


CROOK COUNTY WORK SESSION

**Administration Conference Room
203 NE Court Street, Prineville, OR**

Tuesday November 1, 2022 at 9 a.m.

Members of the public and media are welcome to attend in person with social distancing or via WebEx 1-408-418-9388; Access Code: 2557 624 5694

Meeting Password: 37qgD2rbpy2

	Requester	Discussion Matter	Packet Docs
1		Public Comment	
2	John Eisler	Airport Disadvantaged Business Enterprise	

	Requester	Executive Discussion Matter	Packet Docs
Exec #1			

Items placed on the Work Session agenda are intended for discussion only, without making decisions or finalizing documents unless an emergency exists.

**The Court may add additional items arising too late to be part of this Agenda. Agenda items may be rearranged to make the best use of time.*

**The meeting location is accessible to persons with disabilities. If additional accommodations are required, please submit your request 48 hours prior to the meeting by contacting County Administration at 541-447-6555.*

Requests to be placed on the Work Session agenda are due by 5 p.m. the Thursday before the Work Session

November 1, 2022 Work Session Agenda

AGENDA ITEM REQUEST**Date:**

October 27, 2022

Meeting date desired:

November 1, 2022

Subject:

This is the County's Disadvantaged Business Enterprise (DBE) plan for the Crook County Airport.

Background and policy implications:

In order to be eligible for further grant funding, the County must institute a DBE and report to FAA.

Budget/fiscal impacts:

This has no impact on our current budget.

Requested by:

John Eisler, Asst. County Counsel.

Presenters:

John Eisler.

Legal review (only if requested):

Requested by Legal.

Elected official sponsor (if applicable):

N/A

Crook County Counsel's Office

300 NE 3rd St., Ste 200 • Prineville, Oregon 97754 • (541) 416-3919 • FAX (541) 313-5964

MEMO

**For Work Session
November 1, 2022**

TO: Crook County Court

FROM: Crook County Legal Counsel's Office

DATE: October 27, 2022

RE: Airport DBE
Our File No.: Airport 47(A)

Enclosed is a draft of the Crook County Airport's Disadvantaged Business Enterprise program (the "DBE Program"). This DBE Program is a requirement for further FAA grant funding, and lays out our plan to ensure and promote non-discrimination for any federally-assisted contracts at the airport.

The DBE Program names Airport Manager Kelly Coffelt as the liaison officer and includes various representations by the County, provisions for our airport contracts, and reporting requirements.

My understanding is that once the County approves this draft, it goes to the Federal Civil Rights department to review, then notice gets posted for public comment before the final DBE Program is approved.

Prineville/Crook County

Prineville/Crook County Airport (PRZ)



DBE PROGRAM

and

Three Year Goal Methodology

Prepared by:



POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

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

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. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Kelly Coffelt, 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 Owner in its financial assistance agreements with the Department of Transportation.

The Owner has disseminated this policy statement to the County Judge and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by publishing a notification in the regional newspaper, the Central Oregonian, and by posting a notice on the County’s website: <https://www.cityofprineville.com/airport>

Signature of County Judge

Date

Printed Name and Title _____

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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 – Web 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 Link to DBE Certification Application Website
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives are found in the Policy Statement on the first page of this program.

Section 26.3 Applicability

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

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

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

BIDDERS LIST: 26.11(C)

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

We 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 Owner will maintain records documenting a firm's compliance with the requirements of this part. These records will be retained in accordance with all applicable record retention requirements of the Owner's 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 Owner has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

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

The Owner 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 Owner 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 Owner 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*).

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

Contract Assurance: 26.13b

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

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Owner 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.

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Owner is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Kelly Coffelt
Airport Manager
4585 SW Airport Road
Prineville, OR 97754
Phone: (541) 416-0805
E-mail: kcoffelt@cityofprineville.com

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Owner complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the County Court, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT
- Reviews third party contracts and purchase requisitions for compliance with this program
- Works with all departments to set overall annual goals
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals, if applicable) and monitors results
- Analyzes Owner's progress toward attainment and identifies ways to improve progress
- Participates in pre-bid meetings
- Advises the Cook County Court on DBE matters and achievement
- Determines contractor compliance with good faith efforts

- Acts as liaison to the Uniform Certification Process
- Provides outreach to DBEs and community organizations to advise them of opportunities

Section 26.27 DBE Financial Institutions

It is the policy of the Owner 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 Owner uses the Oregon State online DBE directory to discover financial institutions in the project area that meet this criterion. The DBELO will retain a list of the institutions that meet this criterion. The list will be updated as needed. Information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

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

We will ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. We will use the following method to comply with this requirement:

- Hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after our payment to the prime contractor.

