Disadvantaged Business Enterprise Program Description

Fiscal Years 2017 – 2019

Updated 2016
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II. DEFINITIONS OF TERMS

The definitions of terms contained in 49 CFR §26.5 shall be used as definitions in the TriMet DBE program and are hereby incorporated by reference.

III. NONDISCRIMINATION

TriMet 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 Code of Federal Regulations (CFR) 49 CFR Part 26, effective March 4, 1999, on the basis of race, color, sex, or national origin.

In administering its DBE program, TriMet 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. In order to foster its overall objectives related to these important issues, TriMet may utilize contractual or other arrangements and may use criteria or methods of administration that support creation of opportunities for State of Oregon certified Minority, Women-owned, Emerging Small and Service businesses.

IV. DBE PROGRAM UPDATES

TriMet will continue to carry out this program until all funds from U.S.DOT financial assistance have been expended. TriMet will provide to U.S.DOT updates representing significant changes in the program.

V. QUOTAS, SET-ASIDES OR PREFERENCES

TriMet shall not use quotas, set-asides or preferences in the design or administration of this DBE program.

VI. DBE LIAISON OFFICER (DBELO)

TriMet has designated the following individual as our DBE Liaison Officer (DBELO):

Mr John Gardner,
Director of Diversity & Transit Equity
1800 SW 1st Avenue, Suite 300
Portland, Oregon 97201
Phone: 503-962-2217
E-mail: gardnerj@trimet.org

In that capacity, Mr. Gardner is responsible for implementing all aspects of the DBE program and ensuring that TriMet complies with all provisions of 49 CFR Part 26. Mr. Gardner has direct, independent access to the TriMet General Manager concerning DBE program matters. Mr. Gardner will work closely with TriMet’s Procurement and Contracts Department to develop, implement and monitor the DBE program.

Duties and responsibilities of the DBELO will include the following:

1. Gathers and reports statistical data and other information as required by U.S.DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to ensure overall annual aspirational goal is met.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Analyze contracts and procurements for DBE aspirational goal inclusion in solicitations and monitors results.
6. Analyzes TriMet’s progress toward aspirational goal attainment and identifies ways to improve progress.
7. Has department staff participate in pre-bid meetings.
8. Advises TriMet’s General Manager and Board of Directors on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Monitors the Uniform Certification Process in Oregon for conformance with the criteria set by U.S.DOT and acts as liaison to State of Oregon Office of Minority, Women and Emerging Small Business (OMWESB) regarding the certification process.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains TriMet’s updated directory of certified DBEs.

Other Support Personnel

Personnel from TriMet’s Procurement and Contracts Department share the responsibility for ensuring the effective implementation of the DBE Program. They shall give full cooperation and active support to the DBELO and designees in this effort. Superiors, as part of their tasks and standards, shall evaluate their performance in this area.

Contract Administration/Project Management Staff

Provide the DBELO with draft scopes of work/specifications for projects and RFPs to enable aspirational goal setting. Outreach to DBEs and where applicable, development of appropriate DBE language.

1. Provide the DBELO with copies of all final IFBs, RFPs, mailing lists and advance notices.
2. Inform the DBELO of any changes to ITBs or RFPs.
3. Forward copies of bids to the DBELO for evaluation of compliance with DBE Program requirements.
4. Allocate appropriate resources to participate with the DBELO’s staff at major trade shows targeted to DBEs.
5. Incorporate all applicable DBE Program provisions and/or language in procurements.
6. Alert the DBELO of any potential problems concerning DBE utilization during contract administration.
7. Ensure that RFPs do not contain unnecessary requirements which could unduly restrict or eliminate small businesses from competition
VII. FEDERAL FINANCIAL ASSISTANCE AGREEMENT ASSURANCE

TriMet has signed the following assurance, applicable to all U.S.DOT-assisted contracts and their administration:

TriMet shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any U.S.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 U.S.DOT assisted contracts. The recipient’s DBE Program, as required by 49 CFR Part 26 and as approved by U.S.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 TriMet 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.).

VIII. DBE FINANCIAL INSTITUTIONS

It is the policy of TriMet 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 U.S.DOT-assisted contracts to make use of these institutions. TriMet has made the following efforts to identify and use such institutions: TriMet has contacted the office of State of Oregon for Business Inclusion and Diversity (COBID), Oregon Association of Minority Enterprises (OAME), the Associated General Contractors of America (AGC) and other alliances in the community.

A. Oregon Association of Minority Entrepreneurs Credit Corporation (OAMECC)
   731 N. Hayden Meadows Drive
   Portland, OR  97217
   503-249-7744

   OAMECC is a § 501(c)(3) corporation (operated for charitable purposes and exempt from Federal income taxes) wholly owned by Oregon Association of Minority Entrepreneurs, working in partnership with public and private lending institutions in the State of Oregon, major corporations, and grant institutions, to make capital accessible to socially and economically disadvantaged businesses in Oregon. OAMECC manages its own loan fund.

B. Micro Enterprise Services of Oregon (MESO)
   4008 NE Martin Luther King Jr Blvd
   Portland, OR 97212
   503-841-3351

   MESO’s financing program, CapitalLink, provides financing for owners of small businesses who are unable to access capital through traditional banking institutions. Financing is provided to expand, stabilize, and/or create additional business opportunities.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.
IX. DBE DIRECTORY

The State of Oregon’s Office for Business Inclusion and Diversity (COBID) maintains the main directory. The directory identifies all firms eligible to participate as DBEs. The directory lists the firm’s name, address, and phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. COBID updates the directory daily. TriMet also maintains an in-house directory of DBE certified firms. These firms have been certified by the State of Oregon or comparable program outside the State. The in-house directory contains the firm’s name, address, phone number, and services provided. Updates to the in-house directory are made on an as-needed basis. TriMet’s in-house directory only contains active certified DBE firms. Parties interested in obtaining the main directory may contact COBID directly or may obtain the in-house directory from TriMet. The COBID directory (current as of January 2016) may be found in Attachment B to this document.

State of Oregon Office for Business Inclusion and Diversity (COBID)
775 Summer Street NE, Suite 200
Salem, Oregon 97301
503-986-0123
Website: www.oregon4biz.com/How-We-Can-Help/COBID/

TriMet Diversity and Transit Equity
1800 SW First Avenue, Suite 300
Portland, Oregon 97201
503-962-2213
Website: www.trimet.org/business/dbe/index.htm

X. OVERCONCENTRATION

TriMet has not currently identified over-concentration in any of the types of work that are the subject of its procurements. TriMet will continue to monitor over-concentration as an issue for this program through its over-concentration analysis (page 67) and examination of availability data. The potential for over-concentration is a standard component of TriMet’s analysis of the availability of minority contractors within the relevant trade groups and within the relevant market area.

XI. BUSINESS DEVELOPMENT PROGRAM(S) (BDP)

TriMet will provide race-neutral and gender-neutral means of participation through the development of TriMet’s Small Business Development Programs. Each year the DBELO and the Director of Procurement will facilitate at least two small business events, which may be coordinated with other U.S.DOT recipients and open to all small businesses.

Small businesses will be invited to meet with TriMet’s Diversity and Transit Equity and Procurement departments to learn about TriMet’s contracting opportunities and how to do business with TriMet. TriMet staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to TriMet. In addition, the DBELO will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with TriMet and explore best business practices, which may be used to market small businesses to TriMet.

A. DBE Supportive Services Program

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

XII. REQUIRED CONTRACT CLAUSES

A. Contract Assurance

TriMet will ensure that the following clause is placed in every U.S.DOT-assisted contract and subcontract:

The contractor 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 U.S.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.

B. Prompt Payment

TriMet will include the following clause in each U.S.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 ten (10) working days from the receipt of each payment the prime contractor receives from TriMet. The prime contractor agrees further to return retainage payments to each subcontractor within 10 working days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of TriMet. This clause applies to both DBE and non-DBE subcontractors.

Compliance with the prompt payment contract requirement will be part of the Project Managers project meeting with the Prime Contractor and will be monitored on an ongoing basis by the DBELO.

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

The contractor must also submit to the Project Manager’s office an affidavit certifying that payment was made to the DBE subcontractor or supplier, to be signed by both the prime contractor and DBE. Such an affidavit must be submitted during the project any time a progress or final payment is made to a DBE, and when any retainage held is returned. A summary certification affidavit must be submitted at the completion of the project.

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

C. DBE Program Requirements:

Failure of any contractor to meet the DBE Program requirements shall constitute a breach of contract for which the imposition of the following sanctions may include but is not limited to the following:

a. Withholding monthly progress payments;

b. Assessing sanctions;
c. Liquidated damages; and/or
d. Disqualifying the contractor from future bidding as non-responsible.

XIII. MONITORING AND ENFORCEMENT MECHANISMS

TriMet will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that U.S.DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the U.S.DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. TriMet will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

A. Prime Contractor

1. Contractor’s DBE Liaison Officer

   The DBE Program requires the contractor to designate a DBE liaison officer to administer the contractor’s DBE Program. The name of this individual will be provided to TriMet Project Management staff at the pre-construction conference.

2. Submission of Subcontracts

   The contractor must enter into subcontracts with the DBEs identified in the contractor’s Appendix F – Form 1 and/or DBE Utilization Form for the bid items and amounts specified therein. These agreements must be submitted for consent prior to the start of work under the subcontract. All applicable federal and state provisions must be included in the subcontracts.

B. Pre-Construction Meetings

   TriMet Resident Engineers are responsible for all contract compliance on major U.S. DOT assisted contracts. The official TriMet Resident Engineer Manual includes a description of the responsibility to hold pre-construction meetings and to discuss the above described requirement. This responsibility is demonstrated in the checklist at Attachment F.

C. On-Site Review

   TriMet staff will utilize the DBE On-site Review Form shown at Attachment G, as a monitoring and enforcement mechanism.

XIV. ASPIRATIONAL GOAL DEVELOPMENT

A. Overall DBE Aspirational goal

   TriMet, as the principal recipient of Federal-aid funds, must set an overall aspirational goal for DBE participation in U.S.DOT assisted contracts. The overall aspirational goal will provide for participation by all certified DBEs and will not be subdivided into group specific aspirational goals. Further, no contractor will be subject to a quota, set aside, or preference.

B. Aspirational Goal Amount

   The General Manager of TriMet shall establish an overall aspirational goal for the participation of DBEs in all budgeted contracts utilizing Federal-aid funds. The overall annual aspirational goals will be expressed as a percentage of the total amount of relevant portions of TriMet's FY17, FY18 and FY19 budgets. TriMet's overall
aspirational goal is based on demonstrable evidence of the availability of ready, willing and able DBEs available to participate on U.S.DOT assisted contracts.

