Oregon Department of Aviation

Oregon State Airports

DBE Program Plan

September 2020

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the Oregon Department of Aviation to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also Oregon Department of Aviation policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that 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 DOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Heather Peck, Planning & Project Manager has been delegated as the agency DBE Liaison Officer. In that capacity, Heather Peck is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Oregon Department of Aviation in its financial assistance agreements with the Department of Transportation.

The Oregon Department of Aviation has disseminated this policy statement to the Oregon Department of Aviation and all of the components of the organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on the Oregon Department of Aviation's DOT-assisted contracts. The distribution was accomplished by the Oregon Department of Aviation's website.

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Betty Stansbury, Director Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The Oregon Department of Aviation is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The Oregon Department of Aviation will use terms in this program that have their meanings defined in Part 26, §26.5.

Section 26.7 Non-discrimination Requirements

The Oregon Department of Aviation will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Oregon Department of Aviation will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The Oregon Department of Aviation will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported to FAA as follows:

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

Bidders List

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

This information will be collected in the following way(s): Inclusion of a Bidder's List in the project bidding documents. A copy of the proposed list in included in **Attachment 3**.

Records retention and reporting:

The Oregon Department of Aviation will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Oregon Department of Aviation will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Oregon Department of Aviation's financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

The Oregon Department of Aviation has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: - Each financial assistance agreement the Oregon Department of Aviation signs with a DOT operating administration (or a primary recipient) will include the following assurance:

> The Oregon Department of Aviation 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 Oregon Department of Aviation 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 Oregon Department of Aviation'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 Oregon Department of Aviation of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

The contractor, 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, which may include, but is not limited to:

1) Withholding monthly progress payments;
2) Assessing sanctions;
3) Liquidated damages; and/or
4) Disqualifying the contractor from future bidding as non-responsible.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO)

The following individual has been designated as the DBE Liaison Officer for the Oregon Department of Aviation:

Heather Peck
Planning & Projects Manager
(503)-378-3168
Heather.peck@aviation.state.or.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Oregon Department of Aviation complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Agency Director concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has staff, including the State DOT Attorney and the Airport Engineer of Record to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Oregon Department of Aviation's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Agency Director on DBE matters and achievements.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs

Section 26.27 DBE Financial Institutions

It is the policy of the Oregon Department of Aviation to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

An effort to identify DBE financial institutions is included in the goal calculation included in **Attachment 5**. No DBE financial institutions were identified in the Oregon State Disadvantaged Business Enterprises directory. Similar efforts will be made whenever a new goal is set.

Section 26.29 Prompt Payment Mechanisms

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

In accordance with 49 CFR §26.29, the Oregon Department of Aviation established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Oregon Department of Aviation.

The Oregon Department of Aviation ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Oregon Department of Aviation has selected the following method to comply with this requirement:

- Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and 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.

The Oregon Department of Aviation considers 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 Oregon Department of Aviation. When the Oregon Department of Aviation 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.

The Oregon Department of Aviation provide s appropriate means to enforce the requirements of this section. These means include:

- Contract provisions included in bidding documents

The Oregon Department of Aviation includes the following clause in each DOT-assisted prime contract:

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

The Oregon Department of Aviation has also established, as part of the DBE program, the following mechanisms to ensure prompt payment:

- Contract language, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid. A description of Prompt Payment is described in the Instructions to Bidders section of the Contract Documents.

Monitoring Payments to DBEs

Oregon Department of Aviation requires prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records are available for inspection upon request by any authorized representative of the Oregon Department of Aviation or DOT. This reporting requirement also extends to any certified DBE subcontractor.

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

Section 26.31 Directory

The Oregon Department of Aviation uses the State of Oregon DBE directory, maintained by the State Certification Office for Business Inclusion and Diversity (COBID).

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

The State of Oregon revises the Directory daily. Oregon Department of Aviation makes the Directory available through a website link. The Directory may be found at in **Attachment 4.**

Section 26.33 Over-concentration

The Oregon Department of Aviation has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The Oregon Department of Aviation has not established a Business Development Program.

Section 26.37 Monitoring Responsibilities

The Oregon Department of Aviation implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and sets forth these mechanisms in the Oregon Department of Aviation's DBE program.

The Oregon Department of Aviation actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

The Oregon Department of Aviation undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities are accomplished through the following method(s):

1. We bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. We implement similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 7** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in the DBE Program.

