

**EXHIBIT E - DISADVANTAGED BUSINESS ENTERPRISE (DBE)
REQUIRED PROVISIONS
(Sep 2007)**

Each Contract that includes federal funding (as described in Section 1 below) must incorporate this Exhibit E and receive DBE Goal assignment.

01.0 - DBE Policy and Authorities

(a) DBE Policy, Obligation, and Applicability

As required by 49 CFR Part 26, Agency and the Consultant/Contractor (hereinafter referred to as "Contractor") agree to abide by and take all necessary and reasonable steps to comply with the policy set out below:

DBE POLICY It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex or national origin in the award and administration of USDOT assisted contracts. Consequently, the DBE requirements of 49 CFR 26 apply to each USDOT assisted Contract.

DBE OBLIGATION ODOT and Contractor agree to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of the Contract and subcontracts under the Contract financed in whole or in part with federal funds provided by Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA). ODOT and Contractor 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 services on subcontracts under the Contract. Neither Agency nor Contractor shall discriminate on the basis of race, color, sex or national origin in the award and performance of the Contract.

Contractor shall include as obligations of DBE subcontractors under the Contract the same obligations of Contractor that are set forth in this Exhibit.

DBE APPLICABILITY These DBE requirements apply to all personal services, trade services, and public improvement projects financed in whole or in part with federal funds received from Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) through the Oregon Department of Transportation. Agency and Contractor shall conform to all applicable civil rights laws, orders, and regulations. Agency and Contractor 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 performance of the Contract.

For each Contract utilizing FHWA/FTA/FAA funds, ODOT's Office of Civil Rights will review the project Statement of Work and assign a DBE Goal to the Contract, and that DBE Goal will be applied and administered according to the requirements of these Disadvantaged Business Enterprise (DBE) Required Provisions.

(b) Authorities

These Disadvantaged Business Enterprise (DBE) Required 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 Agency's administration of the DBE Program:

The Code of Federal Regulations (CFR) 49 Part 26 – The general and permanent rules published in the Federal Register that cover the USDOT Disadvantaged Business Enterprise program requirements.

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 prohibits denial of contracting opportunities in federally assisted programs or activities on the basis 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);
- Section 19 of the Urban Mass Transportation Act of 1964, as amended (Public Law 95-599);
- Intermodal Surface Transportation Efficiency Act of 1991;
- STURAA – The Surface Transportation and Uniform Relocation Assistance Act of 1987;
- STAA – The Surface Transportation Assistance Act of 1982.
- SAFETEA-LU – Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users

02.0 - Definitions

Definitions of words and phrases used in connection with the Disadvantaged Business Enterprise (DBE) Program are as follows:

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 Federal-Aid Contract.

Certified Disadvantaged Business Enterprise - A business firm certified by the State of Oregon, Office of Minority, Women, and Emerging Small Business (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 services.

Commercially Useful Function (CUF) - 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, Contractor shall evaluate the amount of work/services subcontracted, industry practices, and other relevant factors. (See also Section 08.00 for more explanation.)

Commodity Codes – North American Industrial Classification System (NAICS) or National Institute of Governmental Purchasing (NIGP) Code(s) assigned by the OMWESB to indicate the standard type(s) of work/services 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 under each Contract perform a commercially useful function.

Contractor/Subcontractor - A licensed business participating in a Federal-Aid Contract, subcontract, or other agreement which Agency has awarded or to which Agency has consented. For this Exhibit, Contractor and Contractor have the same meaning.

Contract – Any project-specific contract, Price Agreement (PA), Work Order Contract (WOC), or Task Order entered into with Agency.

DBE Directory of Certified Firms - A publication (available through Internet at <http://www.cbs.state.or.us/omwesb>) listing all Disadvantaged Business Enterprises which are currently certified by the OMWESB. The Directory is provided to the Contractor for use in identifying DBEs whose participation on a Federal-Aid 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 Federal-Aid Contracts when it is decertified by the certifying agency.

