

POLICY STATEMENT

Section 23.1, 23.23 Objectives/Policy Statement

The City of Redmond has established an Airport Concession Disadvantaged Business Enterprise (ACDBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 23. The City of Redmond is a primary airport and has received federal funds authorized for airport development after January 1988 (authorized under Title 49 of the United States Code). The City of Redmond has signed airport grant assurances that it will comply with 49 CFR Part 23.

It is the policy of the City of Redmond to ensure that ACDBEs as defined in Part 23, have an equal opportunity to receive and participate in concession opportunities. It is also our policy:

1. To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
2. To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
3. To ensure that our ACDBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs at our airport(s);
5. To help remove barriers to the participation of ACDBEs in opportunities for concessions at our airport(s); and
6. To provide appropriate flexibility to our airports in establishing and providing opportunities for ACDBEs.

The Airport Business Coordinator has been designated as the ACDBE Liaison Officer (ACDBELO). In that capacity, The Airport Business Coordinator is responsible for implementing all aspects of the ACDBE program. Implementation of the ACDBE program is accorded the same priority as compliance with all other legal obligations incurred by the City of Redmond in its financial assistance agreements with the Department of Transportation.

City of Redmond has disseminated this policy statement to the City Manager and all of the components of our organization. We have distributed this statement to ACDBE and non-ACDBE concessionaire communities in our area by posting a notice on the Airport's website, www.flyrdm.com and by making it available to all parties requesting a copy from the Airport Business Coordinator.



Keith Witcosky, City Manager

09 / 14 / 2021

Date

SUBPART A – GENERAL REQUIREMENTS

Section 23.1 Objectives

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

Section 23.3 Definitions

The City of Redmond will use terms in this program that have the meaning defined in Section 23.3 and Part 26 Section 26.5 where applicable.

Section 23.5 Applicability

The City of Redmond is a primary airport and the sponsor of federal airport funds authorized for airport development after January 1988 that was authorized under Title 49 of the United States Code.

Section 23.9 Non-discrimination Requirements

The City of Redmond will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement or other agreement covered by 49 CFR Part 23 on the basis of race, color, sex, or national origin.

In administering its ACDBE program, the City of Redmond 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 ACDBE program with respect to individuals of a particular race, color, sex, or national origin.

The City of Redmond acknowledges these representations are also in accordance with obligations contained in its Civil Rights, DBE and ACDBE Airport grant assurances.

The City of Redmond will include the following assurances in all concession agreements and management contracts it executes with any firm:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR Part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR Part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it

enters and cause those businesses to similarly include the statements in further agreements.”

Section 23.11 Compliance and Enforcement

The City of Redmond will comply with and is subject to the provisions of 49 CFR Part 26 (§§ 26.101, 26.105, 26.107 and 2 CFR parts 180 and 1200.

The City of Redmond will comply with this part or be subject to formal enforcement action under §26.105 or appropriate program sanctions, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include actions consistent with 49 U.S.C. §§ 47106(d), 47111(d), and 47122.

2 C.F.R. Part 180, Government-wide Debarment and Suspension (Non-procurement), effective November 15, 2006, adopted and supplemented by DOT at 2 C.F.R. Part 1200, effective June 2, 2008, provides Office of Management and Budget (OMB) guidance for Federal agencies on the government-wide debarment and suspension system for non-procurement transactions, programs and activities. 2 C.F.R. Part 1200 adopts the OMB guidance in subparts A through I of 2 CFR part 180, as supplemented by part 1200, as the Department of Transportation policies and procedures for non-procurement suspension and debarment.

The City of Redmond's compliance with all requirements of this part is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The following enforcement actions apply to firms participating in the [City of Redmond's] ACDBE program:

- (a) For a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate as an ACDBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department of Transportation (DOT) or the Federal Aviation Administration (FAA) may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.
- (b) For a firm that, in order to meet ACDBE goals or other AC/DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, DOT or FAA may initiate suspension or debarment proceedings against the firm under 2 CFR parts 180 and 1200.

- (c) DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the ACDBE program whose conduct is subject to such action under 49 CFR Part 31.
- (d) DOT may refer to the Department of Justice, for prosecution under 18 U.S.C. §§ 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of an ACDBE in the [Sponsor's] ACDBE program or otherwise violates applicable Federal statutes.

Compliance reviews: The FAA may review the City of Redmond's compliance with this part at any time, including but not limited to, reviews of paperwork, on-site reviews, and review of the airport sponsor's monitoring and enforcement mechanism, as appropriate. The FAA Office of Civil Rights may initiate a compliance review based on complaints received.

Any person who knows of a violation of this part by the City of Redmond may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

SUBPART B – ACDBE PROGRAMS

Section 23.21 ACDBE Program Updates

The City of Redmond is small hub primary airport required to have an ACDBE program.

As a condition of eligibility for FAA financial assistance, the City of Redmond will submit its ACDBE program and overall goals to FAA according to 23.45(a) of this section.

Until the City of Redmond's new ACDBE program is submitted and approved, we will continue to implement our ACDBE program that was in effect previously, except with respect to any provision that is contrary to 49 CFR Part 23.

This ACDBE program will be implemented at the Redmond Municipal Airport.

When the City of Redmond makes significant changes to its ACDBE program, we will provide the amended program to the FAA for approval prior to implementing the changes.

Section 23.23 Administrative Provisions

Policy Statement: The City of Redmond is committed to operating its ACDBE program in a nondiscriminatory manner.

The City of Redmond's Policy Statement is elaborated on the first page of this program.

ACDBE Liaison Officer (ACDBELO): We have designated the following individual as our ACDBELO:

Felila Sumanas Narotski
Airport Business Coordinator
2522 S.E. Jesse Butler Circle, # 17
Redmond, OR 97756
Phone: 541-504-3086
Email: felila.narotski@flyrdm.com

In that capacity, the ACDBELO is responsible for implementing all aspects of the ACDBE program and ensuring that the [City of Redmond] complies with all provision of 49 CFR Part 23. The ACDBELO has direct, independent access to the City Manager concerning ACDBE program matters. An organizational chart displaying the ACDBELO's position in the organization is found in Attachment 1 to this program.

