



2014

Disadvantaged Business Enterprise DBE Program

Shirley Lyons, Manager
807 E Main St., P.O. Box 517
Molalla, OR 97038
Phone: 503-829-7000
Email: slyons@sctd.org



South Clackamas Transit District DBE Program

Policy Statement

Section 26.1, 26.23 Objectives and Policy Statement

The South Clackamas Transportation District (the District) 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 District has received Federal financial assistance from the DOT, and as a condition of receiving this assistance, the District has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the District to ensure that DBEs 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 assist the development of firms that can compete successfully in the market place outside the DBE Program.

Shirley Lyons, manager of South Clackamas Transportation District has been delegated as the DBE Liaison Officer (DBELO). In that capacity, Shirley Lyons 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 District in its financial assistance agreements with the DOT.

The District has disseminated this policy statement to the District's Board of Directors. We have emailed this statement to all businesses that perform work for us on DOT-assisted contracts.

[Signature of Recipient's Chief Executive Officer]

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 District is the recipient of federal transit funds authorized by Division B of the Moving Ahead for Progress in the 21st Century (MAP-21), Pub. L. 112-141 or by Federal transit laws in Title 49, U.S. Code, or Titles III of the Safe, Accountable, Flexible, Efficient, Transportation Equity Act: A Legacy for Users, Pub. L. 109-59.

Section 26.5 Definitions

The District will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The District 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 District 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(b)

The District will report DBE participation on a quarterly basis, using DOT form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

The District will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We will collect this information by including a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

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

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since the District has received a grant of \$250,000 or more in FTA capital assistance we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Shirley Lyons, Manager
807 E Main St., P.O. Box 517
Molalla, OR 97038

Phone: 503-829-7000 Email:

slyons@sctd.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the District complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Shirley Lyons 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 has a staff of 1 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 Board and legal counsel 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 attainment and identifies ways to improve progress.
6. Analyzes District's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Participates in pre-bid meetings.
10. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
11. Plans and participates in DBE training seminars.
12. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Oregon.
13. Provides outreach to DBEs and community organizations to advise them of opportunities.
14. Maintains the District's updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of the District 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 contract to make use of these institutions. We have reviewed the Oregon Office of Minority, Women and Emerging Small Business (OWMESB) official DBE list and found no DBE registered financial institutions in Oregon.

Section 26.29 Prompt Payment Mechanisms

The District 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 contract receives from District. 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 time frame may occur only for good cause following written approval of the District. This clause applies to both DBE and non-DBE subcontracts.

Section 26.31 Directory

The District provides instructions to potential bidders to access the State of Oregon's Office of Minority, Women and Emerging Small Business (OMWESB) list identifying all firms eligible to

participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

This list may be accessed at <http://www4.cbs.state.or.us/ex/dir/omwesb/>

Section 26.33 Overconcentration

The District has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

The District has not established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. The District 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 26.109.
2. The District will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Attachment 3 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 procurement activities.
3. The District will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by reviewing invoices submitted by contractors and comparing billed amounts to amounts identified in contractor's proposals.
4. The District will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

The District's overall race/gender conscious DBE goal for Calendar Year 2014 is 1% of the federal financial assistance. This goal based on the Weighted Based Figure Worksheet and the steps outlined below.

Methodology for Race/Gender conscious DBE goal:

1. The District identified the types and amounts of contracts by NAICS code likely to be bid during the upcoming year.
2. We identified the number of DBE qualified firms listed in the current OWMSBE database for each NAICS code¹. This was accomplished by querying the database for any firm that self-identified as providing services in the selected NAICS codes. The search included any firm that listed one of the selected NAICS codes within their first three NAICS listings. However, an adjustment was made to exclude one firm that indicated providing Bus and Other Motor Vehicle Transit Systems (NAICS 485113). When contacted this firm indicated they only perform consulting services, but not transit operations.
3. We obtained the total number of firms in Oregon by NAICS code from the 2011² County Business Patterns database.
4. Using FTA's Weighted Base Figure spreadsheet downloaded from ODOT's website³ we calculated a weighted base goal of 1 percent.

No further adjustments were made. Spreadsheets are attached in Attachment 3.

Section 26.49 Transit Vehicle Manufacturers Goals

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

¹ <http://www4.cbs.state.or.us/ex/dir/omwesb/down/index.cfm> Accessed January 16, 2014

² The most recent year for which data is available. <http://censtats.census.gov/cgi-bin/cbpnaic/cbpsect.pl>
Accessed January 16, 2014

³ FTA Weighting Base Figure Worksheet, <http://cms.oregon.egov.com/ODOT/PT/Pages/resources/civil-rights.aspx#dbe> Accessed January 16, 2014

Section 26.51 (a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation

District will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. To help accomplish this, the District will publicize and distribute the OWMESB directory to the widest feasible universe of potential prime contractors.

