

OREGON DEPARTMENT OF AVIATION

State Airports

DBE PROGRAM

REVISED AUGUST 2015

OREGON DEPARTMENT OF AVIATION DBE PROGRAM

STATE AIRPORTS

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of ODA to ensure that DBEs defined in 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.
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Heather Peck, ODA Program Manager has been designated as the DBE Liaison Officer. In that capacity, Heather Peck is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by ODA in its financial assistance agreements with DOT.

ODA has disseminated this policy statement to the ODA Management and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts by inclusion of this policy in all solicitations for bids and in the bidding documents.



Heather Peck, ODA Program Manager



Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the policy statement on the first page of this program.

Section 26.3 Applicability

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

Section 26.5 Definitions

ODA will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

ODA 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 its DBE program, ODA 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 Record Keeping Requirements

ODA will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually on December 1, the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part. We will also report the DBE Contractor firms contact information either on the FAA DBE Contractor’s Form or other similar format.

Bidders List: 26.11(c)

ODA 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 our DOT-assisted contracts for use in helping to set our overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

ODA will use previously submitted bid packages to collect this information.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26:13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

ODA 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. ODA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. ODA'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 the failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to ODA of its failure to carry out its approved program, DOT may impose sanction as specified under 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: 26.13(b)

ODA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, 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 ODA deems appropriate.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

ODA will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program for approval.

ODA is not eligible to receive DOT financial assistance unless DOT has approved our DBE Program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended.

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this Program (Section 26.1).

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as ODA DBE Liaison Officer:

Heather Peck, ODA Program Manager
3040 25th Street SE

Salem, OR 97302-1125
(503) 378-3168
Heather.Peck@aviation.state.or.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE and ensuring that ODA complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to Matthew Maass, Manager, ODA Airports, concerning DBE Program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this Program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities 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 ODA's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Participates in DBE training seminars.
10. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in the states of Oregon and Washington.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of ODA to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. We have made the following efforts to identify and use such institutions:

Accessing the Certified Firms database on the website of the Oregon Office of Minority, Women and Emerging Small Business (OMWESB).

Information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

ODA has established, as part of its DBE Program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will 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 require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

ODA will consider a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by ODA. When ODA 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.

ODA will provide appropriate means to enforce the requirements of this section as part of contract language.

ODA will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from ODA. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may occur only for good cause following written approval of ODA. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

ODA uses the State of Oregon DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Oregon revises the Directory daily. The Directory may be found at:

<http://www4.cbs.state.or.us/ex/dir/omwesb/search/index.cfm?fuseaction=code>

Section 26.33 Over-concentration

ODA has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

ODA has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

ODA will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 1 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose.
5. 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.

Section 26.39 Fostering small business participation.

ODA 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.

ODA's small business program element is incorporated as Attachment 10 to this DBE Program. 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

ODA does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

ODA will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding FAA funded prime contracts exceeding \$250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) ODA will submit its Overall Three-year DBE Goal to FAA by August 1 as required by the established schedule below.

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Large & Medium Hub Primary	All Regions	August 1, 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Small Hub Primary	All Regions	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Hub Primary	All Regions	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)
Non-Primary (GAs, Relievers and State DOTs)	Alaskan, Eastern, & Great Lakes	August 1 2010 (2011/2012/2013)	August 1, 2013 (2014/2015/2016)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1 2011 (2012/2013/2014)	August 1, 2014 (2015/2016/2017)
Non-Primary (GAs, Relievers and State DOTs)	Central, Southwest, and Western-Pacific	August 1 2012 (2013/2014/2015)	August 1, 2015 (2016/2017/2018)

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If ODA does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and ODA will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust 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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, ODA will consult with minority, women’s and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ODA’s efforts to establish a level playing field for the participation of DBEs.

Following this consultation, ODA will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at 3040 25th Street SE, Salem, OR 97302-1125 for 30 days following the date of the notice, and informing the public that ODA and DOT/FAA will accept comments on the goals for 45 days from the date of the notice.

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. 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 description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals.

