

Regional Transportation Commission
of Washoe County
(RTC)
Disadvantaged Business Enterprise
Program
For
Federal Fiscal Years 2020-2022

Revised May 11, 2022

RTC DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Table of Contents

POLICY STATEMENT	1
SECTION 26.1, 26.23 - OBJECTIVES/POLICY STATEMENT	1
SUBPART A - GENERAL REQUIREMENTS	2
SECTION 26.1 - OBJECTIVES	2
SECTION 26.3 - APPLICABILITY	2
SECTION 26.5 - DEFINITIONS	2
SECTION 26.7 - NON-DISCRIMINATION REQUIREMENTS	2
SECTION 26.11 - RECORD KEEPING REQUIREMENTS	2
SECTION 26.13 - FEDERAL FINANCIAL ASSISTANCE AGREEMENT	3
SUBPART B - ADMINISTRATIVE REQUIREMENTS	5
SECTION 26.21 - DBE PROGRAM UPDATES	5
SECTION 26.25 - DBE LIAISON OFFICER	5
SECTION 26.27 - DBE FINANCIAL INSTITUTIONS	6
SECTION 26.29 - PROMPT PAYMENT MECHANISMS	6
SECTION 26.31 - DIRECTORY	8
SECTION 26.33 - OVERCONCENTRATION	9
SECTION 26.35 - BUSINESS DEVELOPMENT PROGRAMS	9
SECTION 26.37 - MONITORING AND ENFORCEMENT MECHANISMS	9
SECTION 26.39 - SMALL BUSINESS PARTICIPATION	10
SUBPART C - GOOD FAITH EFFORTS	12
SECTION 26.43 - SET-ASIDES OR QUOTAS	12
SECTION 26.45 - OVERALL GOALS	12
SECTION 26.47 - GOAL SETTING AND ACCOUNTABILITY	12
SECTION 26.49 - TRANSIT VEHICLE MANUFACTURERS GOALS	13

Table of Contents (Cont.)

SECTION 26.51 - MEETING OVERALL GOALS/CONTRACT GOALS	13
SECTION 26.53 - GOOD FAITH EFFORTS PROCEDURES	14
SECTION 26.55 - COUNTING DBE PARTICIPATION	16
SUBPART D AND E - CERTIFICATION STANDARDS	17
SECTION 26.81 - UNIFIED CERTIFICATION PROGRAMS (UCP)	17
SECTION 26.91 - PROCEDURES FOR CERTIFICATION DECISIONS	17
SUBPART F - COMPLIANCE AND COOPERATION	18
SECTION 26.109 - INFORMATION, CONFIDENTIALITY AND COOPERATION	18
 <i>APPENDICES:</i>	
APPENDIX A: RTC ORGANIZATIONAL CHART	19
APPENDIX B: DBE MONITORING AND ENFORCEMENT MECHANISMS	20
APPENDIX C: DEMONSTRATION OF GOOD FAITH EFFORTS	23

POLICY STATEMENT

Section 26.1, 26.23 - Objectives/Policy Statement

The Regional Transportation Commission of Washoe County (RTC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 Code of Federal Regulations (CFR) Part 26. The full text of 49 CFR Part 26 can be found at the link https://gov.ecfr.io/cgi-bin/text-idx?mc=true&tpl=/ecfrbrowse/Title30/30tab_02.tpl

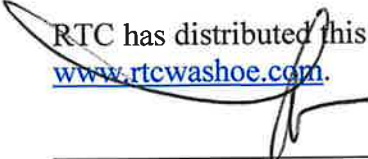
RTC has received Federal financial assistance from the Department of Transportation (DOT), and as a condition of receiving this assistance, RTC provides an assurance that it will comply with 49 CFR Part 26. This requirement was most recently reinstated by Congress in the "Fixing America's Surface Transportation Act" or the "FAST-ACT," (P.L. 114-94).

It is the policy of RTC to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also RTC's policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the RTC's Federal financial assistance programs;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that RTC's DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipient;
7. To assist the development of firms that can compete successfully in the marketplace outside of the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Jennifer Meyers, RTC's Transit Contracts Administrator, is delegated as the DBE Liaison Officer and is responsible for implementing all aspects of the DBE program. Implementation of the DBE program accords the same priority as compliance with all other legal obligations incurred by RTC in financial assistance agreements with the Department of Transportation.

