

**Oregon Department of Transportation**  
**Policy Statement**  
**Disadvantaged Business Enterprise (DBE) Program**

The Oregon Department of Transportation (ODOT) is committed to a Civil Rights Program for the participation of Disadvantaged Business Enterprises (DBEs) in ODOT contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective March 4, 1999.

It is the policy of ODOT to ensure nondiscrimination on the basis of race, color, sex or national origin in the award and administration of the U.S. Department of Transportation (U.S. DOT) assisted contracts. The intention of ODOT is to create an equitable environment in which DBEs can compete fairly for contracts and subcontracts relating to the procurement, contracting and professional service activities of U.S. DOT assisted work.

The Director of ODOT is responsible for establishing the DBE policy for the department. The Manager of the Office of Civil Rights, in coordination with all ODOT personnel, is responsible for the development, implementation and monitoring of the DBE Program for contracts in accordance with the ODOT's nondiscrimination policy. It is the expectation of the Director that all ODOT personnel shall adhere to the intent, as well as the provisions and procedures of the DBE Program.

This Policy will be circulated to all ODOT personnel involved with U.S. DOT assisted work and to members of the community that perform or are interested in performing work on such ODOT contracts. The complete DBE Program for contracts and the overall annual DBE goals analysis are available for review at the:

Office of Civil Rights  
ODOT  
800 Airport Road SE  
Salem, Oregon 97310

If you have any questions or would like further information regarding this program, please contact the Office of Civil Rights Manager, Amanda Vallejo, by telephone at (503) 986-5753, by fax at (503) 986-6382, or by e-mail at [amanda.vallejo@odot.state.or.us](mailto:amanda.vallejo@odot.state.or.us).

Date: 09/08/1999

(Signature on File)

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Grace Crunican  
Director  
Oregon Department of Transportation

## **1.0 Program Policy, Purpose, Scope and Authority**

### **1.1 Policy**

The Oregon Department of Transportation (ODOT) is committed to a Civil Rights Program for the participation of Disadvantaged Business Enterprises (DBEs) in ODOT contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, Effective March 4, 1999.

It is the policy of the Department to practice nondiscrimination on the basis of race, color, sex, and/or national origin in the award and administration of the U.S. Department of Transportation (U.S. DOT) assisted contracts. The intention of the ODOT is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Department's highway construction, procurement, and professional service activities.

The Director of Transportation is responsible for establishing the DBE policy for the Department. The Executive Deputy Director of Transportation Operations is responsible to ensure adherence to this policy. The Manager of the Office of Civil Rights, in coordination with all Department Officers, Division Managers, District Managers, and Contracting and Buying Staff, is responsible for the development, implementation and monitoring of the DBE Program for contracts in accordance with the Department's nondiscrimination policy. It is the expectation of the Director that all ODOT personnel shall adhere to the spirit, as well as the provisions and procedures, of the DBE Program.

This Policy will be circulated to all ODOT personnel and to members of the community that perform or are interested in performing work on ODOT contracts. The complete DBE Program for contracts and the overall annual DBE goals analysis are available for review at the:

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Salem, Oregon 97310**

### **1.2 Purpose**

The ODOT's Disadvantaged Business Enterprise (DBE) Program seeks to achieve the following:

- Ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts;
- Create a level playing field on which DBEs can compete fairly for U.S. DOT assisted contracts;
- Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- Ensure that only firms that fully meet 49 CFR 26 eligibility standards are permitted to participate as DBEs;
- Help remove barriers to the participation of DBEs in U.S. DOT assisted contracts; and
- Assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

This program plan also provides guidelines for management, to implement 49 CFR part 26, and to provide assurance to the US Department of Transportation (US DOT) that ODOT complies with federal mandates regarding the Assistance Program for DBEs.

### **1.3 Prohibited Discrimination**

The ODOT shall not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex and national origin. The ODOT shall 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 objective of this program with respect to individuals of a particular race, color, sex and national origin.

### **1.4 Scope**

This program applies to all US DOT financial assistance where the Oregon Department of Transportation (ODOT) expends federal-aid highway funds authorized under Titles I (other than Part B) and V of the Inter-modal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), Pub. L. 105-178, 112 Stat. 107, and Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

### **1.5 Authority and Applicable Laws**

The US DOT Regulations (49 CFR Part 26) ([Exhibit A](#)) published in the Federal Register, effective March 4, 1999, established a requirement that all recipients of U.S. DOT funds establish a Disadvantaged Business Enterprise Program. The regulations are applicable both to ODOT's Federal-aid construction and to its non-construction activities.

The US DOT's legal authority for its DBE regulations includes Executive Order 11625 (October 13, 1971), which required that federal executive agencies develop comprehensive plans and programs to encourage minority business participation. US DOT requires ODOT to establish a DBE Program as a condition for receiving US DOT federal funds.

Title VI, Civil Rights Act of 1964. This Act concerns non-discrimination in federally assisted programs or activities on the grounds of race, color, sex or national origin.

The Program is also subject to the following laws: Section 30 of the Airport and Airway Development Act of 1970 and Section 520 of the Airport and Airway Improvement Act of 1982, as amended by the Airport and Airway Safety Capacity Expansion Act of 1987; Section 905 of the Railroad Act of 1978 (45 USC 903); and Section 19 of the Urban Mass Transportation Act of 1964, as amended (Public Law 95-599).

### **1.6 Program Elements**

Recipients of U.S. DOT funds are required to adopt DBE Programs, which contain the elements listed in "a." through "l" below. The authority (federal regulation) for each required element, and

<i>Program Element</i>	<i>Authority</i>	<i>Section(s)</i>
a. A Policy statement expressing a commitment to use DBEs in all aspects of contracting.	§26.1	1.1
b. Designation of a liaison officer and a description of the authority, responsibility, and duties of the liaison officer and support staff.	§26.25	2.1.2
c. Procedures to ensure that DBEs have an equitable opportunity to compete for contracts and subcontracts.	§26.51	4.2
d. A DBE Directory or source list to facilitate identifying DBEs with capabilities relevant to specific contract opportunities.	§26.31	4.2.1 C
e. Procedures to ascertain the eligibility of DBEs	Subpart D	6.0
f. Percentage goals for the dollar value of products and/or services to be awarded to DBEs, including the methodology for developing annual race neutral/race conscious goals.	§26.45	3.0
g. Procedures to require competitors of contracts with DBE goals be committed to meeting the goal or satisfying the recipient that they made good faith efforts to meet the goal.	§26.51	4.2.2 B
h. Challenge procedures	§26.87	6.4.8
i. Counting DBE participation towards meeting goals.	§26.55	4.2.3
j. Maintenance of records and reports.	§26.11	7.0
k. DBE Financial Institutions	§26.13(a)	1.7
l. Definition of terms	§26.5	1.8

### **1.7 DBE Financial Institutions**

It is the policy of the ODOT 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 uses these institutions, and to encourage prime contractors on U.S. DOT assisted contracts to make use of these institutions. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **1.8 Definition of Terms**

The terms used in this program have the meanings defined in 49 CFR 26.5.

## **2.0 Program Responsibilities**

### **2.1 Oregon Department of Transportation (ODO7)**

As a recipient of U.S. DOT financial assistance, ODOT is required to implement a DBE program per the requirements of 49 CFR 26. As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged persons are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with federal regulations in ascertaining the eligibility of applicant firms seeking participation in the program.

The ODOT Office of Civil Rights is also responsible for establishing a minimum expected participation goal and determining credit towards meeting the assigned DBE participation goal on federally assisted contracts the department awards. Credit will be allowed for utilization of firms certified as DBEs only.

#### **2.1.1 ODOT Office of Civil Rights (OCR)**

The Manager of OCR serves as the DBE Liaison Officer, and is delegated by the Director the responsibility of developing and implementing policy and directing the DBE Program, ([Exhibit D](#)). The OCR Manager, who reports to the Executive Deputy Director, has responsibility for the day-to-day operation of the DBE Program. Organization charts are attached as [Exhibits B](#) and [C](#).

##### **A. DBE Program Coordinator**

The DBE Program Coordinator develops and implements program functions based on federal rules and regulations to provide opportunities for DBEs. The position establishes the overall annual ODOT goal, identifies contracts for DBE goal evaluation, monitors and evaluates contractual progress of DBE contractors, gathers and reports statistical data, and other information as required by the Federal Highway Administration.

Additionally, this position provides technical assistance and advice to the project management teams who perform contract administration and compliance in accordance with 49 CFR 26. This position assists in the design, monitoring, training, evaluation, and reporting of the DBE program consistent with current federal laws. The program coordinator will recommend actions to be taken by project management staff in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. This position reports directly to the Manager of the Office of Civil Rights.

##### **B. OCR Field Representatives**

The Field Representatives provide technical assistance and advice to the project management teams who perform contract administration and compliance in accordance with 49 CFR 26. This position assists in the design, monitoring, training, evaluation and reporting of the DBE program consistent with current federal laws. The representative will recommend actions to be taken by project management staff in conducting reviews and investigations to assure contractor compliance with DBE contract requirements. This position reports directly to the Manager of the Office of Civil Rights.

C. DBE Supportive Services Provider

Contingent upon availability of Federal Highway Administration supportive services funds, ODOT will provide supportive services through consultant contractors to DBEs who are interested in participating in highway construction projects. The purpose of supportive services is to increase the number of DBE owned firms participating in highway construction projects and to contribute to the growth and eventual self-sufficiency of these DBE firms.

A Request For Proposal (RFP) describing the desired program will be advertised through Program Services. Established criteria will be used to select qualified proposals. A selection committee composed of industry representatives and other interested parties will review and grade each proposal based upon the written material and a formal interview of the competing consultant. The selection committee will make recommendations to the Civil Rights Manager.

## **2.2 Sub-recipients**

All sub-recipients that let U.S. DOT assisted contracts must follow the requirements of 49 CFR Part 26, Sections 26.3, 26.13 (including insertion of DBE clauses in grant agreements and contracts) and 23.21. Whenever a sub-recipient is covered by 49 CFR Part 26 in its own right, the sub-recipient has the responsibility to take all steps necessary to carry out all applicable parts of the regulation. The sub-recipients will develop a DBE Program where required by federal law, or endorse and abide by ODOT's DBE Program. ODOT will make an effort to ensure the sub-recipients comply with all requirements. An agreement will be executed with sub-recipients which will bind sub-recipients to place appropriate DBE clauses in federally assisted contracts and to devise an appropriate DBE Program covering those contracts where required.

Upon FHWA approval of the ODOT DBE Program document, or approval of any changes to the document, all sub-recipients shall be notified in writing by ODOT that they must either adopt said document or prepare their own and submit it to ODOT for approval within a reasonable time period.

### **2.2.1 Sub-recipient Adoption of FHWA Approved ODOT DBE Program Document**

Sub-recipient selecting to adopt the ODOT program document shall submit to ODOT written confirmation of such action duly signed by the appropriate executive officer having legal authority to obligate the sub-recipient.

ODOT will conduct an annual review of all sub-recipients having adopted the ODOT document to ensure program compliance prior to submitting its annual update to FHWA. ODOT's annual updates shall include a status statement regarding sub-recipients' performance and compliance with the ODOT program document.

