

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM



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Economic Development
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**Port of Seattle
Disadvantaged Business Enterprise (DBE) Program**

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INTRODUCTION

The Port of Seattle oversees the Seattle-Tacoma International Airport. The Port consists of a five member Board of Commissioners. Courtney Gregoire is the President of the Commission. The Port of Seattle is run by Mr. Stephen Metruck, Executive Director, and Mr. Lance Lyttle is the Managing Director of the Aviation Division.

The local contact and DBE Liaison Officer "DBELO" is:

Mr. Mian Rice, Diversity in Contracting, Director
Economic Development Division
Port of Seattle
2711 Alaskan Way
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In order to obtain federal funding for airport related projects, the Port must meet the compliance standard of the Code of Federal Regulations (CFR) relating to the participation of socially or economically disadvantaged individuals and organizations (Disadvantaged Business Enterprises (DBE) in the public procurement process. The Disadvantaged Business Enterprise Program sets forth the Preliminary Compliance Plan for airports using the revised standards of 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises (DBE) in Department of Transportation Financial Assistance Programs*. The electronic link to the program is found at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

DOT published Title 49 of the Code of Federal Regulations (49 CFR) Part 26 in the Federal Register on February 2, 1999, and it became effective March 4, 1999 (64 F.R. 5096). It made extensive revisions to DOT's DBE program, which was formerly codified under 49 CFR Part 23. The Final Rule to 49 CFR Part 26 was published in the Federal Register, Volume 68, No. 115 on June 16, 2003. Five (5) subsequent Final Rules to 49 CFR Part 26 were published in the Federal Register on April 2, 2007, April 3, 2009, February 3, 2010, January 28, 2011 and November 3, 2014, which made additional revisions to the regulation. The current version of the regulations is available online in the Electronic Code of Federal Regulations: <http://www.ecfr.gov/cgi-bin/ECFR?page=browse>.

If overall goals were set on a fiscal year basis, the DBE goal is to be submitted to the FAA by August 1st at three-year intervals starting in Fiscal Year 2017. Recipients are required to conduct annual reviews to account for changes that may warrant a modification of the overall goal. Further, a recipient must submit to the operating administration (Federal Aviation Administration (FAA) for approval any significant adjustment made to the goal during the three (3) year period based upon changed circumstances (f)(1).

Annual reports of actual construction participation and DBE participation will be provided to the FAA by December 1st via the FAA's electronic database. This statistical data is used to determine compliance with DBE goals as well as to adjust race-conscious and race-neutral DBE participation.

Participation goals, methods of attainment, and other portions of the DBE Program are subject to revision following a 45-day public comment period that commences with the date of publication and subsequent federal review. The provisions contained within the DBE Program relate to all public contracts to be accomplished with US DOT grant assistance, including FAA Airport Improvement Program (AIP) for which the federal share is \$250,000 or greater during fiscal years 2020 through 2022.

The Port anticipates approximately \$50,000,000 in Airport Improvement Program (AIP) grants from the FAA over the three-year goal period (FY 2020-2022) which would be subject to the DBE program.

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

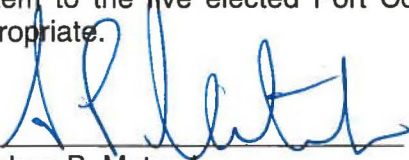
Port of Seattle (Port), owner of SeaTac Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Port of Seattle has received Federal financial assistance from the Department of Transportation,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

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

1. Ensure nondiscrimination in the award and administration of DOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Mian Rice, Diversity in Contracting, Director has been delegated as the DBE Liaison Officer. In that capacity, Mian Rice 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 Port of Seattle in its financial assistance agreements with the Department of Transportation.

The Port has disseminated this Policy Statement to the Port Commission and all components of the Port organization, as appropriate. We have made this statement available to DBE and non-DBE business communities that perform work for the Port on DOT/FAA-assisted contracts. This document will be available electronically to all contractors currently performing work on DOT/FAA-assisted contracts via Port website and will appear in all bid specifications during the DOT/FAA fiscal year 2020-2022. This document will be distributed through the Port of Seattle internal mail system to the five elected Port Commissioners and other Port of Seattle management as is appropriate.



Stephen P. Metruck
Executive Director



Date

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions and Terms

The Port of Seattle will use terms in this program that have their meanings defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The Port of Seattle 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 our DBE program, the Port of Seattle 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

26.11 Reporting to DOT/FAA

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

Port of Seattle will transmit to FAA Civil Rights administrator 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 Port of Seattle will similarly report the required information about participating DBE firms. All reporting will be done through the FAA Civil Rights official reporting system, or another format acceptable to the FAA Civil Rights office as instructed thereby.

The Port will create and maintain a bidders list. The purpose of the list is to maintain accurate data about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Port of Seattle DOT-assisted contracts for use in helping to set our overall goals. The following information about DBE and non-DBE contractors and subcontractors who seek to work on USDOT-assisted contracts is required:

- Firm Name;
- Firm Address;
- Firm's status as a DBE (including UCP or non-UCP) or non-DBE;
- Age of the firm;
- The annual gross receipts of the firm. The Port may obtain gross receipts information by asking each firm to indicate into which bracket it fits (*e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million, \$2-5 million, etc.*) rather than requesting an exact figure from the firm.

This information will be collected on the Bidders List Request Form found in the **Appendix Section as attachments 3**.

Section 26.13 Federal Financial Assistance Agreement

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

26.13 (a) Port Assurances

Each financial assistance agreement the Port of Seattle signs with a DOT operating administration will include the following assurance:

The Port of Seattle shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Port of Seattle shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Port of Seattle 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 Port of Seattle 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.*).

