



Preamble:

If existing contract preference programs are altered or replaced due to legal challenges rendering them unlawful, any new or revised program should incorporate key elements that support small and emerging construction firms. Construction firms face significant challenges, and it is in the best interest of the industry to maintain a strong and competitive pool of small and emerging firms. Below is a list of key elements and successful examples of programs and practices. The intent of this document is not to endorse every aspect of these programs, but rather to highlight specific elements that align with the five key elements.

List of Key Elements:

1. Provide Resources to Small Businesses
2. Provide Practicality and Flexibility in Supporting Emerging Firms
3. Uniform Standards Across Small Business Programs
4. Reduce Administrative Burdens on Prime and Emerging Contractors
5. Eliminate Excessive Penalties for Noncompliance

Key Elements of Programs to Assist Small and Emerging Construction Firms:

While this is a non-exhaustive list, here are examples for each key element.

1. **Provide Resources to Small Businesses** – Current resources are inadequate and lack flexibility. Small business assistance should be in the form of flexible direct federal grants and low interest loans to help these companies grow and compete.

A. Example: U.S. Small Business Administration SBA 7(a) Loan Program - 13 CFR Part 120

1. The SBA 7(a) Loan Program is offered by the U.S. Small Business Administration (SBA), designed to provide financial assistance to small businesses. This program helps small and emerging construction firms secure working capital, purchase equipment, refinance debt, or acquire commercial real estate, ensuring they have the financial resources needed to grow and compete. [SBA 7\(a\) Loan Program](#)

B. Example: San Francisco Bonding and Financial Assistance Program (Section 14B.16)

1. San Francisco provides financial assistance, including guarantees for private bonding companies and financial institutions, to encourage them to provide required bonding and financing to eligible small businesses. This includes access to a bonding assistance training program. The San Francisco Bonding and Financial Assistance Program offers up to 40%

bond guarantees and construction loan guarantees up to \$1,000,000 to eligible small businesses.

C. Example: Minnesota Department of Transportation (MnDOT) provides the following:

1. **Micro Grants:** Grants for certified small businesses to help increase business capacity. Businesses may use grant funds on eligible business expenses. [Micro Grant - Civil Rights - MnDOT](#)
2. **Working Capital Loan Fund:** Loans for Disadvantaged Business Enterprises or Targeted Group Businesses. DBEs and TGBs must have been awarded a Minnesota Department of Transportation contract or must be bidding on a project. Loan funds may be used for financial training, support or assistance. [Working Capital Loan Fund - Civil Rights - MnDOT](#) NOTE: New loans are currently unavailable.
 - i. Fast Track Working Capital Loan
 - ii. MnDOT Working Capital Loan

D. Example: New Jersey Economic Development Authority (NJEDA) – Small Business Improvement Grant

1. The NJEDA offers grants to small businesses to reimburse up to 50% of costs associated with building improvements and purchasing new equipment. This grant supports small contractors in expanding capacity and upgrading equipment necessary for construction projects. [NJEDA Small Business Improvement Grant](#)

E. Example: Louisiana Economic Development – Small and Emerging Business Development (SEBD) Program

1. The SEBD Program, administered by Louisiana Economic Development (LED), provides developmental assistance to Louisiana-based small businesses that are certified as "small and emerging." The program offers training, legal and accounting services, marketing, and business planning support. Small businesses can receive direct one-on-one business development assistance and access to a reimbursement-based performance-based assistance program for project implementation costs. [Small and Emerging Business Development Program – LED](#)
2. **Provide Common Sense and Flexibility in Supporting Emerging Firms** – Current rules of programs, like the DBE program, create challenges for both prime contractors and small businesses when working together—sometimes even restricting collaboration due to legal constraints. Both should have the flexibility to engage in mentorship, education, investment, and technical assistance without unnecessary barriers. For example, prime contractors should be able to share construction equipment with

emerging firms in emergency situations. Providing common sense support without unnecessary barriers allows businesses to strengthen their capabilities and enhance competition within the construction industry. For example, both prime contractors and small businesses should have access to incentives, such as tax benefits or financial support, that encourages collaboration.

