



Disadvantaged Business Enterprise Program  
Under 49 CFR Part 26  
FY 2014-2016

2014 Update (Restatement)

Portland International Airport  
Troutdale Airport  
Hillsboro Airport

June 2014

## INTRODUCTION

In 1999 the Federal Aviation Administration (FAA) approved the Port of Portland (Port) Disadvantaged Business Enterprise (DBE) Program. This June 2014 version restates the Port's DBE Program in full, as an update to the already-approved DBE Program.

The Port has established its DBE Program in compliance with 49 CFR Part 26. This plan complements the Port's existing Small Business Development Program (see Exhibit A to Attachment 10), which will remain in place.

### **Attachments**

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

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

The objectives of the Port's DBE Program are found in the policy statement set forth on Attachment 11.

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

Terms in this Program are used as defined in 49 CFR § 26.5.

### **Section 26.7 Non-discrimination Requirements**

The Port 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 Port 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 Recordkeeping Requirements**

#### **Section 26.11(b) -- Reporting to the Department of Transportation (DOT):**

Annually on December 1 the Port will complete and transmit to FAA the "Uniform Report of DBE Awards or Commitments and Payments" form found in Appendix B to 49 CFR Part 26. We will also report the DBE contractor firms contact information either on the FAA DBE Contractor's Form or other similar format.

The Port will transmit the form electronically using the DOORS electronic reporting system accessible at this link: <http://osdbu.dot.gov/DOORS/Application/logon.aspx> ]

#### **Section 26.11(c) -- Bidders List:**

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

The Port will collect this information using the Port's online vendor portal. A website link to the Port's current online vendor portal is set forth in Attachment 3. Examples of the Port's current data collection portal follow:

https://www.planetbids.com/portal/portal.cfm?CompanyID=15598 PlanetBids Vendor Portal

## Vendor Profile New Registration

Company Info Additional Addresses Classifications Licenses Other Business Info Category/Description

### User Authentication

User Name   
 Password

### Company

Business Type   
 Company Name   
 IRS Reporting Name   
 Doing Business As   
 FEI/Tax ID Number   
 Address   
 City   
 State   
 Country   
 Zip   
 Website

### Main Contact

Name   
 Title   
 Email   
 Alternate Email   
 Phone  ext.   
 Toll Free   
 Mobile   
 Fax

Port of Portland PLANETBIDS Report Cancel Register

https://www.planetbids.com/portal/portal.cfm?CompanyID=15598 PlanetBids Vendor Portal

## Vendor Profile New Registration

Company Info Additional Addresses Classifications Licenses Other Business Info Category/Description

### Classifications

☐ Disadvantaged Business Enterprise Cert #  exp.   
☐ Emerging Small Business Cert #  exp.   
☐ Minority-owned Business Enterprise Cert #  exp.   
☐ National Minority Supplier Development Council  
☐ Other  
☐ Qualified Rehabilitation Facility  
☐ Small Business Administration - Veteran-Owned Small  
☐ Small Business Administration 8A Program  
☐ Small Business Administration- Historically Underutilized  
☐ Small Business Administration- Service-Disabled Veteran  
☐ Small Business Administration- Small Disadvantaged Business  
☐ Small Business Administration- Woman-Owned Small Business  
☐ Women's Business Enterprise National Council  
☐ Women-owned Business Enterprise Cert #  exp.

### Contractor Licenses

Licenses (none)  
 License #   
 Exp. Date

### Other Licenses

Report Cancel Register

The screenshot displays a web browser window with the URL <https://www.planetbids.com/portal/portal.cfm?CompanyID=15598>. The page title is "Vendor Profile" and it includes a "New Registration" link. The navigation menu shows "Company Info", "Additional Addresses", "Classifications/Licenses", "Other Business Info", and "Category/Description". The "Other Business Info" section is active and contains the following fields:

- Exempt from Federal Backup Withholdings ☐
- Payment Terms
- Gross Receipts in Millions
- In Business Since
- Number of Full-Time Employees
- Number of Part-Time Employees
- Accept Purchasing Cards (PCards) ☐
- Accept ACH/Electronic Payments ☐

At the bottom of the form, there are buttons for "Report", "Cancel", and "Register". The Windows taskbar at the bottom shows the "Port of Portland" logo, the "PLANET BIDS" application, and the system clock at 3:41 PM.

## Section 26.13 Federal Financial Assistance Agreement

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

**Section 26.13(a) – Port Assurance:** Each financial assistance agreement the Port signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Port of Portland 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 Port of Portland 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 Port of Portland's DBE program, as required by 49 CFR part 26 and as approved by the 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 Port of Portland 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. ).

**Section 26.13(b) -- Contractor Assurance:**

Each contract the Port signs with a contractor will include the following assurance, and the Port will ensure that each subcontract the prime contractor signs with a subcontractor includes it:

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 Port of Portland deems appropriate.

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Requirement; Updates**

The Port will receive grant(s) for airport planning or development totaling \$250,000 in a Federal fiscal year. We will submit significant changes in the Port's DBE Program for approval. The Port acknowledges that it is not eligible to receive DOT financial assistance unless DOT has approved its DBE Program and the Port is in compliance with it and with 49 CFR Part 26. The Port will continue to carry out its DBE Program until all funds from DOT financial assistance have been expended.

### **Section 26.23 Policy Statement**

The Port's DBE Program Policy Statement is set forth on Attachment 11.

