

1. DBE PROGRAM GENERAL REQUIREMENTS

1.1 Objectives (§§ 26.1, 26.23)

The Disadvantaged Business Enterprise (DBE) Program objectives are found in the DBE Policy statement on the first page of this program.

To achieve the objectives of the Oregon Department of Transportation (ODOT) DBE policy, ODOT will circulate the DBE policy as follows:

To The Oregon Transportation Commission (OTC) – The Office of Civil Rights (OCR) provides annual updates to the OTC and as required. OCR will include the DBE policy with each annual update.

To the Business Community – OCR will circulate the DBE Policy statement at key stakeholder events. Examples of key events include, the annual ODOT-AGC (Association of General Contractors) meeting, and “Doing Business with ODOT” small business workshops. Additionally, when the DBE Program plan update is posted to the OCR webpage, OCR will announce the plan update to the OCR list-serve and include the DBE Policy statement in the announcement. The policy will also be sent electronically to all sub-recipients of Federal Transit Authority (FTA) funded grants and included in the FTA required State Management Plan (SMP). Also, OCR will work with the Office of Procurement (OPO) and Office of Project Letting (OPL) to include the policy statement with project and proposal DBE provisions.

To ODOT Personnel – OCR will coordinate an annual update on Inside ODOT (the agency’s internal newsletter) and periodic updates in the agency’s internal Diversity Newsletter. OCR will also circulate the DBE Policy statement at internal OCR and DBE-related training sessions.

1.2 Applicability (§ 26.3)

This program applies to all US Department of Transportation (USDOT) financial assistance where ODOT expends federal funds as the recipient of:

Federal-aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107 and Titles I, III, and V of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: Legacy for Users (SAFETEA-LU),

Federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240, SAFETEA-LU, Titles I, III, V, and VI, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178,

Federal-aid highway and Federal transit funds authorized under Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141.

Projects funded by Federal Aviation Administration are administered by Oregon Department of Aviation (ODA). For more information on ODA’s DBE Program, see:

<http://www.oregon.gov/aviation/Pages/Affirmative-Action-.aspx>

1.3 Definitions (§ 26.5)

ODOT adopts the definitions contained in 49 CFR 26.5 for this program (see Exhibit A for Part 26).

1.4 Non-discrimination Requirements (§ 26.7)

ODOT will not 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 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, ODOT 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 purpose of this program with respect to individuals of a particular race, color, sex, or national origin.

1.5 Assurances (§ 26.13)

A. Federal Financial Assistance Agreement Assurance (§ 26.13(a))

ODOT has received federal financial assistance from USDOT, and as a condition of receiving this assistance, has signed the following assurance that it will comply with 49 CFR 26:

[Recipient] 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 recipient'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 [Recipient] of its failure to carry out its approved program, the Department may impose sanction 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 verbatim in financial assistance agreements between ODOT and sub-recipients.

B. Contract Assurance (§ 26.13(b))

ODOT will ensure that the following clause is placed verbatim in every USDOT-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.

ODOT physically incorporates FHWA Form 1273 into each highway construction contract that is partly or completely funded under Title 23 and requires that contractors physically incorporate the form into each subcontract.

1.6 Authority and Applicable Law (§ 26.3)

The USDOT Regulations (49 CFR 26) published in the Federal Register, as amended January 28, 2011, established a requirement that all recipients of USDOT funds establish a Disadvantaged Business Enterprise Program. The regulations are applicable both to ODOT's Federal-aid construction and to its non-construction activities including transit and personal service contracts.

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

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

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

1.7 DBE Financial Institutions (§ 26.27)

It is ODOT policy 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 USDOT-assisted contracts to make use of these institutions. OCR has reviewed the Federal Reserve Board's statistical release on minority-owned financial institutions at the following the Federal Reserve website:

<http://www.federalreserve.gov/releases/mob/>

The Federal Reserve Board releases this information quarterly. The current release at the time of this program update showed there were no minority-owned financial institutions in Oregon (see Exhibit B). OCR will annually re-evaluate the availability of DBE financial institutions.