TriMet’s overall DBE aspirational goal is 10.72% applicable to contracts identified in the budget to be assisted by U.S.DOT.

XV. METHOD

TriMet has utilized data from a variety of external sources, in order to develop a reasonable aspirational goal setting methodology.

The following is a summary of the method TriMet used to calculate this aspirational goal:

A. Step-One – Determining Relative DBE Availability

i). Capital Fund - Base Figure

TriMet utilizes data compiled by the Oregon Office for Business Inclusion and Diversity (COBID), 2011 disparity study conducted by regional partners the Portland Development Commission and City of Portland, TriMet’s DBE directory and by the Oregon Employment Department in its Oregon Labor Market Information System (OLMIS). These sources provide for analysis of labor concentration in specific business categories as designated by NAICS code (North American Industrial Classification System). TriMet has made preliminary assumptions regarding which NAICS codes will have relevance to the projects which will receive federal funding in the next three federal fiscal years. Those assumptions are reflected in a spreadsheet at Attachment E.

B. Step Two Adjustments to Base

In prior years, the base figure for DBE availability has utilized baseline data from the Oregon Regional Consortium Disparity Study, a 1996 analysis conducted by local governments in the Portland metropolitan area. Due to the age of that study, TriMet has concluded that it is no longer appropriate to utilized its data as a reference for making a Step Two Adjustment. TriMet’s current Step Two Adjustment is based on an analysis of past participation as signified by award/commitment data submitted to FTA fro the past four fiscal years (FY11-FY14). The median participation figures for those years is 8.92%. TriMet’s goal after factoring Steps One and Two is 10.72%.

C. Race Neutral Analysis

The U.S.DOT regulations require that the maximum feasible portion of the DBE Overall Annual Aspirational Goal be met by using race-neutral methods. Once the overall annual aspirational goal is proposed, the DBELO and the Director of Procurement analyze and project the maximum feasible portion of that aspirational goal that can be achieved by using race-neutral methods. This analysis is a review of past contracting history with information including, but not limited to:

1. DBE participation as prime contractors on U.S.DOT assisted contracts;
2. DBE participation on projects where no DBE aspirational goals have been established;
3. DBE participation on prime contracts exceeding contract aspirational goals;
4. DBE participation on projects as non-committed DBE subcontractors.

TriMet will conduct further race neutral analysis, once major Orange Line project contracts have been closed, however, because all payments reported to date for FY16 have been through contracts without a DBE specific contract aspirational goal, TriMet fully anticipates that its FY 2017-2019 aspirational goal of 10.72% will be met solely through the use of race-neutral measures.
D. Transit Vehicle Manufacturers (TVM)

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

E. Process/Public Participation

TriMet will submit its overall aspirational goal to U.S.DOT every three years by August 1st.

1. TriMet will publish a notice by June 15th of each year of the proposed overall aspirational goal, informing the public that the proposed aspirational goal and its rationale are available for inspection during normal business hours at TriMet’s offices for 30 days following the date of the notice, and informing the public that TriMet and the U.S.DOT will accept comments on the aspirational goals for 45 days from the date of the notice. Any comments received during the Public Comment period will be forwarded to U.S. DOT under separate cover. Notice will be made through the following publications: The Oregonian, Daily Journal of Commerce, El Hispanic News, Skanner Newspaper, The Portland Observer and The Asian Reporter. Notice will also be added to our website at: http://www.trimet.org/bidding.htm. See Attachment C for public notice information for fiscal year 2014-2016.

2. TriMet will present the proposed overall aspirational goal and it’s methodology for feedback to the National Association of Minority Contractors and the Oregon Association of Minority Entrepreneurs. Feedback from this consultive process will be taken into consideration and comments will be forwarded to the U.S. DOT.

3. TriMet will retain for its files, any comments received during the 45 days comment period. In the case that received comments would suggest the need for a plan amendment, such amendment would be forwarded to U.S. DOT by November 1 of each year.

4. TriMet will begin using the overall aspirational goal on October 1 of each year, unless TriMet has received other instructions from U.S.DOT.

XVI. CONTRACT ASPIRATIONAL GOALS

Because trimet is only authorized to operate a race and gender neutral program, trimet does not currently plan on issuing solicitations or awarding contracts that have fixed percentage dbe participation goals. consequently, good faith effort demonstrations, as described in 49 cfr part 26.53, will not be required. conversely, in its solicitation documents (e.g. request for proposal), trimet may require a narrative of a prospective contractor’s efforts to encourage dbe participation on past projects, as well as its plan for obtaining utilization of dbe firms on the impending project. while trimet may ask a proposer to submit an estimated dbe participation percentage, no points will be assigned or awarded based strictly on proposed dbe use.

XVII. COUNTING DBE PARTICIPATION
TriMet will count DBE participation toward overall and contract aspirational goals as provided in 49 CFR §26.55.

A. Counting DBE Participation Towards Meeting Annual Aspirational Goals

Only the work actually performed by a DBE will be counted toward the DBE aspirational goal. The cost of supplies and materials obtained by the DBE or equipment leased (except from the prime contractor or its affiliate) may also be counted.

Expenditures may only be counted if the DBE is performing a commercially useful function. A DBE shall perform at least thirty percent (30%) of the total costs of its contract with its own work force.

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

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

Counting DBE Participation Towards Meeting Annual Aspirational goals of Sub-Recipients.

1. Sub–Recipients Adopting the TriMet Program Document

Credit shall be authorized or deducted per the requirements of part A of this section, regardless of whether or not TriMet or the sub-recipient is the contracting agency. Sub-recipients shall be required to submit quarterly reports to TriMet demonstrating their aspirational goal attainment to date in a manner consistent with the requirement of 49 CFR 26 reporting requirements.

2. Sub-Recipients With A TriMet Approved Program Document

Sub-recipients falling into this category shall be required to submit quarterly reports to TriMet demonstrating their aspirational goal attainment to date in a manner consistent with the requirements of 49 CFR 26 reporting requirements. Sub-recipients shall authorize or deduct credit for work performed by DBEs, per the requirements of part A of this section, regardless of whether TriMet or the prime contractor is the contracting agency. TriMet shall include in its quarterly report to FTA the status of sub-recipient aspirational goal activities falling within this category.

XVIII. GUIDELINES FOR DBE CERTIFICATION

A. Certification Program (CP)

As provided under 49 CFR 26, only firms owned and controlled by socially and economically disadvantaged person(s) are to benefit from the DBE Program. While TriMet retains responsibility for assuring certification of DBEs is performed consistent with 49 CFR 26 standards, the certification Agency for the State of Oregon is the Office of Minority, Women and Emerging Small Businesses (OMWESB). Certification authority for the TriMet DBE Certification Program Component has been delegated to OMWESB.

OMWESB provides staff to conduct DBE certification, re-certification, de-certification, appeals, challenges, investigations of third party allegations, and public awareness activities pertaining to certification programs. The office became the certification authority for state programs under Oregon Revised Statutes (ORS) Chapter 200, in January 1988 (see Attachment D). The Oregon Department of Justice provides legal counsel for OMWESB.
TriMet maintains a directory identifying all firms eligible to participate as DBEs. See Section VIII above and Attachment B for information regarding this directory.

Attachment A describes OMWESB’s current guidelines for certification as of the effective adoption date of this program.

XIX. INFORMATION COLLECTION AND REPORTING

A. Bidders List

TriMet will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on U.S.DOT assisted contracts. The purpose of this requirement is to allow use of the bidder’s list approach to calculating overall aspirational goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

TriMet has started to require the submission and will maintain the following information for all firms submitting formal proposals, bids and quotes, in response to solicitations posted on its eBid vendor registration system:

- Contact Information
- DBE status
- Age of Firm
- Gross Receipts by Bracket

The data will be compiled and maintained by TriMet’s Diversity and Transit Equity and Procurement Departments.

B. Monitoring Payments to DBEs

TriMet 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 TriMet or U.S.DOT. This reporting requirement also extends to any certified DBE subcontractor.

TriMet will maintain a database tracking system to monitor and report actual payments to DBE firms for work committed to them at the time of contract award.

TriMet 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.

Reporting to U.S.DOT

TriMet will report DBE participation on a bi-annual basis, using U.S.DOT Form 4630. These reports will reflect payments actually made to DBEs on U.S.DOT assisted contracts.

C. Confidentiality

TriMet 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 contrary provisions of state or local law, TriMet will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than U.S.DOT) without the written consent of the submitting firm.
TriMet Small Business Program

Consistent with TriMet’s policy that firms certified as DBE, MBE, WBE and ESB have an equal opportunity to participate in the performance of contracts, as well as to foster small business participation in conformance with CFR 49 Part 26.39, TriMet has developed and administers a Small Business program.

Under the Small Business program, TriMet will facilitate participation by Small Businesses in its contracts and agreements through the development of procedures, documents and practices that are “Small Business friendly”.

Elements of TriMet’s Small Business Program are as follows:

**Size Standard**

1. Under TriMet's Small Business program, a Small Business is a business that:

   a. Is organized for profit;
   b. Has a place of business in the United States;
   c. Is independently owned and operated; and
   d. For its industry, does not exceed the numerical size standard established by the federal Small Business Administration pursuant to 13 Code of Federal Regulations Part 121. For more information on these standards see the following Internet site: [http://www.sba.gov/content/table-small-business-size-standards](http://www.sba.gov/content/table-small-business-size-standards)

2. A business shall be presumed to meet the Small Business size standard and be a Small Business if the business comes within one of the following categories:

   a. Is certified as an Emerging Small Business (ESB) by the State of Oregon Office of Minority, Women Owned and Emerging Small Business (OMWESB). To obtain a listing of firms certified by OMWESB, contact OMWESB toll free at 866-467-3466 or access a listing on the Internet at [http://www4.cbs.state.or.us/ex/dir/omwesb/](http://www4.cbs.state.or.us/ex/dir/omwesb/)

   b. Is a participant in federal Small Business Administration programs such as, but not limited to, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. To obtain a listing of Small Businesses participating in the U.S. Small Business Administration programs or activities as eligible Small Businesses, contact the SBA’s Portland Office at 601 SW Second Avenue Suite 950, 503-326-2682; or
   c. Is certified by a public agency other than OMWESB and has a size standard that is no greater than the Small Business Administration Size Standard.