DBE Goal or DBE Participation Goal - An assigned numerical percentage value of the total dollar amount of a Federal-Aid Contract award which must be allocated for DBE participation, pursuant to the requirements of these Disadvantaged Business Enterprise (DBE) Required Provisions.

FAA - Federal Aviation Administration.

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

FHWA - Federal Highway Administration.

FTA - Federal Transit Administration.

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 Federal-Aid Contract DBE Goal. Good faith efforts are required before proposal opening, upon Federal-Aid Contract award, and continue throughout the performance of the Federal-Aid Contract to maximize DBE participation.

Joint Venture (DBE) - An Agency 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 04.0 (a) of these Supplemental Provisions).

Managerial Control - Consistent with normal industry practice, managerial control shall include scheduling work operations, ordering equipment and materials (if materials are part of the Federal-

Aid 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.

ODOT - Oregon Department of Transportation.

OMWESB - The State of Oregon - Office of Minority, Women and Emerging Small Business, which is authorized to certify Disadvantaged Business Enterprises in accordance with federal regulations.

Operational Control - Consistent with normal industry practice, the DBE must supervise the daily operations of the work/services 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/services or a skilled and knowledgeable superintendent employed by and paid wages by the DBE must directly supervise the work/services. If the latter is used, the DBE owner must 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 Federal-Aid 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 must 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 Federal-Aid Contract work/services and the following conditions are present:

- (a) Compensation for performance of work/services is on a unit price or lump sum basis.
- (b) The subcontractor exercises full control and authority over the subcontracted work/services, including the furnishing of labor and equipment and choice of work methods, with only general supervision being exercised by the prime Contractor.
- (c) Personnel involved in the operation are under the direct supervision of the subcontractor and are included on the subcontractor's payroll.
- (d) The Agency 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/Services - Specific descriptions of work/services which the DBE is certified in the DBE Directory as having the expertise and resources necessary to perform.

USDOT - United States Department of Transportation

03.0 - Assigned DBE Participation Goal

For each Contract utilizing FHWA/FTA/FAA funds, ODOT's Office of Civil Rights will review the project Statement of Work and assign a DBE Goal to the Contract, and that DBE Goal will be applied and administered according to the requirements of these Disadvantaged Business Enterprise (DBE) Required Provisions.

In order to comply with Federal regulations and to increase DBE participation on ODOT Federal-Aid Contracts, the Contract is assigned a DBE Participation Goal. The Contractor shall select a portion of Services under the Contract for DBE participation. The Contractor may use DBE subcontractors, suppliers, manufacturers or professional service providers to fulfill the DBE Goal. The DBE Goal on the project remains in effect throughout the life of the Contract. Should a DBE subcontractor lose its certification, the Contractor may be required to substitute with another certified DBE. Dollar values of participation shall be credited toward meeting the DBE Goal based on DBE gross earnings.

In determining whether Contractor has met the Contract DBE Goal, the Services the DBE Contractor (if so certified) has committed with its own forces as well as the Services that it has committed to be performed by DBE subcontractors or suppliers will be counted.

04.0 – Crediting of DBE Participation Toward Meeting the Assigned DBE Participation Goal

(a) Crediting of DBE Participation in the Proposal Submission

Credit toward meeting the assigned DBE Participation Goal shall be granted only when the listed DBE firms are currently certified by State of Oregon OMWESB as a disadvantaged business enterprise. Contractor should not assume that a minority-owned (MBE) or a woman-owned (WBE) firm is currently certified by OMWESB as a DBE firm. Contractor is encouraged to verify the DBE firms' certification by:

- 1) requesting a copy of the DBE certification letter from the committed DBE firm; or
- 2) contacting OMWESB at (503) 947-7976. Contractor may also access the updated certification list by dialing into OMWESB's Internet Web Page address at <http://www.cbs.state.or.us/omwesb>

(b) Crediting of DBE Participation Subsequent to Contract Award

The total dollar value of and the scope of work for the DBE commitment as shown on the COMMITTED DBE BREAKDOWN FORM shall be credited toward meeting the assigned DBE Goal, provided the DBE performs a Commercially Useful Function as defined under 49 CFR 26.55(c)(1).

