

OREGON DEPARTMENT OF
TRANSPORTATION

DISADVANTAGED
BUSINESS
ENTERPRISE
(DBE)
PROGRAM PLAN

September 2012

Oregon Department of Transportation
Policy Statement
Disadvantaged Business Enterprise (DBE) Program

The Oregon Department of Transportation (ODOT) is committed to a Civil Rights Program that includes participation of Disadvantaged Business Enterprises (DBEs) in ODOT contracting opportunities. ODOT has established a DBE program in accordance with U.S. Department of Transportation (USDOT) regulations 49 CFR Part 26, as revised January 28, 2011.

It is ODOT's policy not to discriminate on the basis of race, color, sex, or national origin in the award and administration of USDOT-assisted contracts. It is ODOT's policy to ensure DBEs, as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure the DBE program is narrowly tailored in accordance with applicable law;
4. Ensure only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. Assist the development of firms that can compete successfully in the market place outside the DBE program.

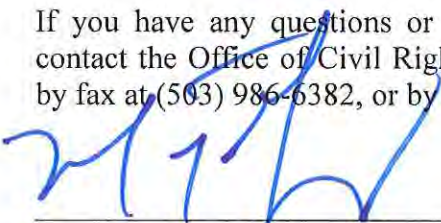
The Director of ODOT establishes the DBE policy for the department. The Manager of the Office of Civil Rights (OCR) is delegated as the DBE Liaison Officer. In that capacity, the Manager of OCR, in coordination with all ODOT personnel, is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by ODOT in its financial assistance agreements with the USDOT. It is the expectation of the Director that all ODOT personnel shall adhere to the intent as well as the provisions and procedures of the DBE Program.

ODOT circulates this policy to the following in accordance with the DBE program: (1) The Oregon Transportation Commission, (2) ODOT personnel involved with USDOT-assisted work, and (3) Members of the DBE and non-DBE business community that perform or are interested in performing work on ODOT contracts. The complete DBE Program and the overall goal calculation reports are available for review at:

ODOT Office of Civil Rights
355 Capitol Street NE, MS 351
Salem, Oregon 97301- 3871

ODOT Office of Civil Rights web page at:
or <http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/index.shtml>

If you have any questions or would like further information regarding this program, please contact the Office of Civil Rights Manager, Michael A. Cobb, by telephone at (503) 986-5753, by fax at (503) 986-6382, or by e-mail at Michael.A.Cobb@odot.state.or.us.



Matthew Garrett
Director, Oregon Department of Transportation



Date

1.	DBE PROGRAM GENERAL REQUIREMENTS	1-1
1.1	Objectives (§§ 26.1, 26.23)	1-1
1.2	Applicability (§ 26.3)	1-1
1.3	Definitions (§ 26.5)	1-1
1.4	Non-discrimination Requirements (§ 26.7)	1-1
1.5	Assurances (§ 26.13)	1-2
A.	Federal Financial Assistance Agreement Assurance (§ 26.13(a))	1-2
B.	Contract Assurance (§ 26.13(b))	1-2
1.6	Authority and Applicable Law (§ 26.3)	1-2
1.7	1.7 DBE Financial Institutions (§ 26.7)	1-3
2.	PROGRAM RESPONSIBILITIES	2-1
2.1	Oregon Department of Transportation (ODOT)	2-1
2.2	ODOT Office of Civil Rights	2-1
A.	DBE Liaison Officer	2-1
B.	DBE Program Manager	2-1
C.	Transit Planning Program Manager	2-2
D.	Civil Rights Field Coordinators	2-2
E.	DBE Supportive Services Provider	2-2
F.	DBE Supportive Services RFP	2-2
2.3	Sub-recipients (including Local Agency Governments)	2-2
A.	Sub-recipient Adoption of FHWA Approved ODOT DBE Program Plan	2-3
B.	Sub-recipient Submission of Program Document to ODOT for Approval	2-3
C.	Local Agency Certification	2-3
2.4	2.4 Other Support Personnel	2-4
A.	Procurement Staff	2-4
B.	Project Management Staff	2-4
C.	Office of the Attorney General	2-4
3.	DBE GOAL DEVELOPMENT	3-1
3.1	Overall Annual DBE Goal	3-1
A.	Establishing Base Figure - Determining Relative DBE Availability	3-1
B.	Adjustment to Base Figure	3-1
C.	Race Neutral Analysis	3-1
D.	Public Participation and Outreach Efforts	3-2
E.	Goal Submission	3-3
F.	Transit Vehicle Manufacturers Certification	3-3
3.2	Contract Specific Goals	3-3
A.	Contract Goal Setting	3-3
B.	Aspirational Targets	3-4
C.	Design-Build	3-4
D.	Construction Management General Contractor (CM/GC)	3-4
3.3	Counting DBE Participation Towards Meeting Annual Goals	3-4
A.	Work Actually Performed	3-4
B.	DBE Subcontracts to non-DBE	3-4
C.	Materials & Supplies	3-4
D.	Achievement	3-5
3.4	Counting DBE Participation To Meet Annual Goals of Sub-recipients	3-5
A.	Sub-recipients Adopting the ODOT Program Document	3-5
B.	Sub-recipients with an ODOT Approved Program Document	3-5
4.	ENSURING DBE PARTICIPATION	4-1
4.1	Procedures to Ensure Participation (§ 26.53)	4-1
A.	Pre-Bid Procedures	4-1
B.	Bid Opening and Contract Award	4-2
C.	Counting DBE Participation Towards Contract Specific Goals	4-5

D.	Civil Rights Compliance Tracking System (CRCT)	4-6
4.2	Contract Performance	4-6
A.	Contractor's DBE Liaison Officer	4-6
B.	Submission of Committed DBE Subcontracts	4-6
C.	Commercially Useful Function (§ 26.55(c))	4-6
D.	Determination	4-7
E.	Sub-Tier Contracting	4-10
F.	Termination and Substitution	4-10
G.	Prompt Payment	4-11
H.	DBE Supplemental Required Contract Provisions	4-12
4.3	Race Neutral Remedies and Other Good Faith Efforts	4-12
A.	Fostering Small Business Participation (§ 26.39)	4-12
B.	Business Development Program(s) (BDP)	4-14
C.	Mentor Protégé Program	4-15
D.	DBE Supportive Services Program	4-15
5.	MONITORING PERFORMANCE (CONTRACT COMPLIANCE)	5-1
5.1	Notification and Reporting Responsibilities	5-1
A.	Project Management and Contract Administrative Staff (including procurement)	5-1
B.	Office of Civil Rights	5-1
C.	Prime Contractor	5-2
5.2	Compliance Review and Evaluation Procedures	5-2
A.	Pre-Construction Conferences	5-2
B.	DBE Activity Reporting Forms	5-3
C.	On-Site Reviews	5-4
5.3	Changes in Work Committed to a DBE	5-5
5.4	Termination and Substitution of a DBE	5-5
A.	Contractor Written Request to Terminate DBE	5-6
B.	Contractor Written Notice to DBE of Pending Request to Terminate	5-6
C.	Proposed Substitution of Another Certified DBE	5-6
5.5	Administrative Sanctions	5-8
A.	Temporarily withholding progress payments	5-8
B.	Permanently withholding payment for work already performed	5-8
C.	Suspension of work	5-8
6.	GUIDELINES FOR DBE CERTIFICATION	6-1
6.1	Unified Certification Program (UCP)	6-1
A.	Civil Rights Compliance Tracking System (CRCT)	6-1
B.	Directory of Certified Firms	6-1
6.2	UCP Responsibilities	6-1
A.	ODOT Office of Civil Rights	6-1
B.	Office of Minority, Women, and Emerging Small Business (OMWESB)	6-1
6.3	Certification Eligibility Requirements	6-2
A.	Burdens of Proof (§ 26.61)	6-2
B.	Business Size (§ 26.65)	6-2
C.	Disadvantaged Group Membership (§ 26.63)	6-2
D.	Small Business Administration 8(a) Program	6-3
E.	Individual Determination of Social and Economic Disadvantage (§ 26.67)	6-3
F.	Independence (§ 26.71)	6-3
G.	Ownership (§ 26.69)	6-4
H.	Control (§ 26.71)	6-4
I.	Other Considerations	6-5
J.	Statement of Personal Net Worth (PNW)	6-6
K.	Joint Venture	6-6
6.4	Application Procedure	6-6

A.	A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and	6-7
B.	A signed, notarized statement of personal net worth with supporting documentation.	6-7
A.	Supplemental Application Verification Documents.....	6-7
B.	On-site Reviews	6-9
C.	On-Site Review Observations and Special Considerations	6-10
D.	Criteria for Evaluating an Applicant's Eligibility	6-11
E.	Out-of-State Applications submitted to OMWESB	6-13
F.	Certification Duration	6-14
G.	Denials and Reapplication Procedures.....	6-15
H.	Removal Procedures (De-certification/Denial).....	6-15
I.	Certification Appeal to USDOT	6-18
J.	ODOT Commodity Code/North American Industry Codes (NAICS)	6-18
7.	MONITORING AND RECORD KEEPING	7-1
7.1	Civil Rights Compliance Tracking System (CRCT).....	7-1
A.	Bidders List	7-1
B.	Monitoring Payments to DBEs	7-1
7.2	Reporting to USDOT	7-2
7.3	Contract Remedies	7-2

EXHIBITS

- Exhibit A - 49 CFR 23 & 26
- Exhibit B - Minority Owned Bank List
- Exhibit C - Civil Rights Reporting Policy & Org Charts
- Exhibit D - Subcontractor Supplier Solicitation & Utilization Report
- Exhibit E - DBE Commitment Requirements
- Exhibit F - DBE Supplemental Required Contract Provisions
- Exhibit G - Required Contract Provisions - Federal Aid Construction Contracts (FHWA 1273)
- Exhibit H - ORS 200
- Exhibit I - DBE Form 1
- Exhibit J - Notice to Bidders Planning to Bid as Joint Ventures
- Exhibit K - DBE Form 2
- Exhibit L - Summary Report of Subcontractors Paid
- Exhibit M - DBE Form 3A
- Exhibit N - DBE Form 3B
- Exhibit O - OAR 445-050
- Exhibit P - IAG DCBS
- Exhibit Q - DBE Certification Application
- Exhibit R - Uniform Report of DBE Commitments Awards & Payments

1. DBE PROGRAM GENERAL REQUIREMENTS

1.1 Objectives (§§ 26.1, 26.23)

The Disadvantaged Business Enterprise (DBE) Program objectives are found in the DBE Policy statement on the first page of this program.

To achieve the objectives of the Oregon Department of Transportation (ODOT) DBE policy, ODOT will circulate the DBE policy as follows:

To The Oregon Transportation Commission (OTC) – The Office of Civil Rights (OCR) provides annual updates to the OTC and as required. OCR will include the DBE policy with each annual update.

To the Business Community – OCR will circulate the DBE Policy statement at key stakeholder events. Examples of key events include, the annual ODOT-AGC (Association of General Contractors) meeting, and “Doing Business with ODOT” small business workshops. Additionally, when the DBE Program plan update is posted to the OCR webpage, OCR will announce the plan update to the OCR list-serve and include the DBE Policy statement in the announcement. The policy will also be sent electronically to all sub-recipients of Federal Transit Authority (FTA) funded grants and included in the FTA required State Management Plan (SMP). Also, OCR will work with the Office of Procurement (OPO) and Office of Project Letting (OPL) to include the policy statement with project and proposal DBE provisions.

To ODOT Personnel – OCR will coordinate an annual update on Inside ODOT (the agency’s internal newsletter) and periodic updates in the agency’s internal Diversity Newsletter. OCR will also circulate the DBE Policy statement at internal OCR and DBE-related training sessions.

1.2 Applicability (§ 26.3)

This program applies to all US Department of Transportation (USDOT) financial assistance where ODOT expends federal funds as the recipient of:

Federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 and Titles I, III, and V of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: Legacy for Users (SAFETEA-LU).

Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240, SAFETEA-LU, Titles I, III, V, and VI, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

1.3 Definitions (§ 26.5)

ODOT adopts the definitions contained in 49 CFR 26.5 for this program (see Exhibit A for Part 26).

1.4 Non-discrimination Requirements (§ 26.7)

ODOT will not 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, ODOT 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 purpose of this program with respect to individuals of a particular race, color, sex, or national origin.

1.5 Assurances (§ 26.13)

A. Federal Financial Assistance Agreement Assurance (§ 26.13(a))

ODOT has received federal financial assistance from USDOT, and as a condition of receiving this assistance, has signed the following assurance that it will comply with 49 CFR Part 26:

[Recipient] shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided for 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.).

This language will appear verbatim in financial assistance agreements between ODOT and sub-recipients.

B. Contract Assurance (§ 26.13(b))

ODOT will ensure that the following clause is placed verbatim in every USDOT-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 the recipient deems appropriate.

1.6 Authority and Applicable Law (§ 26.3)

The USDOT Regulations (49 CFR Part 26) published in the Federal Register, as amended January 28, 2011, established a requirement that all recipients of USDOT funds establish a Disadvantaged Business Enterprise Program. The regulations are applicable both to ODOT's Federal-aid construction and to its non-construction activities including transit and personal service contracts.

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

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

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

1.7 DBE Financial Institutions (§ 26.7)

It is ODOT policy 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 USDOT-assisted contracts to make use of these institutions. OCR has reviewed the Federal Reserve Board's statistical release on minority-owned financial institutions at the following the Federal Reserve website:

<http://www.federalreserve.gov/releases/mob/>

The Federal Reserve Board releases this information quarterly. The current release at the time of this program update showed there were no minority-owned financial institutions in Oregon (see Exhibit B). OCR will annually re-evaluate the availability of DBE financial institutions.

2. PROGRAM RESPONSIBILITIES

2.1 Oregon Department of Transportation (ODOT)

As a recipient of US Department of Transportation (USDOT) financial assistance, the Oregon Department of Transportation (ODOT) is required to implement a Disadvantaged Business Enterprise (DBE) program according to the requirements explained in 49 CFR 26. As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged persons are to benefit from the DBE Program.

The Director of ODOT is responsible for establishing the DBE policy for the Department and is responsible to ensure adherence to this policy. The Manager of the Office of Civil Rights (OCR), in coordination with all ODOT Officers, Division Managers, District Managers, and Procurement Office staff, is responsible for the development, implementation and monitoring of the DBE Program for contracts in accordance with the Department's nondiscrimination policy.

2.2 ODOT Office of Civil Rights

ODOT's OCR is responsible for ensuring compliance with federal regulations in determining the eligibility of applicant firms seeking participation in the program. OCR is also responsible for establishing a minimum expected participation goal on a triennial basis and determining credit towards meeting the assigned DBE participation goal on federally assisted contracts the department awards. Credit will only be given for utilization of firms certified as DBEs, and credit will be limited to the type of work for which they have been evaluated and found to have sufficient resources and operational control.

A. DBE Liaison Officer

The following individual is the designated DBE Liaison Officer:

Michael A. Cobb
Office of Civil Rights Manager
Phone: (503) 986-5753
Fax: (503) 986-6382
Michael.A.Cobb@odot.state.or.us

The OCR Manager serves as the DBE Liaison Officer, and is delegated by the Director the responsibility of developing and implementing policy and directing the DBE Program. The OCR Manager, who reports to the Director, has responsibility for the day-to-day operation and oversight of the DBE Program as it applies to meeting Federal Highway (FHWA) and Federal Transit Authority (FTA) requirements for USDOT-assisted contracts and activities. Organization charts are attached as Exhibits B and C.

B. DBE Program Manager

The DBE Program Manager develops and implements program functions based on federal rules and regulations to provide opportunities for DBEs. The position establishes the overall ODOT goal, identifies ODOT contracts for DBE goal evaluation, establishes goals on identified contracts, monitors and evaluates contractual progress of DBE contractors, gathers and reports statistical data, and other information as required by FHWA. This position also provides support and guidance in developing the overall ODOT goal calculations and program outreach for transit-related activities as required by FTA.

Additionally, this position provides technical assistance and advice to ODOT personnel, outside contractors and consultants, and other agencies that perform contract administration and compliance in accordance with 49 CFR 26. This position assists in the design, monitoring, training, evaluation, and reporting of the DBE program consistent with current federal law. The program manager will recommend actions to be taken by staff in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. This position reports directly to the Manager of the Office of Civil Rights.

C. Transit Planning Program Manager

The Transit Planning Program Manager establishes the overall ODOT goal, monitors and evaluates DBE compliance by sub-recipients, and gathers and reports statistical data and other information as required by FTA.

D. Civil Rights Field Coordinators

Civil Rights Field Coordinators provide technical assistance and advice to the project management and field personnel who perform contract administration and compliance in accordance with 49 CFR 26. These positions assist in the design, monitoring, training, evaluation and reporting of the DBE program consistent with current federal laws. Field Coordinators will recommend action to be taken by field personnel in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. They also provide regional DBE program outreach to contractors and small businesses. These positions report directly to the Field and Business Support Manager.

E. DBE Supportive Services Provider

Contingent upon availability of USDOT funds, ODOT will provide supportive services directly or through consultant contractors to DBEs who are interested in participating in highway/transit construction projects. The purpose of supportive services is to increase the number of DBE owned firms participating in construction projects, and to provide technical assistance and to aid DBEs in finding resources to grow their company and to become self-sufficient.

F. DBE Supportive Services RFP

If DBE Supportive Services are provided through a consultant contractor, a Request for Proposal (RFP) describing the desired program will be advertised through the ODOT Procurement Office. Established criteria will be used to select qualified proposals. A selection committee composed of industry representatives and other interested parties will review and grade each proposal based upon the written material and a formal interview of the competing consultant. The selection committee will make recommendations to the Civil Rights Manager.

2.3 Sub-recipients (including Local Agency Governments)

A sub-recipient is defined for the purposes of this DBE Program Plan as any entity, public or private, who receives USDOT financial assistance through ODOT.

All sub-recipients that let USDOT assisted contracts must follow the requirements of 49 CFR Part 26, (including insertion of DBE clauses in grant agreements and contracts). Sub-recipients will develop a DBE Program where required by federal law, or endorse and abide by ODOT's DBE Program Plan. ODOT will make an effort to ensure the sub-recipients comply with all requirements. An agreement will be executed with sub-recipients which will bind sub-recipients to place appropriate DBE clauses in federally assisted contracts and to devise an appropriate DBE Program covering those contracts where required.

Upon FHWA approval, and as required, FTA approval, of the ODOT DBE Program Plan, or upon modifications to the Plan, all sub-recipients shall be notified in writing by ODOT that they must either adopt the revised plan or prepare their own and submit it to ODOT for approval within a reasonable time period.

A. Sub-recipient Adoption of FHWA Approved ODOT DBE Program Plan

Sub-recipients electing to adopt the ODOT Program Plan shall submit to ODOT written confirmation of such action signed by the appropriate executive officer having legal authority to obligate the sub-recipient.

ODOT will conduct an annual review of all sub-recipients having adopted the ODOT DBE Program Plan to ensure program compliance prior to submitting its annual update to FHWA and as required to FTA. ODOT's annual updates will include a status statement regarding sub-recipients' performance and compliance with the ODOT DBE Program Plan.

ODOT will provide sub-recipients written notice of all Plan amendments. Sub-recipients shall provide written confirmation of adoption of these amendments. Sub-recipients will be required to submit quarterly updates to ODOT reflecting program activities for the reporting period.

B. Sub-recipient Submission of Program Document to ODOT for Approval

Sub-recipients that choose to prepare their own DBE program plan shall submit the plan (signed by the appropriate executive officer) to ODOT Office of Civil Rights for review and approval. ODOT will provide written notice to sub-recipients of any document deficiencies to be corrected prior to approval. Once approved by ODOT, the sub-recipient's document will be forwarded to FHWA and as required to FTA for concurrence.

ODOT will conduct an annual review of all sub-recipients having their own program plan to ensure program compliance prior to submitting annual updates to FHWA and as required to FTA. ODOT's annual updates will include a status statement regarding sub-recipients' performance and compliance with their program documents.

After approval of the plan by ODOT, sub-recipients shall submit written requests to ODOT for approval of all proposed amendments. Sub-recipients shall be required to submit annual updates to ODOT reflecting program activities for the reporting period.

C. Local Agency Certification

Currently, the local government agencies certified to manage FHWA-funded projects contract back to ODOT all Civil Rights-related work, including DBE program requirements. ODOT Office of Civil Rights will work with these certified local agencies to help them to eventually be able to perform their own Civil Rights-related work.

More information on Local Agency Certification can be found at the [Statewide Programs Unit – Certification Program Website](#) of ODOT. Specific information about the requirements to request contract goal assignments from ODOT OCR, include DBE provisions in local agency contracts, and to cooperate with OCR Field Coordinators is included in the [Local Agency Guidance \(LAG\) Manual](#).

2.4 Other Support Personnel

Personnel from other offices within the department share responsibility for ensuring the effective implementation of the DBE Program. They will give full cooperation and active support to the OCR and designees in this effort.

A. Procurement Staff

- (1) Provide OCR with draft scopes of work/specifications for projects and Request for Proposals (RFPs) with federal funding to enable goal setting. Outreach to DBEs and, where applicable, development of appropriate DBE language.
- (2) Provide OCR with copies of all final Invitation to Bids (ITBs), RFPs, mailing lists, and advance notices.
- (3) Incorporate DBE goal and appropriate DBE language into ITBs and RFPs
- (4) Inform the OCR of any changes to ITBs or RFPs that are subject to DBE goals.
- (5) Forward copies of bids to the OCR for evaluation of compliance with DBE requirements.
- (6) Allocate appropriate resources when needed with mutual agreement, to participate with OCR staff at major trade fairs targeted to DBEs.
- (7) Incorporate all applicable DBE provisions for procurements with goals. This information can be obtained from the DBE Program Manager.
- (8) Ensure that ITBs and RFPs do not contain unnecessary requirements which could unduly restrict or eliminate small businesses from competition.

B. Project Management Staff

- (1) Alert OCR to any potential problems concerning DBE utilization during contract administration and document such efforts.
- (2) Ensure the Summary Reports of Subcontractors Paid (SRSP) and other DBE compliance-required documents are sent to the OCR Field Coordinator for each project on a monthly basis (see Section 5, Monitoring Performance and Contractor Compliance).
- (3) Ensure DBE contract goal commitments are met, Commercially Useful Function (CUF) reviews are performed on all DBEs performing work on a project, and OCR concurrence is secured on DBE subcontract matters in accordance with this DBE Program Plan, the DBE contract provisions, and the [ODOT Construction Manual - Chapter 18](#).

C. Office of the Attorney General

- (1) Address legal matters relating to DBE program implementation.
- (2) Render legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
- (3) Advise OCR regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
- (4) Represent ODOT in all legal actions involving DBE issues.

- (5) Provide OCR and the Office of Minority, Women, and Emerging Small Business (OMWESB) with legal opinions concerning DBE certification involving complex issues of ownership and control.

3. DBE GOAL DEVELOPMENT

3.1 Overall Annual DBE Goal

As a recipient of US Department of Transportation (USDOT) financial assistance, and per 49 CFR Part 26, the Oregon Department of Transportation (ODOT) is required to set an overall goal for Disadvantaged DBE participation in USDOT assisted contracts. Unless indicated by a valid disparity study the overall goal will not be subdivided into group specific goals, or be established as a quota system.

ODOT OCR will establish an overall annual goal on a triennial basis for the participation of DBEs in all budgeted contracts utilizing Federal-aid highway funds. ODOT OCR will establish a separate overall annual goal on a triennial basis for the participation of DBEs in all budgeted contracts utilizing Federal Transit Authority (FTA) funds. The overall annual goals will be expressed as a percentage of the total amount of Federal-aid funds the Department anticipates spending in the fiscal year.

ODOT's overall goal is based on demonstrable evidence of ready, willing and able DBEs available to participate on USDOT assisted contracts.

To the maximum extent feasible, ODOT intends to meet the established goals through the race-neutral measures described in section 4.3 of this document. Where race-neutral measures are inadequate to meet an overall goal, ODOT will establish contract-specific goals for particular projects with subcontracting opportunities (race conscious method) as provided under a current, valid waiver from USDOT.

A. Establishing Base Figure - Determining Relative DBE Availability

(1) Determining Relative DBE Availability

Using contracting data available through OCR's tracking database (CRCT) and compiled by entering bidder information provided by Prime Contractors, determine the number of DBEs that have bid or quoted (to ODOT or a Prime Contractor or Vendor bidding on a project) on USDOT assisted prime contracts or subcontracts in the previous three years (bidders list). Determine the number of all businesses that have bid or quoted (to ODOT or a Prime Contractor or Vendor bidding on a project) on prime contracts or subcontracts in the same time period.

(2) Base Figure

Divide the number of DBE bidders by the number of all businesses to arrive at base figure for the relative availability of DBEs in this market area.

B. Adjustment to Base Figure

ODOT will consider any reasonable adjustment to the base figure based on demonstrable evidence indicating that the availability of DBEs for USDOT assisted contracts for the fiscal year may be higher or lower than the base figure indicates, past performance, verifiable barriers to success, adjustments indicated by studies (including disparity and availability studies), and any other relevant factors which can be supported with data. At a minimum, the OCR will analyze the results of ODOT's efforts to contract with DBEs for the most recent three complete federal fiscal years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar DOT's efforts to contract with DBEs.

C. Race Neutral Analysis

Once the overall annual goal is proposed, the OCR will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be achieved by establishing contract goals for particular projects that have subcontracting opportunities. This analysis is a review of past contracting history with information including, but not limited to:

- (1) DBE participation as prime contractors on USDOT assisted contracts;
- (2) DBE participation on projects where no DBE goals have been established;
- (3) DBE Participation on prime contracts exceeding contract goals;
- (4) DBE participation on projects as non-committed DBE subcontractors.

OCR shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR Part 26.51 (f). When projecting the percentage of the overall annual goal to be achieved through establishing contract-specific goals, OCR shall analyze the actual achievement of the overall annual goal through race-neutral methods in the current and previous two years. When establishing contract-specific goals during the current fiscal year, the OCR shall analyze the progress towards achieving the overall annual goal and increase or reduce the use of contract-specific goals accordingly. ODOT shall adjust the ratio of race conscious and race neutral methods to comply with court decisions, legal challenges and guidance from USDOT, FHWA, or FTA.

In cases where an Availability and Disparity Study has provided evidence that some, but not all, presumptive groups should be included in race- and gender-conscious goals, ODOT shall request a waiver from USDOT to allow the goals to be applied only to those groups identified as having a substantial or significant disparity in contracting.

D. Public Participation and Outreach Efforts

ODOT's activities managing public participation and outreach efforts are directed at assisting ODOT to solicit public input to set overall DBE participation goals and meet overall DBE goals.

In establishing overall DBE goals, ODOT will provide for public participation. This will include: Public Notices published in trade and minority circulars; notices posted on the ODOT OCR website; public meetings; and, announcements and discussion at organizational and industry meetings.

Prior to finalizing the Overall Goals Analysis Report, ODOT will notify USDOT recipients, and other USDOT grantees, minority, women, and general contractors groups, community organizations, or other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ODOT's efforts to establish a level playing field for the participation of DBEs, of the proposed goal.

ODOT will publish a notice announcing its proposed overall goal and the race-neutral/race-conscious breakout, informing the public that ODOT's Overall Goals

Analysis Report is available for inspection during normal business hours at the Office of Civil Rights for a period of thirty (30) days, and that ODOT and the USDOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

In conjunction with ODOT's activities to meet its overall DBE goals, ODOT conducts various public participation and outreach activities designed to broaden awareness of ODOT's Office of Civil Rights Program for Contracts. The measures described in 49 CFR 26.51, focusing on race-neutral means will be actively pursued, and ODOT will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. ODOT will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in ODOT's contracting activities.

E. Goal Submission

- (1) The three-year overall goal report will be submitted to the appropriate operating authority, FHWA or FTA, for review on August 1 of the relevant year. The goal is published on the [ODOT/Civil Rights/DBE webpage](#).
- (2) A description of the methodology used to establish the goal, including the base figure (3.A.2 above), and the supporting data from which it was calculated, with any adjustment, will be included.
- (3) A projection of the portions of the overall goal which will be met by race-neutral means and basis for that projection will be included.
- (4) The overall goal for ODOT Transit activities will be submitted to FTA every three years by August 1. This goal is based on non-vehicle monies only and is specific to agencies which receive greater than \$250,000 from ODOT Transit.

F. Transit Vehicle Manufacturers Certification

The Department shall require any transit vehicle manufacturers to certify that they have established an overall annual DBE participation goal that has been approved by FTA before they can bid on any Authority contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal for other FTA-assisted contract expenditures apply.

3.2 Contract Specific Goals

A. Contract Goal Setting

DBE participation goals may be assigned on Federal-aid highway or transit (construction/professional services) projects that have subcontracting possibilities. Unless prohibited, contract goals will be established to meet any portion of the overall goal not met by using race-neutral means (49 CFR §26.51(d)). Contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals, unless verified data, e.g., through a disparity study, supports the need to more narrowly tailor the goals for specific groups, and a waiver has been approved by US DOT.

Prior to solicitation of bids, all proposed federal-aid projects are reviewed by the OCR to identify work that could be performed by DBEs. The procedure and criteria used in assigning project goals include:

- (1) Project location, size, duration, and dollar value.
- (2) The nature of project, (type of work and potential scheduling and coordination work).
- (3) Availability of certified DBE firms within a reasonable distance from the project location that perform items identified capable of being subcontracted.
- (4) Any other relevant criteria, including court decisions and waivers or directives from US DOT.

OCR assigns the goal and forwards it to the appropriate unit (construction specifications or procurement office) for inclusion in the project plans and specifications.

B. Aspirational Targets

DBE Aspirational Target participation evaluations have been performed in the past, but will no longer be included for federal-aid projects. No other race- or gender conscious aspirational targets will be set for small business participation on projects with federal funding.

C. Design-Build

When projects are let using the Design-Build (D-B) method and when federal monies are utilized, the original RFQ and RFP will specify that there will be a DBE goal. The exact goal will be determined in the final stage of the selection process as the scope of work becomes clearer. The design and construction phases of the project will be evaluated separately.

D. Construction Management General Contractor (CM/GC)

Construction Management General Contractor (CMGC) projects will be evaluated in the same manner as Design-Build.

3.3 Counting DBE Participation Towards Meeting Annual Goals

DBE participation is credited using the following procedures:

A. Work Actually Performed

Only the work actually performed by a DBE, (in accordance with section 4.3.3 of this document) will be counted toward the DBE goal. Only the type of work in which the DBE is certified, will be counted as long as the DBE performs a Commercially Useful Function (CUF). The cost of supplies and materials obtained by the DBE, or equipment leased (except from prime contractor or its affiliate), may also be counted.

B. DBE Subcontracts to non-DBE

Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal, with the exception of trucking firms leasing additional trucks in compliance with the one-for-one rule. Expenditures may only be counted if the DBE is performing a CUF. A DBE shall perform at least thirty percent of the total cost of its contract with its own work force.

C. **Materials & Supplies**

If materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent of the cost will be counted. If services are brokered, or materials or supplies are purchased from a broker, only the brokerage fee will be credited.

D. **Achievement**

DBE achievement will not be counted toward the overall goal until the DBE has been paid. OCR will track race-conscious DBE participation separately from race-neutral DBE participation. All DBE participation achieved on projects with no contract-specific goal and all participation over the amount required to meet contract-specific goals will be considered race-neutral participation. Additionally, OCR will not count that portion of DBE participation that is achieved after certification of a DBE has been removed during the performance of a contract.

3.4 Counting DBE Participation To Meet Annual Goals of Sub-recipients.

A. **Sub-recipients Adopting the ODOT Program Document**

Credit shall be authorized or deducted per the requirements of Section 3.3 regardless of whether or not the ODOT or the Sub-recipient is the contracting agency. Sub-recipients of Federal-aid highway program funds shall be required to submit quarterly reports to ODOT. FTA recipients shall be required to report semiannually demonstrating their goal attainment to-date in a manner consistent with the requirements of 49 CFR 26 reporting requirements.

B. **Sub-recipients with an ODOT Approved Program Document**

Sub-recipients of Federal-aid highway funds falling into this category shall be required to submit quarterly reports to ODOT. Recipients of FTA funds shall be required to report semiannually demonstrating their goal attainment to-date in a manner consistent with the requirements of 49 CFR 26 reporting requirements. Sub-recipients shall authorize or deduct credit for work performed by DBEs per the requirements of 3.3 above regardless of whether they or ODOT is the contracting agency. ODOT shall include in its quarterly report to FHWA the status of sub-recipient goal activities falling within this category.

4. ENSURING DBE PARTICIPATION

4.1 Procedures to Ensure Participation (§ 26.53)

A. Pre-Bid Procedures

(1) Disadvantaged Business Enterprise (DBE) Contractor Notification

- (a) Oregon Department of Transportation's (ODOT's) [Contracting with ODOT](#) portal is designed to provide links to the most commonly needed contracting information for current and potential contractors, including DBE contractors and subcontractors. The portal provides links to the schedule of upcoming construction projects and the Small Contracting Program (SCP) opportunities. Additionally, the Office of Civil Rights (OCR) provides a [Search Page for Upcoming Projects](#) for the next 6 months, which allows the contractor to search by component, bid let date, county, region, estimated project size, or keywords. If there are contracted DBE supportive services, bid documents will be available at the offices of the DBE Supportive Services Contractor(s).
- (b) Plans and detailed project information may be secured from ODOT Office of Procurement, Salem, Oregon, and the Region Engineer's office in the district in which a project is located, and on [ODOT e-BIDS](#) for highway construction projects. Designated plan centers also provide project information.

(2) Prime Contractor Notification

- (a) All highway construction bidding opportunities are posted on the ODOT Procurement Office website as soon as they are advertised. All Bid Documents, including Plans, Specifications, Requests for Qualifications and Requests for Proposals are available for inspection by DBE contractors at ODOT's Office of Procurement in Salem, Oregon, on [ODOT e-BIDS](#), and at plan centers. Non-construction contracting opportunities are published on the Oregon Procurement Information Network (ORPIN).
- (b) Projects on which DBE goals have been assigned contain written notice of the goal requirement in the Bid Documents for Highway Construction and non-construction contracting, and for Transit contracts, and the Special Provisions and Supplemental Standard Specifications for Highway Construction.
- (c) The Disadvantaged Business Enterprise Supplemental Required Contract Provisions are included in the Special Provisions and Supplemental Standard Specifications for Highway Construction on all federal-aid projects, as well as Required Contract Provisions Federal-Aid Construction Contracts Form FHWA 1273 (see Exhibit G).

(3) DBE Directory

The DBE Directory is now available on the Internet site:
<http://www4.cbs.state.or.us/ex/dir/omwesb/>

Hard copies can still be requested by contracting the Office of Minority, Women and Emerging Small Business at the following:

OMWESB
775 Summer Street NE, Suite 200
Salem, OR 97301-1280
Phone: (503) 986-0075
Fax: (503) 581-5115

B. Bid Opening and Contract Award

ODOT will award construction contracts to the lowest responsive, responsible bidder as required by Oregon Revised Statute (ORS) 279A, 279B, and 279C, unless an alternative contracting process is approved by FHWA or FTA. For these contracts, as well as contracts awarded pursuant to a Request for Proposal procedure (where the low bid is not the only determining factor in award, but where the Bidder must still be a responsive and responsible bidder), any bidder that fails to demonstrate that it achieved the contract-specific DBE participation goal and, upon such failure to achieve the goal, also fails to demonstrate that it made sufficient good faith efforts to do so, shall be deemed non-responsive and therefore shall be ineligible for award of the contract.

ODOT shall require that any DBEs listed by the bidder for participation in the contract be certified as eligible DBEs as of the date of bid opening. The OCR shall review the bidder's submittal to confirm each DBE firm's certification status.

(1) DBE Commitment and Utilization Form Part I (see Exhibit I)

All bidders (including DBE bidders), must submit with their sealed bid proposal the DBE Commitment Certification and Utilization Form Part I listing the name, type and value of work committed to each DBE subcontractor whose work will be used to fulfill a project-specific goal. If the project-specific goal is zero, all Bidders on federal-aid funded projects must submit the signed form with business and project information, even if there are no committed DBE firms listed.

Credit toward meeting the contract goal varies with the type of DBE firm:

- (a) Construction firms: supply labor and materials to perform a discrete element of the work - 100% credit. The DBE firm must have an active role in purchasing supplies and materials to perform its specific element of work. To receive credit towards the project goal, the DBE firm shall negotiate price, arrange for delivery, and pay for the supplies and materials required for the work to be performed

- (b) Manufacturers: firms that operate or maintain a factory or establishment that produces on the premises the materials or supplies obtained by the contractor - 100% credit.
- (c) Equipment rental firms: equipment must be owned by and registered to the DBE - 100% credit.
- (d) Regular Dealers/Suppliers: must assume actual and contractual responsibility for materials - 60% credit.
- (e) Brokers, packagers, ad hoc suppliers, manufacturers' representatives: no credit for materials, transportation, or other costs - Net Fee credit
- (f) Joint Venture: The contractor may count toward its DBE goal only that portion of the work that the eligible DBE firm actually does with it's own forces.

Should the joint venture be comprised of eligible DBEs only, the entire contract award amount shall be counted toward meeting the DBE assigned goal on the project.

Joint ventures bidding as primes must also meet the assigned project goal for providing subcontracting opportunities for DBEs.

In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, count the work the eligible DBE has committed to performing with its own forces as well as the work that it has committed to be performed by eligible DBE subcontractors and eligible DBE suppliers.

A review of the committed DBE firm's work areas (bid items) as listed on the DBE Commitment Certification and Utilization Form is then completed. If the review by the Office of Civil Rights indicates that the committed DBE firm may not be able to perform the bid items for which the firm has contracted, or that the DBE firm is not certified in the specific types of work, the prime contractor and the DBE firm will be informed and given an opportunity to provide reasonable documentation that the DBE firm is eligible.

The signature of the Bidder shall be affixed to the DBE Commitment Certification and Utilization Form, or, in the case of an electronic bid, the authority of the person submitting the bid shall be verified. Failure of the Bidder's signature to appear on the form shall render the bid proposal non-responsive.

(2) DBE Commitment and Utilization Form Part II (Good Faith Efforts)

In the event a bidder is unable to meet the minimum expected participation per the requirements of DBE Commitment Certification and Utilization Form, Part I, that bidder shall provide additional

information regarding good faith efforts per the requirements of Part II. This information must be included at the time of bid opening.

Types of actions that should be considered as part of the bidder's good faith efforts to obtain DBE participation are listed in Appendix A to 49 CFR Part 26. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

In determining whether a bidder has made good faith efforts, ODOT may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, ODOT may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, ODOT may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts in accordance with 49 CFR Part 26 Appendix A.

(3) Administrative Reconsideration

If it is determined that the apparent successful bidder/offeror has failed to meet the requirements of A and B of this section, the ODOT, before awarding the contract, will notify the bidder/offeror in writing within 15 (fifteen) calendar days of the bid opening. The notification will include the reason for the determination and provide the bidder/offeror an opportunity for administrative reconsideration.

Administrative Reconsideration includes:

- (a) The bidder/offeror will have the opportunity to provide written documentation or argument to the Review Committee, consisting of ODOT personnel, and personnel from other State of Oregon agencies, knowledgeable with DBE Program requirements, concerning the issue of whether it met the goal or made adequate good faith efforts to do so, within 3 working days of the receipt of notification.
- (b) Upon request, the bidder/offeror will have the opportunity to meet in person with the Review Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (c) The Review Committee will make a decision on reconsideration within 3 working days after reviewing the evidence provided by the apparent successful bidder/offeror.
- (d) The bidder/offeror will be notified in writing by the Review Committee regarding the decision of reconsideration within 4 working days of the decision. This notice will explain the basis for

finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

- (e) The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

(4) Committed DBE Breakdown and Certification Form (See Exhibit K)

Upon award of the contract, subsequent to DBE goals being met or satisfactory demonstration of good faith efforts, the Office of Procurement transmits a letter to the contractor requesting the completion of the Committed DBE Breakdown and Certification Form ("Form 2") for the project.

The Form 2 must be completed and submitted within ten calendar days of notification of award, and prior to contract execution, to ODOT Office of Civil Rights, 355 Capitol Street NE, MS 31, Salem, OR 97301-3871. To expedite processing completed and signed Form 2s may be faxed to OCR at (503) 986-6382, but original copies must follow by mail or hand-delivery. Failure to provide detailed DBE information to ODOT within ten calendar days after receiving award notification shall be cause for cancellation of the award and withdrawal of the contract and may be cause for forfeiture of the proposal guaranty.

The contractor shall identify the name(s) of the DBE(s) to be awarded work on the project, along with a detailed description of the bid items, including bid item numbers, descriptions and amounts, and dollar amounts to be subcontracted. The amount(s) entered on the Committed DBE Breakdown and Certification Form must be equal to or greater than the value of work indicated on the DBE Commitment Certification and Utilization Form as submitted with the bid proposal, and must be equal to or greater than the value of the assigned minimum DBE participation goal unless it has been determined that a good faith effort was made. If the value of work indicated on the Committed DBE Breakdown and Certification Form is less than that indicated on the DBE Commitment Certification and Utilization Form, the contract award will be canceled and the contract withdrawn.

The signature of the prime contractor and the signature of the committed DBE owner shall be affixed to the Committed DBE breakdown and Certification Form as required by 49 CFR Part 26.53(b)(2)(v). Failure of these signatures to appear on the form will cause the contract award to be canceled and the contract withdrawn.

C. Counting DBE Participation Towards Contract Specific Goals

(1) Crediting

The contractor shall count toward meeting its DBE goal only those expenditures originally committed to eligible DBEs prior to contract

award, and those on which committed DBEs perform a Commercially Useful Function (CUF) on the project.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBEs subcontractor is itself an eligible DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals, with the exception of trucking where specific conditions apply. (See Section 3.3, Counting DBE Participation Towards Meeting Annual Goals).

Credit shall be authorized for DBE subcontractor participation under a DBE contractor provided a CUF is performed and such participation was part of the DBE contractor's original commitment prior to contract award.

If a DBE is no longer certified, the dollar value for work performed under the contract after the date of decertification will not be counted towards the overall goal.

The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE. (See Section 4.2F)

(2) Good Faith Efforts

If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor will make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the project. Good Faith Efforts shall include steps as outlined in 49 CFR 26, Appendix A.

(3) Crediting for DBE Prime Contractors

The requirements of Section 4.0 will apply to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE subcontractors or suppliers will be counted.

(4) Over-concentration Considerations

If OCR determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the opportunity of non-DBEs to participate in that type of work, OCR will develop appropriate measures to address the over-concentration. The OCR will seek approval of such measures from

the appropriate operating administrations and, at that time, the measures will become a part of this Program. Currently, ODOT is unaware of any types of work that have a burdensome over-concentration of DBE participation, however, OCR will continue to monitor for indications of over-concentration.

D. Civil Rights Compliance Tracking System (CRCT)

See Section 7.0

4.2 Contract Performance

The [ODOT Construction Manual](#) provides procedures and guidance for administration of construction contract performance after award of the contract, and delegates the authority for all DBE Program compliance to the Project Manager assigned to the project. All communication with the Prime Contractor will be through the Project Manager, and all decisions regarding contract compliance will be made by the Project Manager and the Office of Contract Administration.

A. Contractor's DBE Liaison Officer

Section 9 of the Disadvantaged Business Enterprise Supplemental Required Contract Provisions requires the contractor/vendor to designate a DBE Liaison Officer to administer the contractor's DBE program. The name of this individual must be provided to ODOT project management personnel at the pre-construction conference.

B. Submission of Committed DBE Subcontracts

The contractor must enter into subcontracts with the DBEs identified in the Committed DBE Breakdown and Certification Form for the bid items and amounts specified therein or more. These agreements must be submitted for approval to the Project Manager prior to the start of work under the subcontract in accordance with ODOT's Construction Manual. It shall be the responsibility of the Project Manager or Contract Administrator to assure that all required Federal and State provisions are included in all contracts and subcontracts.

C. Commercially Useful Function (§ 26.55(c))

The contractor or vendor is responsible for ensuring that DBEs working on the project perform a Commercially Useful Function (CUF). The contractor or vendor shall receive credit toward meeting the assigned DBE goal and payment for DBE-performed work only if the DBE-performed work has met the CUF requirements.

Commercially Useful Function is defined in 49 CFR 26.55 (c), in part, as follows:

A DBE is considered to perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

(1) CUF Review

The actual CUF review will be performed by personnel assigned the task by the Project Manager per the ODOT Construction Manual, or the Contract Administrator for non-construction contracts. The CUF report will be maintained as part of the project file. The results of the CUF report are entered into OCR's CRCT database. The PM or designee must perform at least one CUF review for each DBE on a project depending on the following milestones during the project:

- (a) Early in the DBE's work, when it is performing one or more of its subcontracted items of work, but before the DBE's peak performance period has passed (recommended for projects of sufficient duration or where the scope of the DBE's work makes it reasonable);
- (b) At the DBE's peak of operations (required);
- (c) Whenever a change in the performance of the DBE occurs (required);
- (d) Whenever there is any indication that a DBE may not be performing a CUF (required);
- (e) Whenever a DBE performs work which varies from the bid items indicated in the contractor's commitment forms (required);
- (f) Whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE (required);
- (g) Whenever a replacement or substitution of a DBE occurs (required), and:
- (h) For projects where the DBE's work lasts longer than one year, at least one review per year (required).

D. Determination

When a DBE is initially determined not to be performing a CUF as defined above, the DBE may present evidence to rebut this determination. The PM or CA, in consultation with OCR, will determine if the DBE is performing a CUF given the type of work involved and normal industry practices.

Decisions on CUF matters are subject to review by the concerned operating administration (FHWA or FTA), but are not administratively appealable to USDOT.

(1) DBE Management

The DBE majority owner(s) must manage the work contracted. The management shall include scheduling work operations, ordering

equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees.

Daily work operations must be under the direct supervision of the DBE majority owner(s) or a superintendent or foreman (on a full-time basis) who is in the employ and under the direct control of the DBE majority owner(s) only. If the owner(s) of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered a DBE and constitutes a failure to perform a commercially useful function.

The supervision of the work by personnel normally employed by another contractor or by personnel not under the control of the DBE constitutes a failure to perform a commercially useful function.

DBE subcontractors shall be responsible for the continuous management, direction, and control of their sub-subcontractors.

(2) DBE Workforce

The DBE must solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent must, on a full-time basis, supervise and control the work of the contract.

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

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

(3) DBE Equipment

The DBE is expected to perform the work with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the project manager prior to the DBE starting work.

Emergency use of equipment owned by the Prime contractor or another subcontractor, where the equipment normally used by the DBE is unavailable, will not be considered a CUF violation if the use is of short duration in a situation where not using the equipment would cause physical harm to a person or would have such a negative impact on the project work as to create a significant hardship. ODOT project management staff should be made aware of the situation as soon as possible.

No credit will be given, nor payment made, for the cost of equipment leased or rented and used in the DBE firm's work when

payment for those costs is made by a deduction from the prime contractor's payment(s) to the DBE firm.

(4) Equipment Leased From The Prime Contractor

The DBE may lease equipment from the prime contractor provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the project manager prior to the DBE starting work.

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

Specialized equipment and operator leased from the prime 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 project manager prior to the DBE starting work.

The project manager shall consent to the lease agreement only when:

- (a) The equipment is of a specialized nature,
- (b) The equipment is readily available at the job site,
- (c) The operation of the equipment is under the full control of the DBE,
- (d) The lease arrangement is for a short term, and
- (e) The lease arrangement is a normal industry practice.

(5) DBE Trucking Firms

The following factors will be used to determine if a DBE Trucking firm is performing a CUF:

- (a) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- (b) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.
- (c) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (d) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

- (e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees, but it cannot exceed the value of transportation services provided by DBE-owned trucks on the contract. Any additional participation by non-DBE lessees receives credit only for the fee or commission they receive as a result of the lease arrangement.
- (f) For the purposes of DBE Trucking Firms, a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

E. Sub-Tier Contracting

Sub-tier DBE subcontracts may be counted toward the prime contractor's DBE goal provided it was listed in the original DBE commitment prior to bid award.

F. Termination and Substitution

The contractor must notify and obtain the written approval of ODOT project management personnel prior to replacing a DBE or making any other change in the participation indicated in the commitment forms. These requirements apply to both pre-award and post-award terminations or deletions of, or substitutions for, DBE firms put forward by offerors in negotiated procurements.

Approval for DBE termination or replacement will be granted only if the following has been demonstrated:

- The committed DBE is unable, unwilling or ineligible to perform, poses a health or safety risk, or for other documented good cause as set out in 49 CFR 26.53(f) that the agency determines compels the termination of the DBE subcontractor;
- The contractor exercised good faith efforts to enable the DBE to perform; and,
- The work/amount is being replaced by another certified DBE, or the contractor has submitted written documentation of good faith efforts to obtain a substitute DBE.

