



## City of Phoenix

### PTD Disadvantaged Business Enterprises (DBE) Program DBE Requirements - Race & Gender-Neutral Competitive Procurement

**SUBRECIPIENT:** \_\_\_\_\_

The City of Phoenix has shown a historical commitment to business diversity. The City of Phoenix and its partners strive to advance the economic growth of small and minority businesses through its Disadvantaged Business Enterprises (DBE) Program.

The City of Phoenix DBE Program is managed and administered by the City's Equal Opportunity Department, Contract Compliance Division. Through a coordinated effort among several city departments and partner agencies, the DBE Program provides certification and opportunities in construction, purchasing, management, and technical assistance.

#### SECTION I. DEFINITIONS

**Arizona Unified Certification Program (AZUCP)** means a consortium of government agencies organized to provide reciprocal DBE certification within Arizona pursuant to 49 Code of Federal Regulations (CFR) Part 26. The official DBE database containing eligible DBE firms certified by AZUCP can be accessed at: <https://utracs.azdot.gov>.

**Arizona's Unified Transportation Registration and Certification System (AZ UTRACS)** is a comprehensive internet-based business directory containing certified ACDBEs, DBEs, and SBCs. The directory includes detailed firm profiles that include capabilities and geographic locations that can be accessed at: <https://utracs.azdot.gov/Search>.

**Bidders List** means a list created by the submitter, consisting of information about all Disadvantaged Small, Minority Business (DSMB) and non-DSMB firms that bid or quote on the project. The list should include the firm's name; address; firm's DBE or non-DBE status; race and gender information for the firm's majority owner; NAICS code applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm. PTD will submit the completed bidders list to FTA as required.

**Broker** is a firm who arrange, facilitate, or expedite transactions.

**City of Phoenix Certification and Compliance System** means the web-based certification and compliance system used to track and monitor DBE and Small Business Participation. The system can be accessed at: <https://phoenix.diversitycompliance.com>.

**Commercially Useful Function (CUF)** means that a DBE is responsible for executing 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 must 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. If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own work force, or if the DBE Subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, the DBE is presumed not to be performing a Commercially Useful Function.

**Contract** means a legally binding agreement that creates obligation between a seller to furnish supplies or services (including construction and professional services) and the buyer to pay for them.

**Contractor** means the submitting firm that was awarded the given contract with the Recipient and/or Subrecipient, to perform the work or service as specified by the contract.

**Disadvantaged Business Enterprise (DBE)** means a for-profit Small Business Concern, that has at least 51% owned and controlled by individuals or individual who are socially and economically disadvantaged, that have successfully completed the DBE certification process and have been granted DBE status by a UCP member pursuant to the criteria contained in 49 CFR Part 26. A directory of currently certified DBE firms is located at <https://utracs.azdot.gov/Search>.

**Distributor** means an established business that engages in the regular sale or lease of the items specified by the contract. The business 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. If a Distributor meets the requirements for Commercially Useful Function (**CUF**), then 40% of the cost of materials or supplies counts toward the DBE goal.

**EOD** means the City of Phoenix Equal Opportunity Department.

**Goods and Services Providers** are firms that provide goods and services that represent a CUF as a DBE or Small Business.

**Joint Venture (JV)** means an association between two or more persons, partnerships, corporations, or any combination thereof, formed to carry on a single business activity. The JV is limited in scope and duration to this Contract. The resources, asset, and labor of the participants must be combined in an effort to accrue profit.

**Manufacturer** means a firm that owns (or leases), operates, or maintains 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.

**Outreach Efforts** means the diligent and good faith efforts demonstrated by a Submitter to solicit participation from interested and qualified DBEs and other Small Businesses. Submitter must identify and document potential business opportunities for DBEs and other Small Businesses, describe what efforts were undertaken to solicit DBE and other Small Businesses participation, disclose results of negotiations with DBEs and other Small Businesses, and communicate and record Submitter's selection decisions relating to DBE and Small Business participants.

**PTD DBE Compliance Specialist** means a Recipient employee responsible for DBE Program compliance with this contract.

**Public Transit Department (PTD)** is the designated recipient and responsible agency for the Federal Transit Administration (FTA) funding and compliance.

**Race- and Gender-Neutral (RGN) Measures** means a measure or program that is or can be used to assist all Small Businesses.