26.13 (b) Contract Assurance

Port of Seattle will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall

carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

The Policy Statement is stated on page 5 of this Program

Section 26.25 Responsibilities of the DBE Liaison Office (DBELO)

The Port of Seattle has designated the following individual as the DBE Liaison Officer:

Mr. Mian Rice
Diversity in Contracting Director & DBELO
Port of Seattle
2711 Alaskan Way
Seattle, Washington 98121
Telephone: (206) 787-7951
Fax Number: (206) 787-3089
Email: Rice.M@ portseattle.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Port of Seattle complies with all the provisions of 49 CFR Part 26. The DBELO has direct, independent access to Mr. Stephen Metruck Executive Director of the Port of Seattle, concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in the **Appendix Section, Attachment 2** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program in coordination with other appropriate staff. All statements regarding the DBELO's duties throughout the Program are intended to include the assistance of Port of Seattle staff that is sufficient to implement the DBE Program. The DBELO has primary responsibility for these duties, which shall be conducted and/or delegated, as needed to ensure 49 CFR Part 26 compliance, as follows:

1. Develop and ensure compliance with the management and implementation of the DBE Program.
2. Gather and report statistical data and other information as required by DOT/FAA.
3. Ensure non-discrimination in the award and administration of US DOT assisted contracts; Identify contracts and procurements so that DBE and SBE goals are included in solicitations (both race-neutral methods and contract specific goal attainment) and identify ways to improve progress.
4. Work with appropriate staff and departments to set three-year overall goal;
5. Advise staff and contractors/consultants on DBE matters, overall goal achievement and good faith effort requirements;
6. Participate with legal counsel, the procurement department and project managers to determine contractor compliance;
7. Plan and participate in DBE training seminars and workshops;
8. Provide DBEs with information and assistance in preparing bids, obtaining bonding, insurance and other business needs, as permitted by law and procurement rules;
9. Explain the DBE participation requirements at pre-bid conferences;
10. Ensure that solicitations contain the clauses and goals required by this program;
11. Review third party contracts and purchase requisitions for compliance with this program;
12. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results;
13. Analyze the Port's progress toward attainment of overall goal and identify ways to improve progress;
14. Chairs the DBE Advisory Committee;
15. Determine with the assistance of the Port's legal counsel and the procurement department contractor compliance with good faith efforts;
16. Act as liaison to the State of Washington's Uniform Certification Process;
17. Provide outreach to DBEs and community organizations to advise them of contracting opportunities;
18. Ensure the maintenance of the Port's bidders' list information with regard to prime and subcontractor requests;
19. Support the dissemination of information on available business opportunities through various mediums to provide DBEs an equal opportunity to compete for FAA-assisted contracts, and;
20. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
21. Advise CEO and/or Commission of DBE matters and achievements

Section 26.27 DBE Financial Institutions

It is the policy of the Port of Seattle 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/FAA-assisted contracts to make use of these institutions.

In an effort to identify and use such institutions, using the OMWBE online directory, the Port of Seattle did not find any DBE financial Institutions in the King County area. The following NAICS Codes were used: 52111, *Monetary Authorities-Central Bank*, 52211, *Commercial Bank*, 52212, *Savings Institution*, and 52213, *Credit Union*.

The Disadvantaged Business Enterprise Liaison Officer for the Port of Seattle will investigate any financial institutions established within the community on an annual basis, which are owned by socially and economically disadvantaged individuals. When a financial institution, owned and operated by socially and economically disadvantaged individuals, is opened during the period of this approved Program, the DBELO will use their services when feasible and provide notification to prime contractors within the bid documents.

Section 26.29 Prompt Payment Mechanisms

The Port 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 10 days from receipt of each payment the Port makes to the prime contractor

Consistent with RCW 60.28.011 (a) and (b), on public improvement contracts that are funded in whole or in part by federal transportation funds, including FAA funds, no retainage is withheld.

The Port of Seattle will include the following clause in each DOT/FAA-assisted prime contract which is compliant with 48 CFR 26.29 Option 2:

The Contractor shall promptly submit all Subcontractor or Supplier invoices as part of its monthly Progress Payment requests. The Contractor is likewise required to make payment to all Subcontractors and Suppliers for all Work included within the Progress Payment within ten (10) days from the receipt of the Progress Payment. Furthermore, the Contractor shall require all subcontracts issued under this contract to all Subcontractors and Suppliers at all tiers to also make all due payments within ten (10) days of their receipt of payment. The Contractor must justify to the Port in writing any intent to withhold payment of monies due to any Subcontractor or supplier.

Progress Payment Retention: In accordance with RCW 60.28.011 (b) public improvement contracts funded in whole or in part by federal transportation funds must rely upon the contract bond as referred to in chapter 39.08 RCW for the protection and payment of (i) The claims of any person or persons arising under the contract to the extent such claims are provided for in RCW 39.08.010; and (ii) the state with respect to taxes, increases, and penalties incurred on the public improvement project under Title 50, 51, and 82 RCW which may be due. The contract bond must remain in full force and effect until, at the minimum, all claims filed in compliance with chapter 39.08 RCW are resolved. In accordance with 49 CFR 26.29, the Port obligates the contractor to make prompt and full payment of any retainage (if any) kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed including Prevailing Wages. The prime contractor must report to the Port the release of said retainage to the subcontractor at that time.

Monitoring Payments to DBEs

The Port will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the Port. This reporting requirement also extends to any certified DBE subcontractor.

