City of Phoenix

Mission Statement

To improve the quality of life in Phoenix through efficient delivery of outstanding public services.

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Project Number

1230041

This report can be made available in alternate format upon request.

Equal Opportunity Department
Disadvantaged Business Enterprise Program

April 20, 2023

Report Highlights

Disadvantaged Business Enterprise Program

Equal Opportunity Department staff fulfilled their responsibilities for administering the City's Disadvantaged Business Enterprise Program Plan.

Business Certifications

Equal Opportunity Department staff properly certified Disadvantaged Business Enterprise firms as well as Disadvantaged Business Enterprise in Airport Concessions Program firms.

Business Monitoring

Equal Opportunity Department staff monitored Disadvantaged Business Enterprise in Airport Concessions Program vendor performance and ensured that payments were properly made to Disadvantaged Business Enterprise in Airport Concessions Program firms.

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Executive Summary

Purpose

Our purpose was to determine that the City's Disadvantaged Business Enterprise (DBE) Program is managed to effectively meet federal requirements and goals.

Background

The City is the designated recipient of Federal Transit Administration (FTA) funds for the region. Recipients of these federal funds are required to develop and implement a DBE program that is intended to ensure that a set percentage of the federal funds go to a DBE certified company. The City's Equal Opportunity Department (EOD) is responsible for monitoring this program.

Participation in the Disadvantaged Business Enterprise in Airport Concessions Program (ACDBE) is required of agencies that received a grant for airport development any time after January 1988 (authorized under Title 49 of the United States Code). As a recipient of grant funds for airport development, the City established an ACDBE Program to comply with this requirement. EOD serves as the City Manager's designee in administering and providing oversight of the City's ACDBE Program. EOD also monitors certifications, contracts, and payments.

The DBE program ensures that socially and economically disadvantaged businesses as defined by the federal government, have an equal opportunity to participate in the performance of United States Department of Transportation (USDOT) assisted contracts and subcontracts administered by the City and its subrecipients. The Program Plan includes the following among its objectives:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts
- Create a level playing field in which DBE firms can compete fairly for USDOT-assistant contracts
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law
- Ensure that only firms that meet federal eligibility standards are permitted into the program

The City must coordinate the program and ensure that DBEs are appropriately certified. The City must also monitor DBEs to ensure they perform the work they are awarded and receive appropriate payment. The City designated EOD as the central, governance point. EOD performs all certifications for the City and monitors all USDOT-assisted projects and subrecipients, except those within the Public Transit Department, which performs its own monitoring functions. EOD coordinates with Public Transit, as well as the other departments (primarily the Street Transportation Department) that use DBEs.

In addition, there is an Airport Concessions DBE (ACDBE) program. EOD certifies and monitors ACDBEs, working closely with the Aviation Department.

Results in Brief

EOD staff administered the DBE Program in accordance with its approved DBE Program Plan.

We verified that EOD meets federal requirements and governance practices listed in the Program Plan. Among other functions, the Program Plan requires that EOD gather and report statistical information, review and monitor contracts, work with departments to set and track overall annual goals, and maintain the City's directory of DBE firms. EOD also provides DBE firms with information and assistance in preparing bids, certifies DBE firms according to criteria set by USDOT, and provides outreach to DBE firms and community organizations to advise them of opportunities.

EOD staff properly ensured that vendor certification for DBE/ACDBE contracts was done.

We reviewed a sample of DBEs/ACDBEs that were certified and renewed in Calendar Year 2022 (CY22). EOD followed the certification process, which requires them to review (1) characteristics such as personal net worth, (2) proof of United States citizenship, and (3) other business organization documents. Staff conducted desk reviews and onsite reviews.

EOD staff ensured that monitoring and enforcement controls were in place to verify that DBE/ACDBE work was done and payments were made.

We reviewed a sample of DBE/ACDBE firms that performed work in CY22. We found that EOD staff appropriately monitored the contractors to ensure that DBE/ACDBE performed the work and that DBE/ACDBE received the appropriate payments. All records are maintained in a computer system that is commonly used within the industry.

