

**Federal Transit Administration  
Disadvantaged Business Enterprise (DBE)  
Program Plan**

**For**

**Mountain Line (Northern Arizona  
Intergovernmental Public Transportation  
Authority)**

Updated: July 2024

Updated: December 2020

Updated: June 18, 2015

Adopted: July 16, 2015

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**Objective - Policy Statement**

Northern Arizona Intergovernmental Public Transportation Authority (Mountain Line), (DBA Mountain Line) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Mountain Line has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Mountain Line has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of Mountain Line to ensure that DBEs as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Purchasing and Contracts Officer has been delegated as the DBE Liaison Officer. In that capacity, the Purchasing and Contracts Officer is responsible for implementing all aspects of the Arizona DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by Mountain Line in its financial assistance agreements with the Department of Transportation.

Mountain Line has disseminated this policy statement to the Mountain Line Board of Directors and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work on DOT-assisted contracts.

Heather Dalmolin  
CEO and General Manager  
Mountain Line

## **GENERAL REQUIREMENTS**

### **Applicability**

As a recipient of funds from the Federal Transit Administration (FTA) Mountain Line has established its DBE program in accordance with 49 CFR Part 26 and has committed to ensuring compliance on all FTA funded transportation projects through monitoring, reporting, and goal-setting. Where DBE goal setting is not necessary or practicable, Mountain Line will encourage race-neutral DBE participation.

Federal transit funds are 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.

### **Definitions**

Disadvantaged Business Enterprise or DBE means a for-profit small business concern –

- That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.
- The owner(s) must have a personal net worth (PNW) less than \$1,320,000..
- The firm must be a for-profit, already existing business with a three year gross receipts average under \$23,980,000. The firm must also not exceed the Small Business Administration (SBA) size standards in 13 CFR part 121 for the type of work it performs.

Mountain Line has adopted and uses the definitions related to the DBE program found in 49 CFR Part 26.5.

### **Non-discrimination Requirements**

Mountain Line will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, Mountain Line 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, sexual orientation, gender identity or expression, or national origin as required by federal, state or local regulations.

### **Record Keeping Requirements**

#### **Uniform Report of DBE Awards or Commitments and Payments:**

Mountain Line will report DBE participation to FTA using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

- DBE activity from October First through March 31st will be submitted by June 1<sup>ST</sup>
- DBE activity from April First through September 31st will be submitted by December 1<sup>ST</sup>
- When goal is not attained, a shortfall analysis and corrective action plan will be submitted to

the FTA within 90 days of the end of the Federal Fiscal Year when the DBE goal is not met.

- The second report will be an accumulation of the entire Fiscal Year

If applicable, Mountain Line will include sub-recipient activity in its semi-annual reports based on project data provided through the Local Public Agency DBE Reporting System.

### Bidders List

Mountain Line utilizes Arizona Department of Transportation (ADOT) bidders list.

The Arizona Department of Transportation (ADOT) will collect bidders' list information, consisting of information regarding DBE and non-DBE firms that bid or quote on DOT-assisted contracts.

Bidders' list information will be used by ADOT in support of annual goal-setting calculations but will not be used exclusively to substantiate availability or the "ready, willing, and able" status of affected Arizona DBEs. Data gathered will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

This information will be collected via completed Bidders List Forms and Civil Rights Vendor Registration hosted by ADOT. Bidders List Forms shall be received by the ADOT Civil Rights Office at the time of bid opening or cost proposal submission. Bidders List Forms shall be submitted by all bidders. Bidders List Forms will contain name, address, and DBE or non-DBE status. Instructions for completing Bidders List Forms are contained in the ADOT DBE Specification, EPRISE. Age and annual gross receipts data will be collected via the Civil Rights Vendor Registration system.

Civil Rights Vendor Registration can be accessed via <https://adot.dbesystem.com/Default.asp>. All contractors, consultants, subcontractors, and sub-consultants, DBE and non-DBE, are required to complete the Civil Rights Vendor Registration for all Mountain Line-administered and sub-recipient federal aid projects.

### Assurances

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

#### Federal Financial Assistance Agreement Assurance 26.13(a)

Mountain Line 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. Mountain Line'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 its terms shall be treated as a violation of this agreement.

Upon notification to the Mountain Line of its failure to carry out its approved program, Mountain Line may impose sanction 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.).