Before transmitting 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 ODOT, 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 ODOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the prime contractor's action. If required in a particular case as a

matter of public necessity (e.g., safety), ODOT may provide a response period shorter than five days.

The contractor's ability to negotiate a more advantageous contract with another subcontractor will not be considered a valid basis for replacement. Requests to substitute committed DBEs will be scrutinized closely. The contractor must document efforts made at the time of commitment to determine that the DBE was capable of performing the work and subsequent efforts made to enable the DBE to perform. The evidence must show that the contractor investigated the DBE's capacity and capability of performing at the time of the commitment. The DBE must have possessed or have had access to adequate resources and workforce. The evidence must also show that the contractor assisted the DBE with supportive actions to enable the DBE to perform.

The notice from the contractor requesting replacement must include the following:

- (1) Documentation as to the contractor's investigation, at the time of the commitment, of the DBE's capacity to perform work;
- (2) Documentation as to the contractor's good faith efforts to enable the DBE to perform as outlined in Appendix A of 49 CFR part 26;
- (3) All documentation describing and citing specifications or inaction of the DBE which constitute their unwillingness or inability to perform;
- (4) Identification of the DBE proposed for replacement with the bid items and amounts to be performed by the replacement; and
- (5) The total dollar amount, per bid item, paid to date to the DBE to be replaced.

G. Prompt Payment

In accordance with ORS 279C.850, the agency includes provisions in each contract that require the contractor to promptly pay each subcontractor, including a materials supplier, for satisfactory performance of their subcontracts, within 10 days out of amounts paid to the contractor by the agency under the contract. If the contractor fails to make payment to the subcontractor within 30 days, the contractor owes the amount due, plus interest charges that begin at the end of the 10 day period within which payment was due.

These prompt payment provisions are included in the [Oregon Standard Specifications for Highway Construction](#), Section 00170.0 Required Payments by Contractors. Section 00195.50(d) Reduction of Retainage provides a process for the return of any retainage held after a subcontractor's work is satisfactorily completed. Once the contractor has received payment from the agency for retainage on

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.

(1) Summary Report of Subcontractors Paid:

The contractor must also submit a signed [Summary Report of Subcontractor's Paid](#) to the project manager's office, which certifies that the contractor has made payments to the subcontractor as indicated on the report and has supporting documentation. All progress payments and payments made when any retainage held is returned to a subcontractor must be indicated on the report.

A [Summary Report of Subcontractor's Paid](#) must be submitted monthly and at the completion of the project. The report must be submitted by the fifth of the month following the contractor's receipt of payment from the agency. (Example: Work performed in January will be paid by the agency in February; the Summary Report showing work performed in January and the related payments made in February must be submitted to the Project Manager by March 5.)

(2) Crediting Payments

The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE.

H. DBE Supplemental Required Contract Provisions

Failure of any contractor to meet the DBE Supplemental Required Contract Provisions and program authorities cited in Section I, Paragraph C, Pages 1-2 of the Program Document, may constitute a breach of contract for which the imposition of the following sanctions, at the discretion of the ODOT Highway Division Administrator, may occur:

- (1) Temporarily withholding progress payments until the contractor complies with these contract provisions where possible through future performance.
- (2) Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.
- (3) Suspension of work for cause as provided under the Standard Specifications for Highway Construction, Sections 00150.00 and 00180.70.

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

After five years, the violation will no longer be considered in reviewing future violations.

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

4.3 Race Neutral Remedies and Other Good Faith Efforts

A. Fostering Small Business Participation (§ 26.39)

ODOT is actively committed to fostering race- and gender-neutral small business growth and participation in ODOT contracting. The agency demonstrates this commitment through the development of both internal and external initiatives aimed toward small firms and the agency's stakeholders. These strategies to foster small business participation in ODOT contracting includes: (1) ODOT Small Contracting Program, (2) Small Business Supportive Services, and (3) Non-Bundling Contract Practices.

Small businesses are welcome to meet with ODOT's DBE Program Manager and learn about ODOT's contracting opportunities and how to do business with ODOT. ODOT staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to ODOT. In addition, the OCR will provide information on DBE certification and DBE program requirements and procedures.

While sub-recipient agencies are not eligible to participate in ODOT's Small Contracting Program, ODOT encourages sub-recipients to consider how contract bundling practices impact small business participation and to foster small business participation by offering supportive services or by encouraging these businesses to participate in ODOT supportive services programs. Each year the OCR will be involved in at least two small business events, which may be coordinated with other USDOT recipients and open to all small businesses.

(1) ODOT Small Contracting Program

All ODOT business lines are encouraged to identify and develop small-sized contracts through the ODOT Small Contracting Program (SCP). SCP is a race and gender-neutral program designed to provide small businesses with opportunities to develop a prime contracting relationship with ODOT while increasing knowledge of contracting with a state agency. Although any company or contractor may register and participate in the program regardless of company size or location, the program is focused on, fostering small business participation on ODOT contracts.

The nature of the selection criteria (limiting invitations to bid on individual contracts to bidders who do not currently have a prime

contract with ODOT) facilitates selection of small businesses for award of contracts.

The Small Contracting Program is made up of three divisions:

- (a) Small Contracting Program for Architectural, Engineering (SCPAE): This program registers companies to provide architectural, engineering, land surveying, and related services on ODOT projects. Contracts awarded under this program will have a value not to exceed \$150,000. This type of procurement is defined in ORS 279C.100.
- (b) Small Contracting Program for Construction (SCPC): This program registers contractors to provide Public Improvement and Public Works construction on ODOT projects. Contracts awarded under this program will have a value not to exceed \$100,000. This type of procurement is defined in ORS 279A.010(1)(cc) for Public Improvement and ORS 279C.800(6) for Public Works.
- (c) Small Contracting Program for Other Services (SCPOS): This program registers companies to provide non-architectural and engineering (Non-A&E) Professional Services and Trade Services. Contracts awarded under this program will have a value not to exceed \$150,000. The scope of services under the SCPOS is based upon the procurement authority outlined in ORS 279A.050(2), 279A.050(3), and OAR 125-246-0170(2)(c).

Additional information about ODOT SCP is available at: http://www.oregon.gov/ODOT/CS/OPO/docs/scp/SCP_faq.pdf#nameddest=Q01

(2) Small Business Supportive Services & Outreach

Through the use of state funds, ODOT provides training and a host of supportive services to small businesses through the initiatives shown below:

- (a) Business Management classes through the Small Business Development Center (SBDC) Network: ODOT offers scholarships to DBE, MBE, WBE or ESB certified firms to pay all but \$200 of the fee for these classes. The Agency works with the SBDC Network to create the class plan and participates in classes by presenting on pertinent ODOT operations.
- (b) Quarterly Small Business Workshops: These are events hosted in Portland on a quarterly basis and in other regions. The workshops provide free training and information on a variety of topics common to small businesses, ranging from bonding to panel discussions on how to do business with ODOT. The workshops provide networking opportunities with prime contractors and other agencies to assist with certification questions.

- (c) Mentor Protégé Program: ODOT sponsors several mentor protégé partnerships managed through the Port of Portland's program.
- (d) Small Business Resource Guide: ODOT contracted with a consultant to survey a wide range of training and business services providers and compile a guide to be used as a resource directory by small businesses. The Guide has been distributed in hard copy and is available on the Office of Civil Rights' website.
- (e) Turner School of Construction Management: ODOT supports the annual classes provided by the Turner School and participates in presenting information to the attendees. Classes offered cover business essentials such as estimating, developing a business plan, and blueprint and cad drawing reading.
- (f) Tradeshows and Marketplaces: Outreach is critical to the success of ODOT programs. Therefore, ODOT contributes to and participates in minority chamber of commerce events and the annual Oregon Association of Minority Entrepreneurs (OAME) Tradeshaw, the annual Minority Enterprise Development Week Tradeshaw, and various other race- and gender-neutral small business events hosted by ODOT stakeholders.

(3) Contract Non-Bundling Practices

It is part of the agency's standard approach to business to consider how contract bundling practices during project development impact contracting opportunities for small businesses on ODOT projects. Throughout the agency consideration is given to portions of a prime contract that could be extracted to create a smaller contract for small business. The focus has been on minimizing the size of contract packages to attract participation of small businesses. Through the Office of Procurement and ODOT region staff, there are ongoing efforts to identify prime contracts that might have been bundled to determine how they might be unbundled to provide opportunities that smaller businesses could reasonably perform.

B. Business Development Program(s) (BDP)

ODOT has developed race- and gender-neutral small business programs including the Emerging Small Business (ESB) Program, which was established in response to Oregon Revised Statute (ORS) 200. The ESB Program has strict limits on average gross receipts, number of employees and participation time. In 2007 all certified DBE, MBE and WBE firms which met the eligibility criteria were granted ESB certification status to increase the contracting opportunities available to them.

C. Mentor Protégé Program

In order to further the development of DBEs to move into non-traditional areas of work and to compete in the marketplace outside the DBE program by receiving training and assistance from other firms, the Mentor-

Protégé Program as outlined in 49 CFR 26.35 is available. ODOT has partnered with the Port of Portland to participate in their established Mentor-Protégé Program. DBEs involved in this program will be independent business entities that meet the requirements of section 6.3 of this document. Firms will be Oregon-state certified DBEs before they begin participation in the mentor protégé program.

D. DBE Supportive Services Program

Contingent upon availability of Federal Highway Administration supportive services funds, ODOT will provide supportive services through consultant contractors to DBEs who are interested in participating in highway construction projects. The purpose of supportive services is to increase the number of socially and economically disadvantaged firms participating in highway construction projects and to contribute to the growth and eventual self-sufficiency of the DBE firms. ODOT will provide resource referral information and will support business support services provided by other organizations to the greatest extent possible.

5. MONITORING PERFORMANCE (CONTRACT COMPLIANCE)

5.1 Notification and Reporting Responsibilities

A. Project Management and Contract Administrative Staff (including procurement)

ODOT project management and contract administration personnel, in consultation with the Office of Civil Rights, are responsible for monitoring compliance with the CUF provision of the contract. The field project manager or contract administrator is responsible for all final actions in the field, including recommendations to the Highway Division Administrator for the suspension of a contractor's and/or subcontractor's right to bid. Procedures such as those described below pertaining to highway construction projects will be followed in monitoring compliance on all USDOT funded contracts.

B. Office of Civil Rights

ODOT Project Management staff will monitor both race-neutral and race-conscious methods of DBE utilization.

(1) Race-conscious Methods

Race-conscious method are generally contracts on which a goal is set as a condition of award. When a DBE goal is set on a contract, an OCR representative will attend the pre-bid or pre-proposal meeting when scheduled. At this meeting the OCR Representative will provide information as to the Internet web site address for the DBE certified firm directory to prime contractors/proposers. Once the contract is awarded, the ODOT Project Manager or Contract Administrator will monitor the amount actually paid to all DBE firms. The Project Manager or Contract Administrator will require updates from the prime contractor/vendor on the amount paid to the DBE each month in the [Summary Report of Subcontractors Paid](#). The amount awarded the DBE, the amount paid to the DBE as stated by the prime, and the amount paid to the DBE as verified by the DBE will be tracked through CRCT. The actual amount paid will be reported to FHWA or FTA. The OCR Field Coordinator or the DBE Program Manager provides technical assistance and direction consistent with 49 CFR Part 26.

For Architecture and Engineering (A&E) and related contracts, the Procurement Office or Local Agency notifies the DBE Program Manager when a solicitation has been developed. The DBE Program Manager determines whether a goal should apply and sets the goal to be included in the solicitation documents (the RFP, or mini-RFP for a Work Order Contract (WOC) solicitation under existing Price Agreements). For contracts awarded without solicitation (for example, a direct appointment, a sole source contract, or a major amendment to a contract), the Procurement Office or Local Agency notifies the DBE Program Manager, who may set a goal to be included in the contract or amendment. After the contract is awarded, the Contractor will be responsible for achievement of the DBE commitment.

[Summary Report of Subcontractors Paid](#) are to be turned in to the Project Manager or Contract Administrator on a monthly basis. The PM or CA will reconcile all payments and verify prompt payment. Copies are then submitted to the Civil Rights Field Coordinator, who will enter the

amounts into CRCT and track compliance. In the event a DBE is not used after commitment, documentation of the reasons for the shortfall or Good Faith Efforts in finding a substitute DBE firm apply.

The OCR Field Coordinator is notified when a contract change or amendment is made and the prime contractor, along with the project manager/contract administrator, will submit a statement regarding how the change may affect DBE subcontracting (by either adding or subtracting work done by DBEs). The Project Manager/contract administrator will assure that work is actually being performed by DBEs and will make site visits.

(2) Race-neutral Methods

Race-neutral methods are generally contracts on which a goal is 0% or when the DBE % achieved exceeds the assigned goal.

The [Summary Report of Subcontractors Paid](#) is to be turned in to the Project Manager or Contract Administrator on a monthly basis. The PM or CA will reconcile all payments and verify prompt payment. Copies are then submitted to the Civil Rights Field Coordinator, who will enter the amounts into CRCT and track compliance. In the event a DBE is not used after commitment, Good Faith Efforts in finding a substitute DBE firm apply.

C. Prime Contractor

(1) Contractor's DBE Liaison Officer

Section 9 of the DBE Supplemental Required Contract Provision requires the contractor to designate a DBE Liaison Officer to administer the contractor's DBE Program. The name of this individual will be provided to ODOT Project Management staff at the pre-construction conference.

(2) Submission of Subcontracts

The contractor must enter into subcontracts with the DBEs identified in the Contractor's Committed DBE Breakdown and Certification Form for the bid items and amounts specified therein. These agreements must be submitted for consent prior to the start of work under the subcontract in accordance with Section 00180.21 of the Standard Specifications for Highway Construction. All Federal and State provisions must be included in the subcontracts in their entirety, and not by reference.

(3) Prompt Payment Documentation

The prime contractor will promptly pay all subcontractors and suppliers as required under Section 4.2 of this document.

5.2 Compliance Review and Evaluation Procedures

A. Pre-Construction Conferences

The contractor shall deliver the following information to the Project Manager/Contract Administrator at the pre-construction conference:

(1) DBE Liaison Officer

The name of the DBE Liaison Officer who will administer the contractor's DBE program. Said officer or the officer's designee shall attend the conference.

- (2) Project Schedule
Contractor's project schedule showing the work commencement date and estimated completion date for each DBE that will perform work on the project.
- (3) DBE Work Plan Proposal (3A)
Disadvantaged Business Enterprise Work Plan Proposal Form (3A) for each DBE at any tier that is committed on the project.
- (4) Subcontracts
Copies of subcontracts for all DBE firms at all tiers, with Requests for Subcontract Approval.

B. DBE Activity Reporting Forms

- (1) DBE Form 3A: Work Plan
The [DBE Work Plan Proposal Form 3A](#) (see Exhibit M) shall be completed by all DBEs participating as subcontractors. The form is noted in the contractor's pre-construction conference packets, and is available on the OCR webpage.
The DBE Work Plan Proposal specifically solicits information regarding the following:
 - (a) Personnel Required
List the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, and/or the source from which the individual was or is to be recruited.
 - (b) Equipment Required
List the items of equipment that will be used on the project. Indicate whether the equipment is owned, or will be rented or leased. If rented or leased, consent to the rental or lease must be obtained from ODOT prior to beginning of the work.
 - (c) Supplies and Materials Required
List the supplies and materials that will be used on the project. Indicate the source, by name, address and phone number, from which supplies and materials will be obtained.
 - (d) Prime Contractor Resources
Discuss any plans for the DBE to share any resources of the prime contractor, e.g. personnel, equipment, tools, facilities, etc.
 - (e) Additional Information
Provide comments or explanation of any of the information provided above.

Project Managers/Contract Administrators will review the proposals and provide written comments as to whether the activities identified in the proposals comply with program regulations. In those instances where proposed activity violates applicable regulations, written comments shall be offered as to corrective action required in order to comply with the

regulations. OCR Field Coordinators will provide project management and contract administration staff technical assistance as required in reviewing and approving the Form 3A.

(2) DBE Form 3B: Commercially Useful Function Verification (See Exhibit N)

The Disadvantaged Business Enterprise Commercially Useful Function Form 3B is completed by ODOT Project Management personnel under the circumstances indicated below:

- (a) On all highway-related projects with DBE participation goals (required).
- (b) Concerning each DBE that is performing on the project, regardless of commitment (required).
- (c) Whenever there is any indication that a DBE may not be performing a CUF (required).
- (d) Early in the DBE's work, when it is performing one or more of its subcontracted items of work, but before the DBE's peak performance period has passed (recommended for projects of sufficient duration or where the scope of the DBE's work makes it reasonable).
- (e) At the DBE's peak of operations (required).
- (f) Whenever a change in the performance of the DBE occurs (required).
- (g) Whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE (required).
- (h) Whenever a replacement or substitution of a DBE occurs (required).
- (i) For projects where the DBE's work lasts longer than one year, at least one review must be conducted each year (required).

(3) Prompt Payment/Release of Retention Verification

The contractor must submit a signed [Summary Report of Subcontractor's Paid](#) to the project manager's office, which certifies that the contractor has made the subcontractor payments, indicated on the report and has supporting documentation. All progress payments and payments made when any retainage held is returned to a subcontractor must be indicated on the report. A summary report affidavit must be submitted at the completion of the project. The report must be submitted by the fifth of the month following the contractor's receipt of payment from the agency. (Example: Work performed in January will be paid by the agency in February; the Summary Report showing work performed in January and the related payments made in February must be submitted to the Project Manager by March 5.)

The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE.

C. On-Site Reviews

As part of the Commercially Useful Function (CUF) report, an on-site review is intended to determine whether the DBE is actively performing, managing and supervising the work. It must employ a labor force which is separate and apart from that employed by the prime or other subcontractors, and which is

independently recruited by the DBE in accordance with standard industry practice. The DBE must supervise and manage the work or independently hire a supervisor, who may not be a supervisor employed by the prime or any other subcontractor on the project.

Equipment required to accomplish the work may be rented or leased, consistent with standard industry practice and at competitive rates. Lease or rental agreements must be furnished to project management personnel for review. The DBE must independently arrange for deliver of, and payment for, materials and supplies. Records of such transactions must be available for review.

Any arrangements which deviate from these generally accepted practices must be agreed to in writing by the parties involved and must receive prior written approval of ODOT project management personnel.

The review form, accompanied by copies of invoices, agreements, daily reports or other documentation, is forwarded by field personnel to Project Management staff for further evaluation. Additional information may be requested, or field visits may be scheduled to meet with the prime contractor and the DBE.

With regard to the Federal-aid share, if an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation will not be counted toward goal achievement for either the contractor or ODOT. When a DBE is initially determined not to be performing a CUF as described in this section, the DBE may present evidence through the contractor to ODOT to rebut that determination. Appropriate contract action will be taken, or sanctions will be imposed as described in Section 5.5 of this document.

Decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

5.3 Changes in Work Committed to a DBE

ODOT will consider the impact on DBE participation in instances where ODOT changes, reduces, or deletes work committed to the DBE at the time of contract award. In such instances, the contractor shall not be required to replace the work but is encouraged to do so.

In cases where normal changes in the scope of a project as an outcome of work adjustments resulting from a recalculation of the amount of work required, causes a reduction in the work committed to a DBE firm, the contractor shall notify the Project Manager and the affected DBE of any proposed change, reduction, or deletion of any work committed at the time of contract award, prior to executing the change order. The contractor shall enable the affected DBE to participate in the change order work when possible. If the final amount paid to the DBE is less than the commitment amount, the contractor shall not be required to submit any documentation of good faith effort to replace the work and will not be penalized for failing to meet the original commitment.

The contractor will not be allowed to reduce the work committed to a DBE so that the contractor can perform the work. Terminating a DBE for convenience is not allowed.

5.4 Termination and Substitution of a DBE

The contractor shall notify ODOT in writing and must obtain written consent before terminating and/or replacing the DBE that was committed as a condition of contract award or otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent for terminating the performance of any DBE will be granted only where the contractor can demonstrate that the DBE is unable,

unwilling, or ineligible to perform, or poses a significant health or safety risk. 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 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 work completed on each bid item by the DBE.
- (7) The total dollar amount paid, per bid item, to date for work performed by the DBE.
- (8) The total dollar amount, per bid item, remaining to be paid to the committed DBE for work completed, but for which the DBE has not received payment and with which the contractor has no dispute.
- (9) The total dollar amount, per bid item, remaining to be paid to the DBE for work completed, but for which the DBE has not received payment and over which the contractor and/or the DBE have dispute.
- (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

The contractor shall send a copy of the request to terminate and substitute letter to the affected committed DBE firm, in conjunction to submitting the request to the Project Manager. The affected DBE firm may submit a response letter to the Project Manager within five (5) calendar days of receiving the notice from the contractor. The affected DBE firm may explain its position concerning performance on the committed work. The Project Manager will consider both the contractor's request and DBE's response and explanation before granting approval of the contractor's termination and substitution request.

If the contractor is unsuccessful in notifying the affected DBE firm, after trying its best to deliver a copy of its request letter, ODOT may determine that the affected (committed) DBE firm is unable or unwilling to continue the contract and a substitution will be immediately approved by the Project Manager.

C. Proposed Substitution of Another Certified DBE

When a DBE substitution is requested, the contractor may propose another certified DBE firm to replace the original committed firm in writing. The contractor shall submit the name of the DBE firm, the proposed work to be performed, and the dollar amount of the work. The contractor shall include pertinent information including bid item, item description, bid quantity & unit, unit price, and total price. In addition, the contractor shall submit a written proposed DBE Work Plan for the requested substitute DBE as described in Section 5.2.2 of this document.

The dollar value of work to be performed by the substitute DBE shall be in an amount not less than the dollar value of the terminated DBE minus the value of work performed to date by the original 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 goal. The contractor must document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

- (1) Evidence that the contractor identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- (2) Evidence that the contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- (3) 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;
- (4) Evidence that the contractor followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. This may include the information outlined below:
 - (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 to be performed;
 - (c) Documentation of each DBE contacted but rejected and the reasons for the rejection.
- (5) Evidence that the contractor provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (6) Evidence that the contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- (7) Evidence that the contractor advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by ODOT or contractor;

- (8) Evidence that the contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- (9) Evidence that the contractor used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- (10) Evidence that the contractor used the services of ODOT's supportive services contractor(s) when available.

5.5 Administrative Sanctions

Failure of any contractor to meet the DBE Supplemental Required Contract Provisions and program authorities cited in Section 1.4 of this document 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 work already performed in a manner that constitutes a breach of contract.
- C. Suspension of work for cause as provided under the Standard Specifications for Highway Construction (2008), Sections 00150.00 and 00180.70.

Any bidder or contractor or subcontractor on a public contract that violates the provisions of ORS 200.075 is subject to having its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one year for a second violation and up to five years for a third violation. Each violation shall remain on record for five years. After five years, the violation shall no longer be considered in reviewing future violations.

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

Decisions regarding administrative sanctions for non-compliance with DBE Program regulations and requirements are made by the Highway Division Administrator, who has sole authority in these matters.

6. GUIDELINES FOR DBE CERTIFICATION

6.1 Unified Certification Program (UCP)

The Oregon Department of Transportation (ODOT) has participated in a Unified Certification Program (UCP) since January 1988 through Oregon Revised Statute (ORS) Chapter 200 and Oregon Administrative Rule (OAR) Chapter 123 Division 200. The sole certification agency for the State of Oregon is the Office of Minority, Women and Emerging Small Business (OMWESB) which is housed within the Oregon Business Development Department (OBDD). See Section 6.2 below.

A. Civil Rights Compliance Tracking System (CRCT)

See Section 7.0

B. Directory of Certified Firms

OMWESB maintains a Unified DBE Directory in accordance with 49 CFR 26.81(g). The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, e-mail address (if available), contact name, owner(s) gender and ethnicity with ownership interest percentage, NAICS code(s) and a description of the type of work the firm has been certified to perform as a DBE. The information is revised daily and the directory is available electronically at:

<http://www.oregon4biz.com/Grow-Your-Business/Business-services/Minority-Owned-Business-Certification/>.

6.2 UCP Responsibilities

A. ODOT Office of Civil Rights

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. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification. ODOT provides funding to OMWESB to support the DBE Certification processing.

B. Office of Minority, Women, and Emerging Small Business (OMWESB)

Certification authority for the ODOT DBE Certification Program Component has been delegated to OMWESB through an interagency agreement with the Oregon Business Development Department (See Exhibit P). ODOT retains responsibility to USDOT for assuring that certification of DBEs is performed consistent with 49 CFR 26 standards.

OMWESB provides staff to conduct DBE certification, certification review, denials, de-certification, appeals, challenges, investigations of third party allegations, and public awareness and outreach activities pertaining to certification programs. This office became the certification authority for state programs under Oregon Revised Statutes (ORS) Chapter 200, in January 1988.

An approved Unified Certification Program Partnership Agreement has been in effect since 2000. ODOT and other USDOT federal aid recipients have signed the agreement.

The Oregon Department of Justice provides legal counsel for OMWESB.

6.3 Certification Eligibility Requirements

The standards in 49 CFR 26, Subpart D, are used by OMWESB in determining whether a firm is owned and controlled by one or more disadvantaged individuals and whether such firm is eligible to be certified as a DBE. Certification procedures are outlined in OAR 123 Division 200 (See Exhibit O).

A. Burdens of Proof (§ 26.61)

The firm seeking certification has the burden of demonstrating to OMWESB, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership, and control. OMWESB will make determinations concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole. A record is defined as all material submitted to OMWESB by the firm seeking certification and any other information available to OMWESB in performing its investigation. For a DBE Certification Application see Exhibit Q.

B. Business Size (§ 26.65)

The firm's size (including its affiliates), currently cannot exceed the following limits:

Type of Firm	Average Annual Gross Receipt for three preceding years
General Construction Contractor	\$22.41 Million
Special Trade Contractor	\$14.0 Million
Architectural	\$7.0 Million
Engineering,	\$14.0 Million

General Construction Contractors standards are established by Section 106(c) of the STURAA and reviewed by the US Department of Transportation. All other standards are those established by the Small Business Administration (SBA) and apply to all government subcontractors. See 13 CFR, Part 121. A firm that exceeds these gross receipts levels or employee numbers is not eligible for certification, even if minorities or women hold controlling interest. The overall DBE size cap is adjusted annually.

C. Disadvantaged Group Membership (§ 26.63)

For the purposes of certification, OMWESB will presume that members of the groups identified herein are socially and economically disadvantaged unless the presumption is rebutted. These individuals do not have the burden to prove they are socially and economically disadvantaged. However, if OMWESB has reason to question whether an individual is a member of such a group, OMWESB will require the individual to produce appropriate documentation of group membership. In making a group membership determination, OMWESB will consider: 1) whether or not the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification; and 2) whether the person is regarded as a member of the group by the relevant community. If OMWESB determines an individual is not a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis using the guidelines in 49 CFR part 26, Appendix E. OMWESB's decision concerning membership in a designated group will be subject to certification appeals procedures.

Individuals who are United States citizens (or lawfully admitted residents) who are also members of the following designated groups as defined in 13 CFR 124.103(b) will be presumed to be socially and economically disadvantaged:

Black Americans	Origins in any black racial groups of Africa.
Hispanic Americans	Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin regardless of race.
Asian-Pacific Americans	Origins in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the US Trust Territories of the Pacific, and the Northern Marianas.
Native Americans	American Indians, Eskimos, Aleuts or Native Hawaiians.
Subcontinent Asian Americans	Origins in India, Pakistan, Sri Lanka, Bhutan, the Maldives Islands, Nepal or Bangladesh.
Women	

D. Small Business Administration 8(a) Program

There is currently no agreement in effect to accept 8(a) certification for the DBE Program. Businesses certified in any of the Small Business Administration programs (8(a), SDB, HubZone, etc.) must apply for DBE certification by submitting the uniform application and all requested supporting documents.

E. Individual Determination of Social and Economic Disadvantage (§ 26.67)

If an individual is not a member of a designated group, s/he must demonstrate that s/he is socially and economically disadvantaged in accordance with 49 CFR Part 26, Appendix E.

(1) Social Disadvantage

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. OMWESB will consider any relevant evidence in its assessment of this element, and in every case OMWESB will consider education, employment, and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(2) Economic Disadvantage

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or a similar line of business who are not socially disadvantaged. In considering diminished capital and credit opportunities, OMWESB will examine all factors relating to personal financial condition including personal income for the past two years, personal net worth, and the fair market value of all assets applicable. OMWESB will also consider the financial condition of applicants compared to financial profiles of small businesses in the same primary industry classification(s) or similar lines of business.

F. Independence (§ 26.71)

49 CFR 26.71 (b) states, in part:

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

G. Ownership (§ 26.69)

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals and must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risk and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, of arrangements. OMWESB will consider factors such as whether the disadvantaged individual made contributions of capital and or expertise that were substantial, and that the disadvantaged individual's business interests were not gifted or transferred from a non-DBE firm or non-disadvantaged individual related to the applicant DBE, or acquired through the improper counting of marital assets.

The specific considerations for determining ownership by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by USDOT from time to time.

H. Control (§ 26.71)

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, OMWESB will scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. OMWESB will consider present or recent employer/employee relationships, the firm's relationship with prime contractors, and factors related to the independence of a potential DBE firm. Further, OMWESB will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially or economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. OMWESB will consider factors such as the position, managerial role, time commitment and competence in the types of work the firm conducts of the disadvantaged individual owners, the delegation of authority to non-disadvantaged individuals, licensing, and the firm's capacity to do the work.

OMWESB will consider whether any non-disadvantaged owner or individual is disproportionately responsible for directing the daily operations of the firm.

The specific considerations for determining control by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by OMWESB from time-to-time.

I. Other Considerations

(1) Commercially Useful Function

OMWESB will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function pertains solely to counting toward DBE goals any participation of firms which have already been certified as DBEs.

(2) Pattern of Conduct

In making certification decisions, OMWESB will consider whether a firm has exhibited a pattern indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(3) Present Circumstances

OMWESB will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individuals at some time in the past. If the firm currently meets ownership and control standards OMWESB will not refuse to certify a firm solely on the basis that it is a newly formed entity.

(4) DBE Cooperation

OMWESB expects DBE firms and firms seeking DBE certification to cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

(5) For-Profit Firms

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(6) Subsidiaries and Affiliates

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided by this policy, a firm that is not owned by such individuals, but instead is owned by another firm, even a DBE firm, cannot be an eligible DBE.

(7) Pre-qualification

OMWESB will not require a DBE firm to be pre-qualified as a condition for certification unless ODOT requires all firms that participate in its contracts and subcontracts to be pre-qualified.

(8) Tribal Organizations

OMWESB recognizes that a firm owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.

J. Statement of Personal Net Worth (PNW)

Each socially and economically disadvantaged individual owner must demonstrate that s/he does not have a personal net worth exceeding \$1.32 million. In determining net worth, OMWESB will exclude an individual's ownership interest in the applicant firm and the individual's equity in his/her primary residence. If the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage based on group membership or the individual's demonstration of economic disadvantage will be conclusively rebutted without any further formal proceedings.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for the purpose of DBE eligibility unless and until s/he makes an individual showing of social and or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual will no longer be eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

A verification of Personal Net Worth will be included with the application form submitted to OMWESB for consideration. Personal financial information shall be considered confidential and shall not be disclosed without the express written consent of the applicant.

K. Joint Venture

A joint venture is eligible if the DBE partner of the joint venture is a state certified DBE and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares accordingly in the ownership, control, management responsibilities, risks, and profits of the joint venture.

Joint venture applications are certified by the ODOT on a project by project basis. Applications shall be submitted to the ODOT Procurement Office and the Office of Civil Rights will evaluate and determine compliance in accordance with established procedures.

6.4 Application Procedure

ODOT will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. All firms seeking certification with ODOT are required to submit a notarized application to the OMWESB.

ODOT will require potential DBEs to complete and submit to OMWESB the appropriate application form included in 49 CFR part 26, and any supporting documents necessary to verify eligibility. OMWESB will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths or in the form of an un-sworn declaration executed under penalty of perjury of the laws of the United States. OMWESB will review all information in the form prior to making a decision about the DBE eligibility of the firm.

The applicant will also be required to submit the following:

- A. A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and
- B. A signed, notarized statement of personal net worth with supporting documentation.

OMWESB will not impose an application fee for firms to participate in the DBE certification process.

OMWESB will safeguard from disclosure, to unauthorized persons, all information gathered as part of the certification process that may be regarded as proprietary or their confidential business information, consistent with applicable federal, state and local laws.

Failure of the applicant to provide all necessary information and documentation as required shall constitute the basis for denying certification.

A. Supplemental Application Verification Documents

(1) Sole Proprietor

- (a) Individual federal tax returns for the last three- (3) years (Schedule C, Profit and Loss Statement).
- (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (c) Rental/lease agreements, and professional service agreements (for office space, equipment, related to the business).
- (d) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver's license, etc.)
- (e) Company profile including a brief description of the firm's product or services.
- (f) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
- (g) Certification letter from the individual's home state, if the business is not located in Oregon.
- (h) Assumed Business Name registration, if applicable.

(2) Limited Liability Company (LLC)

- (a) Federal tax returns for the last three- (3) years.
- (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
- (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
- (e) Company profile including a brief description of the firm's product or services.
- (f) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

- (g) Articles of Organization.
 - (h) Operating Agreement.
 - (i) Minutes of the most recent company meetings affecting ownership, management, and control.
 - (j) Certification letter from the state of incorporation, if the business is not located in Oregon.
- (3) Corporations
- (a) Corporate federal tax returns for the last three- (3) years (first two pages).
 - (b) Resumes of majority owner(s) and key employees if any. Please include previous work experience with dates and specific duties within this business.
 - (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
 - (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
 - (e) Company profile including a brief description of your firm's product or services.
 - (f) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
 - (g) Articles of Incorporation AND amendments, including date approved by State.
 - (h) Minutes of the most recent corporate meetings affecting ownership, management, and control.
 - (i) Corporation by-laws.
 - (j) Copy of stock certificates issued (not specimen copy, both sides).
 - (k) Stock transfer ledger.
 - (l) Certification letter from your home state, if your business is not located in Oregon.
- (4) Partnerships
- (a) Federal, partnership tax returns for the last three- (3) years (first two pages).
 - (b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
 - (c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.) related to your business.
 - (d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
 - (e) Company profile including a brief description of your firm's product or services.
 - (f) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

- (g) Partnership agreement including buy-out rights and profit sharing agreement (signed and dated).
 - (h) Certification letter from your home state, if your business is not located in Oregon.
- (5) New Business (less than one year)
- (a) Canceled checks relating to the business; OR
 - (b) An invoice with paid receipt or canceled checks relating to the business.
 - (c) One reference for whom work has been performed or to whom goods or materials have been sold during the prior year.
 - (d) One reference from whom goods or materials have been purchased for the business or from whom major equipment has been purchased or leased.
 - (e) Copies of office space and equipment lease agreements.

As a new business, the firm may not have federal tax information available at this time. Ensure that the firm has indicated that they are a new business on the application.

B. On-site Reviews

OMWESB schedules an on-site review when it is satisfied that applications and supporting documentation have been received and are complete. In addition, whenever possible, the Certification Specialist will visit an active jobsite and interview the DBE owner and employees to determine independence and control.

- (1) The Certification Specialist assigned the DBE file will schedule an on-site interview with each DBE applicant firm requesting to bid on FHWA, FAA and FTA projects.
- (2) The OMWESB Certification Specialist will review the application prior to the on-site interview to assist in developing any additional questions that will help clarify the applicant's status.
- (3) The OMWESB Certification Specialist normally contacts the DBE applicant firm, by phone, to advise of and arrange for, the review. If the DBE applicant is unable to be contacted by phone or mail, or delays the date of the review without good reason, or fails to appear for the scheduled review, efforts are made to reschedule the on-site review. Continued failure of the applicant to schedule and attend an on-site and jobsite interview may be deemed a failure to cooperate, and can lead to certification denial.
- (4) The OMWESB Certification Specialist conducts on-site reviews by inquiring of and obtaining information as follows:
 - (a) Firm name.
 - (b) Directions to firm's location.
 - (c) Principal contact and phone number.
 - (d) Organizational structure.
 - (e) Persons interviewed and position with firm.
 - (f) Firm's primary line of business.
 - (g) Identities of the firm's board of directors.
 - (h) Frequency that board meets.
 - (i) Firm's bonding/insurance company.

- (j) Current bonding limitation
- (k) Determine:
 - (i) Firm's bond/insurance agent
 - (ii) Firm's attorney
 - (iii) Firm's CPA
 - (iv) Firm's banker(s)
- (l) Number of permanent employees.
- (m) Who approves:
 - (i) Hiring and dismissal of employees
 - (ii) In this person's absence
- (n) Employee recruiting.
- (o) Supervisors employed.
- (p) Explanation of supervisor's duties and responsibilities.
- (q) Determine how the disadvantaged owner acquired interest in the firm.
- (r) Who contributes capital, equipment, real estate, inventory, etc.
- (s) Technical assistance provided by others.
- (t) Total hours per day and days per week DBE owner actively engaged in firm's business.
- (u) DBE owner's daily duties.
- (v) Is DBE owner employed elsewhere - if yes, where?
- (w) Who makes major business decisions (i.e. expansion, diversifying)?
- (x) Marketing of the firm, (how and who's responsible).
- (y) Dispersal of funds, (how and under whose approval).
- (z) Signatures on payroll and other checks, (who signs).
- (aa) Any loan negotiation/arrangement information (who does this).
- (bb) Firm's line of credit and it's limits.
- (cc) Contracts currently active.
- (dd) Business tax return information (who prepares, who signs).
- (ee) Description of firm's bidding/estimating process.
- (ff) Description of firm's process of monitoring job costs.
- (gg) Description of methods used to resolve field problems.
- (hh) Who negotiates contract disputes.
- (ii) Explanation of relationships with other firms who might provide;
 - (i) Manpower/personnel
 - (ii) Equipment
 - (iii) Office space
 - (iv) Yard or warehouse space
- (jj) Information which might show the DBE owner was employed by any board member or officer of this firm.
- (kk) Average length of time firm's products are stored/inventoried.
- (ll) Salaries paid to management personnel.
- (mm) Explanation of spouse's relationship to firm - other firms.
- (nn) Review firm's business plan (goals for future growth, etc.).

C. On-Site Review Observations and Special Considerations

- (1) Upon request of OMWESB, the ODOT DBE Program Manager may assist in the on-site review. When conducting on-site reviews, Certification Specialists actively observe various activities and items to

aid in determining certification eligibility. In addition to visiting the business office, the Certification Specialist will accompany the applicant to a job site, if one is available, and observe the work in progress. If the applicant firm is out-of-state, OMWESB requests a copy of the on-site review document from the state in which the applicant's principal place of business is located. Activities and items include:

- (a) Signing.
- (b) Vehicles: Number, Company Logo.
- (c) Office arrangements.
- (d) Nearby businesses.
- (e) Workers present.
- (f) Who dominates conversation.
- (g) Availability of firm to clients.
- (h) Who appears to have expertise and control.
- (i) Photos of business and principal.
- (j) Other relevant items and activities.

(2) Certification Specialists also observe closely those situations where:

- (a) The disadvantaged business enterprise in which the woman's male relative (husband, brother, father) has extensive experience in the same line of work and may also be actively involved in the applicant's firm.
- (b) The disadvantaged business enterprise in which a minority owner has close ties with a prime contractor, e.g. previously worked only for that contractor, or a prime contractor is 49 percent owner of the DBE firm.

(3) The on-site review form is signed and dated by the Certification Specialist conducting the review.

D. Criteria for Evaluating an Applicant's Eligibility

(1) Business Size

To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. OMWESB will apply current SBA business size standards found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform in USDOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including affiliates) has had average annual gross receipts as defined by SBA regulations over the firm's previous three (3) fiscal years in excess of \$22.41 Million, as adjusted for inflation from time to time by USDOT.

(2) Social and Economic Disadvantage Status

Once an applicant firm is determined to be a small business, social and economic disadvantage is to be reviewed if the firm is applying for disadvantaged business status. Guidance for determining social and economic disadvantage is provided under Appendix E to 49 CFR 26. Social and Economic disadvantaged status may be conferred upon applicant firms in instances where the firm:

- (a) Has been granted 8(a) certification by the Small Business Administration.

- (b) Is owned and controlled by one or more women or a member(s) of one of the minority groups designated in 49 CFR 26.67.
- (c) Is owned and controlled by an individual(s) who, although not a woman or member of one of the minority groups designated in 49 CFR 26, establishes social and economic disadvantage based on identification with another group.

(3) Minority Group Membership

In cases where the applicant claims social and economic disadvantage based on membership in one of the designated minority groups, the state shall ensure that the applicant's minority status is clearly established. Once minority status is established, the applicant shall be rebuttably presumed to be socially and economically disadvantaged. This means that the applicant's social and economic disadvantage status is established as a fact until the presumption is effectively rebutted. However, the state is expected to require even members of the designated minority groups to prove their disadvantaged status if reasonable evidence to rebut the presumption is available to the state.

(4) Individual Determinations

Finally, persons who are not members of one of the designated minority groups may request the state to make an individual determination that they are socially and economically disadvantaged. The state may, at its discretion, make these individual determinations consistent with the guidance in 49 CFR 23, Subpart D Appendix C, or refer such cases to the SBA where they may apply for 8(a) status. For example:

- (a) Does the individual have a chronic physical handicap, which has restricted and still restricts professional acceptance, employment or business mobility? If so, explain fully.
- (b) Has the individual's cultural or social background resulted in chronic underemployment, limited educational opportunities or personal deprivation? If so, explain fully.
- (c) Has the individual experienced low-income status because of apparent discriminatory practices? If so, explain precisely how such discriminatory practices led to your having limited access to needed technical, financial, or management resources and equal opportunity in obtaining contracts.

Outline other specific and pertinent examples of chronic social and economic disadvantage not covered above.

(5) Rebuttable Presumption of Disadvantage Status

The presumption of social and economic disadvantage operating in favor of the designated minority groups may be rebutted at any time before or after certification.

If the state comes into possession of credible information that would lead a reasonable person to believe that a minority individual is not socially or economically disadvantaged, the presumption is no longer operative and the burden of proof shifts back to the applicant. The existence of the presumption does not mean that the certifying agency must ignore obvious evidence that any applicant for certification is not socially or economically disadvantaged unless a third party brings a challenge. It means, rather, that in the absence of such evidence, it must presume

that a minority or woman applicant is socially and economically disadvantaged, and cannot require the applicant to prove it.

Practically speaking, the existence of clear evidence that an otherwise qualified minority applicant is not disadvantaged puts such applicant in a position similar to a challenged minority or an individual claiming disadvantaged who is not a member of a designated group. If the state tentatively determines, on its own initiative based on such clear evidence, that the owner of the firm is not socially and economically disadvantaged, the state should ensure that the owner(s) are afforded procedural safeguards equivalent to that provided in the case of third party challenges.

(6) Ownership and Control

Once business size and social and economic disadvantage status has been determined, ownership and control must be evaluated to ensure that firms applying for DBE certification are in fact independent firms, owned and controlled by one or more socially and economically disadvantaged individuals. Similarly, firms applying for DBE certification on the basis of female ownership must be evaluated to ensure that they are independent and are owned and controlled by women. An independent firm is one the viability of which does not depend on its relationship with another firm or firms.

Under operational control, the applicant must have an overall understanding of and managerial and technical competence and experience directly related to the business operations.

To determine managerial control, the applicant must demonstrate that they possess the power to direct or cause the direction of the management and policies of the firm.

Applicant firms jointly owned by husband and wife will be treated the same irrespective of whether the state has a community property law. The OMWESB will determine eligibility by ensuring that the firm is in fact at least 51 percent owned by the woman and the firm's management and daily business operations are controlled by the woman who owns it. In reaching that conclusion, the OMWESB will determine whether the firm meets the eligibility standards contained in 49 CFR 26.

(7) Personal Net Worth

An individual, whose personal net worth exceeds \$1,320,000, excluding personal residence and interest in the business, shall not be deemed to be economically disadvantaged.

The OMWESB will obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification. These statements will be accompanied by appropriate supporting documentation.

E. Out-of-State Applications submitted to OMWESB

When an out-of-state firm currently certified in its home state applies for DBE certification in Oregon, the Office of Minority, Women & Emerging Small Business (OMWESB), will accept the out-of-state's certification and certify the firm providing the firm submits the following information:

- (1) Completed Uniform DBE Application (or copy from home state UCP if recent - within six months)
- (2) Current DBE certification letter from your home state (must include NAICS codes in which you are certified);
- (3) Home state UCP contact information (phone, email) for requesting additional DBE documentation as necessary;
- (4) Business federal tax returns for previous three years, all schedules;
- (5) Current Personal Financial Statement (signed/dated);
- (6) Individual federal tax returns for each owner claiming disadvantaged status for previous three years, all schedules;
- (7) Licenses/registrations to do business in Oregon (Construction Contractor's Board, Engineering, Electrical, Plumbing, Trucking, Foreign Business Registration with the Oregon Secretary of State, etc.)
- (8) Driver's license for all disadvantaged owners
- (9) OMWESB will:
 - (a) Administrative Specialist will enter the out-of-state DBE application as received on dbase and assign to Cert. Specialist for review
 - (b) Certification Specialist will contact the home state within seven days of receipt of the DBE application to request a copy of the onsite report and verification of current DBE certification status
 - (c) Certification Specialist will provide notice to the applicant regarding certification no later than thirty days from the date on which all information listed above is received
 - (d) Upon receiving new out-of-state DBE applications or certification review forms, OMWESB Certification Specialists will check the Ineligibility Determination Online Database (DOCR) to see if the business has been included on the list.
 - (e) OMWESB staff will regularly check the DOCR regarding DBE decertifications. If OMWESB receives information regarding the decertification of a currently certified out-of-state DBE (from DOCR), Admin. Specialist will pull the certified file and assign to a Cert. Specialist who will contact the home state for copies of their decertification determination report and decertification notice.
 - (f) When decertification information is received from the home state UCP, OMWESB will notify the applicant in writing and initiate decertification in Oregon based on the home state's determination.
 - (g) OUT-OF-STATE REQUESTS FOR DBE INFORMATION:
 - (h) OMWESB staff will email copies of the onsite visit reports, any updates to site visit review and any evaluation of a certified DBE based on the site visit to the out-of-state UCP within seven days of receiving the written request.

F. Certification Duration

Once OMWESB certifies a firm as an eligible DBE, it shall remain certified unless and until its certification is removed. OMWESB will not require DBEs to reapply

for certification as a condition of continuing to participate in the program, but may conduct periodic certification reviews. The DBEs will have to reapply and be re-certified if their certification is removed. OMWESB will update the DBE Database regularly with new certification actions.

(1) Notification of Change in Circumstances

During a DBE firm's certification period, it must inform OMWESB, in writing, of any changes in circumstances affecting the firm's ability to meet disadvantaged status, business size, ownership, control requirements, or any material change in the information provided in the certification application process, and attach supporting documentation describing in detail the nature of such changes. Such notice of change from the DBE firm must take the form of an unsworn declaration executed under penalty of perjury. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate under the regulations.

(2) Annual Affidavit of Continuing Eligibility

Every firm certified by OMWESB as a DBE must provide to OMWESB every year on the anniversary of the date of its initial certification, an affidavit sworn to by the firm's owner(s) before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of the Regulations or any material changes to the information provided in its original application, or the last notification of a change circumstance. The affidavit shall specifically affirm that the DBE continues to meet SBA size criteria and the overall gross receipt cap, documenting this affirmation with supporting documentation of the DBE size and gross receipts. If the DBE fails to provide this information in a timely manner, it will be deemed to have failed to cooperate with the requirements of the regulations.

G. Denials and Reapplication Procedures

If a firm is denied certification, it will be required to wait at least twelve (12) months before it may reapply for DBE certification with OMWESB. The time period for reapplication begins to run on the date the explanation for denial of certification is received by the applicant firm. The firm may file an appeal for any denial of certification to USDOT in accordance with section 6.4.9 of this document.

H. Removal Procedures (De-certification/Denial)

A DBE firm which no longer meets the eligibility standards (or misrepresented information during the certification process) will be removed from the DBE program by having its certification removed. A firm shall remain certified during the removal process.

(1) Initiating Removal

(a) Any person may file a written complaint that alleges a currently certified firm is ineligible. A written complaint must specify reasons for the allegation and include any information or

arguments supporting the allegation. A general allegation or anonymous complaint will not be accepted. The Manager of OMWESB will review the complaint, all certification records and other available information in order to determine whether there is reasonable cause to believe that the firm is ineligible.