The ACDBELO is responsible for developing, implementing and monitoring the ACDBE program, in coordination with other appropriate officials. The ACDBELO has a staff of one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by FAA or DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to ACDBEs in a timely manner.
5. Identifies contracts and procurements so that ACDBE goals are included in solicitations (both race-neutral methods and contract specific goals)
6. Analyzes City of Redmond's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager on ACDBE matters and achievement.
9. Plans and participates in ACDBE training seminars.
10. Acts as liaison to the Unified Certification Program (UCP) in Oregon.
11. Provides outreach to ACDBEs and community organizations to advise them of opportunities.

Directory: The City of Redmond through the Oregon Unified Certification Program (UCP), maintains a directory identifying all firms eligible to participate as DBEs and ACDBEs. The Directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as an ACDBE.

The UCP will ensure that the Directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. The UCP will make any changes to the current directory entries necessary to meet the requirements of this paragraph.

The UCP revises the Directory at least annually. We make the Directory available as follows: www.oregon4biz.com. The Directory may be found in Attachment 2 to this program document. (26.31).

Section 23.25 Ensuring Nondiscriminatory Participation of ACDBEs

The City of Redmond will take the following measures to ensure nondiscriminatory participation of ACDBEs in concessions, and other covered activities (23.25(a)).

The City of Redmond will seek ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others. (23.25(c))

The City of Redmond's overall goal methodology and a description of the race-neutral measures it will use to meet the goals are described in Section 23.25 and Attachment 4 and 5 of this plan. The goals are set consistent with the requirements of Subpart D. (23.25(b), (d))

If the City of Redmond projects that race-neutral measures alone, are not sufficient to meet an overall goal, it will use race-conscious measures as described in Section 23.25 (e) (1-2) and Attachment 4 and 5 of this plan. (23.25(e))

The City of Redmond will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with ACDBEs. (23.25(f))

The City of Redmond will not use set-asides or quotas as a means of obtaining ACDBE participation. (23.25(g)).

Section 23.27 Reporting

We will retain sufficient basic information about our ACDBE program implementation, ACDBE certification and the award and performance of agreements and contracts to enable the FAA to determine our compliance with Part 23. This data will be retained for a minimum of 3 years following the end of the concession agreement or other covered contract.

Beginning March 1, 2006, we will submit to the FAA Regional Civil Rights Office, an annual ACDBE participation report on the form in Appendix A of Part 23.

Section 23.29 Compliance and Enforcement Procedures

The City of Redmond will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 23.

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. We have listed the regulations, provisions, and contract remedies available to us in the events of non-compliance with the ACDBE regulation by a participant in our procurement activities (See Attachment 3). (26.37)

SUBPART C – CERTIFICATION AND ELIGIBILITY

Section 23.31 We will use the procedures and standards of Part 26, except as provided in 23.31, for certification of ACDBEs to participate in our concessions program and such standards are incorporated herein.

The City of Redmond is the member of a Unified Certification Program (UCP) administered by State of Oregon. The UCP will meet all of the requirements of this section.

The City of Redmond is a member of a Unified Certification Program (UCP) administered by the State of Oregon which will make ACDBE certification decisions on behalf of the City of Redmond.

The UCP's directory of eligible DBEs specifies whether a firm is certified as a DBE for purposes of Part 26, and ACDBE for purposes of part 23, or both.

Prior to entering into a new contract, extension, or option with a currently certified ACDBE, we will review their eligibility at that time (i.e., "as soon as possible") rather than waiting until the latest date allowed under Part 23. Our schedule for this review process will be an annual review of our active firms.

We will treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years do not exceed \$56.42 million for non-car rental ACDBEs and \$75.23 million for car rental ACDBEs. The size standard for banks and other financial institutions is \$1 billion in assets, for pay

telephone company's is 1500 employees and for ACDBE automobile dealers is 350 employees.

Section 23.35 The personal net worth standard used in determining eligibility for purposes of Part 23 is \$1.32 million.

We recognize that Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

- (1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification;
- (2) The individual's equity in his or her primary place of residence; and
- (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million.

The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012. (23.3)

An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Any person who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual, even if a member of a group otherwise presumed to be disadvantaged. (See 23.3 - *Personal Net Worth* definition and 23.35)

We will presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. However, before certifying such a firm, we will ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in our concessions program. We are not obligated to certify a part 26 DBE as an ACDBE if the firm does not perform work relevant to our concessions program. (23.37).

We recognize that the provisions of part 26, sections 26.83(c) (2-6) do not apply to certifications for purposes of part 23. We will follow the provisions of 23.39 (a) through (i). We will obtain resumes or work histories of the principal owners of the firm and personally interview these individuals. We will analyze the ownership of stock of the firm, if it is a corporation. We will analyze the bonding and financial capacity of the firm. We will determine the work history of the firm, including any concession contracts or other contracts it may have received. We will compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive. We will obtain a statement from the firm of the types of concessions it prefers

to operate or the type of other contracts it prefers to perform. We will ensure that the ACDBE firm meets the applicable size standard. (23.39(a)(b)).

We acknowledge that a prime contractor includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a City of Redmond. We recognize that the eligibility of Alaska Native Corporations (ANC) owned firms for purposes of part 23 is governed by part 26 section 26.73(h). (23.39(c)(d)).

We will use the certification standards of part 23 to determine the ACDBE eligibility of firms that provide goods and services to concessionaires. (23.39(i))

In instances when the eligibility of a concessionaire is removed after the concessionaire has entered into a concession agreement because the firm exceeded the size standard or the owner has exceeded the PNW standard, and the firm in all other respects remains an eligible DBE, we may continue to count the concessionaire's participation toward ACDBE goals during the remainder of the current concession agreement. We will not count the concessionaire's participation toward ACDBE goals beyond the termination date for the concession agreement in effect at the time of the decertification. (23.39(e))

We will use the Uniform Application Form found in appendix F to part 26 with additional instruction as stated in 23.39(g).

