



**Disadvantaged Business
Enterprise Program (DBE)
FAA/USDOT**

**SeaTac International Airport
FFYs 2023-2025**

**Port of Seattle
Economic Development Division
2711 Alaskan Way Seattle, WA 98121**

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Disadvantaged Business Enterprise (DBE) Program
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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 marketplace 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 the Port website and will appear in all bid specifications during the DOT/FAA fiscal year 2023-2025. 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

07/11/2022

Date

GENERAL REQUIREMENTS

Section 26.1 Objectives

The objectives of the DBE Program are to:

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 marketplace outside the DBE Program.
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.
9. Identify business enterprises that are qualified as DBEs and are qualified to provide the Port of Seattle the required materials, equipment, supplies and services; and to develop a good rapport with the owners and management of those business enterprises.
10. Develop communication programs and procedures that will acquaint prospective DBEs with Port of Seattle contract procedures, activities and requirements that allows DBEs to provide Port of Seattle feedback regarding existing barriers to participation and effective procedures to eliminate barriers.
11. Administer the DBE program in close coordination with the various Port of Seattle departments to facilitate the successful implementation of the program.
12. Foster participation by small businesses by implementing the strategies set forth in this DBE program
13. Promote the use of all types of DBEs.

Section 26.3 Applicability

Pursuant to 49 CFR Sections 26.3 and 26.1, the Port of Seattle is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.* is required to implement a DBE program in accordance with 49 CFR Part 26. The DBE program outlined herein applies to all Port of Seattle contracts that are funded, in whole or in part, by USDOT.

Section 26.5 Definition and Terms

The Port of Seattle will use terms in this program that have their meanings defined in Part 26, §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 its 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.

Each federally funded Port of Seattle contract, and each subcontract entered into by Contractors, will include the following statement (with revisions only to identify the appropriate party):

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 USDOT-assisted contract, which may result in the termination of this Contract or such other remedy as Port of Seattle deems appropriate as specified in the Contract.

Port of Seattle will obtain copies of the subcontracts and subconsultants agreements between Primes and Consultants to verify provisions as mandated in Port of Seattle general conditions and agreement language.

Section 26.11 Record Keeping Requirements

Reporting to DOT

The Port of Seattle will report DBE participation to USDOT as directed by the FAA. The Port of Seattle will transmit 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

Connect official reporting system, or another format acceptable to the FAA as instructed thereby.

Records Documenting DBE Compliance:

Pursuant to 49 CFR Section 26.11, the Port of Seattle will keep and retain records of on-site Commercially Useful Function reviews of DBEs for a minimum of three (3) years unless otherwise provided by applicable record retention requirements.

Bidders List

Pursuant to 49 CFR Section 26.11, the Port of Seattle will maintain a bidders list consisting of all firms bidding or proposing on prime contracts and bidding, proposing or quoting on subcontracts on federally-funded contracts. The purpose of the list is to provide data that is as accurate as possible 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 overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s):

- 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 attachment 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:

Assurance: Each financial assistance agreement the Port of Seattle signs with a DOT operating administration (or a primary recipient) 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.*).

Contract Assurance: The 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.

ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Port of Seattle 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 this DBE program and the Port of Seattle is in compliance. The Port of Seattle will continue to carry out this program until all funds from DOT financial assistance have been expended. The Port of Seattle does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However,

significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

The Policy Statement is elaborated on page 4 of this DBE Program.

Section 26.25 DBE Liaison Officer (DBELO) Responsibilities

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

Mr. Mian Rice
Director-Diversity in Contracting
2711 Alaskan Way Seattle Washington 98121
Phone: (206) 787-7951
E-mail: rice.m@portseattle.org

The DBE Liaison Officer is the primary person responsible for all aspects of this program. 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 provisions of 49 CFR Part 26.

The DBELO has direct, independent access to the Port of Seattle's Executive Director, Stephen Metruck concerning DBE program matters and an organizational chart displaying the DBELO's position in the organization is included in Appendix Section, Attachment 2 to this program.

