



## Disadvantaged Business Enterprise Program Under 49 CFR part 26

2022 Update (Restatement)

Portland International Airport  
Troutdale Airport  
Hillsboro Airport

June 2022

## INTRODUCTION

In 1999 the Federal Aviation Administration (FAA) approved the Port of Portland (Port) Disadvantaged Business Enterprise (DBE) Program. This February 2018 version restates the Port's DBE Program (Program) in full, as an update to the already-approved DBE Program.

The Port has established its DBE Program in compliance with 49 CFR part 26. This Program complements the Port's existing Small Business Development Program (see Exhibit A to Attachment 10), which will remain in place.

### Attachments

- 1 Regulations: 49 CFR part 26 (website link)
- 2 Port of Portland Organizational Chart
- 3 Bidder's List Collection Form
- 4 State of Oregon DBE Directory (website link)
- 5 Overall DBE Three-Year Goal Calculation Methodology
- 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan – Forms 1 & 2
- 7 DBE Monitoring and Enforcement Mechanisms
- 8 DBE Certification Application Form
- 9 State of Oregon UCP Agreement
- 10 Small Business Element of the DBE Program
- 11 DBE Program Policy Statement

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives of the Port's DBE Program are found in the policy statement set forth on Attachment 11.

### **Section 26.3 Applicability**

The Port is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

The Port will use terms in this Program that have the meaning defined in 49 CFR § 26.5.

### **Section 26.7 Non-discrimination Requirements**

The Port 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 this DBE Program, the Port 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 Recordkeeping Requirements**

Section 26.11(b) -- Reporting to the Department of Transportation (DOT):

#### Reporting to DOT

The Port of Portland will continue to provide data about its DBE program to the Department as directed by DOT operating administrations.

DBE participation will be reported to [operating administration] as follows:

The Port will transmit to the FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. The Port will similarly report the required information about participating DBE firms. All reporting will be done through the FAA's official reporting system, or another format acceptable to the FAA as instructed thereby. .

#### Bidders List:

The Port will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Port DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

The Port will collect this information using the Port's online vendor portal. A website link to the Port's current online vendor portal is set forth in Attachment 3. Examples of the Port's current data collection portal follow:

https://www.planetbids.com/portal/portal.cfm?CompanyID=15598 PlanetBids Vendor Portal

File Edit View Favorites Tools Help

**Vendor Profile** New Registration

Company Info | Additional Addresses | Classifications/Licenses | Other Business Info | Category/Description

**User Authentication**

User Name

Password

**Company**

Business Type

Company Name

IRS Reporting Name

Doing Business As

FEI/Tax ID Number

Address

City

State

Country

Zip

Website

**Main Contact**

Name

Title

Email

Alternate Email

Phone  ext.

Toll Free

Mobile

Fax

Port of Portland PLANET BIDS Report Cancel Register

https://www.planetbids.com/portal/portal.cfm?CompanyID=15598 PlanetBids Vendor Portal

File Edit View Favorites Tools Help

**Vendor Profile** New Registration

Company Info | Additional Addresses | Classifications/Licenses | Other Business Info | Category/Description

**Classifications**

Disadvantaged Business Enterprise  Cert #  exp.

Emerging Small Business  Cert #  exp.

Minority-owned Business Enterprise  Cert #  exp.

National Minority Supplier Development Council

Other

Qualified Rehabilitation Facility

Small Business Administration - Veteran-Owned Small

Small Business Administration 8A Program

Small Business Administration- Historically Underutilized

Small Business Administration- Service-Disabled Veteran

Small Business Administration- Small Disadvantaged Business

Small Business Administration- Woman-Owned Small Business

Women's Business Enterprise National Council

Women-owned Business Enterprise  Cert #  exp.

**Contractor Licenses**

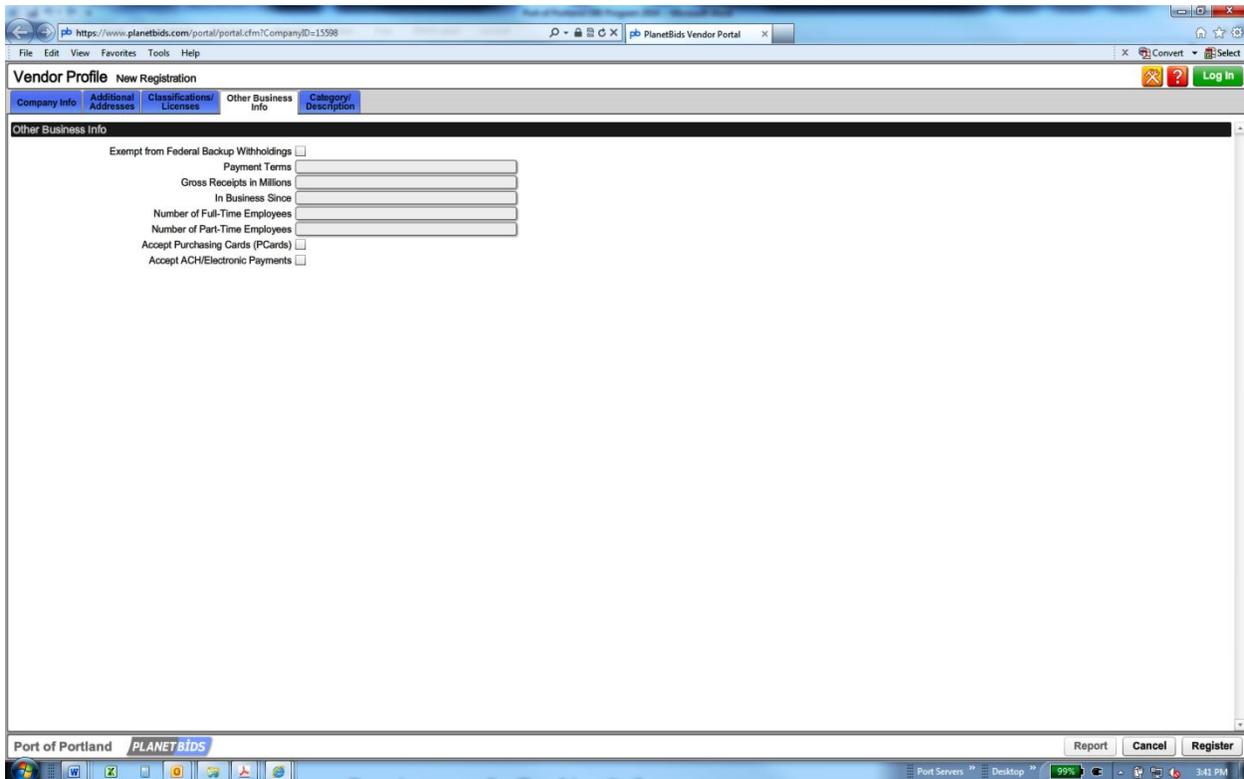
Licenses (none)

License #

Exp. Date

**Other Licenses**

Port of Portland PLANET BIDS Report Cancel Register



## Section 26.13 Federal Financial Assistance Agreement

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

Section 26.13(a) – Port Assurance: Each financial assistance agreement the Port signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Port 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 Port shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Port’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 Port of its failure to carry out its approved Program, the Department may impose sanctions as provided for under 49 CFR 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.*).

