



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

**SeaTac International
Airport**

**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

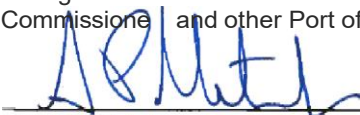
Port of Seattle (Port), owner of SeaTac Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Port of Seattle has received Federal financial assistance from the Department of Transportation, 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 2025-2027. This document shall 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

2/26/2025
Date

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 allow 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 Definitions

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

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.

Section 26.11 Data Collection and Reporting Requirements

Reporting to DOT

Port of Seattle will provide data about its DBE Program to the Department as directed by DOT and its operating administrations. DBE participation will be reported to the Federal Aviation Administration (FAA) as follows:

Port of Seattle will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Part 26. Port of Seattle will similarly report the required information about participating DBE firms. All reporting for this purpose will be done through the FAA’s designated reporting system.

Bidders List

Port of Seattle will collect bidders list information as described in § 26.11(c)(2) and enter it into the system designated by DOT. The purpose of the bidders list is to compile as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our federally assisted contracts for use in helping you set your overall goals, and to provide the Department with data for evaluating the extent to which the objectives of § 26.1 are being achieved.

Port of Seattle will obtain the following bidders list information about all DBE and non-DBEs who bid as prime contractors and subcontractors on each of our federally assisted contracts:

- Firm name
- Firm Address including Zip code
- Firm's status as a DBE or non-DBE
- Race and Sex information for the firm's majority owner
- NAICS code applicable to each scope of work the firm sought to perform in its bid
- Age of the firm
- Annual gross receipts of the firm. The gross receipts can be obtained by asking each firm to indicate into what gross receipts bracket they fit (e.g. less than \$1 million; \$1-3 million; \$3-6 million; \$6-10 million, etc.) rather than requesting an exact figure from the firm.

Port of Seattle will collect the data from all bidders for our federally assisted contracts by requiring the information in paragraph (c)(2) of this section to be submitted with their bids or initial responses to negotiated procurements.

Port of Seattle will enter this data in the Department's designated system no later than December 1 following the fiscal year in which the relevant contract was awarded.

In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to § 26.53(e), Port of Seattle will enter the data no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

Port of Seattle will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, Port of Seattle will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of Port of Seattle financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Assurances Recipients and Contractors Must Make

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

Assurance: Each financial assistance agreement 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.*).

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: 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

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.

Port of Seattle is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and Port of Seattle is in compliance with it and Part 26. Port of Seattle will continue to carry out this program until all funds from DOT financial assistance have been expended. 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 to the relevant operating administration for 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)

The following individual has been designated as the DBE Liaison Officer for 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

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 provision 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. An organizational chart displaying the DBELO's position in the organization is included in Attachment 2 to this program.

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

It is the policy of 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-assisted contracts to make use of these institutions. Availability of such institutions will be investigated on an annual basis.

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

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. Prompt payment and return of retainage requirements also apply to lower-tier subcontractors.

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.

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

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

For every airport construction project funded under Federal grant assistance

programs, Port of Seattle includes the applicable clause from FAA Advisory Circular 150/5370-10 (Section 90-06) pertaining to the selected retainage method. The applicable clause will be included verbatim. However, if state or local prompt payment laws provide for payment in less than 30 days, any reference to “30 days” will be revised accordingly.

Prompt Payment Monitoring for DBEs and Non-DBEs

Port of Seattle clearly understands and acknowledges that reliance on complaints or notifications from subcontractors about a contractor’s failure to comply with prompt payment and retainage requirements is not a sufficient monitoring and oversight mechanism. Therefore, Port of Seattle undertakes proactive monitoring and oversight of prime contractors’ compliance with subcontractor prompt payment and return of retainage requirements of 49 CFR Part 26. Such monitoring activities will be accomplished through the following method(s):

- Contractor Data (CDS) automated system that requires real time entry of payments to, and receipts by, prime contractors and subcontractors and regularly monitoring that system

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 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 on a monthly basis. 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 Dispute Resolution

Port of Seattle will take the following steps to resolve disputes as to whether timely prompt payment and retainage releases are being made as required by § 26.29.

- 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.