We estimate that, in meeting our overall goal of 1%, we will obtain 1% from race-neutral participation and 1% through race-conscious measures.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we 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 DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Section 26.51(d-g) Contract Goals

The District will use contract goals to meet any portion of the overall goal the District does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We will 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 Federal share 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.

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.

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

Information to be submitted (26.53(b))

District treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 10 business days of being informed by District 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 SCTD Legal Counsel, Jordan Ramis PC; Two Center Pointe 6th floor, Lake Oswego, OR 97035.

The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

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

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

District 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, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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.

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.

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 District 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 1 percent 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; (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; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) 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.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

As an ODOT sub-recipient, the District uses the OMWESB certification process.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The ODOT – of which the district is a sub-recipient – is a member of a Unified Certification Program (UCP) administered by the Oregon Office of Minority, Women and Emerging Small Businesses (OMWESB). All matters relating to certification are handled by the OMWESB.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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 contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to 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 District 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 DBE subcontractors equals or exceeds the dollar amounts states in the schedule of DBE participation.

ATTACHMENTS

- Attachment 1 Organizational Chart
- Attachment 2 Form 1 & 2 for Demonstration of Good Faith Efforts
- Attachment 3 Weighting Base Figure Worksheet
- Attachment 4 Regulations: 49 CFR part 26