1 – Program Governance

Background

The City designated the EOD Director as the DBE Liaison Officer. EOD provides program governance and compliance.

The City provides data about its DBE Program to USDOT. The Arizona Department of Transportation (ADOT) submits reports on behalf of the City. The City reports the required information about participating DBE firms. The City reports DBE participation to the Federal Aviation Administration (FAA), Federal Transit Administration (FTA), and Federal Highway Administration (FHWA).

The City established an overall DBE goal covering a three-year federal fiscal year period. On a semi-annual basis, the City reviews awards and commitments shown on the DBE Uniform Reports to evaluate the participation of DBE firms.

Results

EOD administered the DBE Program in accordance with its approved DBE Program Plan. There is proper organizational structure to ensure certification of vendors, federal compliance oversight, and goals compliance.

We verified that EOD meets federal requirements and governance practices listed in the Program Plan. Among other functions, the Program Plan requires that EOD gather and report statistical information, review and monitor contracts, work with departments to set and track overall annual goals, and maintain the City's directory of DBE firms. EOD also provides DBE firms with information and assistance in preparing bids, certifies DBE firms according to criteria set by USDOT, and provides outreach to DBE firms and community organizations to advise them of opportunities.

The City designated the DBE Program Compliance function to EOD. We found that the placement of this function varies when looking at other, similar jurisdictions.

We contacted other, comparable cities that have a DBE function: Albuquerque (NM), Austin (TX), Denver (CO), San Diego (CA), Seattle (WA), and Tucson (AZ). We found some had the function in an EOD-similar department, others in a purchasing function. In some states, such as Washington or New Mexico, the state certifies DBEs; whereas in Arizona, the state, as well as Phoenix and Tucson, can certify. Overall, we found that the location of the DBE program varied.

Recommendation

None

2 – Certification Process

Background

The City participates in an Intergovernmental Agreement (IGA) with the Arizona Department of Transportation and the City of Tucson. The IGA allows applicants a statewide one-stop certification process under the Arizona Unified Certification Program (AZUCP). The AZUCP Partners have agreed to a reciprocal certification program and follow all federal certification procedures and standards.

These procedures and standards include confirming that an applicant's gross receipts and personal net worth is below USDOT standards. EOD must confirm ownership, independence, expertise, and other qualifications. EOD uses the online system B2G to document the certification process and approvals. See *Attachment A – Certification Process Flowchart* for a fuller description of the process.

We reviewed a sample of DBEs and ACDBEs certified in Calendar Year 2022 (CY22) to confirm that EOD followed its process, and federal procedures and standards.

Results

EOD staff properly certified DBEs and ACDBEs.

We reviewed 10 of the 40 DBEs certified in CY22 and 10 of the 14 ACDBEs certified in CY22. We found that all processes were appropriately followed. We did not identify any exceptions. Specifically, we validated that:

- The Lead Contract Specialist assigns files to other Contract Specialists who perform a cursory review of the application for information such as: the applicant's personal net worth, an affidavit of certification, the prior 3 years business/personal tax returns, prior contracts and invoices, proof of United States citizenship, and business organization documents.
- The preliminary desk audit is performed to verify that the applicant is eligible to be included in a disadvantaged group, and that the applicant's personal net worth is below the threshold of $1.32 million.
- Eligible forms are processed, including a comprehensive desk audit and verification of critical documentation.
- The EO Specialist conducts an on-site visit and then performs a final file review.
- The Lead Contract Specialist then performs a second review of the file and either recommends the application for certification or for denial.
- If a certification is denied, the applicant can pursue an appeals process.

