

## **POLICY STATEMENT**

### **Section 26.1, 26.23**

### **Objectives/Policy Statement**

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

It is the policy of the Port of Walla Walla to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our 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 assist the development of firms that can compete successfully in the market place outside the DBE Program.

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

Port of Walla Walla has disseminated this policy statement to Port Commission 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. Every contract for construction with at least \$250,000 DOT-granted funds will make reference to the Port of Walla Walla's policy to comply with 49 CFR Part 26.

  
Jennifer Skoglund, Airport Manager

Aug. 20, 2012  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

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

### **Section 26.5 Definitions**

The Port of Walla Walla will use terms in this program that have the meaning defined in Section 26.5.

### **Section 26.7 Non-discrimination Requirements**

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

In administering its DBE program, the Port of Walla Walla 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(b)**

Since the Port of Walla Walla will receive an annual grant during the reporting period of \$250,000 or more for airport planning or development, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal annually on August 1 if we plan to award contracts exceeding \$250,000 in FAA funds in that Federal fiscal year.

We will report DBE participation to DOT as follows:

We will transmit to FAA annually on December 1, as required the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

#### **Bidders List: 26.11(c)**

The Port of Walla Walla 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 our 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.

We will collect this information in the following ways:

- 1) The Bidders List (example on the Page 4) will be collected upon award from the successful prime contractor, listing all successful and unsuccessful subcontractors providing bids to the successful prime.
- 2) The Bid Tab (example on Page 5) will be compiled after each bid and will list the successful and unsuccessful prime contractors.

All firms bidding or quoting on subcontracts for this DOT-assisted project are listed below.

(To be submitted prior to Notice of Award)

[illegible]

Note: This form is not necessary if the recipient establishes a bidders list using another methodology (e.g., statistically sound survey of firms, widely disseminated request of firms to report information to the recipient, etc.) as defined in the recipient's DBE plan.

\*GRS – Annual Gross Receipts

Enter 1 for less than \$1 million

Enter 2 for more than \$1 million, less than \$5 million

Enter 3 for more than \$5 million, less than \$10 million

Enter 4 for more than \$10 million, less than \$15 million

Enter 4 for more than \$10 million,  
Enter 5 for more than \$15 million.

Enter 5 for more  
good faith effort

## BID TAB

Walla Walla Regional Airport  
AIP Project 3-53-0083-028 - 2012 Apron Reconstruction Project

Bid Opening - July 19, 2011 - 2:00 PM  
Bid Tabulation

BIDDER NAME:

Bid Opening - July 19, 2011 - 2:00 PM Bid Tabulation				BIDDER NAME:	Engineer's Estimate	Granite Construction Low Bidder		Kerr Contractors, Inc. 2nd Low Bidder	
ITEM NO.	ITEM DESCRIPTION	EST. QUAN.	UNIT	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE	UNIT PRICE	TOTAL PRICE
BASE BID (Phase 1 and 2 Construction)									
P-152-4.1	Unclassified Excavation	320	CY	\$16.00	\$5,120.00	\$18.00	\$5,760.00	\$13.00	\$4,160.00
P-154-5.1	Subbase Course	309	TON	\$26.00	\$8,034.00	\$42.00	\$12,978.00	\$30.00	\$9,270.00
P-156-5.1	Temporary Erosion Control	1	LS	\$10,000.00	\$10,000.00	\$7,500.00	\$7,500.00	\$5,000.00	\$5,000.00
P-209-5.1	Crushed Aggregate Base Course	955	TON	\$28.00	\$26,740.00	\$35.00	\$33,425.00	\$30.00	\$28,650.00
P-401-8.1a	Bituminous Surface Course	14,050	TON	\$95.00	\$1,334,750.00	\$73.00	\$1,025,650.00	\$75.00	\$1,053,750.00
P-605-5.1	Joint Sealing Filler	1,190	LF	\$2.50	\$2,975.00	\$6.50	\$7,735.00	\$7.00	\$8,330.00
P-610-5.1	Colored Structural Portland Cement Concrete - 8 ½"	576	SY	\$74.00	\$42,624.00	\$106.00	\$61,056.00	\$135.00	\$77,760.00
P-610-5.2	Structural Portland Cement Concrete - 8 ½"	427	SY	\$60.00	\$25,620.00	\$91.00	\$38,857.00	\$110.00	\$46,970.00
P-610-5.3	Structural Portland Cement Concrete - 4"	27	SY	\$30.00	\$810.00	\$85.00	\$2,295.00	\$40.00	\$1,080.00
P-620-5.1	Runway and Taxiway Painting	8,335	SF	\$0.50	\$4,167.50	\$0.75	\$6,251.25	\$0.75	\$6,251.25
P-620-5.2	Remove Existing Markings	3,476	SF	\$2.00	\$6,952.00	\$1.00	\$3,476.00	\$1.00	\$3,476.00
D-751-5.3	Replace Catch Basin Frame and Grate at Grade	10	EA	\$1,200.00	\$12,000.00	\$700.00	\$7,000.00	\$1,500.00	\$15,000.00
D-751-5.4	Type 2 Catch Basin on Existing SD Line	3	EA	\$3,500.00	\$10,500.00	\$4,700.00	\$14,100.00	\$3,000.00	\$9,000.00
D-754-5.1	Valley Gutter	386	LF	\$45.00	\$17,370.00	\$44.00	\$16,984.00	\$70.00	\$27,020.00
L-105-5.3	New Electrical Service	1	LS	\$8,000.00	\$8,000.00	\$2,526.00	\$2,526.00	\$5,000.00	\$5,000.00
L-108-5.1	#8 AWG L-824C Cable, installed in Trench, Duct Bank or Conduit	5,200	LF	\$2.25	\$11,700.00	\$1.17	\$6,084.00	\$1.15	\$5,980.00
L-108-5.2	#6 AWG Bare Counterpoise wire in Trench	1,000	LF	\$1.50	\$1,500.00	\$1.30	\$1,300.00	\$1.25	\$1,250.00
L-108-5.3	#6 AWG Bare Equipment Ground in Duct or Conduit	650	LF	\$1.80	\$1,170.00	\$1.26	\$819.00	\$1.20	\$780.00
L-108-5.4	1/0 AWG Bare Copper Ground	750	LF	\$3.40	\$2,550.00	\$3.05	\$2,287.50	\$2.95	\$2,212.50
L-108-5.5	12 Pair 19 AWG Shielded Communications Cable	700	LF	\$8.00	\$5,600.00	\$2.69	\$1,883.00	\$2.60	\$1,820.00
L-108-5.6	#4 AWG Cable in Duct or Conduit	2,600	LF	\$3.00	\$7,800.00	\$1.67	\$4,342.00	\$1.60	\$4,160.00
L-108-5.7	#4/0 AWG Bare Ground, installed in Trench or Duct Bank, including Ground Rods and Ground Conductor	650	LF	\$4.70	\$3,055.00	\$6.00	\$3,900.00	\$5.45	\$3,542.50
L-108-5.8	#500 Kcmil Conductor in Duct or Conduit	4,100	LF	\$6.50	\$26,650.00	\$13.00	\$53,300.00	\$11.75	\$48,175.00
L-108-5.9	#2 AWG Conductor in Duct or Conduit	600	LF	\$2.17	\$1,302.00	\$4.00	\$2,400.00	\$3.50	\$2,100.00
L-110-5.2	15-3 Inch PVC Duct Encased in Concrete	650	LF	\$80.00	\$52,000.00	\$140.00	\$91,000.00	\$100.00	\$65,000.00
L-110-5.4	6-3 Inch PVC Duct Encased in Concrete	500	LF	\$40.00	\$20,000.00	\$75.00	\$37,500.00	\$50.00	\$25,000.00
L-115-5.1	Electrical Manhole	3	EA	\$6,400.00	\$19,200.00	\$5,500.00	\$16,500.00	\$7,500.00	\$22,500.00
L-115-5.2	Electrical Handhole	4	EA	\$1,500.00	\$6,000.00	\$3,000.00	\$12,000.00	\$4,000.00	\$16,000.00
SP-1	Mobilization	1	LS	\$150,000.00	\$150,000.00	\$342,675.00	\$342,675.00	\$415,000.00	\$415,000.00
SP-2-4.1	Construction Safety	1	LS	\$15,000.00	\$15,000.00	\$21,000.00	\$21,000.00	\$50,000.00	\$50,000.00
SP-2-4.2	Contractor Provided SPCD	1	LS	\$2,000.00	\$2,000.00	\$500.00	\$500.00	\$500.00	\$500.00
SP-3-1.1	Rubblizing	45,242	SY	\$1.75	\$79,173.50	\$2.00	\$90,484.00	\$2.00	\$90,484.00
SP-4-5.1	Asphalt Overlay Fabric	45,242	SY	\$2.00	\$90,484.00	\$3.00	\$135,726.00	\$3.25	\$147,036.50
SP-5	Demolition	1	LS	\$55,000.00	\$55,000.00	\$75,342.00	\$75,342.00	\$100,000.00	\$100,000.00
SP-10-4.1	Lawn Restoration and Grading	1,570	SY	\$10.00	\$15,700.00	\$5.00	\$7,850.00	\$8.00	\$12,560.00
SP-8	Electronic Gate and Control Pedestal Adjustments	1	LS	\$3,000.00	\$3,000.00	\$6,500.00	\$6,500.00	\$10,000.00	\$10,000.00
SP-9-5.1	Pavement Milling and Removal	2,904	SY	\$12.00	\$34,848.00	\$25.00	\$72,600.00	\$4.50	\$13,068.00
SP-6.5.2	Install New Aircraft Tie-Down	105	EA	\$300.00	\$31,500.00	\$360.00	\$37,800.00	\$850.00	\$89,250.00
SP-7-3.1	Underground Storage Tank Removal	1	LS	\$20,000.00	\$20,000.00	\$5,000.00	\$5,000.00	\$12,000.00	\$12,000.00
Subtotal					\$2,170,895.00		\$2,274,385.75		\$2,439,135.75
8.7% Sales Tax					\$188,867.87		\$197,871.56		\$212,204.81
TOTAL BASE BID (Phase 1 and 2 Construction):					\$2,359,762.87		\$2,472,257.31		\$2,651,340.56