- (b) Authority-Initiated Proceedings - The Manager of OMWESB will review all notifications of change in circumstance or other information that comes to OMWESB's attention, including notification of removal actions of other USDOT recipients, to determine whether there is reasonable cause to believe a currently certified firm is ineligible. When the OMWESB determines that a firm is not eligible for certification, the OMWESB will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant firm upon request.
- (c) USDOT Directive to Initiate Proceeding - A USDOT agency may direct ODOT to initiate removal proceedings, because it has determined the information in the certification records or other information available provides reasonable cause to believe that a firm is ineligible. The USDOT agency must provide ODOT and the firm a notice setting forth reasons for the directive, including relevant documentation.
- (d) Reasonable Cause to Believe a Firm is Ineligible - If the Manager of OMWESB determines that there is not reasonable cause to believe the that firm fails to meet eligibility requirements, s/he shall provide a written notice to the firm and the complainant stating the reasons therefore in such cases where a complaint was filed with OMWESB.
- (e) A DBE may be decertified at any time if the Manager of OMWESB determines that there is reasonable cause to believe the firm no longer meets the eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The OMWESB may also deny certification to any DBE applicant that does not meet eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The following steps shall be taken:
 - (i) Written Notice - In the case of de-certification, the OMWESB shall issue a Notice of Intent to Decertify the DBE 21 days prior to the date of the de-certification, and indicate the specific reasons for the de-certification. In the case of denial of initial certification or re-certification, the DBE or applicant will be notified in writing of the denial and the reasons therefore. The notice shall also include notification that the firm has the right to a contested case hearing.
 - (ii) (b) Contested Case Hearing - In either a de-certification or denial of initial certification or re-certification of a DBE, the DBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for contested case hearing. If the DBE or applicant requests a contested case hearing, the de-certification or denial of re-certification will

be stayed pending the issuance of a final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. If no written request for a contested case hearing is received by the OMWESB within the 21-day period, the de-certification/denial will be final.

- (iii) Decision - Following the contested case hearing, the proposed order issued by the hearings officer will be forwarded to the manager of the OMWESB for issuance of the final order.
- (iv) Notice of Decision - The OMWESB will provide the firm written notice of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. Any applicant or DBE that believes it has been wrongly de-certified or denied certification or re-certification by the OMWESB may also file an appeal in writing, signed and dated, with the USDOT in accordance with section 6.4.9 of this document. OMWESB will send copies of the notice to the complainant in an ineligibility complaint or the concerned USDOT agency that directed ODOT to initiate the proceeding.
- (v) Effects of Removal of Eligibility. - The OMWESB and ODOT OCR will take the following actions upon the removal of a firm's certification:
 1. OMWESB will update the DBE Database and notify ODOT OCR of the removal.
 2. ODOT OCR will determine whether the decertified firm is currently participating in an ODOT contract or has been included in a recent bid;
 3. If a contract that has not been executed before the removal notice involves a commitment by the prime contractor to use the ineligible firm or by ODOT to use the ineligible firm as a DBE prime contractor, the ineligible firm cannot be counted toward the contract goal or the overall annual goal. The Regulations require that ODOT direct a prime contractor to meet the contract goal with another eligible DBE subcontractor or to demonstrate that it has made sufficient good faith efforts to do so;
 4. If a subcontract has been executed by a prime contractor or a prime contract has been executed by ODOT with the ineligible firm before the removal notice, the prime contractor or ODOT may continue to use the firm on the contract and may continue to count the firm's participation toward the contract goal. ODOT shall not count that portion of the ineligible firm's performance remaining on the contract or subcontract after the removal notice toward the overall annual goals; and
 5. If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, ODOT will continue to

count its participation on that contract toward overall and contract goals.

I. Certification Appeal to USDOT

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the USDOT. A complainant in an ineligibility complaint to the OMWESB may appeal to USDOT if OMWESB does not find reasonable cause to propose removing the firm's eligibility. Pending the USDOT appeal decision, OMWESB's decision shall remain in effect. All Appeals shall be sent to:

U.S. Department of Transportation
Office of Civil Rights
400 Seventh Street, SW
Room 2401
Washington, D.C. 20590

All requests for an appeal must be sent, in writing, within ninety (90) days of OMWESB's final decision on the matter. The USDOT may accept an appeal filed later than 90 days after the date of the decision if it determines that there was good cause for the late filing of the appeal. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other USDOT recipients. If the appeal is from a third party; the party will be requested to provide the same information.

The manager shall provide a copy of a complete, well-organized administrative record within twenty (20) days of a request from USDOT. USDOT will make its decision based solely on the entire administrative record without conducting a hearing. The firm and complainants shall have access to any information reviewed by USDOT in accordance with public records and privacy laws.

USDOT will affirm OMWESB's decision if it determines based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions concerning certification. USDOT shall send written notification of its decision including the reasons therefore to OMWESB, the firm and any complainant. If OMWESB's decision is reversed, the manager will take all appropriate actions to conform with the USDOT's decision immediately upon receiving the written notice. USDOT decisions are administratively final, and are not subject to petitions for reconsideration.

J. ODOT Commodity Code/North American Industry Codes (NAICS)

During the certification process for firms indicating a desire to participate in federal aid highway or FTA-funded contracts, a DBE will be assigned a commodity/NAICS code by OMWESB which is indicative of the type of work the firm has shown that it can perform at the time the certification is requested. ODOT uses the commodity/NAICS codes in its process of evaluating projects to identify work which may be accomplished by DBEs.

7. MONITORING AND RECORD KEEPING

7.1 Civil Rights Compliance Tracking System (CRCT)

The Civil Rights Compliance Tracking system (CRCT) is a database system built in-house to store and organize data and track compliance. This system provides tracking and reporting capabilities on companies who bid or respond on projects and the tracking of actual utilization. It also captures amounts paid to all contractors, generates the Federal semi annual report and tracks Equal Employment Opportunity (EEO) and On-the-Job Training (OJT) information as well.

A. Bidders List

ODOT must create and maintain a bidder's list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on USDOT assisted projects. ODOT uses the [Subcontractor Solicitation and Utilization Report](#) (SSUR form) to gather the bidders list information, including firm name, status as DBE or non-DBE and whether the identified firm was utilized in the bidder's submitted bid. All bidders or proposers are required to submit the SSUR form within 10 days of the bid opening or contractor selection. ODOT will conduct periodic surveys or studies to gather bidders list information on annual gross receipts and firm addresses.

Contract/Vendor information is validated with the Subcontractor Solicitation and Utilization Report provided by all bidders within 10 calendar days of the bid opening. If contractor or vendor information provided is not contained in the CRCT system, a profile sheet may be forwarded to the firm in question and the tracking system will be updated when the information is received.

B. Monitoring Payments to DBEs

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of ODOT or USDOT. This reporting requirement is also extended to any certified DBE subcontractor.

ODOT will maintain a running tally of payments actually made to DBE firms and require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments. Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

Prime contractor payment information is imported into CRCT from ODOT's Contract Payment System (CPS) database. Subcontract payment data, provided by prime contractors in the [Summary Report of Subcontractor's Paid](#), is entered by the OCR Field Coordinators into CRCT.

ODOT may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to verify that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation. The audit will also verify whether a CUF report has been completed for DBE subcontractors.

7.2 Reporting to USDOT

As required by 49 CFR 26.11(a) ODOT will submit the DBE Uniform Report of DBE Awards or Commitments and Payments on a semiannual basis to FHWA and FTA. The report to FTA will be submitted through TEAM-Web.

ODOT will continue to maintain and report DBE participation, overall annual goal setting methods, and other requested information to USDOT as directed by FHWA and FTA. Statistical data will be maintained and reported on a semi-annual basis to USDOT agencies reflecting the DBE participation on ODOT's federally-assisted procurement activities. These reports will provide DBE participation information on ODOT's race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally assisted procurement activities.

7.3 Contract Remedies

ODOT will monitor compliance on federally assisted contracts with the requirements of the regulations and the DBE Program. ODOT may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retention, imposition of liquidated damages, and termination of the contract in whole or in part.

For further information, see section 5.5 of this document.

EXHIBIT A

[Home Page](#) > [Executive Branch](#) > [Code of Federal Regulations](#) > [Electronic Code of Federal Regulations](#)



e-CFR Data is current as of June 26, 2012

Title 49: Transportation

[Browse Previous](#) | [Browse Next](#)

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

Section Contents

Subpart A—General

[§ 23.1 What are the objectives of this part?](#)

[§ 23.3 What do the terms used in this part mean?](#)

[§ 23.5 To whom does this part apply?](#)

[§ 23.7 Program reviews.](#)

[§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?](#)

[§ 23.11 What compliance and enforcement provisions are used under this part?](#)

[§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?](#)

Subpart B—ACDBE Programs

[§ 23.21 Who must submit an ACDBE program to FAA, and when?](#)

[§ 23.23 What administrative provisions must be in a recipient's ACDBE program?](#)

[§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?](#)

[§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?](#)

[§ 23.29 What monitoring and compliance procedures must recipients follow?](#)

Subpart C—Certification and Eligibility of ACDBEs

[§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?](#)

[§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?](#)

[§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?](#)

[§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?](#)

[§ 23.39 What other certification requirements apply in the case of ACDBEs?](#)

Subpart D—Goals, Good Faith Efforts, and Counting

[§ 23.41 What is the basic overall goal requirement for recipients?](#)

[§ 23.43 What are the consultation requirements in the development of recipients' overall goals?](#)

[§ 23.45 What are the requirements for submitting overall goal information to the FAA?](#)

[§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?](#)

[§ 23.49 What is the base for a recipient's goal for car rentals?](#)

[§ 23.51 How are a recipient's overall goals expressed and calculated?](#)

[§ 23.53 How do car rental companies count ACDBE participation toward their goals?](#)

[§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?](#)

[§ 23.57 What happens if a recipient falls short of meeting its overall goals?](#)

[§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?](#)

[§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?](#)

Subpart E—Other Provisions

[§ 23.71 Does a recipient have to change existing concession agreements?](#)

- [§ 23.73 What requirements apply to privately-owned or leased terminal buildings?](#)
[§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?](#)
[§ 23.77 Does this part preempt local requirements?](#)
[§ 23.79 Does this part permit recipients to use local geographic preferences?](#)
[Appendix A to Part 23—Uniform Report of ACDBE Participation](#)

Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

Source: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

Subpart A—General

[↑ top](#)

§ 23.1 What are the objectives of this part?

[↑ top](#)

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

§ 23.3 What do the terms used in this part mean?

[↑ top](#)

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR §121.103(f)) do not apply to this part.

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or
 - (iii) An identity of interest between or among parties exists such that affiliation may be found.
- (2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain

repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this subpart, a business is not considered to be “located on the airport” solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be “located on the airport,” however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all

passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area that now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

(1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) The individual's equity in his or her primary place of residence; and (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (<http://www.ntis.gov/naics>).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of §23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.* , "You must do XYZ" means that recipients must do XYZ).

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007; 77 FR 36931, June 20, 2012]

§ 23.5 To whom does this part apply?

[↑ top](#)

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

§ 23.7 Program reviews.

[↑ top](#)

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

[↑ top](#)

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) “The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements.”

§ 23.11 What compliance and enforcement provisions are used under this part?

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The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

[↑ top](#)

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

Subpart B—ACDBE Programs

[↑ top](#)

§ 23.21 Who must submit an ACDBE program to FAA, and when?

[↑ top](#)

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in §23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

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(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (*e.g.*, a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

[↑ top](#)

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

- (1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;
- (2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;
- (3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs
- (4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;
- (5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;
- (6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and
- (7) Establishing a business development program (*see* part 26, §26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

- (1) Establishing concession-specific goals for particular concession opportunities.
 - (i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.
 - (ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.
 - (iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.
 - (iv) The administrative procedures applicable to contract goals in part 26, §26.51–53, apply with respect to concession-specific goals.
- (2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.
- (3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.
- (f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.
- (g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

[↑ top](#)

- (a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.
- (b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

[↑ top](#)

[Link to an amendment published at 77 FR 36931, June 20, 2012.](#)

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management

contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

Subpart C—Certification and Eligibility of ACDBEs

[↑ top](#)

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

[↑ top](#)

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (*see* part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

[↑ top](#)

[Link to an amendment published at 77 FR 36931, June 20, 2012.](#)

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$52.47 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: \$1 billion in assets;

(2) Car rental companies: \$69.97 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) Pay telephones: 1,500 employees;

(4) Automobile dealers: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a *Federal Register* document informing the public of each adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

[↑ top](#)

The personal net worth standard used in determining eligibility for purposes of this part is \$1.32 million. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

[↑ top](#)

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

[↑ top](#)

(a) The provisions of part 26, §§26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

- (1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
- (2) Analyze the ownership of stock of the firm, if it is a corporation;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;
- (5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, §26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in §23.33.

(c) For purposes of this part, the term prime contractor in part 26, §26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, §26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by §26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (*e.g.* , in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, §26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

- (1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.
- (2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.
- (3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Subpart D—Goals, Good Faith Efforts, and Counting

[↑ top](#)

§ 23.41 What is the basic overall goal requirement for recipients?

[↑ top](#)

- (a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.
- (b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.
- (c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.
- (d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.
- (e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

[↑ top](#)

- (a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.
- (b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

[↑ top](#)

[Link to an amendment published at 77 FR 36931, June 20, 2012.](#)

- (a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:
- (1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.
 - (2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.
 - (3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.
- (b) You must then submit new goals every three years after the date that applies to you.
- (c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.
- (d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.
- (e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (*see* §23.51(d)(5))

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious “split,” as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.* , the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral “split.” The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval at least six months before executing the concession agreement for the new concession opportunity.

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

[↑ top](#)

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

§ 23.49 What is the base for a recipient's goal for car rentals?

[↑ top](#)

Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§ 23.51 How are a recipient's overall goals expressed and calculated?

[↑ top](#)

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§23.47–23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a “level playing field” for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in §23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the “relative availability of ACDBEs”).

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, <http://www.census.gov/epcd/cbp/view/cbpview.html> .) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another recipient.* If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (*see* 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* §§26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.* , with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

[↑ top](#)

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of any conflict between these two sections, §23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

[↑ top](#)

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

[↑ top](#)

[Link to an amendment published at 77 FR 36931, June 20, 2012.](#)

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures,

§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

[↑ top](#)

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

[↑ top](#)

You must not use quotas or set-asides for ACDBE participation in your program.

Subpart E—Other Provisions

[↑ top](#)

§ 23.71 Does a recipient have to change existing concession agreements?

[↑ top](#)

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

§ 23.73 What requirements apply to privately-owned or leased terminal buildings?

[↑ top](#)

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

[↑ top](#)

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:

(i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (*e.g.*, location, storage and delivery space, “back-of-the-house facilities” such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE’s chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

§ 23.77 Does this part preempt local requirements?

[↑ top](#)

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

§ 23.79 Does this part permit recipients to use local geographic preferences?

[↑ top](#)

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (*e.g.*, your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

Appendix A to Part 23—Uniform Report of ACDBE Participation

[↑ top](#)

Instructions for Uniform Report of ACDBE Participation

1. Insert name of airport receiving FAA financial assistance and AIP number.
2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.
- 3a. Provide the annual reporting period to which the report pertains (*e.g.*, October 2005–September 2006).
- 3b. Provide the date on which the report is submitted to FAA.
4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.
5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: “Prime Concessions” are concessions who have a direct relationship with the airport (*e.g.*, a company who has a lease agreement directly with the airport to operate a concession). A “subconcession” is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A “management contract” is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (*e.g.*, manage the parking facilities). “Goods/services” refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7-9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5-6 and/or 8-9, the requested information about that firm should be attached in response to this item.

Uniform Report of ACDBE Participation

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXXX	XXXXXXXX					XXXXXX
Goods/Services							
Totals							

6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXXX	XXXXXXXX				XXXXXX	
Goods/Services							
Totals							

7. Current Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

8. Car rental Cumulative ACDBE	A Total	B Total	C Total to	D Total to	E RC to	F RN to	G % of

participation	dollars (everyone)	number (everyone)	ACDBEs (dollars)	ACDBEs (number)	ACDBEs (dollars)	ACDBEs (dollars)	dollars to ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
9. Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
10. Cumulative ACDBE participation by race/gender	A Black Americans	B Hispanic Americans	C Asian-Pacific Americans	D Asian-Indian Americans	E Native Americans	F Non-minority Women	G Other	H Totals
Car Rental								
Non-Car Rental								
Totals								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

[Browse Previous](#) | [Browse Next](#)

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e-CFR Data is current as of June 26, 2012

Title 49: Transportation

[Browse Previous](#) | [Browse Next](#)

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Section Contents

Subpart A—General

- [§ 26.1 What are the objectives of this part?](#)
- [§ 26.3 To whom does this part apply?](#)
- [§ 26.5 What do the terms used in this part mean?](#)
- [§ 26.7 What discriminatory actions are forbidden?](#)
- [§ 26.9 How does the Department issue guidance and interpretations under this part?](#)
- [§ 26.11 What records do recipients keep and report?](#)
- [§ 26.13 What assurances must recipients and contractors make?](#)
- [§ 26.15 How can recipients apply for exemptions or waivers?](#)

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- [§ 26.21 Who must have a DBE program?](#)
- [§ 26.23 What is the requirement for a policy statement?](#)
- [§ 26.25 What is the requirement for a liaison officer?](#)
- [§ 26.27 What efforts must recipients make concerning DBE financial institutions?](#)
- [§ 26.29 What prompt payment mechanisms must recipients have?](#)
- [§ 26.31 What information must you include in your DBE directory?](#)
- [§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?](#)
- [§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?](#)
- [§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?](#)
- [§ 26.39 Fostering small business participation.](#)

Subpart C—Goals, Good Faith Efforts, and Counting

- [§ 26.41 What is the role of the statutory 10 percent goal in this program?](#)
- [§ 26.43 Can recipients use set-asides or quotas as part of this program?](#)
- [§ 26.45 How do recipients set overall goals?](#)
- [§ 26.47 Can recipients be penalized for failing to meet overall goals?](#)
- [§ 26.49 How are overall goals established for transit vehicle manufacturers?](#)
- [§ 26.51 What means do recipients use to meet overall goals?](#)
- [§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?](#)
- [§ 26.55 How is DBE participation counted toward goals?](#)

Subpart D—Certification Standards

- [§ 26.61 How are burdens of proof allocated in the certification process?](#)
- [§ 26.63 What rules govern group membership determinations?](#)
- [§ 26.65 What rules govern business size determinations?](#)
- [§ 26.67 What rules determine social and economic disadvantage?](#)
- [§ 26.69 What rules govern determinations of ownership?](#)
- [§ 26.71 What rules govern determinations concerning control?](#)

[§ 26.73 What are other rules affecting certification?](#)

Subpart E—Certification Procedures

[§ 26.81 What are the requirements for Unified Certification Programs?](#)

[§ 26.83 What procedures do recipients follow in making certification decisions?](#)

[§ 26.85 Interstate certification.](#)

[§ 26.86 What rules govern recipients' denials of initial requests for certification?](#)

[§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?](#)

[§ 26.89 What is the process for certification appeals to the Department of Transportation?](#)

[§ 26.91 What actions do recipients take following DOT certification appeal decisions?](#)

Subpart F—Compliance and Enforcement

[§ 26.101 What compliance procedures apply to recipients?](#)

[§ 26.103 What enforcement actions apply in FHWA and FTA programs?](#)

[§ 26.105 What enforcement actions apply in FAA programs?](#)

[§ 26.107 What enforcement actions apply to firms participating in the DBE program?](#)

[§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?](#)

[Appendix A to Part 26—Guidance Concerning Good Faith Efforts](#)

[Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form](#)

[Appendix C to Part 26—DBE Business Development Program Guidelines](#)

[Appendix D to Part 26—Mentor-Protégé Program Guidelines](#)

[Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage](#)

[Appendix F to Part 26—Uniform Certification Application Form](#)

Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

Source: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

[↑ top](#)

§ 26.1 What are the objectives of this part?

[↑ top](#)

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's **DBE** program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the **DBE** program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

[↑ top](#)

(a) If you are a recipient of any of the following types of funds, this part applies to you:

- (1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of

1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA–21), Pub. L. 105–178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102–240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA–21, Pub. L. 105–178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

[↑ top](#)

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the **DBE** program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or **DBE** means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (**DBE**) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a **DBE** goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a **DBE** firm or applicant for **DBE** certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

Joint venture means an association of a **DBE** firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the **DBE** is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating **DBE** firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for **DBE** program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to **DBE** firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
- (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
- (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (vi) Women;
- (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011]

§ 26.7 What discriminatory actions are forbidden?

[↑ top](#)

- (a) You must 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 this part on the basis of race, color, sex, or national origin.
- (b) In administering your **DBE** program, you must 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 program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

[↑ top](#)

- (a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.
- (b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

[↑ top](#)

- (a) You must transmit the Uniform Report of **DBE** Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.
- (b) You must continue to provide data about your **DBE** program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of **DBE** and non-**DBE** contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about **DBE** and non-**DBE** contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a **DBE** or non-**DBE**;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of **DBE** and non-**DBE** contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011]

§ 26.13 What assurances must recipients and contractors make?

[↑ top](#)

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

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its **DBE** program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's **DBE** program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for 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.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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 the recipient deems appropriate.

§ 26.15 How can recipients apply for exemptions or waivers?

[↑ top](#)

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a **DBE** program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in

developing your proposal, including consultation with the **DBE** community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

- (i) There is a reasonable basis to conclude that you could achieve a level of **DBE** participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;
- (ii) Conditions in your jurisdiction are appropriate for implementing the proposal;
- (iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and
- (iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your **DBE** program as provided in your proposal, subject to the following conditions:

- (i) **DBE** eligibility is determined as provided in subparts D and E of this part, and **DBE** participation is counted as provided in §26.49;
- (ii) Your level of **DBE** participation continues to be consistent with the objectives of this part;
- (iii) There is a reasonable limitation on the duration of your modified program; and
- (iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for **DBE Programs for Federally-Assisted Contracting**

[↑ top](#)

§ 26.21 Who must have a **DBE program?**

[↑ top](#)

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a **DBE** program meeting the requirements of this part:

- (1) All FHWA recipients receiving funds authorized by a statute to which this part applies;
- (2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;
- (3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a **DBE** program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your **DBE** programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your **DBE** program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

[↑ top](#)

You must issue a signed and dated policy statement that expresses your commitment to your **DBE** program, states its objectives, and outlines

responsibilities for its implementation. You must circulate the statement throughout your organization and to the **DBE** and non-**DBE** business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

[↑ top](#)

You must have a **DBE** liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning **DBE** program matters. The liaison officer shall be responsible for implementing all aspects of your **DBE** program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning **DBE** financial institutions?

[↑ top](#)

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

[↑ top](#)

(a) You must establish, as part of your **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.

(b) You must 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. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may 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.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient 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.

(d) Your **DBE** program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your **DBE** program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What information must you include in your **DBE** directory?

[↑ top](#)

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a **DBE**.

(b) You must list 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. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

[↑ top](#)

(a) If you determine that **DBE** firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-**DBE** firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your **DBE** program.

§ 26.35 What role do business development and mentor-protégé programs have in the **DBE** program?

[↑ top](#)

(a) You may or, if an operating administration directs you to, you must establish a **DBE** business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the **DBE** program. You may require a **DBE** firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the **DBE** program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another **DBE** or non-**DBE** firm is the principal source of business development assistance to a **DBE** firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award **DBE** credit to a non-**DBE** mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award **DBE** credit to a non-**DBE** mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your **DBE** program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

[↑ top](#)

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your **DBE** program.

(b) Your **DBE** program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other

purposes (*e.g.*, close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual **DBE** attainments (*e.g.*, payments actually made to **DBE** firms), including a means of comparing these attainments to commitments. In your reports of **DBE** participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

§ 26.39 Fostering small business participation.

[↑ top](#)

(a) Your **DBE** program must include an 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.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your **DBE** program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, \$1 million).

(2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) requiring 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.

(3) On prime contracts not having **DBE** contract goals, requiring 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.

(4) Identifying 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.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your **DBE** program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

[↑ top](#)

§ 26.41 What is the role of the statutory 10 percent goal in this program?

[↑ top](#)

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

[↑ top](#)

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

[↑ top](#)

- (a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for **DBE** participation in your DOT-assisted contracts.
- (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing **DBE** program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.
- (b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of **DBE** participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past **DBE** participation rates in your program without reference to the relative availability of DBEs in your market.
- (c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.
- (1) *Use **DBE** Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your **DBE** directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.
- (2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of **DBE** bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.
- (3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.
- (4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
- (5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.
- (d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.
- (1) There are many types of evidence that must be considered when adjusting the base figure. These include:
- (i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
- (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
- (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.
- (2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
- (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;
- (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.
- (3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing **DBE** program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- (e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal

as follows:

- (1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.
- (2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.
- (3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.
 - (i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.
 - (ii) A project goal covers the entire length of the project to which it applies.
 - (iii) The project goal should include a projection of the **DBE** participation anticipated to be obtained during each fiscal year covered by the project goal.
 - (iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.
- (f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.
 - (ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.
 - (iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.
 - (iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.
 - (v) You may make, for informational purposes, projections of your expected **DBE** achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.
- (2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.
- (3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* 26.51(c)).
- (4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.
- (5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:
 - (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
 - (ii) Avoid imposing undue burdens on non-DBEs.
- (6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.
- (7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.
- (g) In establishing an overall goal, you must provide for public participation. This public participation must include:
 - (1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

[↑ top](#)

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your **DBE** participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved **DBE** program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your 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, you must 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 your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your **DBE** program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of **DBE** Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve **DBE** awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.49 How are overall goals established for transit vehicle manufacturers?

[↑ top](#)

- (a) If you are an FTA recipient, you must require in your **DBE** program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.
- (b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.
- (c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.
- (d) As a recipient, you may, with FTA approval, establish project-specific goals for **DBE** participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.
- (e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

 [top](#)

- (a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating **DBE** participation. Race-neutral **DBE** participation includes any time a **DBE** wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a **DBE** goal, or even if there is a **DBE** goal, wins a subcontract from a prime contractor that did not consider its **DBE** status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).
- (b) Race-neutral means include, but are not limited to, the following:
- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
 - (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
 - (3) Providing technical assistance and other services;
 - (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
 - (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
 - (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
 - (7) Establishing a program to assist new, start-up firms, particularly in fields in which **DBE** participation has historically been low;
 - (8) Ensuring distribution of your **DBE** directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
 - (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.
- (d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.
- (e) The following provisions apply to the use of contract goals:
- (1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your **DBE** program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more **DBE** participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your **DBE** awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious **DBE** contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent **DBE** participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of **DBE** goals. By September, you have already obtained 11 percent **DBE** participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent **DBE** participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the **DBE** participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The **DBE** participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional **DBE** participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your **DBE** participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain **DBE** participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent **DBE** participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent **DBE** participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on **DBE** achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

[↑ top](#)

- (a) When you have established a **DBE** contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:
- (1) Documents that it has obtained enough **DBE** participation to meet the goal; or
 - (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough **DBE** participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.
- (b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:
- (1) Award of the contract will be conditioned on meeting the requirements of this section;
 - (2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of **DBE** firms that will participate in the contract;
 - (ii) A description of the work that each **DBE** will perform;
 - (iii) The dollar amount of the participation of each **DBE** firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a **DBE** subcontractor whose participation it submits to meet a contract goal;
 - (v) Written confirmation from the **DBE** that it is participating in the contract as provided in the prime contractor's commitment; and
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and
 - (3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—
 - (i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
 - (ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.
 - (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
 - (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
 - (1) As part of this reconsideration, the bidder/offeror must 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.
 - (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
 - (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (4) You must 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.
 - (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
 - (e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.
 - (f)
 - (1) You must require that a prime contractor not terminate a **DBE** subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute **DBE** firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a **DBE** subcontractor with its own forces or those of an affiliate, a non-**DBE** firm, or with another **DBE** firm.
 - (2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the **DBE** firm.
 - (3) For purposes of this paragraph, good cause includes the following circumstances:

- (i) The listed **DBE** subcontractor fails or refuses to execute a written contract;
 - (ii) 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;
 - (iii) The listed **DBE** subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
 - (iv) The listed **DBE** subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (v) The listed **DBE** subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (vi) You have determined that the listed **DBE** subcontractor is not a responsible contractor;
 - (vii) The listed **DBE** subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
 - (viii) The listed **DBE** is ineligible to receive **DBE** credit for the type of work required;
 - (ix) A **DBE** owner dies or becomes disabled with the result that the listed **DBE** contractor is unable to complete its work on the contract;
 - (x) Other documented good cause that you determine 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.
- (4) Before transmitting to you 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 you, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the **DBE** five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (*e.g.*, safety), you may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for **DBE** firms put forward by offerors in negotiated procurements.
- (g) When a **DBE** subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another **DBE** subcontractor to substitute for the original **DBE**. These good faith efforts shall be directed at finding another **DBE** to perform at least the same amount of work under the contract as the **DBE** that was terminated, to the extent needed to meet the contract goal you established for the procurement.
- (h) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.
- (i) You must apply the requirements of this section to **DBE** bidders/offerors for prime contracts. In determining whether a **DBE** bidder/offeror for a prime contract has met a contract goal, you count the work the **DBE** has committed to performing with its own forces as well as the work that it has committed to be performed by **DBE** subcontractors and **DBE** suppliers.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.55 How is **DBE** participation counted toward goals?

[↑ top](#)

- (a) When a **DBE** participates in a contract, you count only the value of the work actually performed by the **DBE** toward **DBE** goals.
- (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the **DBE**'s own forces. Include the cost of supplies and materials obtained by the **DBE** for the work of the contract, including supplies purchased or equipment leased by the **DBE** (except supplies and equipment the **DBE** subcontractor purchases or leases from the prime contractor or its affiliate).
- (2) Count the entire amount of fees or commissions charged by a **DBE** firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward **DBE** goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- (3) When a **DBE** subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward **DBE** goals only if the **DBE**'s subcontractor is itself a **DBE**. Work that a **DBE** subcontracts to a non-**DBE** firm does not count toward **DBE** goals.

(b) When a **DBE** performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the **DBE** performs with its own forces toward **DBE** goals.

(c) Count expenditures to a **DBE** contractor toward **DBE** goals only if the **DBE** is performing a commercially useful function on that contract.

(1) A **DBE** performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the **DBE** must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a **DBE** is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the **DBE** credit claimed for its performance of the work, and other relevant factors.

(2) A **DBE** does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of **DBE** participation. In determining whether a **DBE** is such an extra participant, you must examine similar transactions, particularly those in which **DBEs** do not participate.

(3) If a **DBE** does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the **DBE** subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a **DBE** is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the **DBE** may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a **DBE** trucking company is performing a commercially useful function:

(1) The **DBE** must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting **DBE** goals.

(2) The **DBE** must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The **DBE** receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The **DBE** may lease trucks from another **DBE** firm, including an owner-operator who is certified as a **DBE**. The **DBE** who leases trucks from another **DBE** receives credit for the total value of the transportation services the lessee **DBE** provides on the contract.

(5) The **DBE** may also lease trucks from a non-**DBE** firm, including from an owner-operator. The **DBE** who leases trucks from a non-**DBE** is entitled to credit for the total value of transportation services provided by non-**DBE** lessees not to exceed the value of transportation services provided by **DBE**-owned trucks on the contract. Additional participation by non-**DBE** lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): **DBE** Firm X uses two of its own trucks on a contract. It leases two trucks from **DBE** Firm Y and six trucks from non-**DBE** Firm Z. **DBE** credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, **DBE** credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the **DBE** has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the **DBE**, so long as the lease gives the **DBE** absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the **DBE**.

(e) Count expenditures with **DBEs** for materials or supplies toward **DBE** goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a **DBE** manufacturer, count 100 percent of the cost of the materials or supplies toward **DBE** goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a **DBE** regular dealer, count 60 percent of the cost of the materials or supplies toward **DBE** goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which

the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a **DBE** which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward **DBE** goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward **DBE** goals, however.

(f) If a firm is not currently certified as a **DBE** in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any **DBE** goals, except as provided for in §26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a **DBE** subcontractor 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**.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

[↑ top](#)

§ 26.61 How are burdens of proof allocated in the certification process?

[↑ top](#)

(a) In determining whether to certify a firm as eligible to participate as a **DBE**, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

[↑ top](#)

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

[↑ top](#)

(a) To be an eligible **DBE**, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible **DBE** in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

[↑ top](#)

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a **DBE**, whose ownership and control are relied upon for **DBE** certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any

certification appeal proceeding under section 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.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of **DBE** eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for **DBE** certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for **DBE** certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

§ 26.69 What rules govern determinations of ownership?

[↑ top](#)

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible **DBE**, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
- (1) The owner's expertise must be—
 - (i) In a specialized field;
 - (ii) Of outstanding quality;
 - (iii) In areas critical to the firm's operations;
 - (iv) Indispensable to the firm's potential success;
 - (v) Specific to the type of work the firm performs; and
 - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—
- (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-**DBE** firm who is—
- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - (ii) Involved in the same or a similar line of business; or
 - (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—
- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a **DBE**; and
 - (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- (i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
 - (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for **DBE** certification.
- (j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—
- (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;
 - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing

agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

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- (a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.
- (b) Only an independent business may be certified as a **DBE**. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- (1) In determining whether a potential **DBE** is an independent business, you must scrutinize relationships with non-**DBE** firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
- (2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential **DBE** and non-**DBE** firms or persons associated with non-**DBE** firms compromise the independence of the potential **DBE** firm.
- (3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential **DBE** firm.
- (4) In considering factors related to the independence of a potential **DBE** firm, you must consider the consistency of relationships between the potential **DBE** and non-**DBE** firms with normal industry practice.
- (c) A **DBE** firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).
- (d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
- (2) In a corporation, disadvantaged owners must control the board of directors.
- (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- (e) Individuals who are not socially and economically disadvantaged may be involved in a **DBE** firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
- (g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential **DBE** firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you

must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a **DBE**. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a **DBE**; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a **DBE**, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward **DBE** goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011]

§ 26.73 What are other rules affecting certification?

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(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward **DBE** goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a **DBE**.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the **DBE** program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) **DBE** firms and firms seeking **DBE** certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible **DBE** firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a **DBE** firm—cannot be an eligible **DBE**.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent,

so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a **DBE** firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a **DBE** if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your **DBE** Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

Subpart E—Certification Procedures

[↑ top](#)

§ 26.81 What are the requirements for Unified Certification Programs?

[↑ top](#)

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and

guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT **DBE** Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a **DBE** certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a **DBE**.

(d) A UCP is not required to process an application for certification from a firm having its principal 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. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified **DBE** directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

§ 26.83 What procedures do recipients follow in making certification decisions?

[↑ top](#)

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a **DBE** firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including contracts it has received and work it has completed;
- (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the **DBE** program and its preferred locations for performing the work, if any;
- (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the **DBE** program;
- (7) Require potential DBEs to complete and submit an appropriate application form, unless the potential **DBE** is an SBA certified firm applying pursuant to the DOT/SBA MOU.
 - (i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your **DBE** program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.
 - (ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
 - (iii) You must review all information on the form prior to making a decision about the eligibility of the firm.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.
- (e) [Reserved]
- (f) Subject to the approval of the concerned operating administration as part of your **DBE** program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- (g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- (h) Once you have certified a **DBE**, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may conduct a certification review of a certified **DBE** firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If you have grounds to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.
 - (i) If you are a **DBE**, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
 - (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
 - (2) You must attach supporting documentation describing in detail the nature of such changes.
 - (3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).
 - (j) If you are a **DBE**, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).
 - (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your **DBE** program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may

appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for **DBE** certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011]

§ 26.85 Interstate certification.

[↑ top](#)

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for **DBE** certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (*see* §26.83(j)) and any notices of changes (*see* §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a **DBE** firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified **DBE** in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (*see* §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (*see* §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

- (iv) The State law of State B requires a result different from that of the State law of State A.
- (v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
- (3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.
- (4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.
- (i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for **DBE** eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
- (ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.
- (iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.
- (iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
- (v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
- (vi) The firm's application for certification is stayed pending the outcome of this process.
- (vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.
- (e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- (f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:
- (i) The name of the firm;
- (ii) The name(s) of the firm's owner(s);
- (iii) The type and date of the action;
- (iv) The reason for the action.
- (2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.
- (3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified **DBE** firm or applicant.
- (g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

[↑ top](#)

- (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a **DBE**, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

- (b) When you deny **DBE** certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.
- (c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your **DBE** program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.
- (d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a **DBE's** eligibility?

[↑ top](#)

- (a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in §26.109(b).
- (2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
- (3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- (b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.
- (c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
- (2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
- (3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.
- (d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
- (1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
- (2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.
- (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
- (e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- (1) Your method of implementing this requirement must be made part of your **DBE** program.
- (2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your **DBE** program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.* , an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible **DBE** during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a **DBE** prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible **DBE** firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its **DBE** goal for the firm's work. In this case, or in a case where you have let a prime contract to the **DBE** that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the **DBE's** ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

[↑ top](#)

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

[↑ top](#)

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

[↑ top](#)

§ 26.101 What compliance procedures apply to recipients?

[↑ top](#)

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

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

[↑ top](#)

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120,

days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

[↑ top](#)

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

[↑ top](#)

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a **DBE** on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet **DBE** contract goals or other **DBE** program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported **DBE** has been certified by a recipient. Such certification does not preclude the Department from determining that the purported **DBE**, or another firm that has used or attempted to use it to meet **DBE** goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the **DBE** program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a **DBE** in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

[↑ top](#)

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the **DBE** program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the **DBE** program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must 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, you 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.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's **DBE** program (including, but not limited to, recipients, **DBE** firms and applicants for **DBE** certification, complainants and appellants, and contractors using **DBE** firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to **DBE** firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses **DBE** firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

Appendix A to Part 26—Guidance Concerning Good Faith Efforts



[top](#)

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by **DBE** firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a **DBE** goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient **DBE** participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain **DBE** participation sufficient to meet the **DBE** contract goal. Mere *pro forma* efforts are not good faith efforts to meet the **DBE** contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.* , obtain a specified amount of **DBE** participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain **DBE** participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the **DBE** goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate **DBE** participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to **DBE** subcontractors and suppliers and to select those portions of the work or material needs consistent with the available **DBE** subcontractors and suppliers, so as to facilitate **DBE** participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including **DBE** subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract **DBE** goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average **DBE** participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26—Uniform Report of **DBE Awards or Commitments and Payments Form**

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

- 1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
- 2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
- 3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
- 4. State the date of submission of this report.
- 5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
- 6. Name of the recipient.
- 7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.

- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
- 15. Name of the Authorized Representative preparing this form.
- 16. Signature of the Authorized Representative.
- 17. Phone number of the Authorized Representative.
- 18. Fax number of the Authorized Representative.

****Submit your completed report to your Regional or Division Office.**

[↑ top](#)

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UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please refer to the instructions sheet for directions on filling out this form

1. Submitted to (check only one): FHWA FAA FTA--Vendor Number: _____

2. AIP Numbers (FAA Recipients Only): _____

3. Federal fiscal year in which reporting period falls: FY _____

4. Date This Report Submitted: _____

5. Reporting Period: Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30)

6. Name of Recipient: _____

7. Annual DBE Goal: _____ % Race Conscious Goal _____ % Race Neutral Goal _____ % OVERALL Goal _____ %

	Race Conscious Goal		Race Neutral Goal		OVERALL Goal		I		
	A	B	C	D	E	F		G	H
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during the reporting period.)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8. Prime contracts awarded this period									
9. Subcontracts awarded/committed this period									
TOTAL									
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Not-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A		B		C		D		E
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	Total Dollar Value of DBE Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation			
12. Race Conscious									
13. Race Neutral									
14. Totals									

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[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix C to Part 26—DBE Business Development Program Guidelines

[top](#)

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

- (A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.
- (B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.
- (C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is

submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the **DBE** program.

(D) The business plan should contain at least the following:

- (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
- (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of **DBE** participation.
- (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
- (4) Estimates of contract awards from the **DBE** program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
- (5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

- (1) The aggregate dollar value of contracts to be sought under the **DBE** program, reflecting compliance with the business plan;
- (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of **DBE** participation;
- (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
- (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of **DBE** participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;

(5) A positive comparison of the **DBE's** business and financial profile with profiles of non-**DBE** businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a **DBE** firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a **DBE** firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

 [top](#)

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the **DBE** program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

 [top](#)

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their **DBE** programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the **DBE** program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26—Uniform Certification Application Form

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION
NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices - not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."
NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and
 - (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

[↑ top](#)

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- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

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- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
 - (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
 - (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered

"Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

- E. Financial Information**
- (1) **Banking Information**
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) **Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ___ / ___ / ___ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?
 Yes, on ___ / ___ / ___ No
 If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:	(5) Fax #:			
(6) E-mail:		(7) Website <i>(if have one)</i> :			
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State:	Zip:	
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State:	Zip:	

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID <i>(if any)</i> :
(3) This firm was established on ___ / ___ / ___		(4) I/We have owned this firm since: ___ / ___ / ___
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees: Full-time Part-time Total

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		
City: State: Zip:		
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black	<input type="checkbox"/> Hispanic <input type="checkbox"/> Native American
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Subcontinent Asian
	<input type="checkbox"/> Other (specify) _____	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:			
Number	Percentage	Class	Date acquired
			Method Acquired
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
 Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:
 (a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

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AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

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I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

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[68 FR 35559, June 16, 2003]

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EXHIBIT B

MINORITY OWNED FINANCIAL INSTITUTIONS and THEIR BRANCHES as of March 31, 2012
 SORTED by STATE - (Assets and Deposits in Thousands)

Bank/Branch Name	Location	ID	Chr Cls	Ent Type	BHC Name	Min Cd	Minority Ownership Dt	Established Dt	Assets (Thous \$)	Deposits (Thous \$)
ALAMERICA BK	BIRMINGHAM, AL	2877484	207	NMB	ALAMERICA BANCCORP	1	2002-10-24	2000-01-28	32,590	20,796
COMMONWEALTH NB	MOBILE, AL	578237	117	NAT	CNB BC	1	1976-02-19	1976-02-19	68,050	62,056
CRICHTON BR	MOBILE, AL	2627812					1999-07-09	1997-11-01		
DOWNTOWN BR	MOBILE, AL	4231521					2009-05-21	2009-05-21		
FIRST TUSKEGEE BK	TUSKEGEE, AL	1897168	207	NMB	BIRTHRIGHT	1	1991-10-12	1991-10-12	65,234	59,510
DOWNTOWN BR	MONTGOMERY, AL	2400378					1996-01-09	1996-01-09		
EASTDALE CIRCLE BR	MONTGOMERY, AL	3600009					2007-04-30	2007-04-30		
SLOCOMB NB	SLOCOMB, AL	244037	117	NAT	SNB HOLD	5	2002-01-02	1905-10-01	73,630	64,205
DOTHAN BR	DOTHAN, AL	3642399					2007-03-12	2007-03-12		
AMERICAN PLUS BK NA	ARCADIA, CA	3623110	117	NAT		20	2008-11-01	2007-08-08	237,559	189,903
ROWLAND HGTS BR	ROWLAND HEIGHTS, CA	4094173					2009-08-15	2009-08-15		
AMERICAS UNITED BK	GLENDALE, CA	3488980	207	NMB		10	2007-01-11	2006-11-06	104,464	78,200
ASIAN PACIFIC NB	SAN GABRIEL, CA	1462986	117	NAT		20	2004-02-03	1990-07-25	53,226	44,628
ROWLAND HGTS RGNL OFF	ROWLAND HEIGHTS, CA	2641854					2004-02-03	1997-12-03		
BANK OF THE ORIENT	SAN FRANCISCO, CA	777366	217	SMB	ORIENT BC	20	1992-09-22	1971-03-17	566,408	471,820
BANK OF THE ORIENT XIAMEN BR	XIAMEN, 0	778961					1992-09-22	1987-04-17		
HONOLULU DOWNTOWN BR	HONOLULU, HI	2988746					2000-10-14	2000-10-14		
HONOLULU MANOA BR	HONOLULU, HI	967064					2000-10-14	1982-05-10		
HONOLULU MAUNAKEA BR	HONOLULU, HI	3967382					2009-09-21	2009-09-21		
MILLBRAE BR	MILLBRAE, CA	2961682					1999-11-15	1999-11-15		
OAKLAND BR	OAKLAND, CA	779463					1992-09-22	1981-02-05		
SAN FRANCISCO CHINATOWN BR	SAN FRANCISCO, CA	776864					1992-09-22	1972-12-01		
SAN FRANCISCO CLEMENT & 6TH	SAN FRANCISCO, CA	210368					1992-09-22	1975-02-26		
SAN FRANCISCO IRVING ST BR	SAN FRANCISCO, CA	2543556					1997-02-24	1997-02-24		
BANK OF WHITTIER NA	WHITTIER, CA	209362	117	NAT	GREATER PACIFIC BSHRS	20	2011-01-19	1982-12-20	50,911	42,176
RICHARDSON BR	RICHARDSON, TX	4395067					2011-06-23	2011-06-23		
BORREGO SPRINGS BK NA	LA MESA, CA	962265	117	NAT	AMERICAN HERITAGE HOLD	30	1996-12-24	1982-11-01	141,459	123,670
BORREGO SPRINGS BR	BORREGO SPRINGS, CA	3512045					1997-05-05	1997-05-05		
LA MESA BR	LA MESA, CA	3682911					2007-06-30	2007-06-30		
VIEJAS BR	ALPINE, CA	2704722					1998-05-13	1998-05-13		
CIRCLE BK	NOVATO, CA	1436473	207	NMB		5	2006-11-15	1990-01-22	318,341	239,295
CORTE MADERA BR	CORTE MADERA, CA	4276513					2011-04-07	2011-04-07		
NOE VALLEY BR	SAN FRANCISCO, CA	4185110					2009-06-30	2009-06-30		
PETALUMA BR	PETALUMA, CA	3522062					2006-11-15	2005-06-30		
SAN RAFAEL BR	SAN RAFAEL, CA	3522053					2006-11-15	2005-06-30		
SANTA ROSA BR	SANTA ROSA, CA	3553758					2006-12-13	2006-12-13		
COMMUNITY CMRC BK	CLAREMONT, CA	299868	207	NMB		10	2002-07-31	1976-10-01	299,168	230,921
MONTEREY PARK BR	MONTEREY PARK, CA	3516119					2005-06-30	2005-06-30		
OCEANSIDE BR	OCEANSIDE, CA	577865					2002-07-31	1980-09-01		

OLYMPIC BR	LOS ANGELES, CA	1369049			2002-07-31	1985-04-01		
TUSTIN BR	TUSTIN, CA	515661			2002-07-31	1978-06-01		
WOODLAND HILLS BR	WOODLAND HILLS, CA	392862			2002-07-31	1979-11-01		
EASTERN INTL BK	LOS ANGELES, CA	206772	207 NMB		20	1990-06-29	1985-02-27	129,832
LOS ANGELES BR	ALHAMBRA, CA	1462445				1990-06-29	1990-06-29	114,078
EVERGREEN INTL BK	LONG BEACH, CA	3598218	207 NMB		20	2007-06-01	2007-05-07	42,464
FIRST CHOICE BK	CERRITOS, CA	3374878	207 NMB		20	2006-10-18	2005-08-18	260,397
ALHAMBRA BR	ALHAMBRA, CA	4201681				2009-12-31	2009-12-31	225,658
FIRST GEN BK	ROWLAND HEIGHTS, CA	3386264	207 NMB		20	2009-03-12	2005-10-13	515,708
ARCADIA BR	ARCADIA, CA	3628450				2009-03-12	2006-06-30	454,943
IRVINE BR	IRVINE, CA	4224260				2010-12-08	2010-12-08	
ROSEMEAD BR	ROSEMEAD, CA	613464				2011-08-24	1982-12-09	
SAN GABRIEL BR	SAN GABRIEL, CA	4363002				2011-06-30	2011-06-30	
METRO UNITED BK	SAN DIEGO, CA	1864601	207 NMB	METROCORP BSHRS	20	1993-07-23	1991-05-15	395,981
IRVINE BR	IRVINE, CA	2607878				1997-05-28	1997-05-28	333,997
LOS ANGELES BR	ALHAMBRA, CA	2818599				1999-06-01	1999-06-01	
ROWLAND HGTS BR	ROWLAND HEIGHTS, CA	3683084				2007-06-30	2007-06-30	
SAN DIEGO CLAIRMONT MESA BR	SAN DIEGO, CA	3629998				2006-06-30	2006-06-30	
SAN FRANCISCO VAN NESS BR	SAN FRANCISCO, CA	3683093				2007-06-30	2007-06-30	
SAN MATEO NORTHERN CA BR	SAN MATEO, CA	3683105				2007-06-30	2007-06-30	
METROPOLITAN BK	OAKLAND, CA	534466	207 NMB	MET FC	20	1986-06-09	1983-09-01	134,343
OAKLAND CHINATOWN BR	OAKLAND, CA	2607823				1997-07-01	1997-07-01	112,737
SAN FRANCISCO BR	SAN FRANCISCO, CA	2099370				1993-09-18	1993-09-18	
SAN JOSE BR	SAN JOSE, CA	1189014				1988-05-02	1988-05-02	
MISSION NB	SAN FRANCISCO, CA	519360	117 NAT	MNB HC	20	1982-02-16	1982-02-16	183,826
BERKELEY ELMWOOD BR	BERKELEY, CA	1451878				1990-05-19	1990-05-19	160,270
SAN FRANCISCO MISSION ST BR	SAN FRANCISCO, CA	3243769				2004-02-09	2004-02-09	
NEW OMNI BK NA	ALHAMBRA, CA	300063	117 NAT		20	1980-04-11	1980-02-12	178,202
ALHAMBRA BR	ALHAMBRA, CA	3630387				2006-06-30	2006-06-30	152,357
MONTEREY PARK BR	MONTEREY PARK, CA	1892686				1991-09-13	1991-09-13	
ROWLAND HGTS BR	ROWLAND HEIGHTS, CA	302160				1983-04-12	1983-04-12	
PACIFIC ALLI BK	ROSEMEAD, CA	3546862	207 NMB		20	2007-10-04	2006-12-27	120,653
PAN AMER BK	LOS ANGELES, CA	641364	207 NMB		10	1971-07-01	1971-07-01	39,786
LOS ANGELES WHITTIER BR	LOS ANGELES, CA	751160				1981-11-02	1968-04-22	35,078
SANTA ANA MAIN BR	SANTA ANA, CA	1922855				1981-11-02	1981-11-02	
PREMIER BUS BK	LOS ANGELES, CA	3459346	207 NMB		20	2006-11-15	2006-07-25	108,899
PROAMERICA BK	LOS ANGELES, CA	3462074	207 NMB		10	2007-01-11	2006-11-07	92,936
SAEHAN BK	LOS ANGELES, CA	1865680	207 NMB	SAEHAN BC	20	2004-02-26	1991-06-12	128,204
FULLERTON BR	BUENA PARK, CA	2757764				2004-02-26	1998-11-12	105,209
GARDENA BR	TORRANCE, CA	3473276				2006-06-26	2006-06-26	
IRVINE BR	IRVINE, CA	3590669				2007-01-22	2007-01-22	
LA CRESCENTA BR	LA CRESCENTA, CA	2950499				2004-02-26	2000-09-12	
LOS ANGELES DOWNTOWN BR	LOS ANGELES, CA	2455211				2004-02-26	1996-04-12	
LOS ANGELES WILSHIRE BR	LOS ANGELES, CA	3167427				2004-02-26	2001-11-13	
OLYMPIC BR	LOS ANGELES, CA	3778364				2008-04-29	2008-04-29	