The DBELO will work closely with Port of Seattle departments that are responsible for making decisions relative to the Port of Seattle's Contracts and Subcontracts, including but not limited to construction, professional and technical services, and goods or service purchase orders.

The DBELO has a staff of 2 to assist in the administration of the program. The duties and responsibilities include the following:

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.

3. Ensure non-discrimination in the award and administration of US DOT assisted contracts; identify contracts and procurements to ensure that DBE goals are included in solicitations and identify progress improvements.
4. Work with all departments to set overall three-year goal.
5. Advise staff and contractors/consultants on DBE matters, overall goal achievement and good faith effort requirements.
6. Partner with the Port of Seattle Legal Counsel, Central Procurement Office, and Project Managers to determine Contractor Compliance.
7. Plan and participate in DBE training seminars.
8. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
9. Explain the DBE participation requirements at Pre-Bid Conferences.
10. Ensure that solicitations contain the clauses and goals required by DBE 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 of Seattle's progress toward attainment and identify ways to improve progress.
14. Chair the DBE Advisory Committee.
15. Determine 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 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.
20. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
21. Participate in pre-bid meetings.
22. Advise the CEO/governing body on DBE matters and achievement.

Section 26.27 DBE Financial Institutions

Pursuant to 49 CFR section 26.27, the DBE Liaison Officer will explore the full extent of services offered by banks and other financial institutions that qualify as DBEs and are 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.

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, Pierce or Snohomish County area. The following NAICS Codes were used: 52111, Monetary Authorities-Central Bank, 52111, Commercial Bank, 52211, 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 of Seattle requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Port of Seattle established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from the Port of Seattle.

The Port of Seattle ensures prompt and full payment from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, The Port of Seattle has selected the following method below Option 2) to comply with this requirement per 49 CFR 26.29:

The Port of Seattle declines to hold retainage from prime contractors and requires a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

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.

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

To implement this measure, the Port of Seattle includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

90-06 Partial payments. Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, Payment for Materials on Hand. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars.

- a. No retainage will be held by the Owner from progress payments due the prime.
- b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial

payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

It is understood and agreed that the Contractor shall not be entitled to demand or receive partial payment based on quantities of work in excess of those provided in the proposal or covered by approved change orders or supplemental agreements, except when such excess quantities have been determined by the RPR to be a part of the final quantity for the item of work in question.

No partial payment shall bind the Owner to the acceptance of any materials or work in place as to quality or quantity. All partial payments are subject to correction at the time of final payment as provided in paragraph 90-09, Acceptance and Final Payment.

The Contractor shall deliver to the Owner a complete release of all claims for labor and material arising out of this contract before the final payment is made. If any subcontractor or supplier fails to furnish such a release in full, the Contractor may furnish a bond or other collateral satisfactory to the Owner to indemnify the Owner against any potential lien or other such claim. The bond or collateral shall include all costs, expenses, and attorney fees the Owner may be compelled to pay in discharging any such lien or claim.

Section 26.31 DBE Directory

The Port of Seattle is a *non-certifying* member of the Washington Unified Certification Program (UCP). Pursuant to 49 CFR section 26.31 and under the UCP, OMWBE maintains the DBE directory and is updated at least annually. The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

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 DBE directory will be available online at www.omwbe.wa.gov, as well as on request, to Contractors and the public. The OMWBE directory lists the firm's name, certification number, the type of work the firm

has been certified to perform as a DBE, utilizing the North American Industrial Classification System (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

Pursuant to 49 CFR Section 26.33, if the DBE Liaison Officer determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the participation of non-DBEs in that type of work, the DBE Liaison Officer will develop appropriate measures to address the overconcentration. The DBE Liaison Officer will seek the approval of the measures from the FAA. Once approved, will become part of this program.

At this present time, the Port of Seattle has not identified any types of work that have a burdensome overconcentration of DBE participation.

Section 26.35 Business Development Programs

The Port of Seattle has not established a Business Development Program.