A. Example: SBA's Mentor-Protégé Program - 13 CFR § 125.9.

1. Through the SBA Mentor-Protégé Program, mentors provide business and technical support, offering guidance on bidding strategies, regulatory compliance, and effective project execution. Additionally, the program helps small firms access essential resources such as bonding, financing, and supply chain management, strengthening their ability to compete and succeed in the federal marketplace. Joint ventures enable small firms to bid on larger federal projects, expanding their opportunities in government contracting. [SBA's Mentor-Protégé Program](#)

B. Example: San Francisco Administrative Code Chapter Section 14B.8(A) - LBE Subcontracting Participation Requirements and Section 14B.15(A) - Reporting and Review

1. The ordinance states that the San Francisco Mayor shall establish Race & Gender-neutral citywide goals for participation by small and micro local businesses in contracting. These goals are supported by the use of bid discounts, set-aside contracts, and Local Business Enterprise (LBE) subcontracting participation requirements.

C. Example: San Francisco Administrative Code Chapter 14B.7(K) - Micro-LBE Set-Aside Program

1. Public Work/Construction Contracts: Not less than 50% of eligible contracts must be set aside for Micro-LBEs. Services/Commodities Contracts: Not less than 25% of eligible contracts must be set aside for Micro-LBEs.

D. Example: San Francisco Administrative Code Chapter 14B.8(A) - LBE Subcontracting Participation Requirements

1. The Director sets LBE subcontracting participation goals based on:
 - i. The extent of subcontracting opportunities in the contract.
 - ii. The availability and capacity of certified LBE subcontractors.
 - iii. If the LBE participation goal is set below 20%, the Director must provide a written justification

E. Example: San Francisco has established a Mentor-Protégé Program (MPP)

1. The MPP encourages partnerships between experienced contractors and LBEs, offering training, networking, and mentoring. Participating mentors receive bid discounts or good faith outreach requirement waivers.

F. Example: San Francisco CMD Construction Loan Program

1. The San Francisco Bonding and Financial Assistance Program, administered by the Contract Monitoring Division (CMD), includes:
 - i. Loan Guarantee Program to support small and emerging contractors in securing financing for public works projects. Key Features of the Construction Loan Program
 - ii. The program provides financial assistance by guaranteeing construction loans for eligible small contractors and subcontractors.
 - iii. It aims to reduce financial barriers for Local Business Enterprises (LBEs) that struggle to secure funding from traditional lenders

G. Example: SBA's San Francisco Mentor-Protégé Program

1. SBA's Mentor-Protégé Program is reflected in the San Francisco MPP Expansion Program, which provides up to a 1% bid discount and waives outreach requirements for participating mentors.

H. Example: MnDOT Mentor-Protégé Program

1. The Mentor-Protégé Program is one of the programs and services provided by OCR Small Business Development in partnership with the [Minnesota Unified Certification Program \(MnUCP\)](#). The program furthers the development of certified Disadvantaged Business Enterprise (DBE) firms by providing training and assistance from other firms. [Mentor Protégé Program - Civil Rights - MnDOT](#) With mentorship, the small businesses may:
 - Move into nontraditional areas of work
 - Compete in the marketplace outside the DBE program
 - Develop their capacity to compete on projects
 - Types of help provided: Common types of assistance that a mentor may provide a protégé include:
 - Business planning
 - Bidding and estimating
 - Record keeping
 - Technical assistance
 - Capital formation

- Financial counseling
- Bonding
- Equipment use
- Mentor-Protégé agreements will vary based on the needs of the businesses involved.