**Section 26.13 Federal Financial Assistance Agreement**

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

**Assurance: 26.13(a)**

Port of Walla Walla 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 recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The Port of Walla Walla'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 Walla Walla of its failure to carry out its approved program, the Department may impose sanctions as provided for under 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.*).

This language will appear in financial assistance agreements with sub-recipients.

**Contract Assurance: 26.13b**

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS****Section 26.21 DBE Program Updates**

The Port of Walla Walla will receive an annual grant for airport planning or development totaling \$250,000 during one or more years of the reporting period. We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program. We will submit an updated goal on August 1 as required, if we plan to award FAA funded contracts exceeding \$250,000 annually, during the reporting period.

**Section 26.23 Policy Statement**

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

**Section 26.25 DBE Liaison Officer (DBELO)**

We have designated the following individual as our DBE Liaison Officer:

Jennifer Skoglund, Airport Manager

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Port of Walla Walla complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Port Commission concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO retains a consultant to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes Port of Walla Walla's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO\governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Acts as liaison to the Uniform Certification Process in [*name of State*].
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the Port of Walla Walla's updated directory on certified DBEs.

#### **Section 26.27 DBE Financial Institutions**

It is the policy of the Port of Walla Walla 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.

To date, no DBE financial institutions have been identified in the market area for the Walla Walla Regional Airport.

#### **Section 26.29 Prompt Payment Mechanisms**

The Port of Walla Walla will include the following clause in each DOT-assisted prime contract:

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

#### **Section 26.31 Directory**

The recipient uses the State of Washington DBE directory, maintained by the State. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the

firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work.

The State of Washington revises the Directory annually. The Directory may be found at <http://www.omwbe.wa.gov/biznetwas/mainmenu.asp>.

### **Section 26.33 Over-concentration**

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

### **Section 26.35 Business Development Programs**

Port of Walla Walla has not established a business development program.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The Port of Walla Walla will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 2 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
3. We will also implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by the DBEs. This mechanism will provide for a running tally of actual DBE attainments (e.g., payment actually made to DBE firms), including a means of comparing these attainments to commitments. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by requiring the submittal of WSDOT Form 422-102 EF (2/2006) on a quarterly basis between contract award and closeout.
4. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

### **Section 26.39 Fostering small business participation.**

Port of Walla Walla is in the process of creating an 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.