Contract Assurance: The Port will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry

out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Port 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.

### **ADMINISTRATIVE REQUIREMENTS**

#### **Section 26.21 DBE Program Updates**

The Port is required to have a DBE Program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Port is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and The Port is in compliance with it and Part 26. The Port will continue to carry out this program until all funds from DOT financial assistance have been expended. The Port does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

#### **Section 26.23 Policy Statement**

The Port's DBE Program Policy Statement is set forth on [Attachment 11](#).

#### **Section 26.25 DBE Liaison Officer**

The following individual is the Port's DBE Liaison Officer (DBELO):

Kimberly Sutton  
Equity in Contracting Manager  
7200 NE Airport Way, Portland, OR 97218  
Telephone Number 503-415-6587  
Fax Number 503-548-5541  
kimberly.sutton@portofportland.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the Port complies with all provision of 49 CFR part 26. The DBELO has direct, independent access to the Port's Executive Director concerning DBE Program matters. An organizational chart depicting the DBELO's position in the Port is set forth on [Attachment 2](#).

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. Port Procurement, Engineering, and Legal Department personnel will support the DBELO in the administration of this Program. The duties and responsibilities of the DBELO include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this Program.
3. Works with all departments to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract-specific goals) and monitors results.
6. Analyzes the Port's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Commission on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts requirements in solicitations.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the State of Oregon Unified Certification Program (UCP) process.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Administer the Port's Mentor-Protégé Program.

#### **Section 26.27 DBE Financial Institutions**

The Port will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions, and encourage prime contractors on DOT-assisted contracts to use these institutions.

Periodically, the Port initiates a Request for Proposals (RFP) for commercial banking services. Minority-owned institutions are identified and solicited and encouraged to respond to the RFP.

The Port has utilized minority-owned and woman-owned financial institutions for investment banking services. Our Finance and Administrative Services department periodically reviews various financial services needed by the Port and encourages minority-owned and woman-owned financial institutions to propose or bid on those services.

The Port maintains certificates of deposit with two financial institutions identified as socially and economically disadvantaged in the community: Albina Community Bank and American State Bank. We also have hired two minority owned underwriting firms: Siebert Williams Shank & Co. and Loop Capital Markets,

#### **Section 26.29 Prompt Payment Mechanisms**

The Port requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

- In accordance with 49 CFR § 26.29, the Port established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory

performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from the Port.

- The Port ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to § 26.29, the Port has selected the following method to comply with this requirement:
  - 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 maintain a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 10 days after the Port's payment to the prime contractor.
- To implement this measure the Port also includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime contract:

"The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 10 days after the Contractor has received a partial payment. The Port will ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. 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 Port. When the Port 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.

From the total of the amount determined to be payable on a partial payment, five (5) percent of such total amount will be deducted and retained by the Port until the final payment is made, except as may be provided (at the Contractor's option) under ORS 279C.560. The balance of the amount payable, less all previous payments, shall be certified for payment. Should the Contractor exercise its option under ORS 279C.560, no such percent retainage shall be deducted.

When at least 95% of the work has been completed the Port may, with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Port may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor."

### **Section 26.31 DBE Directory**

The Port uses the State of Oregon's DBE directory, maintained by the State of Oregon's Certification Office of Business Inclusion and Equity (COBID). The directory lists the firm's name, address, phone number, and the types of work the firm has been certified to perform as a DBE by using the most specific NAICS code available to describe each type of work. The State of Oregon updates the directory daily. A website link to the directory is set forth in [Attachment 4](#).

### **Section 26.33 Over-Concentration**

Port has not determined that over-concentration exists in the types of work that DBEs perform.

## **Section 26.35 Business Development Programs and Mentor-Protégé Programs**

The Port has not established a DBE business development program as contemplated under 49 CFR § 26.35(a). The Port has, however, established a Mentor-Protégé Program in accordance with 49 CFR § 26.35(b) to provide business development, technical assistance and training to Oregon and Washington certified Disadvantaged, Minority, Women, Service-Disabled Veteran and Emerging Small Business enterprises.

## **Section 26.37 Monitoring and Enforcement Mechanisms**

The Port implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms below.

### Monitoring Payments to DBEs and Non-DBEs

The Port undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the methods below:

- Posting prime contractor payments to an online compliance and tracking system accessible to subcontractors (currently B2G), to alert them to the start of the 10-day clock for payment.
- Use of B2G, an automated system that requires real-time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system.
- We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.
- We will implement a monitoring mechanism 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. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by site visits and CUF reviews, contract monitoring and payment reporting monitoring and close-out reviews. We will also utilize an online compliance and tracking system (currently “B2G”), perform onsite reviews of work performed, and perform a contract close-out review.

The Port requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Port’s financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Port or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The Port proactively reviews contract payments to subcontractors, including DBEs, using B2G. B2G also allows subcontractors to review each progress payment to evaluate

whether the actual amount paid to subcontractors is equivalent to the amounts reported to the Port by the prime contractor.

#### Prompt Payment Dispute Resolution

The Port will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of § 26.29:

The Port facilitates meetings between prime and subcontractor, project managers and legal counsel to resolve payment disputes. In cases where a resolution cannot be accomplished the Port reserves the right to pay subcontractors directly either through joint checks or paying the subcontractor out of any retainage being held on the project.

The Port has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- 1) The contract clause set forth on Attachment 7A, General Conditions, at Section 13.8, providing that the Port may refuse to pay the prime contractor to the extent it has not made past payments to subcontractors, or is in breach of the contract.
- 2) The contract clause set forth on Attachment 7A, Supplementary Conditions, at Section 1.6.G.1, providing that failure to substantially comply with the DBE requirements of the contract is a material breach of the contract.
- 3) The contract clauses set forth on Attachment 7A, General Conditions, at Sections 6.24.E and Section 6.24.J.1.d, providing that if the prime contractor or a first-tier subcontractor does not pay subcontractors within 30 days after receiving payment from the Port or the prime contractor, then the prime contractor or first-tier subcontractor owes the person the amount due plus interest charges at the rate of 9 percent per annum.
- 4) The contract clause set forth on Attachment 7A, General Conditions, at Section 6.24.J.2, requiring the prime contractor to require subcontractors at all tiers to include payment and interest penalty clauses consistent with the above.
- 5) The contract clause set forth on Attachment 7A, Supplementary Conditions, at Section 1.5.B, providing that any delay or postponement of payment among the parties may take place only for good cause, with the Port's prior written approval.
- 6) Using B2G, the Port's DBELO proactively monitors the prime contractor's release of retainage to DBE subcontractors. The DBELO intervenes on the DBE subcontractors' behalf when necessary.
- 7) The contract requires prime contractors to submit, with each request for a progress payment, a Request for Payment form to which the prime must attach an updated copy of the Subcontractor Payment Utilization Report –Compliance Audit Summary from B2G.

#### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure:

- Subcontractors that are not comfortable contacting the prime contractor directly regarding payment, or that have been unable to resolve payment discrepancies with the prime contractor, may contact the Port's DBELO to report the prompt payment issue.
- The DBELO first contacts the prime contractor directly to resolve the problem. If necessary, the DBELO next escalates the issue to the Port's Construction department staff, who may also work with the prime contractor to facilitate resolution. If necessary, the DBELO and Construction staff would next review the Port's contractual remedies with Port Legal counsel and continue working with the prime contractor based on applicable legal advice.
- If reporting the prompt payment issue to the DBELO does not result in timely and meaningful action by the Port to resolve the issue, the affected subcontractor may escalate its complaint to the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

The Port will provide appropriate means to enforce the requirements of § 26.29. These means include:

Bringing to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the Program, so that DOT can take the steps provided in 49 CFR § 26.107 such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules.

- Implementing similar action under our own legal authorities, including when making responsibility determinations in future contract awards. Attachment 7 lists regulatory remedies available to the Port in the event of a Program participant's non-compliance with 49 CFR part 26.
- Advising subcontractors of the availability of the payment bond, to assure payment for labor and materials.
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime
- Maintaining an enforcement mechanism 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. This mechanism includes a written certification that we have reviewed contracting records and monitored work sites for this purpose. This is accomplished by site visits and CUF reviews, contract monitoring and payment reporting monitoring and close-out reviews.
- Maintaining an enforcement mechanism that includes written certification that we have reviewed contracting records and monitored work sites for this purpose. This is accomplished by utilizing B2G, performing onsite reviews of work performed, and perform a contract close-out review.

The Port will actively implement the enforcement actions detailed above.

#### Monitoring Contracts and Work Sites

The Port reviews contracting records and engages in active monitoring of work sites 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. Work site monitoring is performed by DBE Compliance Officers. Contracting records are reviewed by DBE Compliance Officers. The Port will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39            Fostering Small Business Participation**

The Port has created a Small Business 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.

The small business element of the Port's DBE Program is set forth below in Attachment 10. We will actively implement the Program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE Program.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The Port does not use quotas or set-aside contracts for DBEs on DOT-assisted contracts subject to 49 CFR part 26.

### **Section 26.45 Overall Goals**

The Port will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), The Port will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA.

#### **FAA:**

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf)

The DBE goals will be established in accordance with the two-step process as specified in 49 CFR § 26.45 (see below). If the Port does not anticipate awarding DOT/FAA-funded prime contracts the cumulative total value of which exceeds \$250,000 during any of years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the Port will seek to fulfill the objectives outlined in 49 CFR § 26.1.

- Step 1 [49 CFR § 26.45(c)]. The first step is to determine the relative availability of DBEs in the market area, referred to in 49 CFR § 26.45(c) as the “base figure.” We will use a Disparity Study as a method to determine the base figure. The Port understands that exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.
- Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Port will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Port market.

In establishing the overall goal, The Port will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which 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 efforts by The Port to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive

exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Port is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Port engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the Port will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on the Ports official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office Port. This notice will provide that the Port and FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

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The Overall Three-Year DBE Goal submission to the DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

The Port will begin using the overall goal on October 1 of the reporting period unless we have received other instructions from the DOT/FAA.

#### 49 CFR § 26.45(e) -- Project Goals:

If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. A project goal is an overall goal and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a DOT-assisted contract for the project.

#### 49 CFR § 26.45(f) -- Prior Operating Administration Concurrence:

The Port understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the

method employed by Port for calculating goals is inadequate, FAA may, after consulting with Port, adjust the overall goal or require that the goal be adjusted by Port. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in [Attachment 5](#).

#### **Section 26.47 Failure to Meet Overall Goals**

The Port cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Port fails to administer its DBE program in good faith. The Port understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The Port understands that if the awards and commitments shown on the 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, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to fully meet our goal for the new fiscal year; and
- (3) prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above. We will retain records of analysis and corrective actions for three years and make such records available to the FAA upon request.

#### **Section 26.51 Means Recipients Use to Meet Overall Goals**

##### **Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The Port will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under 49 CFR § 26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;

- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of our DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in [Attachment 5](#).

The Port will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.

### **Contract Goals**

The Port will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as the strategies set forth under 49 CFR § 26.39.

If our approved projection under 49 CFR § 26.51(c) estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our Program without setting contract goals during that year, unless it becomes necessary in order to meet our overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

We will express our contract goals as a percentage of the total amount of the federal share of a DOT-assisted contract.

### **Section 26.53 Good Faith Efforts Procedures**

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror

can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The Port's DBELO is responsible for determining whether a bidder that has not met the contract goal has documented sufficient good faith efforts for its bid to be regarded as responsive.

The Port will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before the Port commits to the performance of the contract by the bidder.

#### 49 CFR § 26.53(b) -- Information to be Submitted

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

(1) Award of the contract will be conditioned on meeting the requirements of 49 CFR § 26.53;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in 49 CFR § 26.53(b)(3):

- I. The names and addresses of DBE firms that will participate in the contract;
- II. 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;
- III. The dollar amount of the participation of each DBE firm participating;
- IV. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
- V. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
- VI. If the contract goal is not met, evidence of good faith efforts (see Appendix A of 49 CFR part 26). 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.

(3) We will require that the bidder/offeror present the information required by 49 CFR § 26.53(b)(2):

- For sealed bid solicitations: as a matter of bid responsiveness. Within two working hours of the time bids are due, bidders must submit a "DBE Goal Compliance Report" on which bidders indicate whether they believe the contract goal has been met. A copy of the Port's DBE Goal Compliance Report is included in Attachment 6. If the lowest responsible bidder's bid does not meet the contract goal such bidder must submit, within 24 hours of the Port's request, adequate documentation to establish good faith efforts.
- For negotiated procurements: with initial proposals. Provided that, in a negotiated procurement, including a design-build procurement, the offeror may make a contractually-binding commitment to meet the goal at the time of proposal submission or the presentation of initial proposals but provide the information

required by 49 CFR § 26.53(b)(2) before the Port makes the final selection for the contract.

Sample Bid Specification:

“The requirements of 49 CFR part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Port to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids. Award of this contract will be conditioned upon satisfying the requirements of this section. These requirements apply to all bidders, including those who qualify as disadvantaged business enterprise (DBE).”

A DBE contract goal of \_XX percent of the total amount bid (excluding additive alternates, if any) has been established for this Contract. This Contract will be awarded to the responsible bidder with the lowest responsive bid who either demonstrates its commitment to meet the goal by properly submitting the DBE Goal Compliance Report and associated Confirmation of Participation forms or who, upon the Port’s request, submits adequate evidence that it made good faith efforts, as defined in Appendix A, 49 CFR part 26, to meet the contract goal for DBE participation in the performance of this contract. See the Supplementary Instructions to Bidders and the DBE Goal Compliance Report for more information related to DBE participation goals.

