

49 CFR PART 26

FAA Rev 10.21.2020

**Columbia Gorge Regional Airport (ID: DLS)
City of The Dalles, Oregon / Klickitat County, WA**



DBE PROGRAM & GOAL Development

Ver Date December 2023

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The City of The Dalles and Klickitat County, the owners of Columbia Gorge Regional Airport (DLS), have established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The City of The Dalles and Klickitat County, (Owners) have received federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Owners have signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the Owners to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the Owner’s policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To 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.

Jeff Renard, Airport Manager, has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO 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 Owners in their financial assistance agreements with the Department of Transportation.

The Owners have disseminated this policy statement to the City of the Dalles and Klickitat County and all of the components of our organization. The Owners have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting a notice on the Owners’ airport website (<https://www.flycgra.com>).

[Signature of Recipient's Chief Executive Officer]

Date

[Signature of Recipient's Chief Executive Officer]

Date

Printed Name and Title _____

Printed Name and Title _____

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SUBPART A – 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 City of The Dalles and Klickitat County, (Owners) is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

Section 26.5 Definitions

The Owners will use terms in this program that have the meaning defined in 49 CFR Part 26 § 26.5. (See **Attachment 1** for link to CFR.)

Section 26.7 Non-discrimination Requirements

The Owners 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 Owners 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: 26.11

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

DBE participation will be reported to DOT/FAA as follows:

The Owners will transmit the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part, to FAA annually by December 1 including the required information about participating DBE firms. All reporting will be done through the FAA’s official reporting system, or another format acceptable to the FAA as instructed thereby.

BIDDERS LIST

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

The Owners will collect this information by using a Bidders List form. See **Attachment 3** for a sample of a Bidders List Form. Each airport solicitation will require bidders to submit the bidders list with their proposal.

RECORDS RETENTION AND REPORTING

The Owners will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Owners 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 Owners' financial assistance agreement. Other 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 Owners have signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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

[Note: This language is to be used verbatim, as it is stated in § 26.13(a).]

The Owners 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 Owners 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 Owner'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 Owners 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: 26.13b

The Owners will ensure that the following clause is included in each contract signed with a contractor and each subcontract the prime contractor signs with a subcontractor:

[Note: This language is to be used verbatim, as it is stated in § 26.13(b)]

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 Owners 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.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Owners are 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 Owners are not eligible to receive DOT financial assistance unless DOT has approved their DBE program and they are in compliance with it and part 26. The Owners will continue to carry out its program until all funds from DOT financial assistance have been expended. The Owners do not have to submit regular updates of the program, as long as they remain in compliance. However, the Owners will submit significant changes in the program, including those required by regulatory updates, for approval by DOT.

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 County has designated the following individual as its DBE Liaison Officer:

Jeff Renard
Airport Manager, Columbia Gorge Regional Airport
45 Airport Way
PO Box 285
Dallesport, WA. 98617
Ph: (509) 767-2272
E-mail: manager@flycgra.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Owners complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City of The Dalles City Council and Klickitat County Board of County Commissioners concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is included as **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 support staff, including engineers and legal professionals, to assist in the administration of the program. The DBELO's duties and responsibilities include the following:

- Gathering and reporting statistical data and other information as required by DOT
- Reviewing third party contracts and purchase requisitions for compliance with this program
- Working with all departments to set overall annual goals
- Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner

- Identifying contracts and procurements so that DBE contract goals are included in solicitations and monitors results
- Analyzing the Owners' progress toward attainment and identifies ways to improve progress
- Participating in pre-bid meetings
- Advising the governing body on DBE matters and achievements
- Determining contractor compliance with good faith efforts
- Providing outreach to DBEs and community organizations to advise them of opportunities

Section 26.27 DBE Financial Institutions

It is the policy of the Owners 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.

The Owners use the Washington online business directory to discover financial institutions in Klickitat County that meet this criterion. The directory is updated daily, or as needed, by the State of Washington. Information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

The Owners require 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 Owners have 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 Owners.