**Recipient** means the City of Phoenix Public Transit Department (PTD) for the purposes of this Contract.

**Regular Dealer/Supplier** 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.

**Responsible Submitter** means a firm that has been selected to continue in the procurement process by the Recipient and/or Subrecipient.

**Responsive Submitter** means a firm that has met the minimum DBE program requirements as outlined in the solicitation and due at the time of submittal.

**Small Business Concern (SBC)** means with respect to firms seeking to participate in contracts funded by the U.S. Department of Transportation (US DOT), a Small Business Concern as defined in section 3 of the Small Business Act and Small Business Administration regulations implementing the Act (13 CFR part 121), which Small Business Concern does not exceed the cap on average annual gross receipts specified in 49 CFR § 26.65(b). "Small Business" and "Small Business Concern" are used interchangeably in this DBE Contract Clause.

**Small Business Enterprise (SBE)** means a for-profit Small Business that has been determined to meet the requirements for SBE certification with the City of Phoenix and whose certification is in force at the time of the award of business by the City. A directory of City of Phoenix certified SBE firms is located at <https://phoenix.diversitycompliance.com>.

**Small Business Participation Plan (SBPP)** details the types of work firms will solicit DBEs to perform and a projected timeframe in which actual subcontracts will come to fruition. The Recipient requires firms to make written SBPP revisions annually throughout the life of the contract.

**Subcontract** means a contract at any tier below the prime contract, including a purchase order.

**Subcontractor** means a firm that holds a contract/agreement between a firm and a lower tier contractor, including a vendor under a purchase order.

**Submitter** means a contractor, corporation, or firm that tenders a submittal to the Recipient or its subrecipient to perform services requested by a solicitation or procurement. The submittal may be direct or through an authorized representative. (Submitter is inclusive of the terms: *Bidder, Offeror, Proposer, Respondent*, etc.)

**Subrecipient** is an entity that receives Federal Transit Administration (FTA) funds from the Recipient. FTA subrecipients include but is not limited to the City of Avondale, the City of Buckeye, the City of Chandler, the City of Glendale, the City of Goodyear, the City of Mesa, the City of Peoria, the City of Tempe, and the City of Scottsdale.

**Successful Submitter** means a firm that has been awarded the contract by the Recipient and/or Subrecipient to perform services or furnish supplies requested by a solicitation or procurement.

**Transit Vehicle Manufacturers (TVMs)** means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

**Transit Vehicle Manufacturers Goals** means the goals for which FTA recipients will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR 26.49.

## **SECTION II. GENERAL REQUIREMENTS**

### **A. Applicable Federal Regulations**

This Contract is subject to DBE requirements issued by USDOT in 49 CFR Part 26. Despite the lack of a race- and gender-conscious DBE participation goal for this Contract, the Recipient must track and report DBE participation that occurs as a result of any procurement, goods/services, or other arrangement involving a DBE. For this reason, the Contractor must provide all relevant information to enable the required reporting.

### **B. DBE Participation**

For this solicitation, the City has *not* established a race- or gender-*conscious* DBE participation goal. The Recipient extends to each individual, firm, vendor, supplier, contractor, and Subcontractor an equal economic opportunity to compete for business. The Recipient and Subrecipient uses race- and gender-*neutral* measures to facilitate participation of DBEs. The Recipient and Subrecipient strongly *encourages* each Submitter to voluntarily subcontract with DBEs to perform a Commercially Useful Function (CUF) for the part of the work that the Contractor might otherwise perform with its own forces.

### **C. Counting DBE Participation**

The Recipient will count DBE participation as authorized by federal regulations. A summary of these regulations can be found at [www.ecfr.gov](http://www.ecfr.gov) (49 CFR Part 26.39 and Part 26.55).

### **D. Small Business Participation**

The Recipient will track the participation of all approved businesses throughout the life of this contract. The Recipient will count Small Business participation as authorized by federal regulations. A summary of these regulations can be found at [www.ecfr.gov](http://www.ecfr.gov) (49 CFR Part 26.39).

- a. **Initial SBPP** The Submitter/Contractor shall complete and submit an Initial Small Business Participation Plan (SBPP) within **30 calendar days after contract award** (as authorized by Subrecipient's governing board or council) including any associated supporting documentation. To be considered responsive, the SBPP must 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 SBPP must include an estimated time frame in which actual DBE subcontracts would be executed.
- b. **Annual SBPP Update** The Submitter/Contractor shall provide a Small Business Participation Plan (SBPP) on an **annual basis** by the anniversary date of contract execution. The SBPP must contain strategies to foster small business participation and information concerning the small businesses, including any changes to the initial SBPP.