ROWLAND HGTS BR	ROWLAND HEIGHTS, CA	2950501				2004-02-26	2000-09-22		
TORRANCE BR	TORRANCE, CA	3322329				2005-01-20	2005-01-20		
WESTERN OFF	LOS ANGELES, CA	2896328				2004-02-26	2000-03-13		
SAIGON NB	WESTMINSTER, CA	3394380	117 NAT		20	2006-10-10	2005-11-30	56,146	43,247
NATIVE AMER BK NA	DENVER, CO	664653	117 NAT	NATIVE AMER BC CO	30	1987-07-27	1987-07-27	69,571	60,998
BROWNING BR	BROWNING, MT	3591769				2007-04-02	2007-04-02		
COMMUNITY'S BK	BRIDGEPORT, CT	2914905	207 NMB	URBAN FNCL GRP	1	2005-03-22	2001-02-24	33,598	27,420
CONTINENTAL NB OF MIAMI	MIAMI, FL	837037	117 NAT	CONTINENTAL BC	10	1974-05-10	1974-05-10	311,822	280,639
BIRD RD BR	MIAMI, FL	1157161				1986-09-22	1986-09-22		
DOWNTOWN BR	MIAMI, FL	988331				1981-09-08	1981-09-08		
HIALEAH BR	HIALEAH, FL	927732				1984-09-05	1984-09-05		
NAVARRO/HIALEAH GDNS BR	HIALEAH, FL	4394994				2011-06-08	2011-06-08		
SWEETWATER BR	SWEETWATER, FL	836535				1982-01-26	1982-01-26		
WALMART/HIALEAH GDNS BR	HIALEAH GARDENS, FL	3139910				2000-10-20	2000-10-20		
GREAT EASTERN BK OF FL	MIAMI, FL	2145389	207 NMB		20	2006-09-15	1994-01-20	51,444	45,202
NORTH MIAMI BEACH BR	NORTH MAIMI BEACH, FL	3643800				2007-01-01	2007-01-01		
INTERAMERICAN BK FSB	MIAMI, FL	221775	107 FSB		10	1988-12-31	1976-01-01	247,193	223,731
HIALEAH BR	HIALEAH, FL	4168328				2008-06-30	2008-06-30		
KENDALL BR	MIAMI, FL	4168319				2008-06-30	2008-06-30		
WEST MIAMI BR	WEST MIAMI, FL	4168300				2008-06-30	2008-06-30		
WEST PALM BEACH BR	PALM SPRINGS, FL	4168298				2008-06-30	2008-06-30		
URBAN TR BK	LAKE MARY, FL	408875	107 FSB		1	1988-12-31	1962-01-01	616,200	497,562
GIBSONTON WAL-MART BR	GIBSONTON, FL	4171467				2008-06-30	2008-06-30		
GOLDENROD WAL-MART BR	ORLANDO, FL	4171476				2008-06-30	2008-06-30		
GOLDWYN BR	ORLANDO, FL	3463008				2006-08-09	2006-08-09		
JACKSONVILLE BEACH WAL-MART	JACKSONVILLE BEACH, FL	4171403				2008-06-30	2008-06-30		
JACKSONVILLE MAIN WAL-MART B	JACKSONVILLE, FL	4171421				2008-06-30	2008-06-30		
KIRKMAN WAL-MART BR	ORLANDO, FL	4171449				2008-06-30	2008-06-30		
KISSIMMEE WAL-MART BR	KISSIMMEE, FL	4171289				2008-06-30	2008-06-30		
LEESBURG WAL-MART BR	LEESBURG, FL	4171319				2008-06-30	2008-06-30		
ORANGE PARK WAL-MART BR	ORANGE PARK, FL	4171355				2008-06-30	2008-06-30		
PALMETTO WAL-MART BR	PALMETTO, FL	4171560				2008-06-30	2008-06-30		
PORT ORANGE WAL-MART BR	PORT ORANGE, FL	4171524				2008-06-30	2008-06-30		
SAINT CLOUD WAL-MART BR	SAINT CLOUD, FL	4171337				2008-06-30	2008-06-30		
SANFORD WAL-MART BR	SANFORD, FL	4171373				2008-06-30	2008-06-30		
WINTER HAVEN WAL-MART BR	WINTER HAVEN, FL	4171542				2008-06-30	2008-06-30		
CAPITOL CITY B&T	ATLANTA, GA	2243977	207 NMB	CAPITOL CITY BSHRS	1	1994-10-03	1994-10-03	299,058	277,986
AIRPORT BR	ATLANTA, GA	2479981				1996-06-03	1996-06-03		
ALBANY BR OFF	ALBANY, GA	3050051				2001-07-25	2001-07-25		
AUGUSTA BR	AUGUSTA, GA	3320389				2005-01-03	2005-01-03		
CASCADE BR	ATLANTA, GA	2243995				1994-10-03	1994-10-03		
PEACHTREE BR	ATLANTA, GA	3742413				2007-10-03	2007-10-03		
SAVANNAH BR	SAVANNAH, GA	3247851				2004-01-30	2004-01-30		
STONE MNT BR	STONE MOUNTAIN, GA	2748294				1998-11-02	1998-11-02		
CARVER ST BK	SAVANNAH, GA	370833	207 NMB	CARVER FC	1	1959-12-31	1947-06-04	41,597	33,464
SKIDWAY RD BR	SAVANNAH, GA	3685369				2007-12-11	2007-12-11		
CITIZENS TR BK	ATLANTA, GA	680130	217 SMB	CITIZENS BSHRS CORP	1	1959-12-31	1921-06-18	406,836	353,786
CASCADE CROSSING PHASE II BR	ATLANTA, GA	2917876				2000-06-05	2000-06-05		

EAST POINT BR	EAST POINT, GA	1362880			1987-10-06	1987-10-06		
EUTAW OFF	EUTAW, AL	3174948			2003-03-03	2003-03-03		
LITHONIA BR	LITHONIA, GA	3923388			2009-03-27	2009-03-27		
MACON RD BR	COLUMBUS, GA	3638459			2007-08-29	2007-08-29		
PANOLA RD BR	LITHONIA, GA	1396139			1998-01-31	1989-04-26		
ROCKBRIDGE PLAZA OFF	STONE MOUNTAIN, GA	2491992			1998-01-31	1996-07-19		
SOUTH HARRIS BR	DECATUR, GA	4115180			2009-12-31	2009-12-31		
THIRD AVE NORTH BR	BIRMINGHAM, AL	768775			2003-03-01	1956-01-01		
WEST SIDE OFF	ATLANTA, GA	927330			1972-06-30	1955-08-01		
METRO CITY BK	DORAVILLE, GA	3437456	207 NMB		2008-09-01	2006-04-04	495,202	406,372
DORAVILLE BR	DORAVILLE, GA	4388162			2012-03-03	2012-03-03		
DULUTH BR	DULUTH, GA	3566646			2008-09-01	2007-02-05		
JOHNS CREEK BR	JOHNS CREEK, GA	3685387			2012-03-03	2007-12-05		
JOHNS CREEK BR	JOHNS CREEK, GA	3651757			2008-09-01	2007-09-28		
LAWRENCEVILLE SUWANEE RD BR	SUWANEE, GA	3846674			2008-09-01	2008-08-08		
NORCROSS BR	NORCROSS, GA	3832426			2012-03-03	2007-10-27		
OLD PEACHTREE RD BR	SUWANEE, GA	4310369			2011-07-11	2011-07-11		
OPELICA BR OFF	OPELICA, AL	4397306			2012-03-19	2012-03-19		
QUANTUM NB	SUWANEE, GA	2354387	117 NAT	QUANTUM CAP CORP	2001-01-22	1995-12-27	339,523	292,182
QUANTUM NB BR	ALPHARETTA, GA	3403406			2006-01-11	2006-01-11		
STATE BK OF GA	FAYETTEVILLE, GA	3650442	207 NMB		2007-11-05	2007-11-05	88,504	75,066
HAWAII NB	HONOLULU, HI	915065	117 NAT	HAWAII NAT BSHRS	1994-01-12	1960-09-19	609,709	556,380
AIRPORT BR	HONOLULU, HI	848462			1994-01-12	1962-05-01		
BISHOP ST BR	HONOLULU, HI	2136163			1994-01-12	1992-06-30		
HAWAII KAI BR	HONOLULU, HI	999766			1994-01-12	1962-06-01		
HILO BR	HILO, HI	1000267			1994-01-12	1970-01-01		
KAHULUI BR	KAHULUI, HI	540663			1995-05-20	1982-03-01		
KAILUA BR	KAILUA, HI	850269			1994-01-12	1965-10-01		
KAIMUKI BR	HONOLULU, HI	851864			1994-01-12	1966-10-01		
KALIHI BR	HONOLULU, HI	727763			1994-01-12	1969-10-01		
KAPIOLANI BR	HONOLULU, HI	4056023			2009-09-21	2009-09-21		
KIHEI BR	KIHEI, HI	2305446			1995-05-20	1995-05-20		
KING ST BR	HONOLULU, HI	790169			1994-01-12	1972-08-07		
PEARL CITY BR	PEARL CITY, HI	2577720			1997-05-17	1997-05-17		
PUAINAKO BR	HILO, HI	3141119			2002-07-24	2002-07-24		
AMERICAN METRO BK	CHICAGO, IL	2533043	207 NMB	AMERICAN METRO BC	1999-03-03	1997-01-29	82,324	74,012
667 N CASS AVE OFF	WESTMONT, IL	3609561			2006-02-01	2006-02-01		
CHINATOWN BR	CHICAGO, IL	3512157			2002-04-01	2002-04-01		
COVENANT BK	CHICAGO, IL	533937	207 NMB	COVENANT BSHRS	1977-06-20	1977-06-20	61,107	58,254
FOSTER BK	ROLLING MEADOWS, IL	1362246	207 NMB	FOSTER BSHRS	1993-04-20	1989-02-08	440,583	350,004
ANNANDALE VA BR	ANNANDALE, VA	4201289			2010-06-02	2010-06-02		
ARLINGTON HEIGHTS BR	ARLINGTON HEIGHTS, IL	3511712			2003-07-17	2003-07-17		
DEVON BR	CHICAGO, IL	1970164			1993-04-20	1992-06-05		
HMART BR	NILES, IL	3657973			2006-08-25	2006-08-25		
LINCOLNSHIRE BR	LINCOLNSHIRE, IL	3657982			2007-06-20	2007-06-20		
NAPERVILLE BR	NAPERVILLE, IL	2931050			2000-05-19	2000-05-19		
NILES BR	NILES, IL	2489609			1996-05-28	1996-05-28		
ROLLING MEADOWS BR	ROLLING MEADOWS, IL	4201298			2010-09-24	2010-09-24		
HIGHLAND CMNTY BK	CHICAGO, IL	76135	207 NMB	HIGHLAND CMNTY CO	1970-11-05	1970-11-09	90,977	85,730
10537 S HALSTED ST OFF	CHICAGO, IL	2946755			2000-03-20	2000-03-20		

WOODLAWN BR	CHICAGO, IL	2105301				2008-04-01	1993-05-21		
ILLINOIS-SERVICE FS&LA CHATAM BR	CHICAGO, IL CHICAGO, IL	250476 4152149	107 SAL		1	1988-12-31 2008-06-30	1934-01-01 2008-06-30	150,860	108,624
INTERNATIONAL BK CHICAGO ADAMS ST BR BELLWOOD BR CENTRAL AVE BR DES PLAINES BR SOUTH CHINATOWN BR STONE PARK BR	CHICAGO, IL CHICAGO, IL BELLWOOD, IL WILMETTE, IL DES PLAINES, IL CHICAGO, IL STONE PARK, IL	2006024 3641954 3514272 4394967 4351652 3514245 3514281	207 NMB IBC BC		20	1992-10-26 2012-03-24 2005-06-01 2012-03-24 2011-10-29 1998-01-20 2000-10-02	1992-10-26 2006-05-01 2005-06-01 2012-03-24 2011-10-29 1998-01-20 2000-10-02	481,348	424,551
NATIONAL REPUBLIC BK CHICAGO 2615 W DEVON AVE OFF	CHICAGO, IL CHICAGO, IL	215130 2426471	117 NAT NRBC HC		20	1984-11-20 1991-08-11	1897-02-01 1991-08-11	1,332,612	1,158,706
PACIFIC GLOBAL BK 3233 S ASHLAND OFF SOUTH ARCHER BR	CHICAGO, IL CHICAGO, IL CHICAGO, IL	2360904 3444771 3366622	217 SMB PGB HOLD		20	1998-07-01 2006-03-08 2003-10-01	1995-11-13 2006-03-08 2003-10-01	160,419	138,523
SEAWAY B&TC BRDVIEW BKG CTR FACILITY BRONZEVILLE FACILITY CHATHAM RIDGE FACILITY CRESTWOOD BR DRIVE-IN FACILITY MAYWOOD BR MICHIGAN AVE FACILITY MIDWAY FACILITY MILWAUKEE BR OHARE FACILITY BR WAUKEGAN FACILITY	CHICAGO, IL BROADVIEW, IL CHICAGO, IL CHICAGO, IL CRESTWOOD, IL CHICAGO, IL MAYWOOD, IL CHICAGO, IL CHICAGO, IL MILWAUKEE, WI CHICAGO, IL WAUKEGAN, IL	673431 2098506 4195968 2042282 1997590 2042264 4208073 2042291 3120990 4255442 3507564 4195986	207 NMB SEAWAY BSHRS		1	1965-01-02 2010-10-23 2009-09-25 1977-11-21 2010-10-23 1974-09-23 2010-10-23 1983-07-11 2002-04-24 2011-03-12 2000-12-21 2009-10-23	1965-01-02 1980-12-22 2009-09-25 1977-11-21 1990-02-02 1974-09-23 2010-10-23 1950-10-30 2002-04-24 2011-03-12 2000-12-21 2009-10-23	570,350	509,201
FIRST NEWTON NB COLONIAL PLAZA OFF	NEWTON, IA NEWTON, IA	242949 2111384	117 NAT UNITED IA BSHRS		5	2011-05-10 2011-05-10	1932-03-28 1973-06-27	79,622	72,199
CBW BK	WEIR, KS	71859	207 NMB CB BSHRS CORP		20	2011-01-01	1892-01-01	9,888	8,272
APPALACHIAN FCU	BEREA, KY	886192	103 FCU		39	2008-01-01	1980-09-11	15,759	14,924
METRO BK	LOUISVILLE, KY	2496081	207 NMB LOUISVILLE DEVELOPMENT BANCO		1	2012-02-22	1997-01-07	32,077	27,050
LIBERTY B&TC 1314 N 5TH ST BR 4850 STATE AVE BR 63RD ST BR ALGIERS BR CANAL ST BR FRANKLIN BR GENERAL DEGAULLE BR GENTILLY BR GREENWELL SPRINGS BR HARAHAN BR LAMAR BR LIVINGSTON BR MAGAZINE ST OFF NEW ORLEANS E BR OPELOUSAS BR	NEW ORLEANS, LA KANSAS CITY, KS KANSAS CITY, KS KANSAS CITY, MO ALGIERS, LA NEW ORLEANS, LA NEW ORLEANS, LA NEW ORLEANS, LA NEW ORLEANS, LA BATON ROUGE, LA HARAHAN, LA JACKSON, MS JACKSON, MS NEW ORLEANS, LA NEW ORLEANS, LA OPELOUSAS, LA	283438 2357641 2180700 3921982 4139711 1478307 2491835 3725201 127738 3291153 3643202 2060875 4101389 1222975 345635 3587687	207 NMB LIBERTY FNCL SVC		1	1972-11-16 2008-01-26 2008-01-26 2008-01-25 2009-04-01 2009-04-01 2001-10-13 1996-07-29 1996-07-29 2004-07-12 2004-07-12 2009-04-01 2003-07-25 2010-01-04 1996-07-29 1981-09-17 2009-04-01	1972-11-16 1995-07-20 1980-01-31 2008-01-25 2009-04-01 1990-09-29 1996-06-07 1996-07-29 1974-09-19 2004-07-12 2004-07-12 2001-10-24 1993-07-08 2010-01-04 1988-11-07 1981-09-17 2005-09-15	567,166	475,553

PERKINS BR	BATON ROUGE, LA	3725180				1996-07-29	1996-07-29		
SEVEN MILE BR	DETROIT, MI	2119184				2009-11-07	1986-01-01		
UNIVERSITY BR	BATON ROUGE, LA	2181891				1994-03-26	1994-03-26		
WOODWARD BR	DETROIT, MI	3990036				2009-11-07	2009-11-07		
ADVANCE BK	BALTIMORE, MD	405173	107 FSB		1	1979-12-31	1957-01-01	64,117	52,897
BEREAN BR	PHILADELPHIA, PA	4155663				2008-06-30	2008-06-30		
COLD SPRING LN BR	BALTIMORE, MD	4155645				2008-06-30	2008-06-30		
SECURITY OFF	BALTIMORE, MD	3146244				2009-06-05	2001-10-13		
WALBROOK BR	BALTIMORE, MD	4155494				2008-06-30	2008-06-30		
HARBOR BK OF MD	BALTIMORE, MD	533124	207 NMB	HARBOR BSHRS CORP	1	1982-09-13	1982-09-13	239,213	204,906
INNER HARBOR EAST OFF	BALTIMORE, MD	2241414				1994-09-17	1994-09-17		
PIMLICO OFF	BALTIMORE, MD	445629				1987-07-13	1951-11-05		
RANDALLSTOWN BR	RANDALLSTOWN, MD	998228				2002-04-15	1974-11-15		
RESEARCH PARK BR	BALTIMORE, MD	3676312				2007-06-29	2007-06-29		
RIVERDALE BR	RIVERDALE, MD	2424776				1994-06-01	1994-06-01		
SCIENCE & TECH EAST BR	BALTIMORE, MD	2647230				1997-07-07	1997-07-07		
ONEUNITED BK	BOSTON, MA	935308	207 NMB		1	1982-08-02	1982-08-02	565,157	321,781
CORPORATE BR	LOS ANGELES, CA	166773				2003-01-01	1948-12-01		
GARDENA BR	GARDENA, CA	1856129				2001-05-01	1991-01-19		
LADERA HEIGHTS BR	LOS ANGELES, CA	1856099				2001-05-01	1991-01-19		
LAUDERDALE LAKES BR	LAUDERDALE LAKES, FL	674232				1999-09-11	1977-08-19		
LYNWOOD BR	LYNWOOD, CA	2653110				2001-05-01	1998-01-16		
MIAMI BR	MIAMI, FL	2847889				1999-09-11	1999-09-11		
ROXBURY BR	BOSTON, MA	43409				1982-11-22	1982-11-22		
STOCKER BR	LOS ANGELES, CA	2460934				2001-05-01	1992-04-22		
FIRST INDEPENDENCE BK	DETROIT, MI	254849	207 NMB	FIRST INDEPENDENCE CORP	1	1970-05-14	1970-05-14	170,815	146,933
7 MILE OFF	DETROIT, MI	2042321				1985-03-06	1985-03-06		
GREEKTOWN OFF	DETROIT, MI	2042349				1988-10-24	1988-10-24		
LIVERNOIS HERBERT OFF	DETROIT, MI	2042312				1974-08-15	1974-08-15		
MACK ALTER OFF	DETROIT, MI	3700356				2006-03-13	2006-03-13		
LOTUS BK	NOVI, MI	3482166	207 NMB	LOTUS BC	20	2007-10-04	2007-02-28	71,239	61,757
CAMBRIDGE ST BK	CAMBRIDGE, MN	338851	207 NMB		5	2008-06-25	1914-02-19	72,802	60,205
CAMBRIDGE MILL RIDGE OFF	CAMBRIDGE, MN	3670178				2008-06-25	2001-03-20		
CAMBRIDGE OFF	CAMBRIDGE, MN	3143355				2008-06-25	2002-09-16		
CAMBRIDGE RIVER HILLS OFF	CAMBRIDGE, MN	3670196				2008-06-25	2001-03-15		
MILL RIDGE COMMONS BR	CAMBRIDGE, MN	3661318				2008-06-25	2001-03-20		
RIVER HILLS BR	CAMBRIDGE, MN	3661309				2008-06-25	2001-03-15		
PARK ST BK	DULUTH, MN	286457	207 NMB	PARK BC OF DULUTH	5	2008-09-01	1916-06-28	30,874	29,240
LINCOLN PARK OFF	DULUTH, MN	2618155				2008-09-01	1997-09-30		
MINNEAPOLIS OFF	MINNEAPOLIS, MN	3303207				2008-09-01	2004-10-07		
HOPE FCU	JACKSON, MS	2342816	103 FCU		39	2007-06-01	1995-08-24	144,464	123,904
CENTRAL BK OF KANSAS CITY	KANSAS CITY, MO	751852	207 NMB	CENTRAL BSHRS	5	2003-05-30	1950-08-10	154,086	120,388
BRDWAY BR	KANSAS CITY, MO	3148239				2003-05-30	1999-12-31		
NORTH OAK BR	KANSAS CITY, MO	3315040				2003-05-30	2002-08-19		
RED BRIDGE BR	KANSAS CITY, MO	1948501				2003-05-30	1992-03-28		
ST LOUIS BR	SAINT LOUIS, MO	3991015				2009-11-07	2009-11-07		
TRUMAN RD BR	KANSAS CITY, MO	600558				2003-05-30	1973-02-14		
PEOPLES BK	SENECA, MO	2396592	207 NMB	PBS BSHRS	30	1999-04-12	1996-03-15	94,810	86,024

EAGLE BK	POLSON, MT	3346633	207 NMB	SALISH KOOTENAI BC	30	2007-10-04	2006-07-24	39,591	36,894
BNB BK NA	FORT LEE, NJ	609609	117 NAT	BNB FNCL SVC CORP	20	1986-09-16	1986-09-16	363,118	310,772
FIFTH AVE BR	NEW YORK, NY	3219595				2003-10-03	2003-10-03		
PALISADES PARK BR	PALISADES PARK, NJ	3307988				2004-11-19	2004-11-19		
CITY NB OF NJ	NEWARK, NJ	567905	117 NAT	CITY NAT BSHRS CORP	1	1973-06-11	1973-06-11	359,366	316,161
EAST NEW YORK BR	BROOKLYN, NY	1847873				2001-06-18	1990-11-16		
HARLEM BR	NEW YORK, NY	3366293				2005-06-30	2005-06-30		
HEMPSTEAD BR	HEMPSTEAD, NY	3140336				2002-09-20	2002-09-20		
NEWARK SOUTH SIDE BR	NEWARK, NJ	2766494				1973-06-11	1973-06-11		
PATERSON BR	PATERSON, NJ	2766515				1998-04-21	1998-04-21		
ROOSEVELT BR	ROOSEVELT, NY	1728758				2000-05-12	1979-12-31		
SPRINGFIELD AVE BR	NEWARK, NJ	3043156				2001-06-29	2001-06-29		
INDUS AMER BK	ISELIN, NJ	3369959	207 NMB	IA BC	20	2007-10-04	2005-12-19	203,420	155,711
HICKSVILLE BR	HICKSVILLE, NY	3925056				2008-12-08	2008-12-08		
JERSEY CITY BR	JERSEY CITY, NJ	3726178				2007-10-27	2007-10-27		
PARSIPPANY SUPERMARKET BR	PARSIPPANNY, NJ	3657357				2007-10-04	2006-10-12		
CENTINEL BK OF TAOS	TAOS, NM	800853	207 NMB	CENTINEL BSHRS	10	1969-03-01	1969-03-01	193,933	175,132
QUESTA BR	QUESTA, NM	799555				1979-08-15	1979-08-15		
TAOS BR	TAOS, NM	235156				1977-10-13	1977-10-13		
MY BK	BELEN, NM	1972298	217 SMB	BETHLEHEM FC	10	2000-06-27	1992-07-01	168,964	145,178
ALBUQUERQUE BR	ALBUQUERQUE, NM	2836173				2000-06-27	1999-06-21		
LOS LUNAS BR	LOS LUNAS, NM	2430816				2000-06-27	1996-03-11		
MOUNTAINAIR BR	MOUNTAINAIR, NM	2700667				2000-06-27	1998-05-18		
RIO COMMUNITIES BR	BELEN, NM	2816090				2000-06-27	1999-05-10		
ALTERNATIVES FCU	ITHACA, NY	865384	103 FCU		39	2008-01-01	1979-01-12	77,762	67,454
EASTBANK NA	NEW YORK, NY	98717	117 NAT	EVERGREEN HOLD LLC	20	1984-11-26	1984-11-26	182,766	146,687
FIRST AMER INTL BK	BROOKLYN, NY	2857794	207 NMB	FIRST AMER INTL CORP	20	1999-11-15	1999-11-15	536,289	450,774
107-50 QUEENS BLVD BR	FOREST HILLS, NY	3461022				2006-05-01	2006-05-01		
40 48 MAIN ST BR	FLUSHING, NY	3472756				2006-09-25	2006-09-25		
4208 MAIN ST FLUSHING BR	FLUSHING, NY	3204247				2003-07-28	2003-07-28		
8TH AVE BR	BROOKLYN, NY	3248193				2004-01-15	2004-01-15		
BOWERY BR	NEW YORK, NY	3080526				2002-01-11	2002-01-11		
EAST BRDWAY BR	NEW YORK, NY	3350498				2005-04-28	2005-04-28		
ELMHURST BR	ELMHURST, NY	3657320				2006-07-26	2006-07-26		
GRAND ST BR	NEW YORK, NY	3373152				2005-08-08	2005-08-08		
LUMBEE GUARANTY BK	PEMBROKE, NC	651121	207 NMB		30	1971-12-22	1971-12-22	301,879	260,362
BLOOM AVE BR	FAYETTEVILLE, NC	3624126				2007-08-08	2007-08-08		
FAIRMONT OFF	FAIRMONT, NC	2637491				1997-12-02	1997-12-02		
FALCON VILLAGE BR	FAYETTEVILLE, NC	3624117				2007-08-08	2007-08-08		
FAYETTEVILLE RD BR	LUMBERTON, NC	3294136				1997-09-08	1997-09-08		
HOPE MILLS BR	HOPE MILLS, NC	1872419				1991-06-17	1991-06-17		
MAXTON BR	MAXTON, NC	554325				1995-11-17	1985-02-05		
PINE ST BR	LUMBERTON, NC	1368202				1989-02-09	1989-02-09		
RED SPRINGS BR	RED SPRINGS, NC	2140393				1995-11-04	1993-12-31		
ROWLAND BR	ROWLAND, NC	2140405				1995-11-04	1993-12-31		
ST PAULS BR	SAINT PAULS, NC	1872428				1991-06-17	1991-06-17		
WEST 5TH ST BR	LUMBERTON, NC	3294127				1998-12-15	1998-12-15		

MECHANICS & FARMERS BK CHAPEL HILL BLVD BR CHARLOTTE BR GREENSBORO BR PARRISH ST BR RALEIGH BR ROCK QUARRY RD BR WINSTON-SALEM BR	DURHAM, NC DURHAM, NC CHARLOTTE, NC GREENSBORO, NC DURHAM, NC RALEIGH, NC RALEIGH, NC WINSTON-SALEM, NC	332224 577324 278425 474928 3726235 394428 455020 174424	207 NMB M&F BC	1	1959-12-31 1972-06-30 1972-06-30 2008-03-29 1998-07-01 1972-06-30 1977-06-23 1981-09-19	1908-03-01 1954-01-15 1962-03-01 1971-11-02 1998-07-01 1923-01-01 1977-06-23 1981-09-19	295,203	254,540
ALLNATIONS BK SHAWNEE BR	CALUMET, OK SHAWNEE, OK	146056 3349728	217 SMB ALLNATIONS BC	30	2011-01-01 2011-03-01	1922-05-16 2011-03-01	41,243	36,316
BANK OF CHEROKEE CTY PARK HILL BR PLAZA BR	HULBERT, OK PARK HILL, OK TAHLEQUAH, OK	815754 2627223 3159561	217 SMB GRANDVIEW BSHRS	30	1991-12-12 1997-09-12 2000-04-24	1908-12-01 1997-09-12 2000-04-24	103,278	94,754
BANK OF CMRC KEYS BR STILWELL BR	STILWELL, OK PARK HILL, OK STILWELL, OK	322850 3633315 441452	207 NMB PEOPLES CMRL BC	30	1998-06-23 1998-06-23 1998-06-23	1931-01-01 1995-01-17 1972-02-14	100,571	85,864
BANK OF GROVE	GROVE, OK	3286999	207 NMB	10	2007-10-04	2005-06-09	95,220	70,916
F&M BK CRESCENT BR EAST OKLAHOMA BR PIEDMONT BR SOUTH DIVISION BR WATERLOO BR YUKON BR	EDMOND, OK CRESCENT, OK GUTHRIE, OK PIEDMONT, OK GUTHRIE, OK EDMOND, OK YUKON, OK	163857 3363180 2748221 2721970 3285040 3916876 1357466	207 NMB F&M BSHRS	30	2008-09-01 2011-10-24 2008-09-01 2011-10-24 2008-09-01 2008-10-15 2011-10-24	1902-01-01 2005-05-11 1998-11-19 1998-08-10 2004-12-21 2008-10-15 1989-01-13	237,268	207,192
FIRST NB&TC FIRE LAKE BR GRANITE BR HOLDENVILLE BR LAWTON QUANAH PARKER BR LAWTON SHERIDAN BR MANGUM BR WILLOW BR	SHAWNEE, OK SHAWNEE, OK GRANITE, OK HOLDENVILLE, OK LAWTON, OK LAWTON, OK MANGUM, OK WILLOW, OK	396253 3037838 2403276 3628816 895158 3675089 3082520 1432626	117 NAT	30	1992-05-05 2001-05-04 2006-07-29 2000-01-20 2006-07-29 2007-02-20 2006-07-29 2006-07-29	1984-10-29 2001-05-04 1993-05-28 2000-01-20 1915-01-01 2007-02-20 2000-06-30 1987-08-21	232,035	204,199
FIRST ST BK PORTER CHOUTEAU BR LOCUST GROVE BR	PORTER, OK CHOUTEAU, OK LOCUST GROVE, OK	521251 3324846 3324855	207 NMB PORTER BSHRS	30	1994-07-01 2004-06-15 2000-04-10	1905-01-01 2004-06-15 2000-04-10	36,639	30,563
OKLAHOMA ST BK LANGLEY BR MONKEY ISLAND BR	VINITA, OK LANGLEY, OK AFTON, OK	285759 3182895 3956229	207 NMB OKLAHOMA ST BSHRS	30	2003-03-10 2003-03-10 2009-07-06	1938-07-13 2002-07-26 2009-07-06	112,632	95,300
PEOPLES BK WEST SILOAM BR	WESTVILLE, OK WATTS, OK	539452 1407857	207 NMB PEOPLES CMRL BC	30	1998-06-23 1998-06-23	1903-02-03 1983-12-12	51,860	44,661
SECURITY ST BK 824 NORTH MILT PHILLIPS BR	WEWOKA, OK SEMINOLE, OK	52951 3179019	207 NMB	5	1998-06-23 2002-11-14	1911-12-05 2002-11-14	105,880	93,565
ASIAN BK 815-837 ARCH ST BR	PHILADELPHIA, PA PHILADELPHIA, PA	2785477 3700918	217 SMB ASIAN FNCL	20	2011-01-01 2011-01-01	1999-06-09 2008-02-08	71,418	63,142
UNITED BK OF PHILADELPHIA 3750 LANCASTER BR	PHILADELPHIA, PA PHILADELPHIA, PA	1945247 2486363	207 NMB UNITED BSHRS	1	1993-01-05 1996-07-22	1992-03-23 1996-07-22	69,279	63,928

PROGRESS PLAZA OFF	PHILADELPHIA, PA	375315			1999-09-23	1968-11-22			
WADSWORTH OFF	PHILADELPHIA, PA	904014			1999-09-24	1958-12-15			
SOUTH CAROLINA CMNTY BK	COLUMBIA, SC	2794732	207 NMB	SCCB FINANCIAL CORP	1	1999-03-27	1999-03-27	86,684	83,337
BELT LINE BR	COLUMBIA, SC	39523				2000-01-27	1970-06-22		
EASTOVER BR	EASTOVER, SC	3923977				2008-04-01	2008-04-01		
ORANGEBURG BR	ORANGEBURG, SC	3923968				2008-04-01	2008-04-01		
SOUTH MAIN ST BR	SUMTER, SC	581125				2000-01-27	1970-10-29		
CITIZENS SVG B&TC	NASHVILLE, TN	55635	207 NMB	CSB&T BC	1	1959-12-31	1904-01-04	90,741	79,690
CLARKSVILLE HWY BR	NASHVILLE, TN	2706306				1998-06-13	1998-06-13		
WINCHESTER RD BR	MEMPHIS, TN	3603952				2007-05-15	2007-05-15		
TRI-STATE BK OF MEMPHIS	MEMPHIS, TN	515054	207 NMB		1	1959-12-31	1946-12-16	132,334	116,099
HOLLYWOOD BR	MEMPHIS, TN	422853				1972-06-30	1969-04-01		
LAMAR AIRWAYS BR	MEMPHIS, TN	1438057				1990-02-05	1990-02-05		
SOUTH MEMPHIS BR	MEMPHIS, TN	462952				1972-06-30	1965-05-01		
WHITEHAVEN BR	MEMPHIS, TN	2312097				1994-06-27	1994-06-27		
AMERICAN FNB	HOUSTON, TX	2694681	117 NAT	AFNB HOLD	20	2002-02-25	1998-05-18	869,525	709,107
AMARGOSA BR	AMARGOSA VALLEY, NV	3622252				2011-09-30	2007-07-25		
ARLINGTON BR	ARLINGTON, TX	2254731				2011-09-30	1994-11-10		
CARROLLTON BR	CARROLLTON, TX	4131809				2010-03-10	2010-03-10		
DALLAS BR	PLANO, TX	4346199				2011-10-01	2011-10-01		
FIRST COLONY BR	MISSOURI CITY, TX	2996572				2002-02-25	1998-05-18		
GARLAND BR	GARLAND, TX	2425595				2011-09-30	1996-03-06		
HARRY HINES BR	DALLAS, TX	3486605				2006-08-21	2006-08-21		
HARWIN BR	HOUSTON, TX	2996590				2002-02-25	1998-08-03		
KATY BR	KATY, TX	3846553				2008-11-10	2008-11-10		
LAS VEGAS BR	LAS VEGAS, NV	3824038				2011-09-30	2008-09-29		
LONG POINT BR	HOUSTON, TX	3665138				2007-04-16	2007-04-16		
PAHRUMP BR	PAHRUMP, NV	3814749				2011-09-30	2008-08-22		
PLANO BR	PLANO, TX	3665129				2007-05-01	2007-05-01		
RICHARDSON BR	RICHARDSON, TX	2996581				2002-02-25	1998-05-18		
COMMERCE BK	LAREDO, TX	625159	207 NMB	INTERNATIONAL BSHRS CORP	10	1984-09-30	1982-03-31	536,630	440,655
SAUNDERS AVE BR	LAREDO, TX	3350694				2005-05-09	2005-05-09		
SOUTH LAREDO BR	LAREDO, TX	2994091				2002-01-01	1998-03-03		
WELBY COURT BR	LAREDO, TX	2994112				2002-01-01	2000-03-27		
FALCON INTL BK	LAREDO, TX	564557	207 NMB	FALCON BSHRS	10	1988-05-18	1986-12-10	868,856	764,088
BANDERA RD BR	SAN ANTONIO, TX	3783902				2008-06-02	2008-06-02		
BIBB AVE BR	EAGLE PASS, TX	3586439				2007-02-27	2007-02-27		
BROWNSVILLE BOCA CHICA BR	BROWNSVILLE, TX	3570616				2007-02-08	2007-02-08		
BUDA BR	BUDA, TX	3378719				2005-08-22	2005-08-22		
DEL RIO CHEVROLET DR BR	DEL RIO, TX	3461554				2006-07-17	2006-07-17		
DEL RIO MAIN ST BR	DEL RIO, TX	3392836				2005-11-10	2005-11-10		
DOWNTOWN BR	LAREDO, TX	2978336				1997-02-24	1997-02-24		
EAST BR	LAREDO, TX	2978345				2000-05-01	2000-05-01		
FALCON INTL BK GUADALAJARA R	ZAPOPAN, O	3448797				2005-10-03	2005-10-03		
HIGHWAY 83 BR	MCALLEN, TX	3656293				2007-10-31	2007-10-31		
HILLSIDE BR	LAREDO, TX	3036514				2001-03-05	2001-03-05		
MCALLEN 6301 10TH ST BR	MCALLEN, TX	3724839				2008-03-28	2008-03-28		
MCPHERSON BR	LAREDO, TX	3622243				2007-07-26	2007-07-26		
SAN ANTONIO MILITARY DR BR	SAN ANTONIO, TX	3394616				2005-11-14	2005-11-14		
STONE OAK BR	SAN ANTONIO, TX	2994206				2001-09-08	1997-06-15		
GOLDEN BK NA	HOUSTON, TX	536059	117 NAT		20	1991-05-17	1985-02-22	534,039	465,197

CHAMPIONS BR	HOUSTON, TX	2301475				1995-02-15	1995-02-15		
HARWIN BR	HOUSTON, TX	3968026				2009-03-25	2009-03-25		
LEGACY BR	PLANO, TX	3657562				2006-12-29	2006-12-29		
RICHARDSON BR	RICHARDSON, TX	2650267				1996-08-08	1996-08-08		
SUGAR LAND BR	SUGAR LAND, TX	2336981				1995-08-07	1995-08-07		
INTERNATIONAL BK OF CMRC	BROWNSVILLE, TX	230759	207 NMB	INTERNATIONAL BSHRS CORP	10	1984-10-09	1984-10-09	927,518	640,796
4520 E 14TH ST BR	BROWNSVILLE, TX	231251				1993-10-01	1981-07-06		
630 E ELIZABETH ST BR	BROWNSVILLE, TX	3202038				2003-07-14	2003-07-14		
ALTON GLOOR BR	BROWNSVILLE, TX	3367487				2005-06-14	2005-06-14		
BOCA CHICA BR	BROWNSVILLE, TX	3461563				2006-07-19	2006-07-19		
CENTRAL BLVD BR	BROWNSVILLE, TX	2129222				1993-12-01	1993-12-01		
HARLINGEN WALMART BR	HARLINGEN, TX	3536283				1998-04-08	1998-04-08		
PORT ISABEL BR	PORT ISABEL, TX	1418004				1993-10-01	1989-10-30		
SOUTH DIXIELAND RD BR	HARLINGEN, TX	2512226				1996-06-28	1996-06-28		
SOUTH HWY 48 BR	BROWNSVILLE, TX	3536265				2005-02-01	2005-02-01		
SOUTH PADRE ISLAND BR	SOUTH PADRE ISLAND, TX	1842047				1993-10-01	1990-02-12		
SUNRISE MA BR	BROWNSVILLE, TX	3536274				2000-07-22	2000-07-22		
SUNSHINE BR	HARLINGEN, TX	1460517				1990-06-30	1990-06-30		
WEST ALTON GLOOR BR	BROWNSVILLE, TX	3536201				2001-04-28	2001-04-28		
INTERNATIONAL BK OF CMRC	LAREDO, TX	1001152	207 NMB	INTERNATIONAL BSHRS CORP	10	1978-07-27	1966-09-02	9,734,187	6,876,980
100 EAST 3RD BR	GROVE, OK	2163589				2004-06-19	1917-01-01		
100 WEST PARK AVE BR	OKLAHOMA CITY, OK	2163936				2004-06-19	1908-10-01		
1002 WEST FRISCO BR	CLINTON, OK	2163918				2004-06-19	1990-08-17		
1006 WEST MAIN BR	DUNCAN, OK	2163945				2004-06-19	1990-08-17		
10405 RR 2222 BR	AUSTIN, TX	3383030				2005-09-15	2005-09-15		
1050 NORTH LYNN RIGGS BLVD B	CLAREMORE, OK	2163703				2004-06-19	1993-05-10		
109 EAST FRANKLIN BR	WEATHERFORD, OK	2164362				2004-06-19	1990-08-17		
11002 CULEBRA BR	SAN ANTONIO, TX	3622195				2007-07-23	2007-07-23		
120 N DIV BR	GUTHRIE, OK	162579				2004-06-19	1906-01-01		
1203 CORNWELL BR	YUKON, OK	2164399				2004-06-19	1979-06-15		
12241 NORTH MAY AVE BR	OKLAHOMA CITY, OK	2164326				2004-06-19	1977-07-02		
12625 NORTH IH 35 BR	AUSTIN, TX	3468889				2006-09-01	2006-09-01		
1461 24TH AVE NW BR	NORMAN, OK	2630791				2004-06-19	1996-02-19		
15900 LA CANTERA PRKWY BR	SAN ANTONIO, TX	3383067				2005-09-16	2005-09-16		
1951 SOUTH YALE BR	TULSA, OK	2163806				2004-06-19	1988-12-29		
200 C AVE BR	LAWTON, OK	824354				2004-06-19	1984-07-02		
2009 WEST BRDWAY BR	SULPHUR, OK	2164353				2004-06-19	1992-03-26		
2065 E MAIN ST BR	UVALDE, TX	3424371				2005-11-28	2005-11-28		
2135 MAIN ST BR	EAGLE PASS, TX	3614903				2007-06-25	2007-06-25		
2200 S DOUGLAS BLVD BR	MIDWEST CITY, OK	2612162				2004-06-19	1997-12-02		
2250 EAST 73RD ST BR	TULSA, OK	2163730				2004-06-19	1988-12-29		
2301 N PORTLAND AVE BR	OKLAHOMA CITY, OK	2164308				2004-06-19	1977-09-30		
2305 DEL RIO BR	EAGLE PASS, TX	3266731				2004-04-19	2004-04-19		
2442 SAN ISIDRO PKWY BR	LAREDO, TX	3180266				2003-03-06	2003-03-06		
2513 NORTH HARRISON BR	SHAWNEE, OK	2164335				2004-06-19	1979-04-23		
2800 NOLANA BR	MCALEN, TX	3486481				2001-06-13	2001-06-13		
281/EVANS HEB IN-STORE BR	SAN ANTONIO, TX	3202216				2002-08-23	2002-08-23		
3119 SE MILITARY DR BR	SAN ANTONIO, TX	3383049				2005-09-15	2005-09-15		
3973 HWY 97 BR	SAND SPRINGS, OK	2163794				2004-06-19	1988-12-29		
414 NORTH AIR DEPOT BR	MIDWEST CITY, OK	2164090				2004-06-19	1973-08-27		
421 SANTA FE BR	EDMOND, OK	2817891				2004-06-19	1999-04-30		
430 LINCOLN BR	PURCELL, OK	2164317				2004-06-19	1977-11-01		
455 SOUTH BIBB ST BR	EAGLE PASS, TX	3185953				2003-04-11	2003-04-11		
4902 NORTH WESTERN AVE BR	OKLAHOMA CITY, OK	2163927				2004-06-19	1982-06-21		
4975 HWY 6 N BR	HOUSTON, TX	3468861				2006-11-01	2006-11-01		
513 NORTHEAST 12TH BR	MOORE, OK	2164120				2004-06-19	1980-02-08		

5701 NORTH MAY AVE BR	OKLAHOMA CITY, OK	2164072	2004-06-19	1973-08-27
5706 KIRBY MOTOR BR	HOUSTON, TX	3664467	2002-07-01	2002-07-01
628 GRAND AVE BR	CHICKASHA, OK	2163897	2004-06-19	1992-02-07
6425 NW CACHE CENTRE BR	LAWTON, OK	1405170	2004-06-19	1989-09-05
6909 N LOOP 1604 BR	SAN ANTONIO, TX	3202225	2002-09-11	2002-09-11
700 WEST GRANT BR	PAULS VALLEY, OK	2164250	2004-06-19	1992-11-01
7723 NORTHWEST 23RD ST BR	BETHANY, OK	2163879	2004-06-19	1978-07-03
800 EAST CHARLES PAGE BLVD B	SAND SPRINGS, OK	2163767	2004-06-19	1988-12-29
8202 EAST 71ST BR	TULSA, OK	2163749	2004-06-19	1988-12-29
911 EAST TAFT BR	SAPULPA, OK	2163776	2004-06-19	1988-12-29
999 E BASSE RD BR	SAN ANTONIO, TX	3202234	2002-08-16	2002-08-16
ALAMO BR	ALAMO, TX	3260485	2004-01-15	2004-01-15
ALAMO HEIGHTS BR	SAN ANTONIO, TX	3529203	2000-01-04	2000-01-04
ALIEF BR	ALIEF, TX	341253	1997-11-06	1970-10-05
ALON HEB BR	SAN ANTONIO, TX	2521581	1996-09-19	1996-09-19
ANGLETON BR	ANGLETON, TX	1876903	1997-03-08	1991-07-13
ARANSAS PASS BR	ARANSAS PASS, TX	3530012	2001-03-26	2001-03-26
ARDMORE BR	ARDMORE, OK	3576243	2007-04-04	2007-04-04
ASH BR	MCALLEN, TX	3529865	1996-01-13	1996-01-13
ASTRODOME BR	HOUSTON, TX	3529780	2001-07-10	2001-07-10
AUSTIN AIRPORT BR	AUSTIN, TX	3467565	2006-08-21	2006-08-21
BANDERA RD BR	HELOTES, TX	3281127	2004-07-06	2004-07-06
BASTROP BR	BASTROP, TX	4064297	2010-02-08	2010-02-08
BAY CITY BR	BAY CITY, TX	1469369	1994-09-01	1990-08-31
BIXBY BR	BIXBY, OK	3944918	2009-05-18	2009-05-18
BUNKER HILL HEB BR	HOUSTON, TX	3835427	2008-11-07	2008-11-07
CALLAGHAN BR	SAN ANTONIO, TX	1866360	1991-06-22	1991-06-22
CASTLE HILLS BR	SAN ANTONIO, TX	1971572	1992-06-26	1992-06-26
CEDAR PARK BR	CEDAR PARK, TX	3430569	2006-03-01	2006-03-01
CESAR CHAVEZ BR	AUSTIN, TX	4050133	2010-01-25	2010-01-25
CHANDLER BR	CHANDLER, OK	2163888	2004-06-19	1978-07-03
CONGRESS AVE BR	AUSTIN, TX	3281136	2004-07-06	2004-07-06
CRYSTAL FALL PKWY BR	LEANDER, TX	3906895	2009-02-02	2009-02-02
DEL RIO BR	DEL RIO, TX	3355091	2005-05-16	2005-05-16
DEL RIO WALMART BR	DEL RIO, TX	3530094	2002-05-15	2002-05-15
DETACHED FACILITY	LAREDO, TX	799452	1980-08-08	1980-08-08
DOMAIN MALL BR	AUSTIN, TX	3706611	2008-02-12	2008-02-12
DOWNTOWN BR	HOUSTON, TX	3529669	2000-07-31	2000-07-31
DUNCAN HWY 81 BR	DUNCAN, OK	3940929	2009-05-26	2009-05-26
EAGLE PASS BR	EAGLE PASS, TX	586353	2002-01-01	1890-01-01
EAGLE PASS MAIN ST BR	EAGLE PASS, TX	3301977	2004-10-06	2004-10-06
EAST BR	EAGLE PASS, TX	2421243	2002-01-01	1995-12-18
EAST TRAVIS BR	SAN ANTONIO, TX	1866342	1991-06-22	1991-06-22
EDINBURG MCCOLL BR	EDINBURG, TX	3486463	2006-10-18	2006-10-18
EDINBURG UNIV BR	EDINBURG, TX	3622207	2007-07-23	2007-07-23
EDINGBURG BR	EDINBURG, TX	1460508	1990-06-30	1990-06-30
EDMOND/BRYANT BR	EDMOND, OK	2163963	2004-06-19	1980-01-25
EL BANQUITO DE MAR BR	LAREDO, TX	2406259	1996-02-15	1996-02-15
EL BANQUITO DOWNTOWN	LAREDO, TX	1990407	1992-06-29	1992-06-29
EL BANQUITO HGS BR	LAREDO, TX	3531206	2002-06-30	2002-06-30
EL BANQUITO MINES RD BR	LAREDO, TX	3531279	1998-09-30	1998-09-30
EL BANQUITO N BR	LAREDO, TX	3531215	2002-06-30	2002-06-30
EL BANQUITO S BR	LAREDO, TX	2598266	1997-03-10	1997-03-10
ELDRIDGE BR	HOUSTON, TX	3529799	2000-12-06	2000-12-06
ELDRIDGE PKWY BR	HOUSTON, TX	3446917	2006-05-08	2006-05-08
ELK CITY BR	ELK CITY, OK	2163981	2004-06-19	1980-01-25
ELM PL BR	BROKEN ARROW, OK	2163682	2004-06-19	1988-12-29
EVERHART RD BR	CORPUS CHRISTI, TX	3228506	2003-12-17	2003-12-17