The Owners 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 Owners have selected the following method to comply with this requirement:

- Decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

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

To implement this measure, the Owners' include the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

Retainage will not be withheld on this project. No retainage will be withheld by the Owner from progress payments due the prime Contractor. Retainage by the prime or subcontractors is prohibited, and no retainage will be held by the prime from progress due subcontractors.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. The Owner must ensure prompt and full payment of retainage from the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. 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 Owner. When the Owner 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.

When at least 95% of the project work has been completed to the satisfaction of the Resident Project Representative(RPR), the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done.

The Owners have established, as part of its DBE program, the following mechanisms to ensure prompt payment:

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes;
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed; and
- (3) Other mechanisms, consistent with this Section and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

This clause applies to both DBE and non-DBE subcontractors.

See §26.37 below for additional Prompt Payment information.

[Section 26.31](#) [Directory](#)

The Owners are a non-certifying member of the Oregon Unified Certification Program (UCP), and uses the State of Oregon DBE directory, maintained by the State Certification Office for Business Inclusion and Diversity (COBID) to determine a firm's DBE status.

The directory lists the firm's name, address, phone number, and each type of work the firm has been certified to perform as a DBE using the most specific NAICS code available to describe each type of work. The state revises the Directory daily, or as needed. A link to the directory may be found in **Attachment 4**.

[Section 26.33](#) [Over-Concentration](#)

The Owners have not identified that over-concentration exists in the types of work that DBEs perform.

[Section 26.35](#) [Business Development Programs](#)

The Owners have not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Owners implement and carry 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 their DBE program.

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

- Prime contractors are required to submit to the Owners' copies of the contracts executed with all subcontractors within 10 days of execution of such contracts, including amount agreed upon and method of payment.
- Prime contractors are required to submit a record of all payments to subcontractors no less than quarterly.
- The Owners will confirm with subcontractors the amounts paid and date of receipt of payments.
- The Owners will create and maintain written and/or electronic records of all information collected.

Other affirmative steps to monitor prompt payment and retainage requirements:

- The Owners will put in place quarterly reminders to be sent to subcontractors requesting submission to the Owners a detailed list of all payments received from the Prime during the most recent complete calendar quarter.
- The Owners require 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 Owners financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Owners' or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
- The Owners proactively reviews contract payments to subcontractors including DBEs not less than quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to us by the prime contractor.

Prompt Payment Dispute Resolution

The Owners will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29:

The Owners will facilitate meetings between prime and sub, with resident project representative and/or project manager presence as appropriate, for the purpose of dispute resolution. Participants shall include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

The Owners established, as part of its DBE program, the following mechanism to ensure prompt payment and return of retainage:

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. **See §26.29 above.**

Prompt Payment Complaints

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

- (1) Subcontractor should contact the prime directly regarding any prompt payment complaint.
- (2) If the affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact the DBELO to initiate complaint.
- (3) If filing a prompt payment complaint with the DBELO do not result in timely and meaningful action by the Owners to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA manager.

All steps taken should be documented in writing and communicated to each of the involved parties: the prime, The City of The Dalles and Klickitat County, (Owners), the DBELO, and the FAA.

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 Owners provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assess liquidated damage charges 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
- 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

The Owners actively implements the enforcement actions detailed above. In addition, the Owners will take the following actions, should the need arise:

- The Owners will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
- The Owners will consider similar action under its own legal authorities as outlined in Washington State Laws including responsibility determines in future contracts.

Monitoring Contracts and Work Sites

The Owners 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 Owners or other representative assigned by us. Contracting records are reviewed by The Owners or other representative assigned by us. The Owners will maintain written/electronic documentation that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation.

The Owners have 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 Owners' Small Business Element is incorporated as **Attachment 10** to this DBE Program. The Owners will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of their DBE program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Owners do not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Owners will establish an overall DBE goal covering a three-year federal fiscal year period if they anticipate awarding DOT/FAA 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 Owners will submit its Overall Three-Year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the FAA-established 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	August 1, 2023 (2024/2025/2026)	August 1, 2026 (2027/2028/2029)

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area using one of the following methods.