The Port of Seattle provides contractor informational or technical assistance programs to assist DBEs and other small businesses. The Port of Seattle also refers DBEs and other small businesses to outside resources for assistance. This assistance may include, but is not limited to, general instruction and training in bid or proposal preparation, scheduling, estimating, procurement, insurance, and bonding required for the Port of Seattle. The contractor informational or technical assistance programs are not intended to direct the means or methods of performance of any contractual requirements by DBEs and small businesses. It is expected that DBEs and small businesses will perform these tasks themselves.

On an annual basis the DBELO will facilitate at least one vendor fair (such as Annual Regional Contracting Forum) for all DBEs and small businesses. In addition, the DBE

liaison officer will make available information on DBE certification, small business eligibility and DBE program requirements and procedures. These activities will include procedures on how to do business with the Port of Seattle and exploring best business practices. In addition, the Port of Seattle maintains a web site containing information regarding the DBE program and notices of contracting opportunities and an Outreach Calendar of events; and a small business resource guide to assist DBEs and other small businesses.

Section 26.37 Monitoring and Enforcement Mechanisms

The Port of Seattle will take the following monitoring and enforcement mechanisms to ensure Compliance with 49 CFR Part 26 DBE program requirements by all program participants, including prompt payment, and describe and set forth these mechanisms in the Port of Seattle's DBE program.

The Port of Seattle will also provide monitoring and enforcement mechanisms to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by conducting commercially useful function onsite verification interviews and confirming the DBE performs, manages, and supervises the subcontracted work and has responsibility for materials and supplies used in the DBEs subcontracted work.

The Port of Seattle will actively monitor 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 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 83 00 (Civil Rights, Title VI and Non-Discrimination).
- The Contractor shall maintain records and documents of payments to DBEs for 3 years following the performance of Contracts. These records will be available for inspection upon request by any authorized representative of Port

of Seattle or DOT. This reporting requirement will also extend to any certified DBE subcontractor.

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.

The Port of Seattle will perform routine 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. The 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;

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

- The Port of Seattle proactively reviews contract payments to subcontractors including DBEs on a monthly basis. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the Port of Seattle by the prime contractor.

Prompt Payment Dispute Resolution

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

Schedule meeting(s) to include 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.

The Port of Seattle has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment.

(1) Alternative dispute resolution (ADR): Port of Seattle will take the following steps to resolve disputes as to whether work has been satisfactorily completed for the 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.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

- 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;

Prompt Payment Complaints

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

- If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by the Port of Seattle 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.

Enforcement Actions for Noncompliance of Participants

- The Port of Seattle will provide appropriate means to enforce the requirements of §26.29. These means include: 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
- Other remedies for failure to comply

The Port of Seattle will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

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

The small business element is incorporated as Attachment 10 to this DBE Program Plan. The program elements will be actively implemented to foster small business participation. Implementation of the small business element is required 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), the Port of Seattle will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA-Civil Rights administrator.

FAA:

<https://faa.civilrightsconnect.com/FAA>

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 of Seattle will use a Disparity Study, OMWBE DBE Directory information and Census Bureau Data 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 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 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’s and general contractor

groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the efforts by the 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., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it will occur before the 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 on August 1st. The notice will be posted on the Port of Seattle official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by FAA, the revised goal will be posted on the official internet web site.

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

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

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

Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed as a percentage of funds for a particular grant or project or group of grants and/or projects, including the entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year

covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

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

Prior Operating Administration Concurrence

The Port of Seattle understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Port of Seattle for calculating goals is inadequate, FAA may, after consulting with the Port of Seattle, adjust the overall goal or require that the goal be adjusted by the Port of Seattle. 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 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 for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

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

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

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

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

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

Contract Goals

If the approved projection under paragraph (c) 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 meet the overall goal.

