm), NDOT will promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of NDOT's DBE program, NDOT may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) NDOT will safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h)

(1) Once NDOT has certified a firm, the firm remains certified unless and/or until NDOT removes certification, in whole or in part (*i.e.*, NAICS code removal), through the procedures of [§ 26.87](#).

(2) NDOT will not require a DBE to reapply for certification, renew its certification, undergo a recertification, or impose any functionally equivalent requirement. NDOT may, however, conduct a certification review at any reasonable time and/or at regular intervals of at least two years. The certification review may, at NDOT's discretion, include a new OSR. NDOT may also make an unannounced visit to the DBE's offices and/or job site. NDOT may also rely on another recipient's report of its OSR of the DBE.

(i) If you are a DBE, you will inform NDOT or the NUCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You will attach supporting documentation describing in detail the nature of such changes.

(3) The DBE will notify NDOT of a material change in its circumstances that affects its continued eligibility within 30 days of its occurrence, explain the change fully, and include a duly executed DOE with the notice. The DBE's non-compliance is a [§ 26.109\(c\)](#) failure to cooperate.

(j) A DBE will provide NDOT, every year on the anniversary of its original certification, a new DOE along with the specified documentation in [§ 26.65\(a\)](#), including gross receipts for its most recently completed fiscal year, calculated on a cash basis regardless of the DBE's overall accounting method. The sufficiency of documentation (and its probative value) may vary by business type, size, history, resources, and overall circumstances. However, the following documents may generally be considered "safe harbors," provided that they include all reportable receipts, properly calculated, for the full reporting period: audited financial statements, a CPA's signed attestation of correctness and completeness, or all income-related portions of one or more (when there are affiliates) signed Federal income tax returns as filed. Non-compliance, whether full or partial, is a [§ 26.109\(c\)](#) failure to cooperate.

(k) NDOT will advise each applicant within 30 days of filing whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(l)

(1) NDOT will render a final eligibility decision within 90 days of receiving all information required from the applicant under this part. NDOT may extend this time period once, for no more than an additional 30 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. On a case-by-case basis, the concerned OA may give NDOT one deadline extension if it approves a written request explaining why NDOT needs more time. NDOT's failure to issue a compliant decision by the applicable deadline is a constructive denial of the

application, appealable to DOT under [§ 26.89](#). In this case, NDOT may be subject to enforcement actions described in [§§ 26.103](#) and [26.105](#).

(2) [Reserved]

(m)

(1) NDOT may notify the applicant about ineligibility concerns and allow the firm to rectify deficiencies within the period in [paragraph \(l\)](#) of this section.

(2) If a firm takes curative measures before NDOT renders a decision, NDOT will consider any evidence it submits of having taken such measures. NDOT will not automatically construe curative measures as successful or abusive.

(n) Except as otherwise provided in this [paragraph \(n\)](#), if an applicant for DBE certification withdraws its application before NDOT issues a decision, the applicant can resubmit the application at any time. However, NDOT may place the reapplication at the “end of the line,” behind other applications that have been made since the firm's previous application was withdrawn. NDOT may apply the [§ 26.86\(c\)](#) waiting period to a firm that has established a pattern of withdrawing applications before its decision.

§ 26.85 Interstate certification.

(a) **Applicability.** This section applies to a DBE certified in any UCP.

(b) **General rule.** When a DBE applies to another UCP for certification, the new UCP will accept the DBE's certification from its jurisdiction of original certification (JOC). The JOC is the State in which the firm maintains its principal place of business at the time of application unless and until the firm loses certification in that jurisdiction.

(c) **Application procedure.** To obtain certification by an additional UCP, the DBE will provide:

(1) A cover letter that specifies that the DBE is applying for interstate certification, identifies all UCPs in which the DBE is certified (including the UCP that originally certified it)

(2) An electronic image of the UCP directory of the original UCP that shows the DBE certification; and

(3) A new DOE.

(d) **Confirmation of eligibility.** Within 10 business days of receiving the documents required under [paragraph \(c\)](#) of this section, the additional UCP will confirm the certification of the DBE preferably by reference to the UCP directory of the JOC.

(e) **Certification.** If the DBE fulfills the requirements of [paragraph \(c\)](#) of this section and the UCP confirms the DBE's certification per [paragraph \(d\)](#) of this section, the UCP will

certify the DBE immediately without undergoing further procedures and provide the DBE with a letter documenting its certification.

(f) **Noncompliance.** Failure of the additional UCP to comply with [paragraphs \(d\)](#) and [\(e\)](#) of this section is considered non-compliance with this part.

(g) **Post-interstate certification proceedings.**

(1) After the additional UCP certifies the DBE, the UCP may request a fully unredacted copy of all, or a portion of, the DBE's certification file from any other UCP in which the DBE is certified.

(2) A UCP will provide a complete unredacted copy of the DBE's certification materials to the additional UCP within 30 days of receiving the request. Confidentiality requirements of [§§ 26.83\(d\)](#) and [26.109\(b\)](#) do not apply.

(3) Once the new UCP certifies, then it will treat the DBE as it treats other DBEs, for all purposes.

(4) The DBE will provide an annual DOE with documentation of gross receipts, under [§ 26.83\(j\)](#), to certifying UCPs on the anniversary date of the DBE's original certification by its JOC.

(h) **Decertifications.**

(1) If any UCP has reasonable cause to remove a DBE's certification, in whole or in part (*i.e.*, NAICS code removal), it will notify the other UCPs in which the DBE is certified ("other jurisdictions") via email. The notice will explain the UCP's reasons for believing the DBE's certification should be removed.

(2) Within 30 days of receiving the notice, the other jurisdictions will email the UCP contemplating decertification a concurrence or non-concurrence with the proposed action. The other jurisdictions' responses may provide written arguments and evidence and may propose additional reasons to remove certification. A jurisdiction's failure to timely respond to the reasonable cause notice will be deemed to be a concurrence.

(3) After a UCP receives all timely responses, it will make an independent decision whether to issue a NOI and what grounds to include.

(4) Other UCPs may, before the hearing, submit written arguments and evidence concerning whether the firms should remain certified, but may not participate in the hearing.

(5) If the UCP finds the firm ineligible the firm immediately loses certification in all jurisdictions in which it is certified. The NOD will include appeal instructions provided on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>. The UCP will email a copy of its decision to the other jurisdictions within 3 business days.

(6) The rules of paragraph (h) do not apply to attempts to decertify based upon a DBE's actions or inactions pertaining to [§§ 26.83\(j\)](#) (Declaration of Eligibility) and 26.109(c) (failure to cooperate).

(7) Decertifications under this [paragraph \(h\)](#) will provide due process to DBEs.

(i) If a UCP decides not to issue a NOD removing the DBE's certification, no jurisdiction may initiate decertification proceedings, within one year, on the same or similar grounds and underlying facts.

(ii) If a DBE believes a UCP unfairly targets it with repeated decertification attempts, the DBE may file a complaint to the appropriate OA.

(8) USDOT's appeal decisions are binding on all UCPs unless stated otherwise.

§ 26.86 Decision letters.

(a) When NDOT denies a firm's request for certification or decertifies the firm, NDOT will provide the firm a NOD explaining the reasons for the adverse decision, specifically referencing the evidence in the record that supports each reason. NDOT will also include, verbatim, the instructions found on the Departmental Office of Civil Rights' web page, available at <https://www.transportation.gov/dbeappeal>.

(b) NDOT will promptly provide the applicant copies of all documents and other information on which it based the denial if the applicant requests them.

(c) Applicants may reapply after waiting period of 12 months. That period begins to run the day after the date of the decision letter is emailed. After the waiting period expires, the denied firm may reapply to any certifying member of the UCP that denied the application. NDOT will inform the applicant of that right, and specify the date the waiting period ends, in its decision letter.

(d) An appeal does not extend the waiting period.

§ 26.87 Decertification.

(a) ***Burden of proof.*** To decertify a DBE, NDOT bears the burden of proving, by a preponderance of the evidence, that the DBE does not meet the certification standards of this part.