RTC has distributed this statement to RTC's Procurement Management and on RTC's website at: www.rtcwashoe.com.



Bill Thomas, AICP
RTC Executive Director

5/10/22

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 - Objectives

The eight objectives of RTC's DBE Program are found in the policy statement on the Page 1 of this document.

Section 26.3 - Applicability

The DBE requirements of Part 26 are applicable to RTC as the recipient of federal transit funds authorized by Titles I, III, V, and VI of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the Transportation Equity Act for the 21 Century (TEA-21), Pub.105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; and the Fixing America's Surface Transportation Act or "FAST Act", Sec. 1109. Surface Transportation Block Grant Program.

This DBE Program is also applicable to all RTC sub-recipients. RTC sub-recipients are not anticipated to have any contracting opportunities between federal fiscal year (FFY) 2020 and 2022 utilizing DOT assisted funding that would impact this DBE Program or the corresponding goal proposed for FFY2020 through FFY2022. Sub-recipients are required to sign annual certifications and assurances confirming their compliance with RTC, federal, state, and local regulations, as appropriate. Current RTC sub-recipients will be maintained as sub-recipients until their federally assisted capital vehicles are fully depreciated, and all other grant requirements are satisfied. The overall goal set for the three federal fiscal year is 1.5% and the details of which are published on RTC website.

Section 26.5 - Definitions

RTC will adopt the definitions contained in Section 26.5 of Part 26 for this program.

Section 26.7 - Non-Discrimination Requirements

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

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

Section 26.11 - Record Keeping Requirements

26.11(a) Uniform Report of DBE Award or Commitment and Payments

RTC will report DBE participation to Federal Transit Administration (FTA) using the Uniform

Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

26.11(c) Bidders List

RTC has created and maintains a bidders list. Any prospective bidder interested in doing business with RTC is encouraged to review RTC Procurement Management business guidelines that are posted on its webpage and to submit information for inclusion on RTC's bidders list.

26.11(d) Record Keeping

RTC will document a firm's compliance with the requirements of this part through its coordination with RTC Procurement Management. At a minimum, RTC will keep a complete application package for each certified firm and all affidavits of no- change, change notices, and on-site reviews. These records shall be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records shall be retained 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.

26.11(e) DBE Reporting

Nevada Department of Transportation (NDOT) will report to the Department of Transportation's Office Federal Highway Administration (FHWA) of Civil Rights, by January 1, of each year, the percentage and location in the State of certified DBE firms in the Unified Certification Program (UCP) Directory controlled by the following:

1. Women;
2. Socially and economically disadvantaged individuals (other than women); and,
3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Section 26.13 - Federal Financial Assistance Agreement

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

26.13(a) Federal Financial Assistance Agreement Assurance

RTC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out the terms shall be treated as a violation of this agreement. Upon notification to RTC of failure to carry out the approved program, the Department may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under

18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 {31 U.S.C. 3801 et seq.}.

26.13(b) DBE Recipient and Contractor Assurance

RTC will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 - DBE Program Updates

Since RTC has received a grant of \$250,000 or more in FTA planning, capital, and or operating assistance in a federal fiscal year, RTC will continue to carry out this program until all funds from DOT financial assistance have been expended. RTC will provide updates representing DOT significant changes in the program.

Section 26.25 - DBE Liaison Officer

The **RTC Board of Commissioners** ultimately is responsible for establishing DBE policy and ensuring that the DBE Program has a high priority at the RTC.

The **Executive Director** is responsible for seeing that the Board's policies are implemented throughout the RTC.

The Executive Director has delegated this responsibility to the Finance Director as referenced in 49 CFR Part 26. The DBE Liaison Officer is responsible for overseeing the DBE Program, recommending DBE policy, development and implementation of a written DBE program, and internal and external communication procedures. The DBE Liaison Officer shall have adequate staff and shall have direct and independent access to the Executive Director. The DBE Liaison Officer shall have the full support of the Executive Director.

RTC has designated the following individual as the DBE Liaison Officer (DBELO):

Jennifer Meyers
Transit Contractors Administrator
Regional Transportation Commission of Washoe County
1105 Terminal Way, Suite 300, Reno, NV 89502
Phone: 775-335-1845

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that RTC complies with all provision of 49 CFR Part 26. As indicated in the organizational chart set out in Appendix A, the DBELO has direct, independent access to Bill Thomas, RTC Executive Director, concerning DBE program matters.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all RTC departments to set overall goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in

solicitations (race-conscious methods and contract specific goal attainment) and identifies ways to improve progress.