The Port will perform interim audits of contract payments to DBEs. The audit will 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 and ensure they are paid within 10 days..

Section 26.31 DBE Directory

The Port of Seattle utilizes the State of Washington, Office of Minority and Women Business Enterprises (OMWBE) as its DBE directory to identify all firms eligible to participate in the DBE process. The OMWBE directory lists the firm's name, certification number, the type of work the firm has been certified to perform as a DBE, NAICS codes, and contact information (contact name, address, and telephone number).

In the event the bidder names other DBE firms that he/she would like to use, these firms will need to be certified by OMWBE and included in that Directory.

The Port of Seattle will continue to recommend contractors or small businesses that may qualify as a disadvantaged business to work with the Office of Minority and Women Business Enterprise (OMWBE) to obtain DBE certification (UCP DBE). The Port will require prime contractors to utilize certified DBEs as listed in the online OMWBE DBE directory. The website address for the OMWBE DBE Directory, which is updated monthly, is <http://www.omwbe.wa.gov>. The DBE Directory is available to bidders interested in meeting DBE goals or to locate DBEs capable of performing specific work. In the event that a bidder desires additional information about a listed DBE, they are encouraged to contact the firm directly.

Section 26.33 Over-Concentration

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

Section 26.35 Business Development Programs

- The Port of Seattle has established a Small Business Generator Business Development Program which provides services to support DBE and small business firms seeking opportunities to do business with the Port. Examples of services and activities may include:
 - Outreach to DBE firms regarding opportunities in Port projects
 - Referrals to capacity-building and training opportunities
 - Information sessions and pre-bid technical assistance as appropriate
 - Active participation in small business regional committees

These efforts are through workshops or event sessions marketed through local community agencies, e-mail communications via NACIS codes, or media advertisements.

Section 26.37 Monitoring and Enforcement Mechanisms Responsibilities

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

Port of Seattle 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

Port of Seattle 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):

Reporting Amounts Paid to Subcontractors:

- The Contractor shall submit Monthly Amounts Paid (MAP) every month. This data shall be entered directly on the CDS website: <http://hosting.portseattle.org/cds/>. The Prime Contractor, Subcontractors and all lower tier Subcontractors shall include Subcontractors and Suppliers data on this form. The purpose of this document is to support data collection needed to evaluate the requirements outlined in Document 00 70 00 General Conditions G-04.05 (prevailing wages), G-08.04 (certification of payment), and 00 87 00 (small business utilization).
- The Contractor shall submit, upon request, copies of canceled checks paid to all such Subcontractors. If requested, check copies shall be submitted within ten (10) working days.

Port of Seattle has established, as part of its DBE program, the following mechanism(s) 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.
 - The Contractor shall be paid monies earned by fulfilling its responsibilities under this Contract. Monies shall not be considered earned if any of the following conditions applies:
 - Failure of the Contractor to make payments owed to Subcontractors, or for labor, materials, or equipment;
- Port of Seattle 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 Port's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of Port of Seattle or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
 - Port of Seattle proactively reviews contract payments to subcontractors including DBEs monthly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to Port of Seattle by the prime contractor.

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contacting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate investigation of complaint including individuals authorized to bind each interested party.
 - If affected subcontractor files a complaint, the DBELO will immediately report complaint to the FAA. DBELO will report complaint(s) via FAA website link
-

(<https://www.surveymonkey.com/r/PromptPaymentCompliance>) as required by Congress due to the 2018 FAA Reauthorization.

Prompt Payment Dispute Resolution

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

A meeting(s) between prime and sub, with assigned Port construction manager, contracts administrator, and/or project manager to review and resolve payment disputes based upon approved scopes of services.

Enforcement Actions for Noncompliance of Participants

Port of Seattle will provide appropriate means to enforce the requirements of §26.29. These means include, but are not limited to:

- 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
- Condition closeout of contract on prime contractor's compliance with DBE requirements; and
- Other remedies for failure to comply

Monitoring Contracts and Work Sites

DBELO or designated Port official 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 DBELO or designated Port official. Contracting records are reviewed by DBELO or designated Port official. DBELO or designated Port official 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 Port has a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required in order for the Port of Seattle to be considered by DOT as implementing this DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The Port of Seattle will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), Port will submit its Overall Three-year DBE Goal to FAA Civil Rights office by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA-Civil Rights administrator.

FAA:

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

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Port of Seattle does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and the Port of Seattle 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. The Port will use a Disparity Study, and/or 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 Port of Seattle 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.

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 Port of Seattle 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. Port of Seattle 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 ultimately attain a goal that is rationally related to the relative availability of DBEs in the Port of Seattle market.

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

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

Section 26.45 - 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 your 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 - Prior Operating Administration Concurrent

The Port understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the FAA review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the FAA may, after consulting with the Port of Seattle, adjust our overall goal or require that the Port of Seattle 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 Port of Seattle 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 Port of Seattle fails to administer its DBE program in good faith.

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

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

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) Port of Seattle will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (1) and (2) above to the FAA's Office of Civil Rights administrator for approval.

Section 26.49 Transit Vehicle Manufacturers Goals

This section is not applicable.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

The Port will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a

DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing by identifying potential outside businesses or agencies whom can possibly lend assistance.
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

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

For FFY 2016-2018 and 2019, the Port of Seattle leveraged the September 2014 Disparity Study which showed disparity amongst all WMBE categories, this study provided the Port with the necessary analysis to gain the approval from the FAA-Civil Rights division on October 2015 to move from race-neutral to race-conscious means. The Port will have a new disparity study in 2019. The Port of Seattle is anticipating the DBE achievements for FFY 2020-2022 will continue to be under race-conscious means.