Contract 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-Contract Goals

Requirements of good faith efforts

The obligation of the Bidder/Proposer is to make good faith efforts. The Bidder/Proposer can demonstrate it has done so either by meeting the contract-specific goal or documenting good faith efforts to meet the goal. 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 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 meet the goal, to be regarded as Responsible. Failure of a Bidder/Proposer to meet the goal or document sufficient good faith efforts to do so shall result in Bid/Proposal not being considered for award of the Contract.

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. Examples of good faith efforts are found in Appendix A to Part 26.

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

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - (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.
 - (vi) If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (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.

Administrative reconsideration

Within 5 days of being informed by the Port of Seattle that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Luis Navarro, Workforce Development Director, 2711 Alaskan Way Seattle, Washington 98121, 206-787-7113, Navarro.l@portseattle.org. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts. 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 result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts procedural requirements (post-solicitation)

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

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

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE

- subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
 - (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
 - (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
 - (6) The Port of Seattle determined that the listed DBE subcontractor is not a responsible contractor;
 - (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Port of Seattle 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 [*Recipient*] has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to the Port of Seattle 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 Port of Seattle, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid/solicitation response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Port of

Seattle 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 of Seattle 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 of Seattle 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 of Seattle shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Section 26.55 Counting DBE Participation

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

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

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, 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 Certification Process

The Port of Seattle is a non-certifying member of the Washington Unified Certification Program (UCP). Washington UCP will use the certification standards of Subpart D of

Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. Certifying 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:

Washington State Office of Minority & Women's Business Enterprises
1110 Capital Way South, Suite 150 Olympia, Washington 98501
1-360-664-9750
1-360-585-7079
technicalassistance@omwbe.wa.gov

The Uniform Certification Application form and documentation requirements are found in Attachment 4 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Port of Seattle is the member of a Unified Certification Program (UCP) administered by Washington State Office of Minority & Women's Business Enterprises (OMWBE).

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 *Recipient*

The Port of Seattle understands that if it fails to comply with any requirement of this part, the Port of Seattle 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.

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

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be 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 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.