FREEPORT BR	FREEPORT, TX	1960316	1997-03-08	1992-04-11
FRIENDSWOOD BR	FRIENDSWOOD, TX	3529856	2000-08-09	2000-08-09
GAILARDIA BR	OKLAHOMA CITY, OK	3664391	2006-03-20	2006-03-20
GALVESTON SEAWALL BR	GALVESTON, TX	3367441	2005-05-31	2005-05-31
GULFGATE CTR MALL BR	HOUSTON, TX	3266740	2004-04-30	2004-04-30
HEB IN-STORE MISSION BR	MISSION, TX	3207332	2002-10-18	2002-10-18
HIDALGO BRIDGE ST BR	HIDALGO, TX	3372490	2005-06-10	2005-06-10
HIGHWAY 6 BR	SUGAR LAND, TX	3312209	2004-12-13	2004-12-13
INDEPENDENCE HILL BR	SAN ANTONIO, TX	2427290	1996-03-14	1996-03-14
INWOOD BR	SAN ANTONIO, TX	3445639	2006-04-18	2006-04-18
JACKSON AVE BR	MCALLEN, TX	3529883	1998-10-21	1998-10-21
KATY GRAND PKWY S BR	KATY, TX	3384523	2005-09-21	2005-09-21
KIRBY DRIVE BR	HOUSTON, TX	780357	1997-11-06	1942-04-20
LA PLAZA BR	MCALLEN, TX	1479434	1990-06-30	1990-06-30
LAKE JACKSON BR	LAKE JACKSON, TX	1960334	1997-03-08	1992-04-11
LAKELINE MALL BR	CEDAR PARK, TX	3555154	2007-01-10	2007-01-10
LAREDO BR	LAREDO, TX	3255061	2004-03-15	2004-03-15
LAREDO HWY 83 BR	LAREDO, TX	3467668	2006-08-16	2006-08-16
LAWTON GORE DOWNTOWN BR	LAWTON, OK	3268726	2004-06-19	1991-04-26
LEAGUE CITY BR	DICKINSON, TX	3381942	2005-09-06	2005-09-06
LINDSAY BR	LINDSAY, OK	2164054	2004-06-19	1979-11-16
LOOP 410 BR	SAN ANTONIO, TX	3548875	2006-12-18	2006-12-18
LULING BR	LULING, TX	828455	2002-01-01	1933-12-30
MAIN BR	MCALLEN, TX	1459650	1990-06-30	1990-06-30
MARBLE FALLS BR	MARBLE FALLS, TX	481458	2002-01-01	1925-01-01
MCALLEN 23RD ST BR	MCALLEN, TX	3381960	2005-08-22	2005-08-22
MCALLEN BR	MCALLEN, TX	1444058	1990-04-04	1990-04-04
MCCRELESS HEB	SAN ANTONIO, TX	3809697	2008-08-01	2008-08-01
MIAMI BR	MIAMI, OK	3598375	2007-04-23	2007-04-23
MILITARY DR BR	SAN ANTONIO, TX	3582767	2007-02-20	2007-02-20
MISSION BR	MISSION, TX	1460535	1990-06-30	1990-06-30
MOORE BR	MOORE, OK	3506642	2006-11-07	2006-11-07
MUSKOGEE BR	MUSKOGEE, OK	3957981	2009-07-20	2009-07-20
N 10TH ST BR	MCALLEN, TX	1460526	1990-06-30	1990-06-30
NOLANA BR	MCALLEN, TX	2512217	1996-06-28	1996-06-28
NORTH STAR MALL BR	SAN ANTONIO, TX	3207350	2002-11-04	2002-11-04
NORTHWEST BLVD BR	CORPUS CHRISTI, TX	3281118	2004-07-06	2004-07-06
NORTHWEST MILITARY HWY BR	SAN ANTONIO, TX	2517481	1996-11-22	1996-11-22
OKLAHOMA CITY NW EXPY BR	OKLAHOMA CITY, OK	604378	2004-06-19	1908-01-01
OWASSO GARNETT RD BR	OWASSO, OK	3596764	2007-04-16	2007-04-16
PALMA VISTA BR	MISSION, TX	2523660	1996-10-02	1996-10-02
PALMHURST BR	PALMHURST, TX	3352438	2005-04-20	2005-04-20
PEARLAND BR	PEARLAND, TX	3684148	2007-11-07	2007-11-07
PENITAS BR	PENITAS, TX	3935028	2009-04-29	2009-04-29
PENN S BR	OKLAHOMA CITY, OK	2164287	2004-06-19	1976-12-04
PERRIN BEITEL BR	SAN ANTONIO, TX	3202207	2002-08-30	2002-08-30
PHARR BR	PHARR, TX	1460544	1990-06-30	1990-06-30
PHARR I RD BR	PHARR, TX	3301995	2004-10-15	2004-10-15
PLANTATION BR	LAREDO, TX	3531260	1998-03-31	1998-03-31
PLAZA DEL SOL MALL BR	DEL RIO, TX	3935037	2009-05-06	2009-05-06
PORT LAVACA BR	PORT LAVACA, TX	978060	1994-09-01	1909-05-12
PORTLAND BR	PORTLAND, TX	3463790	2006-07-24	2006-07-24
RICHMOND BR	RICHMOND, TX	2014337	1997-03-08	1993-02-01
RICHMOND BR	HOUSTON, TX	2340429	1997-11-06	1995-09-22
ROCKPORT BR	ROCKPORT, TX	1830062	1995-02-01	1991-02-01
ROCKPORT HWY 35 BR	ROCKPORT, TX	3303672	2004-10-27	2004-10-27
ROUND ROCK BR	ROUND ROCK, TX	3281145	2004-07-06	2004-07-06
S TENTH ST BR	MCALLEN, TX	1460496	1990-06-30	1990-06-30

SAGE RD FACILITY	HOUSTON, TX	1369601				1997-11-06	1986-07-11		
SAN ANTONIO BLANCO RD BR	SAN ANTONIO, TX	3352429				2005-04-20	2005-04-20		
SAN ANTONIO BR	SAN ANTONIO, TX	1002663				1989-05-01	1983-12-01		
SAN ANTONIO BR	SAN ANTONIO, TX	2994055				2002-01-01	1999-03-01		
SAN DARIO BR	LAREDO, TX	2524612				1996-11-26	1996-11-26		
SAN DARIO BR MALL NO 2	LAREDO, TX	3664515				2002-07-17	2002-07-17		
SAN JUAN BR	SAN JUAN, TX	3394607				2005-11-24	2005-11-24		
SAN MARCOS BR	SAN MARCOS, TX	2994037				2002-01-01	1998-03-02		
SAN PEDRO BR	SAN ANTONIO, TX	514561				1995-09-09	1987-04-06		
SCHERTZ FM 3009 BR	SCHERTZ, TX	3424380				2005-11-21	2005-11-21		
SERVICE CTR BR	SAN ANTONIO, TX	2242635				1994-09-15	1994-09-15		
SINTON BR	SINTON, TX	405061				2007-03-17	1909-02-01		
SINTON MOTOR BR	SINTON, TX	527365				2007-03-17	1972-06-05		
SOUTH PARK MEADOWS BR	AUSTIN, TX	3664485				2007-05-11	2007-05-11		
SOUTH PK M BR	SAN ANTONIO, TX	3529212				2002-05-29	2002-05-29		
SOUTH SHORELINE BR	CORPUS CHRISTI, TX	895457				1995-02-01	1983-05-16		
SOUTH STAPLES BR	CORPUS CHRISTI, TX	1193169				1995-02-01	1988-02-03		
SOUTH TX BLVD BR	WESLACO, TX	1872231				1996-06-28	1987-01-17		
SOUTHWEST MILITARY DR BR	SAN ANTONIO, TX	3596746				2007-04-16	2007-04-16		
SPENCER ST BR	HOUSTON, TX	3598357				2007-04-23	2007-04-23		
STILLWATER BR	STILLWATER, OK	3555181				2007-01-16	2007-01-16		
STONE OAK BR	SAN ANTONIO, TX	331665				1995-09-09	1983-06-01		
TULSA 101ST ST BR	TULSA, OK	3394634				2005-10-13	2005-10-13		
TULSA DOWNTOWN BR	TULSA, OK	2163712				2004-06-19	1988-12-29		
TULSA GARNETT RD BR	TULSA, OK	3490929				2006-10-30	2006-10-30		
TULSA SKELLY BR	TULSA, OK	1217319				2004-06-19	1988-09-01		
UNION PLACE BR	BROKEN ARROW, OK	3824047				2008-09-29	2008-09-29		
UVALDE MAIN ST BR	UVALDE, TX	3303663				2004-10-27	2004-10-27		
VICTORIA BR	VICTORIA, TX	3531194				2000-08-31	2000-08-31		
WALDRON BR	CORPUS CHRISTI, TX	3930470				2009-03-16	2009-03-16		
WALMART BR	EDINBURG, TX	3529922				1998-03-04	1998-03-04		
WALMART INST BR	LAREDO, TX	3531233				2001-03-28	2001-03-28		
WALMART INST LP 20 BR	LAREDO, TX	3531251				2003-03-06	2003-03-06		
WALZEM BR	SAN ANTONIO, TX	2232430				1994-08-15	1994-08-15		
WESLACO TX BLVD BR	WESLACO, TX	3372502				2005-06-10	2005-06-10		
WEST ARPRT KR BR	SUGAR LAND, TX	3529409				2001-02-28	2001-02-28		
LONE STAR NB	PHARR, TX	842460	117 NAT	LONE STAR NAT BSHRS TX	10	2003-10-15	1983-01-24	2,130,544	1,764,865
BROWNSVILLE BOCA CHICA BR	BROWNSVILLE, TX	3450325				2005-06-23	2005-06-23		
BROWNSVILLE BR	BROWNSVILLE, TX	3506053				2003-10-15	2000-08-25		
CORPORATE ANNEX	SAN ANTONIO, TX	4116990				2010-03-22	2010-03-22		
CORPORATE OFF	MCALLEN, TX	4054832				2009-09-14	2009-09-14		
DHR MED BR	MCALLEN, TX	3922699				2009-01-29	2009-01-29		
EDINBURG BR	EDINBURG, TX	3506204				2003-10-15	2002-10-01		
HARLINGEN BR	HARLINGEN, TX	3506231				2003-10-15	2003-05-14		
HARLINGEN MOTOR BANK BR	HARLINGEN, TX	3506437				2006-01-01	2006-01-01		
HIDALGO BR	HIDALGO, TX	3252622				2004-02-09	2004-02-09		
LA PLACITA BR	MCALLEN, TX	4351595				2011-10-14	2011-10-14		
MAIN ST BR	MCALLEN, TX	4054823				2009-09-04	2009-09-04		
MED POINT BR	MCALLEN, TX	3506240				2003-11-01	2003-11-01		
MISSION BR	MISSION, TX	2994774				2003-10-15	1997-04-14		
MISSION MED BR	MISSION, TX	3365607				2005-06-27	2005-06-27		
NOLANA BR	MCALLEN, TX	3794690				2008-03-10	2008-03-10		
NORTH MCALLEN BR	MCALLEN, TX	2449911				2003-10-15	1996-04-15		
PALMVIEW BR	PALMVIEW, TX	3295311				2004-05-12	2004-05-12		
PHARR MOTOR BK	PHARR, TX	3506398				2005-03-08	2005-03-08		
PHARR S CAGE BR	PHARR, TX	4195230				2010-09-13	2010-09-13		
PORT ISABEL MOTOR BK	PORT ISABEL, TX	3450343				2006-05-15	2006-05-15		

RIO GRANDE CITY BR	RIO GRANDE CITY, TX	2994783				2003-10-15	2000-08-01		
RIO GRANDE CITY WEST BR	RIO GRANDE CITY, TX	4236188				2011-01-03	2011-01-03		
ROMA BR	ROMA, TX	3336689				2005-01-31	2005-01-31		
SAN ANTONIO MED BR	SAN ANTONIO, TX	4195221				2010-08-24	2010-08-24		
SAN ANTONIO SAN PEDRO BR	SAN ANTONIO, TX	4326593				2011-04-20	2011-04-20		
SOUTH MCALLEN BR	MCALLEN, TX	2246718				2003-10-15	1994-06-13		
SOUTH PADRE ISLAND BR	SOUTH PADRE ISLAND, TX	3450334				2006-05-15	2006-05-15		
WESLACO BR	WESLACO, TX	3302527				2004-04-26	2004-04-26		
WESLACO NORTH BR	WESLACO, TX	4351607				2011-10-25	2011-10-25		
ZARZAMORA BR	SAN ANTONIO, TX	4366870				2011-12-12	2011-12-12		
ONE WORLD BK	DALLAS, TX	3296859	207 NMB	ONE WORLD HOLD	20	2007-03-31	2005-04-04	91,762	73,976
SOUTHWESTERN NB	HOUSTON, TX	2625724	117 NAT	SWNB BC	20	2003-07-22	1997-11-03	331,317	280,692
AUSTIN BR	AUSTIN, TX	3745414				2007-09-25	2007-09-25		
PLANO BR	PLANO, TX	3540552				2005-10-26	2005-10-26		
RICHARDSON BR	RICHARDSON, TX	3540570				2006-01-01	2006-01-01		
SUGAR LAND BR	SUGAR LAND, TX	3351646				2005-04-28	2005-04-28		
STATE BK OF TX	DALLAS, TX	1157415	207 NMB	SBT BSHRS	20	1989-03-10	1987-10-19	535,448	445,984
GARLAND BR	GARLAND, TX	1443284				1990-03-30	1990-03-30		
IRVING BR	IRVING, TX	3951354				2009-07-06	2009-07-06		
RICHARDSON BR	RICHARDSON, TX	3540909				1998-11-16	1998-11-16		
TEXAS NB	MERCEDES, TX	497954	117 NAT	MNB VENT	10	2007-03-02	1920-11-26	95,919	74,633
EDINBURG BR	EDINBURG, TX	3767180				2007-07-16	2007-07-16		
UNITED CENTRAL BK	GARLAND, TX	259657	207 NMB	CENTRAL BC	20	1988-01-29	1984-08-20	2,220,482	1,943,997
1112 S WASHINGTON STR OFF	NAPERVILLE, IL	836946				2009-08-01	1970-01-13		
1303 OGDEN AVE BR	DOWNERS GROVE, IL	2507352				2009-08-01	1988-12-30		
ANNANDALE BR	ANNANDALE, VA	3831942				2008-10-10	2008-10-10		
ARLINGTON BR	ARLINGTON, TX	2399726				1996-01-31	1996-01-31		
ARTESIA BR	ARTESIA, CA	3603046				2007-06-19	2007-06-16		
ATLANTA LPO	DULUTH, GA	3397091				2005-04-28	2005-04-28		
AURORA BR	AURORA, IL	3765533				2009-08-01	2007-08-29		
AUSTIN BR	AUSTIN, TX	3298620				2004-09-15	2004-09-15		
CAROL STREAM BR	CAROL STREAM, IL	3508093				2009-08-01	2001-04-09		
CARROLLTON BR	CARROLLTON, TX	4010173				2009-10-27	2009-10-27		
CHANDLER LPO	CHANDLER, AZ	3684531				2007-12-31	2007-12-31		
CHARLOTTE LPO	CHARLOTTE, NC	3608760				2007-06-25	2007-06-25		
CHICAGO LPO	CHICAGO, IL	3454912				2006-07-15	2006-07-15		
EDISON CROSSLANDS SHOPPING C	EDISON, NJ	3157062				2009-08-01	2001-02-06		
FASHION MART BR	LOS ANGELES, CA	3731967				2008-04-15	2008-04-15		
HARRY HINES BR	DALLAS, TX	1919006				1989-05-11	1989-05-11		
HARVEY BR	HARVEY, IL	3957972				2009-08-01	2009-08-01		
HOUSTON BR	HOUSTON, TX	3765515				2009-08-01	2007-08-07		
HOUSTON GESSNER BR	HOUSTON, TX	2225665				1994-07-15	1994-07-15		
HOUSTON HILLCROFT BR	HOUSTON, TX	3424456				2006-02-15	2006-02-15		
IRVINE BR	IRVINE, CA	3782718				2008-05-30	2008-05-30		
JIMMY CARTER BLVD BR	NORCROSS, GA	3815568				2008-09-02	2008-09-02		
KILLEEN BR	KILLEEN, TX	2731205				1998-06-20	1998-06-20		
NAPERVILLE BR	NAPERVILLE, IL	2354725				2009-08-01	1987-05-21		
PLANO LEGACY BR	PLANO, TX	4010155				2009-10-16	2009-10-16		
PORT RICHMOND BR	STATEN ISLAND, NY	58618				2009-08-01	1971-01-04		
RICHMOND LPO	GLEN ALLEN, VA	3457913				2006-05-15	2006-05-15		
ROCKVILLE BR	ROCKVILLE, MD	3718191				2008-03-10	2008-03-10		
ROSELLE BR	ROSELLE, IL	3508039				2009-08-01	2001-02-15		
SAN JOSE LPO	NEWARK, CA	3457922				2006-05-01	2006-05-01		

SPRING BR	HOUSTON, TX	2642897			1997-12-15	1997-12-15			
SPRINGFIELD BR	SPRINGFIELD, VA	3468843			2006-09-01	2006-09-01			
TAMPA LPO	TAMPA, FL	3560952			2007-01-25	2007-01-25			
VILLA PARK BR	VILLA PARK, IL	3508066			2009-08-01	2001-06-08			
WESTERN AVE BR	CHICAGO, IL	3508011			2009-08-01	2000-12-18			
WILSHIRE BLVD BR	LOS ANGELES, CA	3818000			2008-09-15	2008-09-15			
WALLIS ST BK	WALLIS, TX	283867	207 NMB	WALLIS BSHRS	20	2012-02-08	1956-05-09	363,013	294,017
BANCO HERENCIA ALMEDA CROSSI	HOUSTON, TX	4099600				2012-02-08	2010-02-26		
BANCO HERENCIA BR	HOUSTON, TX	3686197				2012-02-08	2008-01-08		
EAGLE LAKE BR	EAGLE LAKE, TX	2244451				2012-02-08	1994-10-01		
FULSHEAR BR	FULSHEAR, TX	1947755				2012-02-08	1992-03-02		
HOUSTON BR	HOUSTON, TX	2041100				2012-02-08	1993-04-26		
MEADOWS BR	STAFFORD, TX	2799102				2012-02-08	1997-12-29		
NORTHWEST BR	HOUSTON, TX	4255518				2012-02-08	2011-03-04		
SAN ANTONIO BR	SAN ANTONIO, TX	3312197				2012-02-08	2004-12-13		
TOWN AND COUNTRY BR	HOUSTON, TX	3649361				2012-02-08	1999-03-22		
FIRST ST BK	DANVILLE, VA	722227	207 NMB		1	1959-12-31	1919-09-08	37,786	36,080
NCP CMNTY DEV FCU	NORFOLK, VA	2829849	103 FCU		39	2007-06-01	1999-06-05	2,032	1,747
NORTH MILWAUKEE ST BK	MILWAUKEE, WI	759540	207 NMB	NORTH MILWAUKEE BSHRS	1	1971-02-12	1971-02-12	94,093	81,228
NORTHRIDGE OFF	MILWAUKEE, WI	2523192				1996-08-14	1996-08-14		
BANK OF GUAM	HAGATNA, GU	711472	207 NMB	BANKGUAM HC	20	1980-06-04	1972-12-11	1,111,146	864,548
BANK OF GUAM ANDERSON FAC BR	YIGO, GU	2459303				1992-11-02	1992-11-02		
BANK OF GUAM CHUUK BR	CHUUK, 0	3624078				2006-06-30	1980-11-01		
BANK OF GUAM DEDEDO BR	DEDEDO, GU	710970				1980-06-04	1975-05-29		
BANK OF GUAM HARMON BR	HARMON, GU	4328476				2008-06-30	2008-06-30		
BANK OF GUAM JOETEN SUPER BR	SAIPAN, MP	3511105				2000-02-28	2000-02-08		
BANK OF GUAM KOLONIA POHNPE	POHNPEI, 0	717773				1984-04-02	1984-04-02		
BANK OF GUAM KOSRAE BR	KOSRAE, 0	4328524				2009-10-30	2009-10-30		
BANK OF GUAM MAJURO BR	MAJURO, 0	440969				1980-11-01	1969-05-26		
BANK OF GUAM MANGILAO BR	MANGILAO, GU	1946440				1992-01-17	1992-01-17		
BANK OF GUAM MERIZO BR	MERIZO, GU	3359802				1998-04-24	1998-04-24		
BANK OF GUAM NAVAL STATION B	SANTA RITA, GU	2459330				1992-10-15	1992-10-15		
BANK OF GUAM PALAU BR	PALAU, 0	712675				1984-04-02	1984-04-02		
BANK OF GUAM ROTA BR	ROTA, MP	716879				1985-03-01	1985-03-01		
BANK OF GUAM SAN ANTONIO BR	SAIPAN, MP	3511084				1988-08-28	1988-08-28		
BANK OF GUAM SAN FRANCISCO B	SAN FRANCISCO, CA	715676				1983-03-25	1983-03-25		
BANK OF GUAM TAMUNING BR	TAMUNING, GU	711070				1980-06-04	1978-11-13		
BANK OF GUAM TINIAN FAC BR	TINIAN, MP	1940662				1980-11-01	1980-11-01		
BANK OF GUAM TUMON BR	TUMON, GU	1847604				1984-06-06	1984-06-06		
BANK OF GUAM UPPER TUMON BR	UPPER TUMON, GU	3359790				2006-06-30	1997-01-10		
BANK OF GUAM YAP BR	YAP, 0	4328515				2009-09-18	2009-09-18		
BANK OF GUAM YIGO BR	YIGO, GU	4328506				2008-06-30	2008-06-30		
SAIPAN GARAPAN BR	SAIPAN, MP	1940671				1980-11-01	1950-06-19		
SANTA CRUZ BR	HAGATNA, GU	1946534				1991-03-19	1991-03-19		
YIGO BR	YIGO, GU	2459312				1993-02-02	1993-02-02		
BANKPACIFIC	HAGATNA, GU	364270	207 SAL		20	1999-06-08	1953-01-01	109,918	82,465
AGAT BR	AGAT, GU	4022493				2008-06-30	2008-06-30		
DEDEDO BR	DEDEDO, GU	4022505				2008-06-30	2008-06-30		
GARAPAN BR	GARAPAN, MP	4022523				2008-06-30	2008-06-30		
KOROR BR	TGERONGEL HAMLET, 0	4022532				2008-06-30	2008-06-30		
TAMUNING BR	TAMUNING, GU	4022514				2008-06-30	2008-06-30		

Summary Data

Total number of banks	107
Total assets (thousands)	\$39,083,778
Total deposits (thousands)	\$31,485,228

By minority code (Min Cd)	Count
1 African American	26
5 Caucasian Women	7
10 Hispanic	15
20 Asian Americans	41
30 Native Americans	13
35 Eskimos	0
37 Aleutss	0
39 Low Income Credit Union	4
99 Other Minorities	1
Total	107

By Federal Reserve membership status	
Member - Federally chartered	24
Member - State chartered	7
Nonmember	76
Total	107

Charter Class (Chr Cls) Code

Each charter class is composed of three separate digits:

First digit - Chartering authority

0 = Not applicable

1 = Federal (or National)

2 = State

Second digit - Federal Reserve System membership

0 = Not applicable or Nonmember

1 = Member

Third digit - primary insurer

0 = Not applicable or uninsured

1 = Federal Deposit Insurance Corp/Bank Insurance Fund

2 = FDIC/Savings Association Insurance Fund

3 = National Credit Union Share Insurance Fund

4 = State

5 = Other

6 = FDIC/BIF and FDIC/SAIF

7 = Deposit Insurance Fund (DIF) - the FDIC merged BIF & SAIF Mar 30, 2006 to form DIF

Entity Type (Ent Type)

NAT = National Bank

SMB = State Member Bank

NMB = Non-member Bank

FSB = Federal Savings Bank

SSB = State Savings Bank

SAL = Savings & Loan Association

FCU = Federal Credit Union

CRU = Credit Union

Holding Company Number

0 = Not applicable (Independent entity)

EXHIBIT C



Oregon

John A. Kitzhaber, M.D., Governor

Department of Transportation

Office of the Director

1158 Chemeketa Street NE

Salem, OR 97301

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Fax: (503) 986-3432

Date: June 25, 2012

To: Phil Ditzler, Administrator Oregon Division Federal Highway Administration; Rick Krochalis, Regional Administrator Federal Transit Administration Region 10; ODOT Executive Management Team

From: Matthew L. Garrett, Director

Subject: CIVIL RIGHTS REPORTING POLICY
DELEGATED AUTHORITY TO TITLE VI COORDINATOR,
DISADVANTAGE BUSINESS ENTERPRISE PROGRAM MANAGER, AND
EMPLOYEE CIVIL RIGHTS MANAGER

As the Director of the Oregon Department of Transportation (ODOT), I want to assure you of my commitment to making sure that ODOT is prepared to address concerns, issues, and complaints related to civil rights. I have established the following reporting policy to ensure that we are best able to respond to any of these needs should they arise in any of ODOT's transportation programs.

If there is a concern/complaint or issue that needs to be brought to my attention whether internal to ODOT or through our external partners, customers or contractors, I have designated the Title VI Coordinator, Disadvantage Business Enterprise Manager, and the Employee Civil Rights Manager to have direct and unfettered access to contact and/or meet with me. This authority means that under this policy these designated officials need not obtain any other organizational or managerial approval and will have the full support of my staff to work directly with me to address civil rights matters.

This declaration of designated authority speaks strongly to the high priority that the Oregon Department of Transportation places on ensuring the rights of those in protected classes, and those that comprise our most vulnerable populations, are not violated in any way. This policy statement is consistent with provisions contained in 23 CFR 200.9(b)(1), 49 CFR 26.25, and 29 CFR 1614.102(b)(4)

Sincerely,

Matthew L. Garrett
Director

ODOT HEADQUARTERS

March 2012

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ODOT Director
Z7016 7314001
PEM I (42X)

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- Employee Safety ■
- Government Relations Section ■
- Non - HQ employee or external rotation ■
- Budget Services ■
- Public Affairs ■
- Strategic Communications & Production ■
- Business Management ■

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Field Coordinator Reg 1
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Program Analyst 2 (27)
- Eileen Oliver**
Field Coordinator Reg 2
C0861 2301415
Program Analyst 2 (27)
- Christie Meacham**
Field Coordinator
Reg 3 / K Falls
C0861 1151026
Program Analyst 2 (27)
- Julie Myers***
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C0861*** 1181000
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- Vacant**
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- Carrie Hulse+**
Certification Specialist
C5247 3561323
Compliance Specialist 2
(25)
- John Downing**
Small Business Program
ESB (70) / DBE (30)
X0861 9901173
Program Analyst 2 (27)
- Greg Azure**
Title VI Program
X0861 1151033
Program Analyst 2 (27)

Amy Joyce
Legislative Liaison
X0873 0023027
Ops & Policy Analyst 4
(32)

Vacant
Safety Manager
X1348 1181008
Safety Specialist 2 (27)

Jerry Shultz
IH Safety Manager
X1346 3401023
Safety Specialist 2 (27)

Travis Brouwer
Federal Liaison
X0873 7313002
Ops & Policy Analyst 4
(32)

Erin Towne
WC/Safety Manager
X1346 0007000
Safety Specialist 2 (27)

Ron Seater
Safety Manager
X1346 0810008
Safety Specialist 2 (27)

Victor Dodier
Transportation Analyst
X0872 1151032
Ops & Policy Analyst 3
(30)

Penny Repine
Risk Mgmt. Coord.
X0871 1161002
Ops & Policy Analyst 2
(27)

Leslie Shaffer
Administrative Specialist
C0108 0001191
AS2 (19)

John Baker
Transportation Analyst
X0872 9252005
Ops & Policy Analyst 3
(30)

April Carpenter
Budget Analyst
X1245 0013007
Fiscal Analyst 3 (30)

Darryl Ricker, Mgr.
Budget Services
X7010 0057801
PEM F (35X)

Kate Thiel**
Transportation Analyst
C0871 0512002
Ops & Policy Analyst 2
(27)

Amber Taylor
Budget Analyst
X1245 1091015
Fiscal Analyst 3 (30)

Joanna Robart
Legislative Coordinator/
Project Manager
X0872 1022030
Ops/Policy Analyst 3 (30)

Theresa Gibeaut
Budget Technician
C0107 1091003
Admin Specialist 1 (17)

Gary Keys
Ops & Policy Coordinator
X0872 3471153
Ops/Policy Analyst 3 (30)

Don Hamilton
Region 1 - PIO
X0866 1601011
Public Affairs Spec 3 (31)

Peter Murphy
Region 4 - PIO
C0866 0000003
Public Affairs Spec 3 (31)

Jeff Towers
Program/Fiscal Assistant
C1243 1151045
Fiscal Analyst 1 (23)

Lou Torres
Region 2 - PIO
C0866 0513003
Public Affairs Spec 3 (31)

Thomas Strandberg
Region 5 - PIO
C0866 0000005
Public Affairs Spec 3 (31)

Amy Merckley
Commission Sup/
Citizens' Contact Spec
Z0860 0022001
Program Analyst 1 (23)

Richard Little
Region 2 - PIO
C0866 0511001
Public Affairs Spec 3 (31)

David House
DMV - PIO
C0866 0712093
Public Affairs Spec 3 (31)

Erika Zuelke+
Civil Rights Support
C0119 2301388
ESS2 (19)

Jared Castle
Region 3 - PIO
C0866 0010035
Public Affairs Spec 3 (31)

Jyll Smith**
Major Projects Branch PIO
C0866*** Rotational
Public Affairs Spec 3 (31)

Becky Sue Williams
ODOT Director Support
Z0119 0001082
ESS2 (19)

Lissa Willis
State Radio Project -PIO
C0865 0305093
Public Affairs Spec 2 (29)

Roxanne VanHess
Com Division Support
C0119 0015002
ESS2 (19)

Sally Ridenour
Public Info Officer
C0866 1131076
Public Affairs Spec 3 (31)

Kevin Beckstrom
Pub/Central Sen/OTC
X0866 1151010
Public Affairs Spec 3 (31)

Jacque Carlisle
Office Coord/ Chief of
Staff Support/Citizens'
Contact Spec
X0860 4812001
Program Analyst 1 (23)

Michelle Van Schaick**
Dep Director Operations /
Gov Relations Support
Z0119*** 1181002**
ESS2 (19)

Billie Knapp
Deputy Director Central
Services Support
Z0119 0002111
ESS2 (19)

Rebecca Thoreson
Citizens' & ODOT
Representative
Team Lead
X0871 0184002
Ops & Policy Analyst 2 (27)

Kimberly Jordan
Citizens' & ODOT
Representative
C0871 1091074
Ops & Policy Analyst 2 (27)

Tori Hickerson**
Citizens' & ODOT
Representative
C0871*** 0001083
Ops & Policy Analyst 2 (27)

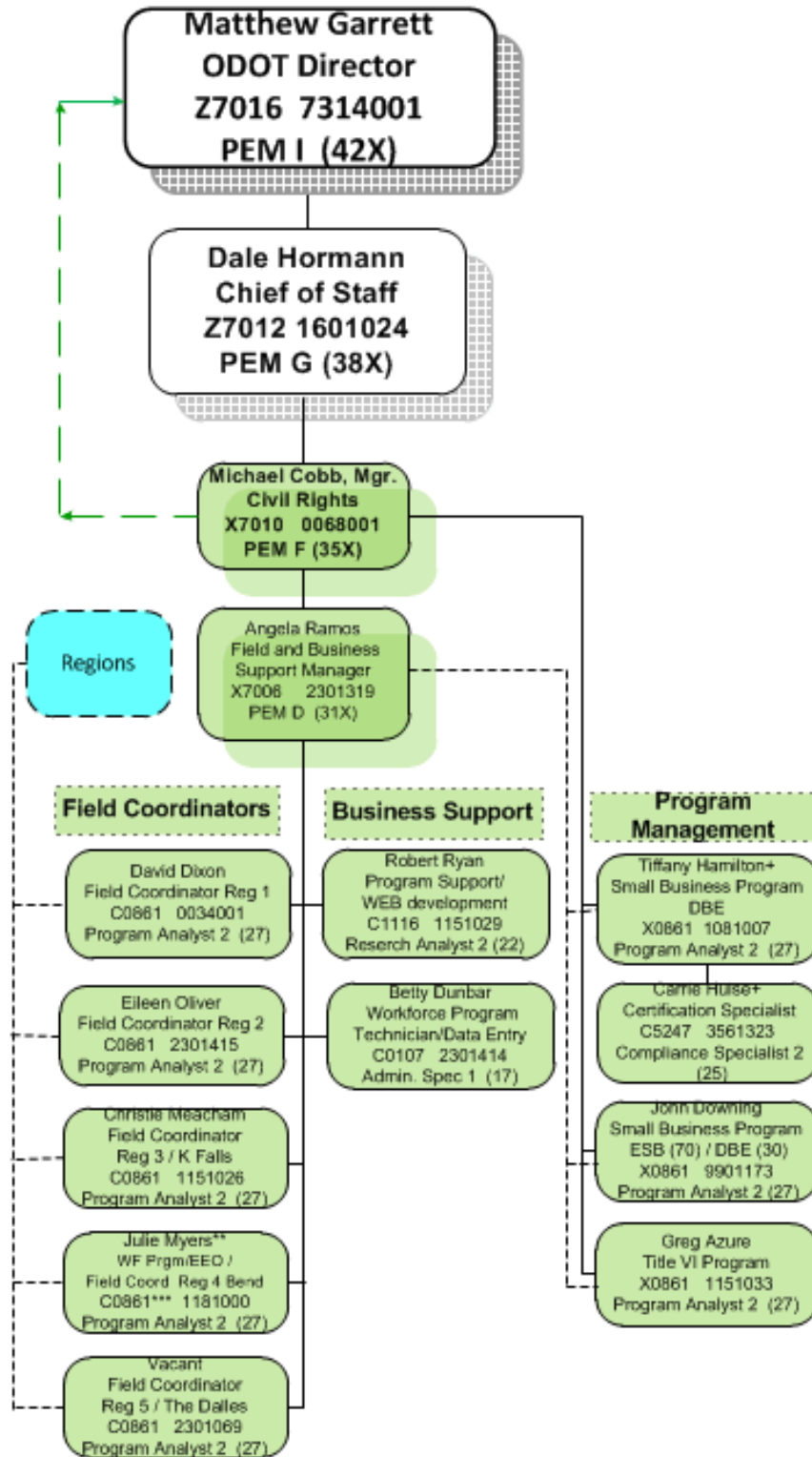
Dave Davis
Citizens' & ODOT
Representative
C0871 1091085
Ops & Policy Analyst 2 (27)

Amy Merckley/ Jacque Carlisle
Citizens' Contact Spec
X0860
Program Analyst 1 (23)

- + Limited Duration
- * Interim
- ** Rotational/Developmental Assignment
- *** Rotational Assignment Classification
- Staff Reports
- ← Direct access on DBE program matters

Office of Civil Rights

ODOT Headquarters



- Limited Duration
- Rotational/Developmental Assignment
- Rotational Assignment Classification
- Soft Reports
- ← Direct access on DBE program matters

March 2012

EXHIBIT D



SUBCONTRACTOR SOLICITATION AND UTILIZATION REPORT

ODOT Office of Civil Rights ♦ 955 Center St. NE, Room 471 ♦ Salem, OR 97301

Please read instructions before completing this form.

This form (ODOT form 734-2721) incorporates and replaces previous DBE and MWESB Subcontractor/Supplier Solicitation and Utilization forms (ODOT forms 734-2533 and 731-0516). The previous forms are obsolete and will not be accepted.

1. PROJECT NAME	2. CONTRACT NUMBER (IF KNOWN)	3. BID OPENING DATE
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All bidders, including DBE prime bidders, must complete and submit this form to the ODOT Office of Civil Rights within 10 calendar days after the bid-opening date. This information will be used to prepare a list of bidders as required by 49 CFR 26.11(c).

By signing below the bidder acknowledges and certifies that this form accurately represents receipt of and consent from the firms listed below as to the consideration for performance on this project. The bidder certifies that the bidder had direct contact with the firms named regarding participation in this project.

4. BIDDER PRINT NAME	5. BIDDER TITLE	
6. BIDDER SIGNATURE X	7. DATE	
8. COMPANY NAME OF CONTRACTOR	9. PHONE	10. FAX

11. NAME OF FIRM	12. PHONE	13. DBE / MWESB STATUS	14. UTILIZATION	
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EXHIBIT E

DISADVANTAGED BUSINESS ENTERPRISE (DBE) COMMITMENT REQUIREMENTS

1. DBE Policies, Obligations, Applicabilities, and Authorities

According to 49 CFR Part 26, all ODOT, all bidders, and all contractors shall agree to abide by and take all necessary and reasonable steps to comply with the DBE policies, obligations, applicabilities and authorities listed in the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

The definitions of and references to DBE goal, DBE commitments and crediting DBE participation shall apply solely to AFDBEs [African American DBE] and ASDBEs, [Asian American DBE] as defined in the Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions.

The assigned DBE goal for this project is referred to in the project Special Provisions.

2. Eligibility Requirements for DBE Participation on Projects

Participation shall be accomplished by including certified DBEs in any part of the contract work that is necessary to complete the contract obligation. A certified DBE may participate as a prime contractor, subcontractor, joint venture, material supplier, material manufacturer, and professional service provider.

Only those DBE firms, certified in the types of work selected and identified as African American, Subcontinent Asian or Asian Pacific by the Office of Minority, Women, and Emerging Small Business (OMWESB) shall be eligible to fulfill required DBE participation contract obligations.

3. Crediting of DBE Participation Toward Meeting the Assigned DBE Participation Goal

(a) Crediting of DBE Participation in Bid Submission

Credit toward meeting the assigned DBE participation goal shall be granted only when the listed firms are currently certified by OMWESB as disadvantaged business enterprises and identified as African American, Subcontinent Asian or Asian Pacific. Bidders should not assume that a minority-owned or a woman-owned firm is currently certified by OMWESB as a DBE firm, that a certified DBE firm is certified as AFDBE or ASDBE, or that a firm is certified to perform any particular type of work. Bidders are 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 503-986-0069. Bidders may also access updated certification list by going to the OMWESB web site at <http://www4.cbs.state.or.us/ex/dir/omwesb/>

For joint ventures, the percentage of DBE participation to be credited toward the goal will be determined or approved by the ODOT prior to bid opening on the basis of information submitted in the joint venture application according to Item No. 6 DBE Participation through Joint Venture.

(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 DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall be credited toward meeting the

assigned goal, provided the DBE performs a Commercially Useful Function according to 49 CFR 26.55(c)(1).

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

The bidder may count 100% of its expenditure to a DBE manufacturer. According 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.

The bidder may count 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 work involved. The DBE shall negotiate the cost, arrange delivery of, and pay for the materials and supplies required for the work of 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

The bidder may count only 60% of the committed amount for the cost of supplies and materials from regular dealers toward meeting the DBE goal. According to 49 CFR 26.55(e)(2)(i) 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.

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

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

(e) Crediting of DBE Participation through Use of DBE Service Providers

Credit toward meeting the 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 ODOT 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 ODOT 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 Commercially Useful Function was performed in delivering a professional, technical and/or expert service.

(f) Crediting of DBE Participation Through Use of DBE Owner/Operator Trucking

A DBE owner/operator must own and operate one truck and be certified by the Office of Minority, Women and Emerging Small Business.

In order for the contractor or subcontractor to be credited and receive payment for DBE owner/operator trucking participation, a valid agreement that includes or has attached the following information must be submitted to the project manager:

- (1) Driver's name;
- (2) Copy of driver's license;
- (3) Vehicle identification number;
- (4) Copy of vehicle registration;
- (5) Motor vehicle license plate number;
- (6) Motor Carrier Plate Number;
- (7) Copy of ODOT Motor Carrier 1A Permit;
- (8) Name of owner/operator from the side of the truck; and
- (9) Method of payment (hour, ton or load)

(g) Crediting of DBE Participation Through Use of DBE Trucking Firms

In order for the contractor to receive credit and payment for the use of a DBE trucking firm, the trucking firm must be covered by a subcontract or written agreement that has been consented by ODOT's project management prior to the beginning of the work.

4. Documentation of Bidders' Proposed DBE Participation

(a) DBE Commitment Certification and Utilization Form

DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM shall become a part of the resulting contract. This certification and utilization form shall be used to determine the bidder's responsiveness to the DBE requirements.

If the assigned goal is zero, all of the required information above Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM must be completed and signed by the bidder's authorized representative. Failure to completely fill out information above Part I, sign, and submit the form with the bid shall be considered non-responsive.

If the assigned goal is greater than zero, all of the required information above Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM must be completed and signed by the bidder's authorized representative. Bidders shall also complete and submit with the bid Part I of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM. The bidder shall fill in each committed DBE firm and its corresponding type of work, its capacity, and the subcontract amount, expenditure, fee, or commission. Failure to completely fill out, sign, and submit the form with the bid shall be considered non-responsive. The Agency will calculate each DBE amount, total the amount to be applied to the DBE goal and calculate the DBE commitment as a percentage of the total bid.

(b) DBEs Bidding as Prime Contractors

The requirements of section 4(a) will apply to DBE bidders from prime contracts. In determining whether a DBE bidder for a prime contract has met a contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE subcontractors or suppliers will be counted.

DBEs bidding as prime contractors shall complete the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM indicating 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.

(c) DBE Commitment Certification Form Part II - Good Faith Efforts

It is the intent of ODOT that all bidders meet the assigned DBE goal for participation by AFDDBEs and ASDDBs. It is recognized that in rare exceptions it may not be possible for all bidders to meet the goal. To determine whether the contract should be awarded to a bidder that has failed to meet the assigned goal, ODOT must decide whether the efforts made to obtain AFDDBE and ASDDBE 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 goal.

In the event a bidder is unable to meet the assigned contract goal, the bidder shall provide additional information regarding good faith efforts per the requirements Part II of the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM. The bidder must document the steps taken to obtain AFDDBE and ASDDBE participation, which demonstrate good faith efforts, such as those outlined below:

- (1) Evidence that the bidders attended any pre-solicitation or prebid meetings that were scheduled by ODOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
- (2) Evidence that the bidder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- (3) Evidence that the bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publication, concerning the subcontracting or supply opportunities;
- (4) Evidence that the bidder provided written notice to a reasonable number of specific DBEs, identified from the DBE Directory of Certified Firms and identified as African American, Subcontinent Asian or Asian Pacific for the selected subcontracting of material supply work, in sufficient time to allow the enterprises to participate effectively;
- (5) Evidence that the bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. This may include the information outlined below:
 - (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 to be performed;
 - (c) Documentation of each DBE contacted but rejected and the reasons for the rejection.

- (6) Evidence that the bidder provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (7) Evidence that the bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- (8) Evidence that the bidder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by ODOT or contractor;
- (9) Evidence that the bidder's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- (10) Evidence that the bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women, and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- (11) Evidence that the bidder used the services of ODOT's Supportive Services contractor(s).

(d) Failure to Comply

All bidders, including certified DBE prime bidders, shall submit a completed and signed DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM with its bid.

If the bidder fails to properly and completely fill out the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM and/or to provide sufficient evidence of compliance with good faith effort requirements, the bid shall be considered non-responsive and the bid shall be rejected.

5. Contract Award Selection Procedure

In addition to the provisions of Sections 00120 and 00130 of the Oregon Standard Specifications for Construction, 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 the ODOT meets its commitment to its overall DBE goal.
- (b) If the low bidder offering a reasonable bid meets or exceeds the assigned goal, that bidder will be considered responsive to the DBE requirement.
- (c) If the review of the type of work for which a DBE firm is certified does not match the type of work shown on the DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM (Part I) then the firm's participation on that contract cannot count toward the assigned DBE contract or overall DBE goals. The bidder will be determined non-responsive unless other certified DBE firms, with matching types of work have been listed or the bidder has established sufficient good faith efforts.
- (d) If the low bidder has not met the assigned goal, ODOT will review the documentation regarding its good faith effort activities to determine if the steps taken are satisfactory. If the steps taken are found satisfactory during the review process, that bidder will be considered responsive to the DBE requirement. If the steps taken are not found satisfactory, the bid will be considered non-responsive to the DBE requirement.
- (e) If the low bidder is determined to be non-responsive, ODOT, before awarding the contract, will notify the bidder in writing within 15 calendar days of the bid opening. The notification will

include the reason for the determination and provide the bidder an opportunity for administrative reconsideration.

Administrative Reconsideration includes:

- (1) The bidder will have the opportunity to provide written documentation or argument to the Review Committee, consisting of personnel knowledgeable with DBE Program requirements, concerning the issue of whether it met the goal or made adequate good faith efforts to do so, within four calendar days of the receipt of notification.
- (2) Upon request, the bidder will have the opportunity to meet in person with the Review Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (3) The Review Committee will make a decision on reconsideration within four calendar days after reviewing evidence of Good Faith Efforts.
- (4) The bidder will be notified in writing by the Review Committee regarding the decision of reconsideration within five calendar days of the decision. This notice will explain the basis for finding that the bidder did or did not meet the 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.

6. DBE Participation Through Joint Venture

Bidders who plan to bid as a joint venture with a DBE partner must be pre-qualified with the Oregon Transportation Commission under the provisions of ORS 279C.430 and Oregon Administrative Rule 734-010-0200 through 734-010-0380. The requirements of 49 CFR 26.55(b) also apply to bidders bidding as joint ventures. In addition to the standard pre-qualification process, there is a specific DBE Joint Venture Application Form. This form must be completed in order for the ODOT to determine DBE participation in the joint venture. Certification of DBE joint ventures shall be completed for and granted for each individual project. The DBE Joint Venture Application form will be provided by ODOT Procurement Office - Construction; 455 Airport Road S.E., Building K; Salem, Oregon 97301-5348; phone (503) 986-6916. The application must be received by Construction Contracts Section at least 10 days prior to the date of bid opening for each individual contract, and approval given prior to bid opening.

7. DBE Contract Compliance After Award and Before Contract Execution

ODOT will send the successful bidder written notice of acceptance and Award, including a request for further breakdown of the DBE information. Within ten calendar days after award and prior to contract execution, the successful bidder shall provide ODOT with a completed Committed DBE Breakdown and Certification Form describing the work to be performed by each DBE firm.

The successful bidder shall submit the following breakdown information: bid item, type of work, bid quantity and unit, unit price, and total price. Furthermore, the successful bidder shall indicate partial work on a bid item and explain the partial

item work. If trucking is a DBE committed work item, the successful bidder shall indicate if the DBE firm is an owner/operator trucking firm. The Prime Contractor and the Committed DBE Contractor shall sign the form.