ODA will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If ODA's awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing your 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 meet fully your goal for the new fiscal year;
- (3) ODA will retain analysis and corrective actions in records for three years and make it available to FAA on request.

Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

ODA 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.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal 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 a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal had documented sufficient good faith efforts to be regarded as responsive: Heather Peck, ODA Program Manager, DBE Liaison Officer.

We will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

ODA treats bidder/offerors' compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information at the time of bid:

1. The names and addresses of DBE firms that will participate in the contract.
2. A description of the work that each DBE will perform.
3. The dollar amount of the participation of each DBE firm participating.
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal.
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by ODA that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidders/offerors should make this request in writing to the following reconsideration official:

Mitch Swecker
Oregon Department of Aviation
3040 25th Street SE
Salem, OR 97302-1125
Mitch.T.Swecker@aviation.state.or.us

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have 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/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, 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 Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

ODA 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

ODA will provide such written consent only if we agree, for reasons stated in our 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) We have determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to us 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 we have 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 us its 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 us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

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.

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.

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 ODA 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/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of ___ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (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; (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; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract 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.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

ODA 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. We will make our certification decisions based on the facts as a whole.

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

Carrie L. Hulse
OMWESB Program Manager
Office of Minority, Women, and Emerging Small Business
Oregon Business Development Department
775 Summer Street NE, Suite 200
Salem, Oregon 97031-1280
P: 503-986-0075; F: 503-581-5115
www.oregon4biz.com/certification

Our certification application forms and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

ODA is not a member of a Unified Certification Program (UCP).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

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

Monitoring Payments to DBEs

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of ODA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 DBE Certification Application Form
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