(b) ***Initiation of decertification proceedings.***

(1) NDOT may determine on its own that it has reasonable cause to decertify a DBE.

(2) If an OA determines that there is reasonable cause to believe that a DBE does not meet the eligibility criteria of this part, the OA may direct NDOT to initiate a proceeding to remove the DBE's certification.

(i) The OA will provide NDOT, and the DBE written notice describing the reasons for the directive, including any relevant documentation or other information.

(ii) NDOT will immediately commence a proceeding to decertify as provided by [paragraph \(e\)](#) of this section.

(3) Any person may file a complaint explaining, with specificity, why NDOT should decertify a DBE. NDOT need not act on a general allegation or an anonymous complaint. NDOT will keep complainants' identities confidential as provided in [§ 26.109\(b\)](#).

(i) NDOT will review its records concerning the DBE, any material the DBE and/or complainant provides, and any other available information. NDOT may request additional information from the DBE or conduct any other investigation that it deems necessary.

(ii) If NDOT determines that there is reasonable cause to decertify the DBE, it initiates a decertification proceeding. If it determines that there is not reasonable cause, it notifies the complainant and the DBE in writing of its decisions and the reasons for it.

(c) **Notice of intent (NOI).** NDOT's first step in any decertification proceeding will be to email a notice of intent (NOI) to the DBE.

(1) The NOI will clearly and succinctly state each reason for the proposed action, and specifically identify the supporting evidence for each reason.

(2) The NOI will notify the DBE of its right to respond in writing, at an informal hearing, or both.

(3) The NOI will inform the DBE of the hearing scheduled on a date no fewer than 30 days and no more than 45 days from the date of the NOI.

(4) If the basis for decertification is that the DBE has been suspended or debarred for conduct related to the DBE program, NDOT issues a NOD decertifying the DBE. In this case, there is no NOI or opportunity for a hearing or written response.

(d) **Response to NOI.**

(1) If the DBE wants a hearing, it will email NDOT saying so within 10 days of the NOI. If the DBE does not do so, it loses its opportunity for a hearing.

(2) NDOT and the DBE may negotiate a different hearing date from that stated in the NOI. Parties will not engage in dilatory tactics.

(3) If the DBE does not want a hearing or does not give timely notice to NDOT that it wants one, the DBE may still provide written information and arguments to NDOT rebutting the reasons for decertification stated in the NOI.

(e) **Hearings.**

(1) The purpose of the hearing is for NDOT to present its case and for the DBE to rebut NDOT's allegations.

(2) The hearing is an informal proceeding with rules set by the hearing officer. The SEDO's attorney, a non-SEDO, or other individuals involved with the DBE may attend the hearing and answer questions related to their own experience or more generally about the DBE's ownership, structure, and operations.

(3) NDOT will maintain a complete record of the hearing, either in writing, video, or audio. If the DBE appeals to DOT under [§ 26.89](#), NDOT will provide that record to DOT and to the DBE.

(f) **Separation of functions.** NDOT will ensure that the decision in a decertification case is made by an individual who did not take part in actions leading to or seeking to implement the proposal to decertify the DBE and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) The decisionmaker will be an individual who is knowledgeable about the certification requirements of this part.

(g) **Notice of decision.** NDOT will send the firm a NOD no later than 30 days of the informal hearing and/or receiving written arguments/evidence from the firm in response to the NOI.

(1) The NOD will describe with particularity the reason(s) for NDOT's decision, including specific references to the evidence in the record that supports each reason. The NOD will also inform the firm of the consequences of the decision under [paragraph \(i\)](#) of this section and of its appeal rights under [§ 26.89](#).

(2) NDOT will send copies of the NOD to the complainant in an ineligibility complaint or to the OA that directed NDOT to initiate the proceeding.

(3) When sending a copy of an NOD to a complainant other than an OA, NDOT will not include information reasonably construed as confidential business information, unless NDOT has the written consent of the firm that submitted the information.

(4) NDOT will make an entry in DOCCR's Online Portal within 5 days of the action. NDOT will enter the name of the firm, names(s) of the firm's owner(s), date of decision, and the reason(s) for its decision.

(h) **Status of firm during proceeding.** A DBE remains certified until NDOT issues a NOD.

(i) [Reserved]

(j) **Consequences.** Decertification has the following effects on contract and overall goals and DBE participation:

(1) When a prime contractor has made a commitment to use a DBE, but a subcontract has not been executed before NDOT issues the NOD as provided for in [paragraph \(g\)](#) of this section, the committed firm does not count toward the contract goal. NDOT will direct the prime contractor to meet the contract goal with an eligible DBE or demonstrate to NDOT that it has made good faith efforts to do so.

(2) When NDOT has made a commitment to using a DBE prime contractor, but a contract has not been executed before NDOT issues the NOD, the decertified firm does not count toward NDOT's overall DBE goal.

(3) If a prime contractor has executed a subcontract with a DBE before NDOT issues the NOD, the prime contractor may continue to receive credit toward the contract goal for the firm's work. In this case, however, the prime contractor may not extend or add work to the contract without prior written consent from NDOT.

(4) If a prime contractor has executed a subcontract with a DBE before NDOT issues the NOD, the prime contractor may continue to receive credit toward the contract goal as set forth in [paragraph \(j\)\(3\)](#) of this section; however, the portion of the decertified firm's continued performance of the contract will not count toward the NDOT's overall goal.

(5) If NDOT executes a prime contract with a DBE that is later decertified, the portion of the decertified firm's performance of the contract remaining after NDOT issued the NOD will not count toward an overall goal, but the DBE's performance of the contract may continue to count toward satisfying any contract goal.

(6) The following exceptions apply to this [paragraph \(j\)](#):

(i) If NDOT decertifies a firm solely because it exceeds the business size standard during the performance of the contract, NDOT may continue to count the portion of the decertified firm's performance of the contract remaining after NDOT issued the NOD toward NDOT's overall goal as well as toward the contract goal.

(ii) If NDOT decertifies the DBE because it was acquired by or merged with a non-DBE, NDOT may not continue to count the portion of the decertified firm's performance on the contract remaining, after NDOT issued a NOD, toward either the contract goal or the overall goal, even if a prime contractor has executed a subcontract with the firm or NDOT has executed a prime contract with the DBE that was later decertified. In this case, if eliminating the credit of the decertified firm will affect the prime contractor's ability to meet the contract goal, NDOT will direct the prime contractor to subcontract to an eligible DBE to the extent needed to meet the contract goal or demonstrate to NDOT that it has made good faith efforts to do so.

§ 26.88 Summary suspension of certification.

(a) **Definition.** Summary suspension is an extraordinary remedy for lapses in compliance that cannot reasonably or adequately be resolved in a timely manner by other means.

(1) A firm's certification is suspended under this part as soon as NDOT transmits electronic notice to its owner at the last known email address.

(2) During the suspension period, the DBE may not be considered to meet a contract or participation goal on contracts executed during the suspension period.

(b) **Mandatory and elective suspensions** —

(1) **Mandatory.** NDOT will summarily suspend a DBE's certification when:

(i) NDOT has clear and credible evidence of the DBE's or its SEDO's involvement in fraud or other serious criminal activity.

(ii) The OA with oversight so directs.

(2) **Elective.**

(i) NDOT has discretion to suspend summarily if it has clear and credible evidence that the DBE's continued certification poses a substantial threat to program integrity.

(ii) An owner upon whom the firm relies for eligibility does not timely file the declaration and gross receipts documentation that [§ 26.83\(j\)](#) requires.

(c) **Coordination with other remedies.** In most cases, a simple information request or a [§ 26.87](#) NOI is a sufficient response to events described in [paragraphs \(b\)\(1\)](#) and [\(2\)](#) of this section. NDOT may consider the burden to the DBE and to itself in determining whether summary suspension is a more prudent and proportionate, effective response. NDOT may *elect* to suspend the same DBE just once in any 12-month period.

(d) **Procedures** —

(1) **Notice.** NDOT will notify the firm, by email, of its summary suspension notice (SSN) on a business day during regular business hours. The SSN will explain the action, the reason for it, the consequences, and the evidence on which NDOT relies.

