

49 CFR PART 26
FAA Rev 10.21.2020

ORCAS ISLAND AIRPORT (ID: ORS)
EASTSOUND, WA.



DBE PROGRAM & GOAL DEVELOPMENT

Ver Date: September 2023

POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

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

It is the policy of the Port to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT–assisted contracts. It is also the Port’s policy:

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

Kim Kimple, Manager Port of Orcas has been delegated as the DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Port in its financial assistance agreements with the Department of Transportation.

The Port has disseminated this policy statement to the Port of Orcas and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The distribution was accomplished by posting a notice on the Port’s website <https://www.portoforcas.com/>.



Kimberley M. Kimple, Manager, Port of Orcas

09/12/2023

Date

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ATTACHMENTS

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

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

Section 26.5 Definitions

The Port will use terms in this program that have the meaning defined in 49 CFR Part 26 § 26.5. (See **Attachment 1** for link to CFR.)

Section 26.7 Non-discrimination Requirements

The Port will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the Port will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

REPORTING TO DOT: 26.11

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

DBE participation will be reported to DOT/FAA as follows:

The Port will transmit the “Uniform Report of DBE Awards or Commitments and Payments” form, found in Appendix B to this part, to FAA annually by December 1 including the required information about participating DBE firms. All reporting will be done through the FAA’s official reporting system, or another format acceptable to the FAA as instructed thereby.

BIDDERS LIST

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

The Port will collect this information by using a Bidders List form. See **Attachment 3** for a sample of a Bidders List Form. Each airport solicitation will require bidders to submit the bidders list with their proposal.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

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

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

The Port shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Port shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Port's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Port of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq*).

Contract Assurance: 26.13b

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

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

The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Port deems appropriate, which may include, but is not limited to: (1) Withholding monthly progress payments; (2) Assessing sanctions; (3) Liquidated damages; and/or (4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Port is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Port is not eligible to receive DOT financial

assistance unless DOT has approved the Port's DBE program and is in compliance with it and part 26. The Port will continue to carry out our program until all funds from DOT financial assistance have been expended. The Port does not have to submit regular updates of our program, as long as the Port remains in compliance. However, we will submit significant changes in the program, including those required by regulatory updates, for approval by DOT.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Kim Kimple
Port Manager
PO Box 53
Eastsound, WA 98245
Ph: (360) 376-5285
Email: orcasairport@rockisland.com

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has support staff, including engineers and legal professionals, to assist in the administration of the program. The DBELO's duties and responsibilities include the following:

- Gathering and reporting statistical data and other information as required by DOT
- Reviewing third party contracts and purchase requisitions for compliance with this program
- Working with all departments to set overall annual goals
- Ensuring that bid notices and requests for proposals are available to DBEs in a timely manner
- Identifying contracts and procurements so that DBE contract goals are included in solicitations and monitors results
- Analyzing the Port's progress toward attainment and identifies ways to improve progress
- Participating in pre-bid meetings
- Advising the governing body on DBE matters and achievements
- Determining contractor compliance with good faith efforts
- Providing outreach to DBEs and community organizations to advise them of opportunities

Section 26.27 DBE Financial Institutions

It is the policy of the Port to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make

reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

The Port uses the Washington State online business directory to discover financial institutions in San Juan County that meet this criterion. The directory is updated daily, or as needed, by the State of Washington. Information on the availability of such institutions can be obtained from the DBELO.

Section 26.29 Prompt Payment Mechanisms

The Port requires that all subcontractors performing work on DOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, the Port has established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor's receipt of each payment from the Port.

The Port ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Port has selected the following method to comply with this requirement:

- Decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

The Port will consider a subcontractor's work satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Port. When the Port has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

Retainage will not be withheld on this project. No retainage will be withheld by the Owner from progress payments due the prime Contractor. Retainage by the prime or subcontractors is prohibited, and no retainage will be held by the prime from progress due subcontractors.

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

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

The Port has established, as part of our DBE program, the following mechanisms to ensure prompt payment:

- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes;
- (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed; and
- (3) Other mechanisms, consistent with this Part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

This clause applies to both DBE and non-DBE subcontractors.

See §26.37 below for additional Prompt Payment information.

