

Regional Transportation Commission
of Washoe County
(RTC)
Disadvantaged Business Enterprise
Program

Updated February 2025

RTC DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Table of Contents

Table of Contents

POLICY STATEMENT	1
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
<i>Uniform Report of DBE Award or Commitment and Payments (26.11(a))</i>	<i>2</i>
<i>Bidders List (26.11(c)).....</i>	<i>2</i>
SECTION 26.13 - FEDERAL FINANCIAL ASSISTANCE AGREEMENT.....	3
<i>Federal Financial Assistance Agreement Assurance (26.13(a))</i>	<i>3</i>
<i>DBE Recipient and Contractor Assurance (26.13(b)).....</i>	<i>3</i>
SUBPART B - ADMINISTRATIVE REQUIREMENTS.....	4
SECTION 26.21 - DBE PROGRAM UPDATES.....	4
SECTION 26.23 – POLICY STATEMENT.....	4
SECTION 26.25 - DBE LIAISON OFFICER (DBELO)	4
SECTION 26.27 - DBE FINANCIAL INSTITUTIONS.....	5
SECTION 26.29 - PROMPT PAYMENT MECHANISMS.....	5
<i>Prompt Payment (26.29(a))</i>	<i>5</i>
<i>Retainage (26.29(b))</i>	<i>6</i>
<i>Satisfactory Completion (26.29(c))</i>	<i>6</i>
<i>Monitoring and Oversight (26.29(d))</i>	<i>6</i>
<i>Enforcement Mechanisms (26.29(e)).....</i>	<i>7</i>
<i>Applicability to Lower-tier Subcontractors (26.29(f)).....</i>	<i>7</i>
<i>Additional Enforcement Actions for Noncompliance (26.29(g))</i>	<i>7</i>
SECTION 26.31 – DBE DIRECTORY.....	8
SECTION 26.33 - OVERCONCENTRATION.....	8
SECTION 26.35 - BUSINESS DEVELOPMENT PROGRAMS	8
SECTION 26.37 - MONITORING AND ENFORCEMENT MECHANISMS.....	9
SECTION 26.39 - SMALL BUSINESS PARTICIPATION.....	11
SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING.....	12
SECTION 26.43 - SET-ASIDES OR QUOTAS	12
SECTION 26.45 - OVERALL GOALS	12
<i>Step-One – Determination of Base Figure (26.45(c))</i>	<i>12</i>
<i>Step-Two – Adjustment to Base Figure (26.45(d))</i>	<i>13</i>
<i>Goal Submission to FTA (26.45(f)).....</i>	<i>13</i>
<i>Public Participation 26.45(g).....</i>	<i>14</i>
SECTION 26.47 - GOAL SETTING AND ACCOUNTABILITY	14
SECTION 26.49 - TRANSIT VEHICLE MANUFACTURERS GOALS	15
SECTION 26.51 - MEETING OVERALL GOALS/CONTRACT GOALS	15
SECTION 26.53 - GOOD FAITH EFFORTS (GFE).....	16
<i>Award of Contracts with a DBE Contract Goal (26.53(a)).....</i>	<i>16</i>
<i>Information to be Submitted (26.53(b)).....</i>	<i>16</i>
<i>Evaluation of Good Faith Efforts (26.53(a) & (c)).....</i>	<i>17</i>
<i>Administrative Reconsideration (26.53(d))</i>	<i>18</i>

<i>Good Faith Efforts When a DBE is Terminated/Replaced on a Contract with Contract Goals (26.53(f))</i>	18
SECTION 26.55 - COUNTING DBE PARTICIPATION	18
SUBPART D AND E - CERTIFICATION STANDARDS.....	18
SECTION 26.81 - UNIFIED CERTIFICATION PROGRAMS (UCP).....	18
SECTION 26.89 AND 26.91 – APPEALS/PROCEDURES FOR CERTIFICATION DECISIONS	19
SUBPART F - COMPLIANCE AND ENFORCEMENT	19
SECTION 26.109 - INFORMATION, CONFIDENTIALITY AND COOPERATION.....	19
<i>Recordkeeping and Payment Monitoring to DBEs</i>	20

DRAFT PENDING FTA CONCURRENCE

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 CFR Part 26](#).

RTC receives Federal Financial assistance from the Department of Transportation, and as a condition of receiving this assistance, RTC has signed an assurance that it will comply with [49 CFR Part 26](#).