2. **Networking/Meet-and-greet**

MnDOT provides meet-and-greets and networking events to support certified small businesses in establishing and strengthening industry relationships. [Small Business Training Programs - Civil Rights - MnDOT](#)

- Learn about specific contracts
- Connect with primes and pitch your business
- Connect with other contractors

I. **Example: Louisiana Economic Development – Small and Emerging Business Development (SEBD) Program**

1. The SEBD program certifies firms based on size and economic status and provides access to one-on-one business development services, financial planning, and project-based reimbursement support. SEBD allows businesses to choose the type of support they need, such as legal, marketing, accounting, or training services, making it adaptable to individual business goals. [Louisiana SEBD Program](#)

3. **Uniform Standards Across Small Business Programs** – The graduation requirements for emerging firms should align with established SBA standards, using average annual revenue as a classification metric. The program should be designed to ensure businesses remain viable and competitive beyond their graduation from the program.

A. **Example: SBA’s Mentor-Protégé program - Title 13 Part 125.9 of the Code of Federal Regulations (CFR)**

1. In 2020, the SBA consolidated all mentor-protégé programs run by federal agencies into a single program. Among the benefits of this was removing the need for businesses to choose between two mentor-protégé programs, streamlining the new program while keeping the same benefits as the two former programs, and requires less SBA involvement for joint ventures.

B. **Example: Business Size Criteria for LBE Certification (Section 14B.3)**

1. San Francisco has standardized revenue-based classification metrics for micro, small, and SBA-certified LBEs. This ensures firms can remain viable beyond their graduation from the program. The Micro-LBE and Small-LBE classification system aligns with SBA standards to maintain uniformity in business program criteria.

C. Example: Minnesota Unified Certification Program (MNUCP)

1. In response to federal law, the MNUCP is the Minnesota Unified Certification Program comprised of a group of state and local agencies who work together to certify DBE's. The program streamlines the Disadvantaged Business Enterprise (DBE) certification process by providing a single, statewide certification recognized by all federal and state agencies in Minnesota. Its purpose is to ensure fair access to federally funded transportation contracts for small businesses owned by socially and economically disadvantaged individuals. [MNUCP - About the MNUCP](#)

D. Example: Missouri Procurement Technical Assistance Center (PTAC)

1. Missouri PTAC provides a uniform framework for small business engagement in public procurement by using standardized eligibility and training requirements. This ensures that emerging firms have access to consistent support and expectations across local and state projects. [Missouri Procurement Technical Assistance Center \(PTAC\)](#)

E. Example: Utah Procurement Technical Assistance Center (PTAC)

1. The Utah PTAC helps small businesses become procurement-ready through standardized training and technical assistance. The program maintains consistency by aligning its procedures with state and federal acquisition guidelines. This alignment reduces variation in contracting requirements and helps firms compete for public work more efficiently across different jurisdictions. [Utah Procurement Technical Assistance Center \(PTAC\)](#)

F. Example: California Department of General Services – Small Business Certification

1. California's certification process for small businesses is based on consistent financial thresholds and operating standards across all state agencies. The program streamlines recognition by using shared eligibility standards and automatic inclusion in state contract search tools, allowing emerging contractors to access opportunities without navigating multiple certification tracks. [California Department of General Services – Small Business Certification](#)
4. **Reduce Administrative Burdens on Prime and Emerging Contractors** – Construction has long been a well-regulated industry, ensuring that workers are safe, and the environment is protected. These businesses should not be burdened or distracted by inconsistent and onerous regulations and reporting requirements. Administrative requirements and regulations should align and allow for reciprocity as much as practicable. For example, initial certification, interstate certification, etc.

A. Example: LBE Subcontracting Requirements & Administrative Flexibility (San Francisco Administrative Code Chapter - Section 14B.8)

1. The ordinance allows waivers of LBE subcontracting requirements when necessary and requires agencies to use good faith efforts to solicit bids from diverse small businesses. This ensures fair contracting without unnecessary administrative burdens. The Micro-LBE Set-Aside Program streamlines the process by setting aside smaller contracts exclusively for micro businesses, eliminating extensive subcontracting requirements for those contracts.