(i) Elective SSNs may not cite more than one reason for the action.

(ii) Mandatory SSNs may state multiple reasons.

(iii) The SSN, regardless of type, will demand that the DBE show cause why it should remain certified and provide the time and date of a virtual show-cause hearing at which the firm may present information and arguments concerning why NDOT should lift the suspension. The SSN will also advise that the DBE may provide written information and arguments in lieu of or in addition to attending the hearing.

(2) **Hearing.** The hearing date will be a business day that is at least 15 but not more than 25 days after the date of the notice. The DBE may respond in writing in lieu of or in addition to attending the hearing; however, it will have waived its right to a hearing if

it does not confirm its attendance within 10 days of the notice and will have forfeited its certification if it does not acknowledge the notice within 15 days. The show-cause hearing will be conducted as a video conference on a standard commercial platform that the DBE may readily access at no cost.

(3) **Response.** The DBE may provide information and arguments concerning its continuing eligibility until the 15th day following the suspension notice or the day of the hearing, if any, whichever is later. The DBE will email any written response it provides. Email submissions correctly addressed are effective when sent. NDOT may permit additional submissions after the hearing, as long as the extension ends on a business day that is not more than 30 days after the notice.

(4) **Scope and burdens.**

(i) Suspension proceedings are limited to the suspension ground specified in the notice.

(ii) NDOT may not amend its reason(s) for summarily suspending certification, nor may it electively suspend the firm again during the 12-month period following the notice.

(iii) The DBE has the burden of producing information and/or making arguments concerning its continued eligibility, but it need only contest the reason cited.

(iv) NDOT has the burden of proving its case by a preponderance of the evidence. It will issue an NOD within 30 days of the suspension notice or lift the suspension. Any NOD will rely only on the reason given in the summary suspension notice.

(v) The DBE's failure to provide information contesting the suspension does not impair NDOT's ability to prove its case. That is, the uncontested evidence upon which NDOT relies in its notice, if substantial, will constitute a preponderance of the evidence for purposes of the NOD.

(5) **Duration.** The DBE remains suspended during the proceedings described in this section but in no case for more than 30 days. If NDOT has not lifted the suspension or provided a rule-compliant NOD by 4:30 p.m. on the 30th day, then it will lift the suspension and amend applicable DBE lists and databases by 12 p.m. the following business day.

(e) **Recourse** —

(1) **Appeal.** The DBE may appeal a final decision under [paragraph \(d\)\(4\)\(iv\)](#) of this section, as provided in [§ 26.89\(a\)](#), but may *not* appeal the suspension itself, unless [paragraph \(e\)\(2\)](#) of this section applies.

(2) **Enforcement.**

(i) The DBE may immediately petition USDOT for an order to vacate NDOT's action if:

(A) NDOT sends a second elective SSN within 12 months, or

(B) Cites multiple reasons in an elective SSN contrary to [paragraph \(d\)\(1\)\(i\)](#) of this section.

(ii) The DBE may also petition to USDOT for an order to compel if NDOT fails to act within the time specified in [paragraph \(d\)\(5\)](#) of this section.

(3) In either case, the DBE will:

(i) Email the request under the subject line, "REQUEST FOR ENFORCEMENT ORDER" in all caps;

(ii) Limit the request to a one-page explanation that includes:

(A) NDOT's name and the suspension dates;

(B) Contact information for NDOT, the DBE, and the DBE's SEDO(s); and

(C) The general nature and date of the firm's response, if any, to the second suspension notice; and

(D) The suspension notice(s).

§ 26.89 Appeals to USDOT.

(a)

(1) Applicants and decertified firms may appeal adverse NODs to USDOT.

(2) An ineligibility complainant or applicable Operating Administration (the latter by the terms of [§ 26.87\(c\)](#)) may appeal to USDOT if NDOT does not find reasonable cause to issue an NOI to decertify or affirmatively determines that the DBE remains eligible.

(3) Appellants will email appeals as directed in NDOT's decision letter within 45 days of the date of the letter. The appeal will at a minimum include a narrative that explains fully and specifically why the firm believes the decision is in error, what outcome-determinative facts NDOT did not consider, and/or what part 26 provisions NDOT misapplied.

(4) NDOT's decision remains in effect until USDOT resolves the appeal or NDOT reverses itself.

(b) When it receives an appeal, USDOT requests a copy of NDOT's complete administrative record including a video, audio, or transcript of any hearing, which NDOT will provide within 20 days of USDOT's request. USDOT may extend this time period when NDOT demonstrates good cause. NDOT will ensure that the administrative record

is well organized, indexed, and paginated and NDOT will provide the appellant a copy of any supplemental information it provides to USDOT.

(c)

(1) USDOT may accept an untimely or incomplete appeal if it determines, in its sole discretion, that doing so is in the interest of justice.

(2) USDOT may dismiss non-compliant or frivolous appeals without further proceedings.

(d) USDOT will avail itself of whatever remedies for noncompliance it considers appropriate.

(e) USDOT decides only the issue(s) presented on appeal. It does not conduct a *de novo* review of the matter, assess all eligibility requirements, or hold hearings. It considers the administrative record and any additional information that it considers relevant.

(f)

(1) USDOT affirms NDOT's decision if it determines that the decision is consistent with applicable rules and supported by substantial evidence.

(2) USDOT reverses decisions that do not meet the standard in [paragraph \(f\)\(1\)](#) of this section.

(3) USDOT need not reverse if an error or omission did not result in fundamental unfairness or undue prejudice.

(4) USDOT may remand the case with instructions for further action. When USDOT specifies further actions, NDOT will take them without delay.

(5) USDOT generally does not uphold NDOT's decision based on grounds not specified in its decision.

(6) USDOT resolves appeals on the basis of facts demonstrated, and evidence presented, at the time of NDOT's decision.

(7) USDOT may summarily dismiss an appeal. Reasons for doing so include, but are not limited to, non-compliance, abuse of process, appellant or NDOT request, and failure to state a claim upon which relief can be granted.

(g) USDOT does not issue advisory opinions.

(h) All decisions described in [paragraph \(f\)](#) of this section are administratively final unless they say otherwise.

(i) DOCR posts final decisions to its website, available at <https://www.transportation.gov/DBEDecisions>.

Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If NDOT fails to comply with any requirement of this part, NDOT 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.

(b) As provided in statute, NDOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because NDOT has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) ***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. If you want to file a complaint, you will do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your 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 your identity as provided in [§ 26.109\(b\)](#). Complaints under this part are limited to allegations of violation of the provisions of this part.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of [subpart D of this part](#) and that 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, USDOT may initiate suspension or debarment proceedings against you under [2 CFR parts 180](#) and [1200](#).

(b) If you are a firm that, 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](#), USDOT may initiate suspension or debarment proceedings against you under [2 CFR parts 180](#) and [1200](#).

(c) 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 USDOT 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.

(d) USDOT 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](#).

(e) USDOT may refer to USDOT 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.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.*

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

(2) Notwithstanding any provision of Federal or state law, NDOT 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 certification and supporting information. However, NDOT will transmit this information to USDOT in any certification appeal proceeding under [§ 26.89 of this part](#) or to any other state to which the individual's firm has applied for certification under [§ 26.85 of this part](#).

(b) ***Confidentiality of information on complainants.*** Notwithstanding the provisions of [paragraph \(a\)](#) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of [14 CFR part 16](#) with respect to confidentiality of information in complaints.

(c) ***Cooperation.*** All participants in USDOT '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).

(d) ***Intimidation and retaliation.*** If NDOT are a recipient, contractor, or any other participant in the program, NDOT 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. If NDOT violate this prohibition, NDOT are in noncompliance with this part.