- a. The Owners will use the Washington DBE Directory information and US Census Bureau data as a method to determine the base figure; or
- b. The Owners will use the most recent Disparity Study for Washington, currently produced in 2019 by the Washington State Department of Transportation to determine the base figure.

Step 2. The second step is to adjust, if necessary, 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. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Owners will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. 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 attain a goal that is rationally related to the relative availability of DBEs in the Owners market area.

CONSULTATION AND PUBLICATION

In establishing the overall goal, the Owners 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 Owners’ efforts 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 Owners’ goal setting process. It will occur before the Owners are required to submit its goal methodology to the operating administration for review pursuant to paragraph (f) of this section. The Owners will document in its goal submission the consultation process that they engaged in. Notwithstanding paragraph (f)(4) of this section, the Owners will not implement their proposed goal until they have complied with this requirement.

In addition, the Owners will publish a notice announcing its proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on its official 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 the operating administration, the revised goal will be posted on its official web site. The Owners will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at their principal office and that the Owners and DOT/FAA will accept comments on the goals for 30 days from the original publication 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 August 1st deadline.

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

The Owners will begin using its overall goal on October 1st of the reporting period, unless they have received other instructions from DOT.

PROJECT GOALS

If permitted or required by the FAA Administrator the Owners will express its overall goals 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 should 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 its regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If the Owners establishes a goal on a project basis, it will begin using the goal with the first solicitation for a DOT-assisted contract for the project.

PRIOR OPERATING ADMINISTRATION CONCURRENT

The Owners understand that it is not required to obtain prior operating administration concurrence with its overall goal. However, if the operating administration's review suggests that the overall goal has not been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with the Owners, adjust the overall goal or require the Owners do so. 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 Owners 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 Owners fails to administer its DBE program in good faith.

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

If the Owners awards and commitments shown on its Uniform Report of DBE Commitments/Awards and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Owners will do the following in order to be regarded by the Department as implementing its 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 its analysis and to enable the Owners to fully meet its goal for the new fiscal year; and
- (3) 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. The Owners 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 Owners 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 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination of lists of potential subcontractors to bidders on prime contracts; 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) Distributing information about 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.

CONTRACT GOALS

If the Owners approved projection estimates that it can meet the entire overall goal for a given year through race-neutral means, the Owners will implement its program without setting contract goals during that year, unless it becomes necessary in order meet the overall goal.

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

The Owners will express its contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

DEMONSTRATION OF GOOD FAITH EFFORTS

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so by either meeting the contract goal or documenting good faith efforts. 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 **Responsible**.

The Owners 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.

INFORMATION TO BE SUBMITTED

In the Owners solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, it will require the following:

- (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 (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. 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 (see Appendix A of this part). 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 Owners will require that the bidder/offeror present the information required by paragraph (b)(2) of this section no later than 5 business days after bid opening as a matter of responsibility.

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

ADMINISTRATIVE RECONSIDERATION (26.53(D))

Within five (5) business days of being informed by the Owners that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official:

Matthew B. Klebes, City Manager
City of The Dalles
313 Court Street
The Dalles, OR 97058
Phone: (541) 296-5481
Email: mklebes@ci.the-dalles.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 so. The DBELO 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 Owners will require the contractor that is awarded the contract 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 require that the subcontract and all lower tier subcontractors be performed in accordance with 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 Owners. 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 Owners' agree, 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 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 1200 or applicable state law;
- (6) The Owners 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 the Owners 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; or
- (10) Other documented good cause that the Owners have determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Owners 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 the Owners, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE (5) five days to respond to the prime contractor's notice and advise the Owners and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why the Owners should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), the Owners 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 prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's *[bid/solicitation]* response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Owners 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 Owners 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 the Owners established for the procurement. The good faith efforts shall be documented by the contractor. If the Owners request documentation from the contractor under this provision, the contractor shall submit the documentation to us within (7) seven days, which may be extended for an additional (7) seven days, if necessary, at the request of the contractor, and the recipient 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 Owner's contracting office 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