### **Section 26.25 DBE Liaison Officer**

The following individual is the Port's DBE Liaison Officer (DBELO):

Kimberly Mitchell-Phillips  
Small Business Development Program Manager/DBELO  
7200 NE Airport Way, Portland, OR 97218  
Telephone Number 503-415-6587  
Fax Number 503-548-5541  
kimberly.mitchell-phillips@portofportland.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the Port complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Port's Executive Director concerning DBE Program matters. An organizational chart depicting the DBELO's position in the Port is set forth on Attachment 2.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. Port Procurement, Engineering, and Legal personnel will support the DBELO in the administration of this Program. The duties and responsibilities of the DBELO 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 the Port's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director and Commission on DBE matters and achievement.
9. Determines contractor compliance with good faith efforts requirements in solicitations.
10. Provides DBEs with information and assistance in preparing bids and obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Acts as liaison to the State of Oregon Unified Certification Program (UCP) process.

13. Provides outreach to DBEs and community organizations to advise them of opportunities.

#### **Section 26.27 DBE Financial Institutions**

The Port will thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, make reasonable efforts to use these institutions, and encourage prime contractors on DOT-assisted contracts to use these institutions.

Periodically, the Port initiates a Request for Proposals (RFP) for commercial banking services. Minority-owned institutions are identified and solicited and encouraged to respond to the RFP.

The Port has utilized minority-owned and woman-owned financial institutions for investment banking services. Our Finance and Administrative Services department periodically reviews various financial services needed by the Port and encourages minority-owned and woman-owned financial institutions to propose or bid on those services.

The Port maintains certificates of deposit with two financial institutions identified as socially and economically disadvantaged in the community: Albina Community Bank and American State Bank.

#### **Section 26.29 Prompt Payment Mechanisms**

The Port has established, as part of its DBE Program, the following clause for use in DOT-assisted public improvement contracts to (a) require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from receipt of each payment the Port makes to the prime contractor; and (b) ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed:

The prime Contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime Contractor receives from the Port. The prime Contractor agrees further to return retainage payments to each subcontractor within 10 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 Port. This clause applies to both DBE and non-DBE subcontractors.

"Good cause" must be documented by the prime contractor and submitted to the Port for review. Contractors must use the specified forms for payment request and for DBE compliance. All such forms are provided in initial bid packages on federally-funded projects.

The Port's DBE Program provides for the enforcement of the requirements of this section. Each DOT-assisted Port public improvement contract includes a clause allowing the Port to take action against a contractor for its failure to fulfill the contract obligations, including termination of the contract in whole or part.

#### **Section 26.31 DBE Directory**

The Port uses the State of Oregon's DBE directory, maintained by the Office of Minority, Women and Emerging Small Business (OMWESB). The directory lists the firm's name,



address, phone number, and the types of work the firm has been certified to perform as a DBE by using the most specific NAICS code available to describe each type of work. The State of Oregon updates the directory daily. A website link to the directory is set forth in Attachment 4.

### **Section 26.33 Overconcentration of DBEs**

Port has not determined that over-concentration exists in the types of work that DBEs perform.

### **Section 26.35 Business Development Programs and Mentor-Protégé Programs**

The Port has not established a DBE business development program as contemplated under Section 26.35(a). The Port has, however, established a Mentor-Protégé program in accordance with Section 26.35(b) to provide business development, technical assistance and training to Oregon and Washington certified Disadvantaged, Minority, Women and Emerging Small Business enterprises.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The Port maintains the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. We will bring to the attention of the DOT any false, fraudulent, or deceitful conduct in connection with the Program, so that DOT can take the steps provided in Section 26.107 such as referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules.
2. We will implement similar action under our own legal authorities, including when making responsibility determinations in future contract awards. Attachment 7 lists regulatory remedies available to the Port in the event of a Program participant's non-compliance with 49 CFR Part 26.
3. We will implement 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 will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by site visits and CUF reviews, contract monitoring and payment reporting monitoring and close-out reviews.
4. We will implement a mechanism that will 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 our reports of DBE participation to the DOT, we will show both commitments and attainments.

### **Section 26.39 Fostering Small Business Participation**

The Port's DBE Program includes a small business "element," which is intended 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 of the Port's DBE Program is set forth below in Attachment 10. We will actively implement the small business element of the DBE Program to foster small business participation.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

The Port does not use quotas or set-aside contracts for DBEs on DOT-assisted contracts subject to 49 CFR Part 26.

### **Section 26.45 Overall Goals**

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

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

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

The first step is to determine the relative availability of DBEs in the market area, referred to in Section 26.45(c) as 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 Port would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

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

We consult with the following organizations in developing the Port's overall DBE goal:

- Oregon Association of Minority Entrepreneurs
- National Association of Minority Contractors

We will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Port Headquarters (7200 NE Airport Way, Portland OR 97218) for 30 days following the date of the notice, and that the Port and DOT/FAA will accept comments on the proposed goal for 45 days from the date of the notice. Notice will be issued in general circulation media and in available minority-focused media and trade publications and websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent.

The Port advertises this public notice in media published by the following organizations:

- The Skanner (minority news publication)
- The Daily Journal of Commerce (trade publication)

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from the DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Attachment 5 contains the goal calculations and a description of the methodology used to calculate the overall goal.

## **Section 26.47            Failure to Meet Overall Goals**

The Port will administer its DBE Program in good faith, and will maintain an approved DBE Program and overall DBE goal, if applicable.

If the awards and commitments shown on the Port's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following to reflect the implementation of the Port's DBE Program in good faith:

- (1) analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to fully meet our goal for the new fiscal year; and
- (3) retain records of analysis and corrective actions for three years and make such records available to the FAA upon request.

## **Section 26.51(a)–(c) Projected Race-Neutral Participation Toward Overall Goal**

Attachment 5 contains a projection of the portion of the overall goal that the Port expects to meet through race-neutral means under the heading “*Breakout of Estimated Race-Neutral and Race and Gender Conscious Participation.*”

## **Section 26.51(d-g) Contract Goals**

The Port will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We acknowledge that we need not establish a contract goal on every such contract. Contract goals will vary depending on the circumstances, such as the type and location of the work and the availability of DBEs to perform the particular type of work. We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

The Port 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 the strategies set forth under Section 26.39.