EXHIBITS

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

EXHIBIT A – External Civil Rights Division Organizational Chart

EXHIBIT B – NDOT Specifications for DBE Requirements

EXHIBIT C – Definitions within the Program

EXHIBIT D – Mentor-Protégé Program

Exhibit A

NDOT EXTERNAL CIVIL RIGHTS ORGANIZATIONAL CHART

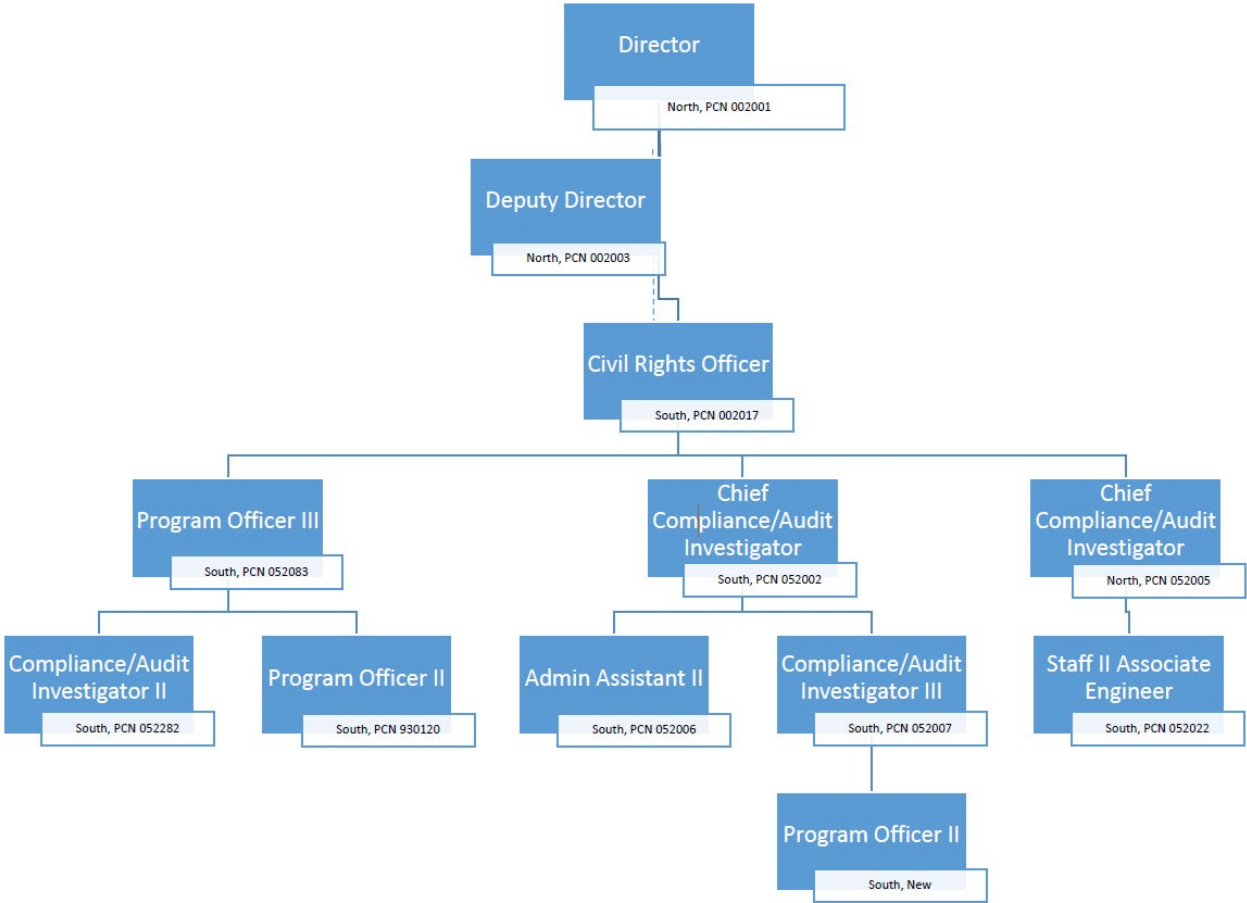


EXHIBIT B

NDOT SPECIFICATIONS FOR DBE REQUIREMENTS

The following sections of NDOT Standard Specifications for Road and Bridge Construction, as amended from time to time by the Special Provisions, relate to DBE program requirements:

- 102.03 Content of Proposal Forms
- 102.16 DBE and SBE Certification and Bidding Requirements
- 103.08 DBE and SBE Verification and Award Requirements
- 108.01 Subletting of Contract

EXHIBIT C

§ 26.5 Definitions.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, [13 CFR part 121](#).

(1) Except as otherwise provided in [13 CFR part 121](#), concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended ([43 U.S.C. 1601](#), *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part.

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

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

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Departmental Office of Civil Rights, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged Business Enterprise or *DBE* means 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; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

FTA Tier I recipient means an FTA recipient to whom this part applies that will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$670,000 in FTA funds in a Federal fiscal year.

FTA Tier II recipient means an FTA recipient to whom this part applies who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which does not exceed \$670,000 in FTA funds in a Federal fiscal year.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian Tribe or *Native American Tribe* means any federally or State-recognized Tribe, band, nation, or other organized group of Indians (Native Americans), or an ANC.

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

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Notice of decision or *NOD* means determination that denies a firm's application or decertifies a DBE.

Notice of intent or *NOI* means recipients letter informing a DBE of a suspension or proposed decertification.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth or *PNW* means the net value of an individual's reportable assets and liabilities, per the calculation rules in [§ 26.68](#).

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available online on the U.S. Census Bureau website: www.census.gov/naics/.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business. The term does not include construction trailers or other temporary construction sites.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or that has applied for such assistance.

Secretary means DOT's Secretary of Transportation or the Secretary's designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, 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 [§ 26.65\(b\)](#).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of a group and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, Maldives, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer (TVM) means any manufacturer whose primary business purpose is to manufacture vehicles built for mass transportation. Such vehicles include, but are not limited to buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Businesses that perform retrofitting or post-production alterations to vehicles so that such vehicles may be used for public transportation purposes are also considered TVMs. Businesses that manufacture, mass-produce, or distribute vehicles primarily for personal use are not considered TVMs.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

Unsworn declaration means an unsworn statement, dated and in writing, subscribed as true under penalty of perjury.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

Exhibit D



Mentor-Protégé Program

Disadvantaged Business Enterprise
NDOT External Civil Rights Division

Date: July 2016

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I. INTRODUCTION AND OVERVIEW

The Nevada Department of Transportation (NDOT) Mentor-Protégé Program (Program) serves to foster a more competitive environment for NDOT projects by building a broader base of Disadvantaged Business Enterprises (DBEs) able to perform work on highway construction projects (including designing and engineering). NDOT will operate a Mentor-Protégé Program within the guidelines set forth in Appendix D, 49 CFR, Part 26 (see Attachment 6), and in cooperation with the Nevada Unified Certification Program (NUCP) partners:

- Carson Area Metropolitan Planning Organization (CAMPO);
- Clark County Department of Aviation, McCarran International Airport;
- Regional Transportation Commission of Southern Nevada (RTCSNV);
- Regional Transportation Commission of Washoe County (RTCW); and
- Reno-Tahoe Airport Authority (RTAA)

A Mentor-Protégé relationship may be recommended to firms as part of their business development plan if it is determined through an in-depth business assessment that the DBE firm's developmental goals would greatly benefit from the relationship.

The Program's immediate objective is to strengthen the long-term stability of DBE firms by focusing the resources on those critical business skills and assets that contractors require to compete successfully in the open market. The Program's goals are to:

- Enhance the business skills of Nevada certified DBE firms;
- Broaden the base of DBE firms' design, engineering and construction activity; and
- Build long-term stability of DBE firms.

In addition to the above goals, it is the intent that the Program assist in overcoming the following common barriers for DBE firms:

- Inability to accommodate size or volume of work;
- Inability to secure adequate financing; and
- Inability to secure adequate bonding.

Involving larger and more established firms in the development of growing DBEs is crucial to the success of the Mentor-Protégé Program. NDOT is committed to fostering a climate that allows DBE firms to benefit from the knowledge and experience of the larger and more established firms.