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

If the 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 Owners will not count the firm's participation toward any DBE goals, except as provided for in § 26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Owners are a non-certifying member of the Washington Unified Certification Program and will not make determinations of the eligibility of firms to participate as DBEs in DOT-assisted contracts. The Owners use the State of Washington DBE directory, maintained by the Washington State Office of Minority and Women's Business Enterprises (OMWBE). For more information about the certification process, or to apply for certification, firms should contact COBID. A link to the DBE application website can be found in **Attachment 8**.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Owners will not make determinations of the eligibility of firms to participate as DBEs in DOT-assisted contracts. The Owners are a member of the Unified Certification Program (UCP) administered by the State of Washington. The UCP will meet all of the requirements of this section. A copy of the signed agreement between the Owners and the State can be found in **Attachment 9**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Recipient

The Owners understand that if it fails to comply with any requirement of this part, the Owners 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 actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 Information, Confidentiality, Cooperation, 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, the Owners will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the Owners will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this Part or to any other state to which the individual's firm has applied for certification under § 26.85 of this Part.

All participants in the Department's DBE program (including, but not limited to, the following; 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 Owners, 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 Owners understands that it is in noncompliance with Part 26 of it violates this prohibition.

ATTACHMENTS

- Attachment 1 Regulations: 49 CFR Part 26 (website link)
- Attachment 2 Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 DBE Directory (website link)
- Attachment 5 Overall Goal Calculations
- 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 (website link)

Attachment 9 State/Owners UCP Agreement

Attachment 10 Small Business Element Program

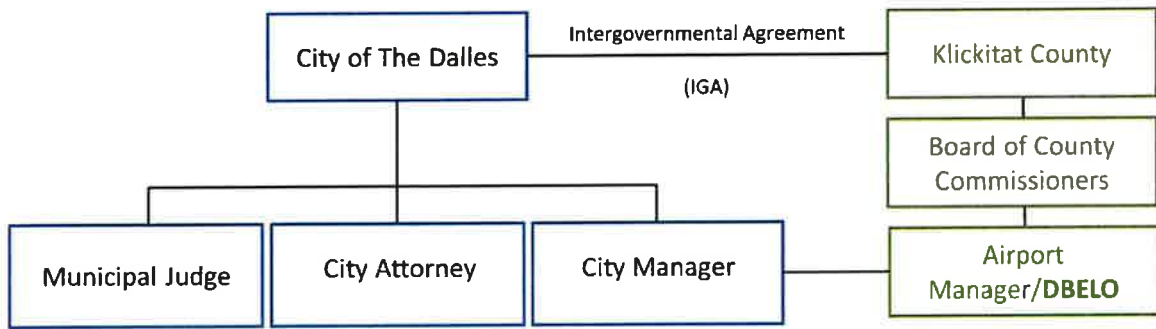
Attachment 1

Regulations: 49 CFR Part 26
(Website Link)

<https://www.ecfr.gov/cgi-bin/text-idx?SID=03244c693412467e551734b3124a572c&mc=true&node=pt49.1.26&rgn=div5#sp49.1.26.a>

Attachment 2

Organizational Chart



Attachment 3

Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

Firm Name Address Phone	DBE or Non-DBE Status*	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil

*Verification via State UCP Directory

Attachment 4

Oregon DBE Directories
(Web Links to DBE directory)

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

Attachment 5

Section 26.45: Overall DBE Three-Year Goal Methodology

To be submitted separately.

Attachment 6 Demonstration of Good Faith Efforts - Forms 1 & 2

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

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) (Title)

Printed Name _____ Date _____

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)

(Printed Name and 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 Owners have available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

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

In addition, the Federal government has several enforcement mechanisms available 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; and
3. Prosecution pursuant to 18 USC 1001.

