



Oregon

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DATE: February 5, 2010

Addenda No. 6

TO:

PLAN HOLDERS

PREPARED BY:

APPROVED BY:

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P.E.

SUBJECT: I-84: Sandy River – Jordan Rd – Bundle 210
Columbia River Highway
Multnomah County
Grading, Drainage, Structures, Paving, Signing, Illumination,
and Roadside Development Project
(Bids to be opened and read February 18, 2010)

The following changes are made to the Project Special Provisions:

- 1. TABLE OF CONTENTS FOR SPECIAL PROVISIONS – The section of the Table of Contents above "Work to be Done" is replaced with the following:

REQUIRED CONTRACT PROVISIONS FOR FEDERAL-AID CONTRACTS (FHWA-1273)
ON-SITE WORKFORCE AFFIRMATIVE ACTION REQUIREMENTS FOR WOMEN AND
MINORITIES ON FEDERAL-AID CONTRACTS
EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS
EQUAL EMPLOYMENT OPPORTUNITY-ASPIRATIONAL TARGET PROVISIONS
DBE PROVISIONS
ASSIGNED CONTRACT GOALS AND TARGETS
REIMBURSABLE FEDERAL ON-THE-JOB AND APPRENTICESHIP TRAINING
PROJECT WAGE RATES
WEB SITE ADDRESSES

- 2. DBE AND MWESB PROVISIONS – The DBE and MWESB Provisions are replaced with the attached DBE Provisions.

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3. ASSIGNED MWESB ASPIRATIONAL TARGETS – Remove the Assigned MWESB Aspirational Targets page from the special provisions.

These changes will be included in the Contract for this Project. It is understood that your Bid will be submitted accordingly.

Attachments: DBE PROVISIONS

DBE PROVISIONS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUPPLEMENTAL REQUIRED CONTRACT PROVISIONS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SUPPLEMENTAL REQUIRED CONTRACT PROVISIONS

01.00 DBE Policy and Authorities

(a) DBE Policy, Obligation, and Applicability - As required by 49 CFR Part 26, ODOT and the Contractor agree to abide by and take all necessary and reasonable steps to comply with the policy set out below:

(1) DBE Policy - It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assisted contracts. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR 26 apply to this agreement.

(2) DBE Obligation - The Oregon Department of Transportation (ODOT) and its Contractor agree to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided by Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) under this agreement. ODOT and its contractors shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform contracts. Neither ODOT nor its contractors shall discriminate on the basis of race, color, sex and/or national origin in the award and performance of Federal-Aid contracts.

(3) DBE Applicability - This applies to all public improvement projects financed in whole or in part with federal funds received from FHWA, FTA and FAA through the ODOT. The ODOT and its contractors shall conform to all applicable civil rights laws, orders, and regulations. ODOT and its contractors shall not discriminate on the basis of race, age, sex, color, religion, national origin, mental or physical disability, political affiliation, or marital status in the award and performance of ODOT contracts.

(b) Authorities - These Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions are authorized by the following laws, rules, regulations and guidelines,

which, in conjunction with any pertinent policy memoranda or procedures issued by the FHWA, all of which are incorporated by reference into the provisions, govern the ODOT's administration of the DBE Program:

The USDOT Regulations (49 CFR Part 26) published in the Federal Register, effective March 4, 1999, established a requirement that all recipients of USDOT funds establish a DBE Program. The regulations are applicable both to ODOT's Federal-aid construction and to its non-construction activities.

The USDOT's legal authority for its DBE regulations includes Executive Order 11625 (October 13, 1971), which required that federal executive agencies develop comprehensive plans and programs to encourage minority business participation. USDOT requires ODOT to establish a DBE Program as a condition for receiving USDOT federal funds.

Title VI, Civil Rights Act of 1964. This Act concerns non-discrimination in federally assisted programs or activities on the grounds of race, color, sex or national origin.