3. If a business does not come within one of the categories set forth in the paragraph immediately above, the business may qualify if it can assure itself and demonstrate to TriMet that the business does in fact meet the applicable Small Business size standard. The business may use tax records, certified annual audit reports of the business, or other documents reasonably related to showing that the business meets the Small Business definition and size standard.
4. Businesses are advised that in proving they meet the size standard for annual gross receipts, the amounts are averaged over the business’ latest three (3) completed fiscal years to determine its average annual receipts. If a business has not been in business for three (3) years, the average weekly revenue for the number of weeks it has been in business is multiplied by 52 to determine its average annual receipts. If there are questions or issues about whether a business meets the applicable size standard, TriMet and the business will consult and, to the extent practicable, follow the methodologies established by the federal Small Business Administration in determining whether a business is within or exceeds an applicable size standard.

**Facilitation of Contracting Opportunities**

In order to facilitate participation by Small Businesses in its contracts and agreements, TriMet will consider “Small Business friendly” strategies in its procurement process. These strategies may include the following, as appropriate: on large contracts, require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size Small Businesses can reasonably perform; require general contractors to provide subcontracting opportunities of a size that Small Businesses can reasonably perform; identify alternative procurement strategies; structure procurements to facilitate the ability of Small Businesses, or consortia or joint ventures including Small Businesses, to compete for and perform the work; require general contractors to describe historical usage of Small Businesses; require contractors to describe strategies for maximizing Small Business usage under the contract, through use of an outreach plan or other appropriate means. At the current time, TriMet will not “set-aside” contracts for Small Businesses.
XXI. ATTACHMENTS
Attachment A The Office of Minority, Women and Emerging Small Businesses (OMWESB) DBE Certification Guidelines

1. Certification Eligibility Requirements
   a. Application Procedure
      TriMet will ensure that only firms certified as eligible DBEs participate as DBEs in the DBE program. All firms seeking certification with TriMet are required to complete the application process online to the COBID.

      COBID will ensure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. COBID will review all information in the form prior to making a decision about the DBE eligibility of the firm.

      The applicant will also be required to submit the following:
      1) A signed, notarized certification of disadvantage (including a narrative if the individual is demonstrating disadvantage on an individual basis); and
      2) A signed notarized statement of personal net worth with supporting documentation.

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

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

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

   b. Burdens of Proof
      The firm seeking certification has the burden of demonstrating to COBID, by a preponderance of the evidence, that it meets the requirements concerning group membership or individual disadvantage, business size, ownership and control.

      COBID will make determinations concerning whether individuals and firms have met the burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole. A record is defined as all material submitted to COBID by the firm seeking certification and any other information available to COBID in performing its investigation.

   c. Criteria for Evaluating an Applicant's Eligibility
      The following standards are used by COBID in determining whether a firm is owned and controlled by one or more disadvantaged individuals and whether such firm is eligible to be certified as a DBE (49 CFR 26, Subpart D).

      1) Business Size
To be an eligible DBE, a firm (including its affiliates) must be an existing small business as defined by SBA standards. COBID will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the types of work the firm seeks to perform in U.S.DOT-assisted contracts. Even if the firm meets the SBA requirements, a firm is not an eligible DBE in any federal fiscal year if the firm (including affiliates) has had average annual gross receipts as defined by SBA regulations over the firm’s previous three (3) fiscal years in excess of $23.98 million, as adjusted for inflation from time to time by U.S.DOT.

2) Social and Economic Disadvantage Status

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

a) Has been granted 8(a) certification by the Small Business Administration.

b) Is owned and controlled by one or more women or a member(s) of one of the minority groups designated in 49 CFR 26.67.

c) Is owned and controlled by an individual(s) who, although not a woman or member of one of the minority groups designated in 49 CFR 26, establishes social and economic disadvantage based on identification with another group.

3) 8(a) Status

If a firm applying for certification has a current, valid certification from or recognized by the SBA under the 8(a) or small and disadvantaged business (SDB) program (except an SDB certification based on the firm’s self-certification as an SDB), TriMet may accept the firm’s 8(a) or SDB certification in lieu of conducting its own certification proceeding, or TriMet may accept the certification of another U.S.DOT recipient for this purpose. In cases where the state has evidence that an 8(a) certified firm does not meet the small business size standards, the state will deny certification to the firm. In these situations, the state will also refer the information to the SBA.

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

4) Minority Group Membership

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

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

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

<table>
<thead>
<tr>
<th>Group</th>
<th>Origins</th>
</tr>
</thead>
<tbody>
<tr>
<td>Black Americans</td>
<td>Origins in any black racial groups of Africa.</td>
</tr>
<tr>
<td>Hispanic Americans</td>
<td>Mexican, Puerto Rican, Cuban, Central or</td>
</tr>
<tr>
<td></td>
<td>South American, Portuguese or other Spanish</td>
</tr>
<tr>
<td></td>
<td>culture or origin regardless of race.</td>
</tr>
<tr>
<td>Asian-Pacific Americans</td>
<td>Origins in Japan, China, Taiwan, Korea,</td>
</tr>
<tr>
<td></td>
<td>Vietnam, Laos, Cambodia, the Philippines,</td>
</tr>
<tr>
<td></td>
<td>Samoa, Guam, the US Trust Territories of the</td>
</tr>
<tr>
<td></td>
<td>Pacific, and the Northern Marianas.</td>
</tr>
<tr>
<td>Native Americans</td>
<td>American Indians, Eskimos, Aleuts or Native</td>
</tr>
<tr>
<td></td>
<td>Hawaiians.</td>
</tr>
<tr>
<td>Subcontinent Asian Americans</td>
<td>Origins in India, Pakistan or Bangladesh.</td>
</tr>
<tr>
<td>Women</td>
<td>Persons of the female gender.</td>
</tr>
<tr>
<td>Other Minorities</td>
<td>Other minorities found to be disadvantaged by</td>
</tr>
<tr>
<td></td>
<td>SBA.</td>
</tr>
</tbody>
</table>

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

5) Individual Determinations

Finally, persons who are not members of one of the designated minority groups
may request the state to make an individual determination that they are socially
and economically disadvantaged. The state may, at its discretion, make these
individual determinations consistent with the guidance in 49 CFR 26, appendix E.
or refer such cases to the SBA where they may apply for 8(a) status. Examples
of factors that may be evaluated in making a determination are:
a) Do the individuals have a chronic physical handicap, which has restricted and still restricts professional acceptance, employment or business mobility? If so, explain fully.

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

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

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

6) Rebuttable Presumption of Disadvantage Status

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

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

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

7) Ownership and Control

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

Under operational control means, the applicant must have an overall understanding of and managerial and technical competence and experience directly related to the business operations.
To determine managerial control, the applicant must demonstrate that they possess the power to direct or cause the direction of the management and policies of the firm.

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

8) Personal Net Worth

An individual, whose personal net worth exceeds $1.32 million, excluding personal residence and interest in the business, shall not be deemed to be economically disadvantaged.

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

Each socially and economically disadvantaged individual owner must demonstrate that s/he does not have a personal net worth exceeding $1.32 million. In determining net worth, COBID will exclude an individual’s ownership interest in the applicant firm and the individual’s equity in his/her primary residence. If the individual’s personal net worth exceeds $1.32 million, the individual’s presumption of economic disadvantage based on group membership or the individual’s demonstration of economic disadvantage will be conclusively rebutted without any further formal proceedings.

When an individual’s presumption of social and/or economic disadvantage has been rebutted, his/her ownership and control of the firm cannot be used for the purpose of DBE eligibility unless and until s/he makes an individual showing of social and/or economic disadvantage in the future. If the basis for rebutting the presumption is a determination that the individual’s personal net worth exceeds $1.32 million, the individual will no longer be eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

d. Other Considerations

1) Commercially Useful Function

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

2) Pattern of Conduct

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

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

4) DBE Cooperation

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

5) For-Profit Firms

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

6) Subsidiaries and Affiliates

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

7) Prequalification

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

8) Tribal Organizations

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

e. Joint Venture

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

Joint venture applications are certified by TriMet on a project-by-project basis. Applications shall be submitted to the DBE Program Manager for review and certification in accordance with established procedures.

f. Supplemental Application Verification Documents

1) Sole Proprietor
   a) Individual federal tax returns for the last three (3) years (Schedule C, Profit and Loss Statement).
b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.

c) Rental/lease agreements and professional service agreements (for office space, equipment, related to the business).

d) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver’s license, etc.)

e) Company profile including a brief description of the firm’s product or services.

f) Necessary licenses to conduct the business, e.g., contractor’s license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

g) Certification letter from the individual’s home state, if the business is not located in Oregon.

h) Assumed Business Name registration, if applicable.

3) Limited Liability Company (LLC)

a) Federal tax returns for the last three- (3) years.

b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.

c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.)

d) Proof of ethnicity/gender (birth certificate, tribal enrollment, passport, driver’s license, etc.).

e) Company profile including a brief description of the firm’s product or services.

f) Necessary licenses to conduct the business, e.g., contractor’s license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), Department of Environmental Quality license, ARC authorization for travel service, professional license, etc.

g) Articles of Organization.

h) Operating Agreement.

i) Minutes of the most recent company meetings affecting ownership, management, and control.

j) Certification letter from the state of incorporation, if the business is not located in Oregon.

4) Corporations

a) Corporate federal tax returns for the last three- (3) years (first two pages).

b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.

c) Rental/lease agreements, and professional service agreements (for office space, equipment, etc.)
d) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver’s license, etc.)

e) Company profile including a brief description of the firm’s product or services.

f) Necessary licenses to conduct the business, e.g., contractor’s license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), DEQ license, ARC authorization for travel service, professional license, etc.

g) Articles of Incorporation and amendments, including date approved by State.

h) Minutes of the most recent corporate and organizational meetings affecting ownership, management, and control.

i) Corporation by-laws.

j) Copy of stock certificates issued (not specimen copy, both sides).

k) Stock transfer ledger.

l) Certification letter from your home state, if your business is not located in Oregon.

5) Partnerships

a) Corporate federal tax returns for the last three- (3) years (first two pages).

b) Resumes of majority owner(s) and key employees. Please include previous work experience with dates and specific duties within this business.

c) Rental/lease agreements and professional service agreements (for office space, equipment, etc.) related to your business.

d) Proof of ethnicity/gender (birth certificate, tribal enrollment documents, passport, driver’s license, etc.).

e) Company profile including a brief description of your firm’s product or services.

f) Necessary licenses to conduct your business, e.g., contractor’s license (construction, landscaping, electrical, plumbing, welding, engineering), city business license (if required), DEQ license, ARC authorization for travel service, professional license, etc.

g) Partnership agreement including buy-out rights and profit sharing agreement (signed and dated).

h) Certification letter from your home state, if your business is not located in Oregon.