The bidder/offeror will be required to submit the following information via the DBE Goal Compliance report and support Confirmation of participation forms. (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. 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 documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and (5) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’s commitment; (6) if the contract goal is not met, evidence of good faith efforts.”

A sample DBE Goal Compliance Report and Confirmation of Participation form can be found in Attachment 6.

49 CFR § 26.53(d) -- Administrative Reconsideration

Within 5 business days of being informed by the Port that it is not responsible because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration of that determination. Bidders/offerors should make this request by submitting a bid protest in writing to the following reconsideration official:

Bobbi Matthews  
Director Administrative Services  
(Interim Chief Procurement Officer)  
Port of Portland  
7200 NE Airport Way  
Portland, OR 97218  
503-415-6354  
Bobbi.Matthews@portofportland.com

The reconsideration official does not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.

As part of this reconsideration, the bidder/offeror has 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 will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so. We will send the bidder a written decision on reconsideration, by issuing a response to the bid protest 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 to the DOT.

#### Good Faith Efforts procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of Port. 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 another DBE firm.

Such written consent will be provided only if Port agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- 1) The listed DBE subcontractor fails or refuses to execute a written contract.
- 2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor.
- 3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory 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 to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- 6) The Port determined that the listed DBE subcontractor is not a responsible contractor.
- 7) The listed DBE subcontractor voluntarily withdraws from the project and provides The Port 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 The Port has determined 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 the Port, a 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 the Port of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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.

We will include in each prime contract a provision stating that:

- the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains our written consent as provided in 49 CFR § 26.53(f); and
- unless our consent is provided under 49 CFR § 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Port 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. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. If the contractor fails or refuses to comply in the time specified, the contracting office/representative of the Port may issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

We will include in each prime contract the contract clause required by 49 CFR § 26.13(b) stating that failure by the contractor to carry out the requirements of 49 CFR part 26 is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

## **Section 26.55            Counting DBE Participation**

DBE participation will be counted toward overall and contract goals as provided in §26.55. The participation of a DBE subcontractor will not be counted toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, DBE firms certified with NAICS code 237310 that exceed the business size standard in § 26.65(b) will remain eligible for DBE credit for work in that category as long as they do not exceed the small business size standard for that category, as adjusted by the United States Small Business Administration.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73      Certification Process**

The Port is a non-certifying member of the State of Oregon Unified Certification Program (UCP) administered by the Oregon Certification Office for Business Inclusion and Diversity (COBID). Oregon's UCP 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. Certifying Oregon UCP members make all certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Business Oregon  
Certification Office for Business Inclusion and Diversity  
775 Summer St. NE, Suite 200  
Salem, OR 97301  
1-866-467-3466  
biz.cobid@biz.oregon.gov

<https://www.oregon.gov/biz/programs/COBID/Pages/default.aspx>

A website link to COBID's DBE certification application forms is set forth in Attachment 8.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Program**

The Port participates in a UCP administered by COBID; see sections 26.61 – 26.73 above in this Program. The State of Oregon administering agencies represent that the UCP meets all of the requirements of 49 CFR § 26.81. A copy of the State of Oregon UCP is included in Attachment 9.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to the Port of Portland**

The Port understands that if it fails to comply with any requirement of this part, the Port may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

### **Section 26.109 Information, Confidentiality, Cooperation, Intimidation or Retaliation**

#### **49 CFR § 26.109(a) & (b) – Information and Confidentiality**

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

Under Oregon's public records inspection laws (ORS 192.311 - 192.517) every person has a right to inspect any nonexempt public record of the Port. A 'public record' includes any writing that contains information relating to the conduct of the public's business, including but not limited to a document, book, paper, photograph, file, audio, magnetic or optical recording, prepared, owned, used or retained by a public body regardless of physical form or characteristics. The DBELO will engage the Port's Records Department staff and legal counsel to review records that are responsive to a public records request to ensure that the records are disclosed in a manner that avoids disclosure of exempt information, including proprietary, confidential or trade secret information if an exemption applies.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to DOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

#### **49 CFR § 26.109(c) – Cooperation**

All participants in the Department's DBE program (including, but not limited to, recipients, 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 recipient 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 recipients, a finding of noncompliance; 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).

#### **49 CFR § 26.109(d) – Intimidation and Retaliation**

The Port, contractor, or any other participant in the program will 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. The Port understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENT 1**

**Regulations: 49 CFR part 26**

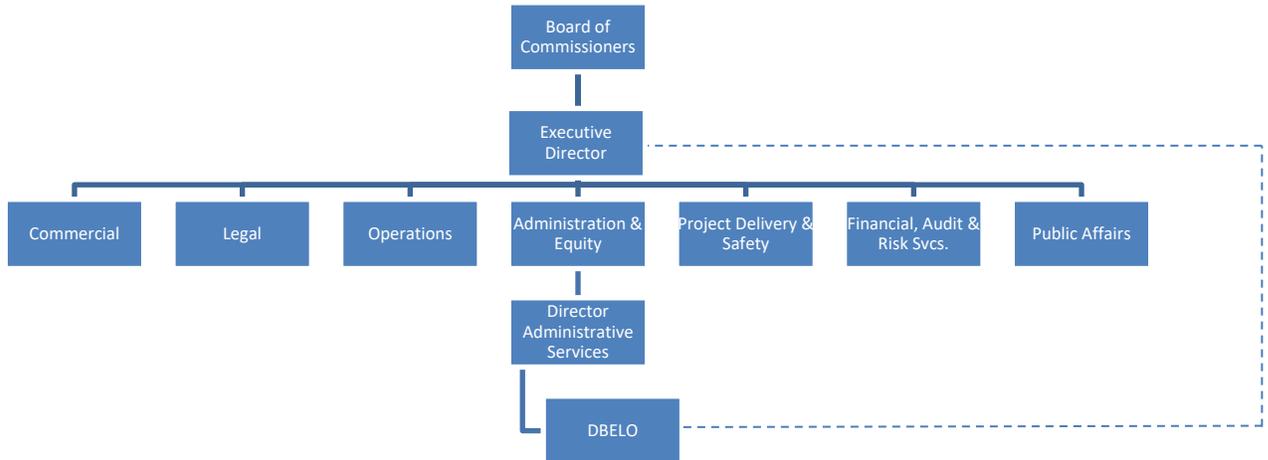
Accessible at this link:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

**ATTACHMENT 2**

**Port of Portland Organizational Chart**

**[49 CFR § 26.25]**



**ATTACHMENT 3**

**Bidder's List Collection Form**

**[49 CFR § 26.11(c)]**

Accessible at this link:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=15598>