II. DEFINITIONS

Mentor – Generally, a mentor is defined as a person who guides another to a greater success. An experienced, large and more established firm willing to advise or train a small DBE firm.

Protégé – A small DBE firm that is guided and supported by a large and more experienced firm.

Mentor-Protégé – Two year partnership involving existing businesses that agree to work together to address matters necessary to help enhance the Protégé's success.

Disadvantaged Business Enterprise (DBE) – Firm 51% owned and controlled by a socially and economically disadvantaged individual(s) and can meet the certification requirements of the Code of Federal regulations (49 CFR Part 26).

Supportive Services Consultant – Individual/entity that can provide technical assistance to the Protégé (e.g. accounting, bond readiness, website development, marketing).

III. MEASURABLE OBJECTIVES

The Department will be looking for the following indicators of Protégé program participation success:

- Higher than average survival rate for the Program's Protégés;
- Continuous improvement in the financial strength and bonding capacity of those firms;
- Consistent success in meeting the objectives included in each Protégé's individual business plan; and
- High rate of successful transition out of the program.

IV. ROLES & RESPONSIBILITIES

Those most deeply involved in the program will be NDOT as well as those firms that are selected as Protégés and those firms that agree to become Mentors.

NEVADA DEPARTMENT OF TRANSPORTATION

NDOT is the sponsor/program administrator. NDOT's duties include:

- Advertising and promoting the program;
- Organizing related business events;
- Collecting enrollment information from potential Protégés;
- Informing and reminding Mentors and Protégés of their roles and responsibilities;
- Collecting status reports;
- Maintaining program records;
- Identifying the necessary sources of Supportive Services funding; and
- Evaluating the progress of the Mentors' and Protégés' partnership through the submission of quarterly progress reports. These quarterly reports will allow NDOT to monitor the Mentor-Protégé relationship and the achievement of the goals identified in the Mentor-Protégé Developmental Action Plan.

SUPPORTIVE SERVICES

The Department, inasmuch as possible, will provide information for Protégés to seek technical assistance (e.g., accounting, bond readiness, website development, and marketing). The services provided to any one firm will depend on its particular needs and to local resources available. Mentors and Protégés will jointly identify those needs during their regular meetings. If effective, the Mentoring process will help the Protégés make the most intelligent and effective use of Supportive Services, and generally, encourage the sound business practices that increase a firm's potential for sustainable growth. The Department will consider reimbursement of costs of supportive services but any request for reimbursement will need adequate justification and must be provided to, and approved by, the Department in advance of use of the services.

The major categories of Supportive Services could include, but are not limited to the following:

- General business management;
- Financial administration;
- Insurance and bond readiness;

- Website development; and
- Business development/marketing.

MENTORS

The quality of the Mentor is the key to the success of any Mentor-Protégé program. Mentors will represent well-established firms, who have the knowledge and experience to help DBEs/SBEs refine and implement sound operating plans.

The Mentor firm will be required to meet with the Protégé on a regular basis. Mentors should train their Protégés to accomplish the following (Also see attached Memorandum of Understanding (MOU):

- Set targets for improvement;
- Set time table for meeting those targets;
- Assist with Protégé's business strategies;
- Assist in evaluating the outcomes;
- Assist in development of the Protégé's Business Plan;
- Regularly review their Protégé's business and action plans; and
- Monitor their Protégés' key business indicators, including their cash flow, work in progress and recent bids.

PROTÉGÉ

The Protégé is a firm that has been in business a minimum of one year and has demonstrated reasonable business acumen. The Protégé's responsibilities include, but are not limited to:

- Identify operational weaknesses;
- Attend meetings scheduled by Mentors;
- Share financial and other proprietary information with Mentor;
- Provide Mentor with company's business profile (accomplishments, certifications, current work-in-progress, current capacity and location);
- Make every reasonable effort to implement the business decisions that the meetings produce; and
- Take the initiative to request whatever additional assistance they may need to address significant business issues.

V. STANDARD OPERATING PROCEDURES

Admission to the NDOT Mentor-Protégé Program is by application (see attached). Once accepted, each Protégé is paired with a Mentor. Working together, a Memorandum of Understanding (MOU) will be signed and approved by the Department (see attached for a sample MOU). The Mentor focuses on assisting the Protégé in developing a business plan, developing marketing strategies, understanding financial statements, and identifying and implementing other action items needed to meet the Protégé firm's goals. The Mentor and Protégé, will together, develop and implement a Mentor-Protégé Developmental Action Plan.

This Program is neither designed nor intended to meet any legal standards set by federal, state, local or other public agencies. The Mentor-Protégé program goal is to pair companies in a relationship that each finds acceptable. The Mentor-Protégé partnership may be dissolved upon written request by either party within 30 days. NDOT will review all circumstances on a case by case basis.

APPLICATION PROCESS

Selection for the NDOT Mentor-Protégé Program is conducted through an application process. In addition to announcing the process on the NDOT website, solicitation to DBE firms is made via letter and e-mail. To apply for participation, businesses must meet the following criteria:

- Participants must be current on all taxes and applicable licenses;
- Current business must have been in continuous operation for the last 12 months;
- Participants must be certified as a DBE in Nevada and be headquartered in Nevada;
- Participants must be involved in the highway construction industry; and
- Participants must be committed to following program rules, guidelines, and processes so that incremental growth and business success can be achieved.

SELECTION OF MENTORS

The Department will solicit individuals to participate as Mentors. To facilitate a successful working relationship between the Mentor and Protégé, NDOT will attempt not to pair industry competitors, unless a request is made (in writing) by the Mentor or Protégé.

The potential Mentor is advised of the Program parameters and its purpose. Emphasis is placed on the commitment necessary to making the program work.

The Mentors' experience can be expected to assist Protégés:

- Identify any weaknesses in the Protégé's general or financial management;
- Identify the professional services that could help address those areas;
- Identify any seminars or other educational programs that Protégés should take; and
- Directly impact Protégés' engineering, project, and construction management.

SELECTION OF PROTÉGÉS

NDOT solicits DBE firms performing work in the highway construction industry to make application to the Program. In addition to the application deadline being posted on the website, NDOT will solicit DBE/SBE firms through its DBE program and community resources.

All applicants must complete and submit a Program application. NDOT reviews all information contained in the application prior to interviewing an applicant.

NDOT will not accept applications from new, start-up firms. To be considered for selection into the NDOT Mentor-Protégé program, the firm must be in operation for at least one year.

Mentors and Protégés will be invited to meet and determine if they are compatible. If one party or both decide not to go forward, NDOT will restart the matching process.

PROTÉGÉ PERFORMANCE STANDARDS

If the Mentor-Protégé Program is successful, Protégés will achieve measurable success against a sound business plan. The Program expects Protégés to demonstrate continuous improvement -- from quarter to quarter and from year to year -- in the following areas:

- Capital base, including:
 - Working capital;
 - Depreciated value of equipment owned or leased;

- Payroll;
- Material expensed;
- Overhead expensed;
- Net profit;
- Available credit;
- Bonding limits, per job and in the aggregate;
- Value of current and future work;
- Success in getting profitable work outside any government or other procurement program for small, minority, women or disadvantaged business enterprises;
- Retention of reliable and productive employees; and
- Customer loyalty resulting in repeat business.

MEETINGS

The first meeting associated with the Mentor-Protégé partnership will be an orientation that will be conducted by NDOT.

Once paired, Mentors and their Protégés is expected to conduct regularly scheduled meetings. Additional regular contact via telephone or e-mail is also required. The Mentor and Protégé, at the onset of their relationship, should establish which party will be responsible for arranging these meetings, creating an agenda and a recap of the meeting.

At these meetings, the Mentor and Protégé should also review the items in the MOU and the Developmental Action Plan established at the beginning of the relationship and make any appropriate changes. They should, for example:

- Review and identify any new barriers to the Protégé's success;
- Identify any management, accounting or other professional services that the Protégé still needs;
- Set specific targets for further improvement; and
- Set a deadline for hitting each target.