The Port of Seattle 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, by making contracts more accessible to small businesses, by means such as those provided under §26.39.

Contract Goals

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

Contract Race Neutral goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

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

Demonstration of Good Faith Efforts (pre-award)

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

DBELO (*or designee*) 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 Port of Seattle will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the Port of Seattle, at the time provided in this section:
 - (i) The names and addresses of DBE firms that will participate in the contract, due with the bid;
 - (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, due with the bid;
 - (iii) The dollar amount of the participation of each DBE firm participating, due with the bid;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal, due with the bid;
 - (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, due prior to Award; and
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26) must be provided by the bidder no later than 2 days after bid opening to be evaluated as a matter of responsibility. 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) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) No later than 5 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 (2) of this section before the final selection for the contract is made by the recipient.

In a negotiated procurement, including a design-build procurement and a general contractor/construction manager (GC/CM) procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of initial selection but provide the information required by paragraph (2) of this section at the appropriate stages of subcontractor price negotiations (in the case of design build and GC/CM).

Administrative Reconsideration

Consistent with 49 CFR Part 26, and the FAA regional office interpretation of that requirement, Bidders/offerors that are deemed to be not responsible based on failing to demonstrate good faith efforts to meet a contract participation goal must be provided an opportunity for administrative reconsideration that is separate from the Port's protest process. As part of this reconsideration, the bidder/offeror:

- (1) must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so;
- (2) must have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do; and
- (3) must be sent 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.

Administrative Reconsideration Procedure

Within 2 days of being informed by the Port that it is not responsive because it has failed to document adequate good faith efforts, a bidder/offeror may request written and/or in-person administrative reconsideration. Bidders/offerors must make this request in writing to the following reconsideration official: Luis Navarro, Pier 69, 2711 Alaskan Way, Seattle, WA. 98121, 206-787-7113. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. The written request must:

- include all written documentation or argument that the bidder/offeror wants the reconsideration official to consider concerning the issue of whether the bidder/offeror met the goal or made adequate good faith efforts to do so; and
- state whether the bidder/offeror requests an 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. ***Failure to request an in-person meeting as part of the written request will be deemed a waiver of such right to do so.***

If the bidder/offeror requests an in-person meeting, that meeting will be scheduled to occur within 5 days of the written request. Within 2 days after the in-person meeting (or 2 days after receipt of the written documentation if no in-person meeting is requested), the bidder/offeror will be sent 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 Port, in its sole discretion, may extend any timeline herein when the Port deems it to be in the Port's best interest to do so.

The result of the reconsideration process is not administratively appealable to the Department of Transportation.

ARTICLE 11: PROTESTS

IB-11.01 - PURPOSE

To provide a prompt, fair and equitable administrative remedy to all Bidders and Prospective Bidders regarding alleged substantive errors or omissions in the bidding documents or regarding the decision by the Port to award the Contract or notice from the Port that a Bid is non-responsive or that a Bidder is not responsible.

IB-11.02 - TIMING

Any actual or prospective Bidder showing a substantial economic interest in this Contract, who is aggrieved by either the solicitation or award of this Contract, may PROTEST to the Port, only in accordance with the procedures set forth below.

- A. **Protests Based on the Form or Content of the Bidding Documents:** Any Protest based on the form or content of the bidding documents, which is or should have been apparent prior to the date established for submittal of Bids, must be clearly labeled on the transmittal envelope as a "Protest" and filed as soon as practicable at 2711 Alaskan Way, Seattle WA 98121 Attention: Director, Central Procurement Office, Contract Administrator. No protest based on the form or content of the bidding documents will be considered if received by the Port later than ten (10) calendar days prior to the specified bid submittal date.
- B. **Other Protests:** Protests based on any other circumstances must be received by the Port at 2711 Alaskan Way Seattle WA 98121, Attention: Director, Central Procurement Office, Contract Administrator in a transmittal envelope, clearly marked "Bid Protest", within two (2) business days after the aggrieved person knows or should have known of the facts and circumstances upon which the protest is based; provided, however, that in no event shall a protest be considered if all Bids are rejected or if the protest is received after award of the Contract. For these protest procedures, if a bidder/offeror is found not responsible for lack of good faith efforts, the bidder/offeror will be deemed to know of the facts and circumstances upon which the protest is based when the bidder/offeror is sent 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.

IB-11.03 - CONTENTS OF PROTEST:

To be considered, a Protest shall be in writing and shall include: (1) the name, street address, fax number and email address of the aggrieved party; (2) the contract title and number under which the Protest is submitted; (3) a detailed description of the specific grounds for the Protest and any supporting legal and/or factual documentation; and (4) the specific ruling or relief requested. In addition, in the event the protesting party asserts its responsibility as a contractor as a ground for Protest, it must address in detail each of the matters addressed in RCW 39.04.350.