Section 26.31 Directory

The Port is a non-certifying member of the Washington Unified Certification Program (UCP), and uses the State of Washington DBE directory, maintained by the Washington State Office of Minority & Women's Business Enterprises (OMWBE) to determine a firm's DBE status. The directory lists the firm's name, address, phone number, and each type of work the firm has been certified to perform as a DBE, using the most specific NAICS code available to describe each type of work. The state revises the Directory daily, or as needed. A link to the directory may be found in **Attachment 4**.

Section 26.33 Over-Concentration

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

Section 26.35 Business Development Programs

The Port has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

The Port actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

Monitoring Payments to DBEs and Non-DBEs

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

- Prime contractors are required to submit to the Port copies of the contracts executed with all subcontractors within 10 days of execution of such contracts, including amount agreed upon and method of payment.
- Prime contractors are required to submit a record of all payments to subcontractors no less than quarterly.

- The Port will confirm with subcontractors the amounts paid and date of receipt of payments.
- The Port will create and maintain written and/or electronic records of all information collected.

Other affirmative steps to monitor prompt payment and retainage requirements:

- The Port will put in place quarterly reminders to be sent to subcontractors requesting submission to the Port of a detailed list of all payments received from the Prime during the most recent complete calendar quarter.
- The Port requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the Port's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Port or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.
- The Port proactively reviews contract payments to subcontractors including DBEs not less than quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to us by the prime contractor.

Prompt Payment Dispute Resolution

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

The Port will facilitate meetings between prime and sub, with resident project representative and/or project manager presence as appropriate, for the purpose of dispute resolution. Participants shall include individuals authorized to bind each interested party, including recipient representative(s) with authority to take enforcement action.

The Port established, as part of its DBE program, the following mechanism to ensure prompt payment and return of retainage:

A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed. **See §26.29 above.**

Prompt Payment Complaints

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

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

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

Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

Enforcement Actions for Noncompliance of Participants

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

- In accordance with the contract, assess liquidated damage charges against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor
- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issue a stop-work order until payments are released to subcontractors, specifying in the contract that such orders constitute unauthorized delays for the purposes of calculating liquidated damages if milestones are not met

The Port actively implements the enforcement actions detailed above. In addition, the Port will take the following actions, should the need arise:

- The Port will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

Monitoring Contracts and Work Sites

The Port reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by the Port or other representative assigned by the Port. Contracting records are reviewed by the Port or other representative assigned by the Port. The Port will maintain written/electronic documentation that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering Small Business Participation.

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

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

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

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

Airport Type	Region	Date Due (Goal Period)	Next Goal Due (Goal Period)
Non-Primary (GAs, Relievers and State DOTs)	New England, Northwest Mountain, & Southern	August 1, 2023 (2024/2025/2026)	August 1, 2026 (2027/2028/2029)

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area using one of the following methods.

- a. The Port will use the Washington DBE Directory information and US Census Bureau data as a method to determine the base figure; or
- b. The Port will use the most recent Disparity Study for Washington State currently produced in 2019 by the Washington State Department of Transportation to determine the base figure.

The Port understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Port will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to attain a goal that is rationally related to the relative availability of DBEs in our market area.

CONSULTATION AND PUBLICATION

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

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

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

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

PROJECT GOALS

If permitted or required by the FAA Administrator we will express our overall goals as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If the Port establishes a goal on a project basis, it will begin using the goal by the time of the first solicitation for a DOT-assisted contract for the project.

PRIOR OPERATING ADMINISTRATION CONCURRENCE

The Port understands that it is not required to obtain prior operating administration concurrence with its overall goal. However, if the operating administration's review suggests that the overall goal has not

been correctly calculated or that the method for calculating goals is inadequate, the operating administration may, after consulting with the Port, adjust the overall goal or require that the Port do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 5** to this program.

Section 26.47 Failure to Meet Overall Goals

The Port cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Port fails to administer its DBE program in good faith.

The Port will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer its DBE Program in good faith to be considered to be in compliance with this part.

If the Port awards and commitments shown on its Uniform Report of DBE Commitments/Awards and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the Port will do the following in order to be regarded by the Department as implementing our DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in its analysis and to enable the Port to fully meet its goal for the new fiscal year; and
- (3) Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. The Port will retain a copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

Section 26.51 Means Recipients Use to Meet Overall Goals

BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS PARTICIPATION

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

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

- (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses, and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.
- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements,

eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

- (3) Providing technical assistance and other services;
- (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on recipient mailing lists for bidders; ensuring the dissemination of lists of potential subcontractors to bidders on prime contracts; provision of information in languages other than English, where appropriate);
- (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
- (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
- (7) Establishing a program to assist new start-up firms, particularly in fields in which DBE participation has historically been low;
- (8) Distributing information about the Washington DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

CONTRACT GOALS

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

If the Port's approved projection estimates that it can meet the entire overall goal for a given year through race-neutral means, the Port will implement its program without setting contract goals during that year, unless it becomes necessary in order meet its overall goal.