SUBPART D – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 23.41 Basic Overall Goal Requirement

The City of Redmond will establish two separate overall ACDBE goals; one for car rentals and another for concessions other than car rentals. The overall goals will cover a three-year period and the sponsor will review the goals annually to make sure the goal continues to fit the sponsor's circumstances. We will report any significant overall goal adjustments to the FAA.

If the average annual concession revenues for car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for car rentals. Likewise, if the average annual concession revenues for concessions other than car rentals over the preceding 3 years do not exceed \$200,000, we need not submit an overall goal for concessions other than car rentals. We understand that "revenue" means total revenue generated by concessions, not the fees received by the airport from concessionaires.

The City of Redmond's overall goals will provide for participation by all certified ACDBEs and will not be subdivided into group-specific goals.

Section 23.43 Consultation in Goal Setting

The City of Redmond consults with stakeholders before submitting the overall goals to the FAA. Stakeholders will include, but not be limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the sponsors efforts to increase participation of ACDBEs.

When submitting our overall goals, we will identify the stakeholders that we consulted with and provide a summary of the information obtained from the stakeholders.

Section 23.45 Overall Goals

The sponsor is a (*large hub primary, medium hub primary, small hub primary, nonhub primary*) airport. As a condition of eligibility for FAA financial assistance, the sponsor will submit its overall goals according to the following schedule:

Primary Airport Size	Region	Date Due	Period Covered	Next Goal Due
Small Hubs	All regions	October 1, 2021	2022/2023/2024	October 1, 2024 (2025/2026/2027)

If a new concession opportunity arises at a time that falls between the normal submission dates above and the estimated average of annual gross revenues are anticipated to be \$200,000 or greater, the sponsor will submit an appropriate adjustment to our overall goal to FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity. (23.45i)

The sponsor will establish overall goals in accordance with the 2-Step process as specified in section 23.51. After determining the total gross receipts for the concession activity, the first step is to determine the relative availability of ACDBEs in the market area, "base figure". The second step is to examine all relevant evidence reasonably available in the sponsor's jurisdiction to determine if an adjustment to the Step 1 "base figure" is necessary so that the goal reflects as accurately as possible the ACDBE participation the sponsor would expect in the absence of discrimination. Evidence may include, but is not limited to past participation by ACDBEs, a disparity study, evidence from related fields that affect ACDBE opportunities to form, grow, and compete (such as statistical disparities in ability to get required financing, bonding, insurance; or data on employment, self-employment, education, training and union apprenticeship)

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

A description of the methodology to calculate the overall goal for car rentals, the goal calculations, and the data we relied on can be found in Attachment 5 to this program.

A description of the methodology to calculate the overall goal for concessions other than car rentals, the goal calculations, and the data we relied on can be found in Attachment 4 to this program.

Projection of Estimated Race-Neutral & Race-Conscious Participation (23.45(f), 23.25(d-e))

The breakout of estimated race-neutral and race-conscious participation can be found with the goal methodology in Attachments 4 and 5 to this program. This section of the program will be reviewed annually when the goal calculation is reviewed under 23.41(c).

Concession Specific Goals (*Also include this language in the DBE goal attachment*) (23.25 (c)(e)(1)(iv))

The City of Redmond will use concession specific goals to meet any portion of the overall goals it does not project being able to meet using race-neutral means. Concession specific goals are established so that, over the period to which the overall goals apply, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish concession specific goals only on those concessions that have direct ownership arrangements (except car rentals), sublease, or subcontracting possibilities. We will require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs (23.25 (f)). Car rental firms are not required to change their corporate structure to provide for direct ownership arrangements. In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services.)

We need not establish a concession specific goal on every such concession, and the size of concession specific goals will be adapted to the circumstances of each such concession (e.g., type and location of concession, availability of ACDBEs.)

If the objective of a concession specific goal is to obtain ACDBE participation through direct ownership with an ACDBE, the City of Redmond will calculate the goal as a

percentage of the total estimated annual gross receipts from the concession.
(23.25(e)(1)(i))

If the concession specific goal applies to purchases and/or leases of goods and services, the City of Redmond will calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire. (23.25(e)(1)(ii))

Good Faith Efforts on Concession Specific Goals (23.25(e)(1)(iii), (iv))

To be eligible to be awarded a concession that has a concession specific goal, bidders/offerors must make good faith efforts to meet the goal. A bidder/offeror may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so. (23.25(e)(1)(iv)). Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The procedures applicable to 49 CFR Sections 26.51 and 26.53, regarding contract goals apply to the City of Redmond's concession specific goals. Specifically:

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

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

Felila Sumanas Narotski is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

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

Information to be submitted (26.53(b))

In our solicitations for concession contracts for which a contract goal has been established, we will require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the City of Redmond, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of ACDBE firms that will participate in the contract;

- (ii) A description of the work that each ACDBE will perform. To count toward meeting a goal, each ACDBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - (iii) The dollar amount of the participation of each ACDBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use an ACDBE sub-concession whose participation it submits to meet a contract goal; and
 - (v) Written confirmation from each listed ACDBE firm that it is participating in the contract in the kind and amount of work provided in the prime concessionaire's commitment.
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each ACDBE and non-ACDBE sub-concession quote submitted to the bidder when a non-ACDBE sub-concession was selected over an ACDBE for work on the contract; and
- (3) We will require that the bidder/offeror present the information required by paragraph (b)(2) of this section:

Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the City of Redmond.

