

**Port of Pasco, Washington  
Tri-Cities Airport**



**Disadvantaged Business Enterprise (DBE)  
Program Plan**



POLICY STATEMENT

**Section 26.1, 26.23 Objectives/Policy Statement**

The Port of Pasco oversees the Tri-Cities Airport and has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The Port of Pasco has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Port has signed an assurance that it will comply with 49 CFR Part 26. The website for 49 CFR Part 26 is shown in Attachment 5.

It is the policy of the Port of Pasco to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also Port of Pasco policy to engage in the following actions on a continuing basis:

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

Tara White has been designated as the DBE Liaison Officer. In that capacity, Ms. White 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 Port in its financial assistance agreements with the Department of Transportation.

The Port of Pasco has disseminated this policy statement to all the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on Port of Pasco DOT-assisted contracts. The distribution was accomplished through advertising mediums. Additionally, this document is made available to anyone who requests to see it during the normal business hours of the Port of Pasco office.

  
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Donald "Buck" Taft, Airport Director  
Port of Pasco

6/14/2022  
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 Port of Pasco is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

**Section 26.5 Definitions**

The Port of Pasco will use terms in this program that have the meaning defined in Part 26, §26.5.

**Section 26.7 Non-discrimination Requirements**

The Port of Pasco 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 Port of Pasco 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**

The Port of Pasco will provide data about its DBE Program to the Department as directed by DOT operating administrations.

DBE participation will be reported DOT/FAA as follows:

The Port of Pasco 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 Part 26. The Port will similarly report the required information about participating DBE firms. All reporting will be done through the DOT/FAA official reporting system, or another format acceptable to DOT/FAA as instructed thereby.

**Bidders List**

The Port of Pasco 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 Port of Pasco DOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected through the Bidders List, included in this document Attachment 6. The Bidders List will be a mandatory addition to all responsive bid packages for federally funded projects received by the Port of Pasco.

Records retention and reporting:

The Port of Pasco will maintain records documenting a firm's compliance with the requirements of this part. At a minimum, the Port of Pasco will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records will be retained in accordance with all applicable record retention requirements of the Port of Pasco financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the financial assistance agreement, whichever is longer.

The Port of Pasco, as a member of the State of Washington UCP established pursuant to §26.81, will Revision Date: 2020-07-13 5 report to the Department of Transportation's Office of Civil Rights each year the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- 1) Women;
- 2) Socially and economically disadvantaged individuals (other than women); and
- 3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

**Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: Each financial assistance agreement the Port of Pasco signs with a DOT operating administration (or a primary recipient) will include the following assurance:

The Port of Pasco 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 Port of Pasco 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 Port of Pasco 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 Port of Pasco 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: The Port of Pasco will ensure that the following clause is included in each DOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

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

## **SUBPART B - ADMINISTRATIVE REQUIREMENTS**

### **Section 26.21 DBE Program Updates**

The Port of Pasco is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. The Port is not eligible to receive DOT financial assistance unless DOT has approved this DBE program and the Port of Pasco is in compliance with it and Part 26. The Port of Pasco will continue to carry out this program until all funds from DOT financial assistance have been expended. The Port of Pasco does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for DOT approval.

### **Section 26.23 Policy Statement**

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

### **Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for the Port of Pasco:

Name	Tara White
Title	Business Manager, Port of Pasco
Address	1110 Osprey Pointe Blvd, Suite 201 Pasco, WA 99301
Telephone Number	509-547-3378
E-mail Address	<a href="mailto:taraw@portofpasco.org">taraw@portofpasco.org</a>

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the Port of Pasco complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Port of Pasco Executive Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing, and monitoring the DBE program, in coordination with other appropriate officials. The DBELO may retain a consultant 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 and monitors results.
6. Analyzes Port of Pasco's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Executive Director/governing body on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.

### **Section 26.27 DBE Financial Institutions**

It is the policy of the Port of Pasco 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.

To date, no DBE financial institutions have been identified in the market area for the Tri-Cities Airport. The availability of these institutions will be reviewed annually.

### **Section 26.29 Prompt Payment Mechanisms**

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

In accordance with 49 CFR §26.29, the Port of Pasco 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 Port of Pasco.

The Port of Pasco ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, the Port of Pasco 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.