6) New Businesses (less than one year)

a) Canceled checks relating to the business; OR

b) An invoice with paid receipt or canceled checks relating to the business.

c) One reference for who work has been performed or to whom goods or materials have been sold during the prior year.

d) One reference from which goods or materials have been purchased for the business or from whom major equipment has been purchased or leased.
e) Copies of office space and equipment lease agreements.

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

g. On-Site Reviews

COBID schedules an On-Site Review when it is satisfied that applications and supporting documentation have been received and are complete.

1) The Certification Specialist assigned to the DBE file will schedule an on-site interview with each DBE applicant firm requesting to bid on FTA, FAA and FTA projects.

2) The COBID Certification Specialist will review the application prior to the on-site interview to assist in developing any additional questions that will help clarify the applicant’s status.

3) The COBID Certification Specialist normally contacts the DBE applicant firm, advising it of the review scheduled approximately two weeks from the date of the letter. If the DBE applicant is unable to be contacted, or delays the date of the review without good reason, or fails to appear for the scheduled review, efforts are made to reschedule the on-site review.

4) DBE certification applicants wishing to participate on upcoming federal-aid assisted construction projects, soon to be let to bid may request acceleration of the certification process if the owner agency has an intergovernmental agreement with COBID. The applicant must request TriMet to transmit a written request to COBID to accelerate certification of the applicant firm. The applicant must provide to TriMet a written request which identifies specific projects to be bid and a letter from any prime who will state the applicant’s bid will be considered.

5) The COBID Certification Specialist conducts On-site Reviews by inquiring of and obtaining information as follows:

   a) Firm name.

   b) Directions to firm’s location.

   c) Principal contact and phone number.

   d) Organizational structure.

   e) Persons interviewed and position with firm.

   f) Firm’s primary line of business.

   g) Identities of the firm’s board of directors.

   h) Frequency that board meets.

   i) Firm’s bonding/insurance company.

   j) Current bonding limitation

   k) Determine:

       i) Firm’s bond/insurance agent

       ii) Firm’s attorney
iii) Firm’s CPA
iv) Firm’s banker(s)
l) Number of permanent employees.
m) Who approves:
   i) Hiring and dismissal of employees
   ii) In this person’s absence
n) Employee recruiting.
o) Supervisor employed.
p) Explanation of supervisor’s duties and responsibilities.
q) Determine how the disadvantaged owner acquired interest in the firm.
r) Who contributes capital, equipment, real estate, inventory, etc.
s) Technical assistance provided by others.
t) Total hours per day and days per week DBE owner actively engaged in firm’s business.
u) DBE owner’s daily duties.
v) Is DBE owner employed elsewhere – if yes, where?
w) Who makes major business decisions (i.e. expansion, diversifying)?
x) Marketing of the firm, (how and who’s responsible.).
y) Dispersal of funds, (how and under whose approval).
z) Signatures on payroll and other checks, (who signs).
   i) Any loan negotiation/arrangement information (who does this).
   ii) Firm’s line of credit and it’s limits.
   iii) Contracts currently active.
   iv) Business tax returns information (who prepares, who signs).
   v) Description of firm’s bidding/estimating process.
   vi) Description of firm’s process of monitoring job costs.
   vii) Description of methods used to resolve field problems.
   viii) Who negotiates contract disputes.
ix) Explanation of relationships with other firms who might provide;
    Manpower
    Equipment
    Office space
    Yard or warehouse space
x) Information, which might show the DBE owner was employed by any board member or officer of this firm.
xi) Average length of time firm’s products is stored/inventoried.

xii) Salaries paid to management personnel.

xiii) Explanation of spouse’s relationship to firm – other firms.

xiv) Review firm’s business plans (aspirational goals for future growth, etc.).

h. Reciprocal Certification

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

1) Accept another Recipient’s certification on a reciprocal basis,

2) Make an independent certification decision based on documentation provided by the other grantee augmented by any additional information OMWESB requires that applicant firm to provide; or

3) Require the applicant firm to go through COBID’s certification process without regard to the action of the other grantee.

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

i. Certification Duration Renewal Certification Procedures

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

1) Notification of Change in Circumstances

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

2) Annual Affidavit of Continuing Eligibility

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

j. Denials and Reapplication Procedures

When the COBID determines that a firm is not eligible for certification, the COBID will
provide the firm a written explanation of the reasons for the denial, specifically
referencing the evidence in the record that supports each reason for the denial. All
documents and other information on which the denial is based will be made available
to the applicant firm upon request. When a firm is denied certification, it is required
to wait at least twelve (12) months before it may reapply for DBE certification with
COBID. The time period for reapplication begins to run on the date the explanation
for denial of certification is received by the applicant firm. The firms may file and
appeal for any denial of certification to U.S.DOT.

k. Removal Procedures (De-certification)

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

1) Initiating Removal.

   a) Any person may file a written complaint that alleges a currently certified firm
is ineligible. A written complaint must specify reasons for the allegation and
include any information or arguments supporting the allegation. A general
allegation or anonymous complaint will not be accepted. The Manager will
review the complaint, all certification records and other available information
in order to determine whether there is reasonable cause to believe that the
firm is ineligible. The Manager will ensure confidentiality of complainant’s
identity, in accordance with current state and federal laws.

   b) Authority-Initiated Proceedings – The Manager will review all notifications of
change in circumstance or other information that comes to COBID’s attention,
including notification of removal actions of other U.S.DOT recipients, to
determine whether there is reasonable cause to believe a currently certified
firm is ineligible.

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

   d) Reasonable Cause to Believe a Firm is Ineligible – If the Manager determines
that there is not reasonable cause to believe the firm is ineligible, s/he shall
provide a written notice to the firm and the complainant stating the reason
therefore in such cases where a complaint was filed with COBID. If the
Manager determines that there is reasonable cause to believe the firm is ineligible, the following steps shall be taken:

i) Written Notice – The COBID will provide written notice to the firm that it proposes to find the firm ineligible for further participation in the DBE program. The notice shall include the reasons for the proposed removal and reference evidence in the record that supports the determination. The notice shall also include notification that the firm has the right to an informal hearing.

ii) Contested Case Hearing – A Contested Case Hearing gives the firm an opportunity to respond to the reasons for the proposed removal of eligibility. The firm can provide any information or arguments concerning why it should remain certified.

A. Certification Appeal to United States Department of Transportation (U.S.DOT)

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

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

All requests for an appeal must be sent, in writing, within ninety (90) days of COBID’s final decision on the matter. The appeal request shall include information and arguments regarding why the decision should be reversed. If the appeal is from a firm, the request must include information regarding certification with other U.S.DOT recipients. If the appeal is from a third party, the party will be requested to provide the same information.

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

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

B. Recertifications

TriMet will review the eligibility of DBEs that are certified under former part 23, to ensure that they meet the standards of Subpart D of 49 CFR Part 26. TriMet will complete this review no later than three years from the most recent certification date of each firm.
For firms that TriMet has certified or reviewed and found eligible under 49 CFR Part 26, TriMet will again review their eligibility as often as TriMet deems necessary. These reviews will include the components deemed necessary by TriMet, and will include but are not limited to an on-site review, submission of a new application, or determination on a case-by-case basis.

C. “No Change” Affidavits and Notices of Change

COBID will require all DBEs to inform it, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided. COBID will also require owners of all DBEs it has certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is as follows:

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 COBID under §26.83(i). [Name of DBE 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 the limits defined in North American Industry Classification System (NAICS) codes and Federal Transit Administration rules; and the disadvantaged owner(s) have not exceeded the personal net worth limit. Any material misrepresentation is grounds for denial or revocation of certification and initiation of actions under federal or state laws concerning false sworn statements.

COBID requires DBEs to submit with this affidavit any relevant documentation showing the firm's size and SBA three-year gross receipts.

COBID will notify all currently certified DBE firms of these obligations in writing approximately 30 days prior to the certification anniversary date. 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 49 CFR Part 26, including personal net worth. Similarly, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a 49 CFR Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.
Attachment B Oregon Revised Statutes, Chapter 200

Chapter 200 — Disadvantaged Business Enterprises; Minority-Owned Businesses; Woman-Owned Businesses; Businesses Owned by Service-Disabled Veterans; Emerging Small Businesses

2015 EDITION

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GENERAL PROVISIONS

200.005 Definitions for ORS 200.005 to 200.075, 200.160 to 200.200 and 279A.105. As used in ORS 200.005 to 200.075, 200.110, 200.120, 200.160 to 200.200 and 279A.105:

1. “Contracting agency” has the meaning given that term in ORS 279A.010.

2. “Contractor” means a person that agrees to legally enforceable terms and conditions under which the person performs services or supplies materials in accordance with a contracting agency’s specifications and for the purpose of accomplishing results the contracting agency intends, while retaining control of the means, methods and manner of performing the services or supplying the materials.

3. “Disadvantaged business enterprise” means a small business concern:
   a. At least 51 percent of which one or more socially and economically disadvantaged individuals own; or
   b. At least 51 percent of the stock of which, if the small business concern is a corporation, is owned by one or more economically disadvantaged individuals who also control and manage the daily business operations of the small business concern.

4. “Economically disadvantaged individual” means a socially disadvantaged individual for whom diminished capital and credit opportunities have impaired the individual’s ability to compete in the free enterprise system as compared to other individuals in the same business area who are not socially disadvantaged individuals.

5. “Emerging small business” means an independent business concern that:
   a. Has a principal place of business located in this state;
   b. Qualifies as a tier one firm or a tier two firm;
   c. Is properly licensed and legally registered in this state; and
   d. Is not a subsidiary or parent company that belongs to a group of firms that the same individuals own or control if, in the aggregate, the group of firms does not qualify as a tier one firm or a tier two firm.

6. “Minority individual” means an individual who is a citizen or lawful permanent resident of the United States and is:
   a. African American, having origins in any of the original peoples of Africa;
   b. Hispanic, having Mexican, Puerto Rican, Cuban, Central or South American or other Spanish culture or origin, regardless of race;
   c. Asian American, having origins in any of the original peoples of East Asia, Southeast Asia, the Indian subcontinent or the Pacific Islands;
   d. Portuguese, having Portuguese, Brazilian or other Portuguese culture or origin, regardless of race;
   e. American Indian or Alaskan Native, having origins in any of the original peoples of North America; or
   f. Any other individual or member of another group that the Certification Office for Business Inclusion and Diversity determines is socially and economically disadvantaged.
(7) “Minority-owned business,” “woman-owned business” or “business that a service-disabled veteran owns” means, as appropriate, a small business concern:

(a) At least 51 percent of which one or more minority individuals, women or service-disabled veterans own and control; or

(b) At least 51 percent of the stock of which, if the small business concern is a corporation, is owned by one or more minority individuals, women or service-disabled veterans who also control and manage the daily business operations of the small business concern.