(c) Crediting of DBE Participation through the Use of DBE Manufacturers

Contractor may count one hundred percent (100%) of its expenditure to a DBE manufacturer. Pursuant to 49 CFR 26.55(e) (1) (I), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

Contractor may count towards its DBE Goal compliance one hundred percent (100 %) of its expenditures for a DBE firm that furnishes and places these materials *only if* the DBE firm is carrying out its responsibilities by actually performing, managing, and supervising the Services involved. The DBE shall negotiate the cost, arrange delivery of, and pay for the materials and

supplies required for the Services under the Contract. Invoices for materials will be invoiced to the DBE firm and not to the prime Contractor.

d) Crediting of DBE Participation Through Use of DBE Regular Dealers

Contractor can apply only sixty percent (60%) of the committed amount for the cost of supplies and materials from regular dealers toward meeting the DBE Goal. A DBE regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. (CFR 26.55(e)(2) (i))

No credit will be granted if Contractor makes a direct payment to a material supplier. However, it will be permissible for a material supplier to invoice Contractor and the DBE jointly and be paid by Contractor making remittance to the DBE firm and material supplier jointly, provided such joint payment arrangements received prior written approval from the Agency.

No credit will be granted if Contractor deducts from the amounts owed to DBE firms for Services performed, the costs for: (1) materials and service ordered by the DBE firm and used by the DBE in performing the Services, (2) purchase price of supplies/materials acquired from Contractor by the DBE firm and used by the DBE in performing the Services, and (3) cost of equipment leased or rented from Contractor by the DBE firm and used by the DBE in performing the Services. Credit shall be withheld where such costs have been deducted from dollar amounts paid to DBE firms for Services performed.

e) Crediting of DBE Participation Through Use of DBE Service Providers

Credit toward meeting the DBE Goal through use of DBE service providers shall be granted for:

- (1) The fees or commissions charged for providing 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 performance of the Contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (2) The fees charged for delivery of materials and supplies required on a job site (but not the cost of materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials or supplies. The fee must be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (4) The total dollar value of payments to the DBE for which a CUF was performed in delivering a professional, technical or expert service.

0.50 - Subcontracting Limitations

- (a) All DBE subcontractors committed to perform a function or service under the Contract, or for replacing the performance of a committed DBE, must perform a CUF as defined in Section 02.0 and described in Section 08.0. If it is determined by Agency that the DBE subcontractor will not

be able to perform a CUF, Agency will notify the Contractor prior to subcontract approval. The Contractor must either provide evidence that the DBE subcontractor is able to perform a CUF, or replace the DBE subcontractor with another DBE who has been certified to perform the proposal item subcontracted as outlined in Section 09.0 (c) of this Exhibit E.

If the Contractor cannot provide sufficient evidence the DBE subcontractor has the ability to perform a CUF, or refuses to replace the DBE, the Contractor may be declared in default, and Agency may terminate the Contract in accordance with Section 10, Termination.

- (b) Second tier DBE subcontracts may be counted toward the Contractor's DBE Goal provided it was listed in Contractor's original DBE commitment.
- (c) All Services committed to DBE firms toward meeting the assigned DBE Participation Goal under the Contract, including Services to be performed by DBE firms substituting for DBE firms committed under the Contract, as outlined in Section 09.0, shall be performed under a written subcontract, regardless of the description of Services to be performed by either the committed or substituting DBE firm. The subcontract must fully describe all Services committed to be performed by DBE firms.
- (d) For DBE subcontractor substitution, the Contractor must submit written request for consent from Agency to substitute a DBE subcontractor for any portion of the Services. Written consent must be received from Agency before the subcontractor is allowed to commence any Services under the Contract. (Section 09.0 (c))

06.0 - Good Faith Efforts Requirements

The Contractor is required to exercise Good Faith Efforts during the entire life of the Contract to meet the assigned DBE Goal with DBE participation and performance on the Contract. Good faith efforts must be made to secure DBE participation sufficient to meet the assigned DBE Goal. The Contractor must also make every reasonable effort during the course of the Contract to enable DBEs to perform those portions of the Contract Services for which they have been committed.