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. The following are our objectives and policies:

- To ensure non-discrimination in the award and administration of DOT assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE program is narrowly tailored in accordance with applicable law;
- To confirm that only firms that fully meet the requirements of 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help eliminate barriers to the participation of DBEs in DOT-assisted contracts; and
- To assist in furthering the development of firms to ensure free and open access to RTC contracting opportunities to compete successfully beyond the DBE program.

The RTC's Transit Contracts Administrator has been delegated as the DBE Liaison Officer (DBELO), and in this capacity 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 RTC in financial assistance agreements with the Department of Transportation.

RTC has distributed this policy statement to RTC's Procurement staff and it is available on RTC's website at: www.rtcwashoe.com. Upon significant changes to the DBE Program, RTC will notify the FTA's Regional Civil Rights Officer and publicize the revised DBE Program on RTC's website which is available to DBE and non-DBE firms. The DBE Program emphasizes RTC's commitment to providing maximum opportunity to all DBE businesses, including Small Business Enterprises, in accordance with 49 CFR Part 26, as amended.

Bill Thomas, AICP
RTC Executive Director

Date

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 - Objectives

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

Section 26.3 - Applicability

RTC is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 - Definitions

RTC will adopt the definitions contained in §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

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

RTC will report DBE participation on a semi-annual basis to the FTA using the Uniform Report of DBE Awards or Commitments and Payments. Effective May 9, 2024, additional data fields in RTC's procurements must be captured and incorporated in the uniform report including the names of DBEs, the North American Industry Classification System (NAICS) codes performed in a contract, the federally assisted contract number(s), and the dollar value of the contract.

Bidders List (26.11(c))

RTC has created and maintains a bidders list consisting of information about all DBE and non-DBE firms that bid or provide quotes on DOT-assisted contracts. Effective May 9, 2024, the Final Rule now requires that RTC submit its bidders list information to the Federal Transit Administration no later than December 1 following the Federal fiscal year in which the relevant contract was awarded. Bidders list data required under revised 49 CFR §26.11, must be obtained for the owners of all firms and include the NAICS code applicable to each scope of work proposed by the firm in its bid. Bidders list information must be obtained **about all DBEs and non-DBEs** who bid as prime contractors and subcontractors (including successful prime contractors and subcontractors) on each of RTC's federally assisted contracts. This information must be collected with bids or initial responses to negotiated procurements, and includes the following:

- (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.

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 49 CFR [§26.53\(e\)](#), the data must be entered no later than December 1, following the fiscal year in which the design-build contractor awarded the relevant subcontract(s).

Section 26.13 - Federal Financial Assistance Agreement

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

Federal Financial Assistance Agreement Assurance (26.13(a))

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. RTC shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. RTC'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.).

DBE Recipient and Contractor Assurance (26.13(b))

RTC will ensure that the following clause is placed in every DOT-assisted contract and each subcontract the prime contractor signs with a subcontractor:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor 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 RTC 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 - DBE Program Updates

The Final Rule provides that all FTA recipients that receive planning, capital, or operating assistance and award FTA-funded contracts must have a DBE program. Since RTC 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, RTC is designated as a Tier I recipient. RTC will continue to carry out this program until all funds from DOT financial assistance have been expended. RTC will submit any significant updates in the program to FTA for approval.

Section 26.23 – Policy Statement

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

Section 26.25 - DBE Liaison Officer (DBELO)

The Executive Director has designated the following individual as the DBE Liaison Officer (DBELO) for the RTC:

Jennifer Meyers
Transit Contractors Administrator
Regional Transportation Commission of Washoe County
1105 Terminal Way, Suite 300, Reno, NV 89502
Phone: 775.332.9513