APPENDIX

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

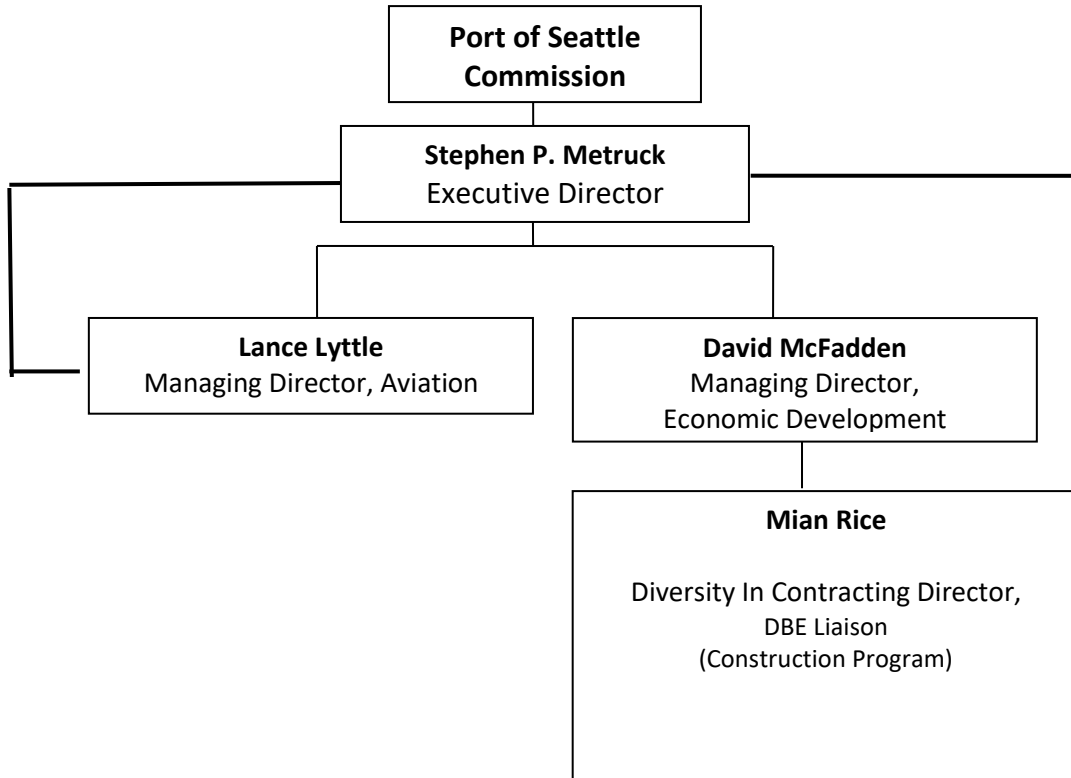
ATTACHMENT 1

Regulations: 49 CFR Part 26 website link

<https://www.ecfr.gov>

ATTACHMENT 2

2022 Port of Seattle Organization Chart



ATTACHMENT 3
Bidder's 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 the 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 3
Bidder's List Collection Form

DISADVANTAGED BUSINESS ENTERPRISE PROPOSAL FORM

Reference: Instructions to Bidders, paragraph IB-02.03

Project Name: _____

Bidder's Name, Address & Phone Number

Work Project: _____

Completion of this form is a part of the DBE requirement. List Certified DBE (s) firm(s) only. For **Joint Ventures or Partnerships**, list certified DBE(s) venture partner(s) only and the dollar value of the work to be performed by the certified DBE(s) partner(s) only. Please complete fully.

Businesses proposed to Fulfill The Disadvantaged Business Enterprise Requirement

Name/Address	Subcontractor, Supplier or Manufacturer	Contact Person	Phone No.	Type of Work	\$ Value

Total DBE: _____

Bidder Signature: _____ Date: _____

FOR POS USE ONLY

BID AMOUNT:

SUBMITTAL IS APPROVED:

\$ _____

DBE % OF BID: _____ %

DISAPPROVED:

SIGNATURE

DATE

ATTACHMENT 4

State of Washington Office of Minority & Women's Business Enterprises (OMWBE)
DBE Directory website link:

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

ATTACHMENT 5

2023-2025 GOAL METHODOLOGY SUBMITTED SEPARATELY

ATTACHMENT 6

Demonstration of Good Faith Efforts – Form

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

- Bidder/offeror has met the DBE contract goal
The bidder/offeror is committed to a minimum of ____ % DBE utilization on this contract.

- Bidder/offeror has not met the DBE contract goal
The bidder/offeror is committed to a minimum of ____% DBE utilization on this contract and has submitted documentation demonstrating good faith efforts.

Legal name of bidder/offeror’s firm: _____

Bidder/Offeror Representative:

Name & Title

Signature Date

FORM 2: LETTER OF INTENT

LETTER OF INTENT

Disadvantages Business Enterprise

(This page shall be submitted for each DBE firm)

Bidder/Offer Firm Name: _____
 Firm Address: _____
 City: _____ State: _____ Zip: _____

DBE Firm: DBE Firm Name: _____
 Firm Address: _____
 City: _____ State: _____ Zip: _____

DBE Contact: _____ **Phone:** _____

DBE Certifying Agency: _____ **Expiration Date:** _____
 (Each DBE firm shall submit evidence (such as photocopy) of their certification)

Classification: Prime Contractor Subcontractor Joint Venture
 Manufacturer Supplier

Work Item (s) to be performed by DBE	Description of Work	NAICS	Contract Amount

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

DBE Contract Amount: \$ _____ Percentage 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.

 [Signature] [Title] [Date]

In the event the Bidder/offeree does not receive award of the prime contract, any and all representation in this Letter of Intent and Affirmation shall be null and voided.

ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

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

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.

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

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

ATTACHMENT 8
DBE Certification Application Form

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.

Please see attached Application

ATTACHMENT 9
State's 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/>

1. Objective/Strategies

The goal of the Port of Seattle is to facilitate competition by small business, DBE and MWBEs. 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 to 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 reasonably 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.