Attachment 1

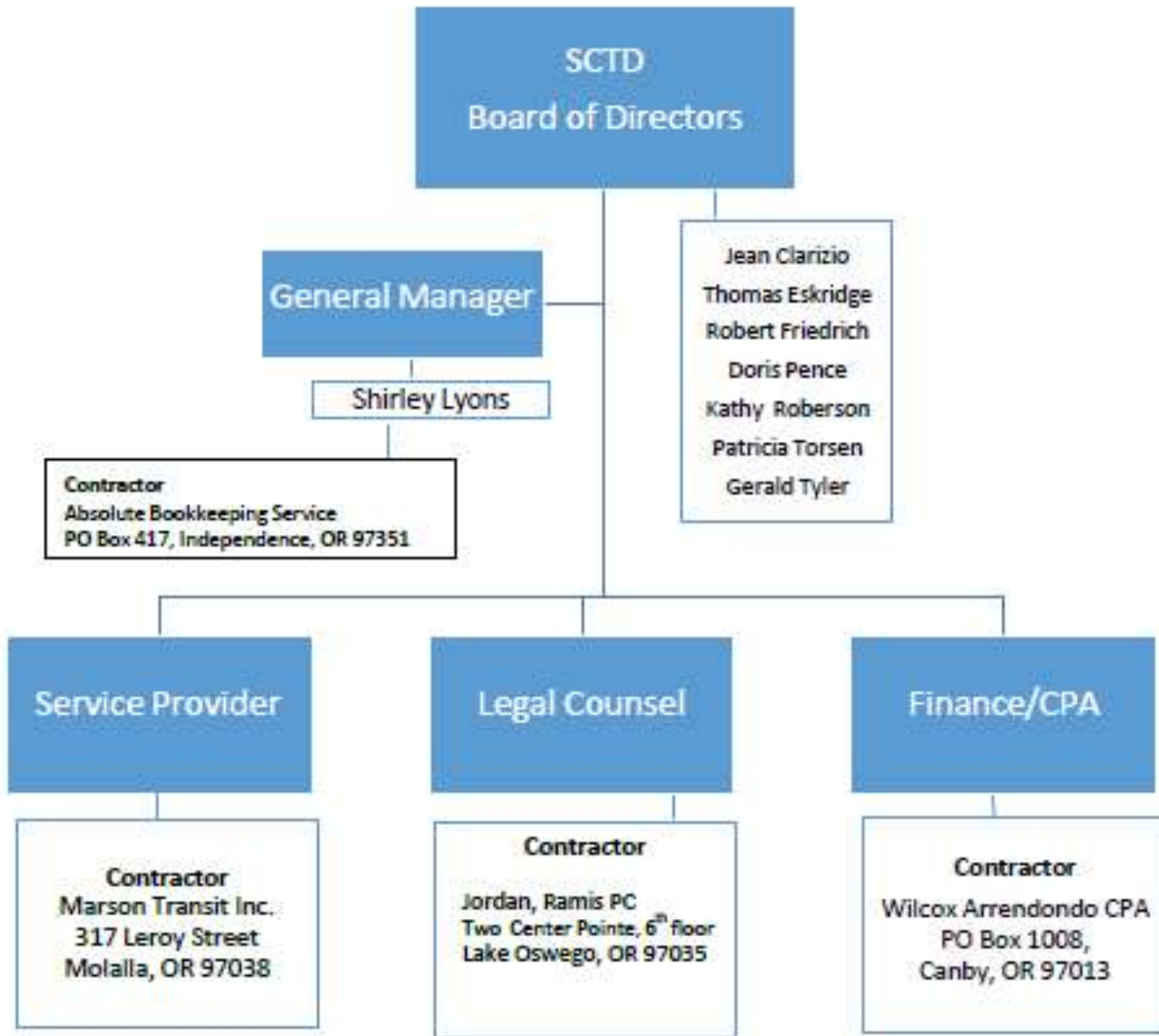


Figure 1- SCTD Organizational Chart

Attachment 2

Forms 1 & 2 for Demonstration of Good Faith Efforts

Forms 1 and 2 are provided as part of 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 submits 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:

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.

By _____

(Signature) (Title)

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

(Submit this page for each DBE subcontractor.)

Attachment 3

Weighting Base Figure Worksheet

Determine the weight of each type of work by NAICS Code:

	NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
1)	541930	TRANSLATION AND INTERPRETATION SERVICES	\$500.00	0.0009
2)	541614	PROCESS, PHYSICAL DISTRIBUTION AND LOGISTICS CONSULTING SERVICES	\$7,500.00	0.0140
3)	541611	ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES	\$15,000.00	0.0280
4)	541211	OFFICES OF CERTIFIED PUBLIC ACCOUNTANTS	\$8,000.00	0.0149
5)	541110	OFFICES OF LAWYERS	\$2,500.00	0.0047
6)	524210	INSURANCE AGENCIES AND BROKERAGES	\$2,500.00	0.0047
7)	485991	SPECIAL NEEDS TRANSPORTATION	\$50,000.00	0.0933
8)	485320	LIMOUSINE SERVICE	\$0.00	0.0000
9)	485310	TAXI SERVICE	\$0.00	0.0000
10)	485113	BUS AND OTHER MOTOR VEHICLE TRANSIT SYSTEMS	\$450,000.00	0.8396
	Total FTA-Assisted Contract Funds		\$536,000.00	0.906716418

Relative availability of DBE's by NAICS Code:

	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	541930	TRANSLATION AND INTERPRETATION SERVICES	3	47	0.0638
2)	541614	PROCESS, PHYSICAL DISTRIBUTION AND LOGISTICS CONSULTING SERVICES	33	70	0.4714
3)	541611	ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES	72	738	0.0976
4)	541211	OFFICES OF CERTIFIED PUBLIC ACCOUNTANTS	0	885	0.0000
5)	541110	OFFICES OF LAWYERS	0	2257	0.0000
6)	524210	INSURANCE AGENCIES AND BROKERAGES	3	1795	0.0017
7)	485991	SPECIAL NEEDS TRANSPORTATION	2	71	0.0282
8)	485320	LIMOUSINE SERVICE	0	31	0.0000
9)	485310	TAXI SERVICE	2	37	0.0541
10)	485113	BUS AND OTHER MOTOR VEHICLE TRANSIT SYSTEMS	0	8	0.0000
	Combined Totals		115	5939	0.0194
					<i>Overall availability of DBEs</i>

(Weight) x (Availability) = Weighted Base Figure

	NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
1)	541930	TRANSLATION AND INTERPRETATION SERVICES	0.00093	x	0.06383	0.0001
2)	541614	PROCESS, PHYSICAL DISTRIBUTION AND LOGISTICS CONSULTING SERVICES	0.01399	x	0.47143	0.0066
3)	541611	ADMINISTRATIVE MANAGEMENT AND GENERAL MANAGEMENT CONSULTING SERVICES	0.02799	x	0.09756	0.0027
4)	541211	OFFICES OF CERTIFIED PUBLIC ACCOUNTANTS	0.01493	x	0.00000	
5)	541110	OFFICES OF LAWYERS	0.00466	x	0.00000	
6)	524210	INSURANCE AGENCIES AND BROKERAGES	0.00466	x	0.00167	0.0000
7)	485991	SPECIAL NEEDS TRANSPORTATION	0.09328	x	0.02817	0.0026
8)	485320	LIMOUSINE SERVICE	0.00000	x	0.00000	
9)	485310	TAXI SERVICE	0.00000	x	0.05405	0.0000
10)	485113	BUS AND OTHER MOTOR VEHICLE TRANSIT SYSTEMS	0.83955	x	0.00000	
Total						0