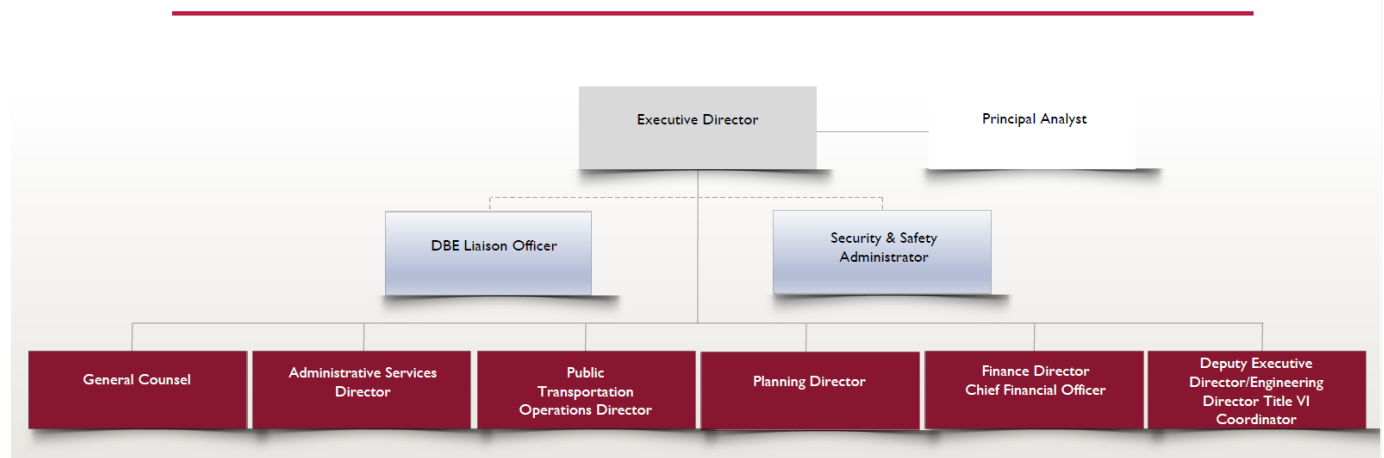
In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that RTC complies with all provision of 49 CFR Part 26. The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate employees. The oversight, duties and responsibilities of the DBELO include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Development of Overall Goals.
- Preparation of the Uniform Report of DBE Commitments/Awards and Payments as required by the DOT.
- Communicates commitment of the DBE Program within the agency.
- In cooperation with Procurement staff, ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (race-conscious methods and/or contract specific goal attainment), and identifies ways to improve progress.
- Analyzes RTC's progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings, when applicable.
- Advises RTC Directors on DBE matters and achievement.
- Assists DBEs in understanding specifications and bid documents, when applicable.

- Reviews and determines appropriate and reasonable contractor compliance.
- Obtains and reviews the DBE directory listings from the Nevada Department of Transportation – Office of External Civil Rights.
- Participates in DBE training opportunities.
- May serve as designee to the State of Nevada UCP.
- May provide outreach to DBEs and community organizations to advise them of opportunities.

As indicated in the organizational chart below, the DBELO has direct, independent access to Bill Thomas, RTC’s Executive Director, concerning all DBE program matters.

EXECUTIVE DEPARTMENT



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 contracts to make use of these institutions. Since the development of this plan there have been no such firms available in Northern Nevada.

RTC will review NDOT's DBE Directory website on an annual basis to determine any listings for financial institutions owned and controlled by socially and economically disadvantaged individuals.

Section 26.29 - Prompt Payment Mechanisms

RTC will apply the requirements of §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.

Prompt Payment (26.29(a))

RTC will include the following clause in each federally-assisted prime contract:

The Prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of

each payment the prime contractor receives from RTC.

Retainage (26.29(b))

RTC must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. 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. RTC may use one of the following methods to comply with this requirement:

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 thirty (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 thirty (30) days after payment to the prime contractor.

Satisfactory Completion (26.29(c))

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 RTC. When the RTC 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.

Monitoring and Oversight (26.29(d))

RTC's Finance Department processes all invoices and payments. Additionally, project managers are assigned to all projects, who track invoices and retainage payments within their departments.

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.

Prime contractors will be required to utilize RTC's Diversity Compliance Reporting System ("B2Gnow") platform. This platform provides the Contractor with an easy-to-use, web-based service for reporting payments rendered to all Subcontractors. Contractors will receive an electronic alert for every payment received from RTC, and must in turn report all Subcontractor payments in B2GNow no later than seven (7) calendar days after paying the Subcontractor(s). Failure to follow these directions may delay payment to Contractor. Contractors can access the platform at <https://rtcwashoe.diversitycompliance.com/?TN=rtcwashoe>.

The Contractor is expected to respond to desk audits performed by the DBELO. Requests for information may include, but are not limited to, Subcontractor invoices and proof of payments (i.e. copies of cashed check or electronic fund transfer (“EFT”) statements.)