Administrative reconsideration (26.53(d))

Within 5 business of being informed by City of Redmond that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: City Manager, 411 SW 9th Street, Redmond, OR 97756. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when an ACDBE is replaced on a concession (26.53(f))

The City of Redmond will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its concession agreement, lease, or subcontract with another certified ACDBE, to the extent needed to meet the concession specific goal. We will require the concessionaire to notify the ACDBELO immediately of the ACDBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the concessionaire to obtain our prior approval of the substitute ACDBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime concession has good cause to terminate the ACDBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

Before transmitting to us its request to terminate and/or substitute an ACDBE sub-concession, the prime concession must give notice in writing to the ACDBE sub-concession, with a copy to us, of its intent to request to terminate and/or substitute, and the reason for the request.

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

The City of Redmond will require a concessionaire to make good faith efforts to replace an ACDBE that is terminated or has otherwise failed to complete its work on a concession with another certified ACDBE. These good faith efforts shall be directed at finding another ACDBE to perform at least the same amount of work under the concession contract as the ACDBE that was terminated, to the extent needed to meet the concession contract goal that we established for the procurement. The good faith efforts shall be documented by the concessionaire. If we request documentation from the concessionaire under this provision, the concessionaire shall submit the documentation to us within 7 days, which may be extended for an additional 7 days if necessary at the request of the concessionaire, and the City of Redmond shall provide a written determination to the concessionaire stating whether or not good faith efforts have been demonstrated.

We will include in each prime concession contract the contract clause required by § 26.13(b) stating that failure by the concessionaire to carry out the requirements of this part is a material breach of the contract and may result in the termination of the concession contract or such other remedies set forth in that section that we deem appropriate if the prime concessionaire fails to comply with the requirements of this section.

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

Sample Proposal/Bid Specification:

The requirements of 49 CFR Part 23, regulations of the U.S. Department of Transportation, applies to this concession. It is the policy of the City of Redmond to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this concession will be conditioned upon satisfying the requirements of this proposal/bid specification. These requirements apply to all concession firms and suppliers, including those who qualify as an ACDBE. An ACDBE concession specific goal of 50.28% of *annual gross receipts (for non-car rental) and 0.00% of annual gross receipts (for car rental)* have been established for these concession firms. The concession firms shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 6), to meet the concession specific goal for ACDBE participation in the performance of this concession.

The concession firm will be required to submit the following information: (1) the names and addresses of ACDBE firms and suppliers that will participate in the concession, (2) A description of the work that each ACDBE will perform; (3) The dollar amount of the participation of each ACDBE firm participating; (4) Written and signed documentation of commitment to use a ACDBE whose participation it submits to meet a contract goal; (5) Written and signed confirmation from the ACDBE that it is participating in the concession as provided in the prime concessionaire's commitment; and (6) If the contract goal is not met, evidence of good faith efforts.

Section 23.53 Counting ACDBE Participation for Car Rental Goals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.53.

Section 23.55 Counting ACDBE Participation for Concessions Other than Car Rentals

We will count ACDBE participation toward overall goals other than car rental as provided in 49 CFR 23.55.

Section 23.57 (b) Goal shortfall accountability. If the awards and commitments on our Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- (1) Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems we have identified in our analysis to enable us to fully meet our goal for the new fiscal year;

If the airport is a CORE 30 or other Airport designated by FAA, include the following information:

- (3) (i) *CORE 30 or other Airport designated by FAA: We will submit the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval by April 1 following the report submittal. If the FAA approves the report, we will be regarded as complying with the requirements of this section for the remainder of the fiscal year.*
- (ii) *As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, we will retain analysis and corrective actions in our records for three years and make it available to the FAA, on request, for their review.*
- (4) *We understand the FAA may impose conditions as part of its approval of our analysis and corrective actions including, but not limited to, modifications to our overall goal methodology, changes in our race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.*
- (5) *We understand we may be regarded as being in noncompliance with this part, and therefore subject to the remedies in § 23.11 of this part and other applicable regulations, for failing to implement our ACDBE program in good faith if any of the following things occur:*

(i) We do not submit our analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves our analysis or corrective actions; or

(iii) We do not fully implement:

(A) The corrective actions to which we have committed, or

(B) Conditions that FAA has imposed following review of our analysis and corrective actions.

(C) If information coming to the attention of FAA demonstrates that current trends make it unlikely that we, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow us to meet our overall goal at the end of the fiscal year, FAA may require us to make further good faith efforts, such as modifying our race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 23.61 Quotas or Set-asides

We will not use quotas or set-asides as a means of obtaining ACDBE participation.

SUBPART E – OTHER PROVISIONS

Section 23.71 Existing Agreements

We will assess potential for ACDBE participation when an extension or option to renew an existing agreement is exercised, or when a material amendment is made. We will use any means authorized by part 23 to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

Section 23.75 Long-Term Exclusive Agreements

We will not enter into a long-term and exclusive agreements for concessions without prior approval of the FAA Regional Civil Rights Office. We understand that a “long-term” agreement is one having a term of longer than 5 years. We understand that an “exclusive” agreement is one in which an entire category of a particular business opportunity is limited to a single business entity. If special, local circumstances exist

that make it important to enter into a long-term and exclusive agreement, we will submit detailed information to the FAA Regional Civil Rights Office for review and approval.