**ATTACHMENT 4**

**State of Oregon DBE Directory**

**[49 CFR § 26.31]**

Accessible at this link:

<https://www.oregon.gov/biz/programs/cobid/pages/default.aspx>

## ATTACHMENT 5

### Overall DBE Three-Year Goal Calculation Methodology

**Accessible at this link:**

<https://www.portofportland.com/Business/DBE>

**ATTACHMENT 6**

**Demonstration of Good Faith Efforts or Good Faith Effort Plan**

**[49 CFR § 26.53(b)]**

DOCUMENT 004336  
DBE GOAL COMPLIANCE REPORT

List ALL certified DBEs the bidder submits for participation in this project. Also list self-performed work if the bidder itself is a certified DBE. Bidders should list all committed DBEs even if, in total, they are inadequate to meet the DBE project goal. DBEs can include, without limitation and at any tier, contractors, trucking companies, suppliers (including but not limited to equipment suppliers and rental companies), manufacturers, regular dealers, or other service providers (including but not limited to professional service providers). DBE participation will be calculated and counted towards the goal as described in the Supplementary Instructions to Bidders. Enter "NONE" if there are no DBEs committed to the project. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

CONTRACTOR: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_ DBE GOAL: \_\_\_\_ %  
FORM COMPLETED BY: \_\_\_\_\_ PHONE: \_\_\_\_\_

Name, Address, and Telephone of DBE	Dollar Amount of Participation Calculated Per Supplementary Instructions to Bidders	Description of Work to be Performed by DBE and Basis for Calculated Dollar Amount of Participation Toward Goal	Is Document 004337, Confirmation of Participation Attached?

Total Dollar Amount and DBE Percentage Committed On This Page: \$ \_\_\_\_\_ / \_\_\_\_\_ %

Total Dollar Amount and DBE Percentage Committed On All Pages (Grand Total): \$ \_\_\_\_\_ / \_\_\_\_\_ %

The undersigned bidder agrees to use the DBE(s) as listed above:

\_\_\_\_\_  
Authorized Signature Date

Does the bidder believe the DBEs listed meet the project goal?  YES  NO

ATTACH DOCUMENT 004337, CONFIRMATION OF PARTICIPATION, from each DBE listed above confirming that it will participate in the contract as provided in the bidder's commitment above.

SEE THE SUPPLEMENTARY INSTRUCTIONS TO BIDDERS for further information about requirement of bidders to submit evidence of good faith efforts upon request of the Port.

DOCUMENT 004337  
CONFIRMATION OF PARTICIPATION

Submit from each DBE listed on the DBE Goal Compliance Report. Enter "NONE" if there are no DBEs committed to the project.

Solicitation No. \_\_\_\_\_ Project Title: \_\_\_\_\_  
\_\_\_\_\_

**Bidder:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**DBE:** Name: \_\_\_\_\_  
Address: \_\_\_\_\_  
City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Certification State (circle one): OREGON / WASHINGTON

Certification No. \_\_\_\_\_

Contact person: Name: \_\_\_\_\_

Phone: \_\_\_\_\_

Estimated dollar amount of the work: \$ \_\_\_\_\_

Description of work to be performed: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**CONFIRMATION**

The above-named DBE confirms to the Port of Portland for purposes of the bidder's DBE Goal Compliance Report that the DBE will participate in the bidder's contract with the Port of Portland for the project identified above in the estimated dollar amount and for the work described above.

By: \_\_\_\_\_

Print name: \_\_\_\_\_

Title: \_\_\_\_\_

Date signed: \_\_\_\_\_

## ATTACHMENT 7

### DBE Monitoring and Enforcement Mechanisms

#### [49 CFR § 26.37]

Some of the regulatory remedies available to the Port in the event of a Program participant's non-compliance with 49 CFR part 26 are set forth below.

- ORS 279C.440 allows the Port to disqualify a business from award of Port contracts for up to three years for the violation of a contract provision that is regarded by the Port to be so serious as to justify disqualification, provided the violation was not caused by acts beyond the business's control.
- ORS 279C.375 requires the Port to reject a bidder based upon an unsatisfactory record of performance. A bidder that has failed to comply with 49 CFR part 26 requirements under a prior contract would have an unsatisfactory record of performance for the purposes of 279C.375(3)(b)(F). This defines "lowest responsible bidder" for the purposes of ORS 279C.375(b).
- ORS 200.065(1) and (2) prohibit fraud in DBE certification and false claims regarding certification for the purpose of obtaining a contract, subcontract, or other benefit.
- ORS 200.065(3) authorizes the Port to withhold payment, suspend or terminate the contract, and impose a civil penalty of 10 percent of the contract or subcontractor price, but not more than \$5,000.
- ORS 200.065(4) requires the Port to investigate and confers the power to subpoena witnesses, records, etc.
- ORS 200.065(5) authorizes the Port to disqualify a person or entity for up to three years for violation of subsection (1) or (2), and also allows the Port to disqualify based upon a fraudulent DBE certification.
- ORS 200.075(1) authorizes the Port to suspend a contractor's or subcontractor's right to participate in a Port contract if the contractor or subcontractor: (1) enters into a public improvement contract with the Port representing without the DBE's knowledge and consent that the DBE will be performing work or supplying materials; (2) exercises management control and decision making control over the internal operations of a DBE; or (3) using a DBE to satisfy a contract goal when the DBE does not perform a commercially useful function.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE Program, including without limitation the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC § 1001

## ATTACHMENT 7A

### Contract Provisions

#### General Conditions

“6.24

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- E. If the Contractor or a first-tier Subcontractor fails, neglects, or refuses to pay a person that provides labor or material in connection with this Contract within 30 days after receiving payment from the Port or the Contractor, the Contractor or first-tier Subcontractor owes the person the amount due plus interest charges that begin at the end of the 10-day period within which payment is due under ORS 279C.580(3) or (4) and that end upon final payment, unless payment is subject to a good faith dispute as defined in ORS 279C.580(5). The rate of interest on the amount due is 9 percent per annum. The amount of interest may not be waived.

\*\*\*

- J. The Contractor shall comply with the following requirements (and, if applicable, prompt payment provisions stated in Document 007301, Supplementary Conditions for Federally Assisted Contracts):
1. The Contractor shall include in each subcontract for property or services the Contractor enters into with a first-tier Subcontractor, including a material supplier, for the purpose of performing this Contract:

\*\*\*

    - d. An interest penalty clause that obligates the Contractor, if the Contractor does not pay the first-tier Subcontractor within 30 days after receiving payment from the Port, to pay the first-tier Subcontractor an interest penalty on amounts due in each payment the Contractor does not make in accordance with the payment clause included in the subcontract pursuant to this subsection. The Contractor or first-tier Subcontractor is not obligated to pay an interest penalty if the only reason that the Contractor or first-tier Subcontractor did not make payment when payment was due is that the Contractor or first-tier Subcontractor had not received payment from the Port or the Contractor when payment was due. The interest penalty:
      - 1) Applies to the period that begins on the day after the required payment date and that ends on the date on which the amount due is paid; and
      - 2) Is computed at the rate specified in ORS 279C.515(2).