As part of this program element, we are considering the following strategies:

- (1) Establish a race-neutral small business set-aside for prime contracts under a stated amount.
- (2) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") we will require the bidders on prime contracts to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

- (3) On prime contracts not having DBE contract goals, we will encourage 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.
- (4) Identifying 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.
- (5) To meet the portion of our overall goal that we project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

We will actively implement the program elements to foster small business participation. Doing so is a requirement of good faith implementation of our DBE program.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

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

### **Section 26.45 Overall Goals**

Port of Walla Walla will establish 3-year overall goals if we anticipate awarding FAA funded prime contracts exceeding \$250,000 annually within one or more of the reporting years within the 3-year goal period. Goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Port of Walla Walla does not anticipate awarding more than \$250,000 in FAA funding annually during the 3-year reporting period, we will not develop an overall goal; however the existing DBE program will remain in effect and the Port of Walla Walla will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

The first step is to determine the relative availability of DBEs in the market area, “base figure”. The second step is to adjust 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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 3 to this program.

In accordance with Section 26.45(f) the Port of Walla Walla will submit its overall goal to DOT on August 1 as required by the goal submittal timeline. In establishing the overall goal, Port of Walla Walla will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the Port of Walla Walla efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Walla Walla Regional Airport office for 30 days following the date of the notice, and informing the public that Port of Walla Walla and DOT will accept comments on the goals for 45 days from the date of the notice. Notice will be issued in general circulation media and available minority-focus media and trade publications, websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.



Our overall goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### **Section 26.47 Failure to meet overall goals.**

If the Port of Walla Walla awards and commitments are less than the goal for that year, we will:

- (1) Analyze the reasons for difference
- (2) Establish specific steps and milestones to fully meet the goal for the new fiscal year
- (3) As an Operational Evolution Partnership (OEP) Plan or primary airport we will submit, within 90 days of the end of that fiscal year, the analysis and corrective actions developed, to the appropriate FAA DBE Team

#### **Section 26.49 Equipment Manufacturers Goals**

Port of Walla Walla will require each equipment manufacturer, as a condition of being authorized to bid or propose on FAA-assisted equipment procurements, to certify that it has complied with the requirements of this section. Alternatively, Port of Walla Walla may, at its discretion and with FAA approval, establish project-specific goals for DBE participation in the procurement of equipment in lieu of the manufacturer complying with this element of the program.

#### **Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The use of race-conscious goals in the State of Washington has been restricted and is contingent upon the existence of published data identifying disparities and availability of specific race and gender groups in each industry. So far, no such data has been made available in Washington State pertaining to FAA funding and airport construction industries. The Port of Walla Walla cannot, at this time, use a race-conscious goal. They would, however, like to reserve the right to use one in the future, should the opportunity arise, and if necessary to meet the overall goal.

**Section 26.51(d-g) Contract Goals**

The Port of Walla Walla will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39.

If our approved projection under paragraph (c) of this section estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year, unless it becomes necessary in order meet our overall goal.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We 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.)

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

**Section 26.53 Good Faith Efforts Procedures**Demonstration of good faith efforts (26.53(a) & (c))

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

Port of Walla Walla 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 (26.53(b))

Port of Walla Walla treats bidder/offers' compliance with good faith efforts' requirements as a matter of **responsibility** – only the apparent successful bidder will submit the DBE information.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information within five (5) business days of being notified that they are the successful bidders, but before the contract is executed:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within five (5) business days of being informed by Port of Walla Walla that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative

reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: Jim Kuntz. 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 when a DBE is replaced on a contract (26.53(f))

Port of Walla Walla 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

If the contractor fails or refuses to comply in the time specified, our contracting office will 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.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the Port of Walla Walla to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be contingent upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26, to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55 Counting DBE Participation**

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We 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.

**SUBPART D – CERTIFICATION STANDARDS**

**Section 26.61 – 26.73 Certification Process**

Port of Walla Walla will rely upon the Washington State Office of Minority and Women Owned Business Enterprises (OMWBE) for certification and to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

For information about the certification process or to apply for certification, firms should contact:  
Jean Wheat (Manager of OMWBE) at [jwheat@omwbe.gov](mailto:jwheat@omwbe.gov).

**SUBPART E – CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

Port of Walla Walla relies upon OMWBE to meet all of the requirements of this section.

## **Section 26.83 Procedures for Certification Decisions**

### Re-certifications 26.83(a) & (c)

The eligibility of DBEs originally certified under former Part 23 will be reviewed by OMWBE to make sure that they will meet the standards of Subpart E of Part 26. They will complete this review no later than three years from the most recent certification date of each firm.

For firms that the UCP has certified or reviewed and found eligible under Part 26, they will again review their eligibility as frequent as every three years. These reviews may include the following components:

- 1) On-site reviews.
- 2) Financial audits.