The Mentor and Protégé will develop a Developmental Action Plan with objective goals and milestones outlined, steps and results required, for the Protégés to improve their prospects for success. Meetings should be held at least monthly and, on their own initiative, Mentors, Protégés, and any Supportive Services staff should also hold such other meetings as they may find necessary.

In addition to the Developmental Action Plan, the Mentor and Protégé should review the Protégé's business plan. Together, Mentors and their Protégés should identify the steps necessary to implement that Plan, and should agree on a set of specific actions for the Protégé to take by the time of the next meeting. Mentors and their Protégés should also review and discuss the latter's recent performance, and see how it compares with earlier decisions and the Protégé's overall business plan.

PROGRESS REPORTS

Progress reports are intended to help everyone assess the actual results of the Mentor-Protégé Program. They should also help the various participants clarify and strengthen their individual roles. Recognizing that the relationships among the participants are all voluntary, the reports should also help strengthen the program as a whole. The reports may be in any format but should be consistent with any plan developed by the Mentor and Protégé and be in conformance with the MOU (see attached format sample).

Quarterly reports are to be submitted to NDOT by the Mentor and Protégé, both jointly and separately. These reports will advise of the Protégé's most recent efforts to implement its Developmental and Business plans and the results of those efforts. The report will also detail the Protégé's current needs. Mentors and Protégés are to use this report to guide their next steps. The reports may be in any format but should be no more than a few pages in length and should include any noteworthy accomplishment, need, or issue.

PROTÉGÉ RESPONSIBILITIES

Protégés have certain responsibilities. They are required to attend all regularly scheduled meetings and to help complete the agenda for those meetings. Between such meetings, Protégés must make every reasonable effort to implement the business decisions that the meetings produce. Depending on the circumstances, they may, for example, need to:

- Work with an accountant or other Supportive Services Consultant;
- Attend seminars and/or other educational programs; or
- Implement specific changes in the management or operation of their businesses.

On a continuing basis, and for as long as they are enrolled in the program, Protégés must also:

- Provide complete and up-to-date information on their businesses, including their business and action plans, their cash flow, their latest bids, and their work in progress; and
- Take the initiative to request whatever additional assistance they may need to address significant business issues.

GRADUATION

Pending the attainment of the conditions and objectives outlined in the Memorandum of Understanding (attached), a formal graduation acknowledgement will be conducted at the end of the two-year period. Many variables will affect the pace with which each Mentor-Protégé team will realize their goals. At the close of two years, if a Mentor-Protégé team has not met all of the conditions and objectives in the MOU and Developmental Action Plan, an exit strategy will be established with NDOT's guidance.



NEVADA DEPARTMENT OF TRANSPORTATION
MENTOR-PROTÉGÉ PROGRAM
MENTOR APPLICATION

Business Name:	Business Address:	Mailing Address (if different)
Owner Name:	Owner Title:	
Business telephone:	Business Fax Number:	E-mail address:

Work Type:

Name of Insurance Company:	Name of Bonding Company:	
Agent:	Agent:	
Phone Number:	Phone Number:	
\$ Amount:	Single \$:	
Type of Coverage:	Aggregate \$:	
Gross Receipts (3 years):		

Please list major projects for the last two years (list the most recent first). If new business, list previous business		Indicate your role: (P) Prime Contractor; (JV) Joint Venture; (SUB) Subcontractor			
Project Name	Type of Project	Role			Contract
		P	JV	SUB	
					\$
					\$
					\$
					\$

Check the categories you would be interested in Mentoring (check all that apply):

<input type="checkbox"/> Business Plans	<input type="checkbox"/> Obtaining Permits Sub-contractors	<input type="checkbox"/> Bonding & Insurance
<input type="checkbox"/> Banking Services	<input type="checkbox"/> Organization Structure	<input type="checkbox"/> Prompt Payment Procedures
<input type="checkbox"/> Records & Contract Management	<input type="checkbox"/> Payrolls (federal, state, fringe benefits)	<input type="checkbox"/> Operations Assessment
<input type="checkbox"/> Reading & Interpreting Contract Plans & Specifications	<input type="checkbox"/> Personnel Management	<input type="checkbox"/> Analysis of major, fixed and variable cost
<input type="checkbox"/> Post Award Bid Assessment	<input type="checkbox"/> Construction Equipment & Materials	<input type="checkbox"/> Accounting Records Preparation & Maintenance
<input type="checkbox"/> Preparing & Negotiating Change Orders, Job Budgets, Trade Payment Breakdowns	<input type="checkbox"/> Market Analysis	<input type="checkbox"/> Competitive marketplace Overhead
<input type="checkbox"/> Cost Accounting	<input type="checkbox"/> Implementation & Action Plans	<input type="checkbox"/> Job Cost & Work In Progress
<input type="checkbox"/> Troubleshooting & Delay Avoidance	<input type="checkbox"/> Scheduling & Purchasing	<input type="checkbox"/> Quality take-off and Estimating
<input type="checkbox"/> Project Planning & Scheduling	<input type="checkbox"/> Other: <i>(Please explain)</i>	

1. State why you want to participate in the Mentor-Protégé Program (attach additional sheet(s) if necessary)

2. What business skills or work type do you want to share with your involvement in the Mentor-Protégé program?

3. What percentage of your contracting is in government: _____%; private _____%.
Identify government entity: City, County, State, Federal, Airports, etc.

Contact NDOT with questions regarding this application or the Mentor-Protégé program. When completed, forward your application by mail or e-mail to:

Title VI/DBE Manager External Civil Rights Division Nevada Department of Transportation 600 S. Grand Central Parkway, Suite 138 Las Vegas Nevada 89106 (702) 730-3317 wmarshall2@dot.state.nv.us	Assistant Title VI/DEB Manager External Civil Rights Division Nevada Department of Transportation 600 S. Grand Central Parkway, Suite 142 Las Vegas Nevada 89106 (702) 730-3305 tlewis@dot.state.nv.us
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Personal Information Notice

Pursuant to Federal Privacy Act (P.L. 93-579), notice is hereby given for the request of personal information by this form. The requested information is voluntary. The purpose of the information is to facilitate the processing of this form. Failure to provide all or any part of the requested information may delay processing of this form. No disclosure of personal information will be made unless permissible under the Act. Direct inquiries regarding record maintenance to the Office of External Civil Rights at the Nevada Department of Transportation.

Signature certifies that information supplied on all corresponding pages and attachments are accurate.

Signature **Date**

Printed Name **Date**



NEVADA DEPARTMENT OF TRANSPORTATION
MENTOR-PROTÉGÉ PROGRAM
PROTÉGÉ APPLICATION

Business Name:	Business Address:	Mailing Address (if			
Owner Title:	Owner Name:				
Do you have a Business Plan? ___ Yes ___ No		Business telephone:	Work Type:		
		Business Fax:			
		Number:			
		E-mail address:			
Name of Insurance Company:		Name of Bonding Company:			
Agent:		Agent:			
Phone Number:		Phone Number:			
\$ Amount:		Single \$:			
Type of Coverage:		Aggregate \$:			
Gross Receipts (3 years):					
Please list major projects for the last two years (list the most recent first). If new business, list previous business references.			Indicate your role: (P) Prime Contractor; (JV) Joint Venture; (SUB) Subcontractor		
Project Name	Type of Project	Role			Contract
		P	JV	SUB	
					\$
					\$
					\$
					\$

Check the categories where you need assistance:

<input type="checkbox"/> Business Plans	<input type="checkbox"/> Obtaining Permits Sub-contractors	<input type="checkbox"/> Bonding & Insurance
<input type="checkbox"/> Banking Services	<input type="checkbox"/> Organization Structure	<input type="checkbox"/> Prompt Payment Procedures
<input type="checkbox"/> Records & Contract Management	<input type="checkbox"/> Payrolls (federal, state, fringe benefits)	<input type="checkbox"/> Operations Assessment
<input type="checkbox"/> Reading & Interpreting Contract Plans & Specifications	<input type="checkbox"/> Personnel Management	<input type="checkbox"/> Analysis of major, fixed and variable cost
<input type="checkbox"/> Post Award Bid Assessment	<input type="checkbox"/> Construction Equipment & Materials	<input type="checkbox"/> Accounting Records Preparation & Maintenance
<input type="checkbox"/> Preparing & Negotiating Change Orders, Job Budgets, Trade Payment Breakdowns	<input type="checkbox"/> Market Analysis	<input type="checkbox"/> Competitive marketplace Overhead
<input type="checkbox"/> Cost Accounting	<input type="checkbox"/> Implementation & Action Plans	<input type="checkbox"/> Job Cost & Work In Progress
<input type="checkbox"/> Troubleshooting & Delay Avoidance	<input type="checkbox"/> Scheduling & Purchasing	<input type="checkbox"/> Quality take-off and Estimating
<input type="checkbox"/> Project Planning & Scheduling	<input type="checkbox"/> Other: <i>(Please explain)</i>	

1. State why you want to participate in the Mentor-Protégé Program (attach additional sheet(s) if necessary)

2. What business skills or work type do you want to learn or enhance with involvement in the Mentor-Protégé program?

3. What percentage of your contracting is in government: _____%; private _____%.
Identify government entity: City, County State, Federal, Airports, etc.