3. We implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

4. We implement a monitoring and enforcement mechanism that includes written certification that we have reviewed contracting records and monitored work sites for this purpose. This is accomplished by subcontractor verification through onsite construction observation, review of letter of intent commitments submitted by the prime contractor, and requests of statement of final amounts paid to DBE subcontractors at project closeout.

5. We implement a mechanism that provides for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we show both commitments and attainments, as required by the DOT uniform reporting form.

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

- The Oregon Department of Aviation proactively reviews contract payments to subcontractors including DBEs quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the Oregon Department of Aviation by the prime contractor.

Prompt Payment Dispute Resolution

The Oregon Department of Aviation takes the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The steps include meetings between prime and subcontractors, with project representatives and/or project manager as appropriate. It is recommended that any meeting for the purpose of dispute resolution include individuals authorized to bind each interested party, including the Oregon Department of Aviation's representative(s) with authority to take enforcement action.

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

(1) Alternative dispute resolution (ADR)

- The Oregon Department of Aviation requires the prime contractor to submit a detailed alternative dispute resolution plan for your approval prior to the issuance of any notice to proceed.

Prompt Payment Complaints

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

- Subcontractors may contact the DBELO for coordination with the prime in regards to payment discrepancies.
- The Oregon Department of Aviation will assist to resolve prompt payment disputes in the event that the DBELO is unable to resolve the complaint.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

The Oregon Department of Aviation provides appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Pay subcontractors directly and deduct this amount from the retainage owed to the prime

- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met
- Other penalties for failure to comply, up to and including contract termination (specify these penalties clearly).

The Oregon Department of Aviation will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The Oregon Department of Aviation reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the airport's consultant. Contracting records are reviewed by the Oregon Department of Aviation. The Oregon Department of Aviation maintains written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation

The Oregon Department of Aviation has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation.

Implementation of the small business element is required in order for the Oregon Department of Aviation to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Oregon Department of Aviation does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Oregon Department of Aviation will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds $250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), the Oregon Department of Aviation will submit its

Overall Three-year DBE Goal to FAA by October 1st of the year in which the goal is due, as established by the schedule below:

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	**New England, Northwest Mountain, & Southern**	**October 1, 2020 (2021/2022/2023)**	**August 1, 2023 (2024/2025/2026)**

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Oregon Department of Aviation does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds $250,000 during any of the years within the three-year reporting period, an overall goal will not be developed; however, this DBE Program will remain in effect and the Oregon Department of Aviation will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

> (c) Step 1. The first step is to determine the relative availability of DBEs in the market area, "base figure". The Oregon Department of Aviation will use DBE Directories and Census Bureau Data as a method to determine the base figure. The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If the Oregon Department of Aviation uses a bidders list, the Oregon Department of Aviation will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quotes by the number of all businesses to derive a base figure for the relative availability of DBEs in the market. When using this approach, the Oregon Department of Aviation will establish a mechanism (documented in the goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on DOT-assisted contracts.

Any methodology the Oregon Department of Aviation chooses will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

> (d) Step 2. Once we have calculated a base figure, we will examine all of the evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at the overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

In establishing the overall goal, the Oregon Department of Aviation will provide for consultation and publication. This includes consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the Oregon Department of Aviation to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the Oregon Department of Aviation is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Oregon Department of Aviation engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

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

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/DBE%20and%20ACDBE%20Reporting%20Requirements%20for%20Airport%20Grant%20Recipients.pdf

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

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

The Oregon Department of Aviation will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like

other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

Prior Operating Administration Concurrence

The Oregon Department of Aviation understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Oregon Department of Aviation for calculating goals is inadequate, FAA may, after consulting with the Oregon Department of Aviation, adjust the overall goal or require that the goal be adjusted by the Oregon Department of Aviation. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals

The Oregon Department of Aviation cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Oregon Department of Aviation fails to administer its DBE program in good faith.

The Oregon Department of Aviation understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

The Oregon Department of Aviation understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;

(3) The Oregon Department of Aviation will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. Oregon Department of Aviation will retain a copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

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

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

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

Contract Goals

If the approved projection under paragraph (c) §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order to meet the overall goal.

The Oregon Department of Aviation will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The Oregon Department of Aviation needs not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

The Oregon Department of Aviation will express its contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsive.