**E. DBE Certification**

Only firms (1) certified by the AZUCP or another UCP member, and (2) contracted to perform a Commercially Useful Function (CUF) on scopes of work for which they are certified, may be considered to determine DBE participation resulting from RGN measures on this Contract.

**F. Civil Rights Assurances**

As a recipient of USDOT funding, the Recipient and Subrecipient has agreed to abide by the assurances found in 49 CFR Parts 21 and 26. Each Contract signed by the Recipient and/or its Subrecipient and the Contractor, and each Subcontract signed by the Contractor and any Subcontractor, must include the following assurance *verbatim*:

- a. "The contractor, sub recipient or Subcontractor must not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor must carry out applicable requirements of [49 CFR part 26](#) in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;
  - (2) Assessing sanctions;
  - (3) Liquidated damages; and/or
  - (4) Disqualifying the contractor from future bidding as non-responsible.
- b. The contractor, subrecipient or Subcontractor agrees to include the above statements in any subsequent agreement or contract covered by 49 CFR, Part 26, that it enters and cause those businesses to similarly include the statement in further agreements."

**G. Nondiscrimination/Equal Opportunity**

The Recipient and Subrecipient will not 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 Parts 26, on the basis of race, color, sex, or national origin.

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

The Recipient and Subrecipient further agrees to meet the nondiscrimination requirements provided in 49 CFR Part 26, § 26.7 with respect to the award and performance of any agreement, contract or Subcontract.

The Recipient and Subrecipient will take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered under the DBE Program.

**H. Required Outreach Efforts**

The Recipient has implemented outreach requirements for this contract. Specifically, each contract must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small businesses, including each rejection of a small-business

proposal.

If a Contractor fails to conduct these Outreach Efforts or fails to submit the required documentation of Contractor's Outreach Efforts as indicated, the Recipient may determine that the Contractor is noncompliant.

### SECTION III. PRE-AWARD SUBMITTAL REQUIREMENTS

#### A. **Form EO1 – PTD Statement of Outreach Commitment**

Each Submitter must sign, date, and submit a completed Form EO1 - Statement of Outreach Commitment. **Form EO1 – PTD is due with initial submittal.**

#### B. **Form EO2 – PTD Small Business Outreach Efforts and Bidders List**

Each Submitter must complete and submit Form EO2 –Small Business Outreach Efforts and Bidders List documenting its diligent, earnest outreach efforts for professional services, as described in this clause. **Form EO2 – PTD and all supporting documentation are due with initial submittal.**

Submitter must list all DBEs and all Small Business Concerns (SBCs) contacted by the Submitter. Submitter must also provide the following minimum information to document its Outreach Efforts and Bidders List in the designated columns within Form EO2-PTD:

##### 1. **Column A - Small Business Name and Contact Information**

Must list each business's full legal name and contact information, including address, phone number, email, and/or fax. The submitter must inquire to obtain the following: the number of years in business, its range of annual gross receipts, the gender of the majority owner, and the race of the majority owner.

##### 2. **Column B - Business Status (DBE, SBC, SBE)**

Indicate the business status. Check all that apply, if known.

- The official DBE database containing eligible DBE and SBC firms can be accessed at: <https://utracs.azdot.gov>.
- City of Phoenix SBE Certification Directory can be accessed at: <https://phoenix.diversitycompliance.com>.

##### 3. **Column C - Scope(s) of Work Solicited**

List the NAICS Cods and scope(s) of work solicited for which the small business was considered for participation in the proposal. The solicitation must include a description of the scope(s) of work being requested.

##### 4. **Column D - Solicitation Method**

Indicate the solicitation method by which each small business was contacted for your outreach efforts and provide supporting documentation. Supporting documentation must include a copy of the actual solicitation sent to DBE. The solicitation may be in the form of letters or attachments to email, phone logs, newspapers, websites, and trade papers, outreach events, etc. If using a log as supporting documentation, it must include:

- List the Solicitation Method
- Name of Submitter's Representative
- Name of Company Contacted
- Name of Person Contacted
- Company's Contact Information Used to Reach the Company (e.g. phone number, email)
- Date and Time of Contact
- Details of the Communication

**5. Column E - Selection Decision**

Indicate the Submitters selection decision for each small business that responded to the solicitation.