Contact NDOT with questions regarding this application or the Mentor-Protégé program. When completed, forward your application by mail or e-mail to:

Title VI/DBE Manager External Civil Rights Division Nevada Department of Transportation 600 S. Grand Central Parkway, Suite 138 Las Vegas Nevada 89106 (702) 730-3317 wmarshall2@dot.state.nv.us	Assistant Title VI/DBE Manager External Civil Rights Division Nevada Department of Transportation 600 S. Grand Central Parkway, Suite 142 Las Vegas Nevada 89106 (702) 730-3305 tlewis@dot.state.nv.us
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Signature certifies that information supplied on all corresponding pages and attachments are accurate.

Signature

Date

Printed Name

Date

**NEVADA DEPARTMENT OF TRANSPORTATION
DBE SUPPORT SERVICES**

Mentor-Protégé

MEMORANDUM OF UNDERSTANDING

Between

(Mentor)

And

(Protégé)

This is a Mentor-Protégé Memorandum of Understanding (MOU) between (Mentor), headquartered at (location) and (Protégé), and headquartered at ____ (location) _____. This MOU between Mentor and Protégé is as set forth below this ____ day of _____, 201__.

A. Introduction and Purpose

The Mentor-Protégé Program is a NDOT initiative established to provide an opportunity for DBE/SBE firms to receive developmental assistance in business and/or technical areas from prime consultants performing on NDOT projects. The goal of the Mentoring experience is to act as a catalyst for the Protégé to become a competitive consultant to government agencies and consultants in the private sector. It is anticipated that this experience will foster a relationship between Mentor and Protégé, and provide increased opportunities that will contribute to Protégé's firm's business development and growth.

This MOU is recognized by the NDOT DBE Program as the framework for business development that the Mentor has agreed to provide to Protégé, as well as the conditions under which both parties will operate.

Mentor and Protégé entered this MOU for the following mutual benefit(s)

B. Objectives of the MOU

Protégé should identify the basis of interest and the objectives of this MOU. The Protégé has identified the following reasons as the basis of interest and the objectives of this MOU: *(Identify specific questions and assistance discussed with the Mentor referencing components of your*

business plan. Objectives should reflect the specific needs of the Protégé. This section should be as descriptive as necessary. Protégé can reference the 'Types of Assistance' listed in the Mentor Protégé Program Plan or the Mentor-Protégé Surveys for examples of services and assistance. Examples: Accounting; Estimating; professional advice; administration; Design Engineering; Proposal Writing; Contract Preparation as prime or sub; Marketing; PR; Construction Engineering; NAICS Code Expansion; Construction Software; Project Management; QA/QC, any others be specified.)

C. Curriculum and Joint Training

The Mentor has identified the following activities where Mentor staff and resources may be used to provide the PROTÉGÉ education, training, shared resourcing or joint attendance at industry or NDOT sponsored training with PROTÉGÉ. *(Identify resources including staff expertise, computer resources/hardware, office space, access. Activities should reflect the specific Mentor resources that address the concerns discussed with the Protégé. This section should be as exhaustive as possible and may address exclusions. Some example types of assistance taken from the Mentor-Protégé Surveys for services and assistance needed/provided can be incorporated here).*

Examples: Access to Drafting/Estimating equipment; professional advice from corporate lawyers; Design Engineering; Proposal Writing; Contract Preparation as prime or sub; Construction Engineering; sponsorship to attend ACEC National Conference, joint attendance at staff training or corporate strategic planning meeting, Construction Software; Project Management advice for bridgework; coordinate meeting with insurance/banking resource; QA/QC tools; all others must be specified.)

D. Confidential and Non-Disclosure

(Mentor and Protégé may include any language necessary to protect the exchange of proprietary information or resources. The language may be similar to the following, at their discretion):

In carrying out the terms of this MOU, it may be necessary for the parties to provide proprietary data and information to one another. To the extent that such data or information so identified in writing by the disclosing party at the time of the exchange, the receiving party agrees to hold such proprietary information in the strictest confidence and further agrees that it will not use any such proprietary data or information, except in connection with this Mentor-Protégé MOU, and will not disclose any such proprietary data or information to any third party, unless authorized in writing by the disclosing party.

The provisions of this paragraph shall not apply to data or information: (i) was in the public domain at the time it was disclosed; or (ii) is disclosed pursuant to the order of a court of competent jurisdiction; or (iii) becomes part of the public domain without breach of this MOU; or (iv) is disclosed with the written approval of the disclosing party; or (v) was independently developed by the receiving party; or (vi) is or was disclosed by the disclosing party to a third party without restriction.

The standard of care imposed on the receiving party for such proprietary data or information will consist of at least the same level of effort the receiving party employs to avoid unauthorized use, disclosure or dissemination of its own proprietary matters of similar value and sensitivity. The receiving party shall not be liable for the inadvertent or accidental disclosure of proprietary information, if such disclosure occurs despite the exercise of the same degree of care as such party normally takes to preserve its own proprietary data or information.

E. General Commitments

The Mentor is committed to providing an adequate amount of time and proper instruction. The Protégé is committed to keeping the Mentor fully informed and meeting any milestones. NDOT DBE Support Services or its agents are committed to coordinating, facilitating and evaluating the program as well as keeping any stakeholder informed on the performance of the program. Each will act with a sense of urgency and mutual respect for each other's time.

Duties

1. Mentor:

- a. Attend meetings.
- b. Review materials submitted by Protégé (business plan, accounting procedures, action plan, etc.) and provide professional, constructive feedback.
- c. Jointly develop and Review Protégé' key indicators.
- d. Recommend areas for improvement consistent with the objectives of this MOU.
- e. Follow prescribed training program for identified areas of improvement
- f. Follow-up on mutual agreements for action.

2. Protégé:

- a. Prepare and attend meetings.
- b. Define and assess its needs.
- c. Present completed and up-to-date information.
- d. Establish an appropriate communications schedule.
- e. Follow-up on mutual agreements for action.

3. NDOT DBE Support Services and/or agents:

- a. Ensures progress by monitoring, providing feedback, and reporting to the Stakeholder Review Panel
- b. Provides tools, resources and feedback to the Mentor-Protégé pair to facilitate completion of the MOU objectives.

4. Preparation of Mentor-Protégé Quarterly and Annual Reports:

The Mentor and Protégé shall use its reasonable and best efforts in completing the required progress reports.

5. Performance Measures:

Protégé will demonstrate actions taken to implement tasks discussed with Mentor to develop in area(s) of need. Quarterly and annual reports will serve as the evaluation of the program. The reports may be in any format but will consist of only a few pages and submitted to the NDOT Program Coordinator.