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

The Port will express its contract goals as a percentage of the Federal share of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

DEMONSTRATION OF GOOD FAITH EFFORTS

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

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

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

INFORMATION TO BE SUBMITTED

In our solicitations for DOT/FAA-assisted contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment; and
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (2) of this section no later than 2 business days after bid opening as a matter of responsibility.
- (4) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

ADMINISTRATIVE RECONSIDERATION (26.53(D))

Within five (5) business days of being informed by the Port that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offeror should make this request in writing to the following reconsideration official:

Board of Commissioners – Board Chair
PO Box 53
Eastsound, WA 98245
(360) 376-5285
Email: orcasairport@rockisland.com

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

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

GOOD FAITH EFFORTS PROCEDURAL REQUIREMENTS (POST-SOLICITATION)

The Port will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of the Port. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or another DBE firm.

Such written consent will be provided only if the Port agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards, provided that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements;
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1200 or applicable state law;
- (6) The Port has determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides the Port written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;

- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; or
- (10) Other documented good cause that the Port has determined compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's *[bid/solicitation]* response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Port as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

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

Section 26.55 Counting DBE Participation

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

If the firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the Port will not count the firm's participation toward any DBE goals, except as provided for in § 26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

The Port is a non-certifying member of the Washington Unified Certification Program and will not make determinations of the eligibility of firms to participate as DBEs in DOT-assisted contracts. The Port uses the State of Washington DBE directory, maintained by the Washington State Office of Minority and Women’s Business Enterprises (OMWBE). For more information about the certification process, or to apply for certification, firms should contact OMWBE. A link to the DBE application website can be found in **Attachment 8**.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Port will not make determinations of the eligibility of firms to participate as DBEs in DOT-assisted contracts. The Port is a member of the Unified Certification Program (UCP) administered by the State of Washington. The UCP will meet all of the requirements of this section. A copy of the signed agreement between the Port and the State can be found in **Attachment 9**.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Recipient

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

Section 26.109 Information, Confidentiality, Cooperation, Intimidation or Retaliation

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

Notwithstanding any provision of Federal or state law, the Port will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the Port will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this Part or to any other state to which the individual’s firm has applied for certification under § 26.85 of this Part.

All participants in the Department's DBE program (including, but not limited to the following: recipients; DBE firms and applicants for DBE certification; complainants and appellants; and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The Port, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this Part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this Part. The Port, understand that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