Section 23.79 Geographic Preferences

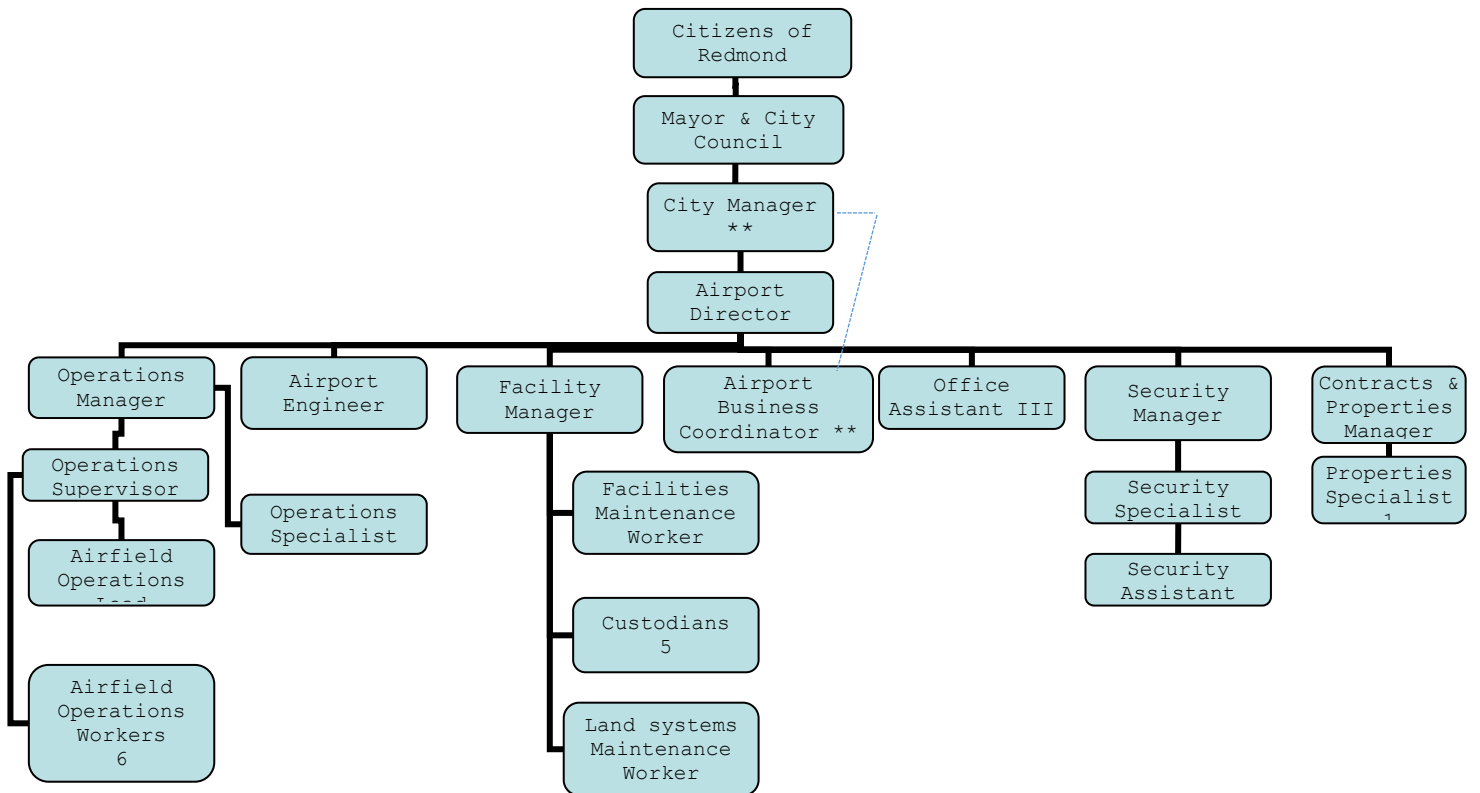
We will not use a “local geographic preference”, i.e., any requirement that gives an ACDBE located in one place an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE/ACDBE Directory (or website link)
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	Overall Goal for Concessions other than Car Rental Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 5	Overall Goals for Car Rentals Calculation, Consultation, Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 6	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 7	Certification Application Forms
Attachment 8	Procedures for Removal of ACDBEs Eligibility
Attachment 9	State’s UCP Agreement
Attachment 10	Regulations: 49 CFR Part 23

Attachment 1

Organizational Chart



** The direct access is for DBELO/ACDBLO activities only

Attachment 2

Oregon ACDBE Directory

To obtain the list of ACDBEs, contact:

Business Oregon – An Oregon State Agency
775 Summer Street N.E., Suite 200
Salem, OR 97301-1280
(503) 986-0123

Or visit the website of the Certification Office for Business Inclusion and Diversity (COBID) of the Oregon Business Development Department at:

www.oregon4biz.com

and:

COBID Certified Vendor Directory at:

<https://oregon4biz.diversitysoftware.com/FrontEnd/SearchCertifiedDirectory.asp?XID=9991&TN=oregon4biz>

Attachment 3

Sample Monitoring and Enforcement Mechanisms

The City of Redmond has several remedies available to enforce the ACDBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to [State Code Section X]; and
3. [List the other laws, statutes, regulations, etc. that are available to enforce the ACDBE requirements.]

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

1. Suspension or debarment proceedings pursuant to 49 CFR part 23 and 2 CFR parts 180 and 1200
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

The City of Redmond will implement various mechanisms to monitor program participants to ensure they comply with Part 23, including, but not limited to the following:

1. We will insert the following provisions into concessions agreements and management contracts:

Any violation or breach of terms of this contract on the part of the contractor or their subcontractors may result in the suspension or termination of this contract or such other action that may be necessary to enforce the rights of the parties of this agreement. The duties and obligations imposed by the Contract Documents and the rights and remedies available thereunder shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law.

2. We will implement the following additional monitoring and compliance procedures:

We will implement a monitoring and enforcement mechanism that will include written certification that we have reviewed, contracting records, and monitored work sites for this purpose.

3. We will implement our compliance and monitoring procedures as follows:

We will implement a mechanism that will provide for a running tally of actual ACDBE attainments (e.g. payment actually made to ACDBE firms), including a means of comparing these attainments to commitments. In our reports of ACDBE participation to DOT, we will show both commitments and attainments, as required by the DOT uniform reporting form.

Attachment 6

Forms 1 & 2 for Demonstration of Good Faith Efforts

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

FORM 1: AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UTILIZATION

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

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

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

Name of bidder/offeror's firm: _____

State Registration No. _____

By _____ Title
(Signature)

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of ACDBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Description of work to be performed by ACDBE firm:

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

Affirmation

The above-named ACDBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By _____
(Signature) (Title)

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

(Submit this page for each ACDBE subcontractor.)