The Program is also subject to the following laws: Section 30 of the Airport and Airway Development Act of 1970 and Section 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety Capacity Expansion Act of 1987; Section 905 of the Railroad Act of 1978 (45 USC 903); and Section 19 of the Urban Mass Transportation Act of 1964, as amended (Public Law 95-599).

Oregon Revised Statutes, Chapters 200 and 279.

Oregon Administrative Rules, Chapter 121, Division 50, MBE/WBE Certification.

The Contractor agrees that these Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions (including references therein) shall be incorporated into all subcontracts (regardless of tier) describing the work to be performed by DBE firms on this project.

02.00 Abbreviations and Definitions:

Abbreviations and definitions of words and phrases used in connection with the DBE Program are as follows:

AFDBE - African American owned Certified Disadvantaged Business Enterprise Contractor or Subcontractor.

ASDBE - Subcontinent Asian and Asian Pacific together referred to as "Asian American", owned Certified Disadvantaged Business Enterprise Contractor or Subcontractor.

FAA - Federal Aviation Administration

FHWA - Federal Highway Administration

FTA - Federal Transit Administration

ODOT - Oregon Department of Transportation

OMWESB - The Office of Minority, Women and Emerging Small Business, which is authorized to certify DBE firms in accordance with federal regulations.

USDOT - United States Department of Transportation

Broker - A business firm that provides a bona fide service, such as professional, technical, consultant or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for the performance of the contract.

Certified Disadvantaged Business Enterprise - A business firm certified by the OMWESB, indicating that it: (a) meets the criteria outlined in 49 CFR 26 regarding certification as a DBE; and (b) possesses the required resources and expertise to perform designated types of work.

Commercially Useful Function - Commercially useful function is defined as follows:

49 CFR 26.55(c) defines commercial useful function as: *a DBE is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the work involved.* To determine whether a DBE is performing a commercially useful function, the recipient or Contractor shall evaluate the amount of work subcontracted, industry practices, and other relevant factors.

Commodity Codes - Code(s) assigned by the OMWESB to indicate the standard type(s) of work the DBE provides.

Contractor's DBE Liaison Officer - The individual designated by the Contractor to assist the Contractor in meeting the Contractor's responsibility of compliance with the legal requirements of the DBE program and with the contractual obligations imposed by these supplementary provisions including but not limited to assuring that the DBE subcontractors on this project perform a commercially useful function.

Contractor/Subcontractor - A licensed business participating in a contract, subcontract, or other agreement which ODOT has awarded or to which ODOT has consented.

DBE Directory of Certified Firms - A publication (available in paper, disk copies, or Internet) listing all Disadvantaged Business Enterprises which are currently certified by the OMWESB. The Directory is provided to the Contractor for use in identifying DBE firms whose participation on a contract may be counted toward achievement of the assigned DBE participation goal.

DBE Eligibility - A firm is eligible to participate as a Disadvantaged Business if it meets the criteria as established by regulation and enforced by the certifying agency. A firm will no longer be able to participate as a DBE on current or future contracts when it receives notification of decertification, denial of recertification, or notice of graduation by the certifying agency.

Equipment - All machinery, tools, and apparatus needed to complete the contract.

Federal-Aid Contract - Any contract including consultant agreements or modifications of a contract between ODOT and a Contractor which is paid for in whole or in part with USDOT financial assistance from FHWA, FTA or FAA.

Goal - An assigned numerical percentage value of the total dollar amount of a contract award for DBE participation which, based on the waiver granted by the United States Secretary of Transportation, dated September 9, 2008, allowing group specific goals, is allocated solely for AFD BE and ASD BE participation.

Good Faith Efforts - Efforts required to obtain and support DBE participation that could reasonably be expected to produce and maintain a level of DBE participation sufficient to meet the contract goal. Good faith efforts are required before bid opening, upon contract award, and continue throughout the performance of the contract to maximize DBE participation.

Joint Venture (DBE) - An ODOT certified enterprise consisting of two or more businesses formed to jointly carry out a single highway construction project, one or more of which is a certified DBE (see Section 8.00 of these Supplemental Provisions).