As applicable, this language will appear in financial assistance agreements with sub-recipients.

#### Contract Assurance 26.13(b)

Mountain Line 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, sex, sexual orientation, gender identity or expression, or national origin as required by federal, state or local regulations in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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 state deems appropriate. The contractor, sub-recipient, or subcontractor shall ensure that all subcontract agreements contain this non-discrimination assurance.

## **ADMINISTRATIVE REQUIREMENTS**

### **DBE Program Updates**

Mountain Line receives funding from the FTA in excess of \$250,000 each federal fiscal year for planning capital, and or operating assistance. As a condition of receipt of funding, Mountain Line will continue to carry out the requirements defined in this Program Plan until all funds from DOT financial assistance have been expended. Further, Mountain Line will provide updates to the DOT regarding any significant changes in the program

### **DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

Heather Higgins, Purchasing and Contracts Officer  
3773 N Kaspar Dr Flagstaff, AZ 86004  
928.679.8907 or [hhiggins@mountainline.az.gov](mailto:hhiggins@mountainline.az.gov)

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Mountain Line complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the CEO and General Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has access to professional and technical staff to assist in the administration of this program. The 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 ADOT to monitor state goal updates and modify Mountain Line policy as necessary.
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 (both race-neutral methods and contract specific goals attainment)

and monitors results.

6. Analyzes Mountain Line's progress toward attainment and identifies ways to improve progress.
7. Develops and submits shortfall analysis and corrective action plan to be submitted to FTA within 90 days of the end of the Federal Fiscal year when the DBE goal is not met.
8. Participates in pre-bid meetings.
9. Advises the General Manager and Board of Directors on DBE matters and achievement.
10. Participates with legal, construction, and contracts/specifications to determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains Mountain Line's updated directory on certified DBEs.

### **DBE Financial Institutions**

It is the policy of Mountain Line 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.

The Arizona Department of Financial Institutions is utilized to identify such institutions. To date, socially and economically disadvantaged owned and controlled financial institutions have not been identified in Arizona.

### **Prompt Payment Mechanisms**

#### **Prompt Payment:**

Mountain Line will include the following clause in each DOT-assisted prime contract:

As per the Arizona Revised Statutes Section 28-6924 Paragraph A.2 and Mountain Line specifications, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contract receives from Mountain Line. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Mountain Line. This clause applies to both DBE and non-DBE subcontracts require that prime contractors pay their subcontractors.

#### **Retainage:**

The prime contractor agrees to return retainage payments to each subcontractor within fourteen (14) days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the [Recipient]. This clause applies to both DBE and non-DBE subcontracts.

Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Mountain Line. If prompt partial or prompt final payment, including any retention, is not made

within the established timeframes, Mountain Line may retain two thousand dollars (\$2,000) per subcontractor, per occurrence. The amount withheld is released after the issue is resolved.

#### **Monitoring and Enforcement:**

Mountain Line has requires various reporting mechanisms, certifications, and forms to monitor and enforce that prompt payment and return of retainage is in fact occurring.

#### **Directory**

Mountain Line identifies DBE's as certified by the ADOT Unified Certification Program.

ADOT serves as the lead agency for the Arizona Unified Certification Program. In this role, ADOT maintains the statewide directory which identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, fax number, email address, gender, ethnicity, certification source, NAICS codes, and the type of work the firm has been certified to perform as a DBE. The directory is available online at [www.azdbe.org](http://www.azdbe.org). Paper copies of the DBE directory are made available upon request by contacting the ADOT Civil Rights Office at (602) 712- 7761 or via email at [dbesupportiveservices@azdot.gov](mailto:dbesupportiveservices@azdot.gov).

#### **Overconcentration**

Mountain Line relies on ADOT's lead for identification and addressing overconcentration issues.

ADOT has not identified that overconcentration exists in the types of work that DBEs perform. However, if ADOT finds that DBE overconcentration has occurred to such an extent as to unduly burden the opportunity of non-DBE firms to participate in the design or construction program, it will develop procedures to address this. The procedures will be submitted to the appropriate operating administration for review and approval prior to implementation.

#### **Business Development Programs**

Mountain Line has not established a formal business development program. We do provide outreach services, including forwarding information no less than annually to all known vendors regarding ADOT's DBE Supportive Services Provides. Additionally announcements from ADOT about educational programs and conferences are sent to all registered vendors.