Port of Seattle has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

➤ Alternative dispute resolution (ADR)

The Port of Seattle will provide appropriate means to enforce the requirements of §26.29. These means include advising 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

Prompt Payment (§26.29)- The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 days from the receipt of each payment the prime contractor receives from Port of Seattle. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Port of Seattle. This clause applies to both DBE and non-DBE subcontractors.

(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.

Prompt Payment Complaints

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

- If the 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 Port of Seattle to resolve prompt payment disputes, the 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

Port of Seattle provides appropriate means to enforce the requirements of § 26.29. These means include:

- 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.

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

Section 26.31 Directory of Certified Firms

Port of Seattle is a non-certifying member of the Washington Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs and/or ACDBEs, and it contains all the elements required by §26.31. The directory lists all firms eligible to participate as a DBE and/or ACDBE in the program. In the listing for each firm, the UCP directory includes the following details about the firm:

- Business address

- Business phone number
- Firm website(s)
- The types of work the firm has been certified to perform as a DBE and/or ACDBE.
- The type of work a DBE and/or ACDBE is eligible to perform is listed by using the most specific NAICS code available to describe each type of work the firm performs. Pursuant to § 26.81(n)(1) and (3), the UCP directory allows NAICS codes to be supplemented with specific descriptions of the type(s) of work the firm performs.
- The UCP directory may include additional data fields of other items readily verifiable in State or locally maintained databases, such as State licenses held, Pre-qualifications, and Bonding capacity.
- The UCP directory is an online system that permits the public to search and/or filter for DBEs by:
 1. Physical location
 2. NAICS code(s)
 3. Work descriptions
 4. All additional data fields of readily verifiable optional information described above.

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

The directory includes a prominently displayed disclaimer that states the information within the directory is not a guarantee of the DBE's capacity and ability to perform work.

Section 26.33 Over-concentration

Port of Seattle has not identified that over-concentration exists in the types of work that DBEs perform. 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 approval of the measures from the FAA. Once approved, will become part of this program.

Section 26.35 Business Development and Mentor-Protégé Programs

Port of Seattle has not established a Business Development Program or a Mentor-Protégé Program as described by 49 CFR Part 26. 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 Responsibilities

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

Port of Seattle actively monitors attainment toward overall goals by maintaining running tally that provides for a frequent comparison of cumulative DBE awards/commitments to DOT-assisted prime contract awards to determine whether our implementation of contract goals is projected to be sufficient to meet the annual goal. The running tally tracking report for overall goal monitoring will be maintained by Diversity in Contracting DBE program staff

and will be updated on a monthly basis per the payments made to the Prime and the subcontractors confirmed via submittals made to the Contractor Data System (CDS) and tracked in an excel spreadsheet. This mechanism to maintain a running tally of overall goal attainment will be used to inform Port of Seattle decisions to implement goals on contracts to be advertised, according to our established contract goal-setting process.

Port of Seattle actively monitors participation with respect to each DBE commitment by using a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor. The running tally for contract goal monitoring will be maintained by the running tally for contract goal monitoring will be maintained by Diversity in Contracting DBE program staff and will be updated on a monthly basis per the payments made to the Prime and the subcontractors confirmed. These contract-specific running tallies will be used to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to § 26.53(g).

Monitoring Contracts and Work Sites

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, and such work is counted according to the requirements of §26.55. Work site monitoring for counting and commercially useful function review is performed by DBE Contract Compliance Specialist and/or DBE Manager. Contracting records are reviewed by DBE Contract Compliance Specialist and/or DBE Manager. Port of Seattle will maintain written certification that contracting records have been reviewed and work sites have been monitored to ensure the counting of each DBE's participation is consistent with its function on the contract.

Section 26.39 Fostering Small Business Participation

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. The program elements will be actively implemented to foster small business participation. Port of Seattle acknowledges that implementation of the small business element is required for us to be considered by DOT as implementing our DBE program in good faith.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

Port of Seattle does not use quotas or race-conscious set-asides in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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 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 FAA.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If 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 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. Port of Seattle will use Disparity Study, OMWBE DBE Directory information that complies with §26.45 as a method to determine the base figure. 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. 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 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 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 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 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, 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 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 Port of Seattle 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 Port of Seattle. This notice will provide that Port of Seattle 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) and the location(s) where the proposed goal may be reviewed. The public comment period will not extend the August 1st deadline.