6. Analyzes RTC's progress toward attainment and identifies ways to improve progress.
7. DBELO or the designee participates in pre-bid meetings.
8. Advises RTC Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Participates in DBE training seminars.
11. Acts or designee as liaison to the State of Nevada UCP.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. RTC utilizes the NDOT website DBE Directory.

Section 26.27 - DBE Financial Institutions

It is the policy of RTC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

RTC has reviewed NDOT's website DBE Directory and has determined there are no listings for financial institutions owned and controlled by socially and economically disadvantaged individuals. RTC will re-evaluate whether DBE financial institutions are available every twelve (12) months.

Section 26.29 - Prompt Payment Mechanisms

RTC will apply the requirements of this Section 26.29 to all federally-assisted contracts that include subcontracts or the opportunity for subcontracts. The requirements apply equally to subcontracts with DBE and non-DBE firms.

26.29(a) Prompt Payment

To satisfy the prompt payment requirements of Section 26.29(a), RTC will include the following clauses in each federally-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of the contract no later than 30 days from the receipt of each payment the prime contractor receives from RTC.

26.29(b) Retainage

To satisfy the retainage requirements of Section 26.29(b), if RTC permits the prime contractor to hold retainage, RTC will include in each applicable federally-assisted prime contract a contract clause that requires the prime contractor to promptly return retainage payments to each

subcontractor within 30 days after the subcontractor's work is satisfactorily completed. If RTC declines to hold retainage and prohibits the prime contractor from holding retainage, RTC will include in each applicable federally-assisted prime contract a contract clause setting out that prohibition.

In order to ensure compliance with this requirement, RTC may:

1. Decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors;
2. Decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed; or;
3. Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after payment to the prime contractor.

Any delay or postponement of payment by the prime contractor from the above referenced period may occur only for good cause following written approval of RTC. This clause applies to both DBE and non-DBE subcontracts.

26.29(c) Satisfactory Completion

For purposes of the prompt payment and retainage provisions, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient 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.

26.29(d) Monitoring and Enforcement

RTC will include in all federally funded contracts language that allows it to monitor and enforce that prompt payment and return of retainage is in fact occurring on any contract, which involves subcontracting. Appendix B, Monitoring and Enforcement Mechanisms, highlight RTC's monitoring procedures.

26.29(e) Prompt Payment

Dispute Resolution

- RTC will take the steps to resolve disputes as to whether work has been satisfactorily completed for purposes of § 26.29. Such steps including but not limited to, meetings between prime and subcontractors, with resident project representative and/or project manager presence as appropriate. Any meeting for the purpose of dispute resolution will include individuals authorized to bind each interested party, including recipient

representative(s) with authority to take enforcement action.

Prompt Payment Complaints

- If an affected subcontractor is not comfortable contacting the prime contractor directly regarding payment or is unable to resolve payment discrepancies with the prime contractor, the subcontractor can contact the DBELO to initiate a complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by RTC to resolve prompt payment disputes, affected subcontractor may contact the RTC Executive Director.
- RTC will handle complaints by subcontractors regarding the prompt payment requirements expeditiously.

Enforcement Actions for Noncompliance of Participants

- RTC will provide appropriate means to enforce the requirements of § 26.29. These means include:
 - In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor.
 - Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract.
 - Pay subcontractors directly and deduct this amount from the retainage owed to the prime contractor.
 - Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met.
 - Failure to comply can include up to and including contract termination.

Section 26.31 - Directory

RTC utilizes the NDOT website DBE Directory. The directory lists the firm's name, contact person, address, phone number, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is updated in "real time," and is the single source for establishing program eligibility.

The directory identifies all firms that are eligible to participate as DBEs in this Program. The RTC will use the DBE Directory as a resource in developing overall and contract specific DBE participation goals and conducting outreach and other programs for DBEs. The DBE Directory will also be made available, on request, to contractors and the public. The DBE Directory will include the firm's name, address, telephone number, contact name and types of work utilizing North American Industry Classification System (NAICS) for which the firm is certified as a DBE.