Attachment 8

Oregon DBE Certification Application (Website Links)

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

Attachment 9

State / Owners UCP Agreement

INTERGOVERNMENTAL AGREEMENT
Administering the Disadvantaged Business Enterprise
Unified Certification Function

This Agreement is made and entered into by and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" the State of Oregon, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD;" and cities, counties or local partners signing on to this Agreement, hereinafter referred to as "Agencies." Parties signing this Agreement shall be referred to individually as "Party," or collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) 190.110 and 283.110, state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
2. The Disadvantaged Business Enterprise (DBE) program requirements set out in Title 49 United States Code of Federal Regulations (CFR) part 26, section 81 require that state recipients of federal transportation funds establish a "one-stop" process to certify businesses owned by socially- and economically-disadvantaged individuals as DBEs: the Unified Certification Program (UCP). 49 CFR § 26.81 requires that all recipients of federal transportation funds in a state sign an agreement establishing the UCP and submit same to the U.S. Secretary of Transportation.
3. As provided in 49 CFR part 26, only firms owned and controlled by socially- and economically-disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification and will act in the capacity of Lead Agency for coordinating the program participation of the Agencies hereunder. ODOT is responsible to USDOT for assuring certification of DBEs is performed consistent with 49 CFR part 26.
4. As provided under ORS 200.055(5), OBDD is the sole agency authorized to certify enterprises as Disadvantage Business Enterprises eligible to perform on public contracts in this state. Pursuant to ORS 200.055, ODBDD herein delegates authority for administration of the Oregon UCP DBE Certification Component to its Certification Office for Business Inclusion and Diversity, hereinafter, "COBID."
5. Pursuant to Oregon Revised Statute 183.341, OBDD has adopted rules for the certification of Disadvantaged Business Enterprise firms, (see OAR chapter 123, division 200).
6. This Agreement defines the roles and responsibilities of ODOT, OBDD, COBID, and Agencies to continue participation in the UCP. The collective effort of the Parties is hereinafter referred to as the "UCP Partnership" or "Partnership."

ODOT/OBDD/Agencies
Agreement No. 32421

NOW THEREFORE, premise being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT, OBDD and Agencies agree to cooperate and coordinate the administration of DBE certification services as required under the Code of Federal Regulations 49 Part 26.
2. The term of this Agreement shall begin upon the signatures of ODOT, OBDD and the first Party to execute this Agreement and shall terminate five (5) years from that date.

MUTUAL PARTIES OBLIGATIONS

1. The Parties mutually agree that all DBE certification decisions by COBID shall be binding on all recipients of federal transportation funds within Oregon.
2. The Parties shall ensure that COBID has sufficient resources and expertise to carry out the requirements of 49 CFR § 26.81.
3. The Parties mutually agree to have open and regular communications on matters concerning DBE certification. Matters of concern to all agencies include process time, staffing, budget, certification issues, directory maintenance and changes in the overall DBE certification process.
4. The Parties shall cooperate in the administration of the USDOT required DBE Certification process, striving for the most efficient use of their individual agency resources in carrying out the process of certifying Socially and Economically Disadvantaged individuals.
5. The Parties agree that all certifications shall be pre-certifications, i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
6. The Parties mutually agree to notify or copy all Parties of the Partnership on any communication to the USDOT or respective agencies regarding DBE Certification.
7. The Parties agree to work in partnership during Federal audits and performance reviews.
8. The Parties will not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex and national origin.
9. The Parties will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishments of the objective of this program with respect to individuals of a particular race, color, sex and national origin.

AGENCIES OBLIGATIONS

1. Each Agency shall designate a representative to attend semi-annual UCP Partnership meetings and any special sessions held to resolve issues that arise requiring more immediate attention. Attendance by teleconference will be acceptable. Semi-annual meetings will occur in the summer (July or August) and the fall (October or November). COBID will provide all other Agencies reasonable notice of the meeting.
2. Agencies agree that ODOT is the Lead Agency for the Partnership.
3. Agencies shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally assisted projects.
4. Agencies shall promptly notify OMWESB of complaints received relating to DBE certification or program administration.