The Overall Three-Year DBE Goal submission to FAA will include any information and comments received, who provided the comment, and how Port of Seattle considered and responded to any comments and information received before finalizing the goal.

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, 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 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 it must meet all the substantive and procedural requirements 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.

Prior Operating Administration Concurrence

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 Port of Seattle for calculating goals is inadequate, FAA may, after consulting with Port of Seattle, adjust the overall goal or require that the goal be adjusted by 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

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.

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.

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

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.

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 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.

The DBE Liaison Officer is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as Responsible.

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 recipient, at the time provided in paragraph (3) of this section:
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. 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;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. 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. Each DBE listed to perform work as a regular

dealer or distributor must confirm its participation according to the requirements of § 26.53 (c)(1).

- f. 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;
- (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, such as a procurement for professional services, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by Port of Seattle. This paragraph (b)(3)(ii) does not apply to a design-build procurement, which must follow the provisions in paragraph (e) of 49 CFR § 26.53.

For each DBE listed as a regular dealer or distributor Port of Seattle will make a preliminary counting determination to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in §§ 26.55(e)(2)(iv)(A), (B), (C), and (3) under the contract at issue. The preliminary determination will be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. Where the DBE supplier does not affirm that its participation will meet the specific requirements of either a regular dealer or distributor, Port of Seattle will make appropriate adjustments in counting such participation toward the bidder's good faith efforts to meet the contract goal. The bidder is responsible for verifying that the information provided by the DBE supplier is consistent with the counting of such participation toward the contract goal.

In a design-build contracting situation, in which Port of Seattle solicits proposals to design and build a project with minimal project details at time of letting, Port of Seattle may set a DBE goal that proposers must meet by submitting a DBE Open-Ended DBE Performance Plan (OEPP) with the proposal. The OEPP replaces the requirement to provide the information required in paragraph (b) of § 26.53(b). To be considered responsive, the OEPP must include a commitment to meet the goal and provide details of the types of subcontracting work or services (with projected dollar amounts) that the proposer will solicit DBEs to perform. The OEPP must include an estimated time frame in which actual DBE subcontracts would be executed. Once the design-build contract is awarded, Port of Seattle will provide ongoing monitoring and oversight to evaluate whether the design-builder is using good faith efforts to comply with the OEPP and schedule. Port of Seattle and the design-builder may agree to make written revisions of the OEPP throughout the life of the project, e.g., replacing the type of work items the design-builder will solicit DBEs to perform and/or adjusting the proposed schedule, as long as the design-builder continues to use good faith efforts to meet the goal.

Port of Seattle will apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, Port of Seattle will count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Administrative Reconsideration of Good Faith Efforts determinations

Within **5** days of being informed by 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: **Janice Zahn, Pier 69, 2711 Alaskan Way, Seattle, WA 98121, 206-388-8584, zahn.j@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 to do so. 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/award)

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

Port of Seattle will require the awarded contractor 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.

Port of Seattle will require that a prime contractor not terminate a DBE or any portion of its work listed in response to § 26.53(b)(2) (or an approved substitute DBE firm per § 26.53(g)) without our prior written consent, unless Port of Seattle causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This requirement applies to instances that include but are not limited to: when a prime contractor seeks to perform work originally designed for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

Port of Seattle will include in each prime contract a provision stating that:

- (1) The contractor must utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains Port of Seattle written consent as provided in § 26.53(f); and
- (2) Unless Port of Seattle consent is provided under § 26.53(f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Port of Seattle may provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the listed DBE or any portion of its work. Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that is 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. For purposes of § 26.53(f)(3), 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, nondiscriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit worthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR parts 180, 215, and 1200 or applicable state law;
- (6) Port of Seattle has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides to 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; and
- (10) Other documented good cause that Port of Seattle determines compels the termination of the DBE subcontractor;

Before transmitting to Port of Seattle the request to terminate a DBE subcontractor or any portion of its work, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to Port of Seattle sent concurrently, of its intent to request to terminate and the reason for the proposed request.

The prime contractor's written notice must give the DBE five (5) days to respond, advising Port of Seattle and the prime contractor of the reasons, if any, why it objects to the proposed termination of its subcontract or portion thereof and why Port of Seattle should not approve the prime contractor's request. If required in a particular case as a matter of public necessity (e.g., safety), Port of Seattle may provide a response period shorter than five (5) days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or changes to DBEs or their listed work put forward by offerors in negotiated procurements.