### “No Change” Affidavits and Notices of Change (26.83(j))

The UCP requires all DBE owners to inform us, in a written affidavit, of any change in their circumstances affecting their ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided in the DBE’s application for certification.

The UCP also requires all DBE owners they have certified to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to the Washington State Office of Minority- and Women-Owned Business Enterprises under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$22.41 million.

The UCP requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

The UCP will notify all currently certified DBE firms of these obligations in writing at the time of certification. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

## **Section 26.85 Interstate Certification**

When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A’s certification and certify the firm, without further procedures. The UCP will follow the procedures defined in Section 26.85.

## **Section 26.86 Denials of Initial Requests for Certification**

If the UCP denies a firm’s application or decertifies it, it may not reapply until 12 months have passed from their action.

## **Section 26.87 Removal of a DBE’s Eligibility**

In the event the UCP proposes to remove a DBE’s certification, they will follow procedures consistent with 26.87. Attachment 5 to this program sets forth these procedures in detail. To ensure separation of

functions in a de-certification, the UCP has determined that a UCP officer will serve as the decision-maker in de-certification proceedings. The UCP has established an administrative “firewall” to ensure that the UCP officer will not have participated in any way in the de-certification proceeding against the firm (including the decision to initiate such a proceeding).

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal our decision in a certification matter to DOT. Such appeals may be sent to:

US Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Program Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone: 202-366-4754  
TTY: 202-366-9696  
Fax: 202-366-5575

The UCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that the UCP’s denial of its application was erroneous).

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

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

Notwithstanding any provision of Federal or state law, the UCP 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 UCP must 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.