ODOT OBLIGATIONS

1. As Lead Agency, ODOT shall do the following:
 - a. Notify and advise COBID and Agencies of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.
 - b. Notify COBID and Agencies of training programs relevant to DBE Certification function and procedures.
 - c. Review a COBID determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.
 - d. Provide ongoing DBE Certification expertise, oversight, as well as conduct process reviews when required, including an annual audit of DBE Certification files.
 - e. Assist COBID in conducting appeals of firms challenging DBE certification decisions.
2. ODOT shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
3. ODOT shall promptly notify COBID of complaints received relating to DBE certification or program administration.
4. ODOT's Project Manager for this Project is Daniel Jackson, Small Business Programs Manager, ODOT – Office of Civil Rights, MS-23, 3930 Fairview Industrial Dr SE, Salem, OR 97302, 503-986-3016, daniel.jackson@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

OBDD OBLIGATIONS

1. OBDD will consult with Agencies regarding changes in State rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.
2. OBDD will not be required to process an application for certification from a firm having its principle place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
3. OBDD will share its information and documents concerning the firm with other interested agencies that are considering the firm's application.
4. OBDD shall maintain a DBE Certification database and directory.
5. OBDD shall provide Agencies with all necessary DBE Certification information required to complete federal reports and data collection.
6. OBDD shall follow all certification procedures and standards set out in 49 CFR part 26.
7. OBDD shall cooperate fully in the oversight, review, and monitoring activities of the USDOT and its operating administrations and implement USDOT's directives and guidance concerning certification matters.
8. OBDD agrees to act in accordance with 49 CFR §26.83(k). OBDD agrees that COBID shall make decisions on applications for certification within ninety (90) days of receiving all information required from the applicant firm. This period may be extended once, for no more than sixty (60) days, upon written notification to the applicant firm, explaining fully and specifically the reasons for the extension.
9. Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, COBID shall not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the applicant firm.
10. OBDD shall submit to ODOT the following documentation on each DBE certification within seven (7) days upon request of ODOT:
 - a. Copy of letter of determination
 - b. Copy of site visit
11. OBDD shall notify ODOT and Agencies in writing within seven (7) days upon request of any of the following:
 - a. **Decertification or Denial of DBE Certification**
 - b. Third party challenge
 - c. Closures or cancellations of any DBE certifications due to a firm's failure to file an annual no-change affidavit;
 - d. Any withdrawals of DBE Certification applications
12. OBDD will participate in DBE staff training.

13. OBDD shall coordinate participation in DBE Certification workshops with Agencies.

14. OBDD shall provide technical assistance to firms seeking DBE Certification.

15. DISPUTE RESOLUTION BETWEEN ODOT and OBDD

- a. ODOT and OBDD agree that any tort liability claim, suit, or loss resulting from or arising out of ODOT's or OBDD's performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this Agreement.
- b. ODOT and OBDD understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and OBDD agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.

16. OBDD's Project Manager for this Project is Carrie L. Hulse, Program Manager, COBID, 775 Summer Street SE, Suite 200, Salem, OR. 97301, 971-301-1271, carrie.l.hulse@oregon.gov, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties.
2. This Agreement may be terminated by mutual consent of all current Parties upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to Agencies, or at such later date as may be established by ODOT or OBDD, under any of the following conditions:
 - a. If Agencies fail to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from ODOT or OBDD fails to correct such failures within ten (10) days or such longer period as ODOT or OBDD may authorize.
 - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT

or OBDD are prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, OBDD or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice, copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.
7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under

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Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties acknowledge and agree that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
10. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or OBDD to enforce any provision of this Agreement shall not constitute a waiver by ODOT or OBDD of that or any other provision.