When a DBE subcontractor or a portion of its work is terminated by the prime contractor as provided in § 26.53(f), or if work committed to a DBE is reduced due to overestimations made prior to award, the prime contractor must use good faith efforts to include additional DBE participation to the extent needed to meet the contract goal. The good faith efforts shall be documented by the contractor. If Port of Seattle requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days, if necessary, at the request of the contractor. Port of Seattle shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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).

For FAA-funded projects **only**, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and may be counted for DBE credit toward overall and contract goals on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Port of Seattle is a non-certifying member of the Washington Unified Certification Program (UCP) and relies upon the UCP's determinations of certification eligibility. 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, Personal Net Worth statement, and documentation requirements can be reviewed at <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/ready-apply>. The Uniform Certification Application form and documentation requirements are found in Attachment 4 to this program.

SUBPART E – CERTIFICATION PROCEDURES

Any procedures included here are highlights only. Detailed certification procedures are enumerated in the full Washington State UCP agreement. The full UCP agreement can be found on the following [Office of Minority and Women's Business Enterprises | \(wa.gov\)](#) link to the website.

Section 26.81 Unified Certification Programs

Port of Seattle is a member of a Unified Certification Program (UCP) administered by **Washington State Office of Minority & Women's Business Enterprises**. The UCP will meet all certification standards and procedures requirements of Subparts D and E of Part 26.

Section 26.91 Actions Following DOT Certification Appeal Decisions

If Port of Seattle is a certifier to which a DOT determination under § 26.89 is applicable, we will take any and all required action(s) pursuant to § 26.91.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Port of Seattle

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

Port of Seattle understands that, as provided in statute, it will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because it has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

Section 26.103 Enforcement Actions Applicable to FHWA and FTA Programs

The provisions of this section apply to enforcement actions under FHWA and FTA programs. Paragraph 2 of this section is also applicable in FAA programs.

- The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

Section 26.105 Enforcement Actions Applicable to FAA Programs

Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

Section 26.107 Enforcement Actions Applicable to Participating Firms

If a firm that does not meet the eligibility criteria of subpart D of this part attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

The Department may take enforcement action under [49 CFR Part 31](#), Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under [49 CFR part 31](#).

The Department may refer to the Department of Justice, for prosecution under [18 U.S.C. 1001](#) or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

Section 26.109 Confidentiality, Cooperation, and Intimidation or Retaliation

In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal 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 a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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. Port of Seattle understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

Attachment 1 Regulations: Link to 49 CFR Part 26 (eCFR)

Attachment 2 Organizational Chart

Attachment 3 Bidder's List Collection Form

Attachment 4 Disadvantaged Business Enterprise Proposal Form

Attachment 5 State of Washington Office of Minority & Women's Business Enterprises (OMWBE) DBE Directory website

Attachment 6 Overall Goal Methodology

Attachment 7 Demonstration of Good Faith Efforts Forms

Attachment 8 DBE Monitoring and Enforcement Mechanisms

Attachment 9 Link to Certification Application Form and Personal Net Worth Statement