If our approved projection under Section 26.51(c) estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

## **Section 26.53 Good Faith Efforts Procedures**

### Section 26.53(a) & (c) -- Demonstration of Good Faith Efforts

For DOT-assisted contracts with contract goals, the Port will only award the contract to bidders that make good faith efforts to meet the goal. A bidder can demonstrate that it has done so by either meeting the contract goal or documenting its good faith efforts to meet the goal. Examples of types of actions the Port will consider to be good faith efforts are found in Appendix A to 49 CFR Part 26.

The Port treats compliance with good faith efforts requirements as a matter of bidder responsibility. The Port’s DBELO is responsible for determining whether a bidder that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. The DBELO will ensure that all information is complete and accurate and adequately documents the bidder’s good faith efforts before the Port commits to the performance of the contract by the bidder.

### Section 26.53(b) -- Information to be Submitted

26.53(b)(2). Each solicitation for which a contract goal has been established will require the bidder to submit the following information:

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

26.53(b)(3). The Port requires bidders to present the information required by Section 26.53(b)(2) before the Port commits itself to the performance of the contract, as a matter of responsibility. Within two working hours of the time bids are due, bidders must submit a “DBE Goal Compliance Report” on which bidders indicate whether they believe the contract goal has been met. A copy of the Port’s DBE Goal Compliance Report is included in Attachment 6. If the lowest apparent responsive and otherwise responsible bidder does not meet the contract goal such bidder must submit, within 24 hours of the Port’s request, adequate documentation to establish good faith efforts.

#### Section 26.53(d) -- Administrative Reconsideration

Within 5 business days of being informed by the Port that it is not responsible because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration of that determination. Bidders make this request by submitting a bid protest in writing to the following reconsideration official:

Craig Johnsen  
Manager, Contracts & Procurement  
Port of Portland  
7200 NE Airport Way  
Portland, OR 97218  
503-415-6354  
craig.johnsen@portofportland.com

The reconsideration official does not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.

As part of this reconsideration, the bidder has 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 will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether the bidder met the goal or made adequate good faith efforts to do so. We will send the bidder a written decision on reconsideration, by issuing a response to the bid protest 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 DOT.

#### Section 26.53(f) -- Good Faith Efforts when a DBE is Replaced on a Contract

The Port will require that prime contractors not terminate a DBE subcontractor (or an approved substitute DBE firm) without the Port’s 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

We will require the prime contractor to notify the DBELO immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation. We will only provide written consent to the prime contractor’s termination of a DBE subcontractor if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;

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

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

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

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

Each DOT-assisted prime contract will contain a provision allowing the Port to impose appropriate administrative remedies on prime contractors that fail to comply with the requirements of this section, including without limitation the suspension or termination of the contract or such other action that may be necessary to enforce the Port's rights under the agreement.

## **Section 26.55                      Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontractor toward a prime contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE subcontractor.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73      Certification Process**

The Port is a member of a Unified Certification Program (UCP) administered by the State of Oregon's Office of Minority, Women & Emerging Small Business (OMWESB).

OMWESB uses the certification standards of Subpart D of 49 CFR 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. OMWESB makes certification decisions based on the facts as a whole.

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

Business Oregon  
Office of Minority, Women & Emerging Small Business  
775 Summer St. NE, Suite 200  
Salem, OR 97301  
1-866-467-3466  
<http://www.oregon4biz.com/Grow-Your-Business/Business-services/Minority-Owned-Business-Certification/>

A website link to OMWESB's DBE certification application forms is set forth in Attachment 8.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81      Unified Certification Program**

The Port participates in a Unified Certification Program (UCP) administered by the State of Oregon Department of Transportation and Business Oregon. The State of Oregon administering agencies represent that the UCP meets all of the requirements of Section 26.81. A copy of the State of Oregon UCP is included in Attachment 9.



## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109      Information, Confidentiality, Cooperation, Intimidation, Retaliation**

#### **26.109(a) & (b) – Information and Confidentiality**

Notwithstanding any provision of Federal or state law, the Port will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information.

Under the Oregon Public Records Law (ORS 192.410 - 192.505) every person has a right to inspect any nonexempt public record of the Port. A ‘public record’ includes any writing that contains information relating to the conduct of the public’s business, including but not limited to a document, book, paper, photograph, file, audio, magnetic or optical recording, prepared, owned, used or retained by a public body regardless of physical form or characteristics. The DBELO will engage Port legal counsel to review records that are responsive to a public records request to ensure that the records are disclosed in a manner that avoids disclosure of exempt information, including proprietary, confidential or trade secret information if an exemption applies.

#### **26.109(c) – Cooperation**

The Port will cooperate fully and promptly with DOT compliance reviews, certification reviews, investigations, and other requests for information. The Port acknowledges that failure to do so shall be a ground for appropriate action, such as a finding of noncompliance.

#### **26.109(d) – Intimidation and Retaliation**

The Port will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Part 26. The Port acknowledges that violation of this prohibition represents noncompliance with Part 26.