Attachment 7

ACDBE Certification Application Form

A copy of the Application Form and instructions can be found at the following website:

<http://www.oregon4biz.com/How-We-Can-Help/COBID/>

Attachment 8

Procedures for Removal of ACDBEs Eligibility

The City of Redmond will follow the procedures as outlined for the removal of an ACDBE' eligibility per the guidelines found on the following website:

<http://www.oregon4biz.com/How-We-Can-Help/COBID/>

ATTACHMENT 9

State's UCP Agreement

A copy of the State of Oregon UCP information can be found at the website below.

http://cdn.portofportland.com/pdfs/SROS_SB_UCP_Agreement.pdf

1. The 2012 signed UCP Agreement.
2. Oregon Business Development Department – Division 200 Certification Procedures

The City intends to use “State of Oregon Certification Office for Business Inclusion and Diversity” for its certification process. For information about the certification process or to apply for certification, firms should contact:

Carrie Baxandall
COBID Program Manager
Business Oregon – An Oregon State Agency
775 Summer Street N.E., Suite 200
Salem, OR 97301-1280
(503) 986-0075
Carrie.Baxandall@oregon.gov

Or visit the website of the Certification Office for Business Inclusion and Diversity (COBID) of the Oregon Business Development Department at:

www.oregon4biz.com

**INTERGOVERNMENTAL AGREEMENT
Administering the Disadvantaged Business Enterprise
Unified Certification Function**

This Agreement is made and entered into by and between the State of Oregon, acting by and through its Department of Transportation, hereinafter referred to as "ODOT;" the State of Oregon, acting by and through its Oregon Business Development Department, hereinafter referred to as "OBDD;" and the State of Oregon, acting by and through its Department of Aviation, cities, counties or local partners signing on to this Agreement, hereinafter referred to as "Agencies." Parties signing this Agreement shall be referred to individually as "Party," or collectively referred to as the "Parties."

RECITALS

1. By the authority granted in Oregon Revised Statute (ORS) [190.110](#) and [283.110](#), state agencies may enter into agreements with units of local government or other state agencies for the performance of any or all functions and activities that a party to the agreement, its officers, or agents have the authority to perform.
 2. The Disadvantaged Business Enterprise (DBE) program requirements set out in Title 49 United States Code of Federal Regulations (CFR) part 26, section 81 require that state recipients of federal transportation funds establish a "one-stop" process to certify businesses owned by socially- and economically-disadvantaged individuals as DBEs: the Unified Certification Program (UCP). 49 CFR § 26.81 requires that all recipients of federal transportation funds in a state sign an agreement establishing the UCP and submit same to the U.S. Secretary of Transportation.
 3. As provided in 49 CFR part 26, only firms owned and controlled by socially- and economically-disadvantaged person(s) are to benefit from the DBE Program. ODOT Office of Civil Rights is responsible for ensuring compliance with the federal regulations in the determination of a DBE certification and will act in the capacity of Lead Agency for coordinating the program participation of the Agencies hereunder. ODOT is responsible to USDOT for assuring certification of DBEs is performed consistent with 49 CFR part 26.
 4. As provided under ORS 200.055(5), OBDD is the sole agency authorized to certify enterprises as Disadvantage Business Enterprises eligible to perform on public contracts in this state. Pursuant to ORS 200.055, OBDD herein delegates authority for administration of the Oregon UCP DBE Certification Component to its Office of Minority, Women, and Emerging Small Business, hereinafter, "OMWESB."
 5. Pursuant to Oregon Revised Statute 183.341, OBDD has adopted rules for the certification of Disadvantaged Business Enterprise firms, (see OAR chapter 123, division 200).
 6. This Agreement defines the roles and responsibilities of ODOT, OBDD, OMWESB, and Agencies to continue participation in the UCP. The collective effort of the Parties is hereinafter referred to as the "UCP Partnership" or "Partnership."
-

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NOW THEREFORE, premise being in general as stated in the foregoing Recitals, it is agreed by and between the Parties hereto as follows:

TERMS OF AGREEMENT

1. Under such authority, ODOT, OBDD and Agencies agree to cooperate and coordinate the administration of DBE certification services as required under the Code of Federal Regulations 49 Part 26.
2. The term of this Agreement shall begin upon the signatures of ODOT, OBDD and the first Party to execute this Agreement and shall terminate five (5) years from that date. The Agreement may be extended or modified by mutual consent of the Parties upon execution of amendments to this Agreement stating said modifications.

MUTUAL PARTIES OBLIGATIONS

1. The Parties mutually agree that all DBE certification decisions by OMWESB shall be binding on all recipients of federal transportation funds within Oregon.
2. The Parties shall ensure that OMWESB has sufficient resources and expertise to carry out the requirements of 49 CFR § 26.81.
3. The Parties mutually agree to have open and regular communications on matters concerning DBE certification. Matters of concern to all agencies include process time, staffing, budget, certification issues, directory maintenance and changes in the overall DBE certification process.
4. The Parties shall cooperate in the administration of the USDOT required DBE Certification process, striving for the most efficient use of their individual agency resources in carrying out the process of certifying Socially and Economically Disadvantaged individuals.
5. The Parties agree that all certifications shall be pre-certifications, i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.
6. The Parties mutually agree to notify or copy all Parties of the Partnership on any communication to the USDOT or respective agencies regarding DBE Certification.
7. The Parties agree to work in partnership during Federal audits and performance reviews.
8. The Parties will not exclude persons from participation in, deny benefits to, or otherwise discriminate against any persons in connection with the award and performance of any contract governed by 49 CFR Part 26 on the basis of race, color, sex and national origin.
9. The Parties will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing the accomplishments of the objective of this program with respect to individuals of a particular race, color, sex and national origin.

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AGENCIES OBLIGATIONS

1. Each Agency shall designate a representative to attend semi-annual UCP Partnership meetings and any special sessions held to resolve issues that arise requiring more immediate attention. Attendance by teleconference will be acceptable. Semi-annual meetings will occur in the summer (July or August) and the fall (October or November). OMWESB will provide all other Agencies reasonable notice of the meeting.
2. Agencies agree that ODOT is the Lead Agency for the Partnership.
3. Agencies shall notify OMWESB of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
4. Agencies shall promptly notify OMWESB of complaints received relating to DBE certification or program administration.