The Contractor must make Good Faith Efforts to replace with another DBE, a DBE who is unable, unwilling or has lost its certified status for any reason, including change in ownership or control. Section 09.0 discusses the procedures that must be followed to terminate a committed DBE and replace the firm with a substitute.

The Contract Administrator 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.

The Contractor must document the steps taken to obtain participation which demonstrate the **Good Faith Efforts** outlined below:

- 1) Evidence that the Contractor attended any pre-solicitation or pre-proposal meetings that were scheduled by Agency to inform DBEs of contracting and subcontracting or material supply opportunities available on the Contract;
- 2) Evidence that the Contractor identified and selected specific economically feasible units of the Contract project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- 3) Evidence that the Contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- 4) Evidence that the Contractor provided written notice to a reasonable number of specific DBEs, 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;

- 5) 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:
 - a) The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
 - b) A description of the information provided to the DBEs regarding the plans and specifications and estimated quantities for portions of the work/services to be performed;
 - c) Documentation of each DBE contacted, but rejected and the reasons for the rejection.
- 6) Evidence that the Contractor provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- 7) Evidence that the Contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory proposals prepared by any DBE;
- 8) Evidence that the Contractor advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Agency or Contractor;
- 9) Evidence that the Contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the DBE Goal or requirements of Agency;
- 10) 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.

07.0 – Administrative Reconsideration

Administrative Reconsideration includes:

- (1) Contractor will have the opportunity to provide written documentation or argument to the ODOT Review Committee, consisting of personnel knowledgeable with DBE Program requirements, concerning the issue of whether it met the DBE Goal or made adequate Good Faith Efforts to do so, within 3 working days of the receipt of notification.
- (2) Upon request, Contractor will have the opportunity to meet in person with the ODOT Review Committee, to discuss the issue of whether they met the DBE Goal or made adequate Good Faith Efforts to do so.
- (3) The ODOT Review Committee will make a decision on reconsideration within 3 working days after reviewing evidence of Good Faith Efforts.
- (4) Contractor will be notified in writing by the ODOT Review Committee regarding the decision of reconsideration within 4 working days of the decision. This notice will explain the basis for finding that Contractor did or did not meet the DBE Goal or make adequate Good Faith Efforts to do so.
- (5) The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

08.0 - Commercially Useful Function

The Contractor (whether DBE certified or relying on DBE certified subcontractors) is responsible for ensuring that DBEs working on the project perform a CUF. The Contractor shall receive credit toward meeting the assigned DBE Goal and payment for DBE CUF performed work only.

An on-site review will be used to ascertain whether the DBE is actively performing, managing, and supervising the Services. It must employ a labor force which is separate and apart from that employed by Contractor, and which is independently recruited by the DBE in accordance with standard industry practice. The DBE must supervise and manage the Services or independently hire a supervisor, who

may not be a supervisor employed by the prime (except for cases where the prime is DBE) 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 Services found to be in violation will not be counted toward DBE Goal achievement for either the Contractor or Agency.

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 Civil Rights Office to rebut that presumption.

a) The DBE (and Not Some Other Business Entity) Must Actually Perform the Subcontract

The DBE's utilization of labor, supervisory personnel, equipment and material in the performance of the subcontract must be consistent with industry standards and must 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 - rather 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 must solicit, hire, place on its payroll, direct, and control all workers performing Services under the subcontract. The DBE owner or its superintendent must, on a full-time basis, supervise and control the Services performed under the subcontract.