- A. Initial Administrative Review: The Protest shall be promptly considered on the written submittal by the Contract Administrator. The Contract Administrator will give notice of the Protest and provide a copy to any others as required. In its sole discretion, the Contract Administrator may give notice of the Protest to other interested parties, including other Bidders. The Port reserves the right to resolve or to attempt to resolve any Protest that concerns the form or content of the solicitation and which Protest was received before the bid opening through written ADDENDA TO THE BIDDING DOCUMENTS. Any ADDENDA will be provided to all parties who have obtained a copy of the solicitation from the Port.
- B. The Contract Administrator will issue a written decision on the Initial Administrative Review within two (2) business days following the receipt of the Protest, stating the reasons for the action taken. A copy of the decision shall be provided to the aggrieved party, and any other party as may be required, by either: (i) personal service, (ii) facsimile, or (iii) email, with telephonic confirmation.
- C. The aggrieved party may appeal the decision of the Contract Administrator by filing a Notice of Administrative Appeal at 2529 S. 194th St, SeaTac, WA 98188, Attention: Director Central Procurement Office, Contract Administrator not more than two (2) business days after receipt of the Initial Administrative Review decision. The Contract Administrator will provide a copy of the Notice of Administrative Appeal to other interested parties as required. The Notice of Administrative Appeal shall be in writing and clearly labeled on the transmittal envelope as a "Notice of Administrative Appeal." A copy of the initial Protest shall be attached to the Notice of Administrative Appeal.

IB-11.04 - ADMINISTRATIVE APPEAL PROCEDURES

Within five (5) business days of receipt of the Notice of Administrative Appeal, an appeal hearing shall be conducted before a two person panel ("the Panel") consisting of a representative of the Port of Seattle's legal department and the Port's Director of Central Procurement Office or, in his/her absence or unavailability, his/her designee.

- A. Except as the Panel may allow in its discretion, no discovery shall be available.
- B. At the Administrative Appeal Hearing, the aggrieved party will be given a reasonable opportunity to present relevant testimony and evidence and to make legal arguments. The hearing shall be recorded and the Panel shall maintain an official record of all documentary evidence presented at the hearing. The Panel shall issue a written Final Decision within five (5) business days after the close of the hearing. A copy of the Final Decision shall be provided to the aggrieved party, and any other party as may be

required, by either: (i) personal service, (ii) facsimile, or (iii) email, with telephonic confirmation.

- C. Standard of Review on Administrative Appeal: On Administrative Appeal, the Panel will consider the Protest, de novo. The aggrieved party shall, however, be restricted from raising any matter or ground not reasonably within the scope of the materials placed before the Contract Administrator.
- D. Stay of the Award of the Contract: The Port will stay award of the Contract for two (2) business days, following the issuance of its Final Decision.

IB-11.05 - JUDICIAL PROCEEDINGS

All judicial proceedings must be filed within two (2) business days of the issuance of the Port's Final Decision.

IB-11.06 - STRICT COMPLIANCE

Strict compliance with these protest procedures is essential in furtherance of the public interest. Any aggrieved party that fails to comply strictly with these protest procedures is deemed, by such failure, to have waived and relinquished forever any right or claim with respect to alleged irregularities in connection with the solicitation or award of the Contract. No person or party may pursue any judicial or administrative proceedings challenging the solicitation or award of this Contract, without first exhausting the administrative procedures specified herein.

IB-11.07 - REPRESENTATION

An aggrieved party may participate personally or, if a corporation or other artificial person, by a duly authorized representative. Whether or not participating in person, an aggrieved party may be represented, at the party's own expense, by counsel.

Good Faith Efforts procedures requirements (post-solicitation)

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

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the DBELO (or designated Port official). 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 DBELO or designated Port official agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise DBELO (or designated Port official) and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If

required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

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

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

During the term of the Contract, failure of the Contractor to comply with any of the requirements of this Section may be deemed by the Port to be a breach of contract, and the Port reserves all of the rights provided by law to remedy such breach.

Section 26.55 Counting DBE Participation

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 Certification Process

The Port of Seattle is a non-certifying member of the State of Washington's Unified Certification Program (UCP), administered by the State of Washington Office of Minority and Women Business Enterprise (OMWBE). Certifying State of Washington UCP members make all certification decisions based on the facts as a whole.

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

Name: Washington State Office of Minority & Woman Business Enterprise

Address: 1110 Capitol Way South, Suite 150 Olympia Wa 98501

Telephone Number: 1-360-664-9750

Fax Number: 1-360-586-7079

E-mail Address: technicalassistance@omwbe.wa.gov

The Uniform Certification Application form and documentation requirements are found on OMWBE's website at <https://omwbe.wa.gov/certification>.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Port of Seattle is a participating member of a Unified Certification Program (UCP) administered by the Washington State Office of Minority and Women Business Enterprise (OMWBE). The UCP will meet all of the requirements of this section.

The Port of Seattle IS NOT A CERTIFYING AGENCY, Sections 26.83 through 26.89 have been omitted per DOT instructions.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a decision of OMWBE in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of OMWBE including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) OMWBE failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave., S.E.
Washington, DC 20590-0001

The U.S. DOT makes its decision based solely on the entire administrative record as supplemented by the appeal. The U.S. DOT does not make a de novo review of the matter and does not conduct a hearing. The U.S. DOT may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party. The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the denial of its application was erroneous).

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Port of Seattle

The Port of Seattle understands that if it fails to comply with any requirement of this part, the Port may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties to the extent consistent with Federal, state, and local law. The Port of Seattle is subject to the Washington State Public Disclosure Act, Chapter 42.56 of the Revised Code of Washington.