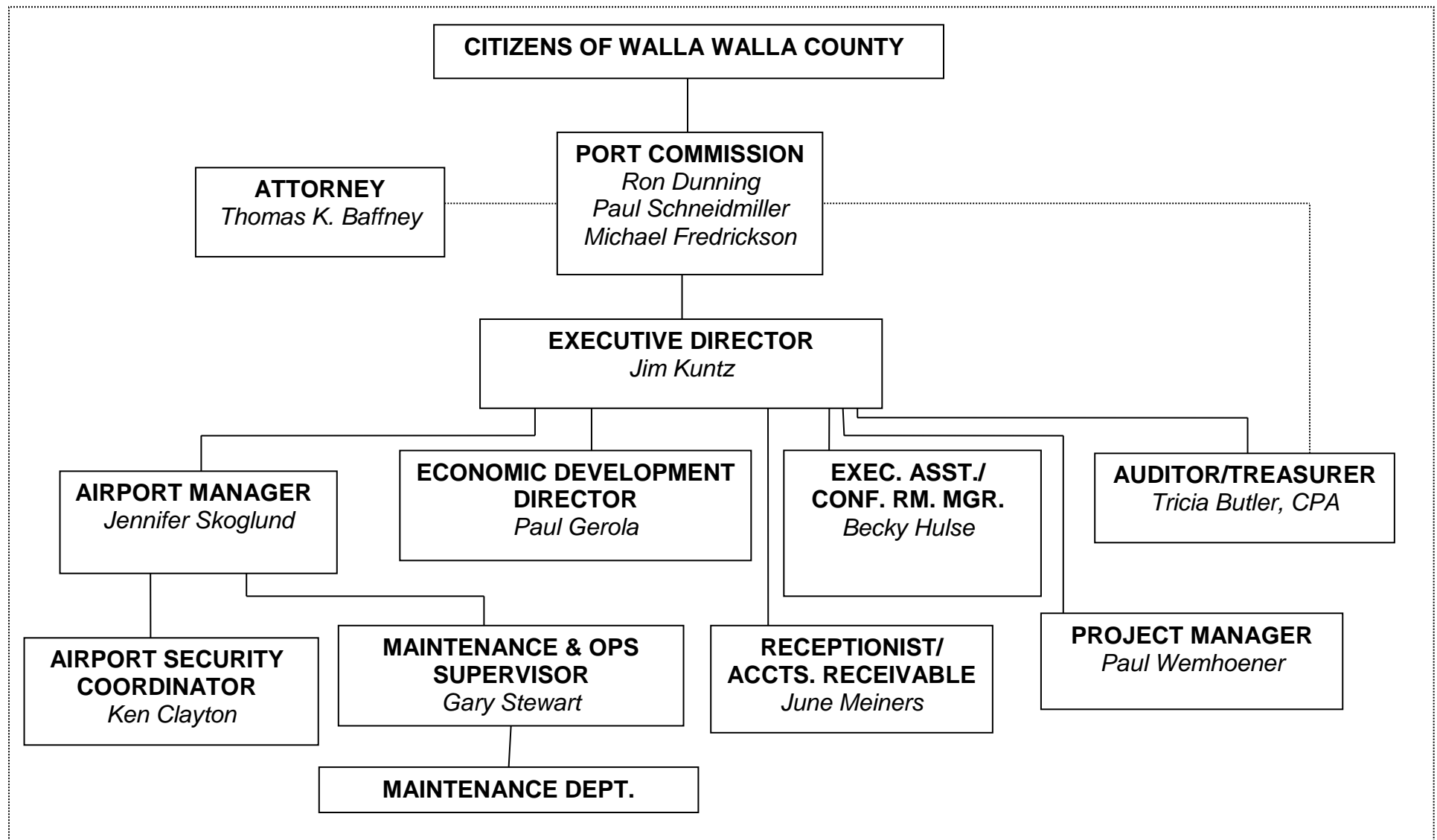
#### **Monitoring Payments to DBEs**

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

We will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

**ATTACHMENTS**

Attachment 1	Organizational Chart
Attachment 2	Monitoring and Enforcement Mechanisms
Attachment 3	Overall Goal Calculation (Include Breakout of Estimated Race-Neutral & Race-Conscious Participation, Public Participation, and Contract Goal)
Attachment 4	Form 1 & 2 for Demonstration of Good Faith Efforts or Good Faith Effort Plan
Attachment 5	Procedures for Removal of DBE's Eligibility

Attachment 1



**Attachment 2****Monitoring and Enforcement Mechanisms**

The [Recipient] 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;

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

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

### Attachment 3

#### Section 26.45: Overall Goal Calculation

The following is the general methodology used for calculation of a three-year overall DBE goal.

*Recipient:*

**Goal Period:** October 1, 20XX through September 30, 20XX

**DOT-assisted contract amount:**

**DBE Goal:** (percentage)

**Total dollar amount to be expended on DBE's:**

**Describe the Number and Type of Projects for This Three-Year Period:**

- a.
- b.

**Market Area:** A list of counties typically defines the Market Area.

**Determination of Market Area:** The Market Area is identified as those counties where most of the contractors who work on federally-assisted projects at the particular airport originate. This is typically determined by inspection of past bidders lists, or by identifying nearby concentrations of firms performing the particular type of work required.

**Step 1. Analysis:** Actual relative availability of DBE's

Method: Use DBE Directories and Census Bureau Data

For the combination of all projects in the three-year period, catalog or calculate the following information:

NAICS	Type of Work (Trade Description)	Total DBE's per Trade <sup>1</sup>	Total Firms per Trade <sup>2</sup>	Percentage for DBE's per Trade <sup>3</sup>	FAA Dollars for all Firms per Trade <sup>4</sup>	FAA Dollars for DBE's per Trade <sup>5</sup>
Total <sup>6</sup>						
					Step 1 Goal <sup>7</sup>	

1. Total DBE's per Trade is determined by examining the UCP's Certified DBE list and counting all DBE's in the market area.
2. Total Firms per Trade is determined through use of [www.censtats.gov](http://www.censtats.gov) database for the market area.
3. Percentage of DBE's per Trade is calculated by dividing DBE's per trade by the number of total firms per trade.
4. FAA Dollars for All Firms per Trade is estimated by examination of the project needs and through the use of estimating tools such as unit price databases or past projects.
5. FAA Dollars for DBE's per Trade is calculated by multiplying Percentage of DBE's per Trade by the FAA Dollars for All Firms per Trade.
6. The relevant totals are summations of FAA dollars for all trades (which should equal the expected FAA contribution for the entire three-year period) and the total of the FAA dollars for DBE's for all trades.
7. The Step 1 goal is calculated by dividing the total dollars for DBE's by the total dollars for all firms.