To implement this measure, the Port of Pasco includes the following clause from FAA Advisory Circular 150/5370-10 in each DOT-assisted prime construction contract:

**90-06 Partial payments.** Partial payments will be made to the Contractor at least once each month as the work progresses. Said payments will be based upon estimates, prepared by the RPR, of the value of the work performed and materials complete and in place, in accordance with the contract, plans, and specifications. Such partial payments may also include the delivered actual cost of those materials stockpiled and stored in accordance with paragraph 90-07, Payment for Materials on Hand. No partial payment will be made when the amount due to the Contractor since the last estimate amounts to less than five hundred dollars. From the total of the amount determined to be payable on a partial payment, 5 percent of such total amount will be deducted and retained by the Owner for protection of the Owner's interests. Unless otherwise instructed by the Owner, the amount retained by the Owner will be in effect until the final payment is made except as follows:

(1) Contractor may request release of retainage on work that has been partially accepted by the Owner in accordance with Section 50-14. Contractor must provide a certified invoice to the RPR that supports the value of retainage held by the Owner for partially accepted work.

(2) In lieu of retainage, the Contractor may exercise at its option the establishment of an escrow account per paragraph 90-08.

b. The Contractor is required to pay all subcontractors for satisfactory performance of their contracts no later than 30 days after the Contractor has received a partial payment. Contractor must provide the Owner evidence of prompt and full payment of retainage held by the prime Contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the Owner. When the Owner has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

c. When at least 95% of the work has been completed to the satisfaction of the RPR, the RPR shall, at the Owner's discretion and with the consent of the surety, prepare estimates of both the contract value and the cost of the remaining work to be done. The Owner may retain an amount not less than twice the contract value or estimated cost, whichever is greater, of the work remaining to be done. The remainder, less all previous payments and deductions, will then be certified for payment to the Contractor.

### **Section 26.31 Directory**

The Port of Pasco is a non-certifying member of the Washington Unified Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs, which contains all the elements required by §26.31.

### **Section 26.33 Over-Concentration**

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

**Section 26.35 Business Development Programs**

The Port of Pasco has not established a business development program.

**Section 26.37 Monitoring Responsibilities**

The Port of Pasco implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in the Port's DBE program.

The Port of Pasco actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

**Monitoring Payments to DBEs and Non-DBEs**

The Port of Pasco undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following methods:

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

The Port of Pasco requires prime contractors to maintain records and documents of payments to subcontractors, including DBE's, for a minimum of three (3) years unless otherwise provided by applicable record retention requires for the Port of Pasco's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of the Port of Pasco or DOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

The Port of Pasco proactively reviews contract payments to subcontractors including DBEs quarterly to ensure compliance. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to the Port of Pasco by the prime contractor.

**Prompt Payment Dispute Resolution**

The Port of Pasco will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

- The Port will facilitate meetings between the prime and subcontractor and include the resident project representative and/or project manager. These meeting will include authorized representatives for all parties involved.

The Port of Pasco has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of retainage:

- Alternative dispute resolution (ADR)
  - The Port of Pasco requires that the prime contractor submit a detailed alternative dispute resolution plan for approval prior to issuance of notice to proceed.

### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- In situations where a subcontractor is not comfortable contracting prime directly regarding payment or is unable to resolve payment discrepancies with prime, the subcontractor should initiate the complaint through direct contact with the DBELO.
- The affected subcontractor may contact the responsible contact with the operating administration if filing a prompt payment complaint with the DBELO does not result in effective action by The Port to resolve the disputes.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

### Enforcement Actions for Noncompliance of Participants

The Port of Pasco will provide appropriate means to enforce the requirements of §26.29. These means include:

- Advise subcontractors of the availability of the payment and performance bond to assure payment for labor and materials in the execution of the work provided for in the contract
- Issue a stop-work order until payments are released to subcontractors
- Other penalties for failure to comply, up to and including contract termination

The Port of Pasco will actively implement the enforcement actions detailed above.

### Monitoring Contracts and Work Sites

The Port of Pasco reviews contracting records and engages in active monitoring of work sites to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. Work site monitoring is performed by DBELO. Contracting records are reviewed by DBELO. The Port of Pasco will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation.**

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

The Small Business element is incorporated as Attachment 3 to this DBE Program. The program elements will be actively implemented to foster small business participation; Implementation of the small business element is required in order for the Port of Pasco to be considered by DOT as implementing this DBE program in good faith.