F. Specific Commitments

F1 - Mentor Commitments

The Mentor commits to a minimum of __ hours per quarter to be spent with Protégé toward the objectives of the MOU. The time commitment may include:

- a. Work with Protégé to create a Development Action Plan of activities and estimated milestones that will be carried out under this MOU.
- b. Discussions or meetings with Protégé and additional professional contacts within the Mentor's organization including financial, legal and human resources staff;
- c. Evaluation of the Protégé's technical capabilities, assessment of its technical strengths, and identification of areas of potential subcontracting opportunities.
- d. Training for agreed upon items under Section 3.0 or accompanying Protégé to NDOT sponsored training listed under Section 4.1.
- e. In addition to the developmental assistance, Mentor will provide factors to assess the Protégé's developmental progress under the program. The criteria for evaluation of the Protégé's developmental success might include:
 - A plan to measure the effectiveness of the relationship.
 - The quality of the Protégé firm's technical capabilities.
 - How the Mentor's assistance will potentially increase contracting and subcontracting opportunities for the Protégé firm.
- f. Honor the nondisclosure of any privileged or proprietary information. Mentor shall not, without prior expressed permission of the Protégé, disclose to others, share with other firms, or otherwise make public knowledge or incorporate within Mentor's projects.

F2 - Protégé Commitments

Protégé commits to the following:

- a. Work with Mentor to create an Action Plan including activities and estimated milestones that will be carried out under this MOU.
- b. Maintain the eligibility requirements of the NDOT Mentor-Protégé Program
- c. Provide proactive and efficient communication, informing NDOT and Mentor of any changes in Protégé's status that may affect the work, relationship, or this MOU, e.g. if the size status of Protégé changes.
- d. Seek all opportunities including mutual opportunities with Mentor on contracting and subcontracting opportunities for NDOT contracts that have no DBE goals and Non-NDOT contracts.
- e. Honor the nondisclosure of any privileged or proprietary information. Protégé shall not, without prior expressed permission of Mentor, disclose to others, share with other firms, or otherwise make public knowledge or incorporate within Protégé's projects.

- a. Ability to successfully perform construction observation and construction contract management duties on highway projects (when Protégé offers those services);
- b. Decreased reliance of Protégé on Mentor for guidance and assistance with the interpretation of NDOT policy or procedures;
- c. Increased financial capacity; and
- d. Increased numbers of projects with consultants other than Mentor.

If NDOT determines that the Mentor-Protégé Program requirements are not being followed, the MOU may be terminated.

I3 - Points of Contact

The following individuals are the authorizing representatives for the Mentor, Protégé, and NDOT at the time of execution of this MOU:

- a. Mentor: Name, Title
 (XXX) XXX-XXXX
 Email address
- b. Protégé: Name, Title
 (XXX) XXX-XXXX
 Email address
- c. NDOT Liaison: Name, Title
 (XXX) XXX-XXXX
 Email address

I. Implementation-Terms and Conditions

General

The parties understand that the MOU is subject to the approval of NDOT and is not intended to be legally binding or a vehicle for transfer or commitment of funds or other resources, including a subcontract.

- a. The MOU shall not constitute, create, or in any way be interpreted as a joint venture, partnership, or formal business organization of any kind.
- b. Either party may change its' cognizant point of contact by written notice to the other, with copy to the NDOT Program Coordinator.
- c. All cooperation between Mentor and the Protégé will be on a nonexclusive basis. Both parties are entitled to execute similar MOU's with other organizations without the notification or approval of either party.
- d. Any resultant subcontract executed between Mentor and the Protégé must be consistent with the requirements of Mentor's contract with NDOT and be subject to NDOT consent.

Intellectual Property and Proprietary Information

It is specifically understood that disposition of title to and/or rights in and to any intellectual property (including inventions and discoveries, patents, technical data, and copyrights) made or conceived by an employee or representative of Mentor or Protégé, in the course of or under the MOU, remains with the initiating party or developer. Neither party shall divulge to any third party any business or confidential information to which access may be given in the course of the MOU during the period of the MOU.

Prohibitions

The following are prohibited in a Mentor-Protégé relationship:

No Mentor-Protégé MOU can force Protégé into an exclusive arrangement with Mentor. As a general rule, Protégé must retain the right to contract with others during the duration of the MOU and Developmental Action Plan.

- a. Under no circumstances is Mentor permitted to have an ownership interest of any kind in the Protégé.
- b. Although there may be various levels of assistance rendered by a Mentor to the Protégé, no assistance can reach the level where day-to-day control has been relinquished by Protégé to Mentor.
- c. The parties to a prospective Mentor-Protégé relationship must not proceed without a written Developmental Action Plan, which has been reviewed and approved in advance by NDOT. Any activities conducted prior to the existence of a fully executed and approved Action Plan will not be credited toward established contract DBE goals nor will the costs be reimbursable by NDOT.
- d. The DBE may never be relegated to the status of middleman, broker or front.
- e. At no time, shall any arrangement lead to a situation where final decision-making authority is taken away from Protégé.

NONSOLICITATION OF EMPLOYEES

During the course of this Agreement:

Mentor and Protégé agree that, for a period of two (2) years from the date of this Agreement, Mentor and Protégé will not solicit, contact or communicate with any employee for the purpose of inducing such employee to terminate his or her employment with Mentor or Protégé.

J. Procedure to Withdraw From MOU

If either Mentor or Protégé proposes to end its participation in this MOU, they will furnish written notice of the proposed withdrawal from the MOU to the NDOT Liaison, stating the specific reason(s), at least thirty (30) days in advance of the effective date.

K. Expiration of MOU

The Mentor will notify NDOT of the date that the MOU will expire. The Mentor and Protégé will complete and submit a final progress report to NDOT.

L. Signatures for MOU

Mentor and Protégé are both required to sign and date the MOU. This MOU is effective for two (2) years (24 months) beginning on the last date signed below.

Mentor:

NAME &TITLE (Date)

Protégé:

NAME &TITLE (Date)

NDOT Officials:

(Name, Civil Rights Officer) (Date)

(Name, DBE Program Chief) (Date)

Sample Meeting Report Form

Protégé Report Form for period: _____

Protégé: _____ Representative: _____
(Print and Sign Name)

Mentor: _____ Representative: _____
(Print and Sign Name)

1. Working Capital:

- Current Assets Less
- Current Liabilities: _____
- Accounts Receivable: _____
Over 60 Days: _____
- Accounts Payable: _____
Over 30 Days: _____

2. Capacity:

- Depreciated Value of Equipment Owned or Leased: _____
Monthly Debt Service: _____
Total Debt: _____
- Total Payroll for Current Month: _____
Preceding Month: _____
Estimate for Following Month: _____
Payroll Taxes and Fringe Benefits: ___[Whether Paid]___
- Total Material Expensed: _____
- Total Overhead Expensed: _____
- Net Profit: _____
- Bank Line of Credit: ___[Yes or No]___
Amount: _____

3. Bonding:

- Surety Company _____[Name]_____
- Limit Per Project: _____
- Aggregate Limit: _____

4. Insurance:

- Current Certificates (for Workers Compensation,
General Liability, Etc.) ___[Yes or No]___

5. Value of Current and Future Work:

- Work in Progress: _____
- Backlog: _____

6. Transition:

- Number of Months in Program: _____
- Projected Date of Transition: _____
- On Schedule: ___[Yes or No]___

(SAMPLE) DEVELOPMENTAL ACTION PLAN
(Protégé)
(Dates of Plan)

Action to Achieve Objective	Time-Frame	Lead Person (Mentor)	Lead Person (Protégé)	Action Update
Work in partnership with Mentor to Develop a Business Plan if not already developed	March 2016	Business Mgr.	Owner	Need to schedule first meeting.
Explore the business community for market of services	June 2016	Business Mgr.	Owner	Need to schedule first meeting.
Complete a Bonding Needs Assessment	May 2016	Business Mgr.	Owner	Attend a bonding class.
Understanding Legal Aspects of Bidding Contracts and Successful Interaction with Primes	July 2016	To be Appointed	Owner	Attend a Legal Aspects of Bidding Class. Attend Networking Functions.
Human Resource Essentials for Small Business	July 2016	Training Officer	Owner	Attend Small Business Human Resources Class

Appendix D, 49 CFR, Part 26

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B) (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor- protégé agreement.