Managerial Control - Consistent with normal industry practice, management shall include scheduling work operations, ordering equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees.

Manufacturer - A firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Operational Control - Consistent with normal industry practice, the DBE shall supervise the daily operations of the work contracted. There are only two acceptable ways for the DBE to supervise the daily operations. The DBE owner may act as superintendent and directly supervise the work or a skilled and knowledgeable superintendent employed by and paid wages by the DBE shall directly supervise the work. If the latter is used, the DBE owner shall be actively involved in making the operational and managerial decisions of the firm.

Regular Dealer - A DBE firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of a contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the DBE firm shall engage in, as its principal business and in its own name, the purchase and sale of the products in question. A regular dealer in such items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as regular dealers within the meaning of this definition.

Subcontract - A subcontracting arrangement is generally considered to exist when a person or firm assumes an obligation to perform a part of the contract work and the following conditions are present:

- Compensation for performance of work is on a unit price or lump sum basis.
- The subcontractor exercises full control and authority over the subcontracted work, including the furnishing of labor and equipment and choice of work methods, with only general supervision being exercised by the prime Contractor.
- Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.
- The ODOT has provided written consent to the subcontract arrangement, regardless of tier.

All conditions involved should be considered and no one condition alone will normally determine whether a subcontract actually exists.

Type of Work - Specific descriptions of work which the DBE is certified in the DBE Directory as having the expertise and resources necessary to perform.

03.00 Assigned Contract Goal - In order to increase AFDDBE and ASDDBE participation on ODOT contracts, the project is assigned a DBE goal for AFDDBE and ASDDBE participation.. The Contractor is required to select a portion of work available on the project for AFDDBE and ASDDBE participation. The Contractor may use AFDDBE or ASDDBE subcontractors, suppliers, manufacturers or professional service providers to fulfill the goal. The contract goal on the project remains in effect throughout the life of the contract. Dollar values of participation shall be credited toward meeting the goal based on AFDDBE and ASDDBE gross earnings.

(According to 49 CFR 26.87(j)(2), if a prime Contractor has executed a subcontract with a firm before the ODOT notifies the firm of its ineligibility, the prime Contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE contract goal for the firm's work. If the ODOT awards the contract to a DBE prime Contractor that is later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after ODOT issued the notice of ineligibility shall not count toward the ODOT overall goal, but may count toward the contract goal. 49 CFR 26.87(j)(3) Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, the ODOT may continue to count its participation on the contract toward overall and contract goals.)

In determining whether an AFDDBE or ASDDBE prime Contractor has met a contract goal, only the work the AFDDBE or ASDDBE has committed with its own forces as well as the work that it has committed to be performed by AFDDBE or ASDDBE subcontractors or suppliers will be counted.

The goal for the project is listed on a sheet titled "DBE Assigned Contract Goal for AFDDBE and ASDDBEs" immediately following these supplemental required contract provisions.

The provisions in these Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions concerning the use of DBEs will apply equally to AFDDBEs and ASDDBEs

committed to meet the DBE goal for AFDDBE and ASDDBE participation, as well as to other committed DBEs. References to DBE contractors and to DBE subcontractors throughout the provisions shall apply to such committed DBEs, and AFDDBEs and ASDDBEs.

04.00 Subcontracting Limitations:

(a) DBE Subcontractors - All DBE subcontractors committed to perform a function or service as a condition of contract award, or for replacing the performance of a committed DBE, shall perform a commercially useful function as defined in Section 09.00. If it is determined by ODOT that the DBE subcontractor is unable to perform a commercially useful function, ODOT will notify the Contractor prior to subcontract approval. The prime Contractor shall either provide evidence that the DBE subcontractor is able to perform a commercially useful function, or replace the DBE subcontractor with another DBE who has been certified to perform the bid item subcontracted as outlined in section 10.00 (c). If the Contractor cannot provide sufficient evidence the DBE subcontractor has the ability to perform a CUF, and/or refuses to replace the DBE, the prime Contractor may be declared in default and the contract could be terminated according to subsection 00180.90(a) of the Oregon Standard Specifications for Construction.