(8) “Responsible bidder or proposer” means a bidder or proposer that the Governor’s Policy Advisor for Economic and Business Equity determines has undertaken both a policy and practice of actively pursuing participation by minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own or emerging small businesses in all of the bidder’s or proposer’s bids or proposals, both public and private.

(9) “Service-disabled veteran” means a veteran who has a United States Department of Veterans Affairs disability rating of at least zero percent as a result of an injury or illness that the veteran incurred, or that was aggravated, during active military service and who received a discharge or release under other than dishonorable conditions.

(10) “Small business concern” means a small business, as defined by the United States Small Business Administration in 13 C.F.R. part 121, as in effect on January 1, 2016.

(11) “Socially disadvantaged individual” means an individual who has been subjected to racial or ethnic prejudice or cultural bias, without regard to individual qualities, because of the individual’s identity as a member of a group.

(12) “State contracting agency” has the meaning given that term in ORS 279A.010.

(13) “Subcontractor” means a contractor that does not have a direct contractual relationship with a contracting agency.

(14) “Tier one firm” means a business that employs not more than 19 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed an amount that the Oregon Business Development Department specifies by rule.

(15) “Tier two firm” means a business that employs not more than 29 full-time equivalent employees and has average annual gross receipts for the last three years that do not exceed an amount that the Oregon Business Development Department specifies by rule.

(16) “Woman” means a person of the female gender who is a citizen or lawful permanent resident of the United States. [1987 c.893 §2; 1989 c.1043 §1; 1991 c.517 §9; 2001 c.104 §71; 2003 c.794 §213; 2005 c.22 §§150,151; 2005 c.683 §§4,5; 2015 c.565 §1]

200.015 Legislative findings. (1) The Legislative Assembly supports the aspirations of minorities, women and emerging small businesses to enter the mainstream of Oregon social, political and economic life.

(2) The Legislative Assembly finds:

(a) The opportunity for full participation in our free enterprise system by minorities, women and emerging small businesses is essential;

(b) Greater economic opportunity for minorities, women and emerging small businesses is essential;

(c) Review of public programs to remedy historical patterns of exclusion of and discrimination against racial or ethnic groups and women is needed;

(d) Public policies and programs to eliminate the effects of long-term, open and pervasive exclusion of and discrimination against minorities and women from the business sector, including increased opportunities to integrate minorities and women into the full economic life of the community should be reviewed; and

(e) In cooperation with the private sector, the affected populations, interested groups and appropriate governmental entities, a program of review should be established to recommend remedies for the unfortunate effects of social, political and economic inequity that still exist.

(3) Women and minorities are rebuttably presumed to be:
(a) Economically disadvantaged.
(b) Socially disadvantaged. [1987 c.893 §3; 1989 c.1043 §2]

200.025 Governor’s Policy Advisor for Economic and Business Equity; Certification Office for Business Inclusion and Diversity; duties. (1) The Governor shall appoint a Governor’s Policy Advisor for Economic and Business Equity within the office of the Governor.
(2) The Certification Office for Business Inclusion and Diversity is created within the Oregon Business Development Department, and the Director of the Oregon Business Development Department shall appoint the employees of the office.
(3) The Governor’s Policy Advisor for Economic and Business Equity shall:
   (a) Advise the Governor and the director on activities and initiatives that may promote the economic integration of minorities, women, service-disabled veterans and emerging small businesses into the business sector;
   (b) Prepare an annual report to the Governor, director and Legislative Assembly on disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that examines:
      (A) The status of the enterprises and businesses in the marketplace;
      (B) Accomplishments and resolutions that have occurred with respect to issues that concern the enterprises and businesses; and
      (C) Recommendations for executive and legislative action; and
   (c) Carry out other duties that the Governor may assign.
(4) The Certification Office for Business Inclusion and Diversity shall:
   (a) Provide information to minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses;
   (b) Assist in developing and implementing an aggressive strategy for this state, based on research and monitoring, that encourages minorities, women, service-disabled veterans and emerging small businesses to participate in the state’s economy;
   (c) Recommend to the director methods for researching, developing and implementing a plan to involve minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses in all state programs;
   (d) Maintain, in consultation with the Department of Transportation, public universities listed in ORS 352.002 and other entities, an Oregon Opportunity Register and Clearinghouse for information about contracting agency solicitations and other opportunities to submit bids or proposals to contracting agencies to provide goods, supplies and services, including professional services;
   (e) Monitor the certification and compliance program under ORS 200.055 for:
      (A) Disadvantaged business enterprises;
      (B) Minority-owned businesses, woman-owned businesses and businesses that service-disabled veterans own;
      (C) Emerging small businesses;
   (f) Investigate complaints and possible abuses of the certification program; and
   (g) Assist in promoting and coordinating plans, programs and operations of state government that help minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to participate in the economic life of this state. [1987 c.893 §4; 1989 c.1043 §3; 1993 c.500 §7; 1993 c.744 §§189,189a; 2003 c.794 §214; 2005 c.683 §§6,7; 2009 c.830 §135; 2015 c.565 §2; 2015 c.767 §§60,224,225]

200.035 Notice to Governor’s Policy Advisor for Economic and Business Equity. (1) A state contracting agency shall give timely notice and information to the Governor’s Policy Advisor for Economic and Business Equity if the state contracting agency intends to advertise or solicit bids or proposals for a public contract with a contract price of $10,000 or more and shall notify the policy advisor when the state contracting agency has awarded the contract.
(2) Each state contracting agency shall, in consultation with the policy advisor, establish a process and timeline for providing the policy advisor with the notice and information required by subsection (1) of this section. [1987 c.893 §5; 1997 c.145 §1; 1997 c.802 §10; 2005 c.351 §1; 2015 c.565 §3]

200.045 Required participants; rebuttable presumption of responsibility and good faith efforts to encourage participation in public contracts. (1) As used in this section, “required participant” means:

(a) A disadvantaged business enterprise;
(b) A minority-owned business, a woman-owned business or a business that a service-disabled veteran owns; or
(c) An emerging small business.

(2) If a public contract requires participation from a required participant and a bidder or proposer for the public contract is not a required participant, a contracting agency may award the public contract to the bidder or proposer only if the bidder or proposer:

(a) Demonstrates that the bidder or proposer is responsible; and
(b) Has made good faith efforts to encourage required participants to participate in the public contract.

(3) A contracting agency may rebuttably presume that for the purposes of this section a bidder or proposer is responsible and has made good faith efforts to encourage required participants to participate in the public contract if the bidder or proposer takes all of these actions:

(a) Attends presolicitation or prebid meetings that the contracting agency scheduled to inform disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses of contracting and subcontracting or material supply opportunities available in connection with a public contract;
(b) Identifies and selects specific economically feasible units of the public contract that disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses may perform in order to increase the likelihood that required participants will participate in the public contract;
(c) Advertises the opportunities described in paragraphs (a) and (b) of this subsection in general circulation publications, trade association publications and publications that serve an audience or readership that consists primarily of minorities, women, service-disabled veterans and emerging small businesses;
(d) Provides written notice of the opportunities described in paragraphs (a) and (b) of this subsection to a reasonable number of specific disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that the bidder or proposer identified from a list of enterprises or businesses that the Certification Office for Business Inclusion and Diversity certified under ORS 200.055, in sufficient time to allow the enterprises or businesses to participate effectively;
(e) Follows up on the bidder’s or proposer’s initial solicitations of interest by contacting the enterprises or businesses to which the bidder or proposer provided notice under paragraph (d) of this subsection to determine with certainty whether the enterprises or businesses are interested in the opportunities described in paragraphs (a) and (b) of this subsection;
(f) Provides interested disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses with adequate information about plans, specifications and requirements for subcontracting or material supply work in connection with the public contract;
(g) Negotiates in good faith with interested disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses, and did not without justifiable reason reject as unsatisfactory bids or proposals that the enterprises or businesses prepared;
(h) Advises and assists interested disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to obtain, when necessary, bonding, lines of credit or insurance that the contracting agency or contractor requires;

(i) Makes efforts to encourage disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to participate in the public contract that the contracting agency may reasonably expect will produce a level of participation that meets the contracting agency’s goals or requirements; and

(j) Uses the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations that the Governor’s Policy Advisor for Economic and Business Equity identifies as providing assistance in recruiting disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses for participation in public contracts.

(4) A contracting agency may rebuttably presume that for the purposes of this section a bidder or proposer is not responsible and has not made good faith efforts to encourage required participants to participate in a public contract if the bidder or proposer does not take all of the actions required under subsection (3) of this section. Superficial or pro forma efforts do not demonstrate responsibility or constitute adequate good faith efforts under this section. [1987 c.893 §7; 1989 c.1043 §8; 1997 c.145 §2; 2003 c.794 §215; 2009 c.830 §136; 2015 c.565 §4]

CERTIFICATION

200.055 Certification as disadvantaged business enterprise, minority-owned business, woman-owned business, business that service-disabled veteran owns or emerging small business; fees; rules; appeal. (1)(a) An enterprise or business may apply to the Certification Office for Business Inclusion and Diversity for certification as:

(A) A disadvantaged business enterprise;

(B) A minority-owned business;

(C) A woman-owned business;

(D) A business that a service-disabled veteran owns; or

(E) An emerging small business.

(b) An enterprise or business shall submit a separate application for each category of certification the enterprise or business seeks under paragraph (a) of this subsection.

(c) If an enterprise or business qualifies under ORS 200.005 to 200.075 and if the office approves an application from the enterprise or business, the office shall certify the enterprise or business under one or more of the categories described in paragraph (a) of this subsection.

(d) For purposes of awarding a public contract, a contracting agency shall recognize an enterprise or business with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075. For purposes of awarding a subcontract in connection with a public contract, a contractor may recognize a subcontractor with a certification from the office as the category of enterprise or business described in the certification and as having met the requirements set forth in ORS 200.005 to 200.075.

(2) In consultation with public universities listed in ORS 352.002 and the Department of Transportation, and with the approval of the Governor’s Policy Advisor for Economic and Business Equity, the Oregon Business Development Department by rule shall adopt a uniform standard form and procedure to provide complete documentation of an enterprise’s or a business’ status as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business. The
department shall compile and make available a list of enterprises and businesses that the Certification Office for Business Inclusion and Diversity certifies under this section.

(3) If the Certification Office for Business Inclusion and Diversity denies a certification as, or decertifies, a disadvantaged business enterprise, an affected business enterprise may appeal directly to the United States Department of Transportation.