ODOT shall provide sub-recipients written notice of all document amendments. Sub-recipients shall provide written confirmation of adoption and incorporation of such amendments. Sub-recipients will be required to submit quarterly updates to ODOT reflecting program activities for the reporting period.

### **2.2.2 Sub-recipient Preparation/Submission of Program Document to ODOT for Approval.**

Sub-recipients selecting to prepare their own program documents shall submit said documents to ODOT for review and approval, signed by the appropriate executive officer. Once approved by ODOT, the sub-recipient's document will be forwarded to FHWA for concurrence. ODOT shall provide written notice to sub-recipient of document deficiencies to be corrected prior to approval.

ODOT will conduct an annual review of all sub-recipients having their own program document to ensure program compliance prior to submitting its annual update to FHWA. ODOT's annual updates shall include a status statement regarding sub-recipients' performance and compliance with their program documents.

After approval of the document by ODOT, sub-recipients shall submit written requests to ODOT for approval of all proposed amendments. Sub-recipients will be required to submit annual updates to ODOT reflecting program activities for the reporting period.

### **2.3 Other Support Personnel**

Personnel from other departments share the responsibility for ensuring the effective implementation of the DBE Program. They shall give full cooperation and active support to the OCR and designees in this effort. Supervisors, as part of their task and standards, shall evaluate their performance in this area.

#### **2.3.1 Contract Administrative/Project Management Staff**

- A. Provide OCR with draft scopes of work/specifications for projects and RFPs to enable goal setting. Outreach to DBEs and, where applicable, development of appropriate DBE language.
- B. Provide the OCR with copies of all final IFBs, RFPs, mailing lists, and advance notices.
- C. Incorporate DBE goal and appropriate DBE language into IFBs and RFPs.
- D. Inform the OCR of any changes to IFBs or RFPs.
- E. Forward Copies of bids to the OCR for evaluation of compliance with DBE requirements.
- F. Allocate appropriate resources to participate with OCR staff at major trade fairs targeted to DBEs.
- G. Incorporate all applicable DBE provisions for procurements with goals.
- H. Alert the OCR of any potential problems concerning DBE utilization during contract administration.
- I. Ensure that RFPs do not contain unnecessary requirements which could unduly restrict or eliminate small businesses from competition.

### **2.3.2 Office of the Attorney General**

- A. Address legal matters relating to DBE program implementation.
- B. Render legal opinions regarding the interpretation of DBE bid specifications and contract provisions.
- C. Advise the OCR regarding matters dealing with imposition of administrative sanctions against contractors who violate DBE provisions.
- D. Represent the ODOT in all legal actions involving DBE issues.
- E. Provide the OCR with legal opinions concerning DBE certification involving complex issues of ownership and control.



## 3.0 DBE Goal Development

### 3.1 Overall Annual DBE Goal

As a recipient of U.S. DOT financial assistance, ODOT is required to set an overall goal for DBE participation in U.S. DOT assisted contracts. The overall goal will not be subdivided into group specific goals, or be established as a quota system.

The Director of the Oregon Department of Transportation shall establish an overall goal on a fiscal basis for the participation of DBEs in all budgeted contracts utilizing Federal-aid funds. The overall annual goals will be expressed as a percentage of the total amount of Federal-aid funds the Department anticipates expending in the fiscal year.

ODOT's overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs available to participate on U.S. DOT assisted contracts.

The Department intends to meet those goals to the maximum extent feasible through the race-neutral measures described in section 4.4 of this document. Where Race-neutral measures are inadequate to meet the overall goals, ODOT will establish specific contract goals for particular projects with subcontracting opportunities.

#### 3.1.1 Establishing Base Figure - Determining Relative DBE Availability

A. Contractor Data:

- (1) Using *contractor* data available through OCRs DBE database, determine the number of ready, willing and able businesses available in the highway contracting area that perform work with the same SIC codes.
- (2) Compare the above with *contractor* data provided by Census Bureau's County Business Pattern (CBP) database. Utilize the average of the two figures. (Information about the CBP database may be obtained from the Census Bureau at their web site, [www.census.gov/epcd/cbp/view/cbpview.html](http://www.census.gov/epcd/cbp/view/cbpview.html) )
- (3) Divide the number of DBEs by the number of all businesses to arrive at base figure A for the relative availability of DBEs in this market area.

B. Contracting Data:

- (1) Using *contracting* data available through OCRs DBE database (BizTrack), determine the number of DBEs that have bid or quoted on U.S. DOT assisted prime or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quotes by the number of all businesses to arrive at base figure B for the relative availability of DBEs in this market area.
- (2) Determine the average percentage of availability by adding base figures A and B then divide by 2.

### **3.1.2 Adjustment To Base Figure**

ODOT will adjust the base figure based on demonstrable evidence indicating that the availability of DBEs for U.S. DOT assisted contracts for the fiscal year may be higher or lower than the base figure indicates. At a minimum, the OCR will analyze the results of ODOT's efforts to contract with DBEs for the current and past two years, any available and relevant disparity studies (to the extent that they are not accounted for in the base figure), and any available and relevant results of other and similar DOT's efforts to contract with DBEs.

### **3.1.3 Race Neutral Analysis**

Once the overall annual goal is proposed, the OCR will analyze and project the maximum feasible portion of that goal that can be achieved by using race-neutral methods. Where the projected portion of the goal using race-neutral methods is less than the overall annual goal, the remaining portion will be achieved by establishing contract goals for particular projects that have subcontracting opportunities.

This analysis is a review of past contracting history with information including, but not limited to:

- A. DBE participation as prime contractors on U.S. DOT assisted contracts;
- B. DBE participation on projects where no DBE goals have been established;
- C. DBE Participation on prime contracts exceeding contract goals;
- D. DBE participation on projects as non-committed DBE subcontractors.

The OCR shall monitor and adjust the use of contract-specific goals in accordance with 49 CFR Part 26.51 (f). When projecting the percentage of the overall annual goal to be achieved through establishing contract-specific goals, the OCR shall analyze the actual achievement of the overall annual goal through race-neutral methods in the current and previous two years. When establishing contract-specific goals during the current fiscal year, the OCR shall analyze the progress towards achieving the overall annual goal and increase or reduce the use of contract-specific goals accordingly.

### **3.1.4 Public Participation and Outreach Efforts**

ODOT's activities managing public participation and outreach efforts are directed at assisting ODOT to solicit public input to set overall annual DBE participation goals and meet overall annual DBE goals.

In establishing overall annual DBE goals, ODOT will provide for public participation. This will include:

Prior to finalizing the Overall Annual Goals Analysis Report, ODOT will consult with U.S. DOT agencies, and other U.S. DOT grantees, minority, women, and general contractors groups, community organizations, or 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 non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and ODOT's efforts to establish a level playing field for the participation of DBEs.

ODOT will publish an annual notice announcing its proposed overall annual goals, informing the public that ODOT's Overall Annual Goals Analysis Report is available for inspection during normal business hours at the Office of Contracts and Materials Management for a period of thirty (30) days, and that ODOT and the U.S. DOT will accept comments on the proposed goals for forty-five (45) days from the date of the notice. The notice will be distributed in general circulation media, local minority-focused media, and trade association publications.

In conjunction with ODOT's activities to meet its overall annual DBE goals, ODOT conducts various public participation and outreach activities designed to broaden awareness of ODOT's Office of Civil Rights Program for Contracts. The measures described in 49 CFR 26.51, focusing on race-neutral means will be actively pursued, and ODOT will also encourage its contractors to make similar outreach efforts to include DBE participation in subcontracting opportunities. In conjunction with the RCRC, ODOT will continue to organize and offer training programs for meeting DBE eligibility requirements, familiarize potential contractors with Authority procurement procedures and requirements, and to otherwise develop effective programs to further the inclusion of DBEs in ODOT's contracting activities.

### **3.1.5 Goal Submission**

- A. The overall goal will be submitted to FHWA for review on August 1 of each year.
- B. A description of the methodology used to establish the goal, including the base figure (3.1.1 A through E above), and the evidence with which it was calculated, with any adjustment will be included.
- C. A projection of the portions of the overall goal which will be met by race-neutral means and basis for that projection.

### **3.1.6 Transit Vehicle Manufactures Certification**

The Department shall require any transit vehicle manufactures to certify that they have established an overall annual DBE participation goal that has been approved by FTA before they can bid on any Authority contracts. Expenditures for FTA-assisted transit vehicle procurements are not included in the funding base to which the overall goal for other FTA-assisted contract expenditures apply.

## **3.2 Contract Specific Goals**

DBE participation goals may be assigned on Federal-aid highway (construction/professional services) projects that have subcontracting possibilities. Contract goals will be established to meet any portion of the overall goal not met by using race-neutral means (49 CFR §26.51(d)). Contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

Prior to solicitation of bids, all proposed federal-aid projects are reviewed by the OCR to identify work that could be performed by DBEs. The procedure and criteria used in assigning project goals include:

- A. Project location, size, duration, and dollar value.

- B. Consider the nature of project, (type of work and potential scheduling and coordination work).
- C. Availability of DBE firms that perform identified sub-contractible items.
- D. Any other relevant criteria.

The OCR reviews the proposed project goal and rationale with the respective field Project/Grant Manager, who provides additional feedback for consideration and adjustments to proposed goal. The OCR refers the proposed goal to the Contract Administration Engineer for review and concurrence. Finally, the OCR assigns the goal and forwards it to the Specifications Unit for inclusion in the project plans and specifications.

### **3.3 Counting DBE Participation Towards Meeting Annual Goals**

Only the work actually performed by a DBE, (in accordance with section 4.3.3 of this document) will be counted toward the DBE goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from prime contractor or its affiliate) may also be counted.

Work that a DBE subcontracts to a non-DBE firm does not count towards the DBE goal. Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE shall perform at least thirty percent of the total cost of its contract with its own work force.

If materials or supplies are obtained from a DBE manufacturer, one hundred percent of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent of the cost will be counted.

DBE achievement will not be counted toward the overall goal until the DBE has been paid. The OCR will track the participation of DBEs in goal specific contracts separately from the participation of DBEs that is considered race neutral. Additionally, the OCR will not count that portion of a DBE participation that is achieved after certification of the DBE has been removed during the performance of a contract.

### **3.4 Counting DBE Participation Towards Meeting Annual Goals of Sub-recipients.**

#### **3.4.1 Sub-recipients Adopting the ODOT Program Document**

Credit shall be authorized or deducted per the requirements of Section 3.3 regardless of whether or not the ODOT or the Sub-recipient is the contracting agency. Sub-recipients shall be required to submit quarterly reports to ODOT demonstrating their goal attainment to date in a manner consistent with the requirements of 49 CFR 26 reporting requirements.

#### **3.4.2 Sub-recipients With An ODOT Approved Program Document**

Sub-recipients falling into this category shall be required to submit quarterly reports to ODOT demonstrating their goal attainment to date in a manner consistent with the requirements of 49 CFR 26 reporting requirements. Sub-recipients shall authorize or deduct credit for work performed by DBEs per the requirements of 3.3 above regardless of whether they or ODOT is the contracting agency. ODOT shall include in its quarterly report to FHWA the status of sub-recipient goal activities falling within this category.