Enforcement Mechanisms (26.29(e))

RTC will provide appropriate means to enforce the requirements of §26.29. These means may include:

- Assessing liquidated damages, in accordance with the contract against the prime contractor for each day beyond the required time-period the prime contractor fails to pay the subcontractor;
- Advising 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;
- Paying subcontractors directly and deducting this amount from the retainage owed to the prime contractor;
- Issuing 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; and/or
- Contract termination.

Any delay or postponement of payment by the prime contractor may occur only for good cause following written approval by the RTC.

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, the affected subcontractor may contact the RTC Executive Director.
- RTC will handle complaints by subcontractors regarding the prompt payment requirements expeditiously.

Applicability to Lower-tier Subcontractors (26.29(f))

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

Additional Enforcement Actions for Noncompliance (26.29(g))

RTC may include a contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate dispute resolution mechanisms to resolve payment disputes.

RTC may also include a contract clause that prime contractors 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.

Section 26.31 – DBE Directory

RTC is a member of the Unified Certification Program (UCP) through the Nevada Department of Transportation (NDOT). NDOT is responsible for performing DBE certifications and maintaining a DBE Directory of all certified DBE firms eligible to participate in the program. The DBE Directory includes 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. The DBE Directory is available on NDOT's website and is updated in "real time," and is the single source for establishing program eligibility. The DBE Directory is also accessible via a link on RTC's website at <https://ndot.dbesystem.com/Default.asp?TN=ndot>.

RTC utilizes the DBE Directory as a resource in developing overall and contract specific DBE participation goals and is used to assist potential prime contractors in the identification of available DBE subcontractors.

Section 26.33 - Overconcentration

RTC has not identified that overconcentration exists in the types of work that DBEs perform. If RTC should determine there is an over-concentration of DBEs in certain business areas to the extent that small non-DBE businesses can no longer effectively participate in RTC's contracting opportunities, the agency will contact the FTA Regional Civil Rights Officer for approval of the over-concentration determination and request assistance in devising measures to address the over-concentration.

Section 26.35 - Business Development Programs

RTC has not established a business development program as DBE firms are referred to the following organization for assistance with business development planning:

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

The [UNR Small Business Development Center](#) offers the following services to DBE firms in Washoe County, and throughout the state:

- One-on-one confidential professional counseling;
- Ongoing educational entrepreneurial seminars and workshops;
- Steps necessary to starting a small business;
- Guidance with business and marketing plan research, preparation and review;
- Assistance with loan package development;
- Marketing, branding and sales planning consultation;
- Assistance with accounting and recordkeeping software and how to use the information to help the business grow;

- Government contracting;
- State certification as a Woman, Minority or Disabled Veteran Enterprise;
- Improving customer service; and,
- Distributes electronic information on upcoming bids, training sessions and other relevant information.

RTC includes a reference to the *Small Business Development Center* above and on our *Doing Business with Us* page on our website.

Section 26.37 - Monitoring and Enforcement Mechanisms

RTC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. RTC will bring to the attention of the FTA or USDOT any false, fraudulent, or dishonest conduct in connection with its DBE program, so that USDOT may initiate 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 §26.109.
2. 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.

RTC's DBE program also includes monitoring and enforcement mechanisms to ensure that work committed, or in the case of race-neutral participation, the work subcontracted to all DBEs at contract award or subsequently, is performed by the DBEs to which the work was committed or subcontracted to, and that such work is counted according to the requirements of §26.55.

This includes:

- a. When a DBE subcontractor begins work on a project, the Project Manager (PM) or DBELO reviews the DBEs operation and completes the appropriate Commercial Useful Function (CUF) Determination form to ensure that:
 - i. DBE owners, supervisory personnel and/or employees are distinguishable from other personnel on the job;
 - ii. If a DBE firm is not performing a CUF, the PM or DBELO will notify the prime contractor in writing, specifying those actions which violate the terms of the contract.
 - iii. If the prime contractor fails to remedy the violation, the PM shall impose one or more sanctions, and the payments made to that DBE will not be credited toward the contract goal.
 - iv. The DBELO 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.
- b. Requesting and uploading all subcontracts from the prime contractor for review.

- c. Facilitating accurate reporting and oversight, entering all DBE and non-DBE firm information whether being counted for credit or not, into the RTC's B2GNow monitoring system.
- d. The B2GNow system database provides a running tally of actual DBE attainments (e.g., payments actually made to DBE and non-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, the PM or DBELO performs Commercially Useful Function (CUF) Reviews on each project for monitoring and enforcement purposes.
- e. The prime contractor shall make prompt and full payment to any DBE subcontractor (including the payment of any retainage) as discussed above in §26.29.
- f. 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.
- g. 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.