*Whether or not a firm was selected.*

*If not selected, provide an explanation of why the firm was not selected.*

*If selected, indicate the Dollar Value.*

**6. Column F - Method of Communication of Final Selection Outcome**

The Submitter must notify the final selection outcome to all small businesses that responded. The supporting documentation for this notification may be in the form of an email, letter, or a telephone log, etc. This documentation must show the following information regarding the final selection:

- Date firm was notified of outcome
- Method used to communicate selection:
  - Email
  - Phone
  - Fax
  - Letter
  - In person

\*Submitter must provide supporting documentation that shows Submitter has communicated its final selection decisions and outcomes to all DBEs and Small and/or Minority Businesses, including those not chosen to participate in this Contract.

Every year on the anniversary of the contract execution date of the Contract, the Contractor must provide the Recipient with an updated Small Business Participation Plan (SBPP), detailing continued commitment to reaching out to DBEs. The SBPP must contain strategies to foster small business participation and information concerning the small businesses, including any changes to the initial SBPP (EO2-PTD and EO3-PTD).

**C. Form EO3 - PTD DBE Utilization Commitment**

The Submitter must complete, sign, date and submit EO3 – PTD DBE Utilization Commitment. **Form EO3 – PTD and all supporting documentation are due with initial submittal**, which commits the Submitter to the Recipient and Subrecipient as follows:

1. The firms indicated as “Selected” on Form EO2-PTD – PTD Small Business Outreach Efforts and Bidders List, will participate in this Contract;
2. The Submitter will comply with the Race- and Gender-Neutral post-award compliance requirements as stated in the DBE contract clause;
3. Submitter understands and agrees that any and all changes or substitutions to Subcontracts with DBEs and Small Businesses must be authorized by the PTD DBE Compliance Specialist prior to implementation; and
4. The following statement is true and correct: The Submitter will designate the proposed total participation of DBE, SBE, and SBC firms in this contract on Form EO3.

**D. Failure to Submit Forms EO1-PTD, EO2-PTD and EO3-PTD**

Submittals that do not have these forms completed and signed, including the supporting documentation required by EO2-PTD, may be deemed nonresponsive. A nonresponsive submittal will be disqualified from further evaluation.

**E. Failure to Meet Outreach Requirements**

The PTD DBE Compliance Specialist will determine, in writing, whether the Submitter has satisfied all outreach requirements. If the PTD DBE Compliance Specialist determines the Submitter failed to satisfy the outreach requirements, then the PTD DBE Compliance Specialist may determine the submittal is nonresponsive. A determination of non-responsiveness *disqualifies* Submitters from further consideration for the Contract award. The Recipient must send written notice to Submitter stating the basis for the PTD DBE Compliance Specialist’s decision.

**F. Administrative Reconsideration**

In the event that the PTD determines the Submitter failed to submit required and completed documentation to meet the DBE Outreach Requirements, an opportunity for reconsideration of this determination will be provided. This opportunity for reconsideration will seek to obtain clarification of documentation submitted with the bid.

Within seven (7) business days of being informed by PTD that the Submitter is not responsive based on insufficient demonstration and/or incomplete documentation of Outreach Efforts, the Submitter may submit its written request for administrative reconsideration to:

**City of Phoenix Disadvantaged Business Enterprise Liaison Officer (DBELO) or Designee  
Equal Opportunity Department  
200 W. Washington, St. 15<sup>th</sup> Floor  
Phoenix, AZ 85003  
Phone: (602) 262-6258  
Fax: (602) 534-1124  
TTY: 7-1-1 Friendly**

**with copy to the Recipient's Procurement Administrator at [PTDprocurement@phoenix.gov](mailto:PTDprocurement@phoenix.gov)**

If the request for Administrative Reconsideration is not submitted within the allotted seven (7) business days, the non-responsive Submitter will not utilize the DBE Program submittal requirements as the basis for its future protest.

As part of this reconsideration process, the Submitter will have an opportunity to provide written clarification or argument concerning the issue of whether it met the Outreach Requirements or provided sufficient supporting and completed documentation of good faith efforts at the time of bid. The DBELO or Designee will review solely the written clarification or argument, along with any document(s) originally submitted at the time of bid. No new or revised forms or supporting documentation will be reviewed for consideration.