## **4.0 Ensuring DBE Participation**

### **4.1 Overall Policy Statement**

The Oregon Department of Transportation (ODOT) is committed to a Civil Rights Program for the participation of Disadvantaged Business Enterprises (DBEs) in ODOT contracting opportunities in accordance with 49 Code of Federal Regulations (CFR) Part 26, effective March 4, 1999.

It is the policy of the ODOT to ensure nondiscrimination on the basis of race, color, sex, and/or national origin in the award and administration of the U.S. Department of Transportation (U.S. DOT) assisted contracts. The intention of the ODOT is to create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to the Department's highway construction, procurement, and professional service activities.

### **4.2 Procedures to Ensure Participation**

#### **4.2.1 Pre-Bid Procedures**

##### **A. DBE Contractor Notification**

(1) A list of contracts to be bid during the month on which DBE goals have been attached is mailed to all certified DBEs.

(2) Plans, Specifications, and Requests for Proposals are available for inspection by DBE contractors at ODOT's Specifications Section, plan centers, and at the offices of the DBE Supportive Services Contractor(s).

(3) Plans and detailed project information may be secured from ODOT, Technical Services Branch, Specifications Section, Salem, Oregon, and the Region Engineer's office in the district in which a project is located. Designated plan centers also provide project information.

##### **B. Prime Contractor Notification**

(1) Each month a list of contracts to be bid during the month on which DBE goals have been assigned is mailed to all prime contractors.

(2) Projects on which DBE goals have been assigned contain written notice of the goal requirement in the Bidders Proposal for Highway Construction and the Special Provisions and Supplemental Standard Specifications for Highway Construction.

(3) The Disadvantaged Business Enterprise Supplemental Required Contract Provisions are included in the Special Provisions and Supplemental Standard Specifications for Highway Construction for projects where DBE goals have been assigned, as well as Required Contract Provisions Federal-Aid Construction Contracts Form FHWA 1273.

C. DBE Directory

The DBE Directory is now available on the Internet site:

[www.cbs.state.or.us/omwesb](http://www.cbs.state.or.us/omwesb)

Hard copies can still be requested by contracting the Office of Minority, Women and Emerging Small Business at the following:

OMWESB  
350 Winter Street NE, Room 21  
(503)947-7976  
(503) 947-7041 (fax)

#### **4.2.2 Bid Opening and Contract Award**

The ODOT shall award contract to the lowest responsive bidder as required by Oregon Revised Statute (ORS) 279. For such contracts, as well as contracts awarded pursuant to a Request for Proposal procedure where the lowest responsible bidder standard does not apply, a bidder that fails to demonstrate that it achieved the contract specific DBE participation goal and fails to demonstrate that it made sufficient good faith efforts to do so shall not be deemed responsive and therefore shall be ineligible for award of the contract.

ODOT shall require that any DBEs listed by the bidder for participation in the contract be certified as eligible DBEs as of the time of bid opening. The OCR shall review the bidder's submittal to confirm each DBE firm's certification status.

A. [DBE Commitment and Utilization Form Part I](#)

All bidders (including DBE bidders), must submit with their sealed bid proposal the DBE Commitment Certification and Utilization Form Part I listing the name, type and value of work committed to each DBE subcontractor.

Credit toward meeting the contract goal varies with the type of DBE firm:

- (1) Construction firms: supply labor and materials to perform a discrete element of the work - 100% credit. The DBE firm must have an active role in purchasing supplies and materials to perform its discrete element of work. To receive credit towards the project goal, the DBE firm shall negotiate price, arrange for delivery, and pay for the supplies and materials required for the work to be performed
- (2) Manufacturers: firms that operate or maintain a factory or establishment that produces on the premises the materials or supplies obtained by the contractor - 100% credit.
- (3) Equipment rental firms: equipment must be owned by and registered to the DBE - 100% credit.
- (4) Regular Dealers/Suppliers: must assume actual and contractual responsibility for materials - 60% credit.

(5) Brokers, packagers, ad hoc suppliers, manufacturers' representatives: no credit for materials, transportation, or other costs - Net Fee credit

(6) Joint Venture: The contractor may count toward its DBE goal only that portion of a joint venture equal to the percentage of ownership and control exercised by the DBE partner.

Should the joint venture be comprised of DBEs only, the entire contract award amount shall be counted toward meeting the DBE assigned goal on the project.

Joint ventures bidding as primes must also meet the assigned project goal for providing subcontracting opportunities for DBEs.

In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, 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.

A review of the committed DBE firm's work areas (bid items) as listed on the DBE Commitment Certification and Utilization Form is then completed. If the review by the Office of Civil Rights indicates that the committed DBE firm may not be able to perform the bid items for which the firm has contracted, the prime contractor and the DBE firm will be informed and be given opportunity to provide reasonable documentation that the DBE firm has performed the contracted work items or to explain how such work items will be performed.

The value of all work listed in the DBE Commitment Certification and Utilization Form Part I shall be credited toward the Assigned Minimum DBE Participation Contract Goal for the project.

The signature of the Bidder shall be affixed to the DBE Commitment Certification and Utilization Form. Failure of the Bidder's signature to appear on the form shall render the bid proposal non-responsive.

**B. DBE Commitment and Utilization Form Part II (Good Faith Efforts)**

In the event a bidder is unable to meet the minimum expected participation per the requirements of DBE Commitment Certification and Utilization Form, Part I, that bidder shall provide additional information regarding good faith efforts per the requirements of Part 11. This information must be included at the time of bid opening.

Types of actions that should be considered as part of the bidder's good faith efforts to obtain DBE participation are listed in Appendix A to Part 26. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet

the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts in accordance with 49 CFR Part 26 Appendix A.

C. Administrative Reconsideration

If it is determined that the apparent successful bidder/offeror has failed to meet the requirements of A and B of this section, the ODOT, before awarding the contract, will notify the bidder/offeror in writing within 4 (four) working days of the bid opening. The notification will include the reason for the determination and provide the bidder/offeror an opportunity for administrative reconsideration.

Administrative Reconsideration includes:

- (1) The bidder/offeror will have the opportunity to provide written documentation or argument to the Review Committee, consisting of personnel knowledgeable with DBE Program requirements, concerning the issue of whether it met the goal or made adequate good faith efforts to do so, within 3 working days of the receipt of notification.
- (2) Upon request, the bidder/offeror will have the opportunity to meet in person with the Review Committee, to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (3) The Review Committee will make a decision on reconsideration within 3 working days after reviewing the evidence provided by the apparent successful bidder/offeror.
- (4) The bidder/offeror will be notified in writing by the Review Committee regarding the decision of reconsideration within 4 working days of the decision. This notice will explain the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (5) The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

D. [Committed DBE Breakdown and Certification Form](#)

Upon award of the contract, subsequent to DBE goals being met or satisfactory demonstration of good faith efforts, the Office of Civil Rights transmits a letter to the contractor requesting the completion of the Committed DBE Breakdown and Certification Form for the project.

This form must be completed and submitted within ten calendar days of notification award, and prior to contract execution, to ODOT, Program Services, Room 307, Transportation Building, Salem, OR 97301-3871. Facsimile copies are acceptable; original copies must be mailed or delivered concurrently. Failure to provide detailed DBE information to ODOT within ten calendar days after receiving award notification shall be cause for cancellation of the award and withdrawal of the contract and may be cause for forfeiture of the proposal guaranty.



The contractor shall identify the name(s) of the DBE(s) to be awarded work on the project, along with a detailed description of the bid items, including bid item numbers, descriptions and amounts, and dollar amounts to be subcontracted. The amount(s) entered on the Committed DBE Breakdown and Certification Form must be equal to or greater than the value of work indicated on the DBE Commitment Certification and Utilization Form as submitted with the bid proposal. If the value of work indicated on the Committed DBE Breakdown and Certification Form is less than that indicated on the DBE Commitment Certification and Utilization Form, the contract award will be canceled and the contract withdrawn if the total value of work credited is not equal to or greater than the value of the assigned minimum DBE participation goal.

The signature of the prime contractor and the signature of the committed DBE owner shall be affixed to the Committed DBE breakdown and Certification Form as required by 49 CFR Part 26.53(b)(2)(v). Failure of these signatures to appear on the form will cause the contract award to be canceled and the contract withdrawn.

#### **4.2.3 Counting DBE Participation Towards Contract Specific Goals**

##### **A. Crediting**

The contractor shall count toward meeting its DBE goal only those expenditures originally committed to DBEs prior to contract award, and those on which committed DBEs perform a Commercially Useful Function (CUF) on the project.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal only if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Credit shall be authorized for DBE subcontractor participation under a DBE contractor provided a CUF is preformed and such participation was part of the DBE contractor's original commitment prior to contract award.

If a DBE is no longer eligible for consideration, the dollar value for work performed under the contract after the date of ineligibility will not be counted towards the overall goal.

***The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE. (See Section 4.3.5 of this document.)***

##### **B. Good Faith Efforts**

If a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor will make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the project. Good Faith Efforts shall include steps as outlined in 49 CFR 26, Appendix A.

C. Crediting for DBE Prime Contractors

The requirements of Section 4.0 will apply to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, only the work the DBE has committed with its own forces as well as the work that it has committed to be performed by DBE subcontractors or suppliers will be counted.

D. Over-concentration Considerations

If OCR determines that DBE participation is so over-concentrated in certain types of work or contracting opportunities that it unduly burdens the opportunity of non-DBEs to participate in that type of work, OCR will develop appropriate measures to address the over-concentration. The OCR will seek approval of such measures from the appropriate operating administrations and, at that time, the measures will become a part of this Program. Currently, ODOT is unaware of any types of work that have a burdensome over-concentration of DBE participation, however, OCR will continue to monitor for indications of over-concentration.

**4.2.4 Automated Participation Tracking System (BizTrack)**

See Section 7.0

**4.3 Contract Performance**

**4.3.1 Contractor's DBE Liaison Officer**

Section 9 of the Disadvantaged Business Enterprise' Supplemental Required Contract Provisions require the contractor to designate a DBE liaison officer to administer the contractor's DBE program. The name of this individual must be provided to ODOT project management personnel at the pre-construction conference.

**4.3.2 Submission of Committed DBE Subcontracts**

The contractor must enter into subcontracts with the DBEs identified in the Contractor's Committed DBE Breakdown and Certification Form, for the bid items and amounts specified therein. These agreements must be submitted for consent prior to the start of work under the subcontract in accordance with Section 00180.21 of the Standard Specifications for Highway Construction. All required Federal and State provisions must be included in the subcontracts.

**4.3.3 Commercially Useful Function**

The contractor is responsible for ensuring that DBEs working on the project perform a commercially useful function (CUF). The contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.

49 CFR 26.55 (c) (1) defines commercial useful function as: *"A DBE is considered to perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved."*

When a DBE is presumed not to be performing a CUF as defined above, the DBE may present evidence to rebut this presumption. The OCR will determine that the firm is performing a CUF given the type of work involved and normal industry practices.

Decisions on CUF matters are subject to review by the concerned operating administration, (FHWA), but are not appealable to U.S. DOT.

A. DBE Management

The DBE majority owner(s) must manage the work contracted. The management shall include scheduling work operations, ordering equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees.