The DBE may with the prior written consent of the Contract Administrator augment its work force with personnel of another firm. The Contract Administrator shall approve the request only when:

- 1) specialized skills are required, and
- 2) the use of such personnel is for a limited time period.

c) DBE Equipment

The DBE is expected to perform the Services with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the Contract Administrator 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's Services when payment for those costs is made by a deduction from the Contractor's payment(s) to the DBE.

Specialized equipment and operator leased from the Contractor: 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 Agency Contract Administrator prior to the DBE starting work.

The Contract Administrator shall consent to the lease agreement only when:

- 1) the equipment is of a specialized nature,
- 2) the equipment is readily available at the job site,
- 3) the operation of the equipment is under the full control of the DBE,
- 4) the lease arrangement is for a short term, and
- 5) the lease arrangement for the specialized equipment in question is a normal industry practice.

The DBE must hire, direct, supervise, control and carry the operator of the equipment on the DBE payroll.

d) 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 Services. If the DBE uses employees' equipment for any part of the Services, the DBE will be credited as a broker as defined in Section 02.0 above. This credit will equal the DBE labor broker's commission for supplying personnel to the job.

09.0 - Termination and Substitution of DBE

The Contractor shall notify ODOT in writing and must obtain written consent before terminating or replacing the DBE that was committed under the Contract 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:

- 1) Date the Contractor determined the DBE to be unwilling, unable or ineligible to perform.
- 2) Projected date Contractor will require substitution or replacement DBE to commence work if consent is granted to the request.
- 3) 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.
- 4) Brief statement of the affected DBE's capacity and ability to perform the work/services as determined by Contractor.
- 5) Brief statement of facts regarding actions taken by Contractor that are believed to constitute Good Faith Efforts toward enabling the DBE to perform.
- 6) To date percentage of Services completed on each proposal item/task or subtask by the DBE.
- 7) The total dollar amount paid, per proposal item/task or subtask, to date for Services performed by the DBE.
- 8) The total dollar amount, per proposal item/task or subtask, remaining to be paid to the committed DBE for Services completed, but for which the DBE has not received payment and with which the Contractor has no dispute.
- 9) The total dollar amount, per proposal item/task or subtask, remaining to be paid to the DBE for Services completed, but for which the DBE has not received payment and over which the Contractor or the DBE have dispute.
- 10) 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 Contract Administrator. The affected DBE firm may submit a response letter to the Contract Administrator within five calendar

days of receiving the notice from the Contractor. The affected DBE firm may explain its position concerning performance on the Services. The Contract Administrator 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, Agency 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 Contract Administrator.

c) Proposed Substitution of Another Certified DBE

When a DBE substitution shall occur, the Contractor may submit in writing another certified DBE firm to replace the original committed firm. The Contractor shall submit the name of the DBE firm, the Services to be performed, and the dollar amount of the Services. The Contractor shall give pertinent information including proposal item/task or subtask number, item/task or subtask description, proposal quantity & unit, unit price, and total price.

The dollar value of Services 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 Services 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 shall review the quality and intensity of those efforts. Efforts that are merely superficial are not Good Faith Efforts to meet the DBE Goal. (See Good Faith Efforts Section 06.0)

10.0 - Changes in Work Committed to DBE

Agency will consider the impact on DBE participation in instances where Agency changes, reduces, or deletes Services committed to the DBE under the Contract award. In such instances, the Contractor shall not be required to replace the Services for credit toward the DBE Goal but is encouraged to do so.

Contractor represents and warrants to Agency that the information provided to Agency on the Committed DBE Breakdown form is true and correct as of the effective date of the Contract and that Contractor shall use the DBE firms indicated on the form for purposes of the Contract. If the Contractor proposes any changes that involve a committed DBE, the Contractor shall notify the DBE of the proposed change, reduction, or deletion of any Services committed under the Contract. The Contractor shall enable the affected DBE to participate in the Amendment request and will make every effort to maintain the committed DBE percentage that was the condition of the Contract. Documentation of this effort and a letter from the DBE agreeing to the change shall be included with the Amendment request.

