

**Federal Fiscal Years 2020 – 2022
DBE Program**



POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

The Olympia Regional 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 Olympia Regional Airport has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Olympia Regional Airport has signed an assurance that it will comply with 49 CFR Part 26 (*hereafter referred to as "Part 26"*).

It is the policy of the Olympia Regional Airport 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. 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.

The Port of Olympia's Senior Contract Administrator is delegated as the DBE Liaison Officer. In that capacity, the Senior Contract Administrator 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 Olympia Regional Airport in its financial assistance agreements with the Department of Transportation.

Olympia Regional Airport has disseminated this policy statement to the Port of Olympia 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. This information is distributed through contract documentation.



Sam Gibboney, Executive Director

1/05/2021

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 Olympia Regional Airport is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

The Olympia Regional Airport will use terms in this program that have the meaning defined in Section 26.5.

Section 26.7 Non-discrimination Requirements

The Olympia Regional Airport 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 Olympia Regional Airport 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:

Awarded Contractors must continue to provide data about your DBE Program to the Department as directed by DOT operating administrations.

We will report DBE participation to DOT/FAA as follows:

We will transmit to FAA annually no later than December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments," found in Appendix B to this part. Similarly, we report the required information about participating DE firm. All reporting will be done through the Olympia Regional Airport's official reporting system.

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

Bidders List: 26.11(c)

The Olympia Regional Airport 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:

Bidders shall submit the bidders list at the time of the bid submittal as a condition of "responsiveness."

Records Retention and Reporting: 26.11(d)

Olympia Regional Airport will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, we will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These

records will be retained in accordance with all applicable record retention requirements of our financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

Section 26.13 Federal Financial Assistance Agreement

Assurance: 26.13(a) - Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

Olympia Regional Airport 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. We 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 Olympia Regional Airport 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 Olympia Regional Airport 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 will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

Note: The following language is to be used verbatim, as 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 recipient deems appropriate, which may include, but is not limited to:

- 1) Withholding monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Olympia Regional Airport 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 Olympia Regional Airport is not eligible to receive DOT financial assistance unless DOT has approved this DBE program, and is compliant with it and Part 26. Olympia Regional Airport will continue to carry out this program until all funds from DOT financial assistance have been expended. Olympia Regional Airport does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Senior Contract Administrator
606 Columbia Street NW, Suite 300
Olympia, WA 98501
Phone: 360-528-8010
email: contracts@portolympia.com

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of one 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 Olympia Regional Airport'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. Determine contractor compliance with good faith efforts.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of the Olympia Regional Airport 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. This assessment is conducted at least once per DBE Goal cycle, or every three years.

The Washington State Office of Minority and Women's Business Enterprises (OMWBE) Universal Directory of Available Firms (<http://www.omwbe.wa.gov/directory/directory.htm>) was searched to determine commodity codes and locations of financial institutions owned and controlled by socially and economically disadvantaged individuals (NAICS Code 522110-Commercial Banking). This assessment is performed at least once per goal cycle.

To date we have not identified any DBE financial institutions in the Thurston County Regional Airport service area.

Section 26.29 Prompt Payment Mechanisms

Olympia Regional Airport 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 Olympia Regional Airport 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 [Recipient].

Olympia Region Airport 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 Olympia Regional Airport has selected the following method to comply with this requirement:

Port of Olympia may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

- a. From the total of the amount determined to be payable on a partial payment, [insert amount of retainage, not to exceed 10%] percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full

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

Section 26.31 Directory

The Olympia Regional Airport uses the State of Washington's 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 nightly. The Directory may be found at the following link: <https://omwbe.wa.gov/directory-certified-firms>.

Section 26.33 Over-concentration

Olympia Regional Airport has not identified that over-concentration exists in the types of work that DBEs perform.

26.35 Business Development Programs

Olympia Regional Airport has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

The Olympia Regional Airport 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 set forth these mechanisms in [Recipient's] DBE program.

Monitoring Payments to DBEs and Non-DBEs

The Olympia Regional Airport undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will implement similar action under our own legal authorities, including responsibility determination's in future contracts. Attachment 7 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 DBE Program.
3. We will implement a monitoring and enforcement mechanism to ensure that work

committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

4. We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by performing 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.
5. In our reports of DBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

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

- The Olympia Regional Airport 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 the Olympia Regional Airport by the prime contractor.