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THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

STATE OF OREGON, by and through its
Oregon Business Development
Department

By 
Chris Cummings, Assistant Director

Date October 29, 2017

OBDD/OMWESB Contact:

Carrie L. Hulse, Program Manager
OBDD – COBID Section
775 Summer Street SE, Suite 200,
Salem, OR. 97301
971-301-1271
carrie.l.hulse@oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By 
Angela Crain, Office of Civil Rights
Manager

Date 10/30/17


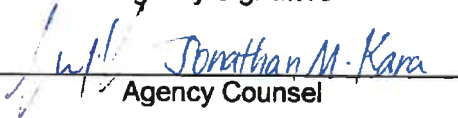
ODOT Contact:

Daniel Jackson, Small Business Programs
Manager
ODOT Office of Civil Rights, MS-23
3930 Fairview Industrial Dr SE
Salem, OR 97302
503-986-3016
daniel.jackson@odot.state.or.us

Unified Certification Function Agreement Signature Page

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State or Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity City of The Dalles (Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

 Agency Signature	<u>10/27/22</u> Date	<u>City Manager</u> Title
_____ Agency Signature	_____ Date	_____ Title
 Agency Counsel	_____ Date	<u>City Attorney</u> Counsel's title

Name and title of Agency Contact Representative:	<u>Jeff Renard</u>
Address:	<u>313 Court St</u> <u>The Dalles, Or 97058</u>
Phone:	<u>541-288-6766</u> Fax: <u>541-296-6906</u>
E-mail:	<u>manager@flycgra.com</u>

Send the **Unified Certification Function Agreement Signature Page** (this page) to: Nameun House, Procurement and Contracts Specialist via e-mail at: Nameun.House@odot.state.or.us and cc' Daniel Jackson, Small Business Programs Manager at: daniel.jackson@odot.state.or.us.

Attachment 10

Small Business Element

OBJECTIVE: FOSTERING SMALL BUSINESS PARTICIPATION

DBE program regulations, CFR § 26.39, that became effective on February 28, 2011, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, including DBEs, taking reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. All DBE firms are eligible for this program; The City of The Dalles and Klickitat County, (Owners) do not have a DBE micro-Small Business Element.

DEFINITION

For the purpose of the Owners' Small Business Element, a small business is defined as: **A company and/or firm whose annual revenue does not exceed one million dollars.** All businesses meeting this criterion will be considered to be small businesses, without regard to race or gender.

STRATEGIES

Prime contracts and subcontracts valued under \$50,000 are available to small businesses as a result of the Airport Improvement Program. The Owners believe that they are currently meeting the objectives of its construction contracting activities by:

- Ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform;
- Arranging quantities, specifications, and delivery schedules to facilitate small business participation; and
- Dividing large contracts into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract.

The Owners will put into place monitoring of consultant-design projects for possible small business participation and encouraging use of small businesses in projects. The Owners seek ways to include all available contractors in its contracts. This may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases, jobs usually performed by subcontractors can be performed as an unbundled prime contract, especially if the outcome of the overall project will not be impacted by the unbundled contracting opportunity.

The Owners provide opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state and local requirements. Through small business outreach, the Owners, with the assistance of the Department of Transportation DBE program, will assist small firms to become primes and in growing their business to eventually compete on larger contracts.

VERIFICATION

All firms participating in small business contracting opportunities will be verified by the Owners as to meeting the eligibility criteria of this program. This will be accomplished using the state business records that include any certifications a firm might have, including DBE certification, as well as annual sales volume.

MONITORING / RECORD KEEPING

The Owners will maintain a contact list comprised of participating businesses, partners and economic development contacts established through various opportunities and affiliations. Through this contact list, the Owners will be able to communicate to small businesses about upcoming contracting and subcontracting opportunities, as well as monitor the success of this Small Business Element in past contracting opportunities.

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

In addition to the above strategies, the Owners will strive to:

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

ASSURANCES

The following Assurances apply to this Small Business element:

1. The program is authorized under state law.
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

IN WITNESS WHEREOF, the parties here to have signed this agreement this 20th day of February 2024.

BOARD OF COUNTY COMMISSIONERS
Klickitat County, Washington



Lori Zoller, Chairman


Jacob Anderson, Commissioner


Dan Christopher, Commissioner


ATTEST:

Clerk of the Board


Alisa Grumbles

In and for the County of Klickitat,
State of Washington

APPROVED AS TO FORM:


David R. Quesnel
Klickitat County Prosecuting Attorney