The ADOT DBE Supportive Services Program provides outreach and educational programs regarding the benefits of DBE certification for minority and women owned businesses. The purpose of the program is to provide education, access, and visibility for the DBE community to aid in business development and eventual self-sufficiency. Training, conferences, and workshops are open to any interested party. Detailed information regarding the ADOT DBE Supportive Services program can be found at [www.adotdbe.com](http://www.adotdbe.com).

#### **Monitoring and Enforcement Mechanisms**

Mountain Line will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.

2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment B lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by monitoring by the DBE Liaison Officer and Mountain Line Development Director.

4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### **Small Business Participation**

Mountain Line has incorporated the following non-discriminatory element to its DBE program, in order to facilitate competition on DOT-assisted public projects by small businesses (both DBEs and non-DBE small businesses):

- Vendor searches completed at local level using grass root groups to ensure adequate advertisement of opportunity;
- Use of Small Business Center for identification of small business and advertisement opportunity;
- Continuous evaluation of contract requirement to minimize and remove unnecessary and unjustified requirements;
- Encouraging bidders on large contracts to identify and create provisions within subcontracts appropriate for small business participation;
- Development of acquisition strategies and structuring procurements to facilitate bids by and awards to small business consortia or joint ventures; and
- Letting prime contract of a size that small businesses can reasonably compete for and perform.

### **Transit Vehicle Manufacturers Goals**

Mountain Line will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, Mountain Line may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program. Mountain Line will report to FTA Transit Vehicle Manufacture purchase information within 30 days of making an award.

### **Good Faith Efforts Procedures**

When Mountain Line establishes a contract goal, it will award the contract only to a bidder/offeror that makes good faith efforts to meet the goal. It will be determined that a bidder/offer has made good faith efforts if the bidder/offer does either of the following:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made adequate good faith efforts to meet the goal, even though it did not obtain enough DBE participation to do so. Mountain Line will not deny award to a bidder/offeror that documents adequate good faith efforts.

Mountain Line has adopted the examples of good faith efforts are found in Appendix A to Part 26. A full explanation of Good Faith Effort requirements is detailed in Attachment B of this DBE Program Plan.

Mountain Line is responsible for determining whether a bidder/offeror that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The initial review will be conducted by the Project Manager/Lead with final review and approval by the Management Services Director.

Mountain Line will ensure that all information is complete and accurate and adequately

documents the bidder/offer's good faith efforts before a commitment to the performance of the contract by the bidder/offeror is made.

#### Information to be Submitted

Mountain Line treats bidder/offers' 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/offerors to submit the following information:

- The names and contact information of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
- If the contract goal is not met, evidence of good faith efforts.

#### Administrative Reconsideration

The bidder/offeror may appeal the determination of the Management Services Director to the CEO and General Manager. That appeal must be in writing and personally delivered or sent by certified mail, return receipt requested, to the CEO and General Manager. The protest must be received by the CEO and General Manager no later than seven (7) calendar days after the decision of the Management Services Director. Copies of the protest shall be sent by the protestant to every bidder, at the same time the protest is submitted to the CEO and General Manager. Any other interested party may submit a response to the appeal no later than seven calendar days after the appeal is requested. Responses from other interested parties must also be in writing and personally delivered or sent by certified mail, return receipt requested, to the CEO and General Manager. Any interested party submitting such response shall also provide a copy of its response to every bidder, at the same time the protest is submitted to the CEO and General Manager. The CEO and General Manager shall promptly consider any appeals under this subsection and notify all bidders of the CEO and General Manager's findings and decision.

Any interested party may protest the CEO and General Manager's decision to the Mountain Line Board of Directors.

#### Good Faith Efforts when a DBE is replaced on a contract with contract goals

Mountain Line 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 contract goal. Mountain Line will require the prime contractor to notify the Project Manager/Lead and the Management Services Director immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, Mountain Line will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

Mountain Line will require that a prime contractor not terminate a DBE subcontractor listed in response to the "Goals" and "Good Faith Efforts" sections listed above (or an approved substitute DBE firm) without Mountain Line's prior written consent. This includes, but is not limited to, instances in which a prime

contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Mountain Line may provide such written consent only if it agrees, for reasons stated in its concurrence document, that the prime contractor has good cause to terminate the DBE firm. For the purposes of this section, 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. Mountain Line 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 Mountain Line 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 Mountain Line determines compels 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 Mountain Line 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 Mountain Line, of its intent to request to terminate and/or substitute, and the reason for the request.