\*\*\*
  2. The Contractor shall include in each of his subcontracts a provision requiring the first-tier Subcontractor to include a payment clause and an interest penalty clause that conforms to the standards of this section in each of his subcontracts and to require each of his Subcontractors to include such clauses in

their subcontracts with each lower-tier Subcontractor or supplier.”

“13.8 The Port may refuse to make payment, in whole or any part, to the extent:

\* \* \*

- E. The Contractor has failed to make payments covered by past progress payments to Subcontractors, or for labor or material; or
- F. The Contractor is in breach of this Contract.”

### **Supplementary Conditions**

“1.5

\*\*\*

- B. The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime Contractor receives from the Port. The prime Contractor agrees further to return retainage payments to each subcontractor within 10 days after the subcontractor's 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 Port. This clause applies to both DBE and non-DBE subcontractors.”

“1.6

\*\*\*

- G. Material Breach
  - 1. Failure to substantially comply with the DBE requirements of the contract is a material breach of the contract.”

**ATTACHMENT 8**

**DBE Certification Application Form**

**[49 CFR § 26 Subpart D]**

Accessible at this link:

<https://www.oregon.gov/biz/programs/cobid/pages/default.aspx>

## ATTACHMENT 9

### State of Oregon UCP Agreement

[49 CFR § 26.81]

Misc. Contracts and Agreements  
No. 32421

Port Contract No. 140928

#### **INTERGOVERNMENTAL AGREEMENT Administering the Disadvantaged Business Enterprise Unified Certification Function**

This Agreement is made and entered into by and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" the State of Oregon, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD;" and cities, counties or local partners signing on to this Agreement, hereinafter referred to as "Agencies." Parties signing this Agreement shall be referred to individually as "Party," or collectively referred to as the "Parties."

#### **RECITALS**

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The Disadvantaged Business Enterprise (DBE) program requirements set out in Title 49 United States Code of Federal Regulations (CFR) part 26, section 81 require that state recipients of federal transportation funds establish a "one-stop" process to certify businesses owned by socially- and economically-disadvantaged individuals as DBEs: the Unified Certification Program (UCP). 49 CFR § 26.81 requires that all recipients of federal transportation funds in a state sign an agreement establishing the UCP and submit same to the U.S. Secretary of Transportation.
3. As provided in 49 CFR part 26, only firms owned and controlled by socially- and economically-disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification and will act in the capacity of Lead Agency for coordinating the program participation of the Agencies hereunder. ODOT is responsible to USDOT for assuring certification of DBEs is performed consistent with 49 CFR part 26.
4. As provided under ORS 200.055(5), OBDD is the sole agency authorized to certify enterprises as Disadvantage Business Enterprises eligible to perform on public contracts in this state. Pursuant to ORS 200.055, ODBDD herein delegates authority for administration of the Oregon UCP DBE Certification Component to its Certification Office for Business Inclusion and Diversity, hereinafter, "COBID."
5. Pursuant to Oregon Revised Statute 183.341, OBDD has adopted rules for the certification of Disadvantaged Business Enterprise firms, (see OAR chapter 123, division 200).
6. This Agreement defines the roles and responsibilities of ODOT, OBDD, COBID, and Agencies to continue participation in the UCP. The collective effort of the Parties is hereinafter referred to as the "UCP Partnership" or "Partnership."

ODOT/OBDD/Agencies  
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**NOW THEREFORE**, premise being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

**TERMS OF AGREEMENT**

1. Under such authority, ODOT, OBDD and Agencies agree to cooperate and coordinate the administration of DBE certification services as required under the Code of Federal Regulations 49 Part 26.
2. The term of this Agreement shall begin upon the signatures of ODOT, OBDD and the first Party to execute this Agreement and shall terminate five (5) years from that date.

**MUTUAL PARTIES OBLIGATIONS**

1. The Parties mutually agree that all DBE certification decisions by COBID shall be binding on all recipients of federal transportation funds within Oregon.
2. The Parties shall ensure that COBID has sufficient resources and expertise to carry out the requirements of 49 CFR § 26.81.
3. The Parties mutually agree to have open and regular communications on matters concerning DBE certification. Matters of concern to all agencies include process time, staffing, budget, certification issues, directory maintenance and changes in the overall DBE certification process.
4. The Parties shall cooperate in the administration of the USDOT required DBE Certification process, striving for the most efficient use of their individual agency resources in carrying out the process of certifying Socially and Economically Disadvantaged individuals.
5. The Parties agree that all certifications shall be pre-certifications, i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
6. The Parties mutually agree to notify or copy all Parties of the Partnership on any communication to the USDOT or respective agencies regarding DBE Certification.
7. The Parties agree to work in partnership during Federal audits and performance reviews.
8. The Parties will not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex and national origin.
9. The Parties will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishments of the objective of this program with respect to individuals of a particular race, color, sex and national origin.

**AGENCIES OBLIGATIONS**

1. Each Agency shall designate a representative to attend semi-annual UCP Partnership meetings and any special sessions held to resolve issues that arise requiring more immediate attention. Attendance by teleconference will be acceptable. Semi-annual meetings will occur in the summer (July or August) and the fall (October or November). COBID will provide all other Agencies reasonable notice of the meeting.
2. Agencies agree that ODOT is the Lead Agency for the Partnership.
3. Agencies shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally assisted projects.
4. Agencies shall promptly notify OMWESB of complaints received relating to DBE certification or program administration.

**ODOT OBLIGATIONS**

1. As Lead Agency, ODOT shall do the following:
  - a. Notify and advise COBID and Agencies of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.
  - b. Notify COBID and Agencies of training programs relevant to DBE Certification function and procedures.
  - c. Review a COBID determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.
  - d. Provide ongoing DBE Certification expertise, oversight, as well as conduct process reviews when required, including an annual audit of DBE Certification files.
  - e. Assist COBID in conducting appeals of firms challenging DBE certification decisions.
2. ODOT shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
3. ODOT shall promptly notify COBID of complaints received relating to DBE certification or program administration.
4. ODOT's Project Manager for this Project is Daniel Jackson, Small Business Programs Manager, ODOT – Office of Civil Rights, MS-23, 3930 Fairview Industrial Dr SE, Salem, OR 97302, 503-986-3016, daniel.jackson@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