Daily work operations must be under the direct supervision of the DBE majority owner(s) or a superintendent or foreman (on a full-time basis) who is in the employ and under the direct control of the DBE majority owner(s) only. If the owners of the firm who are not minorities or women are disproportionately responsible for the operation of the firm, then the firm is not controlled by minorities or women and shall not be considered a DBE and constitutes a failure to perform a commercially useful function.

The supervision of the work by personnel normally employed by another contractor or by personnel not under the control of the DBE constitutes a failure to perform a commercially useful function.

DBE subcontractors shall be responsible for the continuous management, direction, and control of their sub-subcontractors.

B. DBE Workforce

The DBE must solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its superintendent must, on a full-time basis, supervise and control the work of the contract.

The DBE may, with the prior written consent of the project manager, augment its work force with personnel of another firm. The project manager shall approve the request only when:

- (1) Specialized skills are required, and
- (2) The use of such personnel is for a limited time period.

C. DBE Equipment

The DBE is expected to perform the work with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the project manager prior to the DBE starting work.

No credit will be given, nor payment made for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is made by a deduction from the prime contractor's payment(s) to the DBE firm.

D. Equipment Leased From The Prime Contractor

The DBE may lease equipment from the prime contractor provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the project manager prior to the DBE starting work.

The DBE must hire, direct, supervise, control and carry the operator of the equipment on its payroll.

Specialized equipment and operator leased from the prime contractor: The DBE may lease specialized equipment, provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the project manager prior to the DBE starting work.

The project manager shall consent to the lease agreement only when:

- (1) the equipment is of a specialized nature,
- (2) the equipment is readily available at the job site,
- (3) the operation of the equipment is under the full control of the DBE,
- (4) the lease arrangement is for a short term, and
- (5) the lease arrangement is a normal industry practice.

E. DBE Trucking Firms

The following factors will be used to determine if a DBE Trucking firm is performing a CUF:

- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
- (2) The DBE must itself own and operate at least one fully licensed, insured and operation truck used on the contract.
- (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
- (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- (5) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangements. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since the services are not provided by a DBE.

(6) For the purposes of this paragraph (E), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

#### **4.3.4 Sub-Tier Contracting**

Second tier DBE subcontracts may be counted toward the prime contractor's DBE goal provided it was listed in the original DBE commitment prior to bid award.

#### **4.3.5 Substitution**

The contractor must notify and obtain the written approval of ODOT project management personnel and DBE Program staff prior to replacing a DBE or making any other change in the participation indicated in the commitment forms.

*Approval for replacement will be granted only if it is demonstrated that the DBE is unable or unwilling to perform and that the contractor exercised good faith efforts to enable the DBE to perform, and the work/amount is being replaced by another certified DBE or the contractor has submitted written documentation of good faith efforts to obtain a substitute DBE.*

The contractor's ability to negotiate a more advantageous contract with another subcontractor will not be considered a valid basis for replacement. Requests to substitute committed DBEs will be scrutinized closely. The contractor must document efforts made at the time of commitment to determine that the DBE was capable of performing the work and subsequent efforts made to enable the DBE to perform. The evidence must show that the contractor investigated the DBE's capacity and capability of performing at the time of the commitment. The DBE must have possessed or have had access to adequate resources and workforce. The evidence must also show that the contractor assisted the DBE with supportive actions to enable the DBE to perform.

The notice from the contractor requesting replacement must include the following:

- A. Documentation as to the contractor's investigation at the time of the commitment of the DBE's capacity to perform work;
- B. Documentation as to the contractor's good faith efforts to enable the DBE to perform;
- C. All documentation describing and citing specifications or inaction of the DBE which constitute their unwillingness or inability to perform;
- D. Identification of the DBE proposed for replacement with the bid items and amounts to be performed by the replacement; and
- E. The total dollar amount, per bid item, paid to date to the DBE to be replaced.

#### **4.3.6 Prompt Payment**

The contractor must promptly pay each subcontractor and return any retainage held, after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may

occur only for good cause following written approval of the project manager. This policy will apply to both DBE and non-DBE contractors at every tier.

The contractor must maintain records of all subcontracts entered into with DBEs and records of materials purchased from DBE suppliers. Such records shall show the name and business address of each DBE subcontractor or vendor and the total dollar amount actually paid to each DBE subcontractor or vendor.

The contractor must also submit to the project manager's office an affidavit certifying that payment was made to the subcontractor or supplier. Such an affidavit must be submitted during the project at any time a progress or final payment is made to a DBE, and when any retainage held is returned. A summary certification affidavit must be submitted at the completion of the project. (Exhibit L7)

***The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE.***

#### **4.3.7 DBE Supplemental Required Contract Provisions**

Failure of any contractor to meet the DBE Supplemental Required Contract Provisions and program authorities cited in Section I, Paragraph C, Pages 1-2 of the Program Document, constitute a breach of contract for which the imposition of the following sanctions could occur:

- A. Temporarily withholding progress payments until the contractor complies with these contract provisions where possible through future performance.
- B. Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.
- C. Suspension of work for cause as provided under the Standard Specifications for Highway Construction, Sections 00150.00 and 00180.70.

Any bidder, contractor, or subcontractor on a public contract (State or Federal) that violates the provisions of ORS 200.075 shall have its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one year for a second violation, and up to five years for a third violation. Each violation shall remain on record for five years. After five years, the violation shall no longer be considered in reviewing future violations.

Failure of a bidder, contractor, or subcontractor to comply with the DBE Supplemental Required Contract Provisions and other authorities cited in Section 01.00 (b) of these provisions wherein there appears to be evidence of criminal conduct shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

### **4.4 Race Neutral Remedies and Other Good Faith Efforts**

#### **4.4.1 Business Development Program(s) (BDP)**

ODOT will provide race-neutral and gender-neutral means of participation through the development of ODOT's Small Business Development Programs. Each year the OCR will

facilitate at least two small business events, which may be coordinated with other U.S. DOT recipients and open to all small businesses.

Small businesses will be invited to meet with ODOT's DBE Program, Purchasing and Project Management staff and learn about ODOT's contracting opportunities and how to do business with ODOT. ODOT staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to ODOT. In addition, the OCR will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with ODOT and explore best business practices, which may be used to market small businesses at ODOT.

#### **4.4.2 Mentor Protege Program**

ODOT will further the development of DBEs by assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program via receiving training and assistance from other firms.

DBEs involved in this program will be independent business entities that meet the requirements of section 6.3 of this document. These firms will be certified before they begin participation in a mentor protege program.

#### **4.4.3 DBE Supportive Services Program**

Contingent upon availability of Federal Highway Administration supportive services funds, ODOT will provide supportive services through consultant contractors to DBEs who are interested in participating in highway construction projects. The purpose of supportive services is to increase the number of socially and economically disadvantaged firms participating in highway construction projects and to contribute to the growth and eventual self-sufficiency of the DBE firms.

## **5.0 Monitoring Performance (Contract Compliance)**

### **5.1 Notification and Reporting Responsibilities.**

#### **5.1.1 Project Management and Contract Administrative Staff**

ODOT project management personnel, in conjunction with the Office of Civil Rights, are responsible for monitoring compliance with the CUF provision of the contract. The field project manager is responsible for all final actions in the field, including recommendations to the Deputy Director for the suspension of a contractor's and/or subcontractor's right to bid. Procedures analogous to those described below pertaining to highway construction projects will be followed in monitoring compliance on all U.S. DOT funded contracts.

#### **5.1.2 Office of Civil Rights**

OCR staff will monitor both race-neutral and race-conscious methods of DBE utilization.

##### **A. Race-conscious Methods**

When a DBE goal is set on a contract, the DBE Program Coordinator will attend the pre-bid or pre-proposal meeting if scheduled. At this meeting the DBE Program Coordinator will provide copies of the DBE directory and or information as to the Internet web site address to prime contractors. Once the contract is awarded, the DBE Program Coordinator will monitor the amount actually paid to the DBE subcontractor. The DBE Program Coordinator will require updates from the prime contractor on the amount paid to the DBE each month. The amount awarded the DBE, the amount paid to the DBE as stated by the prime, and the amount paid to the DBE as verified by the DBE will be tracked through Biztrack. The actual amount paid will be reported to FHWA. The DBE Program provides technical assistance and direction consistent with 49 CFR Part 26, and recommendations of actions to be taken.

The DBE Program Coordinator is notified when a contract change or amendment is made and the prime contractor, along with the project manager, will submit a statement regarding how the change may affect DBE subcontracting (by either adding or subtracting work done by DBEs) The project manager and the DBE Program Coordinator will assure that work is actually being done by DBEs and will make site visits.

##### **B. Race-neutral Methods**

The Procurement and Contracting Department notifies the DBE Program Coordinator when a solicitation for bid, proposal or quotation becomes available. A notice is then sent to each applicable DBE within two days of the receipt of the notice. The notice is also faxed to minority/women organizations and chambers. The DBE Program Coordinator will obtain a list of companies who submit bids or proposals and those who did not. A follow up survey will inquire as to why the DBE did not respond and use the response to determine any barriers that may exist. Records will be kept on the companies ready, willing and able to do business on any given solicitation. Records will be kept on contracts that have no contract goals and the DBE prime or DBE subcontractors who receive awards and contracts.



### **5.1.3 Prime Contractor**

A. Contractor's DBE Liaison Officer

Section 9 of the DBE Supplemental Required Contract Provision ([Exhibit J](#)) requires the contractor to designate a DBE liaison officer to administer the contractor's DBE Program. The name of this individual will be provided to ODOT Project Management staff at the pre-construction conference.

B. Submission of Subcontracts

The contractor must enter into subcontracts with the DBEs identified in the Contractor's Committed DBE Breakdown and Certification Form for the bid items and amounts specified therein. These agreements must be submitted for consent prior to the start of work under the subcontract in accordance with Section 00180.21 of the Standard Specifications for Highway Construction. All Federal and State provisions must be included in the subcontracts.

C. Prompt Payment Documentation

The prime contractor will promptly pay all subcontractors and suppliers as required under Section 4.3.5 of this document.

## **5.2 Compliance Review and Evaluation Procedures**

### **5.2.1 Pre-Construction Conferences**

The contractor shall deliver the following information to the project manager at the pre-construction conference:

- A. The name of the DBE liaison officer who will administer the contractor's DBE program. Said officer or the officer's designee shall attend the conference.
- B. Contractor's project schedule showing the work commencement date and estimated completion date for each DBE that will perform work on the project.
- C. Disadvantaged Business Enterprise Work Plan Proposal Form (3A) for each DBE that is committed on the project.
- D. Disadvantaged Business Enterprise Sub-Subcontract Work Plan Proposal Form (3A) for each DBE committed as sub-subcontractor and is being used to meet the DBE goal.

### **5.2.2 DBE Activity Reporting Forms**

A. [DBE Form 3A: Work Plan](#)

The DBE Work Plan Proposal Form shall be completed by all DBEs participating as subcontractors. The DBE Sub-Subcontract Work Plan Proposal Form shall be completed by all DBEs participating as sub-subcontractors and is being used by the awarded contractor to meet the DBE goal. Both forms are available by contacting the Office of

Civil Rights at (503) 986-4350. The forms are also included in the contractor's pre-construction conference packets.