(b) Second Tier DBE Subcontracts - Second tier DBE subcontracts may be counted toward the prime Contractor's DBE goal provided it was listed in the original DBE commitment prior to bid award.

05.00 DBE Subcontract and Sub-Subcontract Documents - All work committed to DBE firms toward meeting the assigned participation goal and as a condition of contract award, including work to be performed by DBE firms substituting for DBE firms committed as a condition of contract award, shall be performed under a written subcontract agreement, regardless of the description of work to be performed by either the committed or substituting DBE firm. The subcontract agreement shall fully describe any partial bid item work committed to be performed by DBE firms.

In accordance with Oregon Standard Specifications for Construction subsection 00180.21, the Contractor shall submit written request for consent from ODOT to subcontract any portion of the work at any tier, using form 734-1964, "Contractor's Request for Subcontract Consent," available from the Project Manager. Written consent for the subcontract shall be obtained before the subcontractor is allowed to commence any work on the project.

06.00 Good Faith Efforts Requirements - The Contractor is required to exercise good faith efforts during the entire life of the contract to meet the assigned goal and to maximize DBE participation and performance on the contract. Good faith efforts shall be made to secure DBE participation sufficient to meet the assigned goal. The Contractor shall also make every reasonable effort during the course of the project to enable DBE firms to perform those portions of the contract work for which they have been committed.

The Contractor shall make good faith efforts to replace with another DBE, a DBE who is unable or unwilling to perform, unable to perform a commercially useful function, or has changed its ownership and/or control. Section 10.00 discusses the procedures that shall be followed to terminate a committed DBE and replace the firm with a substitute.

The Project Manager may request the Contractor to submit evidence of Good Faith Efforts at any time during the course of the contract and the Contractor shall promptly submit such evidence.

07.00 DBE Work Plan Proposal Form and DBE Sub-Subcontract Work Plan Proposal Form - The DBE Work Plan Proposal Form shall be completed by all DBE firms participating as subcontractors. The DBE Sub-Subcontract Work Plan Proposal Form shall be completed by all DBE firms participating as sub-subcontractors and is being used by the awarded Contractor to meet the DBE goal. Both forms are available by contacting the Office of Civil Rights at 503-986-4350. The forms are also included in the Contractor's Pre-construction Conference Packet.

The DBE Field Coordinator and Project Manager will review the proposals and provide written comments as to whether the activities identified in the proposals comply with program regulations. In those instances where proposed activity violates applicable regulations, written comments will be offered as to corrective action required in order to comply with the regulations.

(a) Disadvantaged Business Enterprise Work Plan Proposal Form - DBE firms shall submit their Work Plan Proposal Form to the Contractor in time for the Contractor to deliver same to the Project Manager at the pre-construction conference. The DBE Work Plan Proposal specifically solicits information regarding the following:

(1) Personnel Required - List the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, and/or the source from which the individual was or is to be recruited.

(2) Equipment Required - List the items of equipment that will be used on the project. Indicate whether the equipment is owned, rented or leased. If rented or leased, consent to the rental or lease shall be obtained from ODOT prior to beginning of the work.

(3) Supplies and Materials Required - List the supplies and materials that will be used on the project. Indicate the source, by name, address, and phone number, from which supplies and materials will be obtained.

(4) Prime Contractor Resources - Discuss any plans for the DBE to share any resources of the prime Contractor, e.g. personnel, equipment, tools, facilities, etc.

(5) Additional Information - Provide comments or explanation of any of the information provided above.

(b) Disadvantaged Business Enterprise Sub-Subcontract Work Plan Proposal Form - DBE firms shall submit their Sub-Subcontract Work Plan Proposal Form to the Contractor in time for the Contractor to deliver same to the Project Manager at the pre-construction conference. The DBE Sub-Subcontract Plan Proposal specifically solicits information regarding the following:

(1) Personnel Required - List the craft classifications of personnel who will perform the work under the sub-subcontract.