The Oregon Department of Aviation will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

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

(1) Award of the contract will be conditioned on meeting the requirements of this section;
(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
(iii) The dollar amount of the participation of each DBE firm participating;
(iv)Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and,
(vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
(3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section; and,
(4) The information will be presented under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures.

Administrative reconsideration

Within 5 days of being informed by the Oregon Department of Aviation that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Betty Stansbury, Director

Oregon Department of Aviation
(503)-378-4880
Betty.Stansbury@aviation.state.or.us

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation)

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

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Oregon Department of Aviation. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

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

(1) The listed DBE subcontractor fails or refuses to execute a written contract;
(2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
(3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
(4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
(5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
(6) The Oregon Department of Aviation determined that the listed DBE subcontractor is not a responsible contractor;
(7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Oregon Department of Aviation written notice of its withdrawal;
(8) The listed DBE is ineligible to receive DBE credit for the type of work required;
(9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
(10) Other documented good cause that the Oregon Department of Aviation has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the

> contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Oregon Department of Aviation a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Oregon Department of Aviation, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

Each prime contract will include a provision stating:

> The contractor shall utilize the specific DBEs listed in the contractor's solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Oregon Department of Aviation as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Oregon Department of Aviation will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If the Oregon Department of Aviation requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. The Oregon Department of Aviation shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Section 26.55 Counting DBE Participation

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

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Oregon Department of Aviation will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Oregon Department of Aviation makes all certification decisions based on the facts as a whole. For information about the certification process or to apply for certification, firms should contact:

Carrie Hulse
Program Manager
Certification Office for Business Inclusion and Diversity (COBID)
(503) 986-0075
http://www.oregon4biz.com/directory.php?d=1#cobid

The Uniform Certification Application form and documentation requirements are found in Attachment 8 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Oregon Department of Aviation is the member of a Unified Certification Program (UCP) administered by the State of Oregon. The UCP meets all of the requirements of this section. A copy of the application is included in **Attachment 9**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to the Oregon Department of Aviation

The Oregon Department of Aviation understands that if it fails to comply with any requirement of this part, the Oregon Department of Aviation 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 FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

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

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

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).

The Oregon Department of Aviation, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. The Oregon Department of Aviation understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