NDOT's website provides a list of UCP agencies that provide certification services and non-certification services in the State of Nevada at: <https://www.nevadadot.com/doing-business/external-civil-rights/dbe-program>.

Section 26.33 - Overconcentration

RTC has not identified that overconcentration exists in the types of work that DBEs perform in the greater Washoe County area. RTC will re-evaluate whether there is an over concentration every twelve (12) months. In the event that RTC determines that an overconcentration in types of work that DBEs perform exists, RTC will devise appropriate measures to address the specific area of overconcentration.

Section 26.35 - Business Development Programs

RTC plans to refer DBE firms to the following organizations for assistance with business development planning:

Small Business Development Center Nevada
University of Nevada, Reno
University Media Relations Mail Stop 0108
1664 N. Virginia Street
Reno, NV 89557-0108

UNR Small Business Development Center offers the following services to DBE firms in Washoe County:

1. One-on-one confidential professional counseling;
2. Ongoing educational entrepreneurial seminars and workshops;
3. Steps necessary to starting a small business;
4. Guidance with business and marketing plan research, preparation and review;
5. Assistance with loan package development;
6. Marketing, branding and sales planning consultation;
7. Assistance with accounting and recordkeeping software and how to use the information to help the business grow;
8. Government contracting;
9. State certification as a Woman, Minority or Disabled Veteran Enterprise;
10. Improving customer service; and,
11. Distributes electronic information on upcoming bids, training sessions and other relevant information.

Section 26.37 - Monitoring and Enforcement Mechanisms

RTC will undertake the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26- refer to Appendix B, DBE Monitoring and Enforcement Mechanisms.

Section 26.39 - Small Business Participation

Beginning FY 2020, RTC has incorporated the following non-discriminatory elements to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small business):

Small Business Program:

1. Definition - For the purpose of this section, a small business is defined as a firm that meets the definition as contained in 49 CFR 26.5 and Section 3 of the Small Business Act, 15 U.S.C. 631 et seq. which do not exceed the cap on average gross receipts specified in 49 CFR 26.65(b).
2. A Small Business Concern is one that:
 - Is organized for profit, with a place of business located in the United States, 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;
 - Has the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.
 - Is at least 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States, except in the case of a joint venture, where each entity to the venture must be 51 percent owned and controlled by one or more individuals who are citizens of, or permanent resident aliens in, the United States.
3. A Small Business Concern shall not have average annual gross receipts (over the firm's previous three fiscal years) in excess of \$23.98 million. How to calculate average annual receipts and average employment of a firm can be found in 13 CFR 121.104 and 13 CFR 121.106, respectively.

Program participants will be required to establish eligibility via (1) DBE certification in connection with the Nevada Unified Certification Program; (2) U.S. Small Business Administration (SBA) 8A certification, or (3) documentation establishing participation as a registered Dynamic Small Business with Small Business Administration (SBA) This documentation must be provided to UNR Small Business Development Center in order to verify eligibility.

Certified DBEs are presumptively eligible to participate in the program. None of the provisions of this Section shall be interpreted to impose any geographic preferences or limitations, and the program is open to all small business concerns regardless of their location.

4. RTC plans to utilize the Small Business Development Center, at the University of Nevada, Reno (UNR) to seek out and develop a listing of local and regional small businesses. Additional outreach efforts will include:

- Developing lists of the small business organizations identified;
- Contacting small business organizations to make them aware of how to do business with RTC;
- Placing upcoming contracting opportunities on the RTC's website by adding an " Doing Business with" link;
- Providing information and referring small businesses interested in DBE certification to NDOT's website which provides a list of UCP agencies that provide certification services and non-certification services in the State of Nevada.

The principal responsible person for overseeing and implementing the RTC Small Business Program will be the DBELO.

SUBPART C - GOOD FAITH EFFORTS

Section 26.43 - Set-Asides or Quotas

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

Section 26.45 - Overall Goals

In accordance with Section 26.45(f) RTC will submit its triennial overall DBE goal to FTA on August 1, 2019.

RTC will also request use of project-specific DBE goals, and/or will establish project-specific DBE goals as directed by FTA.

RTC will adapt project or contract-specific DBE goals to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work). The DBELO will work with RTC Project Managers to establish contract-specific DBE goals, if applicable.

The process used by RTC to establish overall DBE goals conforms with Section 26.45 of the DBE regulation and is based on the demonstrable evidence of DBE firms ready, able, and willing to participate/perform contracting opportunities derived from RTC's DOT-assisted projects/contracts.