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Mountain Line will include administrative remedies in each prime contract which it will invoke if the prime contractor fails to comply with the requirements of this section.

The requirements of this section will also be applied to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Mountain Line will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

If the Management Services Director determines that the contractor has failed to make sufficient reasonable efforts to meet contract DBE goals, or to otherwise carry out these DBE special provisions, such failure shall constitute a breach of contract and may result in termination of the contract, or any other such remedy as the Management Services Director deems appropriate. The contractor may appeal the decision of the Management Services Director with the CEO and General Manager in accordance with the administrative reconsideration process mentioned previously.

If Management Services Director determines that such failure is not cause to terminate the contract, an amount equal to the value of the DBE goal that was not obtained will be deducted from the payment due to the contractor. However, if the failure is the first by the contractor, and Management Services Director determines the failure was an unintentional error or oversight, the amount to be deducted may be reduced to one-half (1/2) of the value of the un-obtained DBE goal. In addition to any other sanctions, willful failure of the contractor or a DBE to comply with this contract or with the Federal DBE regulations may result in disqualification from further contracting, subcontracting, or other participation in Mountain Line projects.

#### Counting DBE Participation

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

### **DBE CERTIFICATION**

#### Certification Process

Mountain Line has utilizes the Arizona Unified Certification Program and does not certify DBE vendors independently.

ADOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. ADOT will inform applicants within 30 days of receipt of an application whether the information is complete or additional documentation is required. ADOT will make its certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact: ADOT DBE Certification Program Manager, at (602) 712-7761.

Certification application forms and documentation requirements can be found at [www.azdbe.org](http://www.azdbe.org).

**The following is from ADOT FTA DBE Program, updated February 2012**

**CERTIFICATION PROCEDURES**

Arizona Unified Certification Program

ADOT is the lead agency for the Arizona Unified Certification Program. The Arizona UCP meets all of the requirements of 49 CFR Part 26. The UCP is comprised of ADOT, the City of Phoenix, and the City of Tucson. Information regarding the Arizona UCP can be found at [www.azdbe.org](http://www.azdbe.org).

Procedures for Certification Decisions

Annual Updates / "No Change" Affidavits and Notices

Once a DBE has been certified, it shall remain certified until and unless its certification has been removed, in whole or in part, through the procedures of section 26.87. DBEs are not required to reapply for certification. However, ADOT may conduct a certification review of a certified DBE firm, including a new onsite review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If ADOT finds that the firm's eligibility is questionable, it may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites. These reviews will include the following components:

- The most recent company taxes will be collected and evaluated to ensure that the company continues to meet the size standard requirement
- The most recent Personal taxes and Personal Financial Statement for the qualifying DBE (s) will be collected and evaluated to ensure the Personal Net Worth requirement continues to be met.
- Companies will be required to submit any contact information changes or structural changes that may effect eligibility requirements. In addition, certified DBE companies will be required to submit any major purchase agreements or loan agreements signed into after the initial certification review was conducted.

ADOT requires all DBEs to inform the agency within 30 days of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with ADOT's application for certification.

On an annual basis ADOT will also require all certified DBEs to submit a "no change" affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]'s application for certification, except for any changes about which you have provided written notice to the [Recipient] under 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$22.41 million."

Along with the affidavit, DBEs are required to submit their last year of federal taxes documenting annual gross receipts.

ADOT will notify all currently certified DBE firms of these obligations every April 1st. The DBE will have until 6/30 of that year to submit the required documentation. This notification will inform DBEs to submit the "no change" affidavit and their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

The annual update process is completed via its online DBE application. DBEs are required to log into a user account, provide the necessary information, and certify that the information is complete and accurate. The online application is tied directly to vendor registration and may be accessed at [www.azdbe.org](http://www.azdbe.org).

#### Denials of Initial Requests for Certification

If ADOT denies a firm's application or de-certifies a firm, the firm may not re-apply until 12 months have passed from the action. If a firm submits and then withdraws its DBE application, the firm may do so at any time and does not have to wait 12 months.