## **ATTACHMENT 1**

### **Regulations: 49 CFR Part 26**

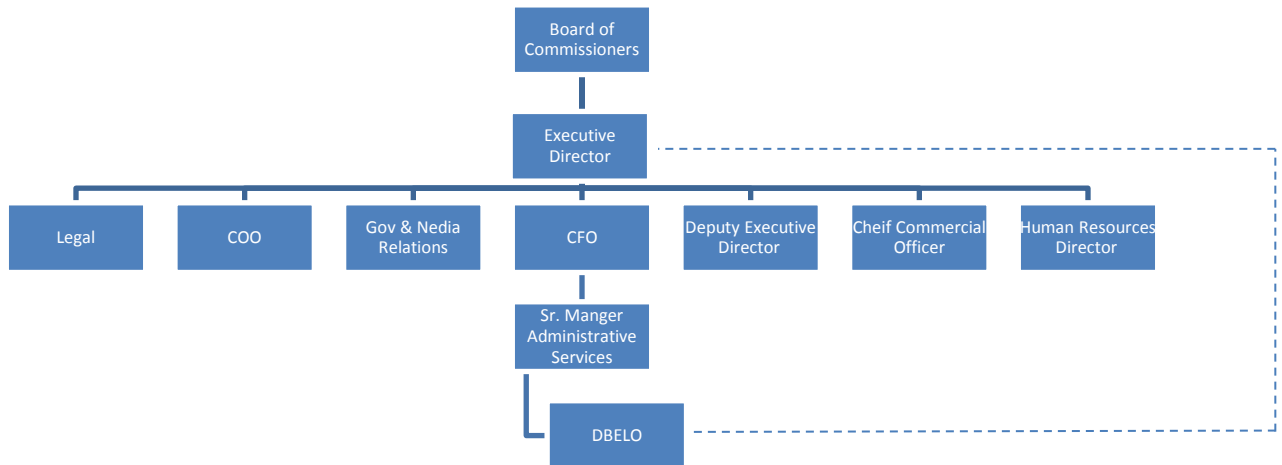
Accessible at this link:

[http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl)

## ATTACHMENT 2

### Port of Portland Organizational Chart

[49 CFR 26.25]



**ATTACHMENT 3**

**Bidder's List Collection Form**

**[49 CFR 26.11(c)]**

Accessible at this link:

<https://www.planetbids.com/portal/portal.cfm?CompanyID=15598>

**ATTACHMENT 4**

**State of Oregon DBE Directory**

**[49 CFR 26.31]**

Accessible at this link:

<http://www4.cbs.state.or.us/ex/dir/omwesb/>

## ATTACHMENT 5

### Overall DBE Three-Year Goal Methodology

[49 CFR 26.45]

#### Port of Portland FY14-16 Disadvantaged Business Enterprise (DBE) Goal Portland International Airport

**Name of Recipient:** Port of Portland

**Airport:** Portland International Airport

**Goal Period:** FY 2014, 2015, 2016

<b>DOT-assisted contract amount:</b>	FY-2014	\$9,150,000.00
	FY-2015	\$15,777,668.00
	FY-2016	\$9,000,000.00
	<b>Total</b>	<b>\$33,927,688.00</b>

**Overall Three-Year Goal:** 5.36%, to be accomplished through 5.36% RC and 0% RN

**Total dollar amount to be expended on DBE's:** \$1,817,111.99

#### **Number and Type of Projects that the Port of Portland anticipates awarding:**

Projects Fiscal Year 2014

1. Taxiway T Southwest Rehabilitation & Taxiways T & K Centerline Lighting - \$9,150,000.00

Projects Fiscal Year 2015

1. Taxiway E North & Exits Rehab - \$5,011,400.00
2. Access Control System – \$10,766,268.00

Projects Fiscal Year 2016

1. Runway 3/21 Rehabilitation - \$9,000,000.00

#### **Market Area:**

The market area for the Port was determined during a 2009 disparity study which identified the relevant market area for construction, architecture and engineering business categories to be Oregon and Washington States. It further identified the Portland Metropolitan Service Area which comprises Multnomah County, Washington County, Clackamas County in Oregon, as well as, Clark County in Washington State. The disparity study further identified King County in Washington State as part of the Port's primary market area.

#### **Step 1. Analysis:** Actual relative availability of DBE's

Method: Use DBE Directories <http://osdbu.dot.gov/DBEProgram/StateDOTDBESites.cfm> and Census Bureau Data <http://www.census.gov/econ/cbp/index.html>

NAICS	Type of Work	Total DBE's	Total All Firms
236210	Industrial Building Construction	14	49
237110	Water and Sewer Line	41	136
237310	Highway, Street & Bridge Construction	69	150
238110	Poured Concrete Foundation and Structure Contractors	35	280
238210	Electrical Contractor	22	905
238220	Plumbing, Heating, Air Conditioning	20	1048
238350	Carpentry	26	523
238910	Site Preparation Contractors	65	413
238990	All other specialty trade contractors	49	342
423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers	8	244
484110	Trucking	17	283
541330	Engineering Services	85	1200
541370	Surveying	21	102
561730	Landscape Service (Seeding, Erosion Control)	33	1391
561990	All Other Support Services (Traffic Control)	22	223
Total		513	7240

Divide the total number of DBE's by the total number of All Firms = base figure for each project.

Base Figure: 7.09%

To determine the overall base figure for more than one project, add all the project percentages together.

**Step 2. Analysis:** Adjustments to Step 1 base figure.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment (if any) was needed to the base figure in order to arrive at the overall goal.

An examination of the anticipated projects for each fiscal year, the availability of the DBE firms by trade classification and the volume of work performed by DBE firms over previous years.