11.0 - Contractor Payments to Subcontractors

The Contractor must maintain records of all subcontracts entered into with DBEs 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 must pay each subcontractor for satisfactory performance under the subcontract no later than 10 (ten) calendar days from receipt of each payment the Contractor receives from the Agency. The Contractor must also return retainage payments to each subcontractor within 10 (ten) calendar 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 Contract Administrator. This policy applies to both DBE and non-DBE subcontractors.

The Contractor shall submit a completed, signed original "Subcontractors Paid - Summary Report" Form 734-2536 (sample in Exhibit B or) available from the Office of Civil Rights at (503) 986-4350, to the Contract Administrator certifying that payment was made to each subcontractor or supplier. Contractor shall submit the form when a progress or final payment has been made to each subcontractor or supplier and when any held retainage is returned to a subcontractor or supplier. Contractor shall 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 Contract project, Contractor shall 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 Contractor's DBE achievements, or the overall DBE Goal, until the amount being counted toward the DBE Goal, and any retainage held by the Contractor has been paid to the DBE.

12.0 - Remedies

In addition to any other remedies provided under the Contract, failure of Contractor to meet these Disadvantaged Business Enterprise (DBE) Required 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:

- a) Temporarily withholding progress payments until the Contractor complies with these Contract provisions through future performance.
- b) Permanently withholding payment for Services already performed in a manner that constitutes a breach of contract.
- c) Suspension of Services for cause as provided under the Standard Specifications for Highway Construction, Sections 00150.00 and 00180.70.
- d) Contractor, if in violation of the provisions of ORS 200.075, shall have its right to propose 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 Contractor or any subcontractors to comply with these Disadvantaged Business Enterprise (DBE) Required 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 or the FHWA Inspector General, or both, for criminal investigation, and if warranted, prosecution.

13.0 - Records and Reports

The Contractor must keep such Contract records as are necessary to determine compliance with these Disadvantaged Business Enterprise (DBE) Required Provisions. Such records must include written reports from the DBE Liaison Officer to the Contract Administrator as to the performance of the committed DBE and its performance of a commercially useful function.

The Contractor shall deliver the following information to the Agency's Project Manager (APM) within ten (10) calendar days after execution of the Contract:

- a) The name of the DBE Liaison Officer who will administer the Contractor's DBE program.

- b) Contractor's project schedule showing the estimated work commencement date and estimated completion date for each DBE that will perform work/services on the Contract project.

The Contractor shall retain copies and submit to APM a completed "Subcontractors Paid – Summary Report" by the 5th of the month following payment to subcontractor(s).

14.0 - Further Information

These Disadvantaged Business Enterprise (DBE) Required Provisions shall be incorporated into and attached to all WOCs financed in whole or in part with federal funds and modified only to the extent necessary for incorporation into the Contract.

For further information concerning Disadvantaged Business Enterprise participation, contact:

Oregon Department of Transportation
Office of Civil Rights
355 Capitol St., Room 504
Salem, OR 97301-3871
Telephone No. (503) 986-4350
Fax No. (503) 986-6382

Exhibit E – Attachment 1
Committed DBE Breakdown Form

The DBE certification and utilization form shall be used to determine the Contractor's responsiveness to the DBE requirements. The Committed DBE Breakdown Form will not be required if the DBE Goal is 0% or if a DBE Goal is not required (i.e., no Federal funding included in project).

Contractor shall complete either Part I or Part II, or both, and submit the Committed DBE Breakdown Form(s) in the form included in this Exhibit E with Contractor's SES, as required above. Contractor's failure to completely fill out, sign, and submit the Committed DBE Breakdown Form(s) with the SES will result in Contractor being considered non-responsive for purposes of subsection e, below.