Recommendation

None

3 – Performance and Payment Monitoring

Background

The City Program Plan defines monitoring to verify that work committed to DBEs at contract award is performed by DBEs:

- Contract defines the work to be performed by the DBE.
- Any changes to the stated DBE participation must be approved by the compliance specialist prior to the change.
- EOD inspects records as needed.
- The contractor provides EOD (via the online computer system B2GNow) with copies of completed and signed subcontracts, purchase orders, invoices, etc., with the designated subcontractors.
- On a monthly basis, the contractor reports in B2GNow all payments received from the owner of the contract and all payments issued to all its subcontractors, subconsultants, and suppliers.
- When work has been fully completed and all payments have been made, a "Certification of Payment" is filed with EOD.
- EOD maintains a written record all monitoring activities conducted by the City.

The City Program Plan also defines how the City will ensure that payments are appropriate and paid to the DBE:

- On a monthly basis, B2GNow sends audit notifications to prime contractors to report payments received from the City and payments made to subcontractors.
- On the 15th of every month, prime contractors enter all payments received and dispersed. B2GNow sends notifications to prime contractors until the audit report is filed.
- Subcontractors, subconsultants, and suppliers are required to confirm the accuracy of the data reported by the prime contractors, i.e., promptness of payment, amount of payment, retention released, and whether the payment was a final payment.
- EOD reviews B2GNow for outstanding audits, addresses prompt payment violations, and ensures retention is released in full within 30 days of the subcontractor substantially completing the scope of work.

We reviewed a sample of DBEs and ACDBEs that were active in CY22 to confirm that appropriate monitoring of performance and payments took place.

Results

EOD staff performed monitoring and enforcement functions to verify that work was done by DBEs and that payments were appropriate and paid to the DBEs.

We reviewed 10 of the 246 DBEs that completed work in CY22. We found that EOD staff used B2GNow to record work and any changes to work, note inspections of work, document all payment files, record any problems, and monitor the DBEs. EOD staff confirmed that the DBE performed the work required.

For the same sample of DBEs, we reviewed B2GNow records to confirm that audit notifications were sent out, that prime contractors entered required payment documentation into B2GNow, and that subcontractors and others confirmed the accuracy of data reported. B2GNow demonstrated that the EOD specialist actively reviewed audits and payments.

EOD staff performed monitoring and enforcement functions to verify that work was done by ACDBEs and that payments were appropriate and paid to the ACDBEs.