Additionally, RTC must effectively implement the following running tally mechanisms as part of its DBE program:

(1) With respect to achieving its overall goal, RTC will use a running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our current implementation of contract goals is projected to be sufficient to meet the overall annual goal. This mechanism is intended to inform decisions to implement goals on contracts to be advertised according to the established contract goal-setting process.

(2) With respect to each DBE commitment, RTC will use a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts be addressed to meet the established contract goal pursuant to [§26.53\(g\)](#).

All RTC personnel involved in RTC's DBE program, including the DBELO, must facilitate the implementation of the running tally requirement.

As noted, RTC utilizes a web-based software system for DBE reporting that is designed to streamline and automate reporting DBE participation. The system is accessible to all firms doing business with RTC and includes automated communication with contractors via email regarding compliance issues and concerns; submission of DBE utilization reports; tracking of contract goals and verification of subcontractor payments.

Section 26.39 - Small Business Participation

RTC'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.

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).

A Small Business Concern is one that:

1. 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;
2. Has the legal form of an individual proprietorship, partnership, limited liability company, corporation, joint venture, association, trust or cooperative.
3. 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.

Small Business Concerns 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.

By statute (NRS 332.201), RTC as a governmental agency is required to submit a report every six (6) months to the Nevada Office of Economic Development concerning local emerging small business participation in RTC contracts. Semi-annually, RTC notifies all newly registered small businesses through the Governor's Office of Economic Development (GOED), inviting them to register on RTC's solicitation platform to receive notifications regarding RTC's contracting opportunities.

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

1. On prime contracts not having DBE contract goals, encouraging 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.

2. Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform such that RTC meets the portion of its overall goal through race-neutral measures.

To assist prime contractors in these efforts, RTC will:

4. Include a link to the *Emerging Small Business* directory with its solicitations;
5. Notify small business organizations to make them aware of *How to Do Business with RTC*;
6. Place upcoming contracting opportunities on the RTC's website under the "*Doing Business With*" page on its solicitation platform;
7. Provide information and refer small businesses interested in DBE certification to NDOT's website to access a list of UCP agencies that provide certification services and non-certification services throughout the State of Nevada.

SUBPART C – GOALS, GOOD FAITH EFFORTS, and COUNTING

Section 26.43 - Set-Asides or Quotas

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

Section 26.45 - Overall Goals

The overall goal RTC establishes is based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on RTC's, FTA federally assisted contracts. In accordance with 49 CFR 26.45(c)(d), RTC uses the following two-step process to develop its overall triennial DBE goal.

- Step One – Determine a base figure representing the relative availability of DBEs.
- Step Two – Examine data to determine what adjustment, if any, is needed to the Base Figure.

This process is intended to provide the maximum flexibility for the RTC while ensuring that the goal is based on the availability of ready, willing and able DBEs in the RTC's relevant geographic market.

Step-One – Determination of Base Figure (26.45(c))

Projected Budget Project Analysis

The RTC shall provide a three (3) year projection for federally funded procurements by category and dollar value for construction, professional services and goods and services to be used in the Step One process for determining and setting the Triennial Goal (exclusive of FTA funds to be used for the purchase of transit vehicles).

Relative Availability of DBEs to All Firms

To establish the relative availability of DBEs **ready, willing and able** to all comparable firms both DBE and Non-DBEs in the RTC's market area, in applicable work categories/scopes, the RTC follows the prescribed goal-setting methodology described in accordance with 49 CFR 26.45. In

determining relative availability, the RTC use the following sources:

- For the numerator, or the number of potentially available DBEs, the RTC uses the DBE Directory maintained by NDOT.
- For the denominator, or the number of all firms (including DBEs), RTC uses the data obtained from the Census Bureau's most recent County Business Patterns dataset for the relevant geographic region.

Determination of the RTC's Market Area

For purposes of DBE goal setting, a substantial majority of the contractors and subcontractors doing business with RTC are located in Washoe County, Nevada. Therefore, to calculate the DBE goal, the market area is determined to be Washoe County.

Weighting Process

To ensure an accurate as possible base figure, a weighting process is applied based on the proportionate value of expenditure in each industry/work scope category.

Step-Two – Adjustment to Base Figure (26.45(d))

The RTC shall examine the current capacity of DBEs to perform work on FTA assisted contracts based on the value of work performed by DBEs in the previous several reporting periods.