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

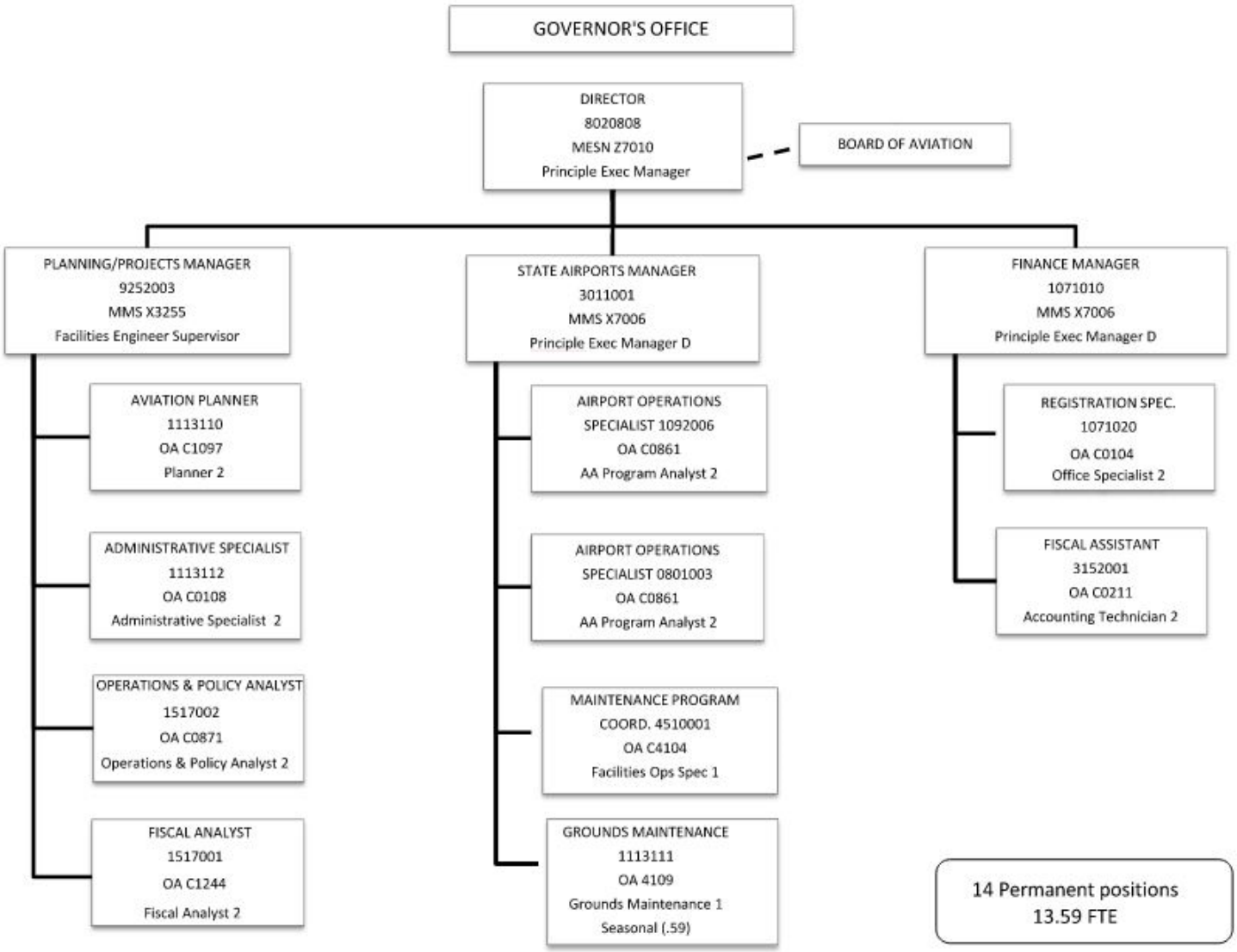
ATTACHMENT 1

Regulations: 49 CFR Part 26, or link to website

http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3
Bidder's List Collection Form

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	Age of Firm	Annual Gross Receipts
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million
			☐ Less than 1 year ☐ 1- 3 years ☐ 4-7 years ☐ 8-10 years ☐ More than 10 years	☐ Less than $500K ☐ $500K - $1 million ☐ $1-2 million ☐ $2-5 million ☐ Greater than $5 million

ATTACHMENT 4

Oregon DBE Directory or web link to DBE directory

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

ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By: _____ _____
(Signature) Title

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: ____

Address: ____

City: ____________________________________ State: _________ Zip: _________

Name of DBE firm: ____

Address: ____

City: ____________________________________State: _________ Zip: ________

Telephone: ________________

Description of work to be performed by DBE firm:

- -

- -

- -

- -

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

Affirmation

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

By: __________________________ Date: ____________

____
(Signature)

____
(Title)

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

Submit this page for each DBE subcontractor.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

The Oregon Department of Aviation has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to Secretary's Executive Order Number E 1009.02;

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

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

ATTACHMENT 8
DBE Certification Application Form
(New form October 2, 2014)

https://www.transportation.gov/sites/dot.gov/files/docs/New%20DBE%20Certification%20Application%2011-18-2014.pdf

ATTACHMENT 9
State's UCP Agreement

http://www.oregon4biz.com/How-We-Can-Help/COBID/DBE/

ATTACHMENT 10
Small Business Element

1. Objective/Strategies

The Oregon Department of Aviation's objectives and strategies include:

(1) In multi-year design-build contracts or other large contracts, it is encouraged that bidders on the prime contract specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(2) On prime contracts not having DBE contract goals, it is encouraged that the prime contractor provides subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(3) 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.

(4) To meet the portion of the Oregon Department of Aviation's overall goal projected to be met through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

2. Definition of Small Business

For purposes of this program, "small business" or "small business concern" will be defined as set forth in 49 CFR 26.5, which as of March 2012 is:

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

3. Verification

The Oregon Department of Aviation will diligently attempt to minimize fraud and abuse in the Small Business Element of its DBE program by verifying program eligibility of firms.

4. Monitoring/Record Keeping

The Oregon Department of Aviation will maintain and monitor the records for the Small Business Element and be able to provide those records if requested.

5. Implementation Timeline

Implementation will occur within 6 months of FAA's approval.

6. Assurance

The Oregon Department of Aviation will provide the following assurances:

1. assurance that the program is authorized under state law;

2. assurance that certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. assurance that there are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;
4. assurance that there are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
5. assurance that aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
6. assurance that the program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).