**Step 2. Analysis:** Adjustment to Step 1 base figure to make it more precise.

Three factors to consider in the adjustment of Step 1 base figure:

- a. The recipient researches the existence of a disparity study. To date, there has not been a disparity study that has relevancy both in the market area and for FAA type projects.
- b. The recipient addresses other factors by consultation with nearby agencies who also set DBE goals. In the past, these agencies have typically been other airports within the same market area. They can also include WSDOT Civil Rights and WSDOT Aviation, although it's

important to recognize that state-wide agencies have broader market areas and their DBE goals are not typically targeted to specific regions within the state. The recipient should also consult Organizations serving or representing DBE's, minority- or women-owned businesses.

- c. The recipient examines the historic overall DBE goals accomplishments at the airport in recent years (i.e., 3-4 years), and specifically, the annual "Report of DBE Goal Accomplishments," Form 4630, Uniform Report of DBE Awards or Commitments and Payments supplemented by contractual closeout information.

Recipients Historic DBE Accomplishments for DOT-Assisted Contracts  
(3-4 years analysis of similar or the same type of work)

Fiscal Year	Goal	Accomplishments	Type of Work

Once catalogued,

\_\_\_% base figure + \_\_\_% (historical median) divided by 2 = \_\_\_adjusted overall goal

**Breakout of Estimated Race Neutral (RN) and Race Conscious (RC) Participation.**  
26.51(b)(1-9)

The recipient will meet the maximum feasible portion of its overall goal by using RN means of facilitating DBE participation. The following RN methods will be considered:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation;
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing;
3. Providing technical assistance and other services;
4. Carrying out information and communications programs on contracting procedures and specific contract opportunities;
5. Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBE's and other small businesses;
6. Providing services to help DBE's and other small businesses improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
9. Assist DBE's and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media; and

The recipient estimates that in meeting its overall goal \_\_%, it will obtain \_\_\_% from RN participation and \_\_\_% through RC measures.

The recipient will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation (see Section 26.51(f)) and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal,

DBE participation on a prime contract exceeding a contract goal and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Public Participation**

**Consultation:** Section 26.45(g)(1). Consultation shall be made with OMWBE, other established groups representing multiple DBE firms, if available, and any available and relevant disparity or availability study.

**Published Notice:** Section 26.45 (g)(2). The public will be notified of the proposed DBE goal. This notice will be made in the general circulation newspaper for the Market Area. The Public will be able to review the goal and methodology at the Recipient's office for 30 calendar days and the Recipient will accept comments for 45 calendar days.

### **Sample Public Notice Language:**

#### **PUBLIC NOTICE**

The [*recipient's name*] Airport hereby announces its three-year goal (for FY20XX-FY20XX) of \_\_\_\_% for Disadvantaged Business Enterprise (DBE) airport construction projects. The proposed goals and rationale is available for inspection between 8:00 a.m. and 5:00 p.m., Monday through Friday at [*location's name and address*] for 30 days from the date of this publication. Comments on the DBE goal will be accepted for 45 days from the date of this publication and can be sent to the following: [*DBELO, name, complete address*] or Federal Aviation Administration, Civil Rights, Staff, ASW-9, 2601 Meacham Boulevard, Fort Worth, TX 76137-0009

### **Contract Goals**

The recipient will use contract goals to meet any portion of the overall goal that the recipient does not project being able to meet using RN means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the recipient's overall goal that is not projected to be met through the use of RN means.

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

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

**Attachment 4****Forms 1 & 2 for Demonstration of Good Faith Efforts****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

**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.

By \_\_\_\_\_  
(Signature) (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 5****Section 26.87 Procedures for Removal of DBE's Eligibility****Ineligibility complaints:**

(1) Can be filed by any person. Written complaints should be made alleging that a currently-certified firm is ineligible and specifying the alleged reasons. General or anonymous allegations may or may not be accepted. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities shall be protected.

(2) UCP will review records concerning the firm, all material provided by the firm and the complainant, and other available information. The UCP may request additional information from the firm or conduct any other investigations that they deem necessary.

(3) If the UCP determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, they must provide written notice to the firm that they propose to find the firm ineligible, setting forth the reasons for the proposed determination. If they determine that such reasonable cause does not exist, they must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**UCP-Initiated proceedings:**

(1) If, based on notification by the firm of a change in its circumstances or other information that comes to the UCP's attention, they determine that there is reasonable cause to believe that a currently certified firm is ineligible, they must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

**DOT directive to initiate proceeding:**

(1) If the concerned operating administration determines that information in the UCP's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct the UCP to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide the UCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) The UCP must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

**Hearing:**

(1) When the UCP notifies a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, they must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(2) In such a proceeding, the UCP bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(3) The UCP must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(4) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, the UCP bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as they would during a hearing.