FAILURE TO PROVIDE DETAILED DBE INFORMATION TO ODOT WITHIN TEN CALENDAR DAYS AFTER AWARD SHALL BE CAUSE FOR CANCELLATION OF THE AWARD AND WITHDRAWAL OF THE CONTRACT AND MAY BE CAUSE FOR FORFEITURE OF THE BID GUARANTY.

8. Information Relating to Contractors Soliciting Project Participation (Bidders List)

Within ten calendar days after bid opening, all bidders shall provide information requested in the Subcontractor Solicitation and Utilization Report, (see appendix), listing bona fide bids or quotes received on this project. The information provided will be used to construct a Bidders List required by 49 CFR 26.11(c).

9. Information Relating to the DBE Requirements on this Project

For further information concerning Disadvantaged Business Enterprise participation, including confirmation of certification for type of work, contact, in writing, C. Jill Miller not later than one week prior to the project bid opening at *ocrinforequest@odot.state.or.us*.

Other requests may be directed to:

Oregon Department of Transportation
Office of Civil Rights
955 Center Street NE, Room 471
Salem, OR 97301
Phone: 503-986-4350
Fax: 503-986-6382

EXHIBIT F

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SUPPLEMENTAL REQUIRED CONTRACT PROVISIONS**

01.00 DBE Policy and Authorities:

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

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

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

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

(b) Authorities - These Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions are authorized by the following laws, rules, regulations and guidelines, which, in conjunction with any pertinent policy memoranda or procedures issued by the FHWA, all of which are incorporated by reference into the provisions, govern the ODOT's administration of the DBE Program.

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

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

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

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

Oregon Revised Statutes, Chapters 200 and 279.

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

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

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

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

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

FAA - Federal Aviation Administration

FHWA - Federal Highway Administration

FTA - Federal Transit Administration

ODOT - Oregon Department of Transportation

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

USDOT - United States Department of Transportation

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

Certified Disadvantaged Business Enterprise - A business firm certified by the OMWESB, indicating that it:

- Meets the criteria outlined in 49 CFR 26 regarding certification as a DBE; and
- Possesses the required resources and expertise to perform designated types of work.

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

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

Commodity Codes - Codes assigned by the OMWESB to indicate the standard types of work the DBE provides.

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

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

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

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

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

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

Goal - An assigned numerical percentage value of the total dollar amount of a contract award for DBE participation which, based on the waiver granted by the United States

Secretary of Transportation, dated September 9, 2008, allowing group specific goals, is allocated solely for AFDDBE and ASDDBE participation.

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

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

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

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

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

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

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

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

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

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

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

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

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

(According to 49 CFR 26.71(n), DBE firms are certified only for specific types of work. If a DBE firm has not been certified prior to bid opening, for the type of work it is intending to perform on a given contract, then the firm's participation on that contract cannot count toward DBE contract or overall goals.)

The goal for the project is listed on the "Assigned DBE Contract Goal" sheet at the end of these provisions.

These Disadvantaged Business Enterprise (DBE) Supplemental Required Contract Provisions concerning the use of DBEs will apply equally to AFDBEs and ASDBEs committed to meet the DBE goal for AFDBE and ASDBE participation, as well as to other committed DBEs. References to DBE contractors and to DBE subcontractors throughout the provisions shall apply to such committed DBEs, and AFDBEs, and ASDBEs.

04.00 Subcontracting Limitations:

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

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

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

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

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

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

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

07.00 DBE Work Plan Proposal Form - The DBE Work Plan Proposal Form shall be completed by all DBE firms participating as subcontractors. The form is available by contacting the Office of Civil Rights at 503-986-4350. The form is also included in the Contractor's Pre-construction Conference Packet.

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

(a) Type of Work - List the types of work the DBE will perform.

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

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

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

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

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

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

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

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

09.00 Commercially Useful Function - The Contractor is responsible for ensuring that DBE firms working on the project perform a commercially useful function (CUF). The

Contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.

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

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

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

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

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

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

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

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

- The equipment is of a specialized nature,

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

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

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

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

10.00 Termination and Substitution of DBE - The Contractor shall notify ODOT in writing and shall obtain written consent before terminating and/or replacing the DBE that was committed as a condition of contract award or otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent for terminating the performance of any DBE will be granted only where the Contractor can

demonstrate that the DBE is unable, unwilling or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or replacement of a DBE will not be consented to based solely on a Contractor's ability to negotiate a more advantageous contract with another subcontractor.

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

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

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

(c) Proposed Substitution of Another Certified DBE - When a DBE substitution shall occur, the Contractor may submit another certified DBE firm to replace the original

committed firm in writing. The Contractor shall submit the name of the DBE firm, the proposed work to be performed, and the dollar amount of the work. The Contractor shall give pertinent information including bid item, item description, bid quantity and unit, unit price, and total price. In addition, the Contractor shall submit a written DBE Work Plan for the requested substitute DBE according to Section 07.00. The dollar value of work to be performed by the substitute DBE shall be in an amount equal to the dollar value of the terminated DBE, minus the value of work performed to date by the DBE, prior to the request for substitution. Should the Contractor be unable to commit the required dollar value to the substitute DBE, the Contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. ODOT will review the quality and intensity of those efforts. Efforts that are merely superficial are not good faith efforts to meet the goal. The Contractor shall document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

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

- Evidence that the Contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- Evidence that the Contractor used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- Evidence that the Contractor used the services of ODOT's Supportive Services Contractor(s).

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

12.00 Contractor Payments to Subcontractors - The Contractor shall maintain records of all subcontracts entered into with DBE firms and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid to each DBE subcontractor or vendor. The Contractor shall pay each subcontractor for satisfactory performance of its contract no later than ten Calendar Days from receipt of each payment the Contractor receives from the ODOT. The Contractor shall also return retainage payments to each subcontractor within 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 Project Manager. This policy applies to both DBE and non-DBE contractors. The Contractor shall submit a completed, signed original "Summary Report of Subcontractors Paid" form 734-2722, available from the Office of Civil Rights at 503-986-4350, to the Project Manager certifying that payment was made to each subcontractor or supplier. Submit the form when a progress or final payment has been made to each subcontractor or supplier or when any held retainage is returned to a subcontractor or supplier. Submit the form no later than the fifth day of the month following the date that payment was made to a subcontractor or supplier. At the completion of the project, submit a final form indicating the total amounts paid to all subcontractors and suppliers. *The participation of a DBE subcontractor will not be credited towards the prime Contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime Contractor has been paid to the DBE.*

13.00 Remedies - Failure of any Contractor to meet the requirements cited in Section 01.00(b) constitutes a breach of contract for which the imposition of the following sanctions could occur:

- Temporarily withholding progress payments until the Contractor complies with these provisions through future performance.
- Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.
- Suspension of work according to the Oregon Standard Specifications for Construction, subsections 00150.00 and 00180.70.

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

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

Failure of a bidder, Contractor, or subcontractor to comply with the requirements cited in Section 01.00(b) when there appears to be evidence of criminal conduct, shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

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

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

For further information concerning Disadvantaged Business Enterprise participation, including confirmation of certification for type of work, contact, in writing, the DBE Program Manager not later than one week prior to the project bid opening at ocrinforequest@odot.state.or.us.

Other requests may be directed to:

Oregon Department of Transportation
Office of Civil Rights
955 Center Street NE, Room 471
Salem, OR 97301
Phone: 503-986-4350
Fax: 503-986-6382

EXHIBIT G

[FHWA-1273 Required Contract Provisions for Federal-Aid Construction Contracts \(March 10, 1994 Version\)](#)

[Include in projects before August 9, 2012]

[FHWA-1273 Required Contract Provisions for Federal-Aid Construction Contracts \(May 1, 2012 Version\)](#)

[Include in projects on and after August 9, 2012]

EXHIBIT H

Chapter 200 — Disadvantaged, Minority, Women and Emerging Small Business Enterprises

2011 EDITION

CERTAIN DISADVANTAGED BUSINESS ENTERPRISES

MISCELLANEOUS MATTERS

GENERAL PROVISIONS

- 200.005 Definitions for ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105
- 200.015 Legislative findings
- 200.025 Advocate for Minority, Women and Emerging Small Business; office; officers and employees; duties
- 200.035 When state agency to notify advocate of solicitations and contract awards
- 200.045 Standards for good faith efforts to meet contract requirements; standards for establishing bidder's responsibility

CERTIFICATION

- 200.055 Certification of disadvantaged, minority, women or emerging small business enterprises; fee; rules; appeal
- 200.057 Designation of certified business as tier one or tier two firm
- 200.065 Fraudulent conduct prohibited; sanctions
- 200.075 Prohibited conduct; suspension of certification or right to participate in public contracts

RESPONSIBILITY OF PUBLIC AGENCIES

- 200.090 Public agencies to pursue policy of providing opportunities

MENTOR PROGRAM

- 200.100 Definitions for ORS 200.100 to 200.120
- 200.110 Mentor program; guidelines; eligibility
- 200.120 Standards for program participation

EMERGING SMALL BUSINESS ASSISTANCE PROGRAM

- 200.160 Transportation Commission duties; report
- 200.170 Eligibility for participation

200.180 Emerging Small Business Account; uses

200.190 Deposit of one percent of highway construction contract amount

200.200 Security for performance by emerging small business

GENERAL PROVISIONS

200.005 Definitions for ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105. As used in ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105:

(1) “Disadvantaged business enterprise” means a small business concern:

(a) That is at least 51 percent owned by one or more socially and economically disadvantaged individuals; or

(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more socially and economically disadvantaged individuals, and of which the management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(2) “Economically disadvantaged individual” means a socially disadvantaged individual whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to other individuals in the same business area who are not socially disadvantaged individuals.

(3) “Emerging small business” means an independent business:

(a) With its principal place of business located in this state;

(b) That qualifies as a tier one firm or a tier two firm;

(c) That is properly licensed and legally registered in this state; and

(d) That is not a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.

(4) “Minority individual” means a person who is a citizen or lawful permanent resident of the United States, who is:

(a) Black, having origins in any of the black racial groups of Africa;

(b) Hispanic, having Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;

(c) Asian American, having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;

(d) Portuguese, having Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;

(e) American Indian or Alaskan Native, having origins in any of the original peoples of North America; or

(f) A member of another group, or another individual who is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) “Minority or women business enterprise” means a small business concern:

(a) That is at least 51 percent owned by one or more minority individuals or women; or

(b) For which, in the case of a corporation, at least 51 percent of the stock is owned by one or more individuals who are minority individuals or women, and of which the management and daily business operations are controlled by one or more of the minority individuals or women who own it.

(6) “Responsible bidder” means a bidder who, as determined by the Advocate for Minority, Women and Emerging Small Business, has undertaken both a policy and practice of actively pursuing participation by minority or women business enterprises in all bids, both public and private, submitted by the bidder.

(7) “Small business concern” means a small business as defined by the United States Small Business Administration in 13 C.F.R. part 121 and in effect on January 1, 2006.

(8) “Socially disadvantaged individual” means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual’s identity as a member of a group.

(9) “Tier one firm” means a business that employs fewer than 20 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$1.5 million for a business performing construction, as defined in ORS 446.310, or \$600,000 for a business not performing construction.

(10) “Tier two firm” means a business that employs fewer than 30 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed \$3 million for a business performing construction, as defined in ORS 446.310, or \$1 million for a business not performing construction.

(11) “Woman” means a person of the female sex who is a citizen or lawful permanent resident of the United States. [1987 c.893 §2; 1989 c.1043 §1; 1991 c.517 §9; 2001 c.104 §71; 2003 c.794 §213; 2005 c.22 §§150,151; 2005 c.683 §§4,5]

200.015 Legislative findings. (1) The Legislative Assembly supports the aspirations of minorities, women and emerging small businesses to enter the mainstream of Oregon social, political and economic life.

(2) The Legislative Assembly finds:

(a) The opportunity for full participation in our free enterprise system by minorities, women and emerging small businesses is essential;

(b) Greater economic opportunity for minorities, women and emerging small businesses is essential;

(c) Review of public programs to remedy historical patterns of exclusion of and discrimination against racial or ethnic groups and women is needed;

(d) Public policies and programs to eliminate the effects of long-term, open and pervasive exclusion of and discrimination against minorities and women from the business sector, including increased opportunities to integrate minorities and women into the full economic life of the community should be reviewed; and

(e) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist.

(3) Women and minorities are rebuttably presumed to be:

(a) Economically disadvantaged.

(b) Socially disadvantaged. [1987 c.893 §3; 1989 c.1043 §2]

200.025 Advocate for Minority, Women and Emerging Small Business; office; officers and employees; duties. (1) There is created, in the Office of the Governor, the Advocate for Minority, Women and Emerging Small Business who shall be appointed by the Governor.

(2) There is created in the Oregon Business Development Department the Office for Minority, Women and Emerging Small Business, the employees of which shall be appointed by the Director of the Oregon Business Development Department.

(3)(a) The director may prescribe the duties and assignments of all officers and employees of the Office for Minority, Women and Emerging Small Business. The director shall establish the compensation of all officers and employees of the office.

(b) The officers and employees of the office shall be allowed reimbursement for reasonable and necessary travel and other expenses incurred in the performance of their duties.

(4) The Advocate for Minority, Women and Emerging Small Business shall:

(a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women and emerging small businesses into the business sector;

(b) Prepare an annual report to the Governor, director and Legislative Assembly on the status of minorities and women in the marketplace, accomplishments and resolutions of issues of concern to minority and women’s enterprises and recommendations for executive and legislative actions; and

(c) Carry out other duties that may be assigned by the Governor.

(5) The Office for Minority, Women and Emerging Small Business shall:

(a) Provide information to minority, women and emerging small businesses;

(b) Assist in the development and implementation of an aggressive strategy for this state, based on research and monitoring, that encourages participation of minorities, women and emerging small businesses in the state’s economy;

(c) Make recommendations to the director on the research, development and implementation of the plan for the involvement of disadvantaged and minority groups and emerging small businesses in all state programs;

(d) Maintain an Oregon Opportunity Register and Clearinghouse for information on public agency and other contract solicitations for professional services, supplies and services and other bid opportunities, in consultation with the State Board of Higher Education, the Department of Transportation and other entities;

(e) Monitor the certification and compliance program for disadvantaged, minority, women and emerging small businesses under ORS 200.055;

(f) Investigate complaints and possible abuses of the certification program; and

(g) Assist in the promotion and coordination of plans, programs and operations of state government that strengthen minority and women participation in the economic life of this state. [1987 c.893 §4; 1989 c.1043 §3; 1993 c.500 §7; 1993 c.744 §§189,189a; 2003 c.794 §214; 2005 c.683 §§6,7; 2009 c.830 §135]

200.035 When state agency to notify advocate of solicitations and contract awards. (1) For a public contract with a value of \$5,000 or more, a state agency shall provide timely notice and information to the Advocate for Minority, Women and Emerging Small Business regarding:

(a) Bid or proposal solicitations; and

(b) Contract awards.

(2) Each state agency shall, in consultation with the advocate, establish a process and timeline for providing the notice and information required by subsection (1) of this section to the advocate. [1987 c.893 §5; 1997 c.145 §1; 1997 c.802 §10; 2005 c.351 §1]

200.045 Standards for good faith efforts to meet contract requirements; standards for establishing bidder's responsibility. (1) To determine whether a bidder that has failed to meet emerging small business enterprise contract requirements may be awarded the contract, the public contracting agency must decide whether the bidder's efforts to obtain participation by emerging small business enterprises were good faith efforts to meet the requirements.

(2) Performing all of the following actions by a bidder constitutes a rebuttable presumption that the bidder has made a good faith effort to satisfy the subcontracting requirement for emerging small businesses. It shall be a rebuttable presumption that the bidder has not made a good faith effort if the bidder has not acted consistently with such actions. Efforts that are merely superficial are not good faith efforts:

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform emerging small business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by emerging small business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific emerging small business enterprises, identified from a list of certified emerging small business enterprises provided or maintained by the Oregon Business Development Department for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested emerging small business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any emerging small business enterprises;

(h) Where applicable, the bidder advised and made efforts to assist interested emerging small business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder's efforts to obtain emerging small business enterprise participation were reasonably

expected to produce a level of participation sufficient to meet the goals or requirement of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of emerging small business enterprises.

(3) To determine whether a bidder is a responsible bidder, the performance of all the following actions constitutes a rebuttable presumption that the bidder is responsible. It shall be a rebuttable presumption that the bidder is not responsible if the bidder has not acted consistently with the actions described in this subsection. Efforts that are merely superficial are not good faith efforts.

(a) The bidder attended any presolicitation or prebid meetings that were scheduled by the contracting agency to inform minority or women business enterprises of contracting and subcontracting or material supply opportunities available on the project;

(b) The bidder identified and selected specific economically feasible units of the project to be performed by minority or women business enterprises in order to increase the likelihood of participation by such enterprises;

(c) The bidder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, if any, concerning the subcontracting or material supply opportunities;

(d) The bidder provided written notice to a reasonable number of specific minority or women business enterprises, identified from a list of certified minority or women business enterprises provided or maintained by the Oregon Business Development Department for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;

(e) The bidder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested;

(f) The bidder provided interested minority or women business enterprises with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;

(g) The bidder negotiated in good faith with interested, capable and competitive minority or women business enterprises submitting bids;

(h) Where applicable, the bidder advised and made efforts to assist interested minority or women business enterprises in obtaining bonding, lines of credit or insurance required by the contracting agency or contractor;

(i) The bidder's efforts to obtain minority or women business enterprise participation were reasonably expected to produce a level of participation sufficient to meet the goals of the public contracting agency; and

(j) The bidder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the Advocate for Minority, Women and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority or women business enterprises. [1987 c.893 §7; 1989 c.1043 §8; 1997 c.145 §2; 2003 c.794 §215; 2009 c.830 §136]

CERTIFICATION

200.055 Certification of disadvantaged, minority, women or emerging small business enterprises; fee; rules; appeal. (1) Any disadvantaged, minority, women or emerging small business enterprise is entitled to be certified as such upon application to the Oregon Business Development Department. If the application is approved by the department, the department shall certify the applicant as a disadvantaged, minority, women or emerging small business enterprise. The enterprise shall be considered so certified by any public contracting agency.

(2) In consultation with the State Board of Higher Education and the Department of Transportation, and with the approval of the Advocate for Minority, Women and Emerging Small Business, the Oregon Business Development Department by rule shall adopt a uniform standard form and procedure designed to provide complete documentation that a business enterprise is certified as a disadvantaged, minority, women or emerging small business enterprise. The department shall compile and make available upon request a list of

certified disadvantaged, minority, women or emerging small business enterprises.

(3) Any business enterprise that is refused certification as a disadvantaged business enterprise or denied recertification as such or whose certification is revoked may appeal directly to the United States Department of Transportation.

(4) Any business enterprise that is refused certification as a minority, women or emerging small business enterprise or has its certification revoked may request a contested case hearing as provided in ORS chapter 183.

(5) The Oregon Business Development Department shall be the sole agency authorized to certify enterprises as disadvantaged, minority, women or emerging small business enterprises eligible to perform on public contracts in this state.

(6) The Oregon Business Development Department by rule may establish a fee not to exceed \$100 for a copy of the list of certified disadvantaged, minority, women and emerging small business enterprises and may assess state agencies for services under ORS 200.005 to 200.075.

(7) The Department of Transportation may collect a fee, not to exceed \$200, from a bidder upon bidder prequalifications to cover the costs of the Oregon Business Development Department in administering ORS 200.005 to 200.075. The Department of Transportation shall transfer such fees to the credit of the account established under subsection (8) of this section.

(8) The Oregon Business Development Department shall establish a special account in which to deposit fees and assessments. The special account is continuously appropriated to the department to meet its expenses in administering ORS 200.005 to 200.075. [1987 c.893 §8; 1989 c.1043 §4; 1993 c.500 §8; 1997 c.145 §3; 2003 c.794 §216; 2009 c.830 §137]

200.057 Designation of certified business as tier one or tier two firm. (1) A business may be certified as an emerging small business by the Oregon Business Development Department for up to 12 years and may be:

- (a) Designated a tier one firm for up to six years unless the business no longer qualifies as a tier one firm.
- (b) Designated a tier two firm for up to six years unless the business no longer qualifies as a tier two firm.

(2) The department shall adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.

(3) Notwithstanding the time limits established by subsection (1) of this section, if a tier one firm provides compelling information showing, in the judgment of the department, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department shall extend the tier one designation of the firm for one year. A tier one firm may receive the extension described in this subsection only once. [2005 c.683 §2; 2009 c.830 §138]

Note: 200.057 was added to and made a part of 200.005 to 200.075 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.

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.

(3) The public contracting agency may withhold payment, suspend or terminate the contract and may impose on any person a civil penalty not to exceed 10 percent of the contract or subcontract price or \$5,000, whichever is less, for each violation of subsection (1) or (2) of this section. The penalty shall be paid to the Office for Minority, Women and Emerging Small Business.

(4) The Oregon Business Development Department or an affected public contracting agency shall

investigate any complaint that a person has violated subsection (1) or (2) of this section. In investigating such a complaint, the department or an affected public contracting agency may require any additional information, administer oaths, take depositions and issue subpoenas to compel the attendance of witnesses and the production of books, papers, records, memoranda or other information necessary to carry out its duties. If any person fails to comply with any subpoena issued under this subsection or refuses to testify on any matter on which a person may lawfully be interrogated, the procedure provided in ORS 183.440 shall be followed to compel compliance.

(5) An affected public contracting agency or the department disqualify any person found to have violated subsection (1) or (2) of this section or who admits to such violation under oath during the course of an investigation from bidding or participating in any public contract for a period of time specified by the agency or department, not to exceed three years. Any contracting agency that has notice of the finding of the fraudulent certification may also disqualify the person from bidding on or participating in any public contract. [1987 c.893 §9; 1989 c.1043 §5; 1997 c.145 §4; 2009 c.830 §139]

200.075 Prohibited conduct; suspension of certification or right to participate in public contracts.

(1) Any bidder or contractor or subcontractor on a public contract that knowingly commits any of the acts listed in paragraphs (a) to (c) of this subsection shall have its right to bid on or participate in any public contract suspended. The suspension shall occur only after notice and opportunity for hearing in such manner as the affected public contracting agency, by rule, shall provide. The suspension shall be 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. The following acts are prohibited:

(a) Entering into any agreement representing that a disadvantaged, minority, women or emerging small business enterprise certified pursuant to ORS 200.055 will be performing work or supplying materials under the public improvement contract without the knowledge and consent of the disadvantaged, minority, women or emerging small business enterprise.

(b) Exercising management and decision making control over the internal operations of any certified disadvantaged, minority, women or emerging small business enterprise. As used in this paragraph, “internal operations” does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.

(c) Using a disadvantaged, minority, women or emerging small business enterprise to perform a subcontract or supply material under a public improvement contract to meet an established goal or requirement when the disadvantaged, minority, women or emerging small business enterprise does not perform a commercially useful function in carrying out its responsibilities and obligations under the contract.

(2) Any disadvantaged, minority, women or emerging small business enterprise certified under ORS 200.055 that allows or commits any of the acts listed in paragraphs (a) to (c) of this subsection shall have its certification suspended for up to 90 days for the 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. The following acts are prohibited:

(a) Use of the firm’s name to meet a disadvantaged, minority, women or emerging small business enterprise goal or requirement on a public contract when the firm does not in fact intend to or does not actually perform the work under the subcontract or purchase and supply material to the project under a material supply contract.

(b) Use of any personnel of an uncertified business to operate, manage or otherwise control the disadvantaged, minority, women or emerging small business enterprise.

(c) Failure to perform a commercially useful function in carrying out its functions under a subcontract or a material supply contract entered into with a contractor or subcontractor on a public contract when represented as a certified business to meet an established goal or requirement.

(3) For the purpose of this section “commercially useful function” means the actual performance of a function or service by the business for which there is a demand in the marketplace, and for which the business receives payment not disproportionate to the work performed or in conformance with industry standards.

Acting as a broker to provide for the performance of work by others does not constitute a “commercially useful function.” [1987 c.893 §11; 1989 c.1043 §6; 1991 c.91 §1; 1995 c.452 §21]

200.085 [1987 c.893 §1; repealed by 1989 c.1043 §14]

RESPONSIBILITY OF PUBLIC AGENCIES

200.090 Public agencies to pursue policy of providing opportunities. Public agencies shall aggressively pursue a policy of providing opportunities for available contracts to emerging small businesses and shall cooperate with the Advocate for Minority, Women and Emerging Small Business to determine the best means by which to make such opportunities available. [1989 c.1043 §10]

MENTOR PROGRAM

200.100 Definitions for ORS 200.100 to 200.120. As used in ORS 200.100 to 200.120:

(1) “Contractor” means a person who contracts on predetermined terms to be responsible for the performance of all or part of a job of preparation or construction in accordance with established specifications or plans, retaining control of means, method and manner of accomplishing the desired result, and who provides:

- (a) Labor at the site; or
- (b) Materials, supplies and labor at the site.

(2) “Disadvantaged business enterprise” means a small business concern that is at least 51 percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any corporation, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals and whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

(3) “Minority or women business enterprise” means a small business concern which is at least 51 percent owned by one or more minorities or women, or in the case of a corporation, at least 51 percent of the stock of which is owned by one or more minorities or women, and whose management and daily business operations are controlled by one or more of such individuals.

(4) “Minority individual” means a person who is a citizen or lawful permanent resident of the United States and who is:

- (a) Black, a person having origins in any of the black racial groups of Africa;
- (b) Hispanic, a person of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
- (c) Asian American, a person having origins in any of the original peoples of the Far East, Southeast Asia, the Indian subcontinent or the Pacific Islands;
- (d) Portuguese, a person of Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;
- (e) American Indian or Alaskan Native, a person having origins in any of the original peoples of North America; or
- (f) A member of another group or another individual that is socially and economically disadvantaged as determined by the Advocate for Minority, Women and Emerging Small Business.

(5) “Subcontractor” means a contractor who has no direct contractual relationship with the owner. [1991 c.559 §1; 2005 c.22 §152]

200.110 Mentor program; guidelines; eligibility. (1) The Oregon Business Development Department may recognize the mentor relationship between contractors and minority business enterprises or women business enterprises certified under this chapter. The mentor relationship shall offer the opportunity to foster and encourage minority and women business enterprises, to expand the capacity of presently existing minority and women businesses and to offer the opportunity for less experienced minority and women businesses to gain training and assistance.

(2) Guidelines for eligibility for the mentor relationship include, but are not limited to:

(a) Minority and women business enterprises that meet the certification requirements of the U.S. Department of Transportation are eligible for participation in a mentor program. Other minority and women business enterprises are also eligible if they meet the certification requirements of this chapter. An agency may grant approval of an enterprise application for certification concurrent with approval of a mentor arrangement.

(b) The minority or women business enterprise must be an independent organization, and the ownership by the individuals must be real. Other employment and business interests by the individuals are not precluded, if such employment or business interests do not conflict with the power of the minority or women owners to direct the management and policies of the minority or women enterprise to make day-to-day as well as major decisions on matters of management, policy and operations.

(c) The mentor program is intended to provide minority and women business enterprises with advice, assistance and training. The enterprise shall be responsible for management and operations of the business. The mentor shall not be responsible for the management of the firm. The mentor and the enterprise shall remain separate and independent business entities with the exception that facilities may be provided to the enterprise by the mentor if a separate lease agreement is maintained by the parties.

(d) Part ownership in a minority or women business enterprise by a nondisadvantaged party, including a mentor, is permitted if in compliance with 49 C.F.R. 23. Any property, equipment, supplies or other services which are sold, rented or donated to the enterprise and any investment made by nondisadvantaged individuals must be reported to the agency involved in the mentor program. Documentation shall be provided by bills of sale, lease agreements or similar documents.

(e) The mentor relationship may include an arrangement with an independent third party, such as a bank or accountant, to act as an agent. Third parties may receive progress payments for work accomplished by the minority or women business enterprise, made out jointly to the agent and the enterprise, and make payments, on behalf of the enterprise, to material suppliers or for federal and state payroll taxes.

(3) Types of assistance a mentor may provide to the minority or women business enterprise include:

- (a) Financial assistance;
- (b) Technical and management assistance;
- (c) Equipment rental and use of personnel; and
- (d) Bonding assistance. [1991 c.559 §2; 2009 c.830 §140]

200.120 Standards for program participation. (1) Mentor relationships may be documented by a written development plan, approved by the Oregon Business Development Department in consultation with the Oregon Association of Minority Entrepreneurs. The development plan shall:

- (a) Clearly set forth the objectives of the parties and their respective roles;
- (b) Be for a specified length of time;
- (c) Determine measurable goals to be reached by the minority or women business enterprise; and
- (d) Provide that if resources of the mentor are utilized by the minority or women business enterprise in the performance of contracts or subcontracts for the mentor or for another contractor, the resources shall be separately identified, accounted for and compensated directly by the minority or women business enterprise to the mentor. If the plan provides for extensive use of the mentor's resources by the minority or women business enterprise, the arrangement may be closely monitored.

(2) The development plan may also include training to be provided by the mentor to the minority or women business enterprise. Training may include:

- (a) Business planning;
- (b) Record keeping;
- (c) Technical training;
- (d) Capital formation;
- (e) Loan packaging;
- (f) Financial counseling;
- (g) Bonding; and

(h) Equipment utilization.

(3) The development plan may be reviewed annually by the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs to review the progress of the mentor program.

(4) The development plan shall contain a provision that the mentor relationship may be terminated by mutual consent or upon determination that:

(a) The mentor firm no longer meets the eligibility standards for certification as a minority or women business enterprise;

(b) Either party has failed or is unable to meet its obligations under the development plan;

(c) The minority or women business enterprise is not progressing or is not likely to progress in accordance with the development plan;

(d) The minority or women business enterprise has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the development plan; or

(e) The plan or provisions thereof are contrary to the requirements of federal, state, or local law or regulation, or otherwise contrary to public policy.

(5) Copies of the development plan shall be retained by all parties to it, and by the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs.

(6) The development plan may include a provision that the arrangement shall be dissolved by either party for reason by notifying the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs. [1991 c.559 §3; 2009 c.830 §141]

EMERGING SMALL BUSINESS ASSISTANCE PROGRAM

200.150 [1991 c.517 §1; repealed by 2005 c.683 §13]

200.160 Transportation Commission duties; report. The Oregon Transportation Commission shall appoint a committee to recommend plans whereby the Department of Transportation may assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects. The committee shall report biennially its recommendation to the commission and to the appropriate legislative committee. [1991 c.517 §2; 2005 c.683 §8]

200.170 Eligibility for participation. (1) Subject to subsection (2) of this section, to participate in the emerging small business program under ORS 200.160 to 200.200, an applicant must:

(a) Be certified by the Oregon Business Development Department under ORS 200.005 to 200.075 as an emerging small business;

(b) Show that the applicant's place of business and the work in which the applicant seeks to participate are located in this state; and

(c) Show that the applicant is in compliance with applicable licensing and registration requirements.

(2) The Department of Transportation may limit eligibility for participation on a specific project or contract to emerging small businesses that are located in or draw a part of their workforce from economically distressed areas or enterprise zones in this state, as designated by the Oregon Business Development Department in consultation with the Employment Department.

(3) An applicant who participates under ORS 200.160 to 200.200 must perform at least 51 percent of the labor provided by the applicant on a public improvement or maintenance project using the applicant's own workforce. [1991 c.517 §§3,6; 2005 c.103 §1; 2005 c.683 §9; 2009 c.830 §142]

200.180 Emerging Small Business Account; uses. The Emerging Small Business Account is established within the State Highway Fund. The Emerging Small Business Account is an investment fund for purposes of ORS 293.701 to 293.820. Moneys in the account are continuously appropriated to the Department of Transportation for the purpose of assisting emerging small businesses under the plans recommended under ORS 200.160. Interest earnings on moneys in the account are credited to the account. [1991 c.517 §4; 1993 c.744 §189b; 2005 c.683 §10]

200.190 Deposit of one percent of highway construction contract amount. The Department of Transportation, when undertaking a public improvement highway construction contract, shall deposit with the State Treasurer an amount equal to not more than one percent of the contract award amount. The State Treasurer shall credit the amount reserved to the Emerging Small Business Account established in the State Highway Fund. The deposit must be made within 30 days of the date on which the contract award is made. [1991 c.517 §5; 1993 c.744 §189c; 2005 c.683 §11]

200.200 Security for performance by emerging small business. (1) When any requirement exists under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C to provide a surety bond or other security for the faithful performance of a public contract, an emerging small business may provide:

(a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186;

(b) A stipulation or undertaking with one or more individual sureties; or

(c) Any other form of security specified in the statute requiring the security.

(2) When the security for the faithful performance of a public contract is in the form of a stipulation or undertaking with one or more individual sureties, the individual sureties must be residents of this state. The total net worth of all the individual sureties on the stipulation or undertaking must be at least twice the sum specified in the stipulation or undertaking. The public agency requiring the security shall determine if the sureties possess the qualifications prescribed by this subsection. [1991 c.517 §8; 2003 c.794 §217]

EXHIBIT I

DBE COMMITMENT CERTIFICATION AND UTILIZATION FORM

This DBE Certification and Utilization Form applies solely to meeting the assigned DBE goal for AFDBE and ASDBE participation. If the assigned goal is zero, the authorized representative of each Bidder shall fill in its name, sign and date the form, and return the form with its Bid. FAILURE OF THE BIDDERS TO COMPLETELY FILL OUT INFORMATION ABOVE PART I AND SUBMIT THIS FORM WITH THE BID SHALL BE CONSIDERED NON-RESPONSIVE. If the assigned goal is greater than zero, each Bidder, including DBE prime Bidders, shall complete and submit this form with their Bid. FAILURE OF THE BIDDERS TO COMPLETELY FILL OUT AND SUBMIT THIS FORM WITH THE BID SHALL BE CONSIDERED NON-RESPONSIVE. This certification shall be deemed a part of the resulting contract.

The bidder acknowledges and certifies that this form accurately represents receipt of and consent from the listed DBE firm as to the use of the referenced itemized quote below for the performance of this project. Bidder certifies that it had direct contact with the named DBE firms regarding participation of this project. Bidder certifies, if awarded this project, that it shall award subcontracts to or enter into agreements with the named DBE's.

If the bidder is submitting evidence of good faith efforts to secure participation, bidder certifies that the good faith efforts documentation is true, accurate and correctly reports the actions taken by the bidder.

Bidder's Authorized Representative (PRINT)

Bidder's Authorized Representative (SIGN)

Date

Name of Contractor (Company Name)

PART I

These columns to be completed by Bidder				These columns to be completed by Agency	
Name of AFDBE or ASDBE Firm	Type of Work *	Function ** (examples: Sub., Supp., DBE Man., Serv., Brok.)	Subcontract Amount (or expenditure amount or fee/commission amount)	Goal Participation % ***	DBE Amount ****

* From "Office of Minority, Women and Emerging Small Business" ** From "Function" column below. *** From "Goal Participation %" column below. **** (Subcontract Amount x Goal Participation %)

Function	Goal Participation %	This section to be completed by Agency	
Subcontractor	100% (of subcontract amount)	ASSIGNED DBE GOAL %	
Supplier (Regular Dealer)	60% (of supply expenditure amount)	TOTAL DBE AMOUNT	\$
DBE Manufacturer	100% (of material expenditure amount)	TOTAL BID AMOUNT	\$
Service Provider	100% (of fee or commission)	DBE COMMITMENT	%
Broker	100% (of brokerage fee only)	(TOTAL DBE AMOUNT ÷ TOTAL BID AMOUNT) (calculated to two decimal places (0.01))	

Additional sheets may be used by copying this form.
Bidder must sign each additional sheet to certify its content and completion of form.

PART II

Bidder shall submit documentation of "good faith efforts" as evidence of actions to secure DBE participation, if bidder's DBE participation commitment for AFDBEs and ASDBEs is less than the assigned goal.

Bidder's documentation of "good faith efforts" shall meet the requirements provided in the Disadvantaged Business Enterprise (DBE) Commitment Requirements, item no. 4(c) DBE Commitment Certification Form Part II - Good Faith Efforts, which outlines the activities considered for good faith efforts.

EXHIBIT J

NOTICE TO BIDDERS PLANNING TO BID AS JOINT VENTURES WITH DBEs

Only joint ventures certified by the Department can be used to meet assigned DBE contract goals. Joint venture applications of the apparent low bidder must be received by Program Services, 355 Capitol St NE Room 212 Salem, OR 97301-3871, Phone (503) 986-3877, in accordance with the timeframes specified in the DBE Special Provisions of the contract documents. For specific information about joint venture certification procedures, write to Office of Civil Rights, 800 Airport Road SE, Salem, OR 097301-4978 Phone (503) -986-4350.

CERTIFICATION PROCEDURE FOR JOINT VENTURES WITH A DBE PARTNER

Bidders planning to bid as joint ventures with a DBE partner to meet assigned contract DBE goals must follow the appropriate procedure listed:

1. Two or more certified DBEs as joint venture.
 - A. State name of joint venture on bid proposal. Since all firms are already certified, a joint venture application is not required.
 - B. A copy of the joint venture agreement by the apparent low bidder must be submitted in the timeframe specified in the DBE Special Provisions of the contract document for each individual contract. The agreement must include information which will clearly define the portion of the work for which each DBE is responsible.

2. Certified DBE and non-DBE.

The Joint Venture Application of the apparent low bidder must be received by Contracts Unit, Program Services in the timeframe specified in the DBE Special Provisions of the contract document. The application and supporting documents must clearly:

- A. Establish the ownership of the joint venture, demonstrating the DBE partner's share in the ownership, control, and management responsibilities, risks, and profits of the joint venture.
 - B. Define the portion of the work which each DBE Partner is responsible for performing.
3. Certifications of joint ventures are approved only for a specific project. New applications for certification are required for each project on which the joint venture is planning to bid. Since changes in the application may occur, the application should be obtained from Program Services for each project for which a joint venture is planned.
 4. Joint venture applications and agreements must be received by Contracts Unit, Program Services at least 10 business days prior to the date for opening bid proposals. The DBE/EEO/ESB Unit shall review and determine approval of all applications received by Contracts Unit.
 5. The DBE/EEO/ESB Unit shall provide the Contracts Unit a written notification of its decision on each application. The Contracts Unit will forward the notification to each applicant by certified mail (and by fax if available) prior to the date for opening proposals.
 6. The notification shall include: (1) notice of acceptance or rejection of application; (2) explanation for rejection of application; and (3) allocation of the percentage value of the joint venture agreement that may be credited toward the assigned DBE goal. If the percentage is less than the goal, the joint venture will be instructed to acquire the remaining percentage with DBE subcontracting commitment(s) or provide documentation of its good faith efforts to do so. Only expenditures to DBEs that perform a commercially useful function in the work of a contract may be counted toward the DBE goal.
 7. Failure to submit all information requested, either in the DBE Joint Venture Application or in the Joint Venture Agreement may result in the Department rejecting the application without further consideration.

JOINT VENTURE CERTIFICATION INSTRUCTIONS

Bidders who plan to meet the assigned DBE goal by bidding as a joint venture with a certified DBE as a joint venture participant must:

1. Complete and submit the attached form.
2. Submit a signed copy of the joint venture agreement.

All of the above items (1-2), must be received from the apparent low bidder in the timeframe specified in the DBE Special Provisions of the contract document by:

Contracts Unit, Program Services
Room 307 Transportation Building
Salem, OR 97310

CRITERIA FOR CONSIDERING JOINT VENTURE APPLICATION PROPOSED BY DBE AND NON-DBE CONTRACTORS

The Department will assess each joint venture agreement proposed to meet all or a portion of a DBE participation goal by using the following criteria:

1. Does the relationship, or any aspect of such, between the DBE and Non-DBE conflict with the ownership and control requirements specified in contract provisions?
2. Is the DBE an independent business concern separate and apart from the Non-DBE partner in the proposed agreement?
3. Is the DBE's share in the ownership, control, management responsibilities, risks, and profits of the joint venture commensurate with the DBE's ownership in joint venture?
4. Does the agreement clearly define the work to be performed by the DBE?
5. Is the work to be performed by the DBE in conformance with the contractual and statutory provisions governing the DBE's performance of a Commercially Useful Function?

DBE JOINT VENTURE APPLICATION

(This form need not be submitted if each joint venture firm is a certified DBE)

- 1. Name of Joint Venture: _____
- 2. Address of Joint Venture: _____

- 3. Phone number of joint venture (include area code): _____
- 4. FAX number of joint venture (include area code): _____
- 5. Identify the firms which comprise the joint venture: _____

(a) Describe the role of the DBE firm in the joint venture.

(b) Describe very briefly the experience and business qualifications of each non-DBE joint venture:

6. Nature of the joint venture's business:

7. Provide a copy of the joint venture agreement.

8. What is the claimed percentage of DBE ownership? _____

9. Ownership of joint venture? (This need not be filled in if described in the joint venture agreement, provided by question 7.)

- (a) Profit and loss sharing.
- (b) Capital contributions, including equipment.
- (c) Other applicable ownership interests.

10. Control of and participation in this contract. Identify below the individuals who are responsible for day-to-day management and policy decision making. Please list the name, title, firm name, race, gender, and work experience for those individuals whose primary responsibilities include:

(a) Financial decision:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Financial Experience:

Employer	Work Title	Time Period	Employer Contact Person	Phone
----------	------------	-------------	-------------------------	-------

- (1) _____
- (2) _____
- (3) _____
- (4) _____

(b) Management decisions, such as estimating:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Estimating Experience:

Employer	Work Title	Time Period	Person	Phone
----------	------------	-------------	--------	-------

- (1) _____
- (2) _____
- (3) _____
- (4) _____

(c) Management decisions, such as marketing and sales:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Marketing and Sales Experience:

Employer	Work Title	Time Period	Person	Phone
----------	------------	-------------	--------	-------

- (1) _____
- (2) _____
- (3) _____
- (4) _____

(d) Management decisions, such as hiring and firing of management personnel:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Personnel Management Experience:

Employer	Work Title	Time Period	Person	Phone
----------	------------	-------------	--------	-------

(1) _____

(2) _____

(3) _____

(4) _____

(e) Management decisions, such as purchasing of major items or supplies:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Purchasing Experience:

Employer	Work Title	Time Period	Person	Phone
----------	------------	-------------	--------	-------

(1) _____

(2) _____

(3) _____

(4) _____

(f) Management decisions, such as supervision of field operations:

Name: _____ Title: _____

Firm: _____

Race: _____ Gender _____

Field Supervisory Experience:

Employer	Work Title	Time Period	Person	Phone
----------	------------	-------------	--------	-------

(1) _____

(2) _____

(3) _____

(4) _____

(g) Is the DBE partner responsible and in total control of the work items, if any, on which it will perform? Yes _____ No _____ If no, why not?

(h) Does the DBE partner possess the power to direct or cause the direction of management and policies? Yes _____ No _____

(i) Does the DBE partner possess the power to make day to day as well as major decisions on matters of management, policy and operations? Yes _____ No _____

11. Identify 3 projects, if any, currently being performed by each joint venture partner:

Project Names of DBE Partner

Project Names of Non-DBE Partner

12. Indicate the DBE partner's most recent date of certification or re-certification with the State of Oregon:

13. Indicate any changes or modifications related to ownership, management and control of the DBE partner's firm, as noted in certification or re-certification applications, that occurred subsequent to its most recent date of certification or re-certification: _____

NOTE: If, after filing this application and before the completion of the joint venture's work on the contract covered by this regulation, there is any significant change in the information submitted, the joint venture must inform the Oregon Department of Transportation, either directly or through the prime contractor, if the joint venture is a subcontractor.

AFFIDAVIT:

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the Oregon Department of Transportation current, complete and accurate information regarding actual joint venture work and the payment therefore and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the Oregon Department of Transportation or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm

Name of Firm

Signature

Signature

Name

Name

Title

Title

Date

Date

Date _____

Date _____

State of _____

Sate of _____

County of _____

County of _____

On this _____ day of _____, 19 _____,

On this ____ day of _____, 19 _____,

before me appeared (Name) _____

before me appeared (Name) _____

_____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by

_____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by

(Name of Firm) _____
to execute the affidavit and did so as his or her free act and deed.

(Name of Firm) _____
to execute the affidavit and did so as his or her free act and deed.

(Seal)

(Seal)

Notary Public _____

Notary Public _____

Commission Expires _____

Commission Expires _____

EXHIBIT K



COMMITTED DBE BREAKDOWN AND CERTIFICATION

Project Name: _____

Contract No.: _____

Committed DBE Firm _____

Awarded Contractor shall complete and submit this form to ODOT's Office of Civil Rights within the timeline set forth in the award notification letter. Failure to provide detailed DBE information to ODOT within this timeline shall be cause for cancellation of the award and withdrawal of the contract and may be cause for forfeiture of the proposal guaranty.

The bidder acknowledges and certifies that this form accurately represents receipt of and consent from the listed DBE firm as to the use of the referenced itemized quote below for the performance of the above referenced project. This certification shall be deemed a part of the resulting contract.

Awarded Contractor and Committed DBE Contractor must sign each additional sheet to certify its content and completion of form.

 DBE Contractor Signature (Authorized Representative) Date Title

 Contractor Signature (Authorized Representative) Date Title

Item No.	Description (If partial, explain briefly) (If trucking, indicate if owner/operator)	(Partial)		Qty.	Unit	Unit Price	Total Price
		Yes	No				
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						\$	\$
						Total amount	\$

Contractor may copy form, as needed, for each committed DBE firm.

To meet the submittal requirement deadline as set forth in the award notification letter, this document may be faxed to the ODOT Office of Civil Rights at (503) 986-6382, original signed document must follow.

EXHIBIT L



SUMMARY REPORT OF SUBCONTRACTORS PAID

ODOT Office of Civil Rights • 955 Center St. NE, Room 471 • Salem, OR 97301

FOR WORK PERFORMED IN
MONTH / YEAR (MM/YYYY)

Please read [instructions](#) before completing this form.

This summary report is required for all projects even if there are no goals or aspirational targets set.

Submit to the Agency Project Manager (see contract for contact information) by the 5th of the month following receipt of payment. *(Example: Work performed in January will be paid in February; the Summary Report for January must be submitted to the Project Manager by March 5.)*

1. PROJECT NAME	2. CONTRACT/PA NO. (WOC NO. IF APPLICABLE)	3. TOTAL DBE COMMITMENT
4. CONTRACTOR NAME	7. PHONE	
5. ADDRESS	8. FAX	
6. CITY, STATE, ZIP	9. E-MAIL	

This certification is made under federal and state laws concerning false statements. The firm's representative signing below understands that supporting documentation for the payment is subject to audit, and that the documentation will be retained for a minimum of six years from the project acceptance date.

10. NAME OF PERSON PREPARING REPORT (PRINT)	11. TITLE	12. SIGNATURE	13. DATE
---	-----------	---------------	----------

	14. CONTRACTOR/CONSULTANT	15. BID ITEMS/TASKS DELIVERABLES PAID	16. STATUS				17. COMMITTED AMOUNT	18. AMOUNT PAID THIS PERIOD	19. AMOUNT PAID TO DATE	20. COMMITMENT BALANCE
			DBE	MWE	ESB	OBE				
1.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
2.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
3.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
4.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
5.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
6.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
7.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
8.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
9.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				
10.			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>				

CONTRACTOR: Please read instructions . If you have questions, please contact the Agency Project Manager.	AGENCY PROJECT MANAGER: Upon receipt of form from Contractor/Consultant, review listed subcontracts to ensure approved in contract and compliance with DBE/MWESB requirements, Refer to Price Agreement, Contract, or Work Order. REGIONS: Submit to OCR Field Coordinator. OTHERS: Submit to OCR Headquarters Representative	OCR REPRESENTATIVE: Upon receipt from Agency Project Manager, review information and enter into CRCT database.
--	--	--

EXHIBIT M



DISADVANTAGED BUSINESS ENTERPRISE WORK PLAN PROPOSAL FORM 3A

CONTRACT NUMBER	PRIME CONTRACTOR		
PROJECT	DBE START DATE	DBE COMPLETION DATE	
DBE NAME			
ADDRESS			
TELEPHONE NUMBER	NAME OF DBE SUPERVISOR		

WORK TO BE PERFORMED BY THE DBE SUBCONTRACTOR

BID ITEM NO(S)	
ESTIMATED START DATE	ESTIMATED COMPLETION DATE

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

2. **Equipment Required** - List below the items of equipment which will be used on the project. Indicate whether the equipment is owned, or will be rented or leased. If rented or leased, consent to the agreement must be obtained prior to beginning of the work.