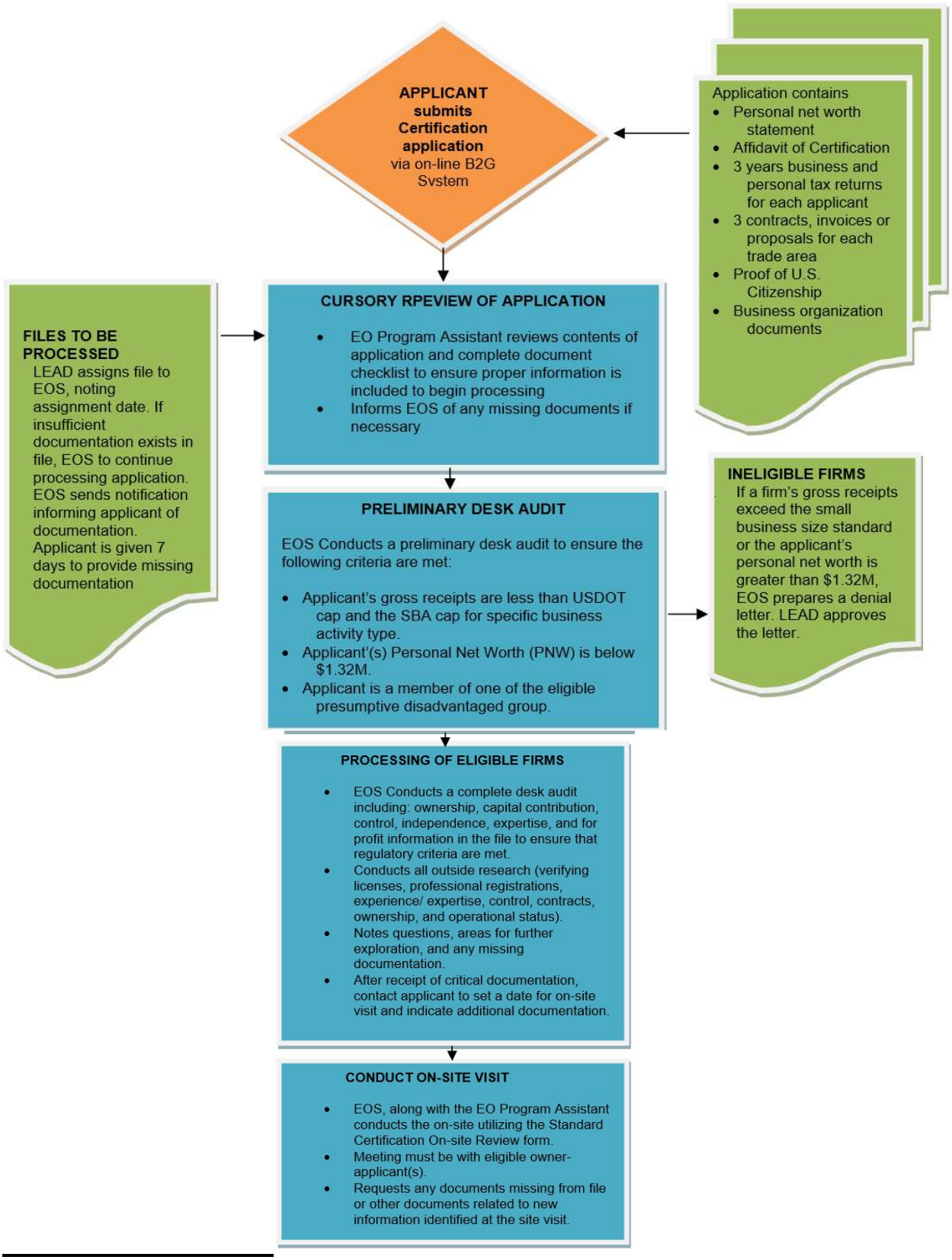
We reviewed 10 of the 52 ACDBEs that performed work in CY22. Again, we found that EOD appropriately used B2GNow to record work and any changes to work, note inspections of work, document all payment files, record any problems, and monitor the DBEs. EOD staff confirmed that the DBE performed the work required.