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

**Section 26.43 Set-asides or Quotas**

The Port of Pasco does not use quotas in any way in the administration of this DBE program.

**Section 26.45 Overall Goals**

The Port of Pasco will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT- funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period, excluding land acquisition and equipment projects. In accordance with §26.45(f), the Port of Pasco will submit its Overall Three-year DBE Goal to FAA by August 1st of the year in which the goal is due, as required by the schedule established by and posted to the website of the FAA:

[https://www.faa.gov/about/office\\_org/headquarters\\_offices/acr/bus\\_ent\\_program/media/Schedule\\_of\\_DB\\_E\\_and\\_ACDBE\\_Reporting\\_Requirements\\_Dec\\_2017\\_Issue.pdf](https://www.faa.gov/about/office_org/headquarters_offices/acr/bus_ent_program/media/Schedule_of_DB_E_and_ACDBE_Reporting_Requirements_Dec_2017_Issue.pdf)

<b>Airport Type</b>	<b>Region</b>	<b>Date Due (Goal Period)</b>	<b>Next Goal Due (Goal Period)</b>
Non-Hub Primary	All Regions	August 1, 2021 (2022/2023/2024)	August 1, 2024 (2025/2026/2027)

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

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. The Port of Pasco will use the 2019 Washington State Airports Disparity Study as a method to determine our base figure. The Port of Pasco understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. The Port of Pasco will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in Port of Pasco market.

In establishing the overall goal, the Port of Pasco 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 Port of Pasco'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 goal setting process, and it will occur before the Port of Pasco is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which the Port of Pasco engaged in. Notwithstanding paragraph (f)(4) of §26.45(f), the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, the Port of Pasco will publish a notice announcing the proposed overall goal before submission to the DOT/FAA by August 1st. The notice will be posted on the Tri-Cities Airport 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 DOT/FAA, the revised goal will be posted on our official internet web site.

The public will also be informed that the proposed overall goal and its rationale are available for inspection during normal business hours at the principal office of the Port of Pasco 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 1<sup>st</sup> deadline.**

The Overall Three-Year DBE Goal submission to DOT/FAA will include a summary of information and comments received, if any, during this public participation process and the Port of Pasco's responses.

The Port will begin using our overall goal on October 1 of the relevant period, unless other instructions from the DOT/FAA have been received.

### Project Goals

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

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

### Prior Operating Administration Concurrence

The Port of Pasco understands that prior DOT/FAA concurrence with the overall goal is not required. However, if the DOT/FAA review suggests that the overall goal has not been correctly calculated or that the method employed by the Port of Pasco for calculating goals is inadequate, DOT/FAA may, after consulting with the Port of Pasco, adjust the overall goal or require that the goal be adjusted by the Port of Pasco. 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 4 to this program.

### **Section 26.47 Failure to meet overall goals.**

The Port of Pasco cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless the Port of Pasco fails to administer its DBE program in good faith.

The Port of Pasco understands that to be considered in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

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

- (1) Analyse in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met; and
- (3) The Port of Pasco will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years and will make it available to [operating administration] upon request.

### **Section 26.51 Means Recipients Use to Meet Overall Goals**

#### Breakout of Estimated Race-Neutral & Race-Conscious Participation

The Port of Pasco 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.
- (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 4 to this program.

The Port of Pasco 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.

### **Contract Goals**

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those DOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established 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).

Contract goals will be expressed as a percentage of the total amount of a DOT-assisted contract.

**Section 26.53 Good Faith Efforts Procedures in Situations where there are Contract Goals**

Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

The 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.

The Port of Pasco will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for DOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (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) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section
- (4) 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 (2) of this section before the final selection for the contract is made by the recipient.

Administrative reconsideration

Within 5 business days of being informed by Port of Pasco 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:

**Reconsideration Official**

The Port of Pasco has designated the following individual as our Reconsideration Official:

Name	Donna Watts
Title	Director of Finance / Auditor
Address	1110 Osprey Pointe Blvd., Suite 201 Pasco, WA 99301
Telephone Number	509-537-0523

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. The bidder/offeror will be sent 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 procedural requirements (post-solicitation)

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without our prior written consent of the Port of Pasco. 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.