Prompt Payment Dispute Resolution

Olympia Regional Airport will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

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

Olympia Regional Airport has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage [examples of mechanisms include the following]:

Alternative dispute resolution (ADR): The prime contractor to submit a detailed, alternative dispute resolution plan for our approval prior to the issuance of any notice to proceed.

The prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures the subcontractors are promptly paid for the work they have performed. Contract with the prime contractor are required to compensate subcontractors for completed work prior to requesting payment from the Olympia Regional Airport.

Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure. [Escalation steps should follow prime, Recipient, and

Operating Administration (OA) in that order, but specific procedures are to be outlined by the Recipient. Procedures and wording below are basic descriptions, and should not be used verbatim.]

1. If affected subcontractor is not comfortable contracting prime directly regarding payment or unable to resolve payment discrepancies with prime, subcontractor should contact DBELO to initiate complaint.
2. If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by Olympia Regional Airport to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
3. 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

Olympia Regional Airport will provide appropriate means to enforce the requirements of §26.29. These means include:

- In accordance with the contract, assessing liquidated damages against the prime contractor for each day beyond the required time period the prime contractor fails to pay the subcontractor, the Olympia Regional Airport may elect to implement one or more of the following measures to resolve the discrepancy:
 - We may 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;
 - We may elect to pay subcontractors directly and deduct this amount from the retainage owed to the prime;
 - We may 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; and,
 - Other penalties may be imposed for failure to comply, up to and including contract termination, including legal judgement for financial loss resulting for delayed or cancelled projects, reporting contract breach to other state and federal agencies, and exclusion for future project work with the Olympia Regional Airport.

Olympia Regional Airport will actively implement the enforcement actions detailed above.

Monitoring Contracts and Work Sites

Olympia Regional Airport 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 [DBELO/compliance team/project managers/consultant/etc.]. Contracting records are reviewed by [DBELO/compliance team/project managers/consultant/etc.]. Olympia Regional Airport will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

Section 26.39 Fostering small business participation.

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

The small business element is incorporated as Attachment 10 to this DBE Program. The program elements will be actively implemented to foster small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

The Olympia Regional Airport does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

The Olympia Regional Airport will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT funded prime contracts the cumulative total value of which exceeding \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the Olympia Regional Airport will submit its Overall 3-year DBE Goal to FAA by August 1 of the year in which the goal is due, as required by the schedule established by and posted to the FAA website, located here:

https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DBE_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf

Goal Setting Procedures:

DBE goals will be established for those fiscal years we anticipate awarding DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If the Olympia Regional Airport does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and the Olympia Regional Airport 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” reflective of our market area. We will use a variety of resources, in order to calculate the most accurate starting point possible. These resources may include Bidders Lists, Disparity Studies, the goals of other DOT recipients, DBE Directory information, Census Bureau Data, and/ or other alternative method that complies with §26.45] as a method to determine the base figure. The Olympia Regional Airport 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.

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 based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects. Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Olympia Regional Airport’s market.

In establishing the overall goal, Olympia Regional Airport may periodically 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 Olympia Regional Airport’s efforts to establish a level playing field for the participation of DBEs.

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 Olympia Regional Airport's principal office for 30 days following the date of the notice, and informing the public that the Olympia Regional Airport and DOT/FAA 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. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1 Goal 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.

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.

Project Goals

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

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

Prior Operating Administration Concurrence

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

Olympia Regional Airport 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 Olympia Regional Airport fails to administer its DBE program in good faith.

Olympia Regional Airport understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

Olympia Regional Airport understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year; and,
2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year.
3. (3) Olympia Regional Airport will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

The breakout of estimated race-neutral and race-conscious participation is included as Attachment 5 to this program.

Section 26.51(d-g) Contract Goals

The Olympia Regional Airport 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 to meet our overall goal.

The Olympia Regional Airport will use contract goals to meet any portion of the overall goal. The Olympia Regional Airport does not project being able to meet the overall goal using race-neutral 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 our overall goal that is not projected to be met through the use of race-neutral means.