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

ATTACHMENTS

[List and appendix]

Attachment 1 Regulations: 49 CFR Part 26 or website link

Attachment 2 Organizational Chart

Attachment 3 Bidder's List Collection Form

Attachment 4 DBE Directory or link to DBE Directory

Attachment 5 Overall Goal Calculations (To Be Submitted Separately)

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

Attachment 7 DBE Monitoring and Enforcement Mechanisms

Attachment 8 DBE Certification Application Form

Attachment 9 State's UCP Agreement

Attachment 10 Small Business Element Program

ATTACHMENT 1

Regulations: 49 CFR Part26 and website Link

§26.67 Social and Economic Disadvantage

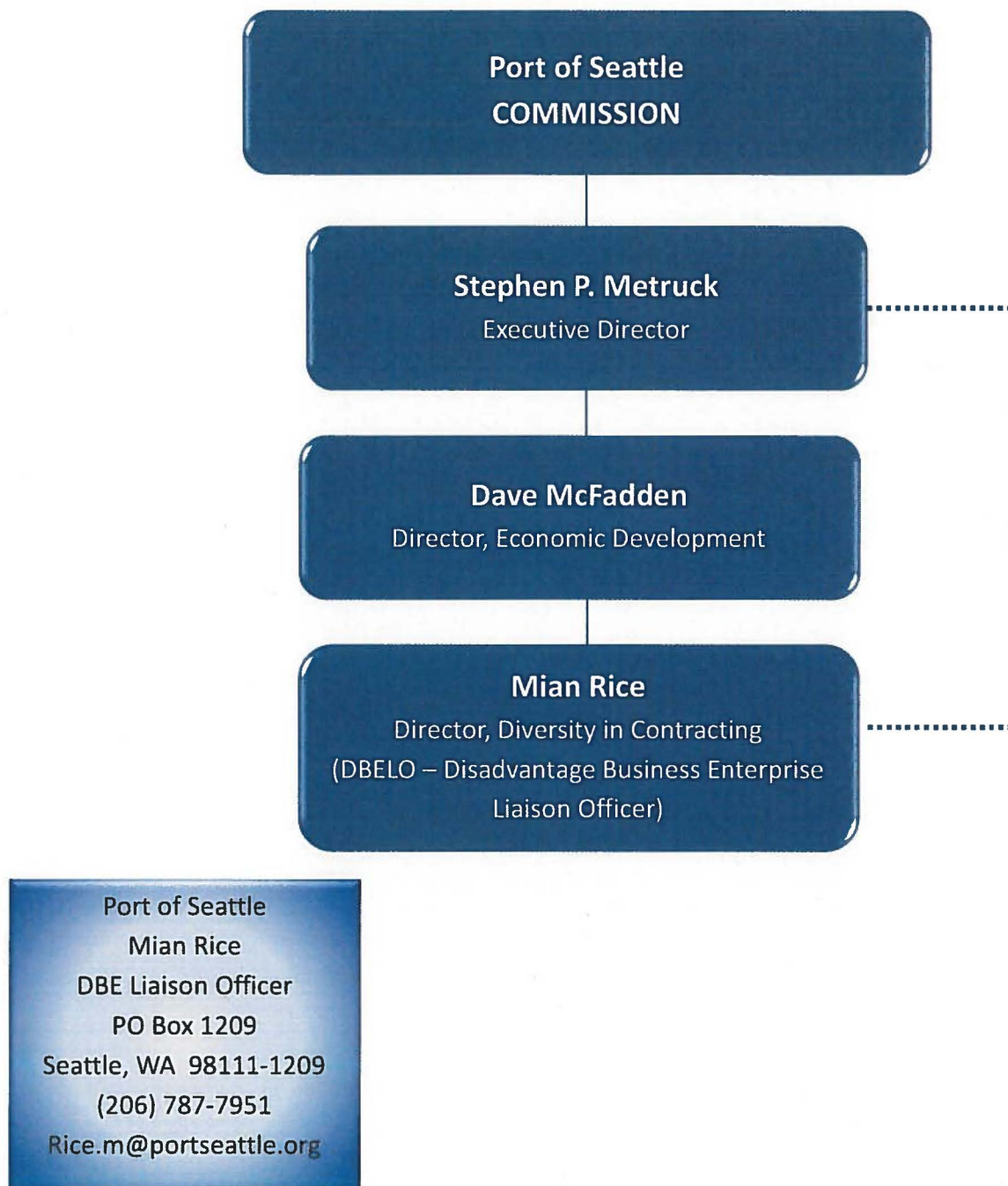
(a) Presumption of disadvantage. (1) You must rebuttable presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the Small Business Administration (SBA, are socially and economically disadvantaged individuals. Firms are required by the state to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

Website Link

<https://www.ecfr.gov>

2019 Port of Seattle DBELO Organizational Chart



ATTACHMENT 3

Bidders List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

[Reminder: the information below must be collected from every bidder who submits a quote/bid to the Port and every potential subcontractor who submitted a quote/bid to each bidder. §26.11(c) requires Port to collect information from all bidders and subcontractors, including unsuccessful ones.]

Firm Name	Firm Address/ Phone #	DBE or Non-DBE Status (verify via State's UCP Directory)	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 years	<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 million
			<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 years	<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 million
			<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 years	<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 million
			<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 years	<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 million
			<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 years	<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 million
			<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 years	<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 million

ATTACHMENT 4

DBE Directory

Office of Minority & Women's Business Enterprises (OMWBE)

Office of Minority & Women's Business Enterprises (OMWBE) certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons. Firms can apply for state certification, federal certification, or both. Federal certifications are utilized if a firm plans to do business on a project funded by the U.S. Department of Transportation.

Website Link:

<http://omwbe.wa.gov/>

ATTACHMENT 5

Submitted separately

ATTACHMENT 6

DISADVANTAGED BUSINESS ENTERPRISE (DBE) SEATTLE-TACOMA INTERNATIONAL AIRPORT

DOCUMENTATION OF GOOD FAITH EFFORTS FORM (TO BE COMPLETED AND SUBMITTED WITH SCHEDULE OF CONTRACT PARTICIPATION IF GOAL NOT MET AND UPON REQUEST.)