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

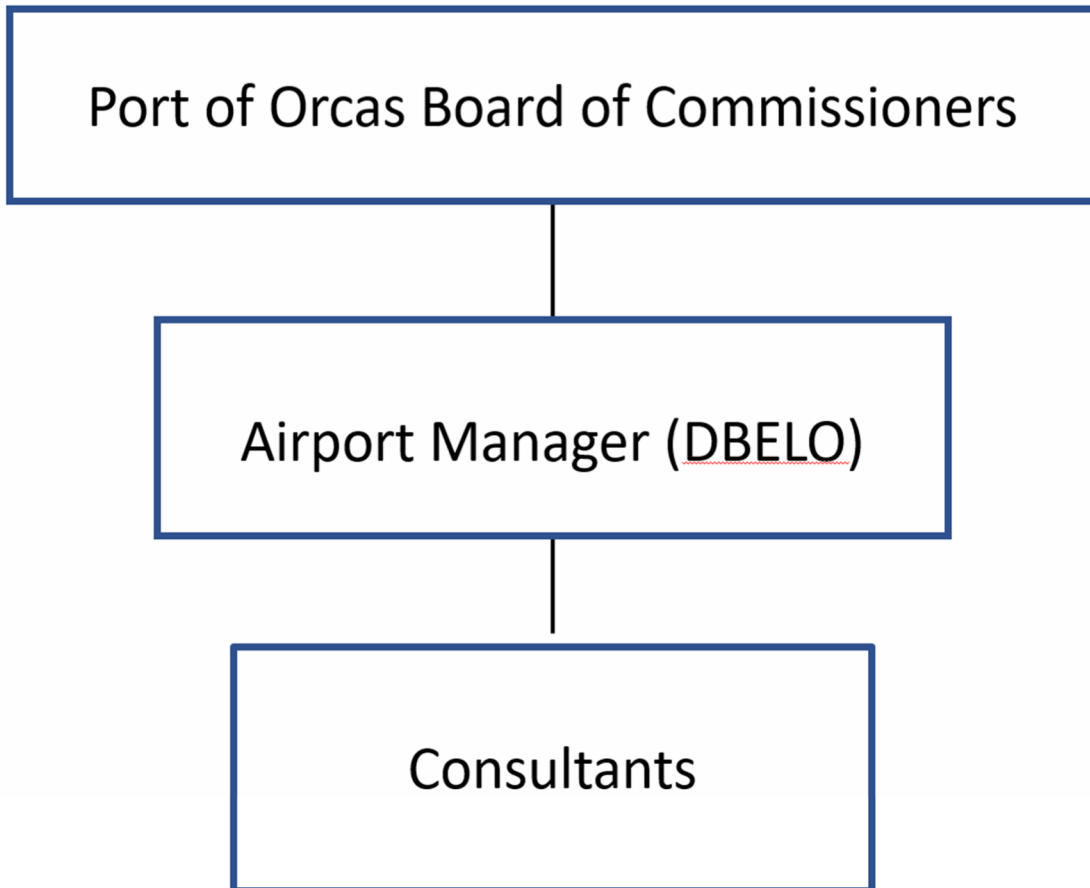
Attachment 1

Regulations: 49 CFR Part 26
(Website Link)

<https://www.ecfr.gov/cgi-bin/text-idx?SID=03244c693412467e551734b3124a572c&mc=true&node=pt49.1.26&rgn=div5#sp49.1.26.a>

Attachment 2

Organizational Chart



Attachment 3

Bidder's List Collection Form

(SAMPLE BIDDERS LIST COLLECTION FORM)

Firm Name Address Phone	DBE or Non-DBE Status*	Age of Firm	Annual Gross Receipts
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil
		<input type="checkbox"/> Less than 1 year <input type="checkbox"/> 1- 3 years <input type="checkbox"/> 4-7 years <input type="checkbox"/> 8-10 years <input type="checkbox"/> More than 10 yrs	<input type="checkbox"/> Less than \$500K <input type="checkbox"/> \$500K - \$1 million <input type="checkbox"/> \$1-2 million <input type="checkbox"/> \$2-5 million <input type="checkbox"/> Greater than \$5 mil

*Verification via State UCP Directory

Attachment 4

Washington State DBE Directory
(Web Link to DBE directory)

<https://omwbe.wa.gov/directory-certified-firms>

Attachment 5

Section 26.45: Overall DBE Three-Year Goal Methodology

To be submitted separately.

Attachment 6

Demonstration of Good Faith Efforts - Forms 1 & 2

[Forms 1 and 2 should be provided as part of the solicitation documents.]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

_____ The bidder/offeror is committed to a minimum of _____ % DBE utilization on this contract.

_____ The bidder/offeror (if unable to meet the DBE goal of _____%) is committed to a minimum of _____% DBE utilization on this contract and should submit documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____
(Signature) (Title)

Printed Name _____ Date _____

FORM 2: LETTER OF INTENT

Name of bidder / offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by DBE firm:

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

Affirmation

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

By _____ Date: _____
(Signature)

(Printed Name and Title)

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

Submit this page for each DBE subcontractor.

Attachment 7

DBE Monitoring and Enforcement Mechanisms

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

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

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

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

Attachment 8

Washington State DBE Certification Application (Website Link)

<https://omwbe.diversitycompliance.com/>

Attachment 9

State / Port UCP Agreement

ATTACHMENT 9
State's UCP Agreement

Memorandum of Understanding

Between

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

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

WITNESSETH:

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

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

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

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

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

1. Representation of Accountability

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

Memorandum of Understanding - UCP
OMWBE/Port of Orcas
Page 1 of 4

2. Acknowledgement and Acceptance of Unified Certification Program

The Port of Orcas agrees to participate in a UCP, as required by 49 CFR Part 26.