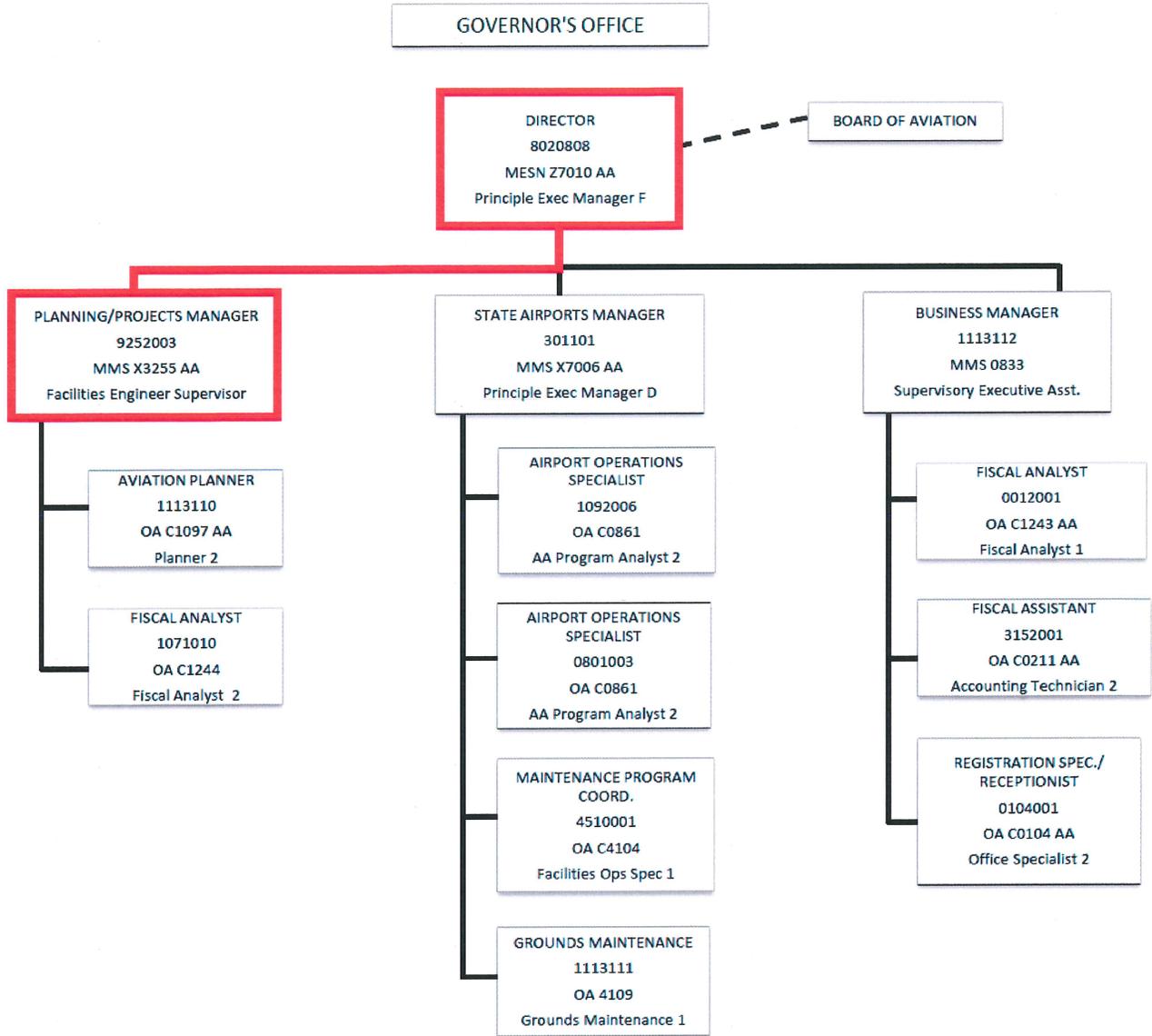
ATTACHMENT 1

Regulations: 49 CFR Part 26:

<http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=5fc7946b772f5f6b1177c7eeebb0fc39&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49>

ATTACHMENT 2

Organizational Chart:



The DBELO, Heather Peck, ODA Planning/Projects Manager has direct access to the Agency Director, Mitch Swecker as shown above.

ATTACHMENT 4

Oregon DBE Directory:

<https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp>

ATTACHMENT 5

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____ %) is committed to a minimum of _____ % DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ _____.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By _____
(Signature)

Date: _____

(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

ODA has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Other laws, statutes, regulations, etc. that are available to enforce the DBE requirements.

In addition, the Federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE program, including, but not limited to, 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 8

DBE Certification Application Form:

<https://oregon4biz.diversitysoftware.com/FrontEnd/StartCertification.asp?XID=7055&TN=oregon4biz>



Business Oregon
Office of Minority, Women and Emerging Small
business
75 Summer St. NE, Suite 200, Salem, OR 97301-280
Phone: 503-986-0075, Fax: 503-581-5115
www.oregon4biz.com

Attachment to DBE
UNIFORM CERTIFICATION
APPLICATION

Request for Consideration of Certification
as a

Minority Business Enterprise (MBE) and/or Woman Business Enterprise (WBE)

The undersigned applicant and business owner hereby requests that the business enterprise identified below be considered for certification as a Minority and/or Woman Business Enterprise (MBE/WBE) under the standards and requirements of ORS 200.005 et. seq. and the Oregon Administrative Rules, Chapter 445, Division 50. I have been provided copies of the relevant statutes and administrative rules as part of the certification process.

Select appropriate program: MBE WBE

My signature below also constitutes my acknowledgement that in the event any of the information contained in this application is determined to be inaccurate or misleading by the Office of Minority, Women and Emerging Small Business (OMWESB), MBE and/or WBE certification may be denied, or in the case of a certification review, that the certification may be revoked.

DATED this _____ day _____, 20____
of _____

Signature of applicant/owner

Title

Printed name of applicant/owner

Name of business

ORS 200.065 Fraudulent conduct prohibited; sanctions. (1) "It shall be unlawful for any person fraudulently to obtain or retain or attempt to obtain or retain or to aid another person fraudulently to obtain or retain or attempt to obtain or retain certification as a disadvantaged, minority, women or emerging small business enterprise.

(2) It shall be unlawful knowingly to make a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of gaining a contract or subcontract or other benefit."