**Separation of functions:**

- (1) The UCP must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- (2) Their method of implementing this requirement must be made part of any Recipients DBE program.
- (3) The decisionmaker must be an individual who is knowledgeable about the certification requirements.

**Grounds for decision:**

- (1) The UCP must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the UCP at the time of its certification of the firm. They may base such a decision only on one or more of the following:
  - (i) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
  - (ii) Information or evidence not available at the time the firm was certified;
  - (iii) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
  - (iv) A change in the certification standards or requirements of the Department since the firm was certified;
  - (v) A documented finding that the UCP's determination to certify the firm was factually erroneous.

**Notice of decision:**

- (1) Following the decision, The UCP must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of their decision and of the availability of an appeal to the Department of Transportation under §26.89. The UCP must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed them to initiate the proceeding.

**Status of firm during proceeding:**

- (1) A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the Notice of Decision.
- (j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:
  - (1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.
  - (2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.
- (3) *Exception:* If the DBE ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.
- (k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.



## **Small Business Element**

### **The Requirement:**

On January 28, 2011, the U.S. Department of Transportation (DOT) issued a final rule amending Title 49 Code of Federal Regulations (CFR) Part 26 to include a new requirement concerning the fostering of small business opportunities. By this rule, recipients of DOT funds would be required to include a Small Business Element as a portion of their Disadvantaged Business Enterprise (DBE) Program.

### **Suggested Action:**

The amendment to Part 26 did not require specific actions to garner small businesses. Instead, several suggestions were identified. Suggestions included, but were not limited to:

- 1) Establishing a small business set-aside program for small contracts,
- 2) Requiring that bidders on large and multi-year design-build contracts specify elements of the contract or specific subcontracts that will be sized for small business participation,
- 3) Requiring contractors to provide subcontracting opportunities, rather than self-performing all work, on contracts without DBE goals,
- 4) Identifying alternative acquisition strategies that promote consortia and joint ventures consisting of small businesses,
- 5) Sizing a portion of all prime contracts for small businesses. That portion was suggested to be large enough that the race-neutral DBE goal could be met if the small businesses happened to be DBE's.

### **Our Response:**

The Port of Walla Walla and the Walla Walla Regional Airport are dedicated to the creation of a contracting environment that is welcoming to small businesses, including DBE's. Small businesses have long seen substantial subcontracting opportunities on construction jobs at the Walla Walla Regional Airport. The structure of the local economy is such that for many trades, only small businesses are available to perform work. As an example pavement striping is typically bid on by two local companies, both of which are small businesses and one of which is a DBE.

Because there is a pattern showing wide-spread use of small businesses, our plan for a small business element is to continue with the contracting practices in place at Walla Walla Regional Airport.

The Port of Walla Walla has a small works roster for construction services under \$200,000. While it is not explicitly reserved for small businesses, the majority of the businesses currently on that list are small businesses. For larger contracts, there has not

been a requirement that the prime contractor award subcontracts of sizes suited to small businesses, but this has almost always happened without requirement.

**Our Solution:**

We propose, as an added requirement for this small business element, to impose upon ourselves the burden of collecting evidence that small businesses are performing a substantial amount of the work on FAA-funded construction projects.

For future FAA-funded projects, information on small businesses would be tracked. Construction contract language would be modified to require subcontractors meeting the small business thresholds to submit gross annual receipts for the past three years proving their small business status and quarterly records of how much they earned via the subcontract on a quarterly basis throughout the project life. Size thresholds for small businesses will be adopted from the most current Table of Small Business Size Standards published by the U.S. Small Business Administration at the time of the contract award. Prime contractors meeting the same thresholds would be asked to submit the same documents. The Port would collect and maintain records showing what percentage of each project, in terms of dollars, was completed by small businesses.

Once again, the Port of Walla Walla and Walla Walla Regional Airport are dedicated to fostering a small business-friendly environment. Since Walla Walla is a small community, small businesses are typically local and regional employers who contribute to the local and regional economies, which is an important goal at the Port of Walla Walla. By implementing a system of data collection and record-keeping, we hope to provide evidence of our dedication and of our success in the promotion of small business.

Signed:

  
Jennifer Skoglund, Airport Manager

Walla Walla Regional Airport

Dated:

  
\_\_\_\_\_