(2) Equipment Required - List the items of equipment the sub-subcontractor will use to perform the work. Indicate whether the required equipment will be rented or leased by the sub-subcontractor, and if so, from whom.

(3) Supplies and Materials Required - List the supplies and materials to be used on the project by the sub-subcontractor and their source.

(4) DBE Management - List the name(s) of the person(s) (either owners of the DBE firm or employed by the firm), who will be responsible for the continuous direction and control of the work to be performed under the sub-subcontract. Indicate the action planned, and steps to be taken to assure DBE management, direction and control of the sub-subcontract work activities.

(5) Additional Information - Provide comments or explanation of any of the information provided above.

08.00 Contractor Pre-construction Conference Reporting - The Contractor shall deliver the following information to the Project Manager at the Pre-construction Conference:

- The name of the DBE liaison officer who will administer the Contractor's DBE program. Said officer or the officer's designee shall attend the conference.
- Contractor's project schedule showing the work commencement date and estimated completion date for each DBE that will perform work on the project.
- Disadvantaged Business Enterprise Work Plan Proposal Form for all DBE's that are performing work on the project regardless of contracting tier or if used to meet the DBE goal.

09.00 Commercially Useful Function - The Contractor is responsible for ensuring that DBE firms working on the project perform a commercially useful function (CUF). The Contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.

An on-site review will be used to ascertain whether the DBE is actively performing, managing, and supervising the work. It shall employ a labor force which is separate and apart from that employed by the prime, and which is independently recruited by the DBE in accordance with standard industry practice. The DBE shall supervise and manage the work or independently hire a supervisor, who may not be a supervisor employed by the prime or any other subcontractor on the project.

With regard to the Federal-aid share, if an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation would not be counted toward goal achievement for either the Contractor or ODOT.

When a DBE is presumed not to be performing a CUF as described in this section, the DBE may present evidence through the Contractor to ODOT to rebut that presumption.

(a) The DBE (and Not Some Other Business Entity) Shall Actually Perform the Subcontract - The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract shall be consistent with industry standards and shall demonstrate that the DBE and not some other business entity is actually performing the subcontract. For example, if a DBE associates itself too closely with another business entity or entities, in acquiring a labor force, supervisors, equipment or materials to an extent inconsistent with industry standards, the DBE can no longer be said to be actually performing the subcontract. Instead a partnership or joint venture of which the DBE is a member is the actual performer of the subcontract.

(b) DBE's Work Force - The DBE shall solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent shall, on a full-time basis, supervise and control the work of the contract. The DBE may with the prior written consent of the Project Manager augment its work force with personnel of another firm. The Project Manager shall approve the request only when:

- Specialized skills are required, and
- The use of such personnel is for a limited time period.

(c) DBE Equipment - The DBE is expected to perform the work with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the Project Manager prior to the DBE starting work. No credit will be given, nor payment made for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is made by a deduction from the prime Contractor's payment(s) to the DBE firm.

The DBE may lease specialized equipment, provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the ODOT Project Manager prior to the DBE starting work. The Project Manager will consent to the lease agreement only when:

- The equipment is of a specialized nature,
- The equipment is readily available at the job site,
- The operation of the equipment is under the full control of the DBE,
- The lease arrangement is for a short term,
- The lease arrangement for the specialized equipment in question is a normal industry practice, and
- The DBE shall hire, direct, supervise, control and carry the operator of the equipment on the DBE payroll.

(d) DBE Trucking Firms - The following factors will be used to determine if a DBE Trucking firm is performing a CUF:

- The DBE shall be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- The DBE shall itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- According to 49 CFR 26.55(d)(5) the DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangements.
- For the purposes of this paragraph, a lease shall indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks shall display the name and identification number of the DBE.