ATTACHMENT 9

STATE OF OREGON'S UCP AGREEMENT

Interagency Agreement between The Unified Certification Program Partners And The Oregon Business Development Department for Administering the Disadvantaged Business Enterprise Unified Certification Function

The Disadvantaged Business Enterprise (DBE) requirements contained in 49 Code of Federal Regulations (CFR) Part 26 include a provision for a "one-stop" certification process. The process must be defined and submitted to the Secretary of Transportation for approval within 3 years of publication of the regulations, March 1, 2002, (Attachment A). Failure to develop and execute a Unified Certification Program agreement will result in a loss of U.S. Department of Transportation (USDOT) funding.

As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged person(s) are to benefit from the DBE Program. The Oregon Department of Transportation (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 the Unified Certification Program Partners. Authority for the Oregon Unified Certification Program, Disadvantaged Business Enterprise Certification Component is delegated to the Office of Minority, Women, and Emerging Small Business through this agreement with the Oregon Business Development Department (OBDD). The Oregon Department of Transportation retains responsibility to U.S. DOT for assuring certification of DBEs is performed consistent with 49 CFR Part 26.

As provided under Oregon Revised Statute 200.055(5), the Department of Consumer and Business Services is the "sole agency authorized to certify enterprises as Disadvantage Business Enterprises eligible to perform on public contracts in this state.", (Attachment B). Additionally, pursuant to Oregon Revised Statute 183.341, the Department of Consumer and Business Services, Office of Minority, Women and Emerging Small Business has adopted model rules for the certification of Disadvantaged Business Enterprise firms, (see OAR 445-050-0020(2)), (Attachment C). This Agreement is made and entered into by and between the Unified Certification Program Partners and the Oregon Economic and Community Development Department to provide Disadvantaged Business Enterprise certification services as required under the Code of Federal Regulations 49 Part 26.

Hereafter the following agencies shall be referred to as the Unified Certification Program Partnership:

Oregon Department of Transportation – ODOT
Oregon Department of Aviation
METRO
Port Of Portland
Tri-Met
Lane Transit District
Salem Area Mass Transit District
Add other participating agencies

Hereafter Unified Certification Program Partnership shall be referred to as UCP Partners.

Hereafter the Oregon Business Development Department shall be referred to as OBDD.

Hereafter the Office of Minority, Women and Emerging Small Business shall be referred to as OMWESB.

Hereafter Disadvantaged Business Enterprise shall be referred to as DBE.

This Agreement shall be effective from the date of execution by the UCP Partners and OBDD and shall continue thereafter.

Now therefore, the parties hereto mutually agree to the following duties and responsibilities:

UCP Partnership Duties and Responsibilities:

- Agree to ensure that OMWESB has sufficient resources to carry out the requirements of 49 CFR §26.81.
- Agree that the ODOT will be the Lead Agency for the Partnership.
- Agree that all certifications shall be pre-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.

Lead Agency Duties and Responsibilities:

- Shall notify OMWESB of any DBE certification issues affecting DBE eligibility for participation on federally assisted projects.
- Shall notify and advise OMWESB and UCP Partners of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.
- Shall notify OMWESB and UCP Partners of training programs relevant to DBE Certification function/procedures.
- Shall review an OMWESB determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.
- Shall provide ongoing DBE Certification expertise, oversight, conduct process reviews when required, and an annual audit of DBE Certification files.
- Shall assist OMWESB in the conduct of "Contested Case Hearings" for DBE firms who have appealed an OMWESB determination.
- Shall submit to the UCP Partners the following documentation on each DBE certification upon request:
 - Copy of letter of determination
 - Copy of site visit
- Shall notify UCP Partners in writing within 7 days upon request of any of the following:
 - **De-Certification or Denial of DBE Certification**
 - Third party challenge
 - DBE Certification closed due to lack of response
 - DBE Certification application withdraws

OBDD (OMWESB) Duties and Responsibilities:

- Shall consult with the UCP Partners regarding changes in State rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.
- 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.
- Shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- Shall maintain a DBE Certification database and directory.
- Shall provide the UCP Partners all necessary DBE Certification information required to complete federal reports and data collection.
- In accordance with 49 CFR §26.83(k) OMWESB shall make decisions on applications for certification within 90 days of receiving from the applicant firm all information required. This time period may be extended once, for no more than 60 days, upon written notification to the firm, explaining fully and specifically the reasons for the extension.
- Shall, consistent with Oregon Public Records law, safeguard from disclosure to any unauthorized person information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information.
- Shall submit to the Lead Agency the following documentation on each DBE certification within 7 days of certification:
 - Copy of letter of determination
 - Copy of site visit
- Shall notify Lead Agency in writing within 7 days of any of the following:
 - **De-Certification or Denial of DBE Certification**
 - Third party challenge
 - DBE Certification closed due to lack of response
 - DBE Certification application withdraws
- Shall participate in Lead Agency DBE staff training.
- Shall coordinate participation in DBE Certification workshops with UCP Partners.
- Shall provide technical assistance to firms seeking DBE Certification.

General Provisions:

- The UCP Partners and OBDD 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.
- The UCP Partners and OBDD 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.

- The UCP Partners and OBDD mutually agree that all DBE certification decisions by OMWESB shall be binding on all DOT recipients within Oregon.
- The UCP Partners and OBDD 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.
- UCP Partners and OBDD 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.
- The UCP Partners and OBDD mutually agree to notify and/or copy all members of the UCP Partnership of any communications regarding DBE Certification to the USDOT, or respective agencies.
- The UCP Partners and OBDD agree to work in partnership during Federal audits and performance reviews
- This Agreement may be amended or terminated by mutual written consent of the parties at any time.

IN WITNESS WHEREOF, the parties hereto have caused this Unified Certification Agreement to be executed by their respective proper officials:

_____ Oregon Department of Transportation	_____ Date
_____ Oregon Business Development Department	_____ Date
_____ Department of Aviation	_____ Date
_____ METRO	_____ Date
_____ Port of Portland	_____ Date
_____ Tri-Met	_____ Date
_____ Lane Transit District	_____ Date
_____ Salem Area Mass Transit District	_____ Date

ATTACHMENT 10

Small Business Element Program

FOSTERING SMALL BUSINESS PARTICIPATION

DBE program regulations, CFR § 26.39, that became effective on February 28, 2011, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking 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.

For purpose of ODA's Small Business Element; a small business is defined as a company and/or firm in whom annual revenue does not exceed one million dollars.

Prime contracts and subcontracts valued under fifty thousand dollars are available to small businesses as a result of the Airport Improvement Program. ODA believes that it is currently meeting the objectives of its construction contracting activities by ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform. Quantities, specifications, and delivery schedules are arranged to facilitate small business participation. Large contracts are divided into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract. ODA will put into place monitoring of consultant-design projects for possible small business participation and encouraging use of small businesses in projects. ODA seeks ways to include all available contractors in its contracts; this may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases jobs usually performed by subcontractors can be performed as an unbundled contract as a prime contract, especially if the outcome of the overall project will not be effected by the unbundled contracting opportunity.

ODA provides opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state and local requirements. Through small business outreach, ODA with the assistance of the State Department of Transportation DBE program will assist small firms to become a prime and in growing their business to eventually compete on larger contracts. ODA will maintain a contact list comprised of businesses, partners and economic development contacts established through various educational opportunities and affiliations. Through this contact list, ODA will be able to communicate to small businesses about upcoming contracting and subcontracting opportunities.

ODA will maintain contacts with the Small Business Administration, area economic development companies and associations, the State Department of Labor and the Department of Commerce in order to offer small businesses assistance in various business growing services. These partnerships will be instrumental in allowing small businesses to grow and learn more about becoming larger companies and being able to bid larger jobs at ODA.

In addition to the above strategies, ODA will when possible:

- In multi-year design-build contracts or other large contracts (*e.g.*, for "megaprojects") require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
- On prime contracts not having DBE contract goals, require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.