B. Example: Minnesota Unified Certification Program (MNUCP)

1. This program simplifies the DBE certification process by offering a single, statewide certification that is recognized by all federal and state agencies in Minnesota. Its goal is to promote equitable access to federally funded transportation contracts for small businesses owned by socially and economically disadvantaged individuals. [MNUCP - About the MNUCP](#)

C. Example: Oregon Buys Procurement System

1. The Oregon Buys platform offers a centralized, digital procurement system that simplifies bidding, document submission, and vendor registration for small businesses. This reduces time-consuming paperwork and allows contractors to manage all transactions through one system, improving efficiency for both primes and emerging subcontractors. [Oregon Buys Procurement System](#)

D. Example: Georgia Department of Administrative Services – Team Georgia Marketplace

1. Georgia's centralized eProcurement platform streamlines how contractors do business with the state. The system enables electronic submission of bids, contract tracking, and vendor registration through one uniform interface, reducing administrative burdens and improving transparency. [Georgia Department of Administrative Services – Team Georgia Marketplace](#)

E. Example: North Carolina Interactive Purchasing System (IPS)

1. North Carolina's IPS offers small businesses a single, simplified platform for accessing bidding opportunities. It reduces the complexity of navigating multiple agency portals by consolidating notices and solicitations, making it easier for emerging firms to find and respond to contracting opportunities. [North Carolina Interactive Purchasing System \(IPS\)](#)

5. **Eliminate Excessive Penalties for Noncompliance** – Under current programs, the risk of noncompliance serves as a deterrence to many businesses. Federal, state and local governments continue to introduce new compliance requirements, shifting focus away from construction work and placing an undue burden on businesses. Failure to comply can result in costly penalties and unfavorable performance evaluations, which may impact future contracting opportunities. These dynamics are fostering uncertainty and discouraging prime contractors from engaging with emerging firms. Implementing a "Good Faith" standard will help reduce the risk of noncompliance.

A. Enforcement and Good Faith Effort in Compliance (San Francisco Administrative Code Chapter - Section 14B.17)

1. The ordinance includes a "Good Faith Effort" clause, protecting firms from excessive penalties if they can prove they took reasonable steps to comply. Firms demonstrating proactive compliance efforts may avoid penalties, such as debarment or payment withholdings. The "Good Faith Effort" Clause in Section 14B.17(F) prevents penalties for businesses that have shown a genuine attempt to comply with the rules

B. Example: MnDOT Good faith efforts toward meeting a DBE, TGB or Vet goal

1. Program regulations governing the DBE, TGB and Vet Programs require that a bidder must meet the project goal or make adequate good faith efforts toward meeting the goal. Bidders who fail to meet the requirements are deemed non-responsible. Program regulation allows the bidder the opportunity for an administrative reconsideration of the determination. The administrative reconsideration is an informal hearing before a Reconsideration Panel which acts as the MnDOT official. The panel is comprised of independent MnDOT personnel who were not involved in the determination that the contractor was a non-responsible bidder. The Reconsideration Panel reviews the good faith efforts of the bidder. [Small Business Program Information - Civil Rights - MnDOT](#)

C. Example: Texas Department of Transportation (TxDOT) – DBE Program Good Faith Effort Guidelines

1. TxDOT evaluates good faith efforts when DBE participation goals are not met, allowing prime contractors to avoid penalties if they demonstrate reasonable and documented attempts to include DBEs. TxDOT provides guidance on acceptable actions and allows for administrative reconsideration of initial determinations. [TxDOT DBE Program](#)

D. Example: Ohio Department of Transportation (ODOT) – Prompt Payment and Good Faith Efforts Policy

1. ODOT enforces a good faith efforts policy to ensure that prime contractors are not unduly penalized if they can demonstrate substantive outreach and

engagement with DBE firms. This includes allowing documentation of emails, meetings, and solicitations to be considered in compliance evaluations. [ODOT Business and Economic Opportunity](#)

E. Example: Arizona Procurement Code – Cooperative Purchasing and Grace Period Policies

1. Arizona’s procurement regulations include cooperative purchasing agreements and grace period allowances that protect small businesses from contract penalties related to clerical errors or first-time noncompliance. These policies reduce punitive consequences for emerging firms navigating complex systems and encourage sustained participation in public projects. [Arizona Procurement Code – Cooperative Purchasing and Grace Period Policies](#)