(e) DBE Flagging Firms - DBE flagging firms will be credited at 100% if the DBE furnishes 100% of the equipment (in this case, paddles and radios) to perform the committed work. If the DBE uses employees' equipment for any part of the work, the DBE will be credited as a broker as defined in 02.00 above. This credit will equal the DBE labor broker's commission for supplying personnel to the job.

10.00 Termination and Substitution of DBE - The Contractor shall notify ODOT in writing and shall obtain written consent before terminating and/or replacing the DBE that was committed as a condition of contract award or otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent for terminating the performance of any DBE will be granted only where the Contractor can demonstrate that the DBE is unable, unwilling or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or replacement of a DBE will not be consented to based solely on a Contractor's ability to negotiate a more advantageous contract with another subcontractor.

(a) Contractor Written Request to Terminate DBE - All Contractor requests to terminate, substitute or replace a DBE shall be in writing and shall include the following information:

- Date the Contractor determined the DBE to be unwilling, unable or ineligible to perform.

- Projected date Contractor will require substitution or replacement DBE to commence work if consent is granted to the request.
- Brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the Contractor's assertion that the DBE is unwilling, unable or ineligible to perform.
- Brief statement of the affected DBE's capacity and ability to perform the work as determined by Contractor.
- Brief statement of facts regarding actions taken by Contractor that are believed to constitute good faith efforts toward enabling the DBE to perform.
- To date percentage of work completed on each bid item by the DBE.
- The total dollar amount paid, per bid item, to date for work performed by the DBE.
- The total dollar amount, per bid item, remaining to be paid to the committed DBE for work completed, but for which the DBE has not received payment and with which the Contractor has no dispute.
- The total dollar amount, per bid item, remaining to be paid to the DBE for work completed, but for which the DBE has not received payment and over which the Contractor and/or the DBE have dispute.
- A written, signed statement from the DBE, provided the DBE concurs with request to terminate, indicating its unwillingness or inability to perform.

(b) Contractor Written Notice to DBE of Pending Request to Terminate and Substitute with Another DBE - The Contractor shall send a copy of the request to terminate and substitute letter to the affected committed DBE firm, in conjunction to submitting the request to the Project Manager. The affected DBE firm may submit a response letter to the Project Manager within five calendar days of receiving the notice from the Contractor. The affected DBE firm may explain its position concerning performance on the committed work. The Project Manager will consider both the Contractor's request and DBE's response and explanation before approving the Contractor's termination and substitution request. If the Contractor is unsuccessful in notifying the affected DBE firm, after trying its best to deliver a copy of its request letter, ODOT may determine that the affected (committed) DBE firm is unable or unwilling to continue the contract and a substitution will be immediately approved by the Project Manager.

(c) Proposed Substitution of Another Certified DBE - When a DBE substitution shall occur, the Contractor may submit another certified DBE firm to replace the original committed firm in writing. The Contractor shall submit the name of the DBE firm, the proposed work to be performed, and the dollar amount of the work. The Contractor shall give pertinent information including bid item, item description, bid quantity & unit, unit price, and total price. In addition, the Contractor shall submit a written DBE Work Plan for the requested substitute DBE as described in Section 07.00. The dollar value of work to be performed by the substitute DBE shall be in an amount equal to the dollar value of the terminated DBE, minus the value of work performed to date by the DBE, prior to the request for substitution. Should the Contractor be unable to commit the required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. ODOT will review the quality and intensity of those efforts. Efforts that are merely superficial are not

good faith efforts to meet the goal. The Contractor shall document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

- Evidence that the Contractor attended any pre-solicitation or prebid meetings that were scheduled by ODOT to inform DBE firms of contracting and subcontracting or material supply opportunities available on the project;
- Evidence that the Contractor identified and selected specific economically feasible units of the project to be performed by DBE firms in order to increase the likelihood of participation by DBE firms;
- Evidence that the Contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- Evidence that the Contractor provided written notice to a reasonable number of specific DBE firms, identified from the DBE Directory of Certified Firms for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
- Evidence that the Contractor followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. Provide the following information:
 - The names, addresses, and telephone numbers of DBE firms who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBE firms to determine with certainty whether the DBE firms were interested;
 - A description of the information provided to the DBE firms regarding the plans and specifications and estimated quantities for portions of the work to be performed;
 - Documentation of each DBE contacted, but rejected and the reasons for the rejection.
- Evidence that the Contractor provided interested DBE firms with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- Evidence that the Contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- Evidence that the Contractor advised and made efforts to assist interested DBE firms in obtaining bonding, lines of credit, or insurance required by ODOT or Contractor;
- Evidence that the Contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- Evidence that the Contractor used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and