RTC's overall DBE Goal is established based on relevant Census data

RTC's overall three year DBE goal has been determined in accordance with the methodology summarized in Appendix D.

Section 26.47 - Goal Setting and Accountability

If the awards and commitments shown on RTC'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, RTC will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis and to enable RTC to meet fully its goal for the new fiscal year;
3. Submit the shortfall analysis and a plan to FTA within 90 days of the end of the affected fiscal year, if requested by FTA.

Section 26.49 - Transit Vehicle Manufacturers Goals

RTC will require each transit vehicle manufacturer (TVM), 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 Part 26. RTC will only allow to bid and select a TVM listed on FTA's certified list of TVMs, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of a RTC vehicle solicitation.

Section 26.51 - Meeting Overall Goals/Contract Goals

RTC will use contract-specific DBE goals to meet the overall goal. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting the overall goal.

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

RTC will express the contract goals as a percentage of the total amount of a FTA-assisted contract.

RTC will continue to place the following statements in the procurement documents for every DOT-assisted prime contract with a contract-specific DBE goal:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of RTC to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE percentage of contract goal established for a contract will also be noted. The bidder/offeror shall demonstrate an intent to satisfy this DBE contract goal or demonstrate good faith efforts to achieve the goal, 49 CFR Part 26 to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidders/offerors commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

26.51(a) Monitoring Payments to DBEs

RTC will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be available for inspection upon request by any authorized representative of RTC or the DOT. This reporting

requirement also extends to include any non-DBE subcontractor.

RTC will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

Section 26.53 - Good Faith Efforts Procedures

26.53(a) Award of Contracts with a DBE Contract Goal

In those instances where a contract-specific DBE goal is included in procurement and/or solicitation, RTC will not award the contract to a bidder who does not either: (1) Meet the contract goal with verified, countable DBE participation; or (2) Documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

26.53(a) & (c) Evaluation of Good Faith Efforts

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive; the DBELO and assigned Procurement Analyst.

RTC will evaluate good faith efforts in accordance with to Part 26 - Guidance Concerning Good Faith Efforts which is provided in Appendix C, Demonstration of Good Faith Efforts.

If bidder/offeror does not meet the established DBE goal, and is required to submit documentation of good faith effort, then a good faith efforts submission shall be provided within three business days from the bid/proposal submittal date, which shall include a signed DBE Good Faith Efforts Checklist (form provided by RTC) and supporting documentation that the bidder/proposer made a good faith effort to meet the goal. RTC may allow a longer period based on submittal of a request demonstrating good cause for such extension. Good faith efforts at a minimum include, without limitation, the following where applicable:

- Attendance at the pre-bid meeting.
- Advertisement in trade association newsletters and minority-focused media within a reasonable time before bids are due for specific sub-bids that would be at least equal to the percentage goal for DBE utilization specified for the project.
- Notifications in writing to minority contractor associations within a reasonable time before bids are due of a solicitation for specific sub-bids.
- Direct negotiation with DBEs for specific sub-bids.

RTC will ensure that all information is complete and accurate and adequately documents the bidders/offers good faith effort before committing to the performance of the contract by the bidder/offeror.

26.53(b) Information to be Submitted

RTC treats bidders'/offerors' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers to submit the following information:

- The names and address of DBE firms that will participate in the contract.
- A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontracting whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
- If the contract goal is not met, evidence of good faith efforts. The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

26.53(d) Administrative Reconsideration

Within five (5) days of being informed by RTC that it is not responsive, because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official: RTC Procurement and Contracts Manager at 1105 Terminal Way, Reno Nevada 89502, Phone (775) 332-9511. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

26.53(f) Good Faith Efforts When a DBE is Terminated/Replaced on a Contract with Contract Goals

RTC requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without RTC's prior written consent. RTC will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the approved contract goal. RTC requires the prime contractors to notify RTC's DBELO immediately of the DBE's inability or unwillingness to perform. RTC requires the contractor to obtain RTC's prior approval of the substitute DBE and to provide copies of the new or amended subcontracts, or documentation of good faith efforts. If a contractor still fails or refuses to comply within a reasonable time, the RTC shall issue an order stopping all or part of payments/work until satisfactory action has been taken.