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

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

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

The work plan must be signed by **both** the Prime Contractor and the DBE Subcontractor

SIGNATURE - DBE SUBCONTRACTOR

TYPE OR PRINT NAME

TITLE

DATE

SIGNATURE - PRIME CONTRACTOR

TYPE OR PRINT NAME

TITLE

DATE

REVIEWED BY: _____ DATE _____
DBE FIELD COORDINATOR

REVIEWED BY: _____ DATE _____
ODOT PROJECT MANAGER

EXHIBIT N



DISADVANTAGED BUSINESS ENTERPRISE COMMERCIALLY USEFUL FUNCTION FORM 3B

CONTRACT NUMBER	PRIME CONTRACTOR		
PROJECT	DBE START DATE	DBE COMPLETION DATE	
DBE NAME			
ADDRESS			
TELEPHONE NUMBER	NAME OF DBE OWNER		

Note: Attach any documents pertinent to the review, i.e., invoices, photographs, daily receipts, lease/rental agreements, sub-contract approval form, etc.

BID ITEM	BID ITEM DESCRIPTION	ESTIMATED % COMPLETE

1. Does the DBE Owner appear to have operational control over the work subcontracted?
 Explanation: _____

2. Do the DBE employees appear to have knowledge of, and control over, the methods of work on their bid items?
 Explanation: _____

3. Name of Superintendent/Foreman exclusively employed by the DBE Owner? _____

To whom does the Superintendent/Foreman report? _____
NAME TITLE

4. List the names and craft classification of the DBE crew observed (use additional sheets if necessary).

NAME	CRAFT CLASSIFICATION	TO WHOM DO THEY REPORT?

4a. Are all employees listed above included on the DBE firm's certified payroll? Also, are they paid directly by the DBE?
 Explanation: _____

4b. Are any employees listed above included on the Prime Contractor's certified payroll?

Explanation: _____

5. List major equipment used by the DBE to complete bid items. Indicate if equipment is owned, leased or rented:

Bid Item	Equipment	Owned	Leased		Rented	
		Yes	Yes	From Whom	Yes	From Whom

6. Are all personnel and equipment under the direct supervision of the DBE Owner, or a superintendent/foreman who reports to the DBE owner?

Explanation: _____

7. List material suppliers for these bid items:

BID ITEM	NAME	ADDRESS	TELEPHONE

8. Has any contractor performed, on behalf of the DBE, a substantial amount of work designated to the DBE?

Explanation: _____

Project Inspector Comments: _____

SIGNATURE _____

PRINT NAME _____ DATE _____

REVIEWER



DISADVANTAGED BUSINESS ENTERPRISE COMMERCIALLY USEFUL FUNCTION FORM 3B INSTRUCTIONS

The Disadvantaged Business Enterprise Commercially Useful Function Form 3b (add link to form?) is required for

Definitions and abbreviations

DBE – Disadvantaged Business Enterprise is a for-profit small business that is at least 51 percent owned by one or more persons who are both socially and economically disadvantaged, or, in the case of a corporation, 51 percent of the stock is owned by one or more such persons. DBE certification is performed by the [Office of Minority, Women, and Emerging Small Business](#) (OMWESB), a part of Business Oregon. Direct your questions about certification to OMWESB, (503) 986-0075.

Prime contractor – A prime or primary contractor is a firm that has been awarded the primary or main contract on a project.

BID Item —Work item to be performed by the DBE firm.

PM – Project Manager.

OCR – Office of Civil Rights.

FC – OCR Field Coordinator.

Item Descriptions

CONTRACT NUMBER/WOC NUMBER – Enter the contract number or PA and WOC number for the project.

PRIME CONTRACTOR – Enter the name of the company as it is registered.

PROJECT – Enter the project name as it appears in the project advertisement.

DBE START DATE – Enter the date the DBE firm is expected to begin work on the project.

DBE COMPLETION DATE – Enter the date the DBE firm is expected to finish work on the project.

DBE NAME – Enter the name of the DBE as it is certified.

ADDRESS – Enter the mailing address of the DBE ; street address or P.O. box number are acceptable.

TELEPHONE NUMBER – Enter the area code and phone number of the company's main office or primary contact person.

NAME OF DBE OWNER – Enter the listed name of the owner of the company

BID ITEM – Bid item number

BID ITEM DESCRIPTION – Type of work to be performed.

Line Item Descriptions

1. Explain the chain –of-command which supports the operational control. Use additional sheets if needed.
2. Explanation of whether employees have knowledge of and experience performing bid items.

3. List the name(s) of Superintendent and/or Foreman and who they report to.
4. Craft classification examples are: laborer, driver, equipment operator, carpenter, etc.
 - 4a. List the employee names and attach Certified Payrolls.
 - 4b. List the employee names and attach Certified Payrolls.
5. Please include copy of truck registration and lease or rental agreement.
6. If the answer is "no", provide an explanation.
7. List material suppliers. Use additional sheets if necessary.
8. Explain the amount of work designated to the DBE and document any supplemental work performed by the Prime or another subcontractor.

Agency Project Inspectors

Provide any additional information or comments necessary to support the performance of a commercially useful function by the DBE firm. If there is work which should be excluded from DBE credit, please explain.

Regions: Submit to OCR Field Coordinator

Others: Submit to OCR Headquarters Representative.

Agency Project Managers

The Project Manager should review the report and document any efforts to investigate or correct discrepancies. By signing the report, the PM verifies that the review was completed in compliance with DBE Program requirements.

Regions: Submit to OCR Field Coordinator

Others: Submit to OCR Headquarters Representative.

OCR Field Coordinator

The FC should review the report for completeness and enter the information into CRCT within 10 working days of receipt.

EXHIBIT O

Secretary of State home | State Archives home

Oregon State Archives

800 Summer St NE Salem OR 97310
503 373 0701 | Mon-Fri: 8am-4:45pm

[Archives Home](#) [About Archives](#) [Archival Records](#) [Administrative Rules](#) [Records Management](#) [Blue Book](#) [Exhibits](#) [Databases](#)

[Home](#) [Access the OARs](#) [Oregon Bulletin](#) [Rules Coordinator Resources](#) [Subscriptions](#)

► **The Oregon Administrative Rules contain OARs filed through May 15, 2012** ◄

**QUESTIONS ABOUT THE CONTENT OR MEANING OF THIS AGENCY'S RULES?
[CLICK HERE TO ACCESS RULES COORDINATOR CONTACT INFORMATION](#)**

DEPARTMENT OF CONSUMER AND BUSINESS SERVICES, MINORITY, WOMEN AND EMERGING SMALL BUSINESS

DIVISION 50

DBE/MBE/WBE/ESB CERTIFICATION PROCEDURES

Disadvantaged/Minority/Woman Business Certification Procedures

445-050-0000

Attorney General's Model Rules

Pursuant to ORS 183.341 the Department of Consumer and Business Services -- Office of Minority, Women and Emerging Small Business adopts the Model Rules of Procedure as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act as amended and effective September 17, 1997.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 183 & ORS 200.055

Stats. Implemented: ORS 183 & ORS 200.055

Hist. MWESB 1-1998, f. & cert. ef. 4-9-98

445-050-0001

Purpose

(1) The purpose of OAR 445-050-0001 to 445-050-0090 is to adopt a standard application form and procedure designed to provide complete documentation for certification of businesses as disadvantaged (DBE) or minority/woman (MBE/WBE). A Disadvantaged Business Enterprise shall be certified under the federal criteria set out in 49 CFR 26. Minority Business Enterprises and Woman Business Enterprises shall be certified under the State of Oregon certification program based on ORS 200.005. Firms that are certified DBEs are eligible to participate on federally funded projects to meet DBE commitment requirements. Any certified firms are eligible to participate in private or non-federally funded public sector projects.

(2) These rules also cover publication of a directory, as well as procedures for handling complaints, challenges and appeals.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: MWESB 1-1998, f. & cert. ef. 4-9-98; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0000 [EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97]; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0005

Definitions

As used in these rules, the following terms shall have the following definitions, unless the context requires otherwise:

(1) "Contribution of Capital" means a real and substantial contribution of capital, tangible personal assets, or expertise to acquire ownership interest in the firm.

Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee.

(2) "Control" or "Controlled" means that Operational and Managerial Control of all aspects of the business is exercised by one or more Qualifying Individual(s).

(3) "Disadvantaged Business Enterprise" or "DBE" means a business that meets the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26.

(4) "Independence" or "Independent" means:

(a) The business must not be inextricably associated with or dependent upon any non-Disadvantaged, non-Minority or non-woman owned firm;

(b) The business owns or leases equipment and resources necessary to perform its work, (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm); and

(c) The business owner has sufficient expertise in the firm's field of operation to operate the firm independently.

(5) "Management Control" or "Management" means that the Qualifying Individual(s) has/have responsibility for the critical areas of business operations and has the demonstrated ability to make independent and unilateral business decisions needed to guide the future of the business. When the actual management of the business is contracted out to individuals other than the owner or is delegated to employees, those persons who have the power to hire and fire these managers exercise Management Control. Areas of control include, but are not limited to:

(a) Authority and responsibility to sign pay checks and letters of credit;

(b) Authority to negotiate and sign for insurance and/or bonds;

(c) Authority to negotiate for banking services;

(d) Authority to negotiate and sign contracts.

(6)(a) "Minority" means a person who is a citizen or lawful permanent resident of the United States, who is a:

(A) Black American which includes persons having origins in any of the Black racial groups of Africa;

(B) Hispanic American which includes persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish or Portuguese culture or origin, regardless of race;

(C) Native American which includes persons who are American Indians, Eskimos, Aleuts or Native Hawaiians;

(i) A person must prove he/she is enrolled or registered by the tribe, clan, nation or Alaskan Native Regional or Village Corporation. Alternatively, the person can provide state or federal certification of enrollment in these groups.

(ii) If a person cannot prove enrollment or registration, he/she must provide proof of qualification to participate in awards or judgments rendered by a federal or state judicial body in favor of the tribe, clan, nation or Alaskan Native Regional or Village corporation.

(iii) A person does not need to reside on a federal or state Indian reservation.

(D) Asian-Pacific American which includes persons whose origin is from Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the United States Trust Territories of the Pacific Islands, the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirabati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(E) Subcontinent Asian Americans which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(F) Women;

(G) Any additional groups whose members are designated as socially and economically disadvantaged by the Small Business Administration and/or that are designated under 49 CFR Part 26.

(6)(b) Bona fide Minority group membership shall be established on the basis of evidence to support the individual's claim that the individual is a member of a Minority group and is so regarded by the particular Minority community. However, the OMWESB is not required to accept this claim if it determines the claim to be invalid. If the Minority community does not exist in Oregon, the burden of proof shifts to the applicant to prove he/she is a Socially and Economically Disadvantaged Individual.

(7) "Minority Business Enterprise" or "MBE" means a business that meets the eligibility standards set out in OAR 445-050-0030.

(8) "OMWESB" means the Office of Minority, Women and Emerging Small Business in the Department of Consumer and Business Services.

(9) "Operational Control" or "Operations" means the Qualifying Individual(s) independently makes the basic decisions for the daily operations of the business. The Qualifying Individual(s) must possess the requisite experience in the field of operations for which certification is sought, control the board of directors or management of the business, and receive salary or profits commensurate with his/her ownership interest. Absentee ownership or title ownership by an individual who does not take an active role in making the basic decisions for the daily operations of the business does not constitute Operational Control.

(a) The Qualifying Individual(s) should have training and experience in the field(s) of operation for which certification is sought. The Qualifying Individual(s) does not need to have hands on or direct control of, or expertise in, every aspect of the business' affairs so long as the owner is able to intelligently use and critically evaluate information presented by employees.

(b) The possession of a specialty license by the Qualifying Individual(s) is not a prerequisite for Operational Control. The Qualifying Individual(s) must possess sufficient knowledge about the business to enable him, or her, to maintain day to day control over the operational aspects of the business. In order to determine that the Qualifying Individual(s) has/have the technical expertise and competence to maintain Operational Control, the Qualifying Individual(s) will be required to submit proof of expertise. Expertise can be documented in two ways for trades or professions requiring a specialty license:

(A) The Qualifying Individual(s) may submit a copy of their essential license(s), or

(B) OMWESB may employ the assistance of state resources to help evaluate whether a Qualifying Individual(s) possesses a working knowledge of the technical requirements of their field and is able to evaluate information provided by subordinates in a critical and intelligent manner. State resources may include technical experts from state agencies such as the Building Codes Division, the Board of Engineering Examiners, the Landscape Contractors Board and the Real Estate Agency.

(10) "Ownership" or "Owned" means the Qualifying Individual(s) own a minimum of 51% of each class of voting stock and at least 51% of the aggregate of all classes of stock or own a minimum of 51% of the membership interests.

(11) "Qualifying Individual(s)" means owners/applicants who belong to one of the recognized ethnic Minority Groups, women, or other individuals determined by OMWESB on a case-by-case basis to be socially and economically disadvantaged. For DBE certification the individuals must meet the requirements of 49 CFR 26. The Qualifying Individual(s) must be a citizen of the United States or a permanent resident.

(12) "Small Business" means a small business as defined pursuant to 13 CFR 121. A Small Business shall not include any concern or group of concerns controlled by the same Qualifying Individual or individuals which have average annual gross receipts in excess of the North American Industry Classification System (NAICS) size limit over the previous three fiscal years. A Small Business must not exceed the following size standards:

(a) General Contractors -- \$28,500,000;

(b) Specialty Contractors -- \$12,000,000;

(c) For firms not included in subsections (a) and (b) -- Small Business Administration (SBA) the North American Industry Classification System (NAICS) code size

standard established under 13 CFR 121.

(d) Firms seeking federal DBE certification must meet current Small Business Administration (SBA) business size standard limits for each type of work the firm seeks to perform not to exceed 17,420,000. Firms seeking state MBE/WBE certification must meet the current SBA business size standard limit for a primary area of work. The firm's primary area of work is determined by percentage of income.

(13) "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, Minorities or any other minorities or individuals found to be disadvantaged by the SBA pursuant to Section 8(a) of the Small Business Act.

(a) It is a rebuttable presumption that Minorities and women are socially and economically disadvantaged.

(b) The OMWESB may also determine on a case by case basis that individuals who are not women or Minorities are Socially and Economically Disadvantaged Individuals.

(c) Socially disadvantaged individuals are people who have been subjected to racial or ethnic prejudice or cultural bias because of their identity as members of a group without regard to their individual qualities.

(A) The social disadvantage must stem from the individual's color, national origin, gender, physical handicap, long-term residence in an environment isolated from the mainstream of American society, or other similar cause beyond the individual's control. Social disadvantage cannot be based on factors common to small business.

(B) The individual must demonstrate that:

(i) He or she personally suffered the disadvantage as a result of treatment experienced in the United States;

(ii) The disadvantage was chronic, long-standing, and substantial, not fleeting or insignificant; and

(iii) The disadvantage negatively affected his or her entrance or advancement in the business world.

(d) Economically disadvantaged individuals are Socially disadvantaged individuals whose ability to compete in the United States economy has been impaired due to diminished capital and credit opportunities compared to non-socially disadvantaged individuals in the same or similar business. The Socially and Economically Disadvantaged Individual(s) will be required to submit a Certification of Social and Economic Disadvantage and Statement of Personal Net Worth.

(14) "USDOT" means the United States Department of Transportation.

(15) "Woman Business Enterprise" or "WBE" means a business that meets the eligibility standards set out in OAR 445-050-0030.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.005

Stats. Implemented: ORS 200.005

Hist.: EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0005; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0020

Eligibility Standards for Disadvantaged Business Enterprises

(1) To be eligible for certification as a Disadvantaged Business Enterprise, a business must meet the following criteria:

(a) The business must be in existence, operational and in business for a profit.

(b) The business must be a Small Business, but in no case may the average annual gross receipts exceed \$17,420,000.

(c) The business must be Controlled by one or more Socially and Economically Disadvantaged Individual(s).

(d) The business must be Owned by one or more Socially and Economically Disadvantaged Individual(s).

(e) The one or more Socially and Economically Disadvantaged Individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest.

(f) The business must be Independent.

(g) The business must be properly licensed and registered in the state of Oregon.

(h) The business must have or lease (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm) sufficient machinery, equipment and employees to operate. In making this determination the OMWESB shall compare the operations of the DBE to a non-DBE operation in the same or similar business.

(2) The OMWESB will utilize 49 CFR 26 to review for eligibility for certification as a DBE. In addition, OMWESB will apply written directives of the USDOT, administrative guidelines and written decisions of the USDOT on appeals of state certification decisions so long as they are in accord with these rules.

(3) In making determinations under this section the OMWESB shall not consider whether the business has previously performed or would be able to perform a commercially useful function. Repeated failure by a business to perform a commercially useful function may, however, indicate that the business is not Independent, Owned or Controlled by a Socially and Economically Disadvantaged Individual.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0020; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0030

Eligibility Standards for Minority and Women Business Enterprises

To be eligible as a Minority or Woman Business Enterprise, a business must meet the following criteria. The OMWESB may perform on-site investigations to verify any of the requirements of this rule.

- (1) The business must be a Small Business. The average annual gross receipts for a firm and its affiliates for the previous three fiscal years must not exceed the amounts established under SBA's NAICS codes.
- (2) The business must be Controlled by one or more Qualifying Individual(s). The Qualifying Individual(s) must establish Minority Group or gender status by identification, US citizenship, birth certificate, driver's license, state identification cards, naturalization documents, military discharge papers, visa, passport, etc., or evaluation for social and economic disadvantage.
- (3) The business must be Owned by one or more Minority or women owners.
- (4) The one or more Qualifying Individual(s) must have made a contribution of assets to the business .
- (5) The business must be Independent.
- (6) The business must be in existence, operational and in business for profit.
- (7) The business must be properly licensed, and if required, legally registered in the state.
- (8) The business must have or lease (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm) sufficient machinery, equipment and employees to operate. In making this determination the OMWESB shall compare the operations of the MBE/WBE to a non-MBE/WBE operation in the same or similar business.
- (9) The Qualifying Individual(s) must have training and experience in the field(s) of operation for which certification is sought. Examples of construction related activities, including but not limited to:
 - (a) Currently holds or has previously held the essential license in the field in which this firm operates;
 - (b) Has read and interpreted blueprints and specifications;
 - (c) Has done take offs;
 - (d) Has prepared estimates and bids;
 - (e) Goes on site and determines if the work is proceeding in accordance with the plans;
 - (f) Answers technical questions from subordinates;
 - (g) Resolves field problems;
 - (h) Supervises field operations.; Examples of professional related activities, including but not limited to;
 - (i) Has a college degree in the field of expertise;
 - (j) Has years of experience and training in the field of expertise;
 - (k) Has experience in project management in the field of expertise.

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0030; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0040

Application Form and Procedure

- (1) Application Form(s). Businesses wishing to be certified as Disadvantaged Business Enterprises must complete the Uniform Certification Application form required by the 49 CFR 26, Appendix G. Minority or Woman Business Enterprises shall complete the application form designed by the OMWESB. The application forms are designed to solicit information to determine whether an applicant business is eligible for certification as a DBE, MBE, or WBE under this chapter. The applications are designed to provide the OMWESB with sufficient information to determine whether an applicant is eligible for certification for both federally assisted and non-federally assisted contracts. Incomplete applications will be "Denied."
- (2) Submittal of Application. The completed application form, together with all required supporting documentation, shall be submitted by mail or in person to the Office of Minority, Women and Emerging Small Business, P.O. Box 14480, Salem, OR 97309-0405
- (3) Processing Applications. The OMWESB will conduct a review and take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.
- (4) On-site Investigations. The OMWESB must conduct an on-site investigation and interview at the owner's place of business for all applicants seeking DBE certification. The purpose of the on-site investigation is to verify the information submitted with the application form. The applicant shall fully cooperate with such an investigation and make available any additional information requested by the OMWESB. DBEs applying from outside the State of Oregon are required to have an on-site interview conducted by their home state jurisdiction. The OMWESB may conduct an on-site investigation and interview at the owner's place of business to verify information necessary for making eligibility decisions for applicants seeking MBE/WBE certification. Last minute on-site cancellations and no shows by a DBE Applicant could result in a DBE being denied certification for failure to submit information needed to make a determination.
- (5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the federal requirements (49 CFR Part 26). As part of its investigation, the OMWESB may require all firms to provide information in addition to that requested on the application form. The applicant has the burden of proving that it is eligible for certification and recertification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. The DBE/MBE/WBE shall notify the OMWESB of any changes in its Ownership or Management which may affect its continued eligibility as a DBE/MBE/WBE within 30 days of the change. Failure to notify OMWESB may result in denial/decertification.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0040; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0050

Directory

The OMWESB shall maintain a state-wide unified directory of certified firms as follows:

- (1) Certified firms shall use the current business name as registered with the Secretary of State Corporation Division for the OMWESB directory (sole proprietorships not registered with the Secretary of State Corporation Division shall use the name listed on their business license), and will use no other name in contracting business. An Assumed Business Name may be used for contracting purposes, but only if it is written in conjunction with the registered business name.
- (2) The directory will be maintained in an electronic format and available on-line. It shall indicate the certification status of each firm: DBE, MBE, WBE and/or ESB. The directory information shall include firm's telephone/fax numbers and mailing addresses. The directory shall also list the firm's capabilities.
- (3) The OMWESB shall update the directory on a quarterly basis, with certifications, recertifications, change of business address, phone number, etc. It is the responsibility of the applicant to assure that OMWESB has a current address and phone number.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0050; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0060

Recertification

- (1) Certification as a DBE/MBE/WBE is valid for three years from the date of certification.
- (2) A recertification notice shall be sent to certified DBE/MBE/WBEs approximately two months prior to expiration of the current certification. The DBE/MBE/WBE shall promptly return the recertification application along with any requested documentation (by-law amendments, evidence of changes in ownership, etc). The signed and notarized recertification application shall be reviewed by the OMWESB to determine continued eligibility. An on-site investigation may be conducted to verify information submitted to the OMWESB. It is the responsibility of the DBE/MBE/WBE to provide the information deemed necessary by the OMWESB to ascertain eligibility for recertification.
- (3) Failure to return the completed recertification application by the expiration date shall lead to administrative closure. Recertification is not automatic. The DBE/MBE/WBE must demonstrate that their business currently meets the qualifications as listed in this chapter.
- (4) An affidavit of "no change" will be sent to DBE firms annually approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous years and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified. MBE and WBE firms are exempt from this requirement.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0060; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0070

Decertification/Denial of DBE

This rule applies only to the decertification or denial of a DBE under 49 CFR Part 26. A DBE may be decertified at any time the OMWESB determines that the firm no longer meets the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26. The OMWESB may also deny certification to any DBE applicant that does not meet the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26. The procedure is as follows:

- (1) In the case of decertification, the OMWESB shall issue a Notice of Intent to Decertify the DBE 21 days prior to the date of the decertification, and indicate the specific reasons for decertification.
- (2) In the case of denial of initial certification or recertification, the DBE or applicant will be notified in writing of the denial and the reasons therefore.
- (3) In either a decertification or denial of initial certification or recertification of a DBE, the DBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for a contested case hearing. If the DBE or applicant requests a contested case hearing, the decertification or denial of recertification will be stayed pending the issuance of a final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. Following the contested case hearing, the proposed order issued by the Hearings Officer will be forwarded to the Manager of the OMWESB for issuance of the final order. If no written request for a contested case is received by OMWESB within the 21-day period, the decertification/denial will be final.
- (4) Any applicant or DBE that believes it has been wrongly decertified or denied certification or recertification by the OMWESB may also file an appeal in writing, signed and dated, with the USDOT. The applicant or DBE must provide the OMWESB with a copy of the USDOT appeal at the same time it submits the appeal to the USDOT. The appeal shall be filed no later than 90 days after the date of decertification or denial of certification or recertification. The Secretary of Transportation may extend the time for filing or waive the time limit, specifically listing the reasons in writing, in the interests of justice. The appeals procedure to the USDOT is set out in 49 CFR 26.
- (5) A DBE may be decertified if the Socially and Economically Disadvantaged Individual dies or leaves the business.
- (6) Any business denied certification as a DBE will be ineligible to reapply for a period of 12 months.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; Former (1)(c)(A) through (3) renumbered to 121-50-075; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0070; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0075

Decertification/Denial of MBE/WBE

This rule applies only to the decertification or denial of MBE/WBE status under Oregon law. An MBE/WBE may be decertified at any time the OMWESB determines that the firm no longer meets the eligibility standards set out in OAR 445-050-0030. If the Minority or woman owner dies or leaves the business, the MBE/WBE may be decertified. The OMWESB may also deny certification to any MBE/WBE applicant that does not meet the eligibility standards set out in OAR 445-050-0030. The procedure is as follows:

- (1) In the case of decertification, the OMWESB shall issue a Notice of Intent to Decertify the MBE/WBE 21 days prior to the date of the decertification, and indicate the specific reasons for decertification.
- (2) In the case of denial of initial certification or recertification, the MBE/WBE will be notified in writing of the denial and the reasons therefore.
- (3) In either a decertification or denial of initial certification or recertification of a MBE/WBE, the MBE/WBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for a contested case hearing.
- (4) If the MBE/WBE or applicant requests a contested case hearing, the decertification or denial of recertification will be stayed pending the issuance of the final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. Following the contested case hearing, the proposed order issued by the Hearings Officer will be forwarded to the Manager of the OMWESB for issuance of the final order. If no written request for a contested case is received by OMWESB within the 21-day period, the decertification/denial will be final.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; Renumbered from former 121-50-070(1)(c)(A) through (3); BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0075; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0080

Third Party Complaints

Third party complaints regarding certification of DBE/MBE/WBEs may be submitted to the OMWESB and will be processed according to the following procedure:

- (1) Any individual, firm or agency who believes that an applicant certified as a DBE/MBE/WBE does not qualify under the standards of eligibility for certification may file a third party complaint with the OMWESB.
- (2) The third party complaint must be submitted to the OMWESB in writing, and must set forth facts which indicate that the DBE/MBE/WBE is not eligible, along with copies of any supporting documents the complainant may have. Facts should be described in as much detail as possible.
- (3) The complainant must sign the third party complaint and give an address and telephone number where complainant may be reached during the investigation. In responding to requests for information concerning any aspect of the DBE, MBE, or WBE programs, OMWESB complies with provisions of the Federal Freedom of Information and Privacy Acts and the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the DBE, MBE, WBE program release of which is not prohibited by federal or state law. OMWESB may maintain the identity of complainants confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.
- (4) The OMWESB will investigate each third party complaint as promptly as resources allow. If preliminary investigative results show good cause for in-depth investigation, The OMWESB will notify the DBE/MBE/WBE of the third party complaint by certified mail. The DBE/MBE/WBE shall cooperate fully in the OMWESB's investigation.
- (5) After the investigation is completed, the OMWESB shall issue a written decision, either a rejection of the third party complaint or a Notice of Intent to Decertify. The written decision shall be mailed to the DBE/MBE/WBE involved and to the complainant. No DBE/MBE/WBE will be decertified based on a third party complaint without first having an opportunity to respond to OMWESB regarding the complaint. DBE firms may request a contested case hearing and/or appeal directly to USDOT as set out in OAR 445-050-0070. If an MBE/WBE receives the notice of intent to decertify, the MBE/WBE may request a contested case hearing as set out in 445-050-0075.
- (6) If the decision of the OMWESB is to continue certification of the DBE, the complainant may submit a complaint to the Secretary of USDOT.
- (7) Information received about an applicant prior to the initial certification being made will not be considered a third party complaint, but will be considered in the investigation of the application for certification.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0080; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0090

Challenges

- (1) Any third party may challenge a Socially and Economically Disadvantaged Individual if the individual is an owner of a business certified or seeking certification as a DBE, MBE, or WBE. The challenge shall be made in writing to the OMWESB.
- (2) Within the letter, the challenging party shall include all information available that is relevant to a determination of whether the challenged party is, in fact, a Socially and Economically Disadvantaged Individual.
- (3) The OMWESB shall determine, on the basis of the information provided by the challenging party, whether there is reason to believe that the challenged party is, in fact, not a Socially and Economically Disadvantaged Individual:
 - (a) If the OMWESB determines that there is no reason to believe that the challenged party is not a Socially and Economically Disadvantaged Individual, the OMWESB shall so inform the challenging party in writing;

- (b) If the OMWESB determines that there is reason to believe that the challenged party is not a Socially and Economically Disadvantaged Individual, the OMWESB shall begin a proceeding, as set out below, to analyze this determination;
- (c) The OMWESB shall notify the challenged party in writing that his/her status as a Socially and Economically Disadvantaged Individual has been challenged;
- (d) The notice shall summarize the grounds for the challenge. The notice shall also require the challenged party to provide to the OMWESB (within a reasonable period specified by the OMWESB) information sufficient to permit the OMWESB to evaluate his/her status as a Socially and Economically Disadvantaged Individual;
- (e) The OMWESB shall evaluate the information available to it and make a proposed determination of whether the challenged party is a Socially and Economically Disadvantaged Individual. The OMWESB shall notify both parties of this proposed determination in writing, setting forth the reasons for this determination;
- (f) During the pendency of a challenge under this rule, the presumption that the challenged party is a Socially and Economically Disadvantaged Individual shall remain in effect.
- (4) After the investigation is completed, the OMWESB shall issue a written decision, either a rejection of the third party challenge, Notice of Intent to Decertify or Denial. The written decision shall be mailed to the DBE, MBE or WBE involved and to the complainant. No firm will be decertified or denied certification based on a third party challenge without first having an opportunity to respond to OMWESB regarding the complaint.
- (5) DBE firms may appeal the final determination of OMWESB, under subsection (3)(e) of this rule, and request a contested case hearing and/or appeal directly to USDOT as set out in OAR 445-050-0070 and in accordance with 49 CFR 26. If an MBE/WBE receives the Notice of Intent to Decertify, the MBE/WBE may request a contested case hearing as set out in 445-050-0075.
- (6) In responding to requests for information concerning any aspect of the DBE, MBE, or WBE programs, OMWESB complies with provisions of the Federal Freedom of Information and Privacy Acts and the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the DBE, MBE, WBE program release of which is not prohibited by federal or state law. OMWESB may maintain the identity of complainants confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0090; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

Emerging Small Business Certification Procedures

445-050-0105

Purpose

(1) The purpose of OAR 445-050-0105 to 445-050-0165 is to adopt a standard application form and procedure designed to provide complete documentation for certification of businesses as Emerging Small Businesses (ESBs); to adopt a procedure for the handling of complaints; to adopt a procedure for the handling of investigations; and to adopt a procedure for the issuing of sanctions. An enterprise certified by OMWESB pursuant to these rules shall be considered so certified by any public contracting agency as defined in ORS 279.011 (5), in the State of Oregon. The OMWESB is the sole certification agency for the State of Oregon and all political subdivisions.

(2) These rules also cover publication of a directory as well as procedures for complaints and appeals.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0105;

445-050-0106

Rulemaking: Attorney General's Model Rules

Pursuant to ORS 183.341 the Department of Consumer and Business Services -- Business Administration Division adopts the Model Rules of Procedures as promulgated by the Attorney General of the State of Oregon under the Administrative Procedures Act as amended and effective September 17, 1997.

Stat. Auth.: ORS 183

Stats. Implemented: ORS 183 & ORS 200.055

Hist.: MWESB 1-1998, f. & cert. ef. 4-9-98

445-050-0115

Eligibility Standards

To be eligible for certification as an ESB, a business must meet all the following criteria:

- (1) A firm must be in existence, operational and in business for a profit;
- (2) Have average, annual gross receipts over the last three years not exceeding \$1.5 million for tier one construction firms and \$600,000 for tier one non-construction firms; and \$3 million for tier two construction firms and \$1 million for tier two non-construction firms.
- (3) The department will adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index (CPI) for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.
- (4) If a tier one firm provides compelling information showing, in the judgment of the Department of Consumer and Business services, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department will extend the tier one designation of the firm for an additional year. A tier one firm may receive the extension only once.
- (5) Have its principal place of business located in the State of Oregon, as determined by tax filing status;

(6) Be independent. An ESB is not eligible if it is a subsidiary or parent company belonging to a group of firms that are owned or controlled by the same individuals if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.

(7) Be properly licensed and if required, legally registered in this state: (e.g., registered as a domestic corporation or partnership, assumed business name filed, Construction Contractors Board registration, etc.);

(8) Have fewer than 20 full-time equivalent employees in tier one and have fewer than 30 full-time equivalent employees in tier two. A full-time equivalent employee is calculated as follows:

(a) Hours worked by part-time and seasonal employees shall be converted into full-time equivalent employee hours by dividing the total hours worked by all part-time and seasonal employees by 2080.

(b) The owners of the firm shall not be considered full-time equivalent employees.

(c) The year period during which full-time equivalent employees shall be calculated shall be the same period as the ESB's tax year.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0115; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06; MWESB 1-2006, f. & cert. ef. 6-15-06

445-050-0125

Application Form and Procedure

(1) OMWESB will utilize ORS 200.005 to review for eligibility for certification as an ESB tier one or tier two.

(2) Application Form. Firms wishing to be certified as ESBs shall complete the application form provided by OMWESB.

(3) Submittal of application. The completed application form, together with all required supporting documentation, shall be submitted to the Office of Minority, Women and Emerging Small Business, 350 Winter St NE, Salem, PO Box 14480, OR 97309-0405

(4) Processing applications. The OMWESB will conduct a review and take action on completed applications as promptly as its resources permit. The order of priority for processing applications shall be the date received by OMWESB.

(5) Determination. The OMWESB shall make a determination based on the eligibility standards included in this chapter and the applicable laws of the State of Oregon. As part of its investigation, OMWESB may require owners to provide information in addition to that requested on the application forms. The applicant has the burden of proving that it is eligible for certification and re-certification at all levels of review. Applicants shall be notified by mail promptly after a decision has been made. Where the OMWESB has denied an application, the letter shall set forth the specific reasons for the denial. Certification may be revoked at any time if the OMWESB determines that the ESB no longer meets the eligibility standards. The ESB shall notify OMWESB within 30 days of any changes in its ownership which may affect its continued eligibility as an ESB. Failure to notify OMWESB may result in denial/decertification.

(6) The applicable emerging small business size standard for each applicant set out in OAR 445-050-0115(1)(b) shall be determined by the firm's primary area of work. Registration of the firm with Construction Contractors and/or Landscape Contractors Board will establish a firm as a construction firm. A construction-related trucking firm will also be considered a construction firm for the purposes of this program.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0125; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06; MWESB 1-2006, f. & cert. ef. 6-15-06

445-050-0135

Recertification

(1) Certification as an ESB is valid for three years from the date of certification.

(2) A recertification notice shall be sent to certified ESBs 60 days prior to expiration of current certification. The ESB shall promptly return the recertification application along with any requested documentation (e.g., evidence of change in ownership; federal tax returns for the last year, etc.). Recertification is not automatic. The applicant must demonstrate that their business still meets the criteria set out in OAR 445-050-0105 through 445-050-0165.

(3) The signed and notarized recertification application shall be reviewed by the OMWESB staff to determine the ESB's continued eligibility. A request to verify information submitted to OMWESB may be required.

(4) Failure to return the completed recertification application by the expiration date shall result in administrative closure of the file.

(5) Firms may only be certified as an ESB for a maximum of twelve consecutive years from original certification date or 13 years for tier 1 firms that meet the criteria for eligibility standards under OAR 445-050-0115(d).

(6) An annual affidavit of "no change" will be sent to the firm approximately 30 days prior to the one-year and two-year anniversaries of the certification date. The completed affidavit, along with federal tax information for the previous year, and documentation of any changes, must be submitted prior to the anniversary date, or the firm will be decertified.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0135; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2005(Temp), f. & cert. ef. 12-29-05 thru 6-27-06; MWESB 1-2006, f. & cert. ef. 6-15-06

445-050-0145

Decertification, Denial of Certification or Denial of Recertification

This rule applies only to the decertification or denial of ESB status under Oregon law. An ESB may be decertified at any time the OMWESB determines that the firm no longer meets the eligibility standards set out in OAR 445-050-0115. The OMWESB may also deny certification to any ESB applicant that does not meet the eligibility standards set out in OAR 445-050-0115. The procedure is as follows:

(1) In the case of decertification, the OMWESB shall issue a Notice of Intent to Decertify the ESB 21 days prior to the date of the decertification, and indicate the specific

reasons for decertification.

(2) In the case of denial of initial certification or recertification, the ESB will be notified in writing of the denial and the reasons therefore.

(3) In either a decertification or denial of initial certification or recertification of a ESB, the ESB or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for a contested case hearing.

(4) If the ESB or applicant requests a contested case hearing, the decertification or denial of recertification will be stayed pending the issuance of the final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. Following the contested case hearing, the proposed order issued by the Hearings Officer will be forwarded to the Manager of the OMWESB for issuance of the final order. If no written request for a contested case is received by OMWESB within the 21-day period, the decertification/denial will be final.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; Renumbered from 121-050-0145 by MWESB 2-1998, f. & cert. ef. 12-11-98; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

445-050-0155

Complaints

(1) Complaints regarding certification of an ESB may be submitted to the OMWESB and will be processed according to the following procedure:

(2) Any individual, firm or agency who believes that an applicant certified as an ESB does not qualify under the standards of eligibility for certification may file a complaint with the OMWESB Manager.

(3) The complaint must be submitted to the OMWESB Manager, must be in writing, and must set forth facts which indicate that the ESB is not eligible, along with copies of any supporting documents the complainant may have. Facts should be described in as much detail as possible.

(4) The complainant must sign the complaint and give an address and telephone number where he or she may be reached during the investigation.

(5) The OMWESB will investigate each complaint as promptly as resources allow. The ESB shall cooperate fully in the OMWESB's investigation. The OMWESB will notify the ESB of the complaint by certified mail.

(6) After the investigation is completed, the OMWESB shall either issue a written decision to the ESB and the complainant, stating that there are no grounds for decertification or the OMWESB shall provide a Notice of Intent to decertify in accordance with OAR 445-050-0145.

(7) In responding to complaints or requests for information concerning any aspect of the ESB program, OMWESB complies with provisions of the State of Oregon Freedom of Information and Privacy Acts. The OMWESB may make available to the public any information concerning the ESB program release of which is not prohibited by state law. Notwithstanding the provisions of paragraph (7) of this section, the identity of complainants may be kept confidential throughout the course of the investigation, at their election. If such confidentiality will hinder the investigation, proceeding, or hearing, or result in a denial of appropriate administrative due process, to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0155; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0165

Directory

OMWESB shall maintain a directory of certified ESBs as follows:

(1) The Directory information shall indicate the status of each firm as an ESB and include:

(a) Mailing address and telephone/fax numbers of firm;

(b) Description of the services the firm provides.

(2) OMWESB shall update the directory with certifications, recertifications, denials, change of business address, phone number, etc. It is the responsibility of the applicant to assure that OMWESB has a current address and phone number.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0165

445-050-0170

Representation of OMWESB by Officer or Employee in Contested Case Hearings

(1) Subject to the approval of the Attorney General, an officer or employee of OMWESB is authorized to appear on behalf of OMWESB in contested case hearings.

(2) The OMWESB representative may not make legal argument on behalf of OMWESB.

(a) "Legal argument" includes arguments on:

(A) The jurisdiction of OMWESB to hear the contested case;

(B) The constitutionality of a statute or rule or the application of a constitutional requirement to OMWESB; and

(C) The application of court precedent to the facts of the particular contested case proceeding.

(b) "Legal argument" does not include presentation of evidence, examination and cross-examination of witnesses or presentation of factual arguments or arguments on:

(A) The application of the facts to the statutes or rules directly applicable to the issues in the contested case;

(B) Comparison of prior actions of OMWESB in handling similar situations;

(C) The literal meaning of the statutes or rules directly applicable to the issues in the contested case; and

(D) The admissibility of evidence of the correctness of procedures being followed.

(3) When an officer or employee of OMWESB represents OMWESB, the presiding officer shall advise such representative of the manner in which objections may be made and matters preserved for appeal. Such advice is of a procedural nature and does not change applicable law on waiver of the duty to make timely objection. Where such objections involve legal argument, the presiding officer shall provide reasonable opportunity for the agency officer or employee to consult legal counsel and permit such legal counsel to file written legal argument within a reasonable time after conclusion of the hearing.

Stat. Auth.: ORS 183.450(7) & ORS 183.450(8)

Stats. Implemented: ORS 183.450(7)(b)

Hist.: MWESB 2-1998 f. & cert. ef. 12-11-98; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

Notification to Advocate of Solicitations

445-050-0200

Timely Notice

"Timely notice" as used in ORS 200.035 shall mean at the time the state agency publicly releases the contract and bid request solicitations.

Stat. Auth.: ORS 200.035

Stats. Implemented: ORS 200.035

Hist.: BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0200

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. [Terms and Conditions of Use](#)

EXHIBIT P

INTERAGENCY AGREEMENT
Administration of the
Disadvantaged Business Enterprise Certification Function
Oregon Business Development Department

This Agreement is made and entered into by and between the STATE OF OREGON, acting by and through its Department of Transportation, Office of Civil Rights, hereinafter referred to as "ODOT;" and the STATE OF OREGON, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD," both herein individually or collectively referred to as "Party" or "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statutes (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The purpose of this Agreement is to provide Disadvantaged Business Enterprise certification services as required under the Code of Federal Regulations (CFR) Chapter 49, Part 26, ODOT's Disadvantaged Business Enterprise Program Plan.
3. Definitions:

Oregon Department of Transportation – ODOT
ODOT Office of Civil Rights – OCR
Oregon Business Development Department - OBDD
U.S. Department of Transportation – USDOT
Federal Highway Administration – FHWA
Office of Minority, Women, and Emerging Small Business – OMWESB
Disadvantaged Business Enterprise – DBE

NOW THEREFORE, the premises being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, and as a recipient of USDOT financial assistance, ODOT is required to implement a DBE Program per the requirements of CFR Chapter 49, Part 26 and wishes to retain the services of OBDD to implement a DBE Program as described in "Exhibit A", attached hereto and by this reference made a part hereof. Payment for said services shall not exceed a maximum amount of \$473,423 in funds available to state.
2. As provided under CFR Chapter 49, Part 26, only firms owned and controlled by socially and economically disadvantaged person(s) are to benefit from the DBE Program. ODOT OCR is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification. Authority for the ODOT's DBE Certification Component is delegated to OMWESB through this Agreement with OBDD. Since ODOT retains responsibility to USDOT for ensuring that the certification of DBEs is performed consistent with CFR Chapter 49, Part 26, OCR will maintain oversight of the certification process.

OBDD/ODOT
Agreement No. 27880

3. This Agreement will supersede and replace Agreement No. 26143. Agreement No. 26143 will terminate upon execution of this Agreement. Invoices issued prior to the replacement of Agreement No. 26143 will still be processed under Agreement No. 26143. All new invoices will be processed through this Agreement.
4. This Agreement shall begin on the date all required signatures are obtained and shall terminate on June 30, 2013, unless terminated or extended by an executed amendment to this Agreement.

OBDD OBLIGATIONS

1. OBDD shall perform the work described in Exhibit A.
2. OBDD shall keep accurate cost records and shall prepare and submit quarterly reports, as described in Exhibit A, directly to ODOT's Project Manager for review and approval. Such reports will be in a form identifying the project, agreement number, and period of report. These reports shall be submitted to:

C. Jill Miller
ODOT Office of Civil Rights
955 Center Street NE, Suite 471
Salem, Oregon 97301-2557

3. OBDD shall receive 19 monthly payments on the first of each month in the amount of \$23,670. A final payment of \$23,693 will be paid after ODOT's project manager has determined all reporting requirements have been met. Under no conditions shall ODOT's obligations exceed \$473,423, including all expenses.
4. OBDD agrees to comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement. Without limiting the generality of the foregoing, OBDD expressly agrees to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
5. OBDD shall perform the service under this Agreement as an independent contractor and shall be exclusively responsible for all costs and expenses related to its employment of individuals to perform the work under this Agreement including, but not limited to, retirement contributions, workers compensation, unemployment taxes, and state and federal income tax withholdings.
6. OBDD certifies and represents that the individual(s) signing this Agreement has been authorized to enter into and execute this Agreement on behalf of OBDD under the direction or approval of its governing body, commission, board, officers, members or representatives, and to legally bind OBDD.
7. OBDD's Project Manager for this Project is John Saris, Business Services Manager, 775 Summer Street SE, Suite 200, Salem, OR 97301, (503) 986-0163, john.saris@state.or.us, or assigned designee upon individual's absence. OBDD shall notify the other Party in writing of any contact information changes during the term of this Agreement.

ODOT OBLIGATIONS

1. In consideration for the services performed, ODOT agrees to reimburse OBDD by revenue transfer on a monthly basis. ODOT will make 19 monthly payments on the first of each month in the amount of \$23,670. A final payment of \$23,693 will be paid after ODOT's project manager has determined all reporting requirements have been met. Said maximum amount of \$473,423 shall include reimbursement for all expenses. Travel expenses shall not be reimbursed. An SFMS transfer using transaction code 720/721 to OBDD may be used.
2. ODOT certifies, at the time this Agreement is executed, that sufficient funds are available and authorized for expenditure to finance costs of this Agreement within ODOT's current appropriation or limitation of the current biennial budget.
3. ODOT shall, upon execution of this Agreement, enter the required data into the Oregon Procurement Information Network (ORPIN) per ORS 190.115.
4. ODOT's Project Manager for this Project is C. Jill Miller, Small Business Programs Manager, 955 Center Street NE, Suite 471, Salem, OR 97301-2557, (503) 986-4355, c.jill.miller@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Party in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. This Agreement may be terminated by either Party upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
2. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
3. The Parties agree that any tort liability claim, suit, or loss resulting from or arising out of the Parties' performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. Each Party to this Agreement agrees to notify the DAS Risk Management Division and the other agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the agencies' activities under this Agreement.
4. The Parties understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). Each Party agrees to accept that coverage as adequate insurance of the other Party with respect to personal injury and property damage.
5. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be

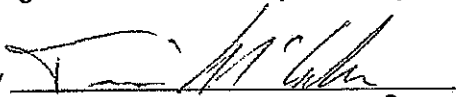
OBDD/ODOT
Agreement No. 27880

included. The Parties shall ensure that each of its contractors complies with these requirements.

6. The Parties acknowledges and agrees that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties, which are directly pertinent to the specific Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records shall be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
7. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
8. This Agreement and attached exhibits constitute the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing and signed by both Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT to enforce any provision of this Agreement shall not constitute a waiver by ODOT of that or any other provision.

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

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

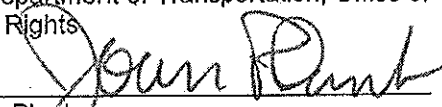
By 
Tim McCabe
Director

Date 10/10/11 

OBDD Contact:

John Saris
Business Services Manager
775 Summer Street SE, Suite 200
Salem, Oregon 97301
(503) 986-0163
john.saris@state.or.us

STATE OF OREGON, by and through
its Department of Transportation, Office of
Civil Rights

By 
Joan Plank
Chief of Staff

Date 10/11/11

ODOT Contact:

Dianne Marsh, HQ Business Manager
1158 Chemeketa Street NE
Salem, Oregon 97301-2557
(503) 986-3437
Dianne.c.marsh@odot.state.or.us

**EXHIBIT A
STATEMENT OF WORK**

OBDD OBLIGATIONS

1. Shall review and take appropriate action when users of the database identify potentially missing, inaccurate, or otherwise erroneous or confusing data.
2. Shall provide OCR staff the necessary DBE Certification information required to complete federal reports and ODOT data collection upon request.
3. In accordance with CFR Chapter 49, Part 26.83(c)(7)(i), OBDD shall ensure that OMWESB uses the application form provided in Appendix F of the CFR, without change or revision, for DBE certification.
4. Shall provide a report prior to the 5th of each month, which includes the following data for the previous month:
 - a. The number of certified DBE firms
 - b. The number of new DBE applications received
 - c. The number of re-certification DBE applications received
 - d. The number of new DBE applications approved
 - e. The number of new DBE applications denied
 - f. The number of re-certification DBE applications approved
 - g. The number of re-certification DBE applications decertified
 - h. Number of DBE applications past the deadline for receipt of annual affidavit or re-cert application, with firm names and timelines
 - i. Number of DBE firms discontinuing recertification
5. Shall provide access to processing timelines for all DBE applications, new and re-cert, currently in the system
6. Shall participate in OCR DBE staff training when available.
7. Shall coordinate participation in DBE Certification workshops and other outreach events with OCR.
8. Shall provide technical assistance to certified firms or firms seeking DBE Certification.
9. Shall submit to the OCR DBE Program Manager the following documentation on each DBE certification within 7 days of certification:
 - Copy of letter of determination
 - Copy of site visit

OBDD/ODOT
Agreement No. 27880

10. Shall notify the OCR DBE Program Manager 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
- Any appeal notice or request for a hearing/review

GENERAL PROVISIONS

1. ODOT and OBDD mutually agree to review the charge assessed to ODOT for DBE certification prior to December 15, 2011, for the 2013-2015 biennium.