(4) If the Certification Office for Business Inclusion and Diversity denies, revokes or refuses to renew a business’s certification as a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, the business may request a contested case hearing as provided in ORS chapter 183.

(5) The Oregon Business Development Department, through the Certification Office for Business Inclusion and Diversity, is the sole agency that may certify enterprises and businesses as disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that are eligible to perform public contracts in this state.

(6) The Oregon Business Development Department by rule may establish a fee not to exceed $100 for a copy of the list described in subsection (2) of this section and may assess contracting agencies for services under ORS 200.005 to 200.075.

(7) The Department of Transportation may collect a fee, not to exceed $200, from a bidder or proposer at the time the bidder or proposer prequalifies to perform public contracts to cover the costs of the Oregon Business Development Department in administering ORS 200.005 to 200.075. The Department of Transportation shall transfer fees that the Department of Transportation collects under this subsection to the credit of the account established under subsection (8) of this section.

(8) The Oregon Business Development Department shall establish a special account in which to deposit fees and assessments. The special account is continuously appropriated to the Oregon Business Development Department to meet the Oregon Business Development Department’s expenses in administering ORS 200.005 to 200.075. [1987 c.893 §8; 1989 c.1043 §4; 1993 c.500 §8; 1997 c.145 §3; 2003 c.794 §216; 2009 c.830 §137; 2015 c.148 §1; 2015 c.565 §5; 2015 c.767 §61]

200.057 Designation of certified emerging small business as tier one or tier two firm.

(1) A business may be certified as an emerging small business by the Oregon Business Development Department for up to 12 years and may be:

(a) Designated a tier one firm for up to six years unless the business no longer qualifies as a tier one firm.

(b) Designated a tier two firm for up to six years unless the business no longer qualifies as a tier two firm.

(2) The department shall adjust annually the amount of the average annual gross receipts required to qualify as a tier one firm or a tier two firm using the most recent three-year average of the Portland-Salem Consumer Price Index for All Urban Consumers for All Items, as reported by the United States Bureau of Labor Statistics.

(3) Notwithstanding the time limits established by subsection (1) of this section, if a tier one firm provides compelling information showing, in the judgment of the department, that the firm has not been afforded an opportunity to bid on emerging small business projects during a year of eligibility, the department shall extend the tier one designation of the firm for one year. A tier one firm may receive the extension described in this subsection only once. [2005 c.683 §2; 2009 c.830 §138]

Note: 200.057 was added to and made a part of 200.005 to 200.075 by legislative action but was not added to any other series. See Preface to Oregon Revised Statutes for further explanation.
200.065 Fraudulent conduct prohibited; penalty and other sanctions. (1) A person may not fraudulently obtain or retain, attempt to fraudulently obtain or retain or aid another person in fraudulently obtaining or retaining or attempting to fraudulently obtain or retain certification as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business.

(2) A person may not knowingly make a false claim that any person is qualified for certification or is certified under ORS 200.055 for the purpose of obtaining a public contract or subcontract or other benefit.

(3) An affected contracting agency may withhold payment, may suspend or terminate a public contract and may impose on any person a civil penalty that does not exceed 10 percent of the contract or subcontract price or $5,000, whichever is less, for each violation of subsection (1) or (2) of this section. The person shall pay the penalty to the affected contracting agency. If the affected contracting agency does not impose a civil penalty on the person under this subsection, the Oregon Business Development Department may independently impose a civil penalty that does not exceed $5,000 for each violation of subsection (1) or (2) of this section. The person shall pay a penalty that the department imposes to the Certification Office for Business Inclusion and Diversity.

(4) The department or an affected contracting agency shall investigate violations of subsection (1) or (2) of this section. In investigating a violation, the department or an affected contracting agency may require any additional information, administer oaths, take depositions and issue subpoenas to compel witnesses to attend and compel the production of books, papers, records, memoranda or other information necessary to carry out the department’s or the affected contracting agency’s duties. If a person fails to comply with any subpoena that the department or the affected contracting agency issued under this subsection or refuses to testify on any matter on which a person may lawfully be interrogated, the department or the affected contracting agency shall follow the procedure provided in ORS 183.440 to compel compliance.

(5) The department or an affected contracting agency may disqualify from submitting a bid or proposal or receiving an award of a public contract, for a period of not more than three years, any person that under oath during the course of an investigation admits to violating subsection (1) or (2) of this section or that the department or the affected contracting agency finds to have violated subsection (1) or (2) of this section. Any contracting agency that has notice of the finding of the fraudulent certification may also disqualify the person from bidding on or participating in any public contract. [1987 c.893 §9; 1989 c.1043 §5; 1997 c.145 §4; 2009 c.830 §139; 2013 c.1 §21; 2015 c.148 §2; 2015 c.565 §6]

200.075 Prohibited conduct; suspension of right to participate in public contracts; revocation of certification. (1) An affected contracting agency shall suspend any bidder’s, proposer’s, contractor’s or subcontractor’s right to submit a bid or proposal for, or receive an award of, a public contract in the future if the bidder, proposer, contractor or subcontractor knowingly commits any of the acts listed in this subsection. The affected contracting agency shall suspend the right only after providing notice and opportunity for hearing in a manner that the affected contracting agency provides by rule. The affected contracting agency shall specify a time for the suspension that is up to one year for a first violation, up to three years for a second violation and up to five years for a third violation. Each violation must remain on record for five years. After five years the affected contracting agency may not consider the violation in reviewing future violations. A bidder, proposer, contractor or subcontractor may not:

(a) Enter into any agreement to represent that a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055 will perform work or supply materials under a public contract without the knowledge and consent of the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business.
(b) Exercise or permit another bidder, proposer, contractor or subcontractor to exercise management and decision making control over the internal operations of a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business, other than the bidder’s, proposer’s, contractor’s or subcontractor’s own enterprise or business. As used in this paragraph, “internal operations” does not include normal scheduling, coordination, execution or performance as a subcontractor on a public contract.

(c) Use a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business to perform a public contract or subcontract or to supply material under a public contract to meet an established goal or requirement if the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business does not perform a commercially useful function in carrying out responsibilities and obligations under the public contract.

(d) Fail to perform a commercially useful function in performing a public contract or subcontract or in supplying material to a contractor or subcontractor that is performing a public contract or subcontract if the bidder, proposer, contractor or subcontractor is presented as a certified disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business to meet an established goal or requirement.

(2) The Certification Office for Business Inclusion and Diversity shall revoke an enterprise’s or business’s certification under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business if, after conducting an investigation in a manner similar to the manner provided in ORS 200.065 (4) for investigating a violation of ORS 200.065 (1) or (2), the Oregon Business Development Department finds that the enterprise or business allows or commits any of the acts listed in this subsection. A disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business may not:

(a) Use the enterprise’s or business’s name to meet a goal or requirement for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own or emerging small businesses to participate in a public contract or subcontract if the enterprise or business does not in fact intend to or does not actually perform work under the public contract or subcontract or does not intend to or does not purchase and supply material under a public contract or subcontract to supply material.

(b) Use personnel of an uncertified enterprise or business to operate, manage or otherwise control the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business.

(c) Exhibit a pattern of failing to perform a commercially useful function in performing a public contract or subcontract or supplying material to a contractor or subcontractor on a public contract if the enterprise or business is represented as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business certified under ORS 200.055 for the purpose of meeting an established goal or requirement.

(3)(a) An affected contracting agency shall notify the department if the affected contracting agency investigates a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business for failing to perform a commercially useful function.

(b) The department may conduct an independent investigation of a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business for exhibiting a pattern of failing to perform
a commercially useful function in response to notifications from one or more affected contracting agencies under paragraph (a) of this subsection.

(4) As used in this section, “commercially useful function”:
(a) Means a function or service:
(A) That the enterprise or business actually performs;
(B) For which a demand exists in the marketplace; and
(C) For which the enterprise or business receives payment that is proportionate to the work that the enterprise or business performs or that conforms with industry standards.
(b) Does not include acting as a broker to provide for others to perform work. [1987 c.893 §11; 1989 c.1043 §6; 1991 c.91 §1; 1995 c.452 §21; 2015 c.148 §3; 2015 c.565 §7]

200.085 [1987 c.893 §1; repealed by 1989 c.1043 §14]

RESPONSIBILITY OF CONTRACTING AGENCIES

200.090 Contracting agencies to pursue policy of providing opportunities. Contracting agencies shall aggressively pursue a policy of providing opportunities for disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses and shall cooperate with the Governor’s Policy Advisor for Economic and Business Equity to determine the best means by which to make such opportunities available. [1989 c.1043 §10; 2015 c.565 §8]

200.100 [1991 c.559 §1; 2005 c.22 §152; repealed by 2015 c.565 §24]

MENTOR RELATIONSHIP

200.110 Mentor relationship; guidelines; eligibility. (1) The Oregon Business Development Department may recognize a mentor relationship between contractors and disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses that are certified under ORS 200.055. In order to qualify for the department’s recognition, the mentor relationship must offer the opportunity for the contractor to foster and encourage disadvantaged business enterprises, minority-owned businesses, woman-owned businesses, businesses that service-disabled veterans own and emerging small businesses to expand the capacity of existing enterprises and businesses and to offer the opportunity for less experienced enterprises and businesses to gain training and assistance.

(2) To have the department recognize the mentor relationship described in subsection (1) of this section, a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business must follow guidelines that include, but are not limited to:
(a) Meeting the certification requirements of the U.S. Department of Transportation or ORS 200.055. The Certification Office for Business Inclusion and Diversity may approve an application for certification under ORS 200.055 at the same time the department approves a mentor arrangement.
(b) Remaining independent from the contractor and maintaining a minority individual’s, woman’s or service-disabled veteran’s actual ownership of the enterprise or business. A minority individual, woman or service-disabled veteran who owns the enterprise or business may have other employment and business interests if the employment or business interests do not conflict with the minority individual’s, woman’s or service-disabled veteran’s power to direct the management and policies of the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business and to make day-to-day and major decisions on matters of management, policy and
operations. A contractor may provide facilities to the enterprise or business if the contractor and the enterprise or business maintain a separate lease agreement.

(c) Complying with 49 C.F.R. 26 as to an individual’s or entity’s part ownership in a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business if the individual or entity is not certified under ORS 200.055. The enterprise or business shall report any property, equipment, supplies or other services that the enterprise or business buys, rents or receives as a donation and any investment that an individual or entity makes in the enterprise or business if the individual or entity is not certified under ORS 200.055. The report must include bills of sale, lease agreements or similar documents.