If the contractor still fails to comply, the RTC may issue a termination for default proceeding.

Section 26.55 - Counting DBE Participation

RTC will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

SUBPART D AND E - CERTIFICATION STANDARDS

Section 26.81 - Unified Certification Programs (UCP)

RTC is a member of the national UCP administered by the NDOT. We will use and count for DBE credit only those DBE firms certified by NDOT. A brief description of the State's UCP can be found at: <https://ndot.dbesystem.com/Default.asp?TN=ndot>.

Section 26.91 - Procedures for Certification Decisions

RTC distributes information about Nevada Department of Transportation's (NDOT's) website, which provides a list of UCP agencies that provide certification services and non-certification services in the State of Nevada.

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

Any firm or complainant may appeal the NDOT's decision in a certification matter to U.S. Department of Transportation. Such appeals may be sent to:

U.S. Department of Transportation
Office of Civil Rights
Certification Appeals Branch
1200 New Jersey Avenue SE
West Building, 7th Floor
Washington, D.C. 20590

DOT certification appeal decisions affecting the eligibility of DBEs for RTC's DOT-assisted contracting are provided directly to certifying organization if DOT has determined that our denial of its application was erroneous.

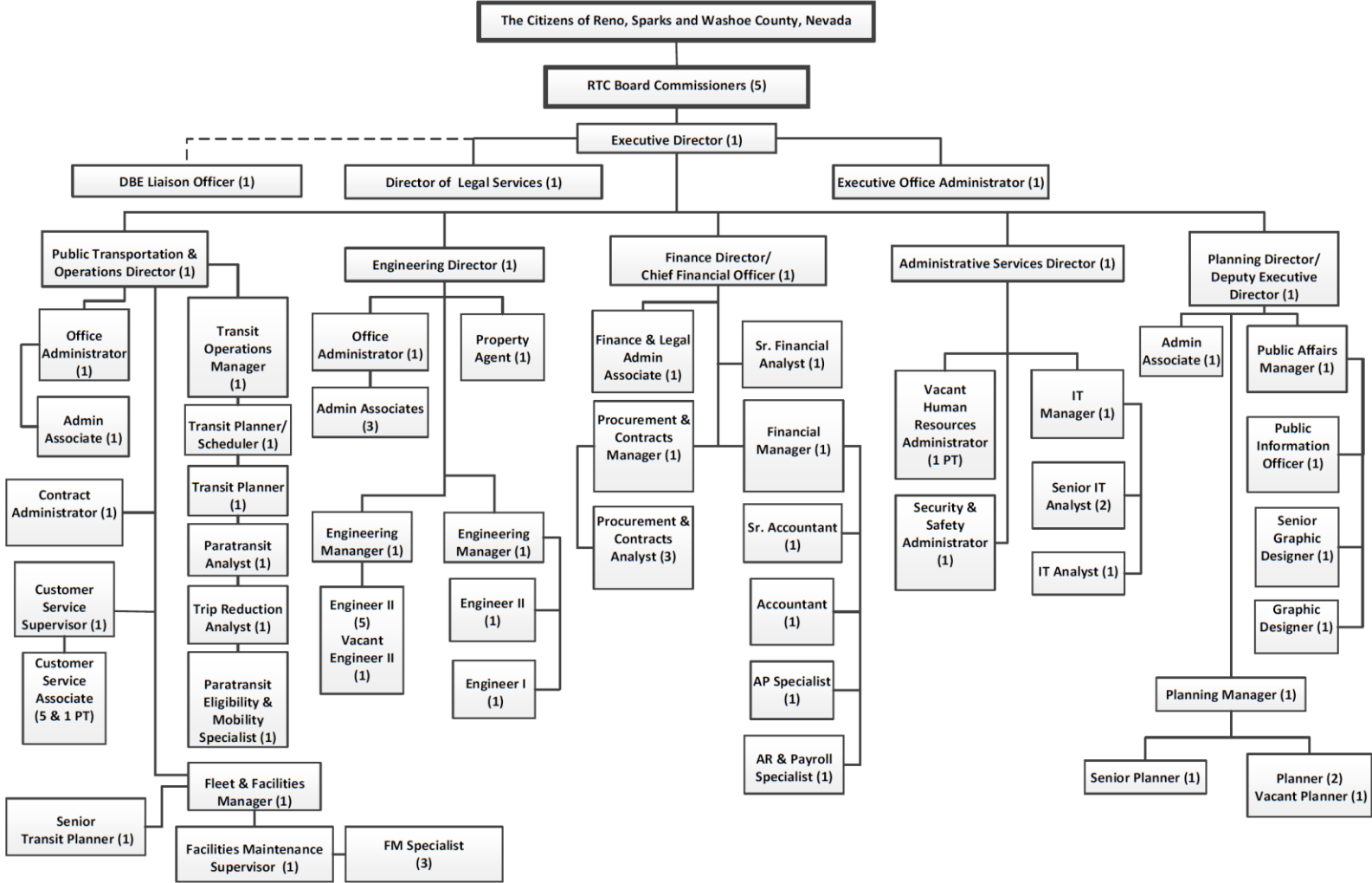
SUBPART F - COMPLIANCE AND COOPERATION

Section 26.109 - Information, Confidentiality and Cooperation

RTC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

Notwithstanding any contrary provisions of federal, state or local law, RTC will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Regional Transportation Commission of Reno, Sparks and Washoe County, Nevada Fiscal Year 2019 Organization Chart



APPENDIX B: DBE MONITORING AND ENFORCEMENT MECHANISMS

In the event that a DBE goal has been established by the solicitation, the prime contractor covenants and agrees as follows:

RTC requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without RTC's prior written consent. Prior written consent shall be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation.

Before transmitting to RTC its request to terminate, the prime contractor shall give notice in writing to the DBE of its intent to do so. A copy of this notice shall be provided to RTC prior to consideration of the request to terminate. The DBE shall have five (5) days to respond and advise RTC why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity, e.g., safety.

In those instances where "good cause" exists to terminate a DBE's contract, RTC requires the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The prime contractor shall notify RTC immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

RTC may seek additional administrative remedies for noncompliance as prescribed under Section 26.53 (f)(3). For purposes of this paragraph, good cause includes the following circumstances:

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

the prime contractor seeks to terminate a DBE 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.