Determining the Median Past Participation

To determine Median Past Participation, RTC calculates the median based upon the volume of work performed on RTC projects by DBE firms over the prior three (3) year period.

Adjusting the Step-One Base Figure with the Median Past Participation

RTC calculates the median past participation percentage and uses that figure to adjust the Step-One Base Figure by taking the average of the median past participation figure and the Step-One Base Figure, and then averaging the Step-One Base Figure with the median of the past years' participation rates.

$$(\text{Step 1 Base Goal} + \text{Median Past Participation}) \div 2 = \text{Adjusted Overall Goal}$$

Goal Submission to FTA (26.45(f))

RTC will submit its overall DBE goal to FTA by August 1 every three (3) years. RTC will also post the goal on its website. With the submission of its goal, RTC will include its projection of the portions of the overall goal it expects to meet through race-neutral and race-conscious measures.

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.

Race-neutral methods to be utilized will include the following:

- a. Provide information about the RTC, its functions and full range of contractual needs.
- b. Offer instructions and clarification on bid specifications, procurement policy,

- procedures, and general bidding requirements.
- c. Maintain a file of successful bid documents from past procurements and permit potential participants to review and evaluate such documents.
- d. Conduct debriefing sessions on each awarded contract to explain why certain bids were unsuccessful.
- e. Provide instructions and clarification on job performance requirements.
- f. Provide information and assistance on certification procedures, sub-contracting practices, bonding requirements.
- g. Arrange solicitations, time for presentation of bids, quantities, specifications and delivery schedules so as to facilitate the participation of DBEs.

Public Participation 26.45(g)

In accordance with the regulations, prior to the submission of the RTC's overall goal to the FTA, the RTC will consult with minority, women and general contractor groups, community organizations, and other officials or organizations that could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the RTC's efforts to establish a level playing field for the participation of DBEs. The focus of this exchange is to obtain information relevant to the goal setting process.

As noted above, following the consultations with the public, RTC will post notice of the proposed goal overall goal, on its website.

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;
 - Consider whether there were circumstances in the procurement/bidding process that might have contributed to the shortfall (i.e. more contracts awarded on good faith effort and/or not all contracts let;
 - Whether ongoing monitoring of the overall goal was adequately conducted in order to project and make timely adjustments to contract goal-setting;
 - Whether contract goals were appropriately established on projects that had opportunities for DBE participation;
 - Whether there was a substantial change in the construction or procurement program, where a mid-cycle review would have demonstrated a need for a downward adjustment to the goal; and/or
 - Whether there were outside factors that contributed to the shortfall such as a substantial decrease in the availability of DBEs to bid on RTC projects or more work from other entities that limited DBE capacity.
2. Establish specific steps and milestones to correct the problem(s) 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.

Given RTC is not considered one of the 50 largest transit authorities as determined by FTA, RTC is not required to submit this analysis and corrective action to the FTA, but must retain this information in its records for three years, and make it available to the FTA on request for their review.

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. RTC will report to FTA, within thirty (30) days of becoming contractually required to procure a transit vehicle, the name of the TVM that was the successful bidder, and the Federal share of the contractual commitment at that time.

Section 26.51 - Meeting Overall Goals/Contract Goals

Race-Neutral Participation

RTC will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral efforts may include, but are not limited to, the following:

- Notifying DBE and small business organizations to make them aware of *How to Do Business With RTC*, and to invite firms to participate in formal and informal procurements.
- Encouraging prime contractors to subcontract portions of work to small businesses, including DBEs.
- Ensuring distribution of the list of certified DBE firms and Emerging Small Businesses (ESBs) in solicitations to the widest feasible range of potential prime contractors.
- Considering (subject to State law and RTC needs) alternatives to stated specifications, such as bonding, insurance limits, and financing, which may limit DBE participation.
- Ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.
- Providing technical assistance, as needed.
- Providing information regarding NDOT's External Civil Rights Division.
- Maintaining website information on DBE certification, RTC's DBE Program, and links to the directory of DBE firms and ESBs.
- Placing upcoming contracting opportunities and contract award information on the RTC's solicitation platform under the "*Doing Business with*" page on our website.
- Provide information and refer small businesses interested in DBE certification to NDOT's website to access a list of UCP agencies that provide certification services and non-certification services throughout the State of Nevada.