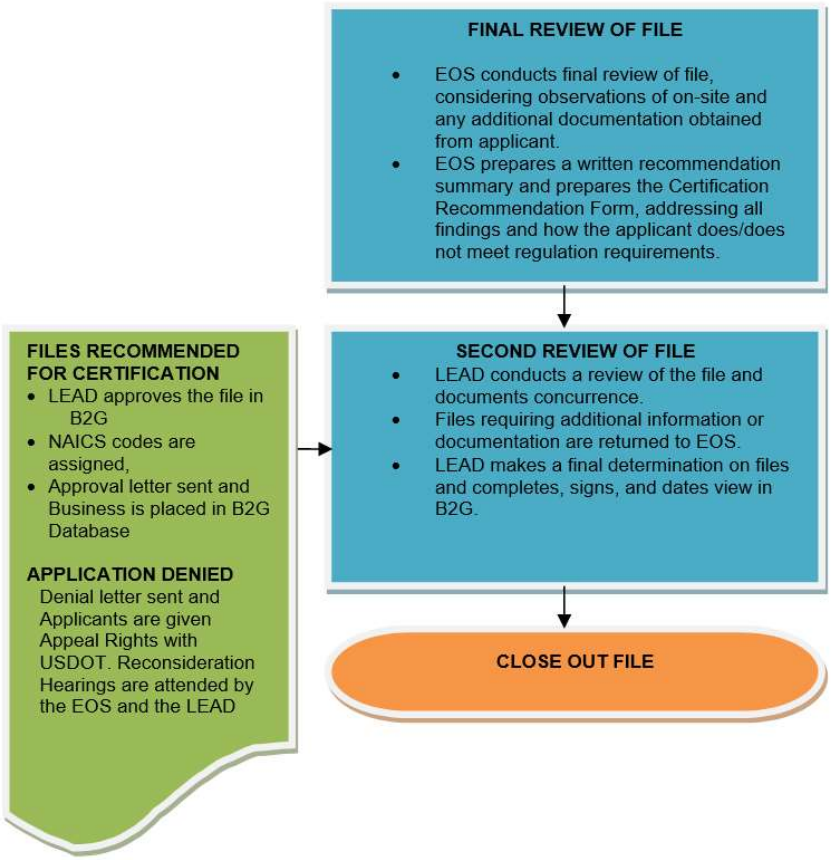
For the same sample of ACDBEs, we reviewed B2GNow records to confirm that audit notifications were sent out, that prime contractors entered required payment documentation into B2GNow, and that subcontractors and others confirmed the accuracy of data reported. B2GNow demonstrated that the EOD specialist actively reviewed audits and payments.