Contact the DBE Office for
questions on completing this form.
Mian Rice
Disadvantaged Business Enterprise
Liaison Officer
phone: (206)787-7951,
or email at rice.m@portseattle.org

Prior to award of a Seattle Tacoma International Airport (SEA) contract, Good Faith Efforts (GFE) are required to be made and demonstrated on all applicable SEA contracts. If you have not attained the amount of DBE participation to meet the contract goal, you are required to complete and submit this Documentation of Good Faith Efforts Form, along with all required supporting GFE documentation.

BIDDERS: This completed form, along with all required supporting documentation, must be submitted along with the Schedule of Contract Participation by the apparent lowest bidder or upon request. Should the bidder fail to comply with this request, the bid shall be considered non-responsive.

RESPONDENTS: This completed form, along with all required supporting documentation, must be submitted along with the Schedule of Contract Participation. Should the respondent fail to comply with this request, the proposal shall be considered non-responsive.

RFP / RFQ / Bid / Solicitation / Other # _____

Bid / Proposal Amount: \$ _____

Date: ____ / ____ / ____

Project Title: _____

_____ has satisfied the requirements of the bid/proposal specifications for the above

Name of Bidder/Respondent Firm

BID / RFP / RFQ or solicitation by the SEA in the following manner: (Please, check the appropriate box.)

- ☐ The Bidder / Respondent is unable to meet the DBE contract goal and has completed and submitted DBE Documentation of Good Faith Efforts Form, along with all required supporting GFE documentation.
- ☐ The Bidder / Respondent is unable to meet the DBE contract goal, however is committed to a minimum of _____ % DBE utilization on this contract and has completed and submitted Documentation of Good Faith Efforts Form, along with all required supporting GFE documentation.

I HEREBY CERTIFY THAT THE INFORMATION CONTAINED HEREIN IS TRUE AND CORRECT.

PRINTED NAME: _____

SIGNATURE: _____

TITLE _____

Instructions: Please, complete sections A through D, and include all specific supporting documentation, as outlined below. Attach additional pages, if necessary.

- ☐ **SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR:** Complete section A.
- ☐ **NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES:** Please, attach a copy of the announcement and written notices distributed to DBEs. Example: Newspaper, e-mail, mail correspondence, and community outreach notices, etc.
- ☐ **INITIAL SOLICITATION & FOLLOW-UP OF INITIAL SOLICITATION:** Bidders / Respondents may only solicit from the Washington State Office of Minority & Woman's Business Enterprises (OMWBE) Program DBE directory located at <http://www.omwbe.wa.gov/>
- ☐ **NEGOTIATE IN GOOD FAITH:** Please, provide a copy of all correspondence documenting negotiation efforts including written rejection notices and copies of DBE and non-DBE quotes.

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SEATTLE-TACOMA INTERNATIONAL AIRPORT
DOCUMENTATION OF GOOD FAITH EFFORTS FORM**

A. SPECIFIC PORTIONS OF WORK IDENTIFIED FOR DBE SUBCONTRACTOR: Please list all selected scopes or portions of work to be performed by DBEs in order to increase the likelihood of meeting the contract goal for this project and the estimated value of each scope or portions of work identified.

Scope or Portions of Work Identified for DBE Participation		Estimated Value	% of Contract Value
1		\$	
2		\$	
3		\$	
4		\$	
5		\$	
6		\$	
7		\$	
8		\$	
9		\$	
10		\$	
11		\$	
12		\$	
13		\$	
14		\$	
15		\$	
TOTALS		\$	

B. NOTIFYING CERTIFIED DBEs OF CONTRACTING OPPORTUNITIES: Please complete all fields below, list all sources of advertisement and outreach to DBE subs.

I. Did you contact the SMALL BUSINESS GROUP OFFICE to request submission of your subcontracting opportunities on the DBE Opportunities page?

YES	NO	Date of Submission
<input type="checkbox"/>	<input type="checkbox"/>	
<input type="checkbox"/>	<input type="checkbox"/>	

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SEATTLE-TACOMA INTERNATIONAL AIRPORT
DOCUMENTATION OF GOOD FAITH EFFORTS FORM**

II. Identify publications in which announcements or notifications were placed and published. Include a copy of each announcement or notification.

Source of Advertising/Outreach	What subcontracting areas of work were advertised?	Date of Ad	Due Date & Time for Sub Bids		SBG VERIFICATION
			Date	Time	
1					
2					
3					
4					
5					

C. INITIAL SOLICITATION & FOLLOW-UP: Please complete all fields below, list all certified DBE firms that received written notification of work items to be subcontracted. In the appropriate space, also indicate when firms received subsequent telephone, or email (with deliver, read receipts and certified firm's response) solicitations. Include copies of the written notice(s) sent to certified firms.