**Fiscal Year #1**
**For FY-2014, we anticipate the award of the following:**

A	B	C	D	E	F	G	H
Project Name	NAICS/Trade Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= F/E)	DBE (\$) (= G x D)
Taxiway T Southwest Rehabilitation & Taxiway T & K Centerline Lighting	Highway, Street and Bridge Construction	237310	\$8,154,500.00	150	69	46.00%	\$3,751,070.00
	All other Specialty Trade Contractors/Sweeping	238990	\$206,000.00	342	49	14.33%	\$29,514.62
	Trucking	484220	\$500,000.00	283	17	6.01%	\$30,035.34
	Surveying	541370	\$65,000.00	102	21	20.59%	\$13,382.35
	Landscaping Services	561730	\$4,500.00	1391	33	2.37%	\$106.76
	All Other Support Services/Traffic Control	561990	\$220,000.00	223	22	9.87%	\$21,704.04
Total Project			\$9,150,000.00	2491	211	8.47%	\$775,050.18
Total FY-2014			\$9,150,000.00			8.47%	\$775,050.18

**Fiscal Year #2**
**For FY-2015, we anticipate the award of the following:**

A	B	C	D	E	F	G	H
Project Name	NAICS/Trade Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= F/E)	DBE (\$) (= G x D)
Access Control System	Excavation	236210	\$410,431.35	49	14	28.57%	\$117,266.10
	Poured Concrete Foundations & Structure Const.	238110	\$137,732.05	280	35	12.50%	\$17,216.51
	Electrical Contractors	238210	\$8,764,811.05	905	22	2.43%	\$213,067.23
	All other Specialty Trade Contractors/Fencing Contractors	238990	\$192,824.87	342	49	14.33%	\$27,626.96
	All Other Support Services/Traffic Control	561990	\$115,141.96	223	22	9.87%	\$11,359.30
	Surveying	541370	\$115,141.96	102	21	20.59%	\$23,705.70
	Landscaping Services	561730	\$115,141.96	1391	33	2.37%	\$2,731.62
	Computer Peripheral Equipment	423430	\$915,043.00	244	8	3.28%	\$30,001.41
Total Project			\$10,766,268.20	3536	204	5.77%	\$621,130.86
Taxiway E North & Exits Rehab	Water and Sewer Line Repair	237110	\$1,300,000.00	136	41	30.15%	\$391,911.76
	Highway, Street and Bridge Construction	237310	\$11,400.00	150	69	46.00%	\$5,244.00
	Electrical Contractors	238210	\$1,600,000.00	905	22	2.43%	\$38,895.03
	Trucking	484110	\$1,100,000.00	283	17	6.01%	\$66,077.74
	Surveying	541370	\$200,000.00	102	21	20.59%	\$41,176.47
	Landscaping Services	561730	\$200,000.00	1391	33	2.37%	\$4,744.79
	All Other Support Services/Traffic Control	561990	\$600,000.00	223	22	9.87%	\$59,192.83
Total Project			\$5,011,400.00	3190	225	7.05%	\$353,468.65
Total FY-2015			\$15,777,668.20			6.41%	\$1,011,547.51



### Fiscal Year #3

For FY-2016, we anticipate the award of the following:

A	B	C	D	E	F	G	H
Project Name	NAICS/Trade Description	NAICS	Trade (\$)	Census	Directory	DBE (%) (= F/E)	DBE (\$) (= G x D)
Runway 3/21 Rehabilitation	Water and Sewer Line Repair	237110	\$700,000.00	136	41	30.15%	\$211,029.41
	Highway, Street and Bridge Construction	237310	\$6,300,000.00	150	69	46.00%	\$2,898,000.00
	Electrical Contractors	238210	\$900,000.00	905	22	2.43%	\$21,878.45
	Trucking	484110	\$600,000.00	283	17	6.01%	\$36,042.40
	Surveying	541370	\$100,000.00	102	21	20.59%	\$20,588.24
	Landscaping Services	561730	\$100,000.00	1391	33	2.37%	\$2,372.39
	All Other Support Services/Traffic Control	561990	\$300,000.00	223	22	9.87%	\$29,596.41
<b>Total Project</b>			<b>\$9,000,000.00</b>	<b>3190</b>	<b>225</b>	<b>7.05%</b>	<b>\$634,796.24</b>
<b>Total FY-2016</b>			<b>\$9,000,000.00</b>			<b>7.05%</b>	<b>\$634,796.24</b>

FY 14, 15, 16 anticipated DBE utilization calculated by averaging the 3 year anticipated project goal is 7.31%.

Step 2 weighted goal calculated averaging the base goal with the step 2 analysis. = 7.2%

### Past History Participation

Other data used to determine the adjustment to the base figure was the median of historical DBE accomplishments as follows:

FY	Total Grant \$ Amount	DBE Goals			Accomplishments			Type of work
		RN	RC	Total	RN	RC	Total	
FY 09	\$7,838,385.00	0.0%	3.0%	3.0%	3.4%	0%	3.4%	Airfield Construction
FY 10	\$27,346,116.00	4.0%	1.0%	5.0%	5.4%	0%	5.4%	Airfield Construction
FY 11	\$6,940,025.00	0.5%	7.5%	8.0%	3.1%	0%	3.1%	Airfield Construction
FY 12	\$39,755,701.14	0.5%	7.5%	8.0%	3.0%	7.4%	10.04%	Airfield Construction
FY 13	\$0	0.5%	7.5%	8.0%	0%	0%	0%	No contracts closed FY13

Arranging this historical data from low to high, (0%, 3.1%, 3.4%, 5.4%, 10.04%) the median is 3.4%.

To arrive at an overall goal, we reviewed our Step 1 base figure 7.09% with our Step 2 analysis figure 7.31% and then averaged the total arriving at an overall goal of 7.2%. We then reviewed past participation accomplishments and used the median of our FY09-FY13 accomplishments to further refine our anticipated goal. We calculated our Step 2 analysis figure 7.31% with our past participation median 3.4%; we averaged the two figures to arrive at an overall agency goal of 5.36%. We feel this adjusted goal figure will accurately reflect DBE participation that can be achieved for the type of project work being awarded during this three-year period.

**Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation. 26.51(b) (1-9)**

The Port will meet the maximum feasible portion of its overall goal by using the following RN means of facilitating DBE participation:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small business, participation.
2. Encouraging prime contractors to solicit bids from DBE subcontractors.
3. Advertising projects in media that is focused toward minority and women-owned businesses.
4. Promoting Port projects at community outreach events including encouraging DBE contractors to consider bidding or proposing on Port projects.
5. Providing technical assistance and small business development through the Port Mentor-Protégé Program.
6. Conducting open pre-bid meetings for all interested bidders.
7. Providing contractors with a list of DBE-certified businesses whose work capability matches the work scope needed for specific projects.
8. Evaluating the potential for the use of solicitation methods including the RFP method where points can be awarded for small business inclusion, rather than the low bid process for award of federally-funded contracts.
9. Conducting formal educational workshops on how to do business with the Port.
10. Facilitating the Port’s Mentor-Protégé Program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses.
11. Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.

**The Port estimates that in meeting its overall goal of 5.36%,it will obtain 0% from RN participation and 5.36% through RC measures.**

This breakout is based on the following factors:

- Results of the Port’s 2009 disparity study which established the need for RC goals on Port construction and engineering projects. (Disparity study findings are outlined below)
- Past FY 11-13 DBE goal was 8%. The Port achieved 5.7% average for the three years and failed to meet its overall agency DBE goal.
- New FY 14-16 DBE goal is 5.6%. The Port has determined that this goal is within range of our current attainment based on RC efforts and chose to meet our entire 5.36% DBE goal utilizing RC efforts.

**Disparity Study Findings:**

The Port completed a disparity study in February 2009. MGT of America was the disparity study consultant. The study time period was July 1, 2002 – June 30, 2007. The study findings and recommendations related to the Port DBE Program are summarized below:

1. M/W/DBE Prime Utilization – During the study period, 18 M/W/DBEs won prime construction contracts for \$34.8 million on Port projects (13.22% of the total). Eight M/W/DBEs won prime architecture and engineering contracts for \$1.2 million on Port projects (9.64% of the total).
2. M/W/DBE Prime Availability was 13.36% for construction prime contractors and 27.44% for architecture and engineering prime contractors.
3. Underutilization existed for African American, Hispanic American, Asian American, and Native American prime construction contractors and for Hispanic American, Asian American, Native American and Nonminority Women architecture and engineering prime contractors.
4. Over the study period 73 M/W/DBE construction subcontractors won \$14.1 million in construction subcontracts on Port projects (15.85% of the total construction subcontracts). Six M/W/DBEs won 12 A&E subcontracts for \$39,425 on Port projects (14.98%).

5. Underutilization existed during the study period for African American, Hispanic American, Asian American, and Native American construction subcontractors. Underutilization existed during the study period for African American, Asian American, Native American, and Nonminority Women architecture and engineering subcontractors.
6. The Port stopped placing DBE goals on construction contracts in 2006. Minority DBE construction subcontractor utilization stopped entirely at that point. The implementation of the ESB program in 2007 did not halt this pattern. There was, however, evidence of the use of M/WBEs that were not certified DBEs on projects without goals.

#### **Disparity Study Recommendations:**

- There was evidence supporting the reestablishment of race- and gender conscious DBE goals in construction and architecture and engineering subcontracting. This evidence was based on disparities in subcontracting, and the collapse in use of DBEs in the absence of goals on federal contracts, and considerable statistical and anecdotal evidence of barriers in the private sector markets associated with race and gender after controlling for capacity variables. At the same time there was some evidence of the use of non-certified M/WBEs in the absence of goals. The strongest case for the restoration of DBE goals can be made for minority DBEs.
- Port DBE goals should be linked to certified DBE availability. Port DBE goals should not be a rigid quota placed on every project. The limited use of DBE goals means that the Port should continue to let out some opportunities without specific DBE goals and closely monitor DBE utilization on these projects. The objective should be to steadily increase the number of DBE dollars achieved without using race and gender conscious DBE goals.

The Port took the following actions in fiscal year 2010 based on the disparity study recommendations:

1. The Port expanded the definition of small business to include all small businesses certified by the states of Oregon and Washington as minority-owned, disadvantaged-owned, women-owned, or emerging small business.
2. New Port guidelines for 'Work-as-Required' contracts were adopted to better manage the associated task order process and the equitable use of contractors awarded these contracts.
3. An updated review of bonding and insurance requirements, including benchmarking with local agency peers, was conducted to verify that the Port was not setting bonding and insurance requirements that are not consistent with local peer agencies. No changes were made based on review and benchmarking.
4. DBE goals were resumed on FAA AIP projects. Two FAA AIP projects were solicited with DBE goals and DBE goals were committed to by the contractors awarded those projects.

The Port will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract obtained through customary competitive procurement procedures.
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal.
- DBE participation on a prime contract exceeding a contract goal.
- DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

## ATTACHMENT 6

### Demonstration of Good Faith Efforts or Good Faith Effort Plan

[49 CFR 26.53(b)]

DOCUMENT 004336  
DBE GOAL COMPLIANCE REPORT

List **ALL** certified DBEs the bidder submits for participation in this project. Also list self-performed work if the bidder itself is a certified DBE. Bidders should list all committed DBEs even if, in total, they are inadequate to meet the DBE project goal. DBEs can include, without limitation and at any tier, contractors, trucking companies, suppliers (including but not limited to equipment suppliers and rental companies), manufacturers, regular dealers, or other service providers (including but not limited to professional service providers). DBE participation will be calculated and counted towards the goal as described in the Supplementary Instructions to Bidders. Enter "NONE" if there are no DBEs committed to the project. (ATTACH ADDITIONAL SHEETS IF NEEDED.)

CONTRACTOR: \_\_\_\_\_ PROJECT NAME: \_\_\_\_\_ DBE GOAL: \_\_\_\_\_%

FORM COMPLETED BY: \_\_\_\_\_ PHONE: \_\_\_\_\_

Name, Address, and Telephone of DBE	Dollar Amount of Participation Calculated Per Supplementary Instructions to Bidders	Description of Work to be Performed by DBE and Basis for Calculated Dollar Amount of Participation Toward Goal	Is Proof of Commitment from DBE Attached?