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 (pre-award)

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.

The Port's Senior Contract Administrator 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 responsive.

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))

Olympia Regional Airport treats bidder/offers' compliance with good faith efforts' requirements as a matter of **responsiveness** – all bidders submit DBE information at the time of bid.

Each solicitation for which a contract goal has been established will require all bidders/offerors to submit the following information at the time of bid:

1. Acknowledgement by prime contractors award will be conditioned on meeting the requirements of this section;
2. The names and addresses of DBE firms that will participate in the contract;
3. A description of the work that each DBE will perform;
 - a. 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
4. The dollar amount of the participation of each DBE firm participating;
5. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
6. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
7. If the contract goal is not met, evidence of good faith efforts (as elaborated in Appendix A of Part 26). 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 DE for work on the Contract; and,
8. The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section
 - a. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; and,
 - b. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration (26.53(d))

Within 7 business days of being informed by Olympia Regional Airport that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Operations Director
c/o Contracting Unit
606 Columbia St NW Suite 300
Washington Street NE Olympia WA 98501
Phone: 360-528-8010

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 (post-solicitation)

Prime contractors are 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 Olympia Regional Airport. 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.

Olympia Regional Airport 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 a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE 5 (five) business 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), 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 Olympia Regional Airport 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.

Olympia Regional Airport 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 Olympia Regional Airport requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor. Olympia Regional Airport 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 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.

Section 26.55 Counting DBE Participation

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

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

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

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

Olympia Regional Airport will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact the Washington State Office of Minority & Women's Business Enterprises (OMWBE) via their website (<http://omwbe.wa.gov/certification/>), or by telephone at the Olympia (Main) Office, (866) 208-1064.

The Uniform Certification Application form and documentation requirements are found in Attachment 9 to this program.

The full packet of information for utilizing the Uniform Certification Form contained in the Final Rule, 49 CFR Part 26, must be used in this attachment; see §26.83(c)(2). Link: <https://www.govinfo.gov/content/pkg/FR-2014-10-02/pdf/2014-23173.pdf#page=39>

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The Olympia Regional Airport utilizes the OMWBE as the Unified Certification Program Administrator. The airport uses the electronic database, provided by the OMWBE, to determine the status of DBEs.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.101 Compliance Procedures Applicable to Olympia Regional Airport

Olympia Regional Airport understands that if it fails to comply with any requirement of this part, Olympia Regional Airport may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

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

Section 26.109 Information, Confidentiality, Cooperation

We 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, we 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, we 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.

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).

Olympia Regional Airport, 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.

Olympia Regional Airport understands that it is in noncompliance with Part 26 if it violates this prohibition.

ATTACHMENTS

- Attachment 1 Link to 49 CFR Part 26
- Attachment 2: Organizational Chart
- Attachment 3 Bidder's List Collection Form
- Attachment 4 Link to Washington State DBE Directory
- Attachment 5 Overall Goal Calculations
- Attachment 6 Demonstration of Good Faith Efforts Forms 1 and 2
- Attachment 7 DBE Monitoring and Enforcement Mechanisms
- Attachment 8 Link to DBE Certification Application Form
- Attachment 9 Link to the Agreement for Unified Certification Program
- Attachment 10 Small Business Element

ATTACHMENT 1

Regulations: 49 CFR Part 26

The following regulations can be found online at the following link under "Regulations".

<http://www.fhwa.dot.gov/hep/guidance>

ATTACHMENT 2

Organizational Chart



ATTACHMENT 3

Bidder's List Collection Form

All firms bidding on subcontracts for this DOT – assisted project are listed below.

Firm Name	Address	Certified DBE (Y or N)	Age of Firm	GRS*

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 require 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 5 for more than \$15 million

ATTACHMENT 4

Link to Washington State DBE Directory:

Washington State Office of Minority and Women's Business Enterprises

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

ATTACHMENT 5

Section 26.45: Overall DBE Three-Year Goal Methodology

Name of Recipient: Olympia Regional Airport

Goal Period: FY2020 - FY2022

DOT-assisted contract amount:

FY-2020	\$	000
FY-2021	\$	000
FY-2022	\$	<u>666.660</u>
Total	\$	666.660

Overall Three-Year Goal: 6.7 %, to be accomplished through 0% RC and 6.7 % RN

Total dollar amount to be expended on DBE's: \$89,332.