ODOT OBLIGATIONS

1. As Lead Agency, ODOT shall do the following:
 - a. Notify and advise OMWESB and Agencies of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.
 - b. Notify OMWESB and Agencies of training programs relevant to DBE Certification function and procedures.
 - c. Review an OMWESB determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.
 - d. Provide ongoing DBE Certification expertise, oversight, as well as conduct process reviews when required, including an annual audit of DBE Certification files.
 - e. Assist OMWESB in the conducting appeals of firms challenging DBE certification decisions.
2. ODOT shall notify OMWESB of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
3. ODOT shall promptly notify OMWESB of complaints received relating to DBE certification or program administration.
4. ODOT's Project Manager for this Project is Tiffany Hamilton, Small Business Programs Manager, ODOT – Office of Civil Rights, MS-31, 355 Capitol St. NE, Salem, OR 97301, 503-986-4355, tiffany.hamilton@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

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OBDD OBLIGATIONS

1. OBDD will consult with Agencies regarding changes in State rules, regulations, statutory proposals or amendments conflicting with federal guidelines in DBE certification.
2. OBDD will not be required to process an application for certification from a firm having its principle place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
3. OBDD will share its information and documents concerning the firm with other interested agencies that are considering the firm's application.
4. OBDD shall maintain a DBE Certification database and directory.
5. OBDD shall provide Agencies with all necessary DBE Certification information required to complete federal reports and data collection.
6. OBDD shall follow all certification procedures and standards set out in 49 CFR part 26.
7. OBDD shall cooperate fully in the oversight, review, and monitoring activities of the USDOT and its operating administrations and implement USDOT's directives and guidance concerning certification matters.
8. OBDD agrees to act in accordance with 49 CFR §26.83(k). OBDD agrees that OMWESB shall make decisions on applications for certification within ninety (90) days of receiving from the applicant firm all information required. This time period may be extended once, for no more than sixty (60) days, upon written notification to the firm, explaining fully and specifically the reasons for the extension.
9. Subject to the Oregon Public Records Law, ORS 192.410 to 192.505, OMWESB shall not release any information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information.
10. OBDD shall submit to ODOT the following documentation on each DBE certification within seven (7) days upon request of ODOT:
 - a. Copy of letter of determination
 - b. Copy of site visit
11. OBDD shall notify ODOT and Agencies in writing within seven (7) days of any of the following:
 - a. **De-Certification or Denial of DBE Certification**
 - b. Third party challenge
 - c. Closures or cancellations of any DBE certifications due to a firm's failure to file an annual no-change affidavit;
 - d. Any withdrawals of DBE Certification applications

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12. OBDD will participate in DBE staff training.
13. OBDD shall coordinate participation in DBE Certification workshops with Agencies.
14. OBDD shall provide technical assistance to firms seeking DBE Certification.
15. OBDD shall submit to Agencies the following documentation on each DBE certification upon request:
 - a. Copy of letter of determination
 - b. Copy of site visit
16. DISPUTE RESOLUTION BETWEEN ODOT, OBDD AND THE OREGON DEPARTMENT OF AVIATION
 - a. ODOT, OBDD, and the Department of Aviation agree that any tort liability claim, suit, or loss resulting from or arising out of ODOT's, OBDD's, or the Department of Aviation's performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this Agreement.
 - b. ODOT, OBDD, and the Department of Aviation understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT, OBDD, and the Department of Aviation agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.
17. OBDD's Project Manager for this Project is John Saris, Business Services Manager, OBDD – Business Services Section, 775 Summer Street SE, Suite 200, Salem, OR. 97301, 503-986-0163, john.saris@biz.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties.
2. This Agreement may be terminated by mutual consent of all current Parties upon thirty (30) days' notice, in writing and delivered by certified mail or in person.

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3. ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to Agencies, or at such later date as may be established by ODOT or OBDD, under any of the following conditions:
 - a. If Agencies fail to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from ODOT or OBDD fails to correct such failures within ten (10) days or such longer period as ODOT or OBDD may authorize.
 - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT or OBDD are prohibited from paying for such work from the planned funding source.
4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, OBDD or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice and copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.
7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines

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and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties acknowledge and agree that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
10. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.

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13. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or OBDD to enforce any provision of this Agreement shall not constitute a waiver by ODOT or OBDD of that or any other provision.

THE PARTIES, by execution of this Agreement, hereby acknowledge that their signing representatives have read this Agreement, understand it, and agree to be bound by its terms and conditions.

STATE OF OREGON, by and through its
Oregon Business Development
Department

By John Saris
John Saris, Business Services Manager

Date October 8, 2012

OBDD/OMWESB Contact:

John Saris, Business Services Manager
OBDD – Business Services Section
775 Summer Street SE, Suite 200,
Salem, OR. 97301
503-986-0163,
john.saris@biz.state.or.us

STATE OF OREGON, by and through
its Department of Transportation

By Michael Cobb 10/15/12
Michael Cobb, Office of Civil Rights
Manager

Date October 15, 2012

APPROVED AS TO FORM

By Ethan Hasenstein, Assistant Attorney
General by email dated October 5th, 2012

ODOT Contact:

Tiffany Hamilton, Small Business
Programs Manager
ODOT Office of Civil Rights, MS-31
355 Capitol St. NE
Salem, OR 97301
503-986-4355
tiffany.hamilton@odot.state.or.us

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Unified Certification Function Agreement Signature Page

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State or Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity Columbia County
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

By: <u>[Signature]</u>	<u>1/23/13</u>	<u>CHAIR</u>
Agency Signature	Date	Title
By: <u>[Signature]</u>	<u>1/23/13</u>	<u>Commissioner</u>
Agency Signature	Date	Title
<u>[Signature]</u>	<u>1/23/13</u>	<u>Assistant County Counsel</u>
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative:	<u>Janet Wright</u>
Address:	<u>230 STRAND ST.</u> <u>St. Helens, OR 97051</u>
Phone:	<u>503-366-0159</u>
Fax:	<u>503-366-8508</u>
E-mail:	<u>janet.wright@co.columbia.or.us</u>


Send the **Unified Certification Function Agreement Signature Page** (this page) to: Mary M. Cole, Procurement and Contracts Specialist via e-mail at: mary.m.cole@odot.state.or.us and cc' Tiffany Hamilton, Small Business Programs Manager at: tiffany.hamilton@odot.state.or.us.