Total Dollar Amount and DBE Percentage Committed On This Page: \$ \_\_\_\_\_ / \_\_\_\_\_%

Total Dollar Amount and DBE Percentage Committed On All Pages (Grand Total): \$ \_\_\_\_\_ / \_\_\_\_\_%

The undersigned bidder agrees to use the DBE(s) as listed above:

Authorized Signature \_\_\_\_\_ Date \_\_\_\_\_

Does the bidder believe the DBEs listed meet the project goal? ☐ YES ☐ NO

**ATTACH WRITTEN CONFIRMATION** from each DBE listed above that it will participate in the contract as provided in the bidder's commitment above. Each DBE's written confirmation should also list the dollar amount of participation and a description of work to be performed to ensure it meets the bidder's descriptions.

**SEE THE SUPPLEMENTARY INSTRUCTIONS TO BIDDERS** for further information about requirement of bidders to submit evidence of good faith efforts upon request of the Port.

## **ATTACHMENT 7**

### **DBE Monitoring and Enforcement Mechanisms**

#### **[49 CFR 26.37]**

Some of the regulatory remedies available to the Port in the event of a Program participant's non-compliance with 49 CFR Part 26 are set forth below.

- ORS 279C.440 allows the Port to disqualify a business from award of Port contracts for up to three years for the violation of a contract provision that is regarded by the Port to be so serious as to justify disqualification, provided the violation was not caused by acts beyond the business's control.
- ORS 279C.375 requires the Port to reject a bidder based upon an unsatisfactory record of performance. A bidder that has failed to comply with 49 CFR Part 26 requirements under a prior contract would have an unsatisfactory record of performance for the purposes of 279C.375(3)(b)(F). This defines "lowest responsible bidder" for the purposes of ORS 279C.375(b).
- ORS 200.065(1) and (2) prohibit fraud in DBE certification and false claims regarding certification for the purpose of obtaining a contract, subcontract, or other benefit.
- ORS 200.065(3) authorizes the Port to withhold payment, suspend or terminate the contract, and impose a civil penalty of 10 percent of the contract or subcontractor price, but not more than \$5,000.
- ORS 200.065(4) requires the Port to investigate and confers the power to subpoena witnesses, records, etc.
- ORS 200.065(5) authorizes the Port to disqualify a person or entity for up to three years for violation of subsection (1) or (2), and also allows the Port to disqualify based upon a fraudulent DBE certification.
- ORS 200.075(1) authorizes the Port to suspend a contractor's or subcontractor's right to participate in a Port contract if the contractor or subcontractor: (1) enters into a public improvement contract with the Port representing without the DBE's knowledge and consent that the DBE will be performing work or supplying materials; (2) exercises management control and decision making control over the internal operations of a DBE; or (3) using a DBE to satisfy a contract goal when the DBE does not perform a commercially useful function.
- The Federal government may apply several enforcement mechanisms to firms participating in the DBE Program, including without limitation 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**  
**[49 CFR 26 Subpart D]**

Accessible at this link:

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

## ATTACHMENT 9

### State of Oregon UCP Agreement

[49 CFR 26.81]

[ \* Prior to submission,  
replace this placeholder  
with a copy of the UCP Agreement signed by all parties  
-- including the Port --  
marked as ATTACHMENT 9 \* ]

## **ATTACHMENT 10**

### **Small Business Element of the DBE Program**

#### **[49 CFR 26.39]**

#### **Overview**

The Port of Portland (Port) administers an existing DBE program as required under 49 CFR Part 26 for Federal Aviation Administration (FAA)-assisted projects. The Port administers that program as an element of the Port's existing Small Business Development Program, consistent with Port Commission Policy No. 6.1.9, dated May 8, 2002 (copy attached as Exhibit A).

Another element of the Port's Small Business Development Program is an existing program intended to increase contract awards to small business concerns for projects that are not FAA-assisted. For example, on some construction contracts that are not FAA-assisted, the Port sets small business subcontracting participation goals. The Port's existing small business contracting program also includes outreach, mentoring, and educational elements.

Accordingly, the Port's existing Small Business Development Program already supports the policy goals of the newly-mandated requirement, under 49 CFR 26.39, that airport sponsors add a small business program component to their existing DBE program. However since a 2011 requirement mandates that DBE programs for FAA-assisted projects also contain a small business element, the Port will expand its DBE program to include the small business contracting elements set forth below.

#### **Specific Program Elements Under 49 CFR 26.39**

The Port will incorporate the following additional, non-discriminatory elements into its existing 49 CFR Part 26 DBE Program, in order to facilitate competition on FAA-assisted Port contracts by small business concerns (both DBEs and non-DBE small businesses).

#### **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)."

The Port will presume that a business is a "small business" or "small business concern" for purposes of this program if the business is a for-profit enterprise that is either:

a. certified as an Emerging Small Business (ESB) by the State of Oregon Office of Minority, Women Owned and Emerging Small Business (OMWESB) or by the Washington State Office of Minority and Women's' Business Enterprise (OMWBE). Each such agency maintains an online listing of certified ESB firms;

b. an eligible participant of federal Small Business Administration (SBA) programs, which may include businesses certified as disadvantaged, minority-owned, women-owned, or



emerging small businesses, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. The SBA maintains an online listing of eligible, participating small businesses; or

c. certified by a public agency other than OMWESB, OMWBE, or SBA and meets a size standard that is no greater than the SBA size standard, which standard must be a criterion for certification or participation in that public agency program.