The DBE Work Plan Proposal specifically solicits information regarding the following:

- (1) Personnel Required - List the names and/or craft classifications for personnel who will perform. Indicate whether the individual is regularly employed by the DBE, and/or the source from which the individual was or is to be recruited.
- (2) Equipment Required - List the items of equipment that will be used on the project. Indicate whether the equipment is owned, or will be rented or leased. If rented or leased, consent to the rental or lease must be obtained from ODOT prior to beginning of the work.
- (3) Supplies and Materials Required - List the supplies and materials that will be used on the project. Indicate the source, by name, address and phone number, from which supplies and materials will be obtained.
- (4) Prime Contractor Resources - Discuss any plans for the DBE to share any resources of the prime contractor, e.g. personnel, equipment, tools, facilities, etc.
- (5) Additional Information - Provide comments or explanation of any of the information provided above.

DBE Field Coordinator and project managers shall review the proposals and provide written comments as to whether the activities identified in the proposals comply with program regulations. In those instances where proposed activity violates applicable regulations, written comments shall be offered as to corrective action required in order to comply with the regulations.

**B. [DBE Form 3B: Commercially Useful Function Verification](#)**

The Disadvantaged Business Enterprise Commercially Useful Function Form 3B is completed by field personnel under the circumstances indicated below:

- (1) On all highway projects with DBE participation goals
- (2) Concerning each DBE that is performing on the project, regardless of commitment.
- (3) Whenever there is any indication that a DBE may not be performing a CUF.
- (4) During the DBE's peak performance period.
- (5) Whenever a DBE performs work which varies from the bid items indicated in the contractor's commitment forms.
- (6) Whenever a change in the performance of the DBE occurs.

(7) Whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE.

(8) Whenever a replacement or substitution of a DBE occurs.

C. Prompt Payment/Release of Retention Verification

The contractor must submit to the project manager's office this affidavit certifying that payment was made to the DBE subcontractor or supplier. This affidavit must be submitted during the project whenever a progress or final payment is made to a DBE, and when any retainage held is returned. A summary certification affidavit must be submitted at the completion of the project.

***The participation of a DBE subcontractor will not be credited towards the prime contractor's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by the prime contractor has been paid to the DBE.***

### 5.2.3 On-Sight Reviews

The on-site review is intended to ascertain whether the DBE is actively performing, managing and supervising the work. It must employ a labor force which is separate and apart from that employed by the prime or other subcontractors, and which is independently recruited by the DBE in accordance with standard industry practice. The DBE must supervise and manage the work or independently hire a supervisor, who may not be a supervisor employed by the prime or any other subcontractor on the project.

Equipment required to accomplish the work may be rented or leased, consistent with industry practice and at competitive rates. Lease or rental agreements must be furnished to project management personnel for review. The DBE must independently arrange for deliver of, and payment for materials and supplies and records of such transactions must be available for review.

Any arrangements which deviate from these generally accepted practices must be agreed to in writing by the parties involved and must receive prior written approval of project management personnel.

The review form, accompanied by copies of invoices, agreements, daily reports or other documentation, is forwarded by field personnel to OCR staff for further evaluation. Additional information may be requested from project management staff, or field visits may be scheduled to meet with the prime contractor and the DBE.

With regard to the Federal-aid share, if an investigation reveals that there has been a violation of the CUF provisions, that portion of the work found to be in violation would not be counted toward goal achievement for either the contractor or ODOT. When a DBE is presumed not to be performing a CUF as described in this section, the DBE may present evidence through the contractor to ODOT to rebut that presumption. Appropriate contract action will be taken, or sanctions will be imposed as described in Section 5.5 of this document.

Decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to U.S. DOT.

### **5.3 Changes in Work Committed to a DBE**

ODOT will consider the impact on DBE participation in instances where ODOT changes, reduces, or deletes work committed to the DBE at the time of contract award. In such instances, the contractor shall not be required to replace the work but is encouraged to do so.

The contractor shall notify the affected DBE of any proposed change, reduction, or deletion of any work committed at the time of contract award prior to executing the change order. The contractor shall enable the affected DBE to participate in the change order request.

### **5.4 Termination and Substitution of a DBE**

The contractor shall notify ODOT in writing and must obtain written consent before terminating and/or replacing the DBE that was committed as a condition of contract award or otherwise being used or represented to fulfill DBE contract obligations during the contract performance period. Written consent for terminating the performance of any DBE will be granted only where the contractor can demonstrate that the DBE is unable, unwilling, or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or replacement of a DBE will not be consented to based solely on a contractor's ability to negotiate a more advantageous contract with another subcontractor.

#### **A. Contractor Written Request to Terminate DBE**

All contractor requests to terminate, substitute or replace a DBE shall be in writing and shall include the following information:

- (1) Date the contractor determined the DBE to be unwilling, unable or ineligible to perform.
- (2) Projected date contractor will require substitution or replacement DBE to commence work if consent is granted to the request.
- (3) Brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to the contractor's assertion that the DBE is unwilling, unable, or ineligible to perform.
- (4) Brief statement of the affected DBE's capacity and ability to perform the work as determined by contractor.
- (5) Brief statement of facts regarding actions taken by contractor that are believed to constitute good faith efforts toward enabling the DBE to perform.
- (6) To date percentage of work completed on each bid item by the DBE.
- (7) The total dollar amount paid, per bid item, to date for work performed by the DBE.
- (8) The total dollar amount, per bid item, remaining to be paid to the committed DBE for work completed, but for which the DBE has not received payment and with which the contractor has no dispute.

(9) The total dollar amount, per bid item, remaining to be paid to the DBE for work completed, but for which the DBE has not received payment and over which the contractor and/or the DBE have dispute.

(10) A written, signed statement from the DBE, provided the DBE concurs with request to terminate, indicating its unwillingness or inability to perform.

B. Contractor Written Notice to DBE of Pending Request to Terminate and Substitute with Another DBE

The contractor shall send a copy of the request to terminate and substitute letter to the affected committed DBE firm, in conjunction to submitting the request to the project manager. The affected DBE firm may submit a response letter to the project manager within five (5) calendar days of receiving the notice from the contractor. The affected DBE firm may explain its position concerning performance on the committed work. The project manager will consider both the contractor's request and DBE's response and explanation before granting approval of the contractor's termination and substitution request.

If the contractor is unsuccessful in notifying the affected DBE firm, after trying its best to deliver a copy of its request letter, ODOT may determine that the affected (committed) DBE firm is unable or unwilling to continue the contract and a substitution will be immediately approved by the project manager.

C. Proposed Substitution of Another Certified DBE

When a DBE substitution is proposed, the contractor may submit another certified DBE firm to replace the original committed firm in writing. The contractor shall submit the name of the DBE firm, the proposed work to be performed, and the dollar amount of the work. The contractor shall give pertinent information including bid item, item description, bid quantity & unit, unit price, and total price. In addition, the contractor shall submit a written proposed DBE Work Plan for the requested substitute DBE as described in Section 5.2.2 of this document.

The dollar value of work to be performed by the substitute DBE shall be in an amount equal to the dollar value of the terminated DBE, minus the value of work performed to date by the DBE, prior to the request for substitution.

Should the contractor be unable to commit the required dollar value to the substitute DBE, the contractor shall provide written evidence of good faith efforts made to obtain the substitute value requirement. ODOT shall review the quality and intensity of those efforts. Efforts that are merely superficial are not good faith efforts to meet the goal. The contractor must document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

(1) Evidence that the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by ODOT to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;

- (2) Evidence that the contractor identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- (3) Evidence that the contractor advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- (4) Evidence that the contractor provided written notice to a reasonable number of specific DBEs, identified from the DBE Directory of Certified Firms for the selected subcontracting or material supply work, in sufficient time to allow the enterprises to participate effectively;
- (5) Evidence that the contractor followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. This may include the information outlined below:
  - (a) The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - (b) A description of the information provided to the DBEs regarding the plans and specifications and estimated quantities for portions of the work to be performed;
  - (c) Documentation of each DBE contacted but rejected and the reasons for the rejection.
- (6) Evidence that the contractor provided interested DBEs with adequate information about the plans, specifications and requirements for the selected subcontracting or material supply work;
- (7) Evidence that the contractor negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- (8) Evidence that the contractor advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by ODOT or contractor;
- (9) Evidence that the contractor's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of ODOT;
- (10) Evidence that the contractor used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and

- (11) Evidence that the contractor used the services of ODOT's supportive services contractor(s).

## **5.5 Administrative Sanctions**

Failure of any contractor to meet the DBE Supplemental Required Contract Provisions and program authorities cited in Section 1.4 of this document constitutes a breach of contract for which the imposition of the following sanctions could occur:

- A. Temporarily withholding progress payments until the contractor complies with these contract provisions through future performance.
- B. Permanently withholding payment for work already performed in a manner that constitutes a breach of contract.
- C. Suspension of work for cause as provided under the Standard Specifications for Highway Construction, Sections 00150.00 and 00180.70.

Any bidder or contractor or subcontractor on a public contract that violates the provisions of ORS 200.075 is subject to having its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one year for a second violation and up to five years for a third violation. Each violation shall remain on record for five years. After five years, the violation shall no longer be considered in reviewing future violations.

Failure of a bidder, contractor, or subcontractor to comply with the DBE Supplemental Required Contract Provisions and other authorities cited in Section 01.00 (b) of these provisions wherein there appears to be evidence of criminal conduct shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

## **5.6 Automated Participation Tracking System (BizTrack)**

See Section 7.0

## **6.0 Guidelines for DBE Certification**

### **6.1 Unified Certification Program (UCP)**

ODOT has participated in a UCP since January 1988 through ORS 200 and OAR 445 Division 50. The certification Agency for the State of Oregon is the Office of Minority, Women and Emerging Small Business. See Section 6.2 below.

#### **6.1.1 Automated Participation Tracking System (BizTrack)**

See Section 7.0

#### **6.1.2 Directory of Certified Firms**

OMWESB maintains a Unified DBE Directory in accordance with 49 CFR 26.81(g). The directory identifies all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of most recent certification and the type of work the firm has been certified to perform as a DBE. The information is revised daily and the directory is available both electronically and hardcopy.

### **6.2 UCP Responsibilities**

#### **6.2.1 ODOT Office of Civil Rights**

As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification. ODOT provides funding to OMWESB to support DBE Certification processing.

#### **6.2.2 Office of Minority, Women, and Emerging Small Business (OMWESB)**

Certification authority for the ODOT DBE Certification Program Component has been delegated to OMWESB through an agreement ([Exhibit G](#)) with the Department of Consumer and Business Services. ODOT retains responsibility to U.S. DOT for assuring certification of DBEs is performed consistent with 49 CFR 26 standards.

OMWESB provides staff to conduct DBE certification, re-certification, de-certification, appeals, challenges, investigations of third party allegations, and public awareness activities pertaining to certification programs. This office became the certification authority for state programs under Oregon Revised Statutes (ORS) Chapter 200, in January 1988 (see [Exhibit F](#)).

The Oregon Department of Justice provides legal counsel for OMWESB.

### **6.3 Certification Eligibility Requirements**

The following standards are used by OMWESB in determining whether a firm is owned and controlled by one or more disadvantaged individuals and whether such firm is eligible to be certified as a DBE (49 CFR 26, Subpart D).