Committed DBE Breakdown Form Part I – DBE Participation

Contractor shall complete Part I of the Committed DBE Breakdown Form for each committed DBE firm, identifying the item/task or subtask and description of services to be provided, quantity and unit price, and total amount to be applied toward the DBE Goal. At the end of the listing, Contractor shall total the amount to be applied to the DBE Goal, divide it by the total proposed Contract amount, and indicate the DBE commitment in percent format to the nearest one-hundredth (0.01).

DBEs proposing as prime Contractors shall indicate the percentage of work to be performed by its own forces as well as the work to be performed by other committed DBEs to meet the DBE Goal.

Committed DBE Breakdown Form Part II - Good Faith Efforts

It is the intent of ODOT that all Contractors meet the assigned DBE Participation Goal. It is recognized that in certain limited circumstances it may not be possible for all Contractors to meet the DBE Goal. To determine whether the Contract should be awarded to a Contractor that has failed to meet the assigned DBE Goal, ODOT must decide whether the efforts made to obtain DBE participation constituted Good Faith Efforts. ODOT will review the quality and intensity of those efforts. Efforts that are merely superficial are not Good Faith Efforts to meet the DBE Goal.

In the event a Contractor is unable to meet the assigned Contract DBE Goal, the Contractor shall provide additional information regarding Good Faith Efforts per the requirements in Part II of the Committed DBE Breakdown form. The Contractor must document the steps taken to obtain participation, which demonstrate Good Faith Efforts, such as those listed in Exhibit E, Section 06.0.

In addition to the provisions of Price Agreement Exhibit E, the following items will be considered in determining Contract award:

- (a) The award of the Contract will be in the best interest of the State of Oregon and will assure that Agency meets its commitment to its overall DBE Goal.
- (b) If the responsible Contractor meets or exceeds the assigned DBE Goal, that Contractor will be considered responsive to the DBE requirements.
- (c) If the review of a committed DBE firm's work areas as listed on the Committed DBE Breakdown form (Part I) indicates that the committed DBE firm may not be able to perform the work for which the firm has been committed, the Contractor and the DBE firm will be informed

and given the opportunity to provide reasonable documentation that the DBE firm has previously performed the committed work items.

- (d) If the Contractor has not met the assigned DBE Goal, ODOT's Civil Rights Office will review the documentation in Part II of the Committed DBE Breakdown Form regarding Contractor's good faith effort activities to determine if the steps taken are satisfactory. If the steps taken are found satisfactory during the review process, that Proposer will be considered responsive to the DBE requirements. If the steps taken are not found satisfactory, the Contractor will be considered non-responsive to the DBE requirements.
- (e) If the Contractor is determined to be non-responsive, Agency, before awarding the Contract, will notify the Contractor in writing within 4 (four) business days. The notification will include the reason for the determination and provide the Contractor an opportunity for Administrative Reconsideration (Exhibit E, Section 07.0).

Contract #: _____[OR] **Price Agreement/Agreement to Agree #** **WOC#**
Project Name:

Page 2 of 2

COMMITTED DBE BREAKDOWN FORM

PART II – Good Faith Efforts

Proposer shall submit documentation below of “Good Faith Efforts” as evidence of actions to secure DBE participation, if bidder’s DBE participation commitment is less than the assigned DBE Goal.

It is the intent of ODOT that all Proposers meet the assigned DBE Participation Goal. It is recognized that in certain limited circumstances it may not be possible for all Proposers to meet the DBE Goal. To determine whether the project-specific Contract or WOC should be awarded to a Proposer that has failed to meet the assigned DBE Goal, ODOT must decide whether the efforts made to obtain DBE participation constituted Good Faith Efforts (Review Section 06.0 of Exhibit E). ODOT will review the quality and intensity of those efforts. Efforts that are merely superficial are not Good Faith Efforts to meet the DBE Goal.