If a business does not fall within one of the three categories set forth above, the business may qualify as a “small business” or “small business concern” for purposes of this program if it can demonstrate to the Port that the business does in fact meet the applicable SBA small business size standard. Such assurance and demonstration may involve reviewing the tax records or certified annual audit reports of the business and taking other actions reasonably related to assessing whether the business meets the stated size standard. If a question arises about whether a business meets the applicable size standard, the Port and the business will confer and, to the extent practicable, follow the methodologies established by the SBA in determining whether the business is within or exceeds an applicable size standard.

#### Contracts for Construction, Goods, and Services

The Port will employ the following methods intended to improve participation by small business concerns on FAA-assisted Port contracts for construction, goods, or services. When the estimated contract amount is between \$5,000 and \$200,000, on a case by case basis the Port will consider one or more of the following options:

- establishing a race-neutral small business set aside for prime contracts;
- dividing prime contracts into smaller-sized packages that are within the financial resources and capacity of small business concerns; and
- requiring the prime contractor/consultant to identify business opportunities within the contract's scope of work that small business subcontractors can reasonably perform, rather than self-performing all the work involved. On such contracts bidders will be required to submit Small Business Goal Compliance Reports (to be provided by the Port), so the Port may monitor compliance with program requirements.

Solicitation documents will clearly identify these contract opportunities and requirements.

#### Professional Services

To improve participation by small business concerns on FAA-assisted Port contracts for professional services, on a case by case basis the Port will consider awarding additional points for small business participation when evaluating proposals, to encourage proposers to give equal opportunity to small businesses to compete for portions of the work. In such solicitations proposers may be required to respond to requirements and questions similar to the following:

- Provide a narrative description of your firm's experience in promoting small business participation as partners, subcontractors, or suppliers on previous projects. Discuss any innovative or successful measures that your firm has undertaken to increase small business participation in operations. Include a list of small business with which your firm has had a contractual relationship during the last 12 months.
- Is your business a “small business” as defined under 49 CFR 26.5, or as provided under the Port of Portland's small business program?

- Describe the actions and strategies your firm will take to increase small local business participation in this work.

On such contracts, proposers may be required to submit Small Business Goal Compliance Reports (provided by the Port), so the Port may monitor compliance with program requirements.

#### Outreach Efforts

The Port will also take affirmative steps to encourage firms that may be eligible for small business certification to become certified as “small businesses” in accordance with 49 CFR Part 26. This will be accomplished through outreach efforts, educational and informational programs, and direct contact.

**EXHIBIT A  
TO  
ATTACHMENT 10**

**Port of Portland Commission Policy**

**Small Business Development Program**

**Policy No. 6.1.9**

Approved Commission Meeting of May 8, 2002

The Port of Portland recognizes a shared responsibility with small businesses, large businesses, public agencies, and community organizations to take actions that will result in small business firms successfully competing for Port business. The Port of Portland is dedicated to working cooperatively with civic and business leaders in the community to develop and implement an effective Small Business Development Program.

It is the policy of the Port of Portland that:

1. Small businesses shall have an equal opportunity to compete for and perform Port of Portland contracts.
2. The Port shall take actions as deemed necessary and reasonable by the Executive Director to increase contract awards to small business firms, to increase the number of different small business firms participating in contract work, and to thereby develop a more competitive contracting environment.
3. Port of Portland contractors shall be required by contract to take all reasonable steps to ensure that small businesses have an equal opportunity to compete for and perform subcontracts. Contractors and subcontractors shall comply with Port bid documentation requirements pertaining to small business participation.
4. Port of Portland contractors and subcontractors shall be required by contract to not discriminate based upon race, color, national origin, or sex in the performance of Port of Portland contracts and subcontracts.
5. Port of Portland contractors and subcontractors shall be required by contract to comply with 49 CFR Part 26 in competing for and performing contracts and subcontracts funded in whole or in part with U.S. Department of Transportation (USDOT) assistance.
6. The Executive Director shall set targets and goals for small business and disadvantaged business enterprise (DBE) participation in the following areas:
  - a. An annual overall Port small business participation target for Port-wide expenditures;
  - b. An annual overall Port DBE goal for USDOT-assisted contracts in accordance with 49 CFR Part 26;
  - c. Contract goals for USDOT-assisted contracts in accordance with 49 CFR Part 26; and
  - d. An annual overall Port DBE goal for airport concession opportunities in accordance with 49 CFR Part 23 and 26.
7. Actual small business and DBE participation shall be reported annually to the Commission.

## **ATTACHMENT 11**

### **POLICY STATEMENT**

#### **Port of Portland Disadvantaged Business Enterprise Program**

##### **June 2014 Restatement**

##### **[49 CFR 26.23]**

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

By virtue of such assurance and the DBE Program it is the policy of the Port to ensure that DBEs, as defined in CFR 49 Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. to ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. to create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. to ensure that the DBE Program is narrowly-tailored in accordance with applicable law;
4. to ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. to help remove barriers to the participation of DBEs in DOT-assisted contracts; and
6. to assist in the development of firms that can compete successfully in the marketplace outside the Port's DBE Program.

Kimberly Mitchell-Phillips has been designated as the Port's Disadvantaged Business Enterprise Liaison Officer (DBELO). In that capacity the DBELO is responsible for implementing all aspects of the Port's DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Port in its financial assistance agreements with the DOT.

Upon approval of the Port's June 2014 restatement of its DBE Program the Port will: (i) disseminate this policy statement to the Port's Board of Commissioners and to employees in all components of the Port; (ii) distribute this policy statement to DBE and non-DBE business communities that perform work on Port DOT-assisted contracts; and (iii) send copies of the 2014 DBE Program to small business advocacy groups by e-mail, US mail, or direction to the program online at the following link: [http://www.portofportland.com/SROS\\_SB\\_Home.aspx](http://www.portofportland.com/SROS_SB_Home.aspx)

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Bill Wyatt, Executive Director

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Date