#### Removal of a DBE's Eligibility

In the event that ADOT proposes to remove a DBE's certification, ADOT will follow procedures consistent with 26.87. If a certified company is determined to no longer be eligible for the DBE program, ADOT will send a propose to remove letter stating the reasons the company no longer meets the DBE requirements. The DBE can request an informal hearing or choose to submit additional information for review. If a company requests an informal hearing ADOT will take action to begin the proceeding per 26.87.

To ensure separation of functions in a de-certification, ADOT has determined that the Nevada DOT Compliance Officer will serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure the Nevada DOT Compliance Officer will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

#### Interstate Certification

When ADOT receives a DBE application from a company certified in another state, ADOT may, at its discretion certify that company without further procedures. If an out of state company wants to obtain certification in this manner, the firm must provide to ADOT a copy of its certification notice from the home state. ADOT would be responsible for verifying the validity of the out of state certification.

If ADOT chooses not to accept certification based on the home state evaluation, the applicant firm must provide a complete copy of the application form, all supporting documents and any other information that needs to be submitted. Once ADOT receives all of the necessary information ADOT must request a copy of the home state onsite report within 7 days of receipt of the application.

If ADOT agrees with the home state determination, ADOT must send the applicant firm a notice that it is certified and place the firm on the AZUCP directory of DBE certified firms within 60 days from the date on which ADOT received all the requested information.

If ADOT has good reason and does not agree with the determination of the home state ADOT must send a notification to the applicant company within 60 days stating the reasons why ADOT is denying certification. This notice must state with particularity the specific reasons why ADOT believes that the firm does not meet the DBE requirements and must offer the applicant firm an opportunity to respond to ADOT with respect to the reasons.

If the applicant firm elects to request an in-person meeting with ADOT's decision maker to discuss ADOT's objections to the firm's eligibility, ADOT must schedule the meeting to take place within 30 days of receiving the firm's request. ADOT must issue a written decision within 30 days of the receipt of the written response from the applicant firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. A decision may be appealed to the Departmental Office of Civil Rights.

When ADOT denies a firm's application, rejects the application of a firm certified in another state, or decertifies a firm, ADOT must make an entry in the Department of Transportation Office of Civil Rights (DOCR's) Ineligibility Determination Online Database. The following information must be submitted:

1. The name of the firm
2. The name of the firm's owner(s)
3. The type and date of this action
4. The reason for the action

ADOT must check the website at least once every month to determine whether any firm that is applying for certification by ADOT, or that ADOT has already certified, is in the database. For any such firm that is in the database, ADOT must promptly request a copy of the listed decision from the UCP that made it. If ADOT receives such a request, ADOT will provide a copy of the decision within 7 days of receiving the request. Notwithstanding any provision of Federal or state law, ADOT must not release any information that may reasonably be construed as confidential business information. This includes application for DBE certification and supporting information. However, ADOT must transmit this information to DOT in any certification appeal proceeding or to any other state to which the individual's firm has applied for certification.

#### Certification Appeals

Any firm or complainant may appeal ADOT's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington,  
DC 20590  
Phone: (202) 366-4754  
TTY: (202) 366-9696  
Fax: (202) 366-5575

ADOT will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs on DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

## **COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation**

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

Notwithstanding any contrary provisions of state or local law, Mountain Line 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.

### **Payment Monitoring**

Mountain Line will require prime contractors, consultants, and vendors to maintain records and documents of payments to DBE and non-DBE subcontractors for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Mountain Line. Subcontractors are required to maintain payment information for any lower tier subcontractors for the same three-year duration.

Mountain Line is required to collect data on DBE and non-DBE participation to report to FTA on Federal-aid projects. Contractors, consultants, and vendors are notified that such record keeping is required by Mountain Line for tracking DBE participation.

Contractors, consultants, and vendors performing on federal aid transportation projects are required to provide monthly reports documenting amounts earned by and paid to all DBEs and non-DBEs. All DBE and non-DBE subcontractors working on federal aid transportation projects are required to verify receipt of payment.

Further, first tier (and lower) subcontractors are required to report amounts earned by and paid to all lower-tier DBE and non-DBE subcontractors. Lower-tier subcontractors are required to verify receipt of payment.

Contractors, consultants, and vendors shall provide the required information to the Management Services Director.