ODOT/OBDD/Agencies
Agreement No. 28966

Unified Certification Function Agreement Signature Page

The Unified Certification Program process developed and implemented by the Oregon Department of Transportation and the Oregon Business Development Department and has been reviewed by this agency. We recognize this program as the authorizing process for certification, certification review, and de-certification of firms in the Disadvantaged Business Enterprise Program for the State of Oregon as required by 49 CFR Part 26.81.

IN THE WITNESS WHEREOF, the Public Entity Rogue Valley Transportation District
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

	10/17/12	General Manager
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title
_____	_____	_____

Name and title of Agency Contact Representative:		Luanne Spencer, Administration Manager/DBELO	
Address:		3200 Crater Lake Avenue	
		Medford, OR 97504-9075	
Phone:	(541) 608-2401	Fax:	(541) 773-2877
E-mail:	lspencer@rvtd.org		

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IN THE WITNESS WHEREOF, the Public Entity City of Hermiston
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

<u>Mark Morgan</u>	<u>10-10-2012</u>	<u>Asst. to the City Manager</u>
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title
_____	_____	_____

Name and title of Agency Contact Representative: <u>Mark Morgan, Asst. to the City Manager</u>	
Address: <u>180 NE 2nd St.</u> <u>Hermiston, OR 97838</u>	
Phone: <u>541-567-5521</u>	Fax: _____
E-mail: <u>mmorgan@hermiston.or.us</u>	


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IN THE WITNESS WHEREOF, the Public Entity Salem-Keizer Transit
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

	<u>10/22/12</u>	<u>General Manager</u>
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative:	<u>Allan Pollock</u>
Address:	<u>925 Commercial St. SE #100</u> <u>Salem, OR 97302</u>
Phone:	<u>503-588-2424</u>
Fax:	<u>503-566-3933</u>
E-mail:	<u>pollocka@chessrsts.org</u>

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IN THE WITNESS WHEREOF, the Public Entity City of Redmond
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

<u>Kim Dickie</u> Agency Signature	<u>10-26-12</u> Date	<u>Airport Director</u> Title
_____ Agency Signature	_____ Date	_____ Title
_____ Agency Counsel	_____ Date	_____ Counsel's title

Name and title of Agency Contact Representative:	<u>Kim Dickie, Airport Director</u>
Address:	<u>2522 SE Jesse Butler Circle, #17</u> <u>Redmond, OR 97756</u>
Phone:	<u>541 504-3496</u> Fax: <u>541 548-0591</u>
E-mail:	<u>Kim.Dickie@ci.Redmond.OR.US</u>


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IN THE WITNESS WHEREOF, the Public Entity Metro Regional Government (Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

	<u>11/5/12</u>	<u>Director of FRS</u>
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative:	<u>Julie Hoffman, C.P.P.B., DBE Program Coordinator</u>	
Address:	<u>600 NE Grand Avenue</u> <u>Portland OR 97232</u>	
Phone:	<u>503 797 1648</u>	Fax: _____
E-mail:	<u>julie.hoffman@oregonmetro.gov</u>	

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IN THE WITNESS WHEREOF, the Public Entity COIC
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

<u>[Signature]</u> Agency Signature	<u>11-5-12</u> Date	<u>EXECUTIVE DIRECTOR</u> Title
 Agency Signature	 Date	 Title
 Agency Counsel	 Date	 Counsel's title

Name and title of Agency Contact Representative: <u>Karen Friend</u>	
Address: <u>1250 NE Bear Creek Road</u> <u>Bend, OR 97701</u>	
Phone: <u>541.548.9525</u>	Fax: <u>541.389.7367</u>
E-mail: <u>kfriend@coic.org</u> or <u>Joel@coic.org</u>	


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IN THE WITNESS WHEREOF, the Public Entity City of Myrtle Creek
(Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

	<u>December 12, 2012</u>	<u>City Administrator</u>
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative: <u>Sean Negherbon</u>	
Address: <u>PO Box 940, Myrtle Creek OR 97457</u>	
Phone: <u>541-863-3171</u>	Fax: <u>541-863-6851</u>
E-mail: <u>snegherbon@ci.myrtle-creek.or.us</u>	


Send the **Unified Certification Function Agreement Signature Page** (this page) to: Mary M. Cole, Procurement and Contracts Specialist via e-mail at: mary.m.cole@odot.state.or.us and cc' Tiffany Hamilton, Small Business Programs Manager at: tiffany.hamilton@odot.state.or.us.

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IN THE WITNESS WHEREOF, the Public Entity Sunset Empire Transit District (Agency) has caused THIS AGREEMENT to be executed by its duly authorized representatives as the date of their signatures below:

 _____	<u>12/20/12</u> Date	<u>Jay Flint, Executive Director</u> Title
Agency Signature		
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative:	<u>Jay Flint, Executive Director, SETD</u>	
Address:	<u>900 Marine Dr.</u>	
	<u>200 Astoria, OR 97103</u>	
Phone:	<u>503-861-5399</u>	Fax: <u>503-325-1606</u>
E-mail:	<u>jay@ridethebus.org</u>	

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Attachment 10

Regulations: 49 CFR Part 23

<https://www.ecfr.gov/cgi-bin/text-idx?SID=7d57da4319c5a595f3174a4a0cf9944b&node=pt49.1.23&rqn=div5>