The DBELO or designee will send the Submitter a written decision on the reconsideration, explaining the basis for finding that the Submitter did or did not meet the DBE Outreach Requirements. The result of the reconsideration process is not administratively appealable and cannot be escalated or included in any other protest not related to the DBE Program.

**SECTION IV. POST-AWARD GENERAL REQUIREMENTS**

The Recipient has implemented outreach efforts requirements for this Contract. Specifically, the Contractor must:

- (1) identify small-business-participation opportunities, including Commercially Useful Functions (CUF);
- (2) actively solicit proposals from small and minority businesses;
- (3) evaluate small-business proposals; and
- (4) communicate selection decisions to small and minority businesses, including each rejection of a small-business proposal.

**A. Subcontracting Commitment**

The Small Business Subcontractors identified and accepted in the Small Business Outreach documents must have an executed contract in place prior to the performance of work. Executed contracts and all lower tier contracts must contain the required Civil Rights Assurances and Prompt Payment provisions.

The Contractor will submit to the Recipient, through the City of Phoenix Certification and Compliance System, all executed contracts, purchase orders, subleases, agreements, and other arrangements formalizing agreements between Contractor and all Subcontractors, upon execution throughout the life of this contract.

The Contractor will not terminate any approved or DBE Small Business Subcontracts, nor will the Contractor alter the scope of work or reduce the Subcontract amount, without the PTD DBE Compliance Specialist's prior written approval. Any request to alter a DBE Subcontract must be submitted in writing to the EO Compliance Specialist before any change is made. If the Contractor fails to do so, the Recipient and/or Subrecipient may declare the Contractor in breach of contract.

## **B. Counting Small Business Participation**

The Contractor may only count expenditures for certified DBE Subcontractors that perform a Commercially Useful Function (CUF), in the NAICS Codes in which it is certified or verified in, on the contract. A DBE performs a CUF 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 CUF, the DBE must 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 material itself. A DBE Subcontractor must perform or exercise responsibility for at least 30% of the total cost of its Subcontract value with its own workforce and equipment before its participation can be counted. DBEs must manage and control the performance of its contract and not be dependent on the prime's personnel and equipment to complete its work. Scope(s) of work not covered in the DBE firm's certification description **will not** be counted as DBE participation.

## **C. Commercially Useful Function (CUF) & Counting of DBE Trucking/Hauling**

**49 CFR Part 26.55 Section (d)** defines CUF and the counting of DBE participation Trucking/Hauling as follows:

- The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose achieving DBE participation.
- The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may 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 value of these hauling services.

## **D. Counting DBE Certified Manufactures, Suppliers, and Brokers:**

**49 CFR Part 26.55 Section (e)** permits the counting of expenditures with DBEs for materials or supplies toward DBE participation as provided in the following:

- If the materials or supplies are obtained from a **DBE manufacturer**, count 100 percent of the cost of the materials or supplies toward DBE participation.
- If the materials or supplies are purchased from a **DBE regular dealer (supplier)**, count 60 percent of the cost of the materials or supplies, including transportation, toward DBE participation.
- If materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, **(packager, broker, or manufacturer's rep.)** count 40 percent of materials or supplies (including transportation costs toward DBE participation.

If an approved DBE allows its DBE certification to expire, or the certification is revoked during the course of the Subcontract, the Recipient will consider all work performed by the DBE under the original contract to count as DBE participation. No increased scope of work negotiated after expiration or revocation of the DBE's certification may be counted. Any work performed under a Contract extension granted by the Recipient and/or Subrecipient may not be counted as DBE participation. If a DBE's certification is lost while under contract with a Contractor, solely because the DBE exceeded the size standard during the performance of the contract, the DBEs performance may count toward the contract goal. If a DBE is decertified because it was acquired by or merged with a non-DBE, the continued performance of the now non-DBE may not count toward the contract goal. If this negatively impacts the Contractor's ability to meet the contract goal, in good faith, the Contractor is strongly encouraged to Subcontract with other DBEs.