Such written consent will be provided only if the Port of Pasco agrees, for reasons stated in the 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) The Port of Pasco 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 the Port of Pasco has 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 the Port of Pasco a request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to the Port, 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 the Port of Pasco and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's action should not be approved. If required in a particular case as a matter of public necessity (*e.g.*, safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's bid response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of the Port of Pasco as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

The Port of Pasco will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the

contract as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. The good faith efforts shall be documented by the contractor. If [Recipient] requests documentation from the contractor under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary, at the request of the contractor. The Port of Pasco shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

### **Section 26.55 Counting DBE Participation**

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

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

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

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73 Certification Process**

The Port of Pasco will rely upon the Washington State Office of Minority and Women Owned Business Enterprises (OMWBE) for certification and 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.

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

Sarah Erdmann (OMWBE Deputy Director)  
1110 Capitol Way South, Suite 150  
Olympia, WA 98501  
sarahe@omwbe.wa.gov

The Uniform Certification Application form and documentation requirements are found in Attachment 10 to this program. [*The Uniform Certification Form contained in the Final Rule, 49 CFR Part 26, must be used in this attachment; see §26.83(c)(2).*]

**SUBPART E – CERTIFICATION PROCEDURES**

**Section 26.81 Unified Certification Programs**

The Port of Pasco is a member of a Unified Certification Program administered by the State of Washington. The UCP will meet the requirements of this section. A copy of the signed agreement page of the membership of the UCP between the Port of Pasco and the UCP is included in Attachment 10.

**SUBPART F – COMPLIANCE AND ENFORCEMENT**

**Section 26.101 Compliance Procedures Applicable to the Port of Pasco**

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

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

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

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information.

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 Port of Pasco, 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. The Port of Pasco understands that it is in noncompliance with Part 26 if it violates this prohibition.

**ATTACHMENTS**

Attachment 1 Organizational Chart

Attachment 2 DBE Monitoring and Enforcement Mechanisms

Attachment 3 Small Business Element Program

Attachment 4 Overall Goal Calculations *"To Be Submitted Separately"*

Attachment 5 Regulations: 49 CFR Part 26 or website link

Attachment 6 Bidder's List Collection Form

Attachment 7 DBE Directory or link to DBE Directory

Attachment 8 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2

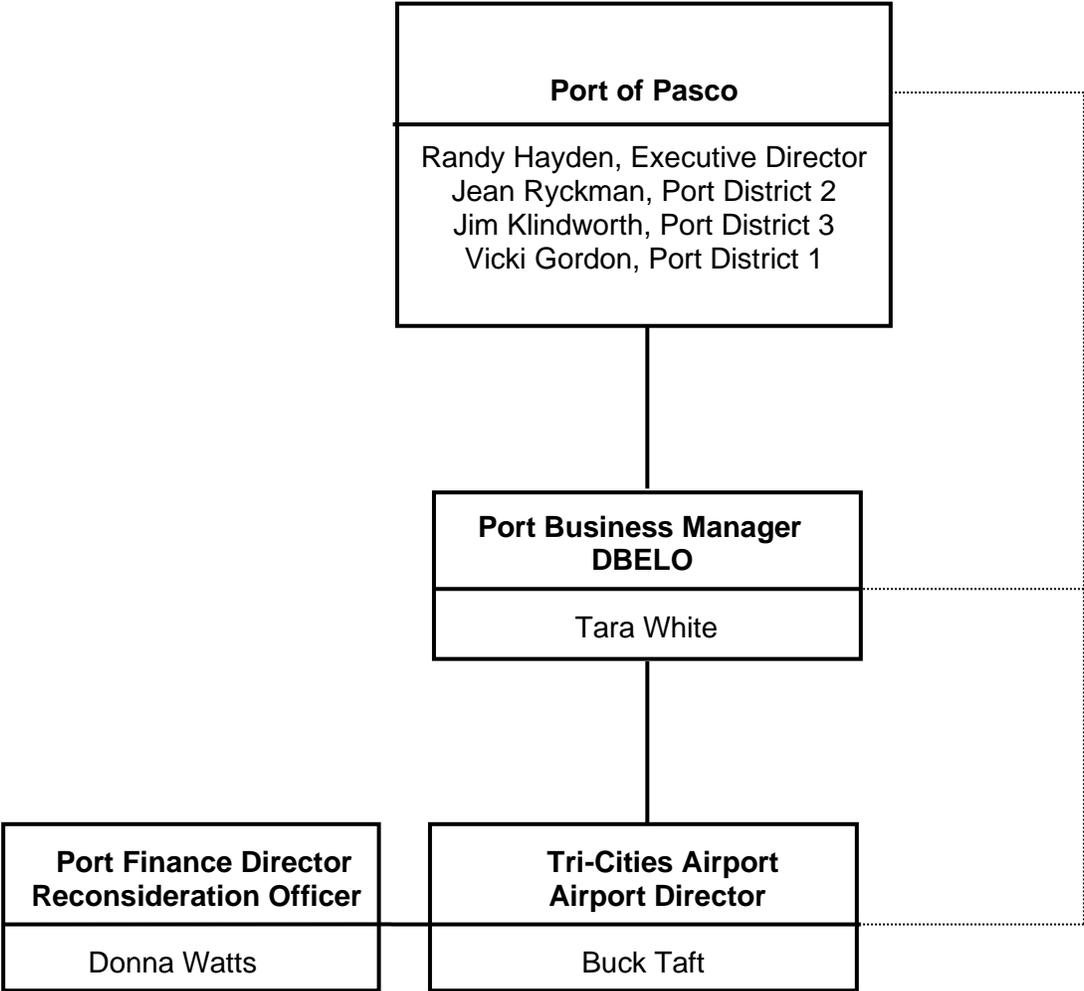
Attachment 9 DBE Certification Application Form

Attachment 10 State's UCP Agreement

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ATTACHMENT 1

Organizational Chart



ATTACHMENT 2

**DBE Monitoring and Enforcement Mechanisms**

The Port of Pasco 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 terms of RCW 39.19.090

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

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

**Small Business Element**

**The Requirement:**

On February 28, 2011, the U.S. Department of Transportation (DOT) issued a final rule amending Title 49 Code of Federal Regulations (CFR) Part 26 to include a new requirement concerning the fostering of small business opportunities. By this rule, recipients of DOT funds would be required to include a Small Business Element as a portion of their Disadvantaged Business Enterprise (DBE) Program.

**Definition of a Small Business:**

- 1) DBE firms are eligible to be identified as a Small Business;
- 2) Size standard shall be consistent with 49 CFR 26,5 and will be no larger than the Small Business Administration's size standards.

**Suggested Action:**

The amendment to Part 26 did not require specific actions to garner small businesses. Instead, several suggestions were identified. Suggestions included, but were not limited to:

- 3) Establishing a small business set-aside program for small contracts,
- 4) Requiring that bidders on large and multi-year design-build contracts specify elements of the contract or specific subcontracts that will be sized for small business participation,
- 5) Requiring contractors to provide subcontracting opportunities, rather than self-performing all work, on contracts without DBE goals,
- 6) Identifying alternative acquisition strategies that promote consortia and joint ventures consisting of small businesses,
- 7) Sizing a portion of all prime contracts for small businesses. That portion was suggested to be large enough that the race-neutral DBE goal could be met if the small businesses happened to be DBE's.

**Our Response:**

The Port of Pasco is dedicated to the creation of a contracting environment that is welcoming to small businesses, including DBE's. Small businesses have long seen subcontracting opportunities on construction jobs at the Tri-Cities Airport. The structure of the local economy is such that for many trades, only small businesses are available to perform this work.

Because of our past success in the promotion of small business, our plan for a small business element of the DBE Program is to continue with the contracting practices in place at this airport.

**Our Plan:**

Prime contracts and subcontracts are available to small businesses as a result of the Airport Improvement Program. The Port of Pasco believes that it is currently meeting the objectives of its construction contracting activities by ensuring that a reasonable number of prime contracts and subcontracts are of a size that small businesses, including DBEs, can reasonably perform. Quantities, specifications, and

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delivery schedules are arranged to facilitate small business participation. All contracts are divided into multiple bid schedules and bid items to make it easier to define portions of the work to subcontract. The Port of Pasco will put into place monitoring of consultant-design projects for possible small business participation and encouraging use of small businesses in projects. The Port of Pasco seeks ways to include all available contractors in its contracts; this may include bundling or unbundling jobs or limiting the size of its contracts so that smaller businesses may be awarded contracts. In some cases, jobs usually performed by subcontractors can be performed as an unbundled contract as a prime contract, especially if the outcome of the overall project will not be effected by the unbundled contracting opportunity.

We propose, as an added requirement for this small business element, to impose upon ourselves the burden of collecting evidence that small businesses are performing work on FAA-funded construction projects.

Information on small businesses will be tracked much in the same way that DBE's are currently tracked. For FAA-funded projects, construction contract language would be modified to require subcontractors meeting the small business thresholds set by the Small Business Administration (SBA) to provide notification of their small business status. The Port would collect and maintain records showing what percentage of each project, in terms of dollars, was completed by small businesses.

**Assurances:**

The Port of Pasco will provide the following assurances for this program:

- The program is authorized under state law;
  - Certified DBE's that meet the size criteria established under the program are presumptively eligible to participate in the program;
  - No geographic preferences or limitations will be imposed on any federally assisted procurement included in the program;
  - There are no limits on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untired businesses; and
  - Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
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ATTACHMENT 4

**Tri-Cities Airport DBE Overall Goals**

*(To be submitted separately)*

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**ATTACHMENT 5**

**The 49 CFR Part 26 website is:**

<http://www.ecfr.gov/cgi-bin/text-idx?SID=a53e961ae3accec24a8640655bbdd783&node=pt49.1.26&rgn=div5>



**ATTACHMENT 7**

**The State of Washington DBE Directory is found at:**

<https://omwbe.diversitycompliance.com/>

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ATTACHMENT 8

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

**LETTER OF INTENT FOR DBE PARTICIPATION**

**Name of Bidder's Firm:** \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

**Name of DBE Firm:** \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

State Certification Number: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bidder intends to utilize the above-named Disadvantaged firm for the work described above. The estimated amount of work is valued at \$\_\_\_\_\_. If the above-named bidder is not determined to be the successful bidder, the Letter of Intent shall be null and void.

**Name of DBE Firm:** \_\_\_\_\_

Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

State Certification Number: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Bidder intends to utilize the above-named Disadvantaged firm for the work described above. The estimated amount of work is valued at \$\_\_\_\_\_. If the above-named bidder is not determined to be the successful bidder, the Letter of Intent shall be null and void.

*NOTE: Use additional sheets if needed.*

**ATTACHMENT 9**

**The State of Washington Federal DBE Certification Application is found at:**

<https://omwbe.wa.gov/certification/federal-certification>

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ATTACHMENT 10

State's UCP Agreement

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**ACCEPTED:**

STATE OF WASHINGTON  
Office of Minority & Women's Business Enterprises

By \_\_\_\_\_  
Juan Huey-Ray  
Acting Director

Dated: \_\_\_\_\_

**THE UNDERSIGNED representative of the following modal of the U.S. Department of Transportation in the State of Washington\* has reviewed the foregoing Memorandum and hereby concurs:**

U.S. DEPARTMENT OF TRANSPORTATION

Federal Highway Administration  
Washington Division

By \_\_\_\_\_  
Daniel Mathis, Division Administrator

DATED: \_\_\_\_\_

City of Davenport Airport

By Charles G. Johnston  
The Honorable Charles G. Johnston, Mayor

DATED: 6/4/03

- Representatives of the Federal Transit Authority and Federal Aviation Administration in the State of Washington are unable to review and comment.

Port of Ephrata

By \_\_\_\_\_  
Barbara Deycous, Town Clerk

Dated: \_\_\_\_\_

Port of Friday Harbor

By \_\_\_\_\_  
Steve Simpson, Port Director

Dated: \_\_\_\_\_

Port of Grays Harbor/Bowerman Field

By \_\_\_\_\_  
Diane Souron

Dated: \_\_\_\_\_

Port of Lopez

By \_\_\_\_\_  
Ron Fowler

Dated: \_\_\_\_\_

Port of Olympia

By \_\_\_\_\_  
Doug Sandu, Airport Manager

Dated: \_\_\_\_\_

Port of Pasco

By Ron Foraker  
Ron Foraker

Dated: 11/14/02

By Jim Morasch  
Jim Morasch

Dated: 11/14/02