DBE FIRM & CONTACT	PHONE	Scope of Work Solicited	Date of Written Notification	Result of Initial Communication	Date of Follow-up and Method of Contact (Phone, Fax, E-mail)		Result of Follow-up Communication
Ex. ABC Company / Jane Smith	(504) 123-4567	Legal services	01/01/14	Will submit a quote	01/10/14	e-mail	Quote received
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
11							
12							

DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SEATTLE-TACOMA INTERNATIONAL AIRPORT
DOCUMENTATION OF GOOD FAITH EFFORTS FORM

DBE FIRM & CONTACT	PHONE	Scope of Work Solicited	Date of Written Notification	Result of Initial Communication	Date of Follow-up and Method of Contact (Phone, Fax, E-mail)		Result of Follow-up Communication
Ex. ABC Company / Jane Smith	(504) 123-4567	Legal services	01/01/14	Will submit a quote	01/10/14	e-mail	Quote received
13							
14							
15							
16							
17							
18							
19							
20							
21							
22							
23							
24							
25							
26							
27							
28							
29							
30							

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
SEATTLE-INTERNATIONAL AIRPORT
DOCUMENTATION OF GOOD FAITH EFFORTS FORM**

D. NEGOTIATE IN GOOD FAITH: Provide an explanation for any rejected DBE bid or price quotation, unless another DBE is accepted for the same work, as follows:

- I. Where price competitiveness is not the reason for rejection, complete all fields below and provide a copy of the written rejection notice including the reason for rejection to the rejected DBE firm. A meeting may be held with the rejected DBEs, if requested, to discuss the rejection.**

	DBE Subcontractor	Scope	Date rejection notice sent	Reason	Meet with DBE Sub?		
					Yes	No	Not requested
1					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
3					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
7					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
8					<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

- II. Where price competitiveness is the reason for rejection, complete all fields below, and attach copies of all DBE and non-DBE bid quotes.**

	DBE Subcontractor	Scope	Quote		Non DBE Subcontractor	Scope	Quote	Price Variance (+/-)
1			\$	1			\$	%
2			\$	2			\$	%
3			\$	3			\$	%
4			\$	4			\$	%
5			\$	5			\$	%
6			\$	6			\$	%
7			\$	7			\$	%
8			\$	8			\$	%



LETTER OF INTENT

Disadvantage Business Enterprise
(This page shall be submitted for each DBE firm)

Bidder/Offer

Name: _____

Address: _____

City: _____ State: _____ Zip: _____

DBE Firm:

DBE Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

DBE Contact Person:

Name: _____ Phone: () _____

DBE Certifying Agency:

_____ Expiration Date: _____

Each DBE Firm shall submit evidence (such as a photocopy) of their certification status.

Classification:

☐ Prime Contractor

☐ Subcontractor

☐ Joint Venture

☐ Manufacturer

☐ Supplier

Work item(s) to be performed by DBE	Description of Work Item	Quantity	Total

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated participation is as follows:

DBE contract amount: \$ _____ Percent of total contract: _____ %

AFFIRMATION:

The above-named DBE firm affirms that it will perform that portion of the contract for the estimated dollar value as stated herein above.

By: _____
(Signature) (Title)

* In the event 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.

ATTACHMENT 7

26.37

MONITORING AND ENFORCEMENT MECHANISM

Section 26.37(a) (b) Monitoring and Enforcement Mechanisms

The Port of Seattle 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 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
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 certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by appropriate auditing of projects to ensure *compliance with Part 26 requirements*.
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.

ATTACHMENT 8

DBE CERTIFICATION APPLICATION

The Office of Minority and Women's Business Enterprises (OMWBE) certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons. Firms can apply for state certification, federal certification, or both. Businesses will need federal certification if they plan to do business on a project funded by the U.S. Department of Transportation.

As of August 1, 2017 the Office of Minority Women Business Enterprise provided access to the certification application online at <http://omwbe.wa.gov/certification> for those businesses that are interested in being certified

ATTACHMENT 9

STATE UCP AGREEMENT

Office of Minority & Women's Business Enterprises (OMWBE)

Office of Minority & Women's Business Enterprises (OMWBE) certifies small businesses owned and controlled by minority, women, and socially and economically disadvantaged persons. Firms can apply for state certification, federal certification, or both. Federal certifications are utilized if a firm plans to do business on a project funded by the U.S. Department of Transportation.

This agreement is based upon the OMWBE – Political Subdivision Fees for the State of Washington – Authorizing Laws and Rules: RCW 39.19.120, and WAC 326-02-034

Website Link:

<http://omwbe.wa.gov/>

ATTACHMENT 10

Small Business Element

1. Objectives and Strategies

The goal of the Port of Seattle is to facilitate competition by small business, DBE and MWBE's concerns. This includes taking all reasonable steps to eliminate obstacles to participation in Port of Seattle contracting opportunities, and to assist in the development of firms so they can compete successfully in the marketplace within or outside the DBE Program.

The Port will use the following below strategies to accomplish the above stated goals:

- On contracts, where there are not DBE contract goals, the Port of Seattle will require the prime provide contracting opportunities that include work that DBEs, can reasonable perform, rather than self-performing all the work involved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE/SBE participation, even when the prime contractor might have the ability and otherwise prefer to perform these work items with its own forces.
- The Port has reviewed the issue of unnecessary and unjustified bundling of contracts, and has found that unbundling contracts may make sense where different disciplines or trades are involved in a single enterprise. For example, if a main contract included work performed by carpenters, electricians and cleaners, it probably makes sense to unbundle. In cases however where all the work is essentially in the same classification, the Port's experience has been that keeping the work under one prime provides not only greater efficiency of operation but also offers the best opportunities for increasing small business participation.
- The Port has concluded from this experience that it is ill-advised to adopt a blanket strategy of unbundling contracts; instead, the Port plans to consider unbundling contracts on a case-by case basis. Thus, when practical, on large scope contracts containing work involving different disciplines or trades, such contracts will be divided into potentially smaller contracting opportunities.

In addition, the Port will accomplish its goals by doing the following;

- Helping small businesses to better understand the Port's contracting and procurement opportunities.
- Championing the case for utilization of small businesses among Port departments and prime contractors.