**OBDD OBLIGATIONS**

1. OBDD will consult with Agencies regarding changes in State rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.
2. OBDD will not be required to process an application for certification from a firm having its principle place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
3. OBDD will share its information and documents concerning the firm with other interested agencies that are considering the firm's application.
4. OBDD shall maintain a DBE Certification database and directory.
5. OBDD shall provide Agencies with all necessary DBE Certification information required to complete federal reports and data collection.
6. OBDD shall follow all certification procedures and standards set out in 49 CFR part 26.
7. OBDD shall cooperate fully in the oversight, review, and monitoring activities of the USDOT and its operating administrations and implement USDOT's directives and guidance concerning certification matters.
8. OBDD agrees to act in accordance with 49 CFR §26.83(k). OBDD agrees that COBID shall make decisions on applications for certification within ninety (90) days of receiving all information required from the applicant firm. This period may be extended once, for no more than sixty (60) days, upon written notification to the applicant firm, explaining fully and specifically the reasons for the extension.
9. Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, COBID shall not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the applicant firm.
10. OBDD shall submit to ODOT the following documentation on each DBE certification within seven (7) days upon request of ODOT:
  - a. Copy of letter of determination
  - b. Copy of site visit
11. OBDD shall notify ODOT and Agencies in writing within seven (7) days upon request of any of the following:
  - a. **Decertification or Denial of DBE Certification**
  - b. Third party challenge
  - c. Closures or cancellations of any DBE certifications due to a firm's failure to file an annual no-change affidavit;
  - d. Any withdrawals of DBE Certification applications
12. OBDD will participate in DBE staff training.

13. OBDD shall coordinate participation in DBE Certification workshops with Agencies.
14. OBDD shall provide technical assistance to firms seeking DBE Certification.
15. DISPUTE RESOLUTION BETWEEN ODOT and OBDD
  - a. ODOT and OBDD agree that any tort liability claim, suit, or loss resulting from or arising out of ODOT's or OBDD's performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this Agreement.
  - b. ODOT and OBDD understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and OBDD agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.
16. OBDD's Project Manager for this Project is Carrie L. Hulse, Program Manager, COBID, 775 Summer Street SE, Suite 200, Salem, OR. 97301, 971-301-1271, [carrie.l.hulse@oregon.gov](mailto:carrie.l.hulse@oregon.gov), or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

#### **GENERAL PROVISIONS**

1. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties.
2. This Agreement may be terminated by mutual consent of all current Parties upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to Agencies, or at such later date as may be established by ODOT or OBDD, under any of the following conditions:
  - a. If Agencies fail to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from ODOT or OBDD fails to correct such failures within ten (10) days or such longer period as ODOT or OBDD may authorize.
  - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT

or OBDD are prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, OBDD or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice, copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.
7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under

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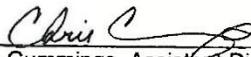
Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties acknowledge and agree that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
10. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or OBDD to enforce any provision of this Agreement shall not constitute a waiver by ODOT or OBDD of that or any other provision.

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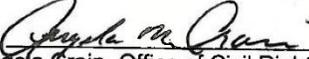
**THE PARTIES**, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

**STATE OF OREGON**, by and through its  
Oregon Business Development  
Department

By   
Chris Cummings, Assistant Director

Date October 29, 2017

**STATE OF OREGON**, by and through  
its Department of Transportation

By   
Angela Crain, Office of Civil Rights  
Manager

Date 10/30/17

**OBDD/OMWESB Contact:**

Carrie L. Hulse, Program Manager  
OBDD – COBID Section  
775 Summer Street SE, Suite 200,  
Salem, OR. 97301  
971-301-1271  
carrie.l.hulse@oregon.gov

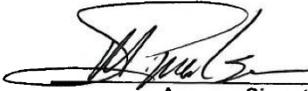
**ODOT Contact:**

Daniel Jackson, Small Business Programs  
Manager  
ODOT Office of Civil Rights, MS-23  
3930 Fairview Industrial Dr SE  
Salem, OR 97302  
503-986-3016  
[daniel.jackson@odot.state.or.us](mailto:daniel.jackson@odot.state.or.us)

**Unified Certification Function Agreement Signature Page**

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State or Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity Port of Portland  
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

 Agency Signature	<u>For Christine Moody</u> Date	 Title
Agency Signature	Date	Title
 Agency Counsel	<u>2/1/18</u> Date	<u>Asst. General Counsel</u> Counsel's title

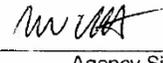
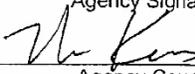
Name and title of Agency Contact Representative:	Kimberly Mitchell-Phillips, Disadvantaged Business Enterprise Program Mgr.	
Address:	7200 NE Airport Way, Portland, oREGON 97218	
Phone:	503-415-6587	Fax: 503-548-5541
E-mail:	kimberly.mitchell-phillips@portofportland.com	

Send the **Unified Certification Function Agreement Signature Page** (this page) to: Nameun House, Procurement and Contracts Specialist via e-mail at: [Nameun.House@odot.state.or.us](mailto:Nameun.House@odot.state.or.us) and cc' Daniel Jackson, Small Business Programs Manager at: [daniel.jackson@odot.state.or.us](mailto:daniel.jackson@odot.state.or.us).

**Unified Certification Function Agreement Signature Page**

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State of Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity City of Pendleton  
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

 Agency Signature	<u>5 Dec '17</u> Date	<u>Mayor</u> Title
 Agency Signature	<u>12/6/17</u> Date	<u>City Manager</u> Title
 Agency Counsel	<u>12/15/17</u> Date	<u>City Atty</u> Counsel's title

Name and title of Agency Contact Representative:	<u>Erica Stewart, Airport Admin Specialist</u>
Address:	<u>2016 Airport Road</u> <u>Pendleton, OR 97801</u>
Phone:	<u>541-276-7754</u> Fax: <u>N/A</u>
E-mail:	<u>erica.stewart@ci.pendleton.or.us</u>

Send the **Unified Certification Function Agreement Signature Page** (this page) to: Nameun House, Procurement and Contracts Specialist via e-mail at: [Nameun.House@odot.state.or.us](mailto:Nameun.House@odot.state.or.us) and cc' Daniel Jackson, Small Business Programs Manager at: [daniel.jackson@odot.state.or.us](mailto:daniel.jackson@odot.state.or.us).

## ATTACHMENT 10

### Small Business Element of the DBE Program

[49 CFR § 26.39]

#### Overview

The Port of Portland (Port) administers an existing DBE Program as required under 49 CFR part 26 for Federal Aviation Administration (FAA)-assisted projects. The Port administers that Program as an element of the Port's existing Small Business Development Program, consistent with Port Commission Policy No. 6.1.9, dated May 8, 2002 (copy attached as Exhibit A).

Another element of the Port's Small Business Development Program is an existing program intended to increase contract awards to small business concerns for projects that are not FAA-assisted. For example, on some construction contracts that are not FAA-assisted, the Port sets small business subcontracting participation goals. The Port's existing small business contract participation program also includes outreach, mentoring, and educational elements.

Accordingly, the Port's existing Small Business Development Program supports the policy goals of the requirement, under 49 CFR § 26.39, that airport sponsors maintain a small business program component to their existing DBE program. However, since a 2011 requirement mandates that DBE programs for FAA-assisted projects also contain a small business element, the Port has expanded its DBE program to include the small business contracting elements set forth below.