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

The Owner will provide appropriate means to enforce the requirements of this section. These means include:

- Appropriate penalties for failure to comply with the Prompt Payment terms
- Delay or postponement of payment amount the parties may take place only for good cause, with prior written approval by Crook County.

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Owner. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced timeframe may

occur only for good cause following written approval of the Owner. This clause applies to both DBE and non-DBE subcontractors.

Section 26.31 Directory

The Owner is a non-certifying member of the Oregon Unified Certification Program (UCP). The Owner uses the State of Oregon DBE directory, maintained by the Oregon Certification Office for Business Inclusion and Diversity. The directory lists the firm's name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The State revises the Directory daily. The location of the Directory may be found in **Attachment 4**.

Section 26.33 Over-Concentration

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

Section 26.35 Business Development Programs

The Owner has not established a business development program.

Section 26.37 Monitoring Responsibilities

The Owner implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms below.

The Owner 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 Owner undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

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

Other affirmative steps to monitor prompt payment and retainage requirements:

The Owner requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided

by applicable record retention requirements for the Owner's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Owner or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- The Owner performs interim audits of contract payments to DBEs. The audits review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. The records are maintained as part of the Owner's project records.

The Owner will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. We will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. In the event of non-compliance with the DBE regulation by a participant in our DBE Program, we will apply legal and contract remedies available under Federal, state, and local law.
3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.
4. We will implement a monitoring and enforcement mechanism that will include written documentation that we have reviewed contracting records and monitored work sites for this purpose. The monitoring will be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).
5. We will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Prompt Payment Dispute Resolution

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

The Owner 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 Owner has 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 affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact the Owner to initiate complaint.
- (3) If filing a prompt payment complaint with the Owner does not result in timely and meaningful action by the Owner to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.

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.

All steps taken should be documented in writing and communicated to each of the involved parties: the prime, the Owner, the DBELO, and the FAA.

Enforcement Actions for Noncompliance of Participants

The Owner provides appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assess interest 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 Owner actively implements the enforcement actions detailed above.

Monitoring Contracts and Work Sites

The Owner 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 Owner or other representative assigned by the Owner. Contracting records are reviewed by the Owner or other representative assigned by the Owner. The Owner will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation.

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

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

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The Owner will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds \$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 Owner will work in good faith to submit its Overall Three-Year DBE Goal to FAA by August 1st as required by the 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, 2020 (2021/2022/2023)	August 1, 2023 (2024/2025/2026)

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

Step One - Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Owner will use a Disparity Study, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45, as a method to determine the base figure. The Owner understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

The Owner will also match the project work items as closely as possible to the actual work performed by the DBEs in the Directory using the NAICS codes any DBE is certified to perform, and weight the results to reflect the value of each NAICS code as a percent of the entire project

value, and use that percent to collect the DBEs ready and available for each NAICS code. The formula for this can be found in **Attachment 5**.

Step Two - 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 Owner 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.

Section 26.45 (g)(1) Consultation and Publication

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

In addition, the Owner will publish a notice announcing our proposed overall goal before submission to the operating administration and will strive to have this complete by August 1st. The notice will be posted on our official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the Owner and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent, including offices and websites where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

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

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45(e) Project Goals

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

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.

Section 26.45(f) Prior Operating Administration Concurrent

The Owner understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration's review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we 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 Owner will maintain an approved DBE Program and overall DBE goal, if applicable, as well as administer our DBE Program in good faith, to be considered to be in compliance with this part.

If the Owner awards and commitments shown on our 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, we will do the following in order to be regarded by the Department as implementing our 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) 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. We will retain 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 Owner 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) Ensuring distribution of the State DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs and other small businesses to develop their capability to utilize emerging technology and conduct business through electronic media.

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

Section 26.51(d-g) Contract Goals

(The following section on Contract Goals is included in the event contract goals are necessary and are found to be allowable under DOT-assisted contracts.)

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

If our approved projection under paragraph (c) of this section 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.

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

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

(The following section on Good Faith Efforts is included in the event contract goals are necessary and are found to be allowable under DOT-assisted contracts.)

DEMONSTRATION OF GOOD FAITH EFFORTS (26.53(A) & (C))

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

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

INFORMATION TO BE SUBMITTED (26.53(B))

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we 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 Owner, 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;
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section, no later than 2 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 Owner.