Race-Conscious Participation

RTC will use contract-specific DBE goals to meet any portion of the overall goal that RTC does

not project being able to meet using race-neutral means, as described above. 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 opportunities. 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 goal as a percentage of the total amount of a federally funded FTA-assisted contract.

To ensure that its DBE Program continues to be narrowly-tailored to overcome the effects of discrimination, RTC will adjust usage of contract goals as follows:

1. If during the course of any year in which contract goals are used, and RTC determines that the overall goal will be exceeded, the use of contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If RTC determines that it will fall short of its overall goal, appropriate modifications will be implemented in the use of race-neutral and race-conscious measures to allow the overall goal to be met.
2. If DBE participation obtained by race-neutral means alone meets the overall goals for two (2) consecutive years, contract goals will not be set on any contracts during the next year. Only race-neutrals means will continue to be used thereafter to meet the overall goal unless and until such time that the overall goal is not met for a year.
3. If DBE participation through use of contract goals exceeds RTC's overall goal in two (2) consecutive years, use of contract goals will be reduced proportionately in the following year.

Section 26.53 - Good Faith Efforts (GFE)

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

In those instances where a contract-specific DBE goal is included in a 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. Examples of good faith efforts are found in [49 CFR Part 26, Appendix A](#).

Information to be Submitted (26.53(b))

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 bidders/offerors to submit the following information:

1. The names and address of DBE firms that will participate in the contract.
2. 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;
3. The dollar amount of the participation of each DBE firm participating;

4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. 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
6. 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.

To obtain this information, RTC requires each bidder/proposer, at the time of submitting its bid/proposal, to submit the *Demonstration of Good Faith Efforts* forms and the *DBE Commitment* form with 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 bidder's 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.

Provided that, in a negotiated procurement, including design-build procurements, the bidder/proposer may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by this section before the RTC makes the final selection for the contract.

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

The RTC will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before committing to the performance of the contract by the bidder/proposer. To assess good faith efforts, RTC will require that the bidder/proposer demonstrate that it has either met the established contract DBE goal, or that it made good faith efforts by demonstrating and documenting its good faith efforts to do so. The RTC will consider evidence of good faith efforts as outlined in [49 CFR Part 26, Appendix A](#). The RTC's assigned Procurement Analyst and DBELO are responsible for determining whether a bidder/offeree who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

If the bidder/proposer 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 (3) business days from the bid/proposal submittal date, which shall include 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:

1. Attendance at the pre-bid meeting.
2. 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.
3. Notifications in writing to minority contractor associations within a reasonable time before bids are due of a solicitation for specific sub-bids.
4. 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.

Administrative Reconsideration (26.53(d))

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 Director of Finance 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 reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The reconsideration official 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.

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

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 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 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)

NDOT is responsible for implementing the DBE certification program in accordance with 49 CFR Part 26. RTC is a certifying partner of the Nevada UCP along with the Reno-Tahoe Airport Authority, Carson Area Metropolitan Planning Organization, the Regional Transportation Commission of Southern Nevada and Harry Reid International Airport in Las Vegas. The RTC receives monthly DBE Directory listings, notifications of recently certified DBEs, decertified DBEs, and renewals from NDOT, and participates in monthly UCP meetings. RTC 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 26.89 and 26.91 – Appeals/Procedures for Certification Decisions

RTC distributes information about NDOT's website, which provides a list of UCP agencies that provide certification services and non-certification services in the State of Nevada. Any firm or complainant may appeal the NDOT's decision in a certification matter to the 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

RTC will promptly implement any U.S. DOT certification appeal decisions affecting the eligibility of DBEs for RTC's DOT-assisted contracting (e.g. certify a firm if DOT has determined that NDOT's denial of its application was erroneous.)

SUBPART F - COMPLIANCE AND ENFORCEMENT

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.

All participants in RTC's DBE program (including, but not limited to 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 RTC 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 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).

As a contractor, or any other participant in RTC's DBE program, you must 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 you violate this prohibition, you are in noncompliance with this part.

Recordkeeping and Payment Monitoring to DBEs

RTC will require prime contractors to maintain records and documents of payments to DBE/SBE subcontractors for three (3) years following the performance of the contract. These records will be made available for inspection upon request by an authorized representative of RTC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

RTC will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. 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 in the schedule of DBE participation. The DBELO will also monitor prompt payment by prime contractors to DBE/SBE subcontractors on any RTC project. This information will be maintained in the B2GNow system.

DRAFT PENDING FTA CONCURRENCE