(3) A mentor relationship may include an arrangement with an independent third party, such as a bank or accountant, to act as an agent. A third party may receive progress payments for work that a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business accomplishes, made out jointly to the third party and the enterprise or business, and may make payments on behalf of the enterprise or business to material suppliers or for federal and state payroll taxes.

(4) Types of assistance that a contractor may provide in a mentor relationship to a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business include:

(a) Financial assistance;
(b) Technical and management assistance;
(c) Equipment rental and use of personnel; and
(d) Bonding assistance. [1991 c.559 §2; 2009 c.830 §140; 2015 c.565 §9]

200.120 Development plan for mentor relationship; contents; review; termination. (1) The Oregon Business Development Department, in consultation with the Oregon Association of Minority Entrepreneurs, may approve a written development plan as part of a mentor relationship. The development plan must:

(a) Clearly set forth the objectives and roles of the parties;
(b) Be for a specified length of time;
(c) Determine measurable goals that the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business must reach; and
(d) Provide that if a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business uses a mentor’s resources in performing contracts or subcontracts for the mentor or for another contractor, the enterprise or business shall separately identify, account for and directly compensate the mentor for the resources. The department may closely monitor a development plan that provides that the enterprise or business will use the mentor’s resources extensively.

(2) The development plan may also provide for the mentor to train the disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns, or emerging small business. Training may include:

(a) Business planning;
(b) Record keeping;
(c) Technical training;
(d) Capital formation;
(e) Loan packaging;
(f) Financial counseling;
(g) Bonding; and
(h) Equipment utilization.
(3) The Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs may review the development plan annually to monitor progress.

(4) The development plan must provide that the mentor relationship may be terminated by mutual consent or if:

(a) An enterprise or a business no longer qualifies for certification under ORS 200.055 as a disadvantaged business enterprise, a minority-owned business, a woman-owned business, a business that a service-disabled veteran owns or an emerging small business;
(b) Either party has failed or is unable to meet the party’s obligations under the development plan;
(c) The disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business is not progressing or is not likely to progress in accordance with the development plan;
(d) The disadvantaged business enterprise, minority-owned business, woman-owned business, business that a service-disabled veteran owns or emerging small business has reached a satisfactory level of self-sufficiency to compete without resorting to special treatment provided in the development plan; or
(e) The plan or provisions of the plan are contrary to the requirements of federal, state, or local law or regulation, or otherwise contrary to public policy.

(5) The parties to the development plan, the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs shall retain copies of the plan.

(6) The development plan may provide that either party may dissolve the plan for any reason by notifying the Oregon Business Development Department and the Oregon Association of Minority Entrepreneurs. [1991 c.559 §3; 2009 c.830 §141; 2015 c.565 §10]

200.150 [1991 c.517 §1; repealed by 2005 c.683 §13]

EMERGING SMALL BUSINESS ASSISTANCE PROGRAM

200.160 Transportation Commission duties; report. The Oregon Transportation Commission shall appoint a committee to recommend plans whereby the Department of Transportation may assist emerging small businesses in overcoming barriers to participation in state public improvement and maintenance projects. The committee shall report biennially its recommendation to the commission and to the appropriate legislative committee. [1991 c.517 §2; 2005 c.683 §8]

200.170 Eligibility for participation. (1) Subject to subsection (2) of this section, to participate in the emerging small business program under ORS 200.160 to 200.200, an applicant must:

(a) Be certified by the Oregon Business Development Department under ORS 200.005 to 200.075 as an emerging small business;
(b) Show that the applicant’s place of business and the work in which the applicant seeks to participate are located in this state; and
(c) Show that the applicant is in compliance with applicable licensing and registration requirements.

(2) The Department of Transportation may limit eligibility for participation on a specific project or contract to emerging small businesses that are located in or draw a part of their workforce from economically distressed areas or enterprise zones in this state, as designated by the Oregon Business Development Department in consultation with the Employment Department.

(3) An applicant who participates under ORS 200.160 to 200.200 must perform at least 51 percent of the labor provided by the applicant on a public improvement or maintenance project using the applicant’s own workforce. [1991 c.517 §§3,6; 2005 c.103 §1; 2005 c.683 §9; 2009 c.830 §142]
200.180 Emerging Small Business Account; uses. The Emerging Small Business Account is established within the State Highway Fund. The Emerging Small Business Account is an investment fund for purposes of ORS 293.701 to 293.857. Moneys in the account are continuously appropriated to the Department of Transportation for the purpose of assisting emerging small businesses under the plans recommended under ORS 200.160. Interest earnings on moneys in the account are credited to the account. [1991 c.517 §4; 1993 c.744 §189b; 2005 c.683 §10]

200.190 Deposit of one percent of highway construction contract amount. The Department of Transportation, when undertaking a public improvement highway construction contract, shall deposit with the State Treasurer an amount equal to not more than one percent of the contract award amount. The State Treasurer shall credit the amount reserved to the Emerging Small Business Account established in the State Highway Fund. The deposit must be made within 30 days of the date on which the contract award is made. [1991 c.517 §5; 1993 c.744 §189c; 2005 c.683 §11]

200.200 Security for performance by emerging small business. (1) When any requirement exists under ORS 279.835 to 279.855 or ORS chapter 279A, 279B or 279C to provide a surety bond or other security for the faithful performance of a public contract, an emerging small business may provide:
   (a) A surety bond issued by a corporate surety qualified by law to issue surety insurance as defined in ORS 731.186;
   (b) A stipulation or undertaking with one or more individual sureties; or
   (c) Any other form of security specified in the statute requiring the security.
(2) When the security for the faithful performance of a public contract is in the form of a stipulation or undertaking with one or more individual sureties, the individual sureties must be residents of this state. The total net worth of all the individual sureties on the stipulation or undertaking must be at least twice the sum specified in the stipulation or undertaking. The public agency requiring the security shall determine if the sureties possess the qualifications prescribed by this subsection. [1991 c.517 §8; 2003 c.794 §217]
The Tri-County Metropolitan Transportation District of Oregon is in the process of releasing its aspirational goal for FY 2017 – 2019. TriMet is seeking public feedback regarding contracting opportunities and potential barriers for DBEs.

A community discussion will be held at the State of Oregon Office Building, 800 NE Oregon, Portland, OR 97232 on Thursday, June 30, 2016 from 3:30 to 5pm. The meeting room is accessible.

Comments on TriMet’s aspiritional goal will be accepted at meeting; submit written comments to TriMet, Attn: Department of Diversity & Transit Equity, 1800 SW First Avenue, Suite 300, Portland, OR 97201 or emailed to johnsomo@trimet.org.

Comments will be accepted through July 22, 2016.

Persons requiring meeting materials in alternative formats and/or sign language interpreters should contact TriMet's Senior and Disabled Citizen Information at 503.962.2455 or TTY call 711 for Oregon Relay Service at least two work days prior to the meeting so arrangements can be made.
Attachment D - NAICS Code Analysis

The NAICS codes listed on the following page are in consideration of the following projects using FTA funds for FY 17-FY19.

- Portland to Milwaukie Light Rail Project – Deferred Shelters Installation
- Light rail track and structure repairs at various locations throughout the TriMet light rail line.
- Pedestrian crossing improvements.
- Westside Bike and Rides Shelter Fabrication Services
- Custodial Goods and Services at TriMet Facilities and Transit Centers
- Design Services for Powell Bus Garage Renovation Project
- Ruby Juction Wash Rack Weatherization Project
- Bus Shelter Cleaning Services - Three Regions
- Morrison/Yamhill intersection repairs
- Moody/Porter Phase II Safety Improvements
<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Description</th>
<th>DBE firms</th>
<th>Total Firms</th>
<th>DBE Availability %</th>
</tr>
</thead>
<tbody>
<tr>
<td>236220</td>
<td>Commercial &amp; Institutional Building Construction</td>
<td>41</td>
<td>886</td>
<td>4.63%</td>
</tr>
<tr>
<td>237110</td>
<td>Water &amp; Sewer Line &amp; Related Structures Construction</td>
<td>37</td>
<td>187</td>
<td>19.79%</td>
</tr>
<tr>
<td>237310</td>
<td>Highway, Street, &amp; Bridge Construction</td>
<td>70</td>
<td>336</td>
<td>20.83%</td>
</tr>
<tr>
<td>238110</td>
<td>Poured Concrete Foundation &amp; Struction Contractors</td>
<td>39</td>
<td>477</td>
<td>8.18%</td>
</tr>
<tr>
<td>238910</td>
<td>Site Preparation Contractors</td>
<td>69</td>
<td>331</td>
<td>20.85%</td>
</tr>
<tr>
<td>561720</td>
<td>Janitorial Services</td>
<td>7</td>
<td>534</td>
<td>1.31%</td>
</tr>
<tr>
<td>541310</td>
<td>Architectural Services</td>
<td>9</td>
<td>708</td>
<td>1.27%</td>
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<tr>
<td>541320</td>
<td>Landscape Architectural Services</td>
<td>17</td>
<td>94</td>
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</tr>
<tr>
<td>541330</td>
<td>Engineering Services</td>
<td>38</td>
<td>911</td>
<td>4.17%</td>
</tr>
<tr>
<td>541340</td>
<td>Drafting Services</td>
<td>48</td>
<td>48</td>
<td>100.00%</td>
</tr>
<tr>
<td>541430</td>
<td>Graphic Design Services</td>
<td>23</td>
<td>497</td>
<td>4.63%</td>
</tr>
<tr>
<td>541690</td>
<td>Other Scientific and Technical Consulting Services</td>
<td>66</td>
<td>269</td>
<td>24.54%</td>
</tr>
<tr>
<td>541611</td>
<td>Administrative Management &amp; General Mngt Consulting</td>
<td>115</td>
<td>125</td>
<td>92.00%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>579</strong></td>
<td><strong>5403</strong></td>
<td><strong>10.72%</strong></td>
</tr>
</tbody>
</table>
### Summary of Awards/Commitments Made