Attachment 10 State's UCP Agreement or Link to State's UCP Agreement

Attachment 11 Small Business Element Program

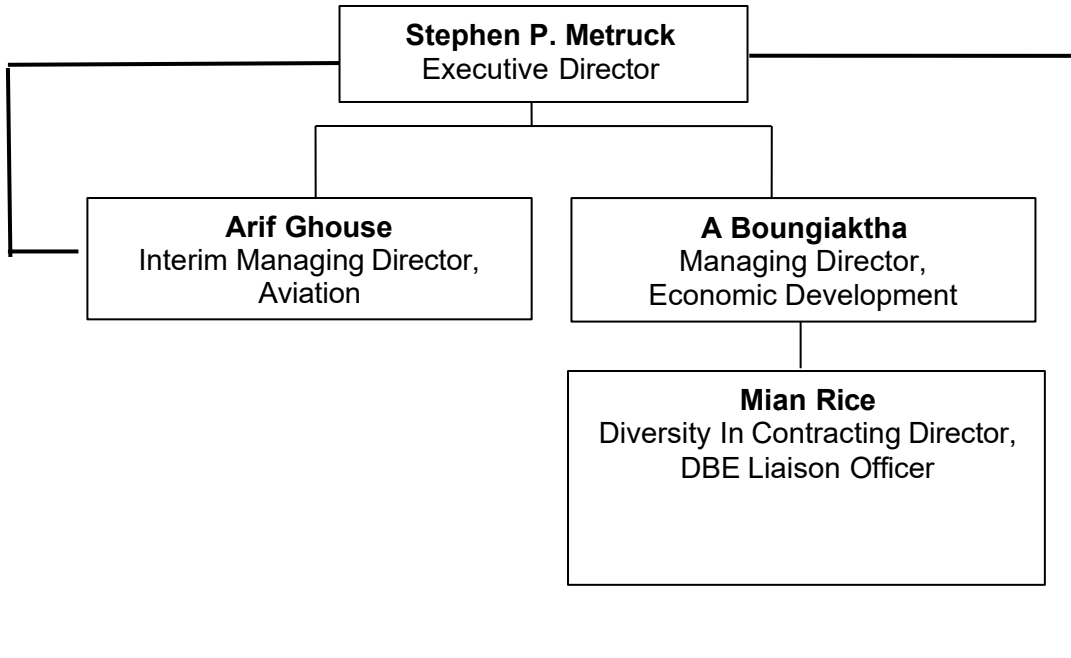
ATTACHMENT 1

DBE program regulations are codified in Title 49 of the Code of Federal Regulations, Part 26. They can be retrieved using the following link to the Electronic Code of Federal Regulations:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26>

ATTACHMENT 2

PORT OF SEATTLE ORGANIZATIONAL CHART



ATTACHMENT 4
Disadvantaged Business Enterprise Proposal 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 5

State of Washington Office of Minority & Women's Business Enterprises (OMWBE)
UCP Directory may be found here:

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

ATTACHMENT 6

2023-2025 GOAL METHODOLOGY SUBMITTED SEPERATELY

ATTACHMENT 7

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

Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.

(This page shall be submitted for each DBE firm)

Name of bidder/offeror's firm: _____

Name & title of firm's AR: _____

Phone: _____ Email: _____

Name of DBE firm: _____

Name & title of DBE firm's AR: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone: _____ Email: _____

Work to be performed by DBE firm:

Description of Work	NAICS	Dollar Amount / %*	Manufacturer/Regular Dealer/Distributor/Broker**

*Percentage is to be used only in negotiated procurements

**For DBE suppliers only, state how the DBE will perform. For dealer/distributor/broker, Form 3 must be included.

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ _____. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

Signature of Bidder/Offeror's Authorized Representative

Date: _____

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation, therefore.

Signature of DBE's Authorized Representative

Date: _____

FORM 3: DBE REGULAR DEALER/DISTRIBUTOR FORM

OMB Approval Pending 04/17/2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(v)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:

Total Subcontract/Purchase Order Amount:

Authorized DBE Representative (Name and Title):

NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)

b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory?

☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a), and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3, to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate?

☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacture's facility)? ☐ YES² ☐ NO³

a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:

ATTACHMENT 8

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
- Prosecution pursuant to 18 USC 1001.

ATTACHMENT 9
DBE Certification Application Form

DBE Certification Application Form and Personal Net Worth Statement:

[Washington State Office of Minority & Women's Business Enterprises Certification Management System \(diversitycompliance.com\)](http://diversitycompliance.com)

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 10
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/>

Memorandum of Understanding

I *Between*

**THE WASHINGTON STATE
OFFICE OF MINORITY AND WOMEN'S BUSINESS ENTERPRISES**
and
Port of Seattle
and
WASHINGTON STATE DEPARTMENT OF TRANSPORTATION
for the
**STATE OF WASHINGTON
UNIFIED CERTIFICATION PROGRAM**

This Memorandum of Understanding for participation in the State of Washington Unified Certification Program (UCP) is between the **Port of Seattle (POS)** and the State of Washington, through its Office of Minority and Women's Business Enterprises (OMWBE) and ITS Department of Transportation (WSDOT) and is effective as of the date of the last signatory hereto.