Recommendation

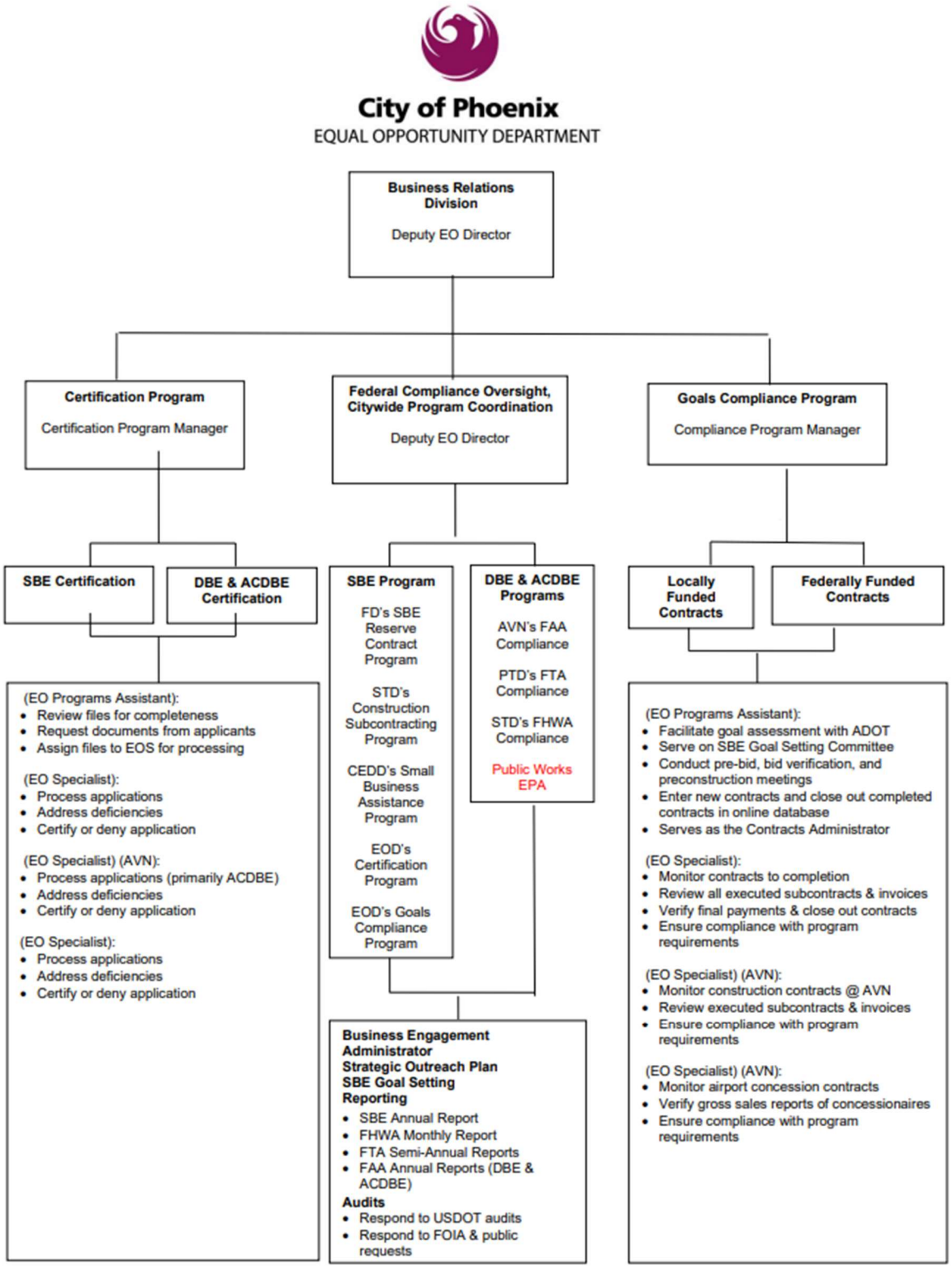
None

Attachment A – Certification Process Flowchart




FINAL REVIEW OF FILE
EOS conducts final review of file, considering observations of on-site and any additional documentation obtained from applicant.
EOS prepares a written recommendation summary and prepares the Certification Recommendation Form, addressing all findings and how the applicant does/does not meet regulation requirements.
SECOND REVIEW OF FILE
LEAD conducts a review of the file and documents concurrence.
Files requiring additional information or documentation are returned to EOS.
LEAD makes a final determination on files and completes, signs, and dates view in B2G.
CLOSE OUT FILE
FILES RECOMMENDED FOR CERTIFICATION
LEAD approves the file in B2G
NAICS codes are assigned,
Approval letter sent and Business is placed in B2G Database
APPLICATION DENIED
Denial letter sent and Applicants are given Appeal Rights with USDOT. Reconsideration Hearings are attended by the EOS and the LEAD

Attachment B – EOD Business Relations Organizational Chart



Scope, Methods, and Standards

Scope

We reviewed EOD's DBE program management from January 1, 2022 through December 14, 2022.

The internal control components and underlying principles that are significant to the audit objectives are:

- Control Environment
    - Management should establish an organizational structure, assign responsibility, and delegate authority to achieve the entity's objective
- Control Activities
    - Management should design control activities to achieve objectives and respond to risks
    - Management should implement control activities through policies
- Information and Communication
    - Management should use quality information to achieve the entity's objectives
    - Management should internally communicate the necessary quality information to achieve the entity's objectives
    - Management should externally communicate the necessary quality information to achieve the entity's objectives
- Monitoring Activities
    - Management should establish and operate monitoring activities to monitor the internal control system and evaluate the results
    - Management should remediate identified internal control deficiencies on a timely basis

Methods

We used the following methods to complete this audit:

- We reviewed the Program Plan and other policies.
- We interviewed program compliance staff in EOD as well as in the departments using DBEs and ACDBEs.
- We tested the certification process for a sample of firms certified in calendar year 2022.
- We tested monitoring of and payments to ACDBEs and DBEs that were active in calendar year 2022.

Unless otherwise stated in the report, all sampling in this audit was conducted using a judgmental methodology to maximize efficiency based on auditor knowledge of the population being tested. As such, sample results cannot be extrapolated to the entire population and are limited to a discussion of only those items reviewed.

Data Reliability

We assessed the reliability of B2GNow data by reviewing existing information about the data and the system that produced them, and interviewing agency officials knowledgeable about the data. We determined that this data was sufficiently reliable for the purposes of this audit.

Standards

We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives. Any deficiencies in internal controls deemed to be insignificant to the audit objectives but that warranted the attention of those charged with governance were delivered in a separate memo. We are independent per the generally accepted government auditing requirements for internal auditors.