3. Designation of Exclusive Certifying Authority; Binding Effect

The Port of Orcas agrees as follows:

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

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

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

4. Notification Responsibilities of the Parties

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

5. Duties and Responsibilities of OMWBE

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

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

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

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

5.4 Share information and documents concerning firms certified in the state of Washington with other state UCPs that are considering applications of certification from such firms.

5.5 Maintain a unified *DBE Directory* of firms certified by OMWBE pursuant to this UCP that shall contain all of the information required by 49 CFR 26.31 and be available to the public electronically, on the Internet, and in print.

5.6 Cooperate fully with all oversight, review and monitoring activities of USDOT and the other parties, as it relates to the implementation and ongoing activities of the UCP.

5.7 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to the UCP by USDOT and/or the Federal Transit Administration and/or the **Port of Orcas**.

6. Duties and Responsibilities of the Port of Orcas

The **Port of Orcas** shall perform the following duties and have the following responsibilities:

6.1 Pay a reasonable fee or other appropriate charge that has been established by rule in accordance with RCW 39.19.210 and WAC 326-02-034(3)(a).

6.2 Provide OMWBE and WSDOT with a copy of the **Port of Orcas** Disadvantaged Business Enterprise Program Plan, and a copy of the **Port of Orcas** Annual DBE Agency Goal Submittal as provided to the Federal Transit Administration.

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

6.4 Cooperate fully with all oversight, review and monitoring activities of USDOT and/or the Federal Transit Administration, as it relates to the implementation and ongoing activities of the UCP.

6.5 Cooperate fully with and participate in any audits or certification performance reviews and/or respond to and reply to other requests for information as may be directed to The **Port of Orcas** by USDOT and/or the Federal Transit Administration and/or OMWBE.


IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding effective as of the last date of all the signatories appearing here below.

ACCEPTED:

Washington State Office of Minority and Women's Business Enterprises

BY: Lisa van der Lugt Date: 04/01/2022
Lisa van der Lugt
Director

Approved as to Form:


Assistant Attorney General
State of Washington

The Port of Orcas

BY: Jearnie Sipe Date: 4-1-22
Authorized Signature


Approved as to Form (if required):

Legal Counsel

Washington State Department of Transportation

BY: Roger Millar Date: 4/4/2022
Secretary

Approved as to Form:


Assistant Attorney General
State of Washington

Attachment 10

Small Business Element

OBJECTIVE: FOSTERING SMALL BUSINESS PARTICIPATION

DBE program regulations, CFR § 26.39, that became effective on February 28, 2011, require that a DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, including DBEs, taking reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors. All DBE firms are eligible for this program; the Port of Orcas Island (Port) does not have a DBE micro-Small Business Element.

DEFINITION

For the purpose of the Port's Small Business Element, a small business is defined as: **A company and/or firm whose annual revenue does not exceed one million dollars.** All businesses meeting this criterion will be considered to be small businesses, without regard to race or gender.

STRATEGIES

Prime contracts and subcontracts valued under \$50,000 are available to small businesses as a result of the Airport Improvement Program. The Port believes that it is currently meeting the objectives of its construction contracting activities by:

- Ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform;
- Arranging quantities, specifications, and delivery schedules to facilitate small business participation; and
- Dividing large contracts into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract.

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

The Port provides opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state and local requirements. Through small business outreach, the Port, with the assistance of the Department of Transportation DBE program, will assist small firms to become primes and in growing their business to eventually compete on larger contracts.

VERIFICATION

All firms participating in small business contracting opportunities will be verified by the Port as to meeting the eligibility criteria of this program. This will be accomplished using the state business records that include any certifications a firm might have, including DBE certification, as well as annual sales volume.

MONITORING / RECORD KEEPING

The Port will maintain a contact list comprised of participating businesses, partners and economic development contacts established through various opportunities and affiliations. Through this contact list, the Port will be able to communicate to small businesses about upcoming contracting and subcontracting opportunities, as well as monitor the success of this Small Business Element in past contracting opportunities.

The Port will maintain contacts with the Small Business Administration, area economic development companies and associations, the State Department of Labor, and the Department of Commerce in order to offer small businesses assistance in various business growing services. These partnerships will be instrumental in allowing small businesses to grow and learn more about becoming larger companies and being able to bid larger jobs at the Port's Airport.

In addition to the above strategies, the Port will strive to:

- In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”), require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform;
- On prime contracts not having DBE contract goals, require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved; and
- Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

ASSURANCES

The following Assurances apply to this Small Business element:

1. The program is authorized under state law.
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program.
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses.
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).