WITNESSETH:

WHEREAS, the Undersigned are recipients of funding and assistance programs administered by the U.S. Department of Transportation (USDOT) and its operational modal, the Federal Aviation Administration (FAA), in the state of Washington;

WHEREAS, Washington State Office of Minority and Women's Business Enterprises (OMWBE) performs certification following the regulations in 49 Code of Federal Regulations (CFR) Part 26;

WHEREAS, 49 CFR 26.81 requires all USDOT recipients in each state to participate in a Unified Certification Program (UCP);

WHEREAS, Chapter 39.19.120 Revised Code of Washington (RCW) designates OMWBE as the exclusive authority for certification of minority, women, and socially and economically disadvantaged business enterprises for all programs administered by the state of Washington, any city, town, county, special purpose district, public corporation created by the state, municipal corporation, or quasi-municipal corporation within the state of Washington; and

In Consideration of the foregoing recitals, the Undersigned agree as follows:

1. Representation of Accountability

The Washington State Department of Transportation (WSDOT) and OMWBE represent that WSDOT is ultimately accountable and responsible to USDOT for Disadvantaged Business Enterprise (DBE) Certification in the state of Washington and is therefore a necessary signatory to this agreement.

*Memorandum of Understanding - UCP
OMWBE/ Port of Seattle (POS)/WSDOT
Page 1 of 4*

2. Acknowledgement and Acceptance of Unified Certification Program

Port of Seattle (POS) agrees to participate in a UCP, as required by 49 CFR Part 26.

3. Designation of Exclusive Certifying Authority; Binding Effect

Port of Seattle (POS) agrees as follows:

3.1 OMWBE is now, and shall continue to be the sole and exclusive certification authority for participation in the USDOT DBE Program in the state of Washington in accordance with 49 CFR Part 26 and Chapter 39.19 RCW.

3.2 Final certification determinations made by OMWBE shall be binding and have the full force and effect of law as may be provided by 49 CFR Part 26.

3.3 Only final certification determinations issued by OMWBE prior to the due date for bids or offers on a contract which a firm seeks to participate as a DBE shall be recognized for purposes of award.

4. Notification Responsibilities of the Parties

Each party to this agreement agrees to notify the other parties of all regulatory changes, interpretations and other communications affecting the operation, duties, and/or responsibilities of each party under this agreement.

5. Duties and Responsibilities of OMWBE

In its capacity as the sole and exclusive certification authority in the state of Washington, it is acknowledged that OMWBE shall perform the following duties and have the following responsibilities:

5.1 Comply with and follow all certification standards and nondiscrimination requirements of 49 CFR Part 26, as may be approved from time to time, including without limitation, implementation of all USDOT directives and guidance concerning certification matters.

5.2 Only process applications for certification from firms with principal places of business outside the state of Washington if such firms have received certification determinations from the designated UCPs of the states in which the firms maintain principal places of business.

5.3 Issue administratively final determinations to certify, recertify or remove a firm based upon applications submitted to it for certification and recertification, appeals, third party challenges, ineligibility complaints, recipient-initiated proceedings, and USDOT directives.

5.4 Share information and documents concerning firms certified in the state of

*Memorandum of Understanding - UCP
OMWBE/ **Port of Seattle (POS)**/WSDOT
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IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the last date of all the signatories appearing here below.

ACCEPTED:

Washington State Office of Minority and Women's Business Enterprises

BY: *Sarah Erdmann*
Sarah Erdmann (Nov 5, 2024 10:17 PST)
Sarah Erdmann
Acting Director

Date: Nov 5, 2024

Approved as to Form:

Sharon James
Sharon James (Nov 7, 2024 08:30 PST)
Assistant Attorney General
State of Washington

PORT OF SEATTLE (POS)

BY: *APMETL*
Stephen Metruck
Executive Director

Date: Nov 12, 2024

Approved as to Form (if required):

Legal Counsel

Washington State Department of Transportation

BY: *R. Millar*
Roger Millar
Secretary

Date: Nov 13, 2024

Approved as to Form:

Albert Wang
Albert Wang (Nov 13, 2024 13:45 PST)
Assistant Attorney General
State of Washington

ATTACHMENT 11

Small Business Element

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 of Seattle administers a Race Neutral program under the Small Business Element and defines a Small Business as an overall business that fits within the Small Business Administration size standards.

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 contractor.