### 6.3.1 Burdens of Proof

The firm seeking certification has the burden of demonstrating to OMWESB, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership, and control. OMWESB will make determinations concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole. A record is defined as all material submitted to OMWESB by the firm seeking certification and any other information available to OMWESB in performing its investigation.

### 6.3.2 Business Size

The firm's, (including its affiliates), size cannot exceed the following limits:

Type of Firm	Average Annual Gross Receipt for three proceeding years
General Contractor	\$16.6 Million
Special Trade Contractor	\$7.0 Million
Engineering, Architectural	\$4.0 Million

General Contractor's standards are established by Section 106(c) of the STURAA and reviewed by the US Department of Transportation. All other standards are those established by the Small Business Administration (SBA) and apply to all government subcontractors. See 13 CFR, Part 121. A firm that exceeds these gross receipts levels or employee numbers is not eligible for certification, even if minorities or women hold controlling interest.

### 6.3.3 Disadvantaged Group Membership

For the purposes of certification, OMWESB will presume that members of the groups identified herein are socially and economically disadvantaged unless the presumption is rebutted. These individuals do not have the burden to prove they are socially and economically disadvantaged. However, if OMWESB has reason to question whether an individual is a member of such a group, OMWESB will require the individual to produce appropriate documentation of group membership. In making a group membership determination, OMWESB will consider: 1) whether or not the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification; and 2) whether the person is regarded as a member of the group by the relevant community. If OMWESB determines an individual is not a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis. OMWESB's decision concerning membership in a designated group will be subject to certification appeals procedures.

Individuals who are United States citizens (or lawfully admitted residents) who are also members of the following designated groups will be presumed to be socially and economically disadvantaged:

Black Americans -	Origins in any black racial groups of Africa.
Hispanic Americans -	Mexican, Puerto Rican, Cuban, Central or South American, Portuguese or other Spanish culture or origin regardless of race.

Asian-Pacific Americans -	Origins in Japan, China, Taiwan, Korea, Vietnam, Laos, Cambodia, the Philippines, Samoa, Guam, the US Trust Territories of the Pacific, and the Northern Marianas.
Native Americans -	American Indians, Eskimos, Aleuts or Native Hawaiians.
Subcontinent Asian Americans -	Origins in India, Pakistan or Bangladesh.
Women	

### **6.3.4 Small Business Administration 8(a) Program**

Individuals identified by the Small Business Administration to be socially and economically disadvantaged under Section 8(a) of the Small Business Act as amended [15 USC 637(A)] are conclusively presumed to be socially and economically disadvantaged.

### **6.3.5 Individual Determination of Social and Economic Disadvantage**

If an individual is not a member of a designated group, s/he must demonstrate that s/he is socially and economically disadvantaged in accordance with 49 CFR Part 26, Appendix E.

#### **A. Social Disadvantage.**

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as a members of groups and without regard to their individual qualities. OMWESB will consider any relevant evidence in its assessment of this element, and in every case OMWESB will consider education, employment, and business history to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

#### **B. Economic Disadvantage.**

Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or a similar line of business who are not socially disadvantaged. In considering diminished capital and credit opportunities, OMWESB will examine all factors relating to personal financial condition including personal income for the past two years, personal net worth, and the fair market value of all assets applicable. OMWESB will also consider the financial condition of applicants compared to financial profiles of small businesses in the same primary industry classification(s) or similar lines of business.

### **6.3.6 Independence**

49 CFR 26.71 (b) states, in part, *"Only an independent business may be certified as a DBE. An independent business is one that viability of which does not depend on its relationship with another firm or firms."*

### **6.3.7 Ownership**

To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals and must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in the ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership and share in the risk and profits commensurate with their ownership interest, as demonstrated by the substance, not merely the form, of arrangements. OMWESB will consider factors such as whether the disadvantaged individual made contributions of capital and or expertise that were substantial, and that the disadvantaged individual's business interests were not gifted or transferred from a non-DBE firm or non-disadvantaged individual related to the applicant DBE, or acquired through the improper counting of marital assets.

The specific considerations for determining ownership by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by U.S. DOT from time to time.

### **6.3.8 Control**

Only an independent business may be certified as a DBE. An independent business is one that the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, OMWESB will scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. OMWESB will consider present or recent employer/employee relationships, the firm's relationship with prime contractors, and factors related to the independence of a potential DBE firm. Further, OMWESB will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. The socially or economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day; as well as long-term decisions on matters of management, policy and operations. OMWESB will consider factors such as the position, managerial role, time commitment and competence in the types of work the firm conducts of the disadvantaged individual owners, the delegation of authority to non-disadvantaged individuals, licensing, and the firm's capacity to do the work.

The specific considerations for determining control by socially and economically disadvantaged individuals are outlined in the regulations as may be supplemented by written procedures issued by OMWESB from time-to-time.

### **6.3.9 Other Considerations**

A. Commercially Useful Function

OMWESB will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertain solely to counting toward DBE goals any participation of firms which have already been certified as DBEs.

B. Pattern of Conduct

In making certification decisions, OMWESB will consider whether a firm has exhibited a pattern indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

C. Present Circumstances

OMWESB will evaluate the eligibility of a firm on the basis of present circumstances and will not refuse to certify a firm based solely on historical information indicating lack of ownership or control by socially and economically disadvantaged individuals at some time in the past. If the firm currently meets ownership and control standards, OMWESB will not refuse to certify a firm solely on the basis that it is a newly formed firm.

D. DBE Cooperation

OMWESB expects DBE firms and firms seeking DBE certification to cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide such information is a ground for denial or removal of certification.

E. For-Profit Firms

Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

F. Subsidiaries and Affiliates

An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided by this policy, a firm that is not owned by such individuals, but instead is owned by another firm, even a DBE firm, cannot be an eligible DBE.

G. Pre-qualification

OMWESB will not require a DBE firm to be pre-qualified as a condition for certification unless OMWESB requires all firms that participate in its contracts and subcontracts to be pre-qualified.

## H. Tribal Organizations

OMWESB recognizes that a firm owned by an Indian tribe, Alaska Native Corporation, or Native Hawaiian organization as an entity, rather than by Indians, Alaska Natives, or Native Hawaiians as individuals, may be eligible for certification as long as such firm meets the size standards and is controlled by socially and economically disadvantaged individuals.

### **6.3.10 Statement of Personal Net Worth (PNW)**

Each socially and economically disadvantaged individual owner must demonstrate that s/he does not have a personal net worth exceeding \$750,000. In determining net worth, OMWESB will exclude an individual's ownership interest in the applicant firm and the individual's equity in his/her primary residence. If the individual's personal net worth exceeds \$750,000, the individual's presumption of economic disadvantage based on group membership or the individual's demonstration of economic disadvantage will be conclusively rebutted without any further formal proceedings.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for purpose of DBE eligibility unless and until s/he makes an individual showing of social and or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$750,000, the individual will no longer be eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

A verification of Personal Net Worth will be included with the application form submitted to OMWESB for consideration. (Exhibit LI)

### **6.3.11 Joint Venture**

A joint venture is eligible if the DBE partner of the joint venture meets the standards for an eligible DBE set forth above and the DBE partner is responsible for a clearly defined portion of the work to be performed and shares in the ownership, control, management responsibilities, risks, and profits of the joint venture.

Joint venture applications are certified by the ODOT on a project by project basis. Applications shall be submitted to the ODOT, Program Services for review and certification by the OCR in accordance with established procedures.

## **6.4 Application Procedure**

ODOT will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. All firms seeking certification with ODOT are required to submit a notarized application to the OMWESB.

ODOT will require potential DBEs to complete and submit to OMWESB an appropriate application form. OMWESB will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths or in the form of an un-sworn declaration executed under penalty of perjury of the laws of the

United States. OMWESB will review all information in the form prior to making a decision about the DBE eligibility of the firm.

The applicant will also be required to submit the following:

- A. A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and
- B. A signed, notarized statement of personal net worth with supporting documentation.

OMWESB will not impose an application fee for firms to participate in the DBE certification process.

OMWESB will safeguard from disclosure, to unauthorized persons, all information gathered as part of the certification process that may be regarded as proprietary or their confidential business information, consistent with applicable federal, state and local laws.

***Failure of the applicant to provide all necessary information and documentation as required shall constitute the basis for denying certification.***

#### **6.4.1 Supplemental Application Verification Documents**

- A. Sole Proprietor
  - (1) Individual federal tax returns for the last three- (3) years (Schedule C, Profit and Loss Statement).
  - (2) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
  - (3) Rental/lease agreements, and professional service agreements (for office space, equipment, related to the business).
  - (4) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver's license, etc.)
  - (5) Company profile including a brief description of the firm's product or services.
  - (6) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
  - (7) Certification letter from the individual's home state, if the business is not located in Oregon.
  - (8) Assumed Business Name registration, if applicable.

B. Limited Liability Company (LLC)

- (1) Federal tax returns for the last three- (3) years.
- (2) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (3) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
- (4) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
- (5) Company profile including a brief description of the firm's product or services.
- (6) Necessary licenses to conduct the business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
- (7) Articles of Organization.
- (8) Operating Agreement.
- (9) Minutes of the most recent company meetings affecting ownership, management, and control.
- (10) Certification letter from the state of incorporation, if the business is not located in Oregon.

C. Corporations

- (1) Corporate federal tax returns for the last three- (3) years (first two pages).
- (2) Resumes of majority owner(s) and key employees if any. Please include previous work experience with dates and specific duties within this business.
- (3) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)
- (4) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
- (5) Company profile including a brief description of your firm's product or services.
- (6) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
- (7) Articles of Incorporation AND amendments, including date approved by State.

- (8) Minutes of the most recent corporate meetings affecting ownership, management, and control.
- (9) Corporation by-laws.
- (10) Copy of stock certificates issued (not specimen copy, both sides).
- (11) Stock transfer ledger.
- (12) Certification letter from your home state, if your business is not located in Oregon.

D. Partnerships

- (1) Federal, partnership tax returns for the last three- (3) years (first two pages).
- (2) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.
- (3) Rental/lease agreements and professional service agreements (for office space, equipment, etc.) related to your business.
- (4) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver's license, etc.).
- (5) Company profile including a brief description of your firm's product or services.
- (6) Necessary licenses to conduct your business, e.g., contractor's license (construction, landscaping, electrical, plumbing, welding, engineering), PUC authority, city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.
- (7) Partnership agreement including buy-out rights and profit sharing agreement (signed and dated).
- (8) Certification letter from your home state, if your business is not located in Oregon.

E. New Business (less than one year)

- (1) Canceled checks relating to the business; OR
- (2) An invoice with paid receipt or canceled checks relating to the business.
- (3) One reference for whom work has been performed or to whom goods or materials have been sold during the prior year.
- (4) One reference from whom goods or materials have been purchased for the business or from whom major equipment has been purchased or leased.
- (5) Copies of office space and equipment lease agreements.



*As a new business, the firm may not have federal tax information available at this time. Ensure that the firm has indicated that they are a new business on the application.*

#### **6.4.2 On-site Reviews**

OMWESB schedules an on-site review when it is satisfied that applications and supporting documentation have been received and are complete.

- A. The Certification Specialist assigned the DBE file will schedule an on-site interview with each DBE applicant firm requesting to bid on FHWA, FAA and FTA projects.
- B. The OMWESB Certification Specialist will review the application prior to the on-site interview to assist in developing any additional questions that will help clarify the applicant's status.
- C. The OMWESB Certification Specialist normally contacts the DBE applicant firm, by phone, to advise of and arrange for, the review. If the DBE applicant is unable to be contacted by phone or mail, or delays the date of the review without good reason, or fails to appear for the scheduled review, efforts are made to reschedule the on-site review.
- D. DBE certification applicants wishing to participate on upcoming federal-aid assisted construction projects, soon to be let to bid, may request acceleration of the certification process. The applicant must request ODOT to transmit a written request to OMWESB to accelerate certification of the applicant firm. The applicant must provide to ODOT a written request which identifies specific projects to be bid and a letter from any prime who will state the applicant's bid will be considered.
- E. The OMWESB Certification Specialist conducts on-site reviews by inquiring of and obtaining information as follows:
  - (1) Firm name.
  - (2) Directions to firm's location.
  - (3) Principal contact and phone number.
  - (4) Organizational structure.
  - (5) Persons interviewed and position with firm.
  - (6) Firm's primary line of business.
  - (7) Identities of the firm's board of directors.
  - (8) Frequency that board meets.
  - (9) Firm's bonding/insurance company.
  - (10) Current bonding limitation
  - (11) Determine:
    - (a) Firm's bond/insurance agent
    - (b) Firm's attorney
    - (c) Firm's CPA
    - (d) Firm's banker(s)
  - (12) Number of permanent employees.
  - (13) Who approves:
    - (a) Hiring and dismissal of employees
    - (b) In this person's absence
  - (14) Employee recruiting.
  - (15) Supervisors employed.

- (16) Explanation of supervisor's duties and responsibilities.
- (17) Determine how the disadvantaged owner acquired interest in the firm.
- (18) Who contributes capital, equipment, real estate, inventory, etc.
- (19) Technical assistance provided by others.
- (20) Total hours per day and days per week DBE owner actively engaged in firm's business.
- (21) DBE owner's daily duties.
- (22) Is DBE owner employed elsewhere - if yes, where?
- (23) Who makes major business decisions (i.e. expansion, diversifying)?
- (24) Marketing of the firm, (how and who's responsible).
- (25) Dispersal of funds, (how and under whose approval).
- (26) Signatures on payroll and other checks, (who signs).
  - (aa) Any loan negotiation/arrangement information (who does this).
  - (ab) Firm's line of credit and it's limits.
  - (ac) Contracts currently active.
  - (ad) Business tax return information (who prepares, who signs).
  - (ae) Description of firm's bidding/estimating process.
  - (af) Description of firm's process of monitoring job costs.
  - (ag) Description of methods used to resolve field problems.
  - (ah) Who negotiates contract disputes.
  - (ai) Explanation of relationships with other firms who might provide;
    - 1. Manpower
    - 2. Equipment
    - 3. Office space
    - 4. Yard or warehouse space
  - (aj) Information which might show the DBE owner was employed by any board member or officer of this firm.
  - (ak) Average length of time firm's products are stored/inventoried.
  - (al) Salaries paid to management personnel.
  - (am) Explanation of spouse's relationship to firm - other firms.
  - (an) Review firm's business plan (goals for future growth, etc.).

### **6.4.3 On-Site Review Observations and Special Considerations**

Upon request of OMWESB, ODOT Program Coordinator may conduct the on site review. When conducting on site reviews, Certification Specialists actively observe various activities and items to aid in determining certification eligibility. IF the applicant firm is out-of-state, OMWESB requests a copy of the on-site review document from the state in which the applicant's principal place of business is located. Activities and items include:

- A. Signing.
- B. Vehicles: Number, Company Logo.
- C. Office arrangements.
- D. Nearby businesses.
- E. Workers present.
- F. Who dominates conversation.

- G. Availability of firm to clients.
- H. Who appears to have expertise and control.
- I. Photos of business and principal.
- J. Other relevant items and activities.

Certification Specialists also observe closely those situations where:

- A. The disadvantaged business enterprise in which the woman's male relative (husband, brother, father) has extensive experience in the same line of work and may also be actively involved in the applicant's firm.
- B. The disadvantaged business enterprise in which a minority owner has close ties with a prime contractor, e.g. previously worked only for that contractor, or a prime contractor is 49 percent owner of the DBE firm.

The on-site review form is signed and dated by the Certification Specialist conducting the review.

#### **6.4.4 Criteria for Evaluating an Applicant's Eligibility**

##### **A. Business Size**

To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. OMWESB will apply current SBA business size standards found in 23 CFR Part 121 appropriate to the types of work the firm seeks to perform in U.S. DOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including affiliates) has had average annual gross receipts as defined by SBA regulations over the firm's previous three (3) fiscal years in excess of \$16.6 Million, as adjusted for inflation from time to time by U.S. DOT.

##### **B. Social and Economic Disadvantage Status**

Once an applicant firm is determined to be a small business, social and economic disadvantage is to be reviewed if the firm is applying for disadvantaged business status. Guidance for determining social and economic disadvantage is provided under Appendix E to 49 CFR 26. Social and Economic disadvantaged status may be conferred upon applicant firms in instances where the firm:

- (1) Has been granted 8(a) certification by the Small Business Administration.
- (2) Is owned and controlled by one or more women or a member(s) of one of the minority groups designated in 49 CFR 26.67.
- (3) Is owned and controlled by an individual(s) who, although not a woman or member of one of the minority groups designated in 49 CFR 26, establishes social and economic disadvantage based on identification with another group.

C. 8(a) Status

Applicant firms found to be disadvantaged by the Small Business Administration (SBA) pursuant to Section 8(a) of the Small Business Act shall be conclusively presumed by the state to be socially and economically disadvantaged. The social and economic disadvantage status of such firms cannot, under 49 CFR 26, be overturned by the state. However, a state may, where appropriate, challenge an 8(a) firm's status to the SBA. In addition, in cases where the state has evidence that an 8(a) certified firm does not meet the small business size standards, the state will deny certification to the firm. In these situations, the state will also refer the information to the SBA.

Notwithstanding the above, 8(a) firms also certified under 49 CFR 26 must perform the work under contract in accordance with 49 CFR 26 in order for the work to be credited toward goal accomplishment. Further, the state may impose sanctions on 8(a) firms for violating the requirements of the DBE program. These sanctions may include denial of credit to DBE goals, suspension, debarment, and removal from the state's DBE directory based on changes in the 8(a) firm's ownership and control.

D. Minority Group Membership

In cases where the applicant claims social and economic disadvantage based on membership in one of the designated minority groups, the state shall ensure that the applicant's minority status is clearly established. Once minority status is established, the applicant shall be rebuttably presumed to be socially and economically disadvantaged. This means that the applicant's social and economic disadvantage status is established as a fact until the presumption is effectively rebutted. However, the state is expected to require even members of the designated minority groups to prove their disadvantaged status if reasonable evidence to rebut the presumption is available to the state.

E. Individual Determinations

Finally, persons who are not members of one of the designated minority groups may request the state to make an individual determination that they are socially and economically disadvantaged. The state may, at its discretion, make these individual determinations consistent with the guidance in 49 CFR 23, Subpart D Appendix C, or refer such cases to the SBA where they may apply for 8(a) status.

(1) Does the individual have a chronic physical handicap, which has restricted and still restricts professional acceptance, employment or business mobility? If so, explain fully.

(2) Has the individual's cultural or social background resulted in chronic underemployment, limited educational opportunities or personal deprivation? If so, explain fully.

(3) Has the individual experienced low-income status because of apparent discriminatory practices? If so, explain precisely how such discriminatory practices led to your having limited access to needed technical, financial, or management resources and equal opportunity in obtaining contracts.

Outline other specific and pertinent examples of chronic social and economic disadvantage not covered above.

F. Rebuttable Presumption of Disadvantage Status

The presumption of social and economic disadvantage operating in favor of the designated minority groups may be rebutted at any time before or after certification.

If the state comes into possession of credible information that would lead a reasonable person to believe that a minority individual is not socially or economically disadvantaged, the presumption is no longer operative and the burden of proof shifts back to the applicant. The existence of the presumption does not mean that the certifying agency must ignore obvious evidence that any applicant for certification is not socially or economically disadvantaged unless a third party brings a challenge. It means, rather, that in the absence of such evidence, it must presume that a minority or woman applicant is socially and economically disadvantaged, and cannot require the applicant to prove it.

Practically speaking, the existence of clear evidence that an otherwise qualified minority applicant is not disadvantaged puts such applicant in a position similar to a challenged minority or an individual claiming disadvantaged who is not a member of a designated group. If the state tentatively determines, on its own initiative based on such clear evidence, that the owner of the firm is not socially and economically disadvantaged, the state should ensure that the owner(s) are afforded procedural safeguards equivalent to that provided in the case of third party challenges.

G. Ownership and Control

Once business size and social and economic disadvantage status has been determined, ownership and control must be evaluated to ensure that firms applying for DBE certification are in fact independent firms, owned and controlled by one or more socially and economically disadvantaged individuals. Similarly, firms applying for DBE certification on the basis of female ownership must be evaluated to ensure that they are independent and are owned and controlled by women. An independent firm is one the viability of which does not depend on its relationship with another firm or firms.

Under operational control, the applicant must have an overall understanding of and managerial and technical competence and experience directly related to the business operations.

To determine managerial control, the applicant must demonstrate that they possess the power to direct or cause the direction of the management and policies of the firm.

Applicant firms jointly owned by husband and wife will be treated the same irrespective of whether the state has a community property law. The OMWESB will determine eligibility by ensuring that the firm is in fact at least 51 percent owned by the woman and the firm's management and daily business operations are controlled by the woman who owns it. In reaching that conclusion, the OMWESB will determine whether the firm meets the eligibility standards contained in 49 CFR 26.

H. Personal Net Worth

An individual, whose personal net worth exceeds \$750,000.00, excluding personal residence and interest in the business, shall not be deemed to be economically disadvantaged.

The OMWESB will obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE certification and whose ownership and control are relied upon for DBE certification. These statements will be accompanied by appropriate supporting documentation.

#### **6.4.5 Reciprocal Certification**

When another U.S. DOT recipient has certified a firm, OMWESB has the discretion to take any of the following actions:

- A. Accept another recipient's certification on a reciprocal basis;
- B. Make an independent certification decision based on documentation provided by the other grantee augmented by any additional information OMWESB requires that applicant firm to provide; or
- C. Require the applicant firm to go through OMWESB's certification process without regard to the action of the other grantee.

When another grantee, in connection with its consideration of the eligibility of a firm, makes a written request for certification information OMWESB has obtained about that firm, OMWESB will promptly make the information available to the other grantee.

#### **6.4.6 Certification Duration Renewal of Certification Procedures**

Once OMWESB certifies a firm as an eligible DBE, it shall remain certified for a period of at least three (3) years unless and until its certification is removed or expires. OMWESB will not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three- (3) year period. The DBEs will have to reapply and be re-certified if their certification is removed or expires at the end of the certification period. OMWESB will update the DBE Database regularly with new certification actions.