EXHIBIT Q



Business Oregon
Office of Minority, Women and Emerging Small Business
775 Summer St. NE, Suite 200, Salem, OR 97301-1280
Phone: 503-986-0075, Fax: 503-581-5115
www.oregon4biz.com

Thank you for requesting an application packet for certification with the Office of Minority, Women and Emerging Small Business (OMWESB). There are three certification programs available: federal Disadvantaged Business Enterprise (DBE); state Minority Business Enterprise (MBE) or Women Business Enterprise (WBE); and state Emerging Small Business (ESB).

We encourage you to apply for all certifications for which you qualify.

If you wish to apply for **DBE certification only**, please submit the following:

- DBE Uniform Certification Application.
- Personal Net Worth statements.
- All required documentation appropriate for your business structure as listed on the Supporting Documents Checklist in this document.
- List any ABN or DBA used for this business.
- Official governmental documentation that substantiates ethnicity and gender. Examples include birth certificate, tribal enrollment with a federally recognized tribe, passport, driver license, etc.
If the information provided is inconclusive, additional documentation will be required.

If you wish to apply for **both DBE and MBE and/or WBE**, please submit the following:

- DBE Uniform Certification Application.
- Personal Net Worth statements.
- All required documentation appropriate for your business structure as listed on the Supporting Documents Checklist in this document.
- List any ABN or DBA used for this business.
- Official governmental documentation that substantiates ethnicity and gender. Examples include birth certificate, tribal enrollment with a federally recognized tribe, passport, driver license, etc.
If the information provided is inconclusive, additional documentation will be required.
- Signed statement requesting consideration for MBE and/or WBE certification (last page of this packet).

If your primary business location is in Oregon and you wish to apply for the Emerging Small Business (ESB) program, also complete the ESB “Streamlined” application available in [Word format](#) and [PDF format](#).

The Oregon State Procurement Office is the host of the Oregon Procurement Information Network (ORPIN) and all newly certified businesses are automatically registered as vendors on their system. Businesses can bid on contracts for government projects and services without certification from us. The Procurement Office help desk phone number is 503-378-4642 and its Web site address is <http://procurement.oregon.gov>.



Instructions For Completing the Disadvantaged Business Enterprise (DBE) Program Uniform Certification Application

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you *may not* have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended or had bidding privileges denied or restricted by *any* state or local agency or federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's Web site address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices—*not* a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This also could be the Social Security number of the owner of your firm.

- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."
NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and

- (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.
- (4) If you answered “Yes” to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An “immediate family member” is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law or father-in-law. If you answered “Yes,” provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business and whether they own or manage the company.

Section 3: OWNERSHIP

Identify **all** individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner’s gender.
- (6) Check the appropriate box that indicates this owner’s ethnicity (check all that apply). If you checked “Other,” specify this owner’s ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program’s other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner’s initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.

- (5) Indicate the number, percentage of the total, class, date acquired and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked “Yes,” state the name of the other business and this owner’s title or function held in that business.
- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has *any* relationship with your firm. If you checked “Yes,” identify the name of the other business and this owner’s title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be “socially and economically disadvantaged” and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program).

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner’s PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered “Yes,” briefly explain the nature, history, purpose and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm’s Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity and gender of each individual serving on your firm’s Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above perform a management or supervisory function for any other business. If you answered “Yes,” identify each person by name, his/her title, the name of the other business in which s/he is involved and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm’s officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered “Yes,” identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm’s management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person and the nature of his/her business relationship with that other firm.

C. Indicate your firm's inventory in the following categories:

- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
- (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
- (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
- (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly

explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information

- (1) Banking Information
 - (a) State the name of your firm's bank.
 - (b) Give the main phone number of your firm's bank branch.
 - (c) Give the address of your firm's bank branch.
- (2) Bonding Information
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) Give your agent's/broker's phone number.
 - (d) Give your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. List current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and the license/permit number and issuing state of the license or permit.

I. List the three largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract and the dollar value of each contract.

J. List the three largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date and the dollar value of the contract.

AFFIDAVIT & SIGNATURE

Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DBE Uniform Certification Application Supporting Documents Checklist

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- Your firm's signed loan agreements, security agreements and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you also must supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required. (See *Supplemental Document Checklist*)

DBE Uniform Certification Application
Special Instructions
For Airport Concessionaire Only

The following are additional special instructions for a firm applying for airport concession DBE certification.

- (1) In the space available in Section 2(B)(7) of the application form, the applicant must state that it is applying for certification as an Airport Concession Disadvantaged Business Enterprise (ACDBE).
- (2) With respect to Section 4(C) of the application form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.
- (3) The applicant need not complete Section 4(I) and (J) of the application form. However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession and start date of concession.
- (4) Please note for airport concession DBE certification, federal regulations, 49 CFR §23.3, define personal net worth (PNW) for an airport concession owner as follows:
“Personal net worth” means “the net value of the assets of an individual remaining after total liabilities are deducted. An individual’s personal net worth does not include the following: (1) the individual’s ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) the individual’s equity in his or her primary place of residence; and (3) other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual’s ACDBE business), to a maximum of \$3 million. An individual’s personal net worth includes only his or her own share of assets held jointly or as community property with the individual’s spouse.”

If an applicant is relying upon the exclusion of “other assets” to meet the PNW requirement, the applicant must demonstrate and provide documentation to show that the assets are necessary to obtain financing or a franchise agreement to enter or expand a concession business at an airport (e.g., by producing letters from banks to that effect); or show that the assets have in fact been encumbered to support existing financing for an airport concession business (e.g., by producing loan agreements showing value of assets used as collateral for the loans).

If you have any questions or would like assistance, please call the Office of Minority, Women & Emerging Small Business at 503-986-0075.

For Airport Concessionaire Use Only

**Disadvantaged Business Enterprise Program
49 C.F.R. Part 26**

Uniform Certification Application

Roadmap For Applicants

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard **and** does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?
 - If you answered "Yes" to all of the questions above, you **may be** eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE:** You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the *Documents Check List* at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT—<http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA—<http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

<p>Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in federal programs.</p>

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es).)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> DBE	Name of certifying agency: _____ Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> No <input type="checkbox"/> Yes, on ____/____/____ State: ____
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the 8(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or federal entity? <input type="checkbox"/> No <input type="checkbox"/> Yes, on ____/____/____ State: _____ Name of state, local or federal agency: _____ Explain the nature of the action: _____ _____ _____	
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Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person: _____		Title: _____	
(2) Legal name of firm: _____			
(3) Phone #: _____		(4) Other Phone: _____	
		(5) Fax #: _____	
(6) E-mail: _____		(7) Web site <i>(if have one)</i> : _____	
(8) Street address of firm <i>(No P.O. Box)</i> : _____			
City: _____		County/Parish: _____	
		State: _____	
		Zip: _____	
(9) Mailing address of firm <i>(if different)</i> : _____			
City: _____		County/Parish: _____	
		State: _____	
		Zip: _____	

B. Business Profile

(1) Describe the primary activities of your firm: _____		(2) Federal Tax ID (if any): _____	
(3) This firm was established on ____/____/____		(4) I/We have owned this firm since: ____/____/____	
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i> _____			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):

Sole Proprietorship

Partnership

Corporation

Limited Liability Partnership

Limited Liability Corporation

Joint Venture

Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership or a different name?

No

Yes

If yes, explain:

(9) Number of employees: Full-time: _____ Part-time: _____ Total: _____

(10) Specify the gross receipts of the firm for the last 3 years:

Year: _____	Total receipts: \$ _____
Year: _____	Total receipts: \$ _____
Year: _____	Total receipts: \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment or office staff, with any other business, organization or entity?

Yes No

If Yes, identify: Other Firm's name: _____

Explain nature of shared facilities:

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each. (Attach extra sheets, if needed.):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed.):

	Name	Relationship	Company	Type of Business	Own	Manage
1.					<input type="checkbox"/>	<input type="checkbox"/>
2.					<input type="checkbox"/>	<input type="checkbox"/>
3.					<input type="checkbox"/>	<input type="checkbox"/>

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below. (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:		(2) Title:		(3) Home Phone:	
(4) Home Address (<i>street and number</i>):		City:		State:	Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		(6) Ethnic group membership (<i>Check all that apply</i>): <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (<i>specify</i>)			
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No					
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No					

B. Ownership interest

(1) Number of years as owner:		(2) Initial investment to acquire ownership interest in firm:	Type		Dollar Value
(3) Percentage owned:			Cash		\$
(4) Familial relationship to other owners:			Real Estate		\$
			Equipment		\$
			Other		\$
(5) Shares of Stock:	Number	Percentage	Class	Date acquired	Method acquired
				//_	
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If Yes, identify: Name of Business:			Function/Title:		
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (<i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i>)? <input type="checkbox"/> Yes <input type="checkbox"/> No					
If Yes, identify: Name of Business:			Function/Title:		
Nature of Business Relationship:					

C. Disadvantaged Status—NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (<i>Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying.</i>)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (<i>attach additional sheets if needed</i>):

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<p>(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify for each person: Person: _____ Title: _____ Business: _____ Function: _____</p>					
<p>(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No</p> <p>If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____</p>					

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			

(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			
(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____				
(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Firm: _____ Person: _____ Nature of Business Relationship: _____				

C. Indicate your firm's inventory in the following categories (*attach additional sheets if needed*):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No.: _____
 (c) Address of bank: _____
 City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker: _____ (c) Phone No.: _____
 (d) Address of agent/broker: _____
 City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit: \$ _____ Project limit: \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.			\$	\$	
2.			\$	\$	
3.			\$	\$	

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.	\$				
2.	\$				
3.	\$				

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc., attach additional sheets if needed):

Name of License or Permit Holder	Type of License/Permit	Expiration Date	License Number And State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner or Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					



Business Oregon
Office of Minority, Women and Emerging Small Business
775 Summer St. NE, Suite 200, Salem, OR 97301-1280
Phone: 503-986-0075, Fax: 503-581-5115
www.oregon4biz.com

Capabilities: Please refer to the attached North American Industry Classification System (NAICS) code list. In the first and second columns, list any NAICS code numbers and the NAICS descriptions that apply to your business. Under “Business capability,” clearly identify the products or services in which the qualifying individual has expertise and control. (See **example** in first row.)

Enter your **primary** line of work on the *first* line after the example line.

NAICS code no.	NAICS description	Business capability
Example 238320	Painting and Wall Covering Contractors	Commercial painting, interior only; wallpaper hanging, texture application
Primary:		



Affidavit of Certification

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A material or false statement or omission made in connection with this application is sufficient cause for denial of certification, revocation of a prior approval, initiation of suspension or debarment proceedings, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable federal and state law.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (check all that apply):

- Female Black American Hispanic American
- Native American Asian-Pacific American
- Subcontinent Asian American
- Other (specify) _____



I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

Notary Certificate

]Notarial Certificate[

State of: _____

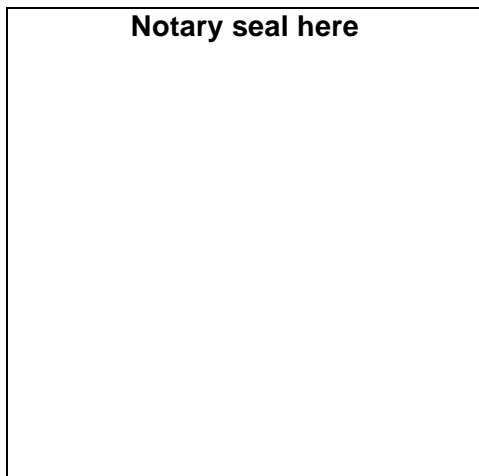
County of: _____

On _____ before me, _____
Date Name of notary

Personally appeared _____,

Personally appeared _____,

Personally appeared _____,



Personally known to me

Proved to me on the basis of satisfactory evidence

To be the person(s) whose signature(s) appear(s) on the application in whose authorized capacity the application was executed.

WITNESS my hand,

Signature of notary public

My commission expires on _____
Date



Instructions to complete Personal Financial Statement (SBA Form 413) for the Unified Certification Program:

1. Fill out all line items to the best of your ability. Be sure to include the DATE in the upper right corner of the First page.
2. Include all of your and, if applicable, your spouse's assets and liabilities.
3. Assets that must be included are real property (includes rental or vacation homes), personal property wherever located (includes household goods, collectibles, clothing and jewelry), other businesses, vehicles, boats, trailers, cash, bank accounts, stocks, bonds, retirement accounts, insurance policies and any other assets where you have an ownership interest.
4. Complete Section 4 for all of your real estate. Be sure to include and identify which is your primary residence.
5. For married individuals, list both names and all property, including both community and separate property. Complete Section 5 to identify separate property for each spouse.
6. Describe other assets, other property and other liabilities in detail. Include your equity in your business also, under Other Assets, and then itemize all Other Assets in Section 5.
7. Market values for items such as real estate, other assets and other property should be as accurate as possible to their value as of the above date.
8. If necessary, use additional sheet(s) of paper to report all information and details.
9. To compute **Net Worth**, first add all liabilities and put that figure in the Total Liabilities line, then subtract Total Liabilities from Total Assets to get your **Net Worth**.
10. To determine economic disadvantage eligibility, your **Net Worth** amount will be adjusted by the following to obtain an Adjusted Net Worth figure (see worksheet below).
 - Exclusion of an individual's ownership interest in the applicant firm;
 - Exclusion of an individual's equity in his or her primary residence;
 - Deduction of tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.
 - **For airport concessionaire only:** Exclusion of other assets documented to be necessary to obtain financing or a franchise agreement for the initiation, support or expansion of an airport concession, to a maximum of \$3 million.

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse. If your Adjusted Net Worth exceeds the \$750,000 cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE certification. If the Adjusted Net Worth of the majority owner(s) exceeds the \$750,000 cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise the firm no longer qualifies.

Adjusted Net Worth Worksheet:

Net Worth (less one-half of community property, if applicable)	\$ _____
Less: ① ownership interest in applicant firm	(_____)
② equity in primary residence	(_____)
③ tax and interest penalties on retirement accounts	(_____)
④ airport concessionaire exclusion, if applicable	(_____)
Adjusted Net Worth Total	\$ _____

11. Be sure to sign and date at the end of the statement. If you have any questions or would like assistance in completing this form, please contact one of the certifying agencies on the enclosed Roster.



PERSONAL FINANCIAL STATEMENT

U.S. SMALL BUSINESS ADMINISTRATION

As of _____, _____

Complete this form for: (1) each proprietor, or (2) each limited partner who owns 20% or more interest and each general partner, or (3) each stockholder owning 20% or more of voting stock, or (4) any person or entity providing a guaranty on the loan.

Name:	Business Phone:
Residence Address:	Residence Phone:
City, State, & Zip Code:	
Business Name of Applicant/Borrower:	

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on Hand & in Banks	\$ _____	Accounts Payable	\$ _____
Savings Accounts	\$ _____	Notes Payable to Banks and Others	\$ _____
IRA or Other Retirement Account	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable	\$ _____	Installment Account (Auto)	\$ _____
Life Insurance—Cash Surrender Value		Mo. Payments \$ _____	
Only	\$ _____	Installment Account (Other)	\$ _____
(Complete Section 8)		Mo. Payments \$ _____	
Stocks and Bonds	\$ _____	Loan on Life Insurance	\$ _____
(Describe in Section 3)		Mortgages on Real Estate	\$ _____
Real Estate	\$ _____	(Describe in Section 4)	
(Describe in Section 4)		Unpaid Taxes	\$ _____
Automobile—Present Value	\$ _____	(Describe in Section 6)	
Other Personal Property	\$ _____	Other Liabilities	\$ _____
(Describe in Section 5)		(Describe in Section 7)	
Other Assets	\$ _____	Total Liabilities	\$ _____
(Describe in Section 5)		Net Worth	\$ _____
Total	\$ _____	Total	\$ _____

Section 1. Source of Income	(Omit Cents)	Contingent Liabilities	(Omit Cents)
Salary	\$ _____	As Endorser or Co-Maker	\$ _____
Net Investment Income	\$ _____	Legal Claims & Judgments	\$ _____
Real Estate Income	\$ _____	Provision for Federal Income Tax	\$ _____
Other Income (Describe below)*	\$ _____	Other Special Debt	\$ _____

Description of Other Income in Section 1.

*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 5. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 6. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount and to what property, if any, a tax lien attaches.)

Section 7. Other Liabilities. (Describe in detail.)

Section 8. Life Insurance Held. (Give face amount and cash surrender value of policies—name of insurance company and beneficiaries)

I authorize SBA/Lender to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of either obtaining a loan or guaranteeing a loan. I understand FALSE statements may result in forfeiture of benefits and possible prosecution by the U.S. Attorney General (Reference 18 U.S.C. 1001).

Signature: _____ Date: _____ Social Security Number: _____

Signature: _____ Date: _____ Social Security Number: _____

PLEASE NOTE: The estimated average burden hours for the completion of this form is 1.5 hours per response. If you have questions or comments concerning this estimate or any other aspect of this information, please contact Chief, Administrative Branch, U.S. Small Business Administration, Washington, D.C. 20416, and Clearance Officer, Paper Reduction Project (3245-0188), Office of Management and Budget, Washington, D.C. 20503. **PLEASE DO NOT SEND FORMS TO OMB.**

DBE—Title 49: Code of Federal Regulations

1 PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

2 CFR § 26.89 What is the process for certification appeals to the Department of Transportation?

- (a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.
- (2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.
- (3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.
- (b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.
- (c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.
- (1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).
- (2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).
- (d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- (e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
- (f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
- (1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
- (2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.
- (3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
- (4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
- (5) The Department does not uphold your decision based on grounds not specified in your decision.
- (6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
- (7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

Complete text of the Code of Federal Regulations is available online <http://www.gpoaccess.gov/index.html>

Excerpt from the Oregon Administrative Rules filed through October 15, 2008

**Oregon Business Development Department
Office of Minority, Women and Emerging Small Business**

DIVISION 50: DBE CERTIFICATION PROCEDURES

445-050-0020

Eligibility Standards for Disadvantaged Business Enterprises

(1) To be eligible for certification as a Disadvantaged Business Enterprise, a business must meet the following criteria:

(a) The business must be in existence, operational and in business for a profit.

(b) The business must be a Small Business, but in no case may the average annual gross receipts exceed \$17,420,000.

(c) The business must be Controlled by one or more Socially and Economically Disadvantaged Individual(s).

(d) The business must be Owned by one or more Socially and Economically Disadvantaged Individual(s).

(e) The one or more Socially and Economically Disadvantaged Individual(s) must have made a contribution of capital to the business, which is commensurate with their ownership interest.

(f) The business must be Independent.

(g) The business must be properly licensed and registered in the state of Oregon.

(h) The business must have or lease (where leasing is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm) sufficient machinery, equipment and employees to operate. In making this determination the OMWESB shall compare the operations of the DBE to a non-DBE operation in the same or similar business.

(2) The OMWESB will utilize 49 CFR 26 to review for eligibility for certification as a DBE. In addition, OMWESB will apply written directives of the USDOT, administrative guidelines and written decisions of the USDOT on appeals of state certification decisions so long as they are in accord with these rules.

(3) In making determinations under this section the OMWESB shall not consider whether the business has previously performed or would be able to perform a commercially useful function. Repeated failure by a business to perform a commercially useful function may, however, indicate that the business is not Independent, Owned or Controlled by a Socially and Economically Disadvantaged Individual.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 200.005 & 200.055

Stats. Implemented: ORS 200.005 & 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0020; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00; MWESB 1-2004, f. 1-15-04, cert. ef. 2-15-04

445-050-0070

Decertification/Denial of DBE

This rule applies only to the decertification or denial of a DBE under 49 CFR Part 26. A DBE may be decertified at any time the OMWESB determines that the firm no longer meets the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26. The OMWESB may also deny certification to any DBE applicant that does not meet the eligibility standards set out in OAR 445-050-0020 and 49 CFR 26. The procedure is as follows:

- (1) In the case of decertification, the OMWESB shall issue a Notice of Intent to Decertify the DBE 21 days prior to the date of the decertification, and indicate the specific reasons for decertification.
- (2) In the case of denial of initial certification or recertification, the DBE or applicant will be notified in writing of the denial and the reasons therefore.
- (3) In either a decertification or denial of initial certification or recertification of a DBE, the DBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for a contested case hearing. If the DBE or applicant requests a contested case hearing, the decertification or denial of recertification will be stayed pending the issuance of a final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. Following the contested case hearing, the proposed order issued by the Hearings Officer will be forwarded to the Manager of the OMWESB for issuance of the final order. If no written request for a contested case is received by OMWESB within the 21-day period, the decertification/denial will be final.
- (4) Any applicant or DBE that believes it has been wrongly decertified or denied certification or recertification by the OMWESB may also file an appeal in writing, signed and dated, with the USDOT. The applicant or DBE must provide the OMWESB with a copy of the USDOT appeal at the same time it submits the appeal to the USDOT. The appeal shall be filed no later than 90 days after the date of decertification or denial of certification or recertification. The Secretary of Transportation may extend the time for filing or waive the time limit, specifically listing the reasons in writing, in the interests of justice. The appeals procedure to the USDOT is set out in 49 CFR 26.
- (5) A DBE may be decertified if the Socially and Economically Disadvantaged Individual dies or leaves the business.
- (6) Any business denied certification as a DBE will be ineligible to reapply for a period of 12 months.

Stat. Auth.: ORS 200.055

Stats. Implemented: ORS 200.055

Hist.: EX 1-1988(Temp), f. & cert. ef. 7-14-88; EX 3-1988(Temp), f. 9-2-88, cert. ef. 9-1-88; EX 4-1988, f. 12-5-88, cert. ef. 12-15-88; EX 2-1991, f. & cert. ef. 10-24-91; Former (1)(c)(A) through (3) renumbered to 121-50-075; BAD 1997, f. & cert. ef. 5-20-97; MWESB 2-1998, f. & cert. ef. 12-11-98, Renumbered from 121-050-0070; MWESB 1-2000, f. 11-7-00, cert. ef. 12-1-00

The official copy of an Oregon Administrative Rule is contained in the Administrative Order filed at the Archives Division, 800 Summer St. NE, Salem, Oregon 97310. Any discrepancies with the published version are satisfied in favor of the Administrative Order. The Oregon Administrative Rules and the Oregon Bulletin are copyrighted by the Oregon Secretary of State. [Terms and Conditions of Use](#)
Complete text found at http://arcweb.sos.state.or.us/rules/OARS_400/OAR_445/445_050.html

North American Industry Classification System (NAICS) Codes

Please select the code number that most closely identifies your type of business from the following condensed list. Write the code number in the space provided on your form. **Note:** This document contains a partial list of NAICS codes. For a complete list of NAICS codes, please visit <http://www.sba.gov/size/indehtableofsize.html>.

Agriculture, Forestry, Fishing and Hunting	
111000	Crop Production
112000	Animal Production
113000	Forestry and Logging
114000	Fishing, Hunting and Trapping*
115000	Support Activities for Agriculture and Forestry
Mining	
211000	Oil and Gas Extraction
212000	Mining (except Oil and Gas)
213000	Support Activities for Mining
Utilities*	
221110	Hydroelectric, Fossil Fuel, Nuclear and Other Electric Power Generation
221120	Electric Power Transmission, Control and Distribution
221310	Water Supply and Irrigation Systems*
Construction*	
<i>Construction of Buildings</i>	
236115	New Single-Family Housing Construction (except Operative Builders)
236116	New Multifamily Housing Construction (except Operative Builders)
236117	New Housing Operative Builders
236118	Residential Remodelers
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
<i>Heavy and Civil Engineering Construction</i>	
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237210	Land Subdivision
237310	Highway, Street, and Bridge Construction
237990	Other Heavy and Civil Engineering Construction
237990	Dredging and Surface Cleanup Activities
<i>Specialty Trade Contractors</i>	
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238130	Framing Contractors
238140	Masonry Contractors
238150	Glass and Glazing Contractors
238160	Roofing Contractors
238170	Siding Contractors
238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors
238220	Plumbing, Heating, and Air-Conditioning Contractors
238290	Other Building Equipment Contractors
238310	Drywall and Insulation Contractors
238320	Painting and Wall Covering Contractors
238330	Flooring Contractors
238340	Tile and Terrazzo Contractors
238350	Finish Carpentry Contractors
238390	Other Building Finishing Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors

238990	Building and Property Specialty Trade Services
Manufacturing	
<i>Food Manufacturing</i>	
<i>Beverage and Tobacco Product Manufacturing</i>	
<i>Textile Mills</i>	
<i>Textile Product Mills</i>	
<i>Apparel Manufacturing</i>	
315211	Men's and Boys' Cut and Sew Apparel Contractors
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors
315220	Men's and Boys' Cut and Sew Apparel Manufacturing
315230	Women's and Girls' Cut and Sew Apparel Manufacturing
315299	All Other Cut and Sew Apparel Manufacturing
315999	Other Apparel Accessories and Other Apparel Manufacturing
<i>Leather and Allied Product Manufacturing</i>	
316211	Rubber and Plastics Footwear Manufacturing
316213	Men's Footwear (except Athletic) Manufacturing
316214	Women's Footwear (except Athletic) Manufacturing
316219	Other Footwear Manufacturing
<i>Wood Product Manufacturing</i>	
Paper Manufacturing	
<i>Printing and Related Support Activities</i>	
323110	Commercial Lithographic Printing
323111	Commercial Gravure Printing
323112	Commercial Flexographic Printing
323113	Commercial Screen Printing
323114	Quick Printing
323115	Digital Printing
323116	Manifold Business Forms Printing
323117	Books Printing
323118	Blankbook, Loose-leaf Binder and Device Manufacturing
323119	Other Commercial Printing
323121	Tradebinding and Related Work
323122	Prepress Services
<i>Petroleum and Coal Products Manufacturing</i>	
324121	Asphalt Paving Mixture and Block Manufacturing
324122	Asphalt Shingle and Coating Materials Manufacturing
<i>Chemical Manufacturing</i>	
<i>Plastics and Rubber Products Manufacturing</i>	
326211	Tire Manufacturing (except Retreading)
326212	Tire Retreading
326220	Rubber and Plastics Hoses and Belting Manufacturing
326291	Rubber Product Manufacturing for Mechanical Use
326299	All Other Rubber Product Manufacturing
<i>Nonmetallic Mineral Product Manufacturing</i>	
<i>Primary Metal Manufacturing</i>	
<i>Fabricated Metal Product Manufacturing</i>	
332116	Metal Stamping
332322	Sheet Metal Work Manufacturing
332323	Ornamental and Architectural Metal Work Manufacturing
332710	Machine Shops
332721	Precision Turned Product Manufacturing
332996	Fabricated Pipe and Pipe Fitting Manufacturing
<i>Machinery Manufacturing</i>	
333120	Construction Machinery Manufacturing

333311	Automatic Vending Machine Manufacturing
	Office Machinery Manufacturing
333414	Heating Equipment (except Warm Air Furnaces) Manufacturing
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing
333613	Mechanical Power Transmission Equipment Manufacturing
333618	Other Engine Equipment Manufacturing
333911	Pump and Pumping Equipment Manufacturing
333921	Elevator and Moving Stairway Manufacturing
333922	Conveyor and Conveying Equipment Manufacturing
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing
<i>Computer and Electronic Product Manufacturing</i>	
334111	Electronic Computer Manufacturing
334112	Computer Storage Device Manufacturing
334113	Computer Terminal Manufacturing
334119	Other Computer Peripheral Equipment Manufacturing
334210	Telephone Apparatus Manufacturing
334220	Radiant Television Broadcasting and Wireless Communications Equipment Manufacturing
334290	Other Communications Equipment Manufacturing
334310	Audio and Video Equipment Manufacturing
334417	Electronic Connector Manufacturing
334418	Printed Circuit Assembly (Electronic Assembly) Mfg
334419	Other Electronic Component Manufacturing
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables
334514	Totalizing Fluid Meter and Counting Device Manufacturing
334518	Watch, Clock, and Part Manufacturing
334519	Other Measuring and Controlling Device Manufacturing
334611	Software Reproducing
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing
334613	Magnetic and Optical Recording Media Manufacturing
<i>Electrical Equipment, Appliance and Component Manufacturing</i>	
<i>Transportation Equipment Manufacturing</i>	
336112	Light Truck and Utility Vehicle Manufacturing
336120	Heavy Duty Truck Manufacturing
336211	Motor Vehicle Body Manufacturing
336212	Truck Trailer Manufacturing
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing
336312	Gasoline Engine and Engine Parts Manufacturing
336321	Vehicular Lighting Equipment Manufacturing
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing
336340	Motor Vehicle Brake System Manufacturing
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing
336360	Motor Vehicle Seating and Interior Trim Manufacturing
336370	Motor Vehicle Metal Stamping
336391	Motor Vehicle Air-Conditioning Manufacturing
336399	All Other Motor Vehicle Parts Manufacturing

336411	Aircraft Manufacturing
336510	Railroad Rolling Stock Manufacturing
336611	Ship Building and Repairing
336991	Motorcycle, Bicycle and Parts Manufacturing
336999	All Other Transportation Equipment Manufacturing
<i>Furniture and Related Product Manufacturing</i>	
337127	Institutional Furniture Manufacturing
337211	Wood Office Furniture Manufacturing
337214	Office Furniture (Except Wood) Manufacturing
337215	Showcase, Partition, Shelving, and Locker Manufacturing
337920	Blind and Shade Manufacturing
<i>Miscellaneous Manufacturing</i>	
339111	Laboratory Apparatus and Furniture Manufacturing
339950	Sign Manufacturing
339991	Gasket, Packing, and Sealing Device Manufacturing
Wholesale Trade	
<i>Merchant Wholesalers, Durable Goods</i>	
423110	Automobile and Other Motor Vehicle Merchant Wholesalers
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers
423130	Tire and Tube Merchant Wholesalers
423140	Motor Vehicle Parts (Used) Merchant Wholesalers
423210	Furniture Merchant Wholesalers
423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
423320	Brick, Stone, and Related Construction Material Merchant Wholesalers
423330	Roofing, Siding, and Insulation Material Merchant Wholesalers
423390	Other Construction Material Merchant Wholesalers
423410	Photographic Equipment and Supplies Merchant Wholesalers
423420	Office Equipment Merchant Wholesalers
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
423440	Other Commercial Equipment Merchant Wholesalers
423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
423490	Other Professional Equipment and Supplies Merchant Wholesalers
423510	Metal Service Centers and Other Metal Merchant Wholesalers
423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers
423690	Other Electronic Parts and Equipment Merchant Wholesalers
423710	Hardware Merchant Wholesalers
423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
423740	Refrigeration Equipment and Supplies Merchant Wholesalers
423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
423820	Farm and Garden Machinery and Equipment Merchant Wholesalers
423830	Industrial Machinery and Equipment Merchant Wholesalers
423840	Industrial Supplies Merchant Wholesalers
423850	Service Establishment Equipment and Supplies Merchant Wholesalers
423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
423930	Recyclable Material Merchant Wholesalers
423940	Other Miscellaneous Durable Goods Merchant

*Note: Evidence of State or other licensing is required in order to be classified in this industry, if applicable.

	Wholesalers
	<i>Merchant Wholesalers, Nondurable Goods</i>
424110	Printing and Writing Paper Merchant Wholesalers
424120	Stationary and Office Supplies Merchant Wholesalers
424130	Industrial and Personal Service Paper Merchant Wholesalers
424210	Drugs and Druggists' Sundries Merchant Wholesalers
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers
424340	Footwear Merchant Wholesalers
424410	General Line Grocery Merchant Wholesalers
424420	Packaged Frozen Food Merchant Wholesalers
424490	Other Grocery and Related Products Merchant Wholesalers
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
424710	Petroleum Bulk Stations and Terminals
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
424920	Book, Periodical, and Newspaper Merchant Wholesalers
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers
424940	Tobacco and Tobacco Product Merchant Wholesalers
424950	Paint, Varnish, and Supplies Merchant Wholesalers
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers
425000	Wholesale Electronic Markets and Agents and Brokers
425110	Business to Business Electronic Markets
425120	Wholesale Trade Agents and Brokers
Retail Trade	
<i>Motor Vehicle and Parts Dealers</i>	
441110	New Car Dealers
441120	Used Car Dealers
441221	Motorcycle Dealers
441222	Boat Dealers
441229	All Other Motor Vehicle Dealers
441229	Aircraft Dealers, Retail
441310	Automotive Parts and Accessories Stores
441320	Tire Dealers
<i>Furniture and Home Furnishings Stores</i>	
442110	Furniture Stores
442210	Floor Covering Stores
442291	Window Treatment Stores
442299	All Other Home Furnishings Stores
<i>Electronics and Appliance Stores</i>	
443111	Household Appliance Stores
443112	Radio, Television and Other Electronics Stores
443120	Computer and Software Stores
443130	Camera and Photographic Supplies Stores
<i>Building Material and Garden Equipment and Supplies Dealers</i>	
444110	Home Centers
444120	Paint and Wallpaper Stores
444130	Hardware Stores
444190	Other Building Material Dealers
444210	Outdoor Power Equipment Stores
444220	Nursery and Garden Centers
<i>Food and Beverage Stores</i>	
<i>Health and Personal Care Stores</i>	
<i>Gasoline Stations</i>	

<i>Clothing and Clothing Accessories Stores</i>	
448110	Men's Clothing Stores
448120	Women's Clothing Stores
448130	Children's and Infants' Clothing Stores
448140	Family Clothing Stores
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448320	Luggage and Leather Goods Stores
<i>Sporting Good, Hobby, Book and Music Stores</i>	
451211	Book Stores
451212	News Dealers and Newsstands
<i>General Merchandise Store</i>	
<i>Miscellaneous Store Retailers</i>	
453110	Florists
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty and Souvenir Stores
453310	Used Merchandise Stores
<i>Nonstore Retailers</i>	
454111	Electronic Shopping
454112	Electronic Auctions
454113	Mail-Order Houses
454210	Vending Machine Operators
454311	Heating Oil Dealers
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers
454319	Other Fuel Dealers
454390	Other Direct Selling Establishments
Transportation*	
<i>Air Transportation</i>	
481111	Scheduled Passenger Air Transportation
481112	Scheduled Freight Air Transportation
481211	Nonscheduled Chartered Passenger Air Transportation
481212	Nonscheduled Chartered Freight Air Transportation
481219	Other Nonscheduled Air Transportation
<i>Rail Transportation</i>	
<i>Water Transportation</i>	
<i>Truck Transportation</i>	
484110	General Freight Trucking, Local
484121	General Freight Trucking, Long-Distance, Truckload
484122	General Freight Trucking, Long-Distance, Less Than Truckload
484210	Used Household and Office Goods Moving
484220	Specialized Freight (except Used Goods) Trucking, Local
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance
<i>Transit and Ground Passenger Transportation</i>	
485111	Mixed Mode Transit Systems
485112	Commuter Rail Systems
485113	Bus and Motor Vehicle Transit Systems
485119	Other Urban Transit Systems
485210	Interurban and Rural Bus Transportation
485310	Taxi Service
485320	Limousine Service
485410	School and Employee Bus Transportation
485510	Charter Bus Industry
485991	Special Needs Transportation
485999	All Other Transit and Ground Passenger Transportation
<i>Pipeline Transportation</i>	
<i>Scenic and Sightseeing Transportation</i>	
<i>Support Activities for Transportation</i>	
488111	Air Traffic Control
488119	Other Airport Operations
488190	Other Support Activities for Air Transportation

*Note: Evidence of State or other licensing is required in order to be classified in this industry, if applicable.

488210	Support Activities for Rail Transportation
488310	Port and Harbor Operations
488320	Marine Cargo Handling
488390	Other Support Activities for Water Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
488510	Freight Transportation Arrangement
488991	Packing and Crating
488999	All Other Support Activities for Transportation
<i>Postal Service</i>	
<i>Couriers and Messengers</i>	
492110	Couriers
492210	Local Messengers and Local Delivery
<i>Warehousing and Storage</i>	
493110	General Warehousing and Storage
493120	Refrigerated Warehousing and Storage
493190	Other Warehousing and Storage
Information*	
<i>Publishing Industries (except Internet)</i>	
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Directory and Mailing List Publishers
511199	All Other Publishers
511210	Software Publishers
512110	Motion Picture and Video Production
512191	Teleproduction and Other Postproduction Services
512199	Other Motion Picture and Video Industries
512210	Record Production
512220	Integrated Record Production/Distribution
512240	Sound Recording Studios
512290	Other Sound Recording Industries
<i>Broadcasting (except Internet)</i>	
515111	Radio Networks*
515112	Radio Stations*
515120	Television Broadcasting*
515210	Cable and Other Subscription Programming
<i>Internet Publishing and Broadcasting</i>	
516110	Internet Publishing and Broadcasting
<i>Telecommunications</i>	
517110	Wired Telecommunications Carriers
517211	Paging
517212	Cellular and Other Wireless Telecommunications
517310	Telecommunications Resellers
517410	Satellite Telecommunications
517510	Cable and Other Program Distribution
517910	Other Telecommunications
<i>Internet Service Providers, Web Search Portals, and Data Processing Services</i>	
518111	Internet Service Providers
518112	Web Search Portals
518210	Data Processing, Hosting, and Related Services
<i>Other Information Services</i>	
519110	News Syndicates
519120	Libraries and Archives
519190	All Other Information Services
Finance and Insurance*	
<i>Credit Intermediation and Related Activities</i>	
522220	Sales Financing
522291	Consumer Lending
522292	Real Estate Credit
522298	All Other Non-Depository Credit Intermediation
522310	Mortgage and Nonmortgage Loan Brokers

522320	Financial Transactions Processing, Reserve, and Clearing House Activities
522390	Other Activities Related to Credit Intermediation
<i>Financial Investments and Related Activities</i>	
523110	Investment Banking and Securities Dealing
523120	Securities Brokerage
523130	Commodity Contracts Dealing
523140	Commodity Contracts Brokerage
523910	Miscellaneous Intermediation
523920	Portfolio Management
523930	Investment Advice
523991	Trust, Fiduciary and Custody Activities
523999	Miscellaneous Financial Investment Activities
<i>Insurance Carriers and Related Activities</i>	
524113	Direct Life Insurance Carriers
524114	Direct Health and Medical Insurance Carriers
524126	Direct Property and Casualty Insurance Carriers
524127	Direct Title Insurance Carriers
524128	Other Direct Insurance (except Life, Health and Medical) Carriers
524130	Reinsurance Carriers
524210	Insurance Agencies and Brokerages
524291	Claims Adjusting
524292	Third Party Administration of Insurance and Pension Funds
524298	All Other Insurance Related Activities
<i>Funds, Trusts and Other Financial Vehicles</i>	
525110	Pension Funds
525120	Health and Welfare Funds
525190	Other Insurance Funds
525910	Open-End Investment Funds
525920	Trusts, Estates, and Agency Accounts
525930	Real Estate Investment Trusts
525990	Other Financial Vehicles
Real Estate and Rental and Leasing*	
<i>Real Estate</i>	
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
531130	Lessors of Miniwarehouses and Self Storage Units
531190	Lessors of Other Real Estate Property
531210	Offices of Real Estate Agents and Brokers*
531312	Nonresidential Property Managers
531320	Offices of Real Estate Appraisers*
531390	Other Activities Related to Real Estate
<i>Rental and Leasing Services</i>	
532111	Passenger Car Rental
532112	Passenger Car Leasing
532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing
532210	Consumer Electronics and Appliances Rental
532299	All Other Consumer Goods Rental
532310	General Rental Centers
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing
532420	Office Machinery and Equipment Rental and Leasing
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
Professional, Scientific and Technical Services*	
541110	Offices of Lawyers*
541191	Title Abstract and Settlement Offices

*Note: Evidence of State or other licensing is required in order to be classified in this industry, if applicable.

541199	All Other Legal Services
541211	Offices of Certified Public Accountants*
541213	Tax Preparation Services*
541214	Payroll Services
541219	Other Accounting Services
541310	Architectural Services*
541320	Landscape Architectural Services*
541330	Engineering Services*
541340	Drafting Services
541340	Map Drafting
541350	Building Inspection Services
541360	Geophysical Surveying and Mapping Services*
541370	Surveying and Mapping (except Geophysical) Services*
541380	Testing Laboratories
541410	Interior Design Services
541420	Industrial Design Services
541430	Graphic Design Services
541490	Other Specialized Design Services
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
541513	Computer Facilities Management Services
541519	Other Computer Related Services
541611	Administrative Management and General Management Consulting Services
541612	Human Resources and Executive Search Consulting Services
541613	Marketing Consulting Services
541614	Process, Physical Distribution and Logistics Consulting Services
541618	Other Management Consulting Services
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541710	Research and Development in the Physical, Engineering, and Life Sciences
541720	Research and Development in the Social Sciences and Humanities
541810	Advertising Agencies
541820	Public Relations Agencies
541830	Media Buying Agencies
541840	Media Representatives
541850	Display Advertising
541860	Direct Mail Advertising
541870	Advertising Material Distribution Services
541890	Other Services Related to Advertising
541910	Marketing Research and Public Opinion Polling
541922	Commercial Photography
541930	Translation and Interpretation Services
541990	All Other Professional, Scientific and Technical Services
Management of Companies and Enterprises	
551111	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies
Administrative and Support Services	
<i>Administrative and Support Services</i>	
561110	Office Administrative Services
561210	Facilities Support Services
561210	Base Maintenance
561310	Employment Placement Agencies
561320	Temporary Help Services
561330	Employee Leasing Services
561410	Document Preparation Services
561421	Telephone Answering Services
561422	Telemarketing Bureaus
561431	Private Mail Centers

561439	Other Business Service Centers (including Copy Shops)
561440	Collection Agencies
561450	Credit Bureaus
561491	Repossession Services
561492	Court Reporting and Stenotype Services
561499	All Other Business Support Services
561510	Travel Agencies
561520	Tour Operators
561599	All Other Travel Arrangement and Reservation Services
561611	Investigation Services
561612	Security Guards and Patrol Services*
561613	Armored Car Services
561621	Security Systems Services (except Locksmiths)
561622	Locksmiths
561710	Exterminating and Pest Control Services*
561720	Janitorial Services
561730	Landscaping Services*
561740	Carpet and Upholstery Cleaning Services
561790	Other Services to Buildings and Dwellings
561910	Packaging and Labeling Services
561920	Convention and Trade Show Organizers
561990	All Other Support Services
<i>Waste Management and Remediation Services</i>	
562111	Solid Waste Collection
562112	Hazardous Waste Collection*
562119	Other Waste Collection
562211	Hazardous Waste Treatment and Disposal*
562219	Other Nonhazardous Waste Treatment and Disposal
562910	Remediation Services
562910	Environmental Remediation Services
562920	Materials Recovery Facilities
562998	All Other Miscellaneous Waste Management Services
Educational Services	
611410	Business and Secretarial Schools
611420	Computer Training
611430	Professional and Management Development Training
611512	Flight Training
611513	Apprenticeship Training
611519	Other Technical and Trade Schools
611630	Language Schools
611691	Exam Preparation and Tutoring
611692	Automobile Driving Schools
611699	All Other Miscellaneous Schools and Instruction
611710	Educational Support Services
Health Care and Social Assistance*	
<i>Ambulatory Health Care Services</i>	
621110	Offices of Physicians
621210	Offices of Dentists
621310	Offices of Chiropractors
621320	Offices of Optometrists
621330	Offices of Mental Health Practitioners (except Physicians)
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists
621391	Offices of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners
621410	Family Planning Centers
621420	Outpatient Mental Health and Substance Abuse Centers
621492	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical and Emergency Centers
621498	All Other Outpatient Care Centers

*Note: Evidence of State or other licensing is required in order to be classified in this industry, if applicable.

621511	Medical Laboratories
621512	Diagnostic Imaging Centers
621610	Home Health Care Services
621910	Ambulance Services
621999	All Other Miscellaneous Ambulatory Health Care Services
<i>Hospitals</i>	
<i>Nursing and Residential Care Facilities</i>	
<i>Social Assistance</i>	
624110	Child and Youth Services
624120	Services for the Elderly and Persons with Disabilities
624190	Other Individual and Family Services
624210	Community Food Services
624221	Temporary Shelters
624229	Other Community Housing Services
624230	Emergency and Other Relief Services
624310	Vocational Rehabilitation Services
624410	Child Day Care Services
Arts, Entertainment and Recreation	
711000	Performing Arts, Spectator Sports and Related Industries
712000	Museums, Historical Sites and Similar Institutions
713000	Amusement, Gambling and Recreation Industries
Accommodation and Food Services*	
<i>Accommodation</i>	
<i>Food Services and Drinking Places</i>	
722110	Full-Service Restaurants
722211	Limited-Service Restaurants
722212	Cafeterias
722213	Snack and Nonalcoholic Beverage Bars
722310	Food Service Contractors
722320	Caterers
722330	Mobile Food Services
722410	Drinking Places (Alcoholic Beverages)
Other Services	
<i>Repair and Maintenance</i>	
811111	General Automotive Repair
811112	Automotive Exhaust System Repair
811113	Automotive Transmission Repair
811118	Other Automotive Mechanical and Electrical Repair and Maintenance
811121	Automotive Body, Paint and Interior Repair and Maintenance
811122	Automotive Glass Replacement Shops
811191	Automotive Oil Change and Lubrication Shops
811192	Car Washes
811198	All Other Automotive Repair and Maintenance
811211	Consumer Electronics Repair and Maintenance
811212	Computer and Office Machine Repair and Maintenance
811213	Communication Equipment Repair and Maintenance
811219	Other Electronic and Precision Equipment Repair and Maintenance
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
811411	Home and Garden Equipment Repair and Maintenance
811412	Appliance Repair and Maintenance
811420	Reupholstery and Furniture Repair
811430	Footwear and Leather Goods Repair
<i>Personal and Laundry Services</i>	
812320	Drycleaning and Laundry Services (except Coin-Operated)
812331	Linen Supply

812332	Industrial Launderers
812921	Photo Finishing Laboratories (except One-Hour)
812922	One-Hour Photo Finishing
812930	Parking Lots and Garages
<i>Religious, Grantmaking, Civic, Professional and Similar Organizations</i>	

The following internal codes are not NAICS codes, and are to be used only by Airport Concessionaires

Airport Concessions	
999000	Airport Concessionaire - Food and Beverage
999001	Airport Concessionaire - Book Stores
999002	Airport Concessionaire - Auto Rental
999003	Airport Concessionaire - Banks
999004	Airport Concessionaire - Hotels and Motels
999005	Airport Concessionaire - Insurance Machines and Counters
999006	Airport Concessionaire - Gift, Novelty, and Souvenir Shop
999007	Airport Concessionaire - Newstands
999008	Airport Concessionaire - Shoe Shine Stands
999009	Airport Concessionaire - Barber Shops
999010	Airport Concessionaire - Automobile Parking
999011	Airport Concessionaire - Jewelry Store
999012	Airport Concessionaire - Advertising
999013	Airport Concessionaire - Luggage Cart
999014	Airport Concessionaire - Nail Salons
999015	Airport Concessionaire - Private Mail Centers

*Note: Evidence of State or other licensing is required in order to be classified in this industry, if applicable.



Business Oregon
Office of Minority, Women and Emerging Small Business
775 Summer St. NE, Suite 200, Salem, OR 97301-1280
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 of _____, 20_____.

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."



EXHIBIT R

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(H) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

****Submit your completed report to your Regional or Division Office.**

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Please refer to the Instructions sheet for directions on filling out this form

1. Submitted to (check only one): FHWA FAA FTA--Vender Number _____

2. AIP Numbers (FAA recipients only):

3. Federal fiscal year in which reporting period falls: FY 2012

4. Date this report submitted: 5/29/2012

5. Report Period: 10/01/2011 to 03/31/2012

Report due June 1 (for period Oct. 1 - Mar. 31)

Report due Dec. 1 (for period Oct. 1 - Sept. 30)

FAA annual report due Dec. 1

6. Name of Recipients: Oregon Department of Transportation

7. Annual DBE Goal(s): Race Conscious Goal 3.00% Race Neutral Goal 8.50% Overall Goal 11.50%

COMMITMENTS/AWARDS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during this period)	A	B	C	D	E	F	G	H	I
	Total Dollars	Total Number	Total to DBE's (dollars) [E + G]	Total to DBE's (number) [F + H]	Total to DBE's/Race Conscious (dollars)	Total to DBE's/Race Conscious (numbers)	Total to DBE's/Race Neutral (dollars)	Total to DBE's/Race Neutral (numbers)	Percentage of total dollars to DBE's [C / A]
8. Prime Contracts Awarded This Period									
9. Subcontracts Awarded/Committed This Period									
Totals									

DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian - Pacific American	Non-Minority Women	Other(i.e. not of any other group listed)	TOTALS [A+B+C+D+E+ F+G]
10. Total Number of Contracts (Prime and Sub)	5	8	3	0	10	27	0	53
11. Total Dollar Value								

ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	A	B	C	D	E
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (dollars)	Total DBE Participation (dollars)	Percent of Total DBE Participation
12. Race Conscious					
13. Race Neutral					
14. Total					

15. Submitted by (Printed Name of Authorized Representative)

16. Signature of Authorized Representative

17. Phone Number:

18. Fax Number: