POLICY STATEMENT

Section 26.1, 26.23 Objectives/Policy Statement

City of Creswell (City), owner of the Hobby Field Airport, has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. City of Creswell has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, City of Creswell has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the City to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

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

The City has disseminated this policy statement to the City Council and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. The City makes this policy statement available at the airport office.

Michelle Amberg, City Administrator

Date
SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

The City of Creswell is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, et seq.

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

In administering its DBE program, the City will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11

The City will provide data about its DBE Program to the Department as directed by the DOT Operating administrations.

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

We will transmit to FAA annually, by or before December 1, the information required for the “Uniform Report of DBE Awards or Commitments and Payments”, as described in Appendix B to this part. We will also report the DBE contractor firm information either on the FAA DBE Contractor’s Form or other similar format. We will begin using the revised Uniform Report of DBE Awards or Commitments and Payments for reporting FY 2018 due December 2018.

Bidders List: 26.11(c)

The City of Creswell will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping to set our
overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

We will collect this information in the following ways: A bidder’s list (see Attachment 3) will be included in each bid and proposal. The prime contractor will be required to submit the bidder’s list for him/herself and for each subcontractor.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a) - Each financial assistance agreement the City of Creswell signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The City of Creswell shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The City shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The City’s DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the City of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

Contract Assurance: 26.13b – City of Creswell will ensure that the following clause is included in each contract we sign with a contractor and each subcontract the prime contractor signs with a subcontractor:

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

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The City of Creswell is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts,
cumulative total value of which exceeds $250,000 in FAA funds in a federal fiscal year. We are not eligible to receive DOT financial assistance unless DOT has approved our DBE program and we are in compliance with it and this part. We will continue to carry out our program until all funds from DOT financial assistance have been expended. We do not have to submit regular updates of our program, as long as we remain in compliance. However, we will submit significant changes in the program for approval.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Shelley Humble, Airport Manager
13 South 1st St
P.O. Box 276
Creswell, OR 97426

P: (541) 895-2913
shumble@creswell-or.us

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

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

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

Section 26.27 DBE Financial Institutions

It is the policy of the City of Creswell to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions.

We have made the following efforts to identify and use such institutions: The Business Oregon Certification web site was searched to determine NAICS codes and the location of financial institutions owned and controlled by socially and economically disadvantaged individuals.

The list can be obtained by calling 503-986-0123, or on the internet at:

https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp

To date, we have identified no such institutions in the City of Creswell, Oregon service area. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

The City will investigate the availability on an annual basis.

Section 26.29 Prompt Payment Mechanisms

The City of Creswell requires all subcontractors performing work on DOT-assisted contracts shall be paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CRF 26.29, the City established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from the prime contractor’s receipt of each payment from the City.

The City ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Pursuant to Part 26.29, the City has selected the following method to comply with this requirement:

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

The City will consider a subcontractor’s work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required to the City. When the City has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
The City will provide appropriate means to enforce the requirements of this section. These means include:

The City will include the following clause in each DOT-assisted prime contract:

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

The City has also established, as part of our DBE program, the following mechanisms to ensure prompt payment:

- A contract clause providing that the prime contractor will not be reimbursed for the current pay period work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for previous pay period work they have performed.

Monitoring Payments to DBE and Non-DBEs

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

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

Section 26.31 Directory

The City of Creswell uses the State of Oregon Unified Certification Program (UCP) DBE Directory, maintained by the State.

The directory lists the firm’s name, address, phone number, and the type of work the firm has been certified to perform as a DBE. In addition, the directory lists each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type or work.

The Directory is revised automatically as DBE firms apply for certification. The Directory is available to the public on the Business Oregon website at:
Section 26.33 Over-concentration

The City of Creswell has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The City of Creswell has not established a business development program.

Section 26.37 Monitoring Responsibilities

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

2. We will implement similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 7 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our DBE Program.

3. We will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

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

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

Section 26.39 Fostering small business participation.

The City of Creswell has created a Small Business element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
The City’s small business element is incorporated as Attachment 10 to this DBE Program. We will actively implement the program elements to foster small business participation; doing so is a requirement of good faith implementation of our DBE program.

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

**Section 26.43 Set-asides or Quotas**

The City of Creswell does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

The City of Creswell will establish an overall DBE goal covering a three-year federal fiscal year period if we anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds $250,000 during any one or more of the reporting fiscal years within the three-year goal period. In accordance with Section 26.45(f) the City will submit its Overall three-year DBE Goal to FAA by August 1st as required by the established schedule below.

<table>
<thead>
<tr>
<th>Airport Type</th>
<th>Region</th>
<th>Date Due (Goal Period)</th>
<th>Next Goal Due (Goal Period)</th>
</tr>
</thead>
</table>

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If City of Creswell does not anticipate awarding DOT/FAA funded prime contracts the cumulative total value of which exceeds $250,000 during any of the years within the three-year reporting period, we will not develop an overall goal; however, this DBE Program will remain in effect and the City will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

(c) Step 1. The first step is to determine the relative availability of DBEs in the market area, “base figure”. We will use the DBE Directories and Census Bureau Data to determine our base figure. The second step is to adjust the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on Contracts.

If we use a bidders list, we will do the following: Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, we will establish a mechanism (documented in our goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on our DOT-assisted contracts.
Any methodology we choose will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in our market. We understand that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section (above), is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once we have calculated a base figure, we will examine all of the evidence available in our jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at our overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

26.45 (g)(1) In establishing the overall goal, the City will provide for consultation and publication. This includes consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City’s efforts to establish a level playing field for the participation of DBEs. The consultation will include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the City’s goal setting process, and it will occur before we are required to submit our goal methodology to the operating administration for review pursuant to paragraph (f) of this section. We will document in our goal submission the consultation process that we engaged in. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement. This consultation will be scheduled and posted on the City’s website.

In addition, the City will publish a notice announcing our proposed overall goal before submission to the operating administration on August 1st. The notice will be posted on our official internet web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal will be posted on our official internet web site. We will inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at our principal office and that the City and DOT/FAA will accept comments on the goals for 30 days from the date of the notice. Notice of the comment period will include the addresses to which comments may be sent (including offices and websites) where the proposal may be reviewed. The public comment period will not extend the August 1st deadline.

Our DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and our responses or that no comments were received during the comment period.

We will begin using our overall goal on October 1 of the reporting period, unless we have received other instructions from DOT.

Section 26.45 (e) - Project Goals

If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.45(f) - Prior Operating Administration Concurrent
The City understands that we are not required to obtain prior operating administration concurrence with our overall goal. However, if the operating administration’s review suggests that our overall goal has not been correctly calculated or that our method for calculating goals is inadequate, the operating administration may, after consulting with us, adjust our overall goal or require that we do so. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program.

Section 26.47 Failure to meet overall goals.

The City will maintain an approved DBE Program and overall DBE goal, if applicable as well as administer our DBE Program in good faith to be considered to be in compliance with this part.

If the City awards and commitments shown on our Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following in order to be regarded by the Department as implementing your DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;

2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to meet fully your goal for the new fiscal year;

3. The City will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c) (1) and (2) of this section to the FAA for approval.

Section 26.51 Means Recipients Use to Meet Overall Goals

(a) The City of Creswell will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

Race-neutral means include, but are not limited to the following:

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

2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to
help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 5 to this program.

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

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

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

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

We will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

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

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

DBELO 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))

The City treats bidder/offerors’ compliance with good faith efforts requirements as a matter of responsiveness.

In our solicitations for DOT/FAA-assisted 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 recipient, at the time provided in paragraph (b)(3) of this section:
   (i) The names and addresses of DBE firms that will participate in the contract;
   (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
   (iii) The dollar amount of the participation of each DBE firm participating;
   (iv) Written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
   (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’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 DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE 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 recipient.

Administrative reconsideration (26.53(d))
Within 7 business days of being informed by the City 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:

Michelle Amberg, City Administrator
13 South 1st St
P.O. Box 276
Creswell, OR 97426

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 procedures in situations when there are contract goals (26.53(f)(g))

We will include in each prime contract a provision stating:

The contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph 26.53(f); and

That, unless our consent is provided under this paragraph 26.53(f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

We will require the contractor that is awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part’s provisions.

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

We will require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without our prior written consent. This includes, but not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
We will provide such written consent only if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

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

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

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

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

The City will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal that we established for the procurement. The good faith efforts shall be documented by the contractor. If we request documentation from the contractor under this provision, the contractor 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 contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the City to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 5.50 percent [as determined in the goal calculation Attachment 5] has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information:

(1) the names and addresses of DBE firms that will participate in the contract;
(2) a description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
(3) the dollar amount of the participation of each DBE firm participating;
(4) written documentation of the bidder/offeror’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and
(5) written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor’s commitment;
(6) if the contract goal is not met, evidence of good faith efforts.

Section 26.55 Counting DBE Participation

We will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. We will not count the participation of a DBE subcontract toward a contractor’s final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.
If the firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, we will not count the firm’s participation toward any DBE goals, except as provided for in 26.87(j).

**SUBPART D – CERTIFICATION STANDARDS**

**Section 26.61 – 26.73 Certification Process**

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

For information about the certification process or to apply for certification, firms should contact:

Business Oregon, Certification Office for Business Inclusion and Diversity (COBID)
775 Summer St NE, Ste 200
Salem, OR 97301-1280
Phone (503) 986-0123

Our certification application forms and documentation requirements are found in Attachment 8 to this program.

**SUBPART E – CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

The City is a member of a Unified Certification Program (UCP) administered by Oregon Department of Transportation, see Attachment 9. The UCP will meet all of the requirements of this section.

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

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

Notwithstanding any provision of Federal or state law, we will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, we will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual’s firm has applied for certification under § 26.85 of this part.

All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using
DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

The City of Creswell, contractor, or any other participant in the program will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If we violate this prohibition, we are in noncompliance with this part.

**ATTACHMENTS**

Attachment 1 Regulations: 49 CFR Part 26 or website link
Attachment 2 Organizational Chart
Attachment 3 Bidder’s List Collection Form
Attachment 4 DBE Directory or link to DBE Directory
Attachment 5 Overall Goal Calculations
Attachment 6 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
Attachment 7 DBE Monitoring and Enforcement Mechanisms
Attachment 8 DBE Certification Application Form
Attachment 9 State’s UCP Agreement
Attachment 10 Small Business Element Program
ATTACHMENT 1
Regulations: 49 CFR Part 26, or link to website

http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&SID=5fc7946b772f5f6b1177c7eeebb0fc39&rgn=div5&view=text&node=49:1.0.1.1.20&idno=49
ATTACHMENT 2

Organizational Chart

FAA Civil Rights Division

City Administrator
Michelle Amberg

Airport Consultants

DBELO
Shelley Humble
# ATTACHMENT 3
Bidder's List Collection Form

*(SAMPLE BIDDERS LIST COLLECTION FORM)*

<table>
<thead>
<tr>
<th>Firm Name</th>
<th>Firm Address/Phone #</th>
<th>DBE or Non-DBE Status (verify via State’s UCP Directory)</th>
<th>Age of Firm</th>
<th>Annual Gross Receipts</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>□ Less than 1 year  □ 1-3 years □ 4-7 years □ 8-10 years □ More than 10 years</td>
<td></td>
<td>□ Less than $500K    □ $500K - $1 million □ $1-2 million □ $2-5 million □ Greater than $5 million</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less than 1 year  □ 1-3 years □ 4-7 years □ 8-10 years □ More than 10 years</td>
<td></td>
<td>□ Less than $500K    □ $500K - $1 million □ $1-2 million □ $2-5 million □ Greater than $5 million</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less than 1 year  □ 1-3 years □ 4-7 years □ 8-10 years □ More than 10 years</td>
<td></td>
<td>□ Less than $500K    □ $500K - $1 million □ $1-2 million □ $2-5 million □ Greater than $5 million</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less than 1 year  □ 1-3 years □ 4-7 years □ 8-10 years □ More than 10 years</td>
<td></td>
<td>□ Less than $500K    □ $500K - $1 million □ $1-2 million □ $2-5 million □ Greater than $5 million</td>
</tr>
<tr>
<td></td>
<td></td>
<td>□ Less than 1 year  □ 1-3 years □ 4-7 years □ 8-10 years □ More than 10 years</td>
<td></td>
<td>□ Less than $500K    □ $500K - $1 million □ $1-2 million □ $2-5 million □ Greater than $5 million</td>
</tr>
</tbody>
</table>
ATTACHMENT 4

Web link to Oregon State DBE Directory:

https://oregon4biz.diversitysoftware.com/FrontEnd/VendorSearchPublic.asp
ATTACHMENT 5

Section 26.45: Overall DBE Goal Methodology

Name: Hobby Field Airport (77S) owned by the City of Creswell, Oregon

Goal Period: City of Creswell (City's) project goal for the Federal Fiscal Years (FFY) 2018-2020

DOT Assisted Contract Amount:

<table>
<thead>
<tr>
<th>Year</th>
<th>Grant Amount</th>
<th>Match Amount</th>
<th>TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>FY 2018</td>
<td>$130,500</td>
<td>$14,500</td>
<td>$145,000</td>
</tr>
<tr>
<td>FY 2019</td>
<td>$690,000</td>
<td>$76,667</td>
<td>$766,667</td>
</tr>
<tr>
<td>FY 2020</td>
<td>$20,000</td>
<td>$0</td>
<td>$20,000</td>
</tr>
<tr>
<td>Total</td>
<td>$840,500</td>
<td>$111,167</td>
<td>$931,667</td>
</tr>
</tbody>
</table>

Overall Three Year Goal:
Based on the above calculation the overall goal for the City for fiscal years 2018-2020 is 5.50%. The City estimates that in meeting its overall goal of 5.50%, it will obtain 5.50% from Race-Neutral participation and 0.0% through Race-Conscious measures.

Total Dollar Expended on DBE:
The City anticipates contracting $41,620 to DBE firms during FFY 2019.

Types of Contract:
- During FFY 2018, The City expects to receive $130,500 in FAA - DOT assisted contracts, making it exempt from meeting a DBE goal. The funding covers the design phase of a taxi lane rehabilitation project that is scheduled for construction in 2019.

- During FFY 2019, The City expects to receive $690,000 in FAA - DOT assisted contracts. The project is the construction of the taxi lane improvements design in 2018.

- During FFY 2020, The City expects to receive $20,000 in FAA - DOT assisted contracts, making it exempt from meeting a DBE goal. The funding covers a match to the State Pavement Maintenance Program (PMP). A match by the City is not required for the federal portion since the match is recognized by FAA as coming from the State PMP funding portion for the work. The PMP portion funds 90% of the work thereby exceeding the federal grant match requirements.

Market Area:
Hobby Field is located in the City of Creswell approximately 8 miles south of Eugene, OR along Interstate-5 and resides in Linn County.
A substantial majority of the airport’s contractors and subcontractors come from the following counties:

- Linn,
- Lane,
- Benton, and
- Douglas

**Step 1: Actual relative availability of DBE’s**

In arriving at this goal, the City has researched the U.S. Census Bureau, City Business Patterns Section, to obtain the total number of businesses in the designated market area surrounding the airport specific project site that fall within the appropriate North American Industry Classification Systems (NAICS) Code, which match the prevalent work to be accomplished under federal grant. The City also consulted the state Business Oregon Certification Office for Business Inclusion and Diversity (COBID) for DBE and Oregon Office of Minorities, Women, and Emerging Small Businesses (OMWESB) Certified Directory maintained by the State of Oregon to find the number of certified businesses in the job classifications for project work for the fiscal year. Individual DBE goals will be calculated for each Airport Improvement Program (AIP) and General Aviation Entitlement grant issued to the City in FFY 2019. The individual calculations include both a percentage goal and a dollar goal. The City added each DBE goal and averaged that goal to calculate an overall DBE fiscal goal.

**2019 - (Creswell Municipal Airport - Hobby Field) Taxi lanes Improvements - Construction**

Work for this project includes Construction activities along with Engineering Inspection Services. This project will be awarded under one contract.

The City consulted the U.S. Census Bureau, City Business Patterns Section to obtain the total number of businesses in NAICS Codes. The City then consulted the DBE and Oregon COBID Certified Directory for the stated counties. Results are listed below for the unweighted availability of DBE firms:

<table>
<thead>
<tr>
<th>NAICS Code #</th>
<th>Certification Type</th>
<th>Benton DBE</th>
<th>Benton All</th>
<th>Douglas DBE</th>
<th>Douglas All</th>
<th>Lane DBE</th>
<th>Lane All</th>
<th>Linn DBE</th>
<th>Linn All</th>
<th>Total DBE</th>
<th>Total All</th>
</tr>
</thead>
<tbody>
<tr>
<td>237110</td>
<td>Water and Sewer Lines (Storm sewer construction)</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>4</td>
<td>0</td>
<td>1</td>
<td>9</td>
<td>1</td>
<td>17</td>
<td>9</td>
</tr>
<tr>
<td>237310</td>
<td>Highway, Street, and Bridge Construction (AC, PCC, rock, paint) - Flagging</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td></td>
<td>Highway, Street, and Bridge Construction (AC, PCC, rock, paint)</td>
<td>0</td>
<td>25</td>
<td>0</td>
<td>10</td>
<td>1</td>
<td>13</td>
<td>1</td>
<td>7</td>
<td>2</td>
<td>55</td>
</tr>
<tr>
<td></td>
<td><strong>Specialty Trade Contractors</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>233210</td>
<td>Electrical Contractors</td>
<td>0</td>
<td>12</td>
<td>1</td>
<td>28</td>
<td>0</td>
<td>8</td>
<td>2</td>
<td>6</td>
<td>148</td>
<td>148</td>
</tr>
<tr>
<td>233990</td>
<td>Specialty Trade (ind. sealing, fencing, etc.)</td>
<td>0</td>
<td>11</td>
<td>1</td>
<td>12</td>
<td>2</td>
<td>39</td>
<td>1</td>
<td>17</td>
<td>4</td>
<td>79</td>
</tr>
<tr>
<td></td>
<td><strong>Consultants</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>541330</td>
<td>Engineering Services</td>
<td>1</td>
<td>46</td>
<td>0</td>
<td>13</td>
<td>4</td>
<td>55</td>
<td>1</td>
<td>13</td>
<td>6</td>
<td>127</td>
</tr>
<tr>
<td>541370</td>
<td>Geophysical Surveying and Mapping Services</td>
<td>1</td>
<td>2</td>
<td>0</td>
<td>8</td>
<td>1</td>
<td>11</td>
<td>0</td>
<td>1</td>
<td>2</td>
<td>22</td>
</tr>
<tr>
<td>541380</td>
<td>Testing Laboratories</td>
<td>1</td>
<td>6</td>
<td>0</td>
<td>2</td>
<td>0</td>
<td>7</td>
<td>0</td>
<td>3</td>
<td>1</td>
<td>18</td>
</tr>
<tr>
<td></td>
<td><strong>Total</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>18</td>
<td>467</td>
</tr>
</tbody>
</table>
Base figure = Ready, willing, and able DBE’s
All firms ready, willing and able

The data source or demonstrable evidence used to derive the numerator was:

Oregon OMWESB DBE database: https://oregon4biz.diversitysoftware.com/

The data source or demonstrable evidence used to derive the denominator was:

United States Census Bureau database:

Dividing the total number of DBEs by the total number of all firms gives a base DBE availability figure for each contract. The availability figures for 2018 and 2020 were not computed as the grant funding level was below $250,000 as noted earlier. The base goal projection for 2019 is;

- 2019 – (18/467) = 3.85%

The average weighted availability is 3.85%. This is the Base of the DBE Goal.

The costs shown were estimated from the best available information. The DBE goal for this 2019 project may be revised to reflect updated cost information.

<table>
<thead>
<tr>
<th>Proposed Project</th>
<th>NAICS Description</th>
<th>NAICS</th>
<th>* Trade ($)</th>
<th>Census</th>
<th>Directory</th>
<th>DBE (%)</th>
<th>DBE $</th>
<th>Weighted DBE (%)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Construct Taxiway __ Phase 2 Construction</td>
<td>Water and Sewer Lines (Storm sewer construction)</td>
<td>237110</td>
<td>$50,000</td>
<td>17</td>
<td>1</td>
<td>5.88%</td>
<td>$2,941</td>
<td>0.39%</td>
</tr>
<tr>
<td></td>
<td>Highway, Street, and Bridge Construction (AC, PCC, rock, paint) - Flagging</td>
<td>237110</td>
<td>$10,000</td>
<td>1</td>
<td>1</td>
<td>100.00%</td>
<td>$10,000</td>
<td>1.32%</td>
</tr>
<tr>
<td></td>
<td>Highway, Street, and Bridge Construction (AC, PCC, rock, paint)</td>
<td>237310</td>
<td>$531,666</td>
<td>55</td>
<td>2</td>
<td>3.64%</td>
<td>$19,333</td>
<td>2.56%</td>
</tr>
<tr>
<td></td>
<td>Electrical Contractors</td>
<td>238210</td>
<td>$15,000</td>
<td>148</td>
<td>1</td>
<td>0.68%</td>
<td>$101</td>
<td>0.01%</td>
</tr>
<tr>
<td></td>
<td>Specialty Trade (incl. sealing, fencing, etc.)</td>
<td>238990</td>
<td>$20,000</td>
<td>79</td>
<td>4</td>
<td>5.06%</td>
<td>$1,013</td>
<td>0.13%</td>
</tr>
<tr>
<td></td>
<td>Engineering Services</td>
<td>541330</td>
<td>$70,000</td>
<td>127</td>
<td>6</td>
<td>4.72%</td>
<td>$3,307</td>
<td>0.44%</td>
</tr>
<tr>
<td></td>
<td>Geophysical Surveying and Mapping Services</td>
<td>541370</td>
<td>$45,000</td>
<td>22</td>
<td>2</td>
<td>9.09%</td>
<td>$4,091</td>
<td>0.54%</td>
</tr>
<tr>
<td></td>
<td>Testing Laboratories</td>
<td>541380</td>
<td>$15,000</td>
<td>18</td>
<td>1</td>
<td>5.56%</td>
<td>$833</td>
<td>0.11%</td>
</tr>
</tbody>
</table>

2019 Program Totals  

$756,666 467 18 3.85% $41,620 5.50%

No step 2 adjustment was made for this goal.

The City estimates a 5.50% ($41,620) race neutral goal for the 2019 Taxilanes Improvements – Construction, which will receive $690,000 in federal funds.
The base goal projection after weighting is as follows:
- Total weighted DBE Availability: 5.50%
- Total for all Trades: 5.50%

Base of DBE Goal: 5.50%

**Basis for no Step 2 adjustment in the above projects**

a. Past participation – There have been no recent projects of similar character at the airports that have had DBE participation. Based on past participation, there is no data to support an adjustment to the base figure. Therefore, no adjustment to the base figure was made based on past participation.

b. Disparity study – A disparity study was conducted in 1996 for the region. This study is too old to be considered current. There are no newer disparity studies available for review. A disparity study is being initiated by the Oregon Department of Aviation and FAA in 2019 that should have data available for the 2021-2023 goal period. The City will continue to contact FAA, Oregon COBID and others for records of any recently completed disparity studies. Therefore, no adjustment will be made based on disparity studies.

c. Other factors, information about barriers to entry to past competitiveness of DBEs on projects:
   - The City has not found disparity in contracting for airport construction.

**BREAKOUT OF ESTIMATED “RACE AND GENDER NEUTRAL AND RACE-CONSCIOUS PARTICIPATION**

The City will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The City’s projects will achieve increased DBE participation through race-neutral means by;

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

2. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

3. Ensuring distribution of the State DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors.
The City estimates that in meeting the established overall goal of 5.50%. Based on the 9th Circuit Court Decision in Western States Paving Company v. Oregon State Department of Transportation, the City has determined that it is appropriate to use a race/gender neutral goal. The City encourages all bidders to take active race/gender neutral steps to include DBE’s in this and other airport contracts. Race/gender neutral steps include unbundling large contracts, subcontract work the prime contractor may self-perform, provide bonding or financing assistance, provide technical assistance, etc. This contract can be awarded without the lowest responsive bidder meeting the goal or demonstrating good faith effort to meet the goal.

The City will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation and will track and report race-neutral and race-conscious participation separately. For reporting purposes, race neutral DBE participation includes, but is not necessarily limited to, the following:

- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
- DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
- a DBE participation on a prime contract exceeding a contract goal; and
- DBE participation through a subcontract from a prime contract that did not consider a firm's DBE status in making the award.

PUBLIC PARTICIPATION

Public Notice

In establishing the overall goal, the City of Creswell provided for consultation and publication. This process included consultation with minority, women’s, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the City’s goal setting process, and it occurred before we were required to submit our goal methodology to the operating administration for review pursuant to the paragraph (f) of this section. Notwithstanding paragraph (f)(4) of this section, we will not implement our proposed goal until we have complied with this requirement.

The consultation engaged in was a teleconference meeting at __ on __, 2019 to comply with this requirement. The meeting was publicly announced 30 days prior to being held and advertised on the City’s official internet web site. The notice included the date, time, and location of the meeting as well as a description of the meeting’s purpose.

Comments on the DBE goal will be accepted for 30 days from the date of this publication and can be sent to the following:

DBELO
Attn: Shelley Humble, Airport Manager
13 South 1st St
P.O. Box 276
Creswell, OR 97426

P: (541) 895-2913
shumble@creswell-or.us

or

Federal Aviation Administration
Office of Civil Rights (Attn: Sonia Cruz)
PO Box 92007
Los Angeles, CA 90009
ATTACHMENT 6

Demonstration of Good Faith Efforts - Forms 1 & 2

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

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

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

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

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

Name of bidder/offeror’s firm: ______________________________________

State Registration No. ____________________

By ___________________________________    ______________________

(Signature)                                                                 Title
FORM 2: LETTER OF INTENT

Name of bidder/offeror’s firm: _______________________________

Address: ___________________________________________________________________

City: _____________________________ State: _______ Zip: ______

Name of DBE firm: _______________________________

Address: ___________________________________________________________________

City: _____________________________ State: _______ Zip: ______

Telephone: _______________________

Description of work to be performed by DBE firm:
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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is $ ___________.

Affirmation

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above and that the firm is DBE certified to perform the specific trades.

By ______________________________   Date: _______________________

(Signature)

______________________________   (Title)

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

Submit this page for each DBE subcontractor.
ATTACHMENT 7

DBE Monitoring and Enforcement Mechanisms

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

1. Breach of contract action, pursuant to the terms of the contract;
2. Breach of contract action, pursuant to the applicable section of the Revised Statutes of Oregon (Oregon Revised Statutes - ORS).

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.
ATTACHMENT 8
Web link to DBE Certification Application Form
(New form October 2, 2014)

https://www.transportation.gov/osdbu/disadvantaged-business-enterprise/dbe-uniform-certification-application
ATTACHMENT 9

State’s UCP Agreement
1. Objective/Strategies

Objectives and Strategies for City of Creswell include:

1. In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) the City of Creswell will require bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

2. On prime contracts not having DBE contract goals, require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

3. Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

4. Definition

1. For purpose of the City of Creswell’s Small Business Element; a small business is defined as a company and/or firm in whom annual revenue does not exceed 7 million dollars.

2. For purpose of the City of Creswell’s Small Business Element; a DBE firm is defined as a company:

   a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

   b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

3. Verification

   • The City of Creswell will diligently attempt to minimize fraud and abuse in the SB element of its DBE program by verifying program eligibility of firms.

4. Monitoring/Record Keeping

   • The information will be organized by the DBELO
   • SB element will be reasonably monitored

5. Implementation Timeline

   This program will be implemented within 9 months of FAA’s approval.

6. Assurance:

   1. This program is authorized under state law by the State of Oregon
   2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program
3. There are no geographic preferences or limitations imposed on any federally assisted procurement included in the program;

4. There are no limits on the number of contracts awarded to firms participating in the program but that every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and

5. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.

6. The program is open to small businesses regardless of their location (i.e., that there is no local or other geographic preference).