Before transmitting to RTC its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Contracting Officer, of its intent to request to terminate and/or substitute, and the reason for the request.

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

RTC management requires the prime contractor to obtain RTC prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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

The prime contractor shall provide the DBELO with at least thirty (30) days written notice prior to instituting any legal action against a DBE subcontractor.

Effective July 1, 2019, RTC will be implementing the B2G software which enables prime contractors to input payment data directly into this software. DBELO will be reconcile such data with accounting payment to ensure that they tally. The prime contractor shall provide the DBELO with monthly updates as to the prime contractor's continuing compliance with the DBE requirements set forth in the solicitation.

The prime contractor shall make prompt and full payment to any DBE subcontractor (including the payment of any retainage) within the later of:

- a. Thirty (30) days after the DBE subcontractor's work is satisfactorily completed, or
- b. Thirty (30) days after the prime contractor receives payment from RTC for satisfactory completion of the accepted work.

A DBE subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by RTC when RTC has made an incremental acceptance of a portion of the Services, the work of a DBE subcontractor covered by that acceptance is deemed to be satisfactorily completed. The prime contractor shall not withhold payment to any DBE subcontractor as a result of the exercise of RTC's rights under this Contract.

RTC will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take

the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. These may include:

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

RTC will also consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists or revocation of DBE certification if applicable, pursuant to applicable Nevada Statutes.

Note: RTC does not certify DBEs rather uses the list of DBEs identified in the NDOT UCP Directory. NDOT's website DBE Directory is located at <https://ndot.dbesystem.com/Default.asp?TN=ndot>.

APPENDIX C: DEMONSTRATION OF GOOD FAITH EFFORTS

(Forms 1 and 2 should be provided as part of the solicitation documents)

RTC requires prime contractors to provide substantiation of good faith efforts conducted to attest DBE utilization and participation in contracts when a contract goal is prescribed.

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____% DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of Bidder's/Offeror's Firm _____

State Registration No. _____

Date _____

By: _____
Please Print Name

By: _____
Signature

By: _____
Title

FORM 2: LETTER OF INTENT

Name of Bidder's/Offeror's firm: _____

Address: _____

City: _____ State: _____ Zip _____

Name of DBE Firm: _____

Address: _____

City: _____ State: _____ Zip _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offered is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$_____

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
Signature Title

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

(Please submit this page for each subcontractor.)