##### **A. Notification of Change in Circumstances**

During a DBE firm's three (3)-year certification period, it must inform OMWESB, in writing, of any changes in circumstances affecting the firm's ability to meet disadvantaged status, business size, ownership, control requirements, or any material change in the information provided in the certification application process, and attach supporting documentation describing in detail the nature of such changes. Such notice of change from the DBE firm must take the form of an unsworn declaration executed under penalty of perjury. The written notification shall be provided by the DBE within thirty (30) days of occurrence of the change(s). If the DBE fails to make timely notification of such changes, it will be deemed to have failed to cooperate under the regulations.

##### **B. Annual Affidavit of Continuing Eligibility**

Every firm certified by OMWESB as a DBE must provide to OMWESB every year on the anniversary of the date of its initial certification, an affidavit sworn to by the firm's owner(s) before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of the Regulations or any material changes to the information provided in its original application, or the last notification of a change circumstance. The affidavit shall specifically affirm that the DBE continues to meet SBA size criteria and the overall gross receipt cap, documenting this affirmation with supporting documentation of the DBE size and gross receipts. If the DBE fails to provide this information in a timely manner, it will be deemed to have failed to cooperate with the requirements of the regulations.

#### **6.4.7 Denials and Reapplication Procedures**

If a firm is denied certification, it may be required to wait at least twelve (12) months before it may reapply for DBE certification with OMWESB. The time period for reapplication begins to run on the date the explanation for denial of certification is received by the applicant firm. The firm may file an appeal for any denial of certification to U.S. DOT in accordance with section 6.4.9 of this document.

#### **6.4.8 Removal Procedures (De-certification/Denial)**

A DBE firm, which no longer meets the eligibility standards (or misrepresented information during the certification process), will be removed from the DBE program by having its certification removed. A firm shall remain certified during the removal process.

##### **A. Initiating Removal**

(1) Any person may file a written complaint that alleges a currently certified firm is ineligible. A written complaint must specify reasons for the allegation and include any information or arguments supporting the allegation. A general allegation or anonymous complaint will not be accepted. The Manager of OMWESB will review the complaint, all certification records and other available information in order to determine whether there is reasonable cause to believe that the firm is ineligible.

(2) Authority-Initiated Proceedings - The Manager of OMWESB will review all notifications of change in circumstance or other information that comes to OMWESB's attention, including notification of removal actions of other U.S. DOT recipients, to determine whether there is reasonable cause to believe a currently certified firm is ineligible. When the OMWESB determines that a firm is not eligible for certification, the OMWESB will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant firm upon request.

(3) U.S. DOT Directive to Initiate Proceeding - A U.S. DOT agency may direct ODOT to initiate removal proceedings, because it has determined the information in the certification records or other information available provides reasonable cause to believe that a firm is ineligible. The U.S. DOT agency must provide ODOT and the firm a notice setting forth reasons for the directive, including relevant documentation.

(4) Reasonable Cause to Believe a Firm is Ineligible - If the Manager of OMWESB determines that there is not reasonable cause to believe the firm is ineligible, s/he shall provide a written notice to the firm and the complainant stating the reasons therefore in such cases where a complaint was filed with OMWESB.

A DBE may be decertified at any time if the Manager of OMWESB determines that there is reasonable cause to believe the firm no longer meets the eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The OMWESB may also deny certification to any DBE applicant that does not meet eligibility standards set out in 49 CFR 26 Subpart D and OAR 445-050-0020. The following steps shall be taken:

(a) Written Notice - In the case of de-certification, the OMWESB shall issue a Notice of Intent to Decertify the DBE 21 days prior to the date of the de-certification, and indicate the specific reasons for the de-certification. In the case of denial of initial certification or re-certification, the DBE or applicant will be notified in writing of the denial and the reasons therefore. The notice shall also include notification that the firm has the right to a contested case hearing.

(b) Contested Case Hearing - In either a de-certification or denial of initial certification or re-certification of a DBE, the DBE or applicant has 21 calendar days from the date of the Notice of Intent to Decertify or the letter of denial in which to submit a written request for contested case hearing. If the DBE or applicant requests a contested case hearing, the de-certification or denial of re-certification will be stayed pending the issuance of a final order. Contested case hearings will be conducted in accordance with ORS 183.310 to 183.550 and OAR 445-050-0000. If no written request for a contested case is received by the OMWESB within the 21-day period, the de-certification/denial will be final.

(c) Decision - Following the contested case hearing, the proposed order issued by the hearings officer will be forwarded to the manager of the OMWESB for issuance of the final order.

(d) Notice of Decision - The OMWESB will provide the firm written notice of the final decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. Any applicant or DBE that believes it has been wrongly de-certified or denied certification or re-certification by the OMWESB may also file an appeal in writing, signed and dated, with the U.S. DOT in accordance with section 6.4.9 of this document. OMWESB will send copies of the notice to the complainant in an ineligibility complaint or the concerned U.S. DOT agency that directed ODOT to initiate the proceeding.

(e) Effects of Removal of Eligibility. - The OMWESB and ODOT OCR will take the following actions upon the removal of a firm's certification:

(1) OMWESB will update the DBE Database and notify ODOT OCR of the removal.

(2) ODOT OCR will determine whether the decertified firm is currently participating in an ODOT contract or has been included in a recent bid;

(3) If a contract that has not been executed before the removal notice involves a commitment by the prime contractor to use the ineligible firm or by ODOT to use the ineligible firm as a DBE prime contractor, the ineligible firm cannot be counted toward the contract goal or the overall annual goal. The Regulations require that ODOT direct a prime contractor to meet the contract goal with another eligible DBE



subcontractor or to demonstrate that it has made sufficient good faith efforts to do so;

(4) If a subcontract has been executed by a prime contractor or a prime contract has been executed by ODOT with the ineligible firm before the removal notice, the prime contractor or ODOT may continue to use the firm on the contract and may continue to count the firm's participation toward the contract goal. ODOT shall not count that portion of the ineligible firm's performance remaining on the contract or subcontract after the removal notice toward the overall annual goals; and

(5) If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, ODOT will continue to count its participation on that contract toward overall and contract goals.

#### **6.4.9 Certification Appeal to U.S. DOT**

A firm that has been denied certification or whose eligibility is removed may make an administrative appeal to the U.S. DOT. A complainant in an ineligibility complaint to the OMWESB may appeal to U.S. DOT if OMWESB does not find reasonable cause to propose removing the firm's eligibility. Pending the U.S. DOT appeal decision, OMWESB's decision shall remain in effect. All Appeals shall be sent to:

U.S. Department of Transportation  
Office of Civil Rights  
400 Seventh Street, SW  
Room 2401  
Washington, D.C. 20590

All requests for an appeal must be sent, in writing, within ninety (90) days of OMWESB's final decision on the matter. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if it determines that there was good cause for the late filing of the appeal. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other U.S. DOT recipients. If the appeal is from a third party; the party will be requested to provide the same information.

The manger shall provide a copy of a complete, well-organized administrative record within twenty (20) days of a request from U.S. DOT. U.S. DOT will make its decision based solely on the entire administrative record without conducting a hearing. The firm and complainants shall have access to any information reviewed by U.S. DOT in accordance with public records and privacy laws.

U.S. DOT will affirm OMWESB's decision if it determines based on the entire administrative record, that the decision is supported by substantial evidence or is consistent with the substantive or procedural provisions or procedural provisions concerning certification. U.S. DOT shall send written notification of its decision including the reasons therefore to OMWESB, the firm and any complainant. If OMWESB's decision is reversed, the manager will take all appropriate actions to conform with the U.S. DOT's decision immediately upon receiving the written notice. U.S. DOT decisions are final and binding on OMWESB only.

#### **6.4.10 ODOT Commodity Code/Standard Industry Codes (SIC)**

During the certification process for firms indicating a desire to participate in federal aid highway contracts, a DBE will be assigned a commodity/SIC code by OMWESB which is indicative of the type of work the firms has shown that it can perform at the time the certification or re-certification is requested. ODOT uses the commodity/SIC codes in its process of evaluating bids containing work to be accomplished by DBEs.

## **7.0 Monitoring and Record Keeping**

### **7.1 Automated Participation Tracking System (BizTrak)**

The Automated Participation Tracking System (Biz Trak) is a relational database system based in Microsoft Access to store and organize data. This system provides tracking and reporting capabilities on companies who bid or respond on projects and the tracking of actual utilization.

The system is composed on the following Modules (tables):

- A. Small Business Outreach Module (Contractor/Vendor Availability)
- B. Pre-Award Effort Module (Projects)
- C. Post-Award Tracking Module (Compliance)
- D. Workforce Tracking and Monitoring Module (EEO/OTT)

#### **7.1.1 Bidders List**

ODOT must create and maintain a bidder's list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on U.S. DOT assisted projects. This information must be included at the time of bid opening and provide the following:

- A. Firm name
- B. Firm Address
- C. Firm's status as a DBE or non-DBE
- D. Age of the firm
- E. Annual Gross Receipts for the firm

A Contractor/Vendor Profile Sheet (Exhibit L8) is supplied to all firms identified by the Secretary of State, Corporations Division who possess the Standard Industry Classification for Heavy Highway Construction. When received by the contractor, this information is entered into the Contractor/Vendor table of the tracking system.

Contract/Vendor information is validated with the Subcontractor/Supplier Solicitation and Utilization Form provided by all bidders within 10 calendar days of the bid opening ([Exhibit L4](#)). If contractor/vendor information provided is not contained in the tracking system, a profile sheet will be forwarded to the firm in question and the tracking system will be updated when the information is received.

#### **7.1.2 Monitoring Payments to DBEs**

It is the contractor's responsibility to maintain records and documents for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of ODOT or U.S. DOT. This reporting requirement is also extended to any certified DBE subcontractor.

ODOT will maintain a running tally of payments actually made to DBE firms and require prime contractors and DBE subcontractors and suppliers to provide appropriate documentation to verify such payments, (Exhibit L7). Credit toward overall or contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs.

Contract payment information on prime contractors will be downloaded from the contract payments unit and entered into the tracking system on prime payments table (located within the compliance module) of the tracking system.

Payment information to subcontractors provided by prime contractors will be entered into the tracking system on the sub payments table (located within the compliance module).

ODOT may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to verify that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation.

## **7.2 Reporting to U.S. DOT**

ODOT will continue to report DBE participation and overall annual goal setting methods to U.S. DOT agencies as directed. Statistical data will be maintained and reported on a quarterly basis to U.S. DOT agencies reflecting the DBE participation on ODOT's federally-assisted procurement activities. These reports will provide DBE participation information on ODOT's race-neutral and gender-neutral contracts; race-conscious contracts; and the combined DBE participation on all federally assisted procurement activities.

## **7.3 Contract Remedies**

ODOT will monitor compliance of its contracts on federally assisted contracts with the requirements of the regulations and the DBE Program. ODOT may impose such contract remedies as are available under federal, state and local law and regulations for non-compliance. Such remedies may include, but are not limited to, withholding of progress payments and contract retention, imposition of liquidated damages, and termination of the contract in whole or in part.

For further information, see section 5.5 of this document.