#### **Specific Program Elements Under 49 CFR § 26.39**

The Port will incorporate the following additional, non-discriminatory elements into its existing 49 CFR part 26 DBE Program, in order to facilitate competition on FAA-assisted Port contracts by small business concerns (both DBEs and non-DBE small businesses):

#### Definition of Small Business

For purposes of this Program "small business" or "small business concern" will be defined as set forth in 49 CFR § 26.5, which as of October 2014 is:

"... a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b)."

The Port will presume that a business is a "small business" or "small business concern" for purposes of this Program if the business is a for-profit enterprise that is either:

a. certified as an Emerging Small Business (ESB) by the State of Oregon Certification Office for Business Inclusion and Diversity (COBID) or by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). Each such agency maintains an online listing of certified ESB firms;

b. an eligible participant of federal Small Business Administration (SBA) programs, which may include businesses certified as disadvantaged, minority-owned, women-owned, or

emerging small businesses, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. The SBA maintains an online listing of eligible, participating small businesses; or

c. certified by a public agency other than COBID, OMWBE, or SBA and meets a size standard that is no greater than the SBA size standard, which standard must be a criterion for certification or participation in that public agency program.

If a business does not fall within one of the three categories set forth above, the business may qualify as a “small business” or “small business concern” for purposes of this Program if it can demonstrate to the Port that the business does in fact meet the applicable SBA small business size standard. Such assurance and demonstration may involve reviewing the tax records or certified annual audit reports of the business and taking other actions reasonably related to assessing whether the business meets the stated size standard. If a question arises about whether a business meets the applicable size standard, the Port and the business will confer and, to the extent practicable, follow the methodologies established by the SBA in determining whether the business is within or exceeds an applicable size standard.

### Contracts for Construction, Goods, and Services

The Port will employ the following methods intended to improve participation by small business concerns on FAA-assisted Port contracts for construction, goods, or services. When the estimated contract amount is between \$5,000 and \$200,000, on a case by case basis the Port will consider one or more of the following options:

- establishing a race-neutral small business set aside for prime contracts;
- dividing prime contracts into smaller-sized packages that are within the financial resources and capacity of small business concerns; and
- requiring the prime contractor/consultant to identify business opportunities within the contract’s scope of work that small business subcontractors can reasonably perform, rather than self-performing all the work involved. On such contracts bidders will be required to submit Small Business Goal Compliance Reports (to be provided by the Port), so the Port may monitor compliance with Program requirements.

Solicitation documents will clearly identify these contract opportunities and requirements.

### Professional Services

To improve participation by small business concerns on FAA-assisted Port contracts for professional services, on a case by case basis the Port will consider awarding additional points for small business participation when evaluating proposals, to encourage proposers to give equal opportunity to small businesses to compete for portions of the work. In such solicitations proposers may be required to respond to requirements and questions similar to the following:

- Provide a narrative description of your firm’s experience in promoting small business participation as partners, subcontractors, or suppliers on previous projects. Discuss any innovative or successful measures that your firm has undertaken to increase small business participation in operations. Include a list of small business with which your firm has had a contractual relationship during the last 12 months.
- Is your business a “small business” as defined under 49 CFR § 26.5, or as provided under the Port of Portland’s Small Business Program?

- Describe the actions and strategies your firm will take to increase small local business participation in this work.

On such contracts, proposers may be required to submit Small Business Goal Compliance Reports (provided by the Port), so the Port may monitor compliance with Program requirements.

#### Outreach Efforts

The Port will also take affirmative steps to encourage firms that may be eligible for small business certification to become certified as “small businesses” in accordance with 49 CFR part 26. This will be accomplished through outreach efforts, educational and informational programs, and direct contact.

**EXHIBIT A  
TO  
ATTACHMENT 10**

**Port of Portland Commission Policy**

**Small Business Development Program**

**Policy No. 6.1.9**

Approved Commission Meeting of May 8, 2002

The Port of Portland recognizes a shared responsibility with small businesses, large businesses, public agencies, and community organizations to take actions that will result in small business firms successfully competing for Port business. The Port of Portland is dedicated to working cooperatively with civic and business leaders in the community to develop and implement an effective Small Business Development Program.

It is the policy of the Port of Portland that:

1. Small businesses shall have an equal opportunity to compete for and perform Port of Portland contracts.
  2. The Port shall take actions as deemed necessary and reasonable by the Executive Director to increase contract awards to small business firms, to increase the number of different small business firms participating in contract work, and to thereby develop a more competitive contracting environment.
  3. Port of Portland contractors shall be required by contract to take all reasonable steps to ensure that small businesses have an equal opportunity to compete for and perform subcontracts. Contractors and subcontractors shall comply with Port bid documentation requirements pertaining to small business participation.
  4. Port of Portland contractors and subcontractors shall be required by contract to not discriminate based upon race, color, national origin, or sex in the performance of Port of Portland contracts and subcontracts.
  5. Port of Portland contractors and subcontractors shall be required by contract to comply with 49 CFR part 26 in competing for and performing contracts and subcontracts funded in whole or in part with U.S. Department of Transportation (USDOT) assistance.
  6. The Executive Director shall set targets and goals for small business and disadvantaged business enterprise (DBE) participation in the following areas:
    - a. An annual overall Port small business participation target for Port-wide expenditures;
    - b. An annual overall Port DBE goal for USDOT-assisted contracts in accordance with 49 CFR part 26;
    - c. Contract goals for USDOT-assisted contracts in accordance with 49 CFR part 26; and
    - d. An annual overall Port DBE goal for airport concession opportunities in accordance with 49 CFR parts 23 and 26.
1. Actual small business and DBE participation shall be reported annually to the Commission.

ATTACHMENT 11

POLICY STATEMENT

Port of Portland Disadvantaged Business Enterprise Program

February 2018 Restatement

[49 CFR § 26.23]

The Port of Portland (Port) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT) at 49 CFR part 26. The Port has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance the Port has signed an assurance that it will comply with 49 CFR part 26.

By virtue of such assurance and the DBE Program it is the policy of the Port to ensure that DBEs, as defined in CFR 49 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; and
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. to assist in the development of firms that can compete successfully in the marketplace outside the Port's DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Kimberly Mitchell-Phillips has been designated as the Port's Disadvantaged Business Enterprise Liaison Officer (DBELO). In that capacity the DBELO is responsible for implementing all aspects of the Port's DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Port in its financial assistance agreements with the DOT.

Upon approval of the Port's February 2018 restatement of its DBE Program the Port will: (i) disseminate this policy statement to the Port's Board of Commissioners and to employees in all components of the Port; (ii) distribute this policy statement to DBE and non-DBE business communities that perform work on Port DOT-assisted contracts; and (iii) send copies of the 2018 DBE Program to small business advocacy groups. We will accomplish this distribution by e-mail, US mail, or direction to the Program online at the following link: <https://www2.portofportland.com/SmallBiz>


\_\_\_\_\_
4/5/18  
Director
Date