## **E. DBE Substitutions**

If the DBE was approved by the Recipient, the DBE Compliance Specialist will consider whether or not the Contractor has exercised diligent and good-faith efforts to find another DBE a replacement. The Contractor must complete the **Request for Substitution/Exemption Form**, notifying the PTD DBE Compliance Specialist in writing of the necessity to substitute a DBE and providing specific reason(s) for the substitution or replacement. Actual



substitution or replacement of a DBE may not occur before the PTD DBE Compliance Specialist's written approval has been obtained.

**F. Relief from Proposed DBE Utilization**

After Contract award, the Recipient will not grant relief from the proposed DBE utilization except in extraordinary circumstances. The Contractor's request to modify Small Business participation must be in writing to the PTD DBE Compliance Specialist.

Contractor's written request must set forth the amount of relief sought, evidence that demonstrates why relief is necessary, and any additional relevant information that the PTD DBE Compliance Specialist should consider. The Contractor must include with the request all documentation of Contractor's attempts to Subcontract with the DBE and any other action taken to locate and solicit a replacement Small Business.

**G. Prompt Payment of Subcontractors**

The prompt payment clause must be included in every contract and Subcontract.

The Contractor must promptly pay its Subcontractors, subconsultants, subconsultants or suppliers. **For projects governed by 49 CFR, Part 26 payment must be made within five (5) calendar days** after the Contractor has received payment for scope of work completed by the Subcontractor. If the Contractor diverts any payment received for a DBE's work performed on the Contract or fails to reasonably account for the application or use of the payment, the Recipient and/or Subrecipient may declare the Contractor in breach of contract.

Under the prompt-payment provisions of 49 CFR Part 26, the Contractor must ensure prompt and full payment of retentions to Subcontractors and suppliers. The Contractor must pay each Subcontractor's and supplier's retention no later than 30 days the satisfactory completion of and scope of work, and after the Recipient and/or Subrecipient has paid for the scope(s) of work. If the Recipient and/or Subrecipient reduces the Contractor's retention, the Contractor must correspondingly reduce the retentions of Subcontractors and suppliers that have performed satisfactory work.

Nothing in this section prevents the Contractor from enforcing its Subcontract with a Subcontractor or supplier for defective work, late performance, and other claims arising under the Subcontract.

**SECTION V. RECORDS & REPORTING REQUIREMENTS**

**A. Records**

During the performance of the Contract, the Contractor must keep all records necessary to document DBE participation. The Contractor must provide the records to the Recipient within 72 hours of the Recipient's request and at final completion of the Contract. The Recipient will prescribe the form, manner, and content of reports. The required records include:

1. All bidders' information to include firm's name; address; DBE or other status; race and gender information for the firm's majority owner; NIACS code(s) applicable to each scope of work the firm sought to perform in its bid; age of the firm; and the annual gross receipt of the firm.
2. A complete listing of all Subcontractors and suppliers on the project.
3. Each Subcontractor's and supplier's scope performed.
4. The dollar value of all Subcontracting work, services, and procurement.
5. Copies of all executed Subcontracts, purchase orders, invoices, and Subcontractor receipts.
6. Total operating expenses and total costs of goods sales.
7. Copies of all payment documentation and Change Orders.

**B. Records Maintenance**

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

**C. Reports**

The Contractor is required to file the following payment reports in the City of Phoenix Certification and Compliance System:

1. **Progress Payments:** By the 15<sup>th</sup> of *each* month, the Contractor must enter payment information and related supporting documentation into the City of Phoenix Certification and Compliance System.
  - a. The total of all payments received from the Recipient and/or Subrecipient during the previous month.
  - b. All payments made to Subcontractors during the previous month.
  - c. Supporting documentation to corroborate the payment amounts, which include but not limited to invoices and pay receipts.

The Successful Submitter is responsible for ensuring that Subcontractors confirm receipt of payment in the City of Phoenix Certification and Compliance System by the end of each month.

2. **Final Payment:**

Before the Recipient and/or Subrecipient processes the Contractor's final payment and/or outstanding retention held against the Contractor, the Contractor must notate in the City of Phoenix Certification and Compliance System:

  - a. The payment to each Subcontractor is considered "Final."
  - b. Every Subcontractor must confirm they have received full and "Final" payment in the City of Phoenix Certification and Compliance System.

For federal reporting purposes, the ***Certification of Final Payment Form*** must be completed and signed by the Contractor and DBE firm(s). The Contractor is responsible for ensuring that Subcontractors confirm the receipt of full and "Final" payment in the Phoenix Contract Compliance System.