ADMINISTRATIVE RECONSIDERATION (26.53(D))

Within 5 business days of being informed by Owner 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:

Brian Barney
Crook County Commissioner
300 NE Third St
Prineville, OR 97754
Phone: (541) 447-6555
E-mail: brian.barney@co.crook.or.us

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

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

GOOD FAITH EFFORTS PROCEDURAL REQUIREMENTS WHEN CONTRACT GOAL IS ESTABLISHED (POST SOLICITATION) (26.53(F)(G))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains our written consent as provided in this paragraph 26.53(f); and that, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor 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 this part's provisions.

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our 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 provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards, provided 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) 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; or
- (10) Other documented good cause that we have determined compels the termination of the DBE subcontractor; provided that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

The Owner 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 we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor shall submit the documentation to us within seven days, which may be extended for an additional seven days, if

necessary, at the request of the contractor, and the Owner shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

We will include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section that we deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Owner of Prineville to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of __ percent [*as determined in the goal calculation Attachment __*] has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

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

Forms that may be utilized to determine whether the bidder/offeror has satisfied the requirements of this section can be found in **Attachment 6**.

Section 26.55 Counting DBE Participation

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

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, we 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 Owner is a non-certifying member of the Oregon Unified Certification Program (UCP) and therefore will not make determinations of the eligibility of firms to participate as DBEs in DOT-assisted contracts. The Owner uses the State of Oregon DBE directory, maintained by the Certification Office for Business Inclusion and Diversity. A link to the DBE application website can be found in **Attachment 8**.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Owner is a member of the Unified Certification Program (UCP) administered by the State of Oregon. The UCP will meet all of the requirements of this section. A copy of the signed agreement page of the membership of the UCP between the Owner and the Oregon UCP can be found in **Attachment 9**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Crook County

The Owner understands that if it fails to comply with any requirement of this part, the Owner may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122.

Section 26.109 Information, Confidentiality, Cooperation & Intimidation or Retaliation

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

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we 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 of Transportation's DBE program (including, but not limited to, recipients, DBE firms, 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 Owner, 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. If we violate this prohibition, we are in noncompliance with this part.

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 – Web 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 Link to DBE Certification Application Website
- Attachment 9 State's UCP Agreement
- Attachment 10 Small Business Element Program

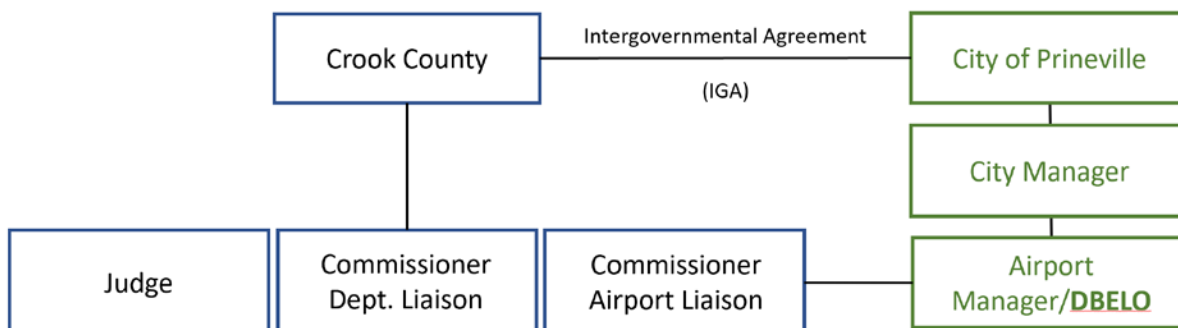
Attachment 1

Regulations: 49 CFR Part 26

(Link to Website)

<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 Directory
(Web link)

<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

FORM 2: LETTER OF INTENT

Name of bidder / offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____
(Signature)

Date: _____

(Title)

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

[Submit this page for each DBE subcontractor.]

Attachment 7

DBE Monitoring and Enforcement Mechanisms

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

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

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

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

Attachment 8

Oregon DBE Certification Application Website

<https://www.oregon.gov/biz/programs/COBID/DBE-ACDBE/Pages/default.aspx>

Attachment 9
State's UCP Agreement

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 Crook County does not have a DBE micro-Small Business Element.

DEFINITION

For the purpose of the Owner's 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 Owner believes that it is currently meeting the objectives of its construction contracting activities by:

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

The Owner provides opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state and local requirements. Through small business outreach, the Owner, 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 Owner 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 Owner will maintain a contact list comprised of participating businesses, partners and economic development contacts established through various educational opportunities and affiliations. Through this contact list, the Owner 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 Owner 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 Owner's Airport.

In addition to the above strategies, the Owner 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).