#### TriMet DBE Program

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Total $ Oct-Mar</th>
<th>Total DBE $ Oct-Mar</th>
<th>% of Total to DBEs</th>
<th>Total $ Apr-Sep</th>
<th>Tot DBE $ Apr-Sep</th>
<th>% of Tot to DBEs</th>
<th>Total FY $</th>
<th>Total FY DBE $</th>
<th>% of Total to DBEs</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY15</td>
<td>$6,490,611</td>
<td>$773,247</td>
<td>11.91%</td>
<td>$6,038,706</td>
<td>$739,597</td>
<td>12.25%</td>
<td>$12,529,317</td>
<td>$1,512,844</td>
<td>12.07%</td>
</tr>
<tr>
<td>FY14</td>
<td>$18,804,724</td>
<td>$2,088,070</td>
<td>11.10%</td>
<td>$1,619,172</td>
<td>$30,764,199</td>
<td>13.54%</td>
<td>$3,707,242</td>
<td>$10,506,156</td>
<td>6.86%</td>
</tr>
<tr>
<td>FY13</td>
<td>$136,519,520</td>
<td>$6,594,040</td>
<td>4.83%</td>
<td>$3,912,116</td>
<td>$153,129,826</td>
<td>23.55%</td>
<td>$12,121,439</td>
<td>$10,506,156</td>
<td>6.86%</td>
</tr>
<tr>
<td>FY12</td>
<td>$41,421,551</td>
<td>$6,335,237</td>
<td>15.29%</td>
<td>$5,786,202</td>
<td>$170,071,682</td>
<td>4.50%</td>
<td>$12,121,439</td>
<td>$10,506,156</td>
<td>6.86%</td>
</tr>
<tr>
<td>FY11</td>
<td>$68,086,272</td>
<td>$3,664,647</td>
<td>5.55%</td>
<td>$1,272,094.00</td>
<td>85,140,455.00</td>
<td>6.68%</td>
<td>$4,936,741.00</td>
<td>$4,936,741.00</td>
<td>5.80%</td>
</tr>
<tr>
<td>FY10</td>
<td>$1,458,938</td>
<td>$25,236</td>
<td>1.73%</td>
<td>$3,699,598.00</td>
<td>$989,724.00</td>
<td>25.75%</td>
<td>$1,014,960</td>
<td>$1,014,960</td>
<td>19.68%</td>
</tr>
<tr>
<td>FY09</td>
<td>$8,191,767</td>
<td>$1,303,698</td>
<td>15.91%</td>
<td>$6,461,810.00</td>
<td>$805,702.00</td>
<td>12.47%</td>
<td>$14,653,577</td>
<td>$2,109,400</td>
<td>14.40%</td>
</tr>
</tbody>
</table>

**Median FY2011-2014**

- **Step 1** Calculated Goal
- **Step 2** Adjusted Goal
TOPICS FOR DISCUSSION AT THE PRECONSTRUCTION MEETING

- Project organization, key contacts, responsibilities, emergency contact information
- Partnering
- Community affairs involvement
- Art projects
- Affirmative Action programs and the goals for DBE participation
- Inclusion of Prime Contract Terms in Prime/Sub-Contractor agreements
- Contractor quality control (quality assurance) program and procedures
- Capital Project's Quality Assurance Program Manual and procedures
- Capital Project's Construction Safety Program oversight/overview
- Contractor's Safety and Incident Prevention Program (including emergency actions)
- Security concerns with regards to accessing operational and newly constructed TriMet facilities
- Risk Management and Owner Controlled Insurance Program (if applicable)
- Sustainability
- Compliance with laws, codes and regulations of public agencies (including permits)
- Mobilization
- Job site housekeeping
- Job site security for lay down yards, storage areas and structures under construction
- Maintenance and protection of traffic
- Environmental concerns and sedimentation control
- Processing of submittals and early deliverables
- Contractor's construction methods
- Coordination of contract work with the project as a whole
- Contractor's preliminary schedule (detailed schedules are usually required on or before 90 days after the Notice to Proceed is issued)
- Processing of shop and working drawings
- Coordination for permitting, installation and billing for temporary project utilities and utilities that will transfer over as permanent to TriMet MOW/Operations
- Advance payments for materials and equipment
- Progress payment procedures
  - Web based Contract Compliance System (i.e. Elations)
  - Compliance with labor provisions as specified by EEO
  - Labor requirements and certification of payrolls
- Unforeseen site conditions
- TriMet furnished materials and equipment
- Contract modifications
- Incentive reviews
- Original and final surveys (surveys performed by contractor, check surveys performed by TriMet)
- Claims and disputed work procedures
- Record drawings/specifications and drawing control
- Punch list procedures
- Final quantities
- Training and Operations & Maintenance (O&M) Manuals
- Retainage
- Completion of work, final payment and closeout procedures
## Attachment F - On-Site DBE Review

### Project Information

<table>
<thead>
<tr>
<th>Project</th>
<th>Contract Number</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Prime Contractor</th>
<th>Date</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Sub Contractor</th>
<th>DBE Certification Number</th>
</tr>
</thead>
</table>

### 1. Per the condition of award, indicate DE work observed this date

<table>
<thead>
<tr>
<th>Subcontract ID number</th>
<th>Approximate % Complete</th>
<th>Item Description</th>
<th>Dollar Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### DBE Subcontractor’s Start Date

<table>
<thead>
<tr>
<th>DBE Subcontractor’s Start Date</th>
<th>Project percentage complete</th>
<th>DBE Anticipated Completion Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Subcontractor’s Site Superintendent / Foreman

<table>
<thead>
<tr>
<th>Subcontractor’s Site Superintendent</th>
<th>Foreman (Name)</th>
<th>Exclusively Employed by the DBE contractor?</th>
</tr>
</thead>
</table>

### If No, Please Explain

Is Superintendent / Foreman shown on DBE Payroll?  □ Yes □ NO
Is Superintendent / Foreman shown on any other On-Site Contractor’s Payroll?  □ Yes □ NO

### If Yes, Explain

If Known, to Whom Does the DBE Superintendent / Foreman Directly Report to Within His/Her Own organization?

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
</tr>
</thead>
</table>

List Names and Crafts of DBE Crew as Observed (Use additional sheets, if needed)

### Are any Crew Members on the Prime or any other Project Subcontractors Payroll(s)?  □ Yes □ NO
If Yes, Please Indicate

List DBE Equipment Observed Being Used

### Does DBE Equipment have Markings or Emblems?  □ Yes □ NO

<table>
<thead>
<tr>
<th>Equipment</th>
</tr>
</thead>
<tbody>
<tr>
<td>□ Owned □ Leased</td>
</tr>
</tbody>
</table>

### Equipment under direct supervision of DBE Subcontractor?  □ Yes □ NO

<table>
<thead>
<tr>
<th>DBE Subcontractor</th>
</tr>
</thead>
</table>

### Does DBE owner been Present on the Job Site?  □ Yes □ NO

### What %

Does DBE Subcontractor Appear to have Control over Methods of Work in its items?  □ Yes □ NO
<table>
<thead>
<tr>
<th>Solicitation No.</th>
<th>Submitting Party</th>
<th>Address</th>
<th>City</th>
<th>State</th>
<th>Form of Biz</th>
<th>Date of Incorporp.</th>
<th>DBE Status (Y or N)</th>
<th>Certification #</th>
<th>Gross Receipts Brackets</th>
</tr>
</thead>
<tbody>
<tr>
<td>RC120XXXBW</td>
<td>ABC Corp.</td>
<td>123 Main St.</td>
<td>Portland</td>
<td>OR</td>
<td>Corp</td>
<td>2001 Y</td>
<td>Y</td>
<td>123456</td>
<td>&lt;$500,000 $500k - $1M $1M-$2M $2M-$5M &gt;$5M</td>
</tr>
<tr>
<td>RC120XXXBW</td>
<td>DEF Ltd.</td>
<td>456 Buzzard Lane</td>
<td>Salem</td>
<td>OR</td>
<td>Partnership</td>
<td>2005 N</td>
<td>N</td>
<td></td>
<td>X</td>
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</table>
### Over-Concentration Analysis

<table>
<thead>
<tr>
<th>NAICS Code</th>
<th>Description</th>
<th>Non-DBE Businesses</th>
<th>DBE Businesses</th>
<th>Total Businesses</th>
<th>Percentage to DBE's</th>
<th>Percentage to Non-DBE's</th>
</tr>
</thead>
<tbody>
<tr>
<td>236220</td>
<td>Commercial and Institutional Building Construction</td>
<td>845</td>
<td>41</td>
<td>886</td>
<td>4.63%</td>
<td>95.37%</td>
</tr>
<tr>
<td>237110</td>
<td>Water &amp; Sewer Line &amp; Related Structures Construction</td>
<td>150</td>
<td>37</td>
<td>187</td>
<td>19.79%</td>
<td>80.21%</td>
</tr>
<tr>
<td>237310</td>
<td>Highway, Street &amp; Bridge Construction</td>
<td>266</td>
<td>70</td>
<td>336</td>
<td>36.05%</td>
<td>63.95%</td>
</tr>
<tr>
<td>238110</td>
<td>Poured Concrete Foundation &amp; Structure Contractors</td>
<td>438</td>
<td>39</td>
<td>477</td>
<td>8.18%</td>
<td>91.82%</td>
</tr>
<tr>
<td>238910</td>
<td>Site Preparation Contractors</td>
<td>262</td>
<td>69</td>
<td>331</td>
<td>20.85%</td>
<td>79.15%</td>
</tr>
<tr>
<td>561720</td>
<td>Janitorial Services</td>
<td>527</td>
<td>7</td>
<td>534</td>
<td>1.31%</td>
<td>98.69%</td>
</tr>
<tr>
<td>541310</td>
<td>Architectural Services</td>
<td>699</td>
<td>9</td>
<td>708</td>
<td>1.27%</td>
<td>98.73%</td>
</tr>
<tr>
<td>541320</td>
<td>Landscape Architectural Services</td>
<td>77</td>
<td>17</td>
<td>94</td>
<td>18.09%</td>
<td>81.91%</td>
</tr>
<tr>
<td>541330</td>
<td>Engineering Services</td>
<td>873</td>
<td>38</td>
<td>911</td>
<td>4.17%</td>
<td>95.83%</td>
</tr>
<tr>
<td>541340</td>
<td>Drafting Services</td>
<td>0</td>
<td>48</td>
<td>48</td>
<td>100.00%</td>
<td>0%</td>
</tr>
<tr>
<td>541430</td>
<td>Graphic Design Services</td>
<td>474</td>
<td>23</td>
<td>497</td>
<td>4.63%</td>
<td>95.37%</td>
</tr>
<tr>
<td>541690</td>
<td>Other Scientific and Technical Consulting Services</td>
<td>203</td>
<td>66</td>
<td>269</td>
<td>24.54%</td>
<td>75.46%</td>
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<tr>
<td>541611</td>
<td>Administrative Management and General Mgmt Consulting Services</td>
<td>10</td>
<td>115</td>
<td>125</td>
<td>92.00%</td>
<td>8.00%</td>
</tr>
</tbody>
</table>

**Available Businesses vs. NAICS Codes**

- Non-DBE Businesses
- DBE Businesses
- Total Businesses
End of report

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