(Calculated using a percentage of the Federal share of DOT-assisted contracts.)

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.

Legal name of bidder/offeror's firm: _____

Bidder/Offeror Representative:

Name & Title

Signature

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 :

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

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. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

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 7

DBE Monitoring and Enforcement Mechanisms

The Olympia Regional Airport 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. Breach of contract action, pursuant to Washington Administrative Code (WAC) 326-02-050, Penalties Which May be Imposed.
3. Breach of contract action, pursuant to Revised Code of Washington (RCW) 39.19.080, Prohibited Activities – Penalties; and RCW 39.19.090, Compliance with Chapter or Contract – Remedies.

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

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

ATTACHMENT 8
DBE Certification Application Form

The following is a link to the Washington State Office of Minority and Women's Business Enterprise' DBE Certification Applications forms:

<http://www.omwbe.wa.gov/certification/certification>applications.shtml>

ATTACHMENT 9
State's UCP Agreement

The following is a link to the Agreement for Unified Certification Program between District Department of Transportation and Washington Metropolitan Area Transit Authority (Revised December 2011)

<https://comp.ddot.dc.gov/Documents/DBE%20PROGRAM%20PLAN%20FHWA-FTA%202013%20PART%203.pdf>.

ATTACHMENT 10
FOSTERING SMALL BUSINESS PARTICIPATION

Program Regulations

DBE program regulations, CFR § 26.39, that became effective on February 28, 2011, require each program to include an element for contracting with small businesses on federally funded projects. The regulation intends to facilitate competition for small businesses by eliminating obstacles for their participation and removing unjustified bundling of contract requirements that may preclude small business participation as prime or subcontractors.

Small Business Definition

For the purpose of Olympia Regional Airport's Small Business Element, a small business is defined as a company and/or firm that meet one or more of the following descriptions:

- a. A company and/or firm that is certified in the state of Washington as a Minority Business Enterprise (MBE), Woman Business Enterprise (WBE), Minority Woman Business Enterprise (MWBE), Combination Business Enterprise (CBE), and/or Socially and Economically Disadvantaged Business Enterprise (SEDBE). An online listing of each of type of business can be found on the Washington State Office Of Minority & Women's Business Enterprises website, which is updated regularly.
- b. A company and/or firm that is federally certified and eligible to participate in transportation specific federal projects. These companies and firms include federally certified Small Business Enterprises (SBEs), Disadvantaged Business Enterprises (DBEs), and Airport Concessionaire Disadvantaged Business Enterprises (ACDBEs). An online listing of participating firms can be found on the US Small Business Administration (SBA) website.
- c. A company and/or firm that can demonstrate the size and revenue requirements set forth by the SBA's Small Business Size Standards. Such size standards are outlined on the SBA's website.

For the purposes of this program, the Olympia Regional Airport, will not qualify a company and/or firm as a Small Business if the company and/or firm does not fit the above three descriptions.

Fostering Small Business Participation Plan

The Olympia Regional Airport plans to improve small business participation of FAA-assisted Port contracts on a case by case basis where small business opportunities are feasible. Prime contracts and subcontracts, for both Construction and Professional Services, which are estimated under \$250,000.00, will be evaluated for small business participation.

The Airport currently provides opportunities for small businesses in contracts awarded using simplified procedures subject to the requirements of applicable Federal, state, and local requirements. In addition to these opportunities, the Olympia Regional Airport will foster small business participation according to DBE program regulations, CFR § 26.39. According to these regulations, the Olympia Regional Airport will promote contracting with small businesses whenever the following variables exist:

- On contracts estimated over \$2 million (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, 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.

- 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.

Outreach

As a part of the Olympia Regional Airport's DBE Program and for the purposes of this small business element, the Airport will maintain contacts with the Small Business Administration, Thurston County Chamber of Commerce, the Washington State Office of Minority & Women's Business Enterprises, in order to offer small businesses assistance in various business growing services. These partnerships will be instrumental in promoting growth and stability of small businesses within the region.