- Evidence that the Contractor used the services of ODOT's Supportive Services Contractor(s).

11.00 Changes in Work Committed to DBE - ODOT will consider the impact on DBE participation in instances where ODOT changes, reduces, or deletes work committed to the DBE at the time of contract award. In such instances, the contractor shall not be required to replace the work but is encouraged to do so. If the prime Contractor proposes any changes that involve a committed DBE, the Contractor shall notify the DBE of the proposed change, reduction, or deletion of any work committed at the time of contract award prior to executing the change order. The Contractor shall enable the affected DBE to participate in the change order request and will make every effort to maintain the committed DBE percentage that was the condition of contract award. Documentation of this effort and a letter from the DBE agreeing to the change shall be included with the request.

12.00 Contractor Payments to Subcontractors - The Contractor shall maintain records of all subcontracts entered into with DBE firms and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid to each DBE subcontractor or vendor. The Contractor shall pay each subcontractor for satisfactory performance of its contract no later than 10 (ten) days from receipt of each payment the Contractor receives from the ODOT. The Contractor shall also return retainage payments to each subcontractor within 10 (ten) 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 Project Manager. This policy applies to both DBE and non-DBE contractors. The Contractor shall submit a completed, signed original "Subcontractors Paid - Summary Report" form 734-2536, available from the Office of Civil Rights at 503-986-4350, to the Project Manager certifying that payment was made to each subcontractor or supplier. Submit the form when a progress or final payment has been made to each subcontractor or supplier or when any held retainage is returned to a subcontractor or supplier. Submit the form no later than the fifth day of the month following the date that payment was made to a subcontractor or supplier. At the completion of the project, submit a final form indicating the total amounts paid to all subcontractors and suppliers. *The participation of a DBE subcontractor will not be credited towards the prime Contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime Contractor has been paid to the DBE.*

13.00 Remedies - Failure of any Contractor to meet the DBE Supplemental Required Contract Provisions and program authorities cited in Section 01.00 (b) of these provisions constitutes a breach of contract for which the imposition of the following sanctions could occur: Temporarily withholding progress payments until the Contractor complies with these contract provisions through future performance.

Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.

Suspension of work for cause as provided under the Oregon Standard Specifications for Construction, subsections 00150.00 and 00180.70.

Any bidder or Contractor or subcontractor on a public contract that violates the provisions of ORS 200.075 shall have its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one year for a second violation and up to five years for a third violation.

Each violation shall remain on record for five years. After five years, the violation shall no longer be considered in reviewing future violations.

Failure of a bidder, Contractor, or subcontractor to comply with the DBE Supplemental Required Contract Provisions and other authorities cited in Section 01.00 (b) of these provisions wherein there appears to be evidence of criminal conduct shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

14.00 Records and Reports - The Contractor shall keep such project records as are necessary to determine compliance with these DBE Supplemental Required Contract Provisions. Such records shall include written reports from the DBE Liaison Officer to the Contractor as to the performance of the committed DBE and its performance of a commercially useful function.

15.00 Further Information - The DBE Supplemental Required Contract Provisions shall be incorporated into and attached to all agreements and contracts on projects financed in whole or in part with federal funds.

For further information concerning Disadvantaged Business Enterprise participation, contact:

Oregon Department of Transportation
Office of Civil Rights
355 Capitol Street NE, Room 504
Salem, OR 97301-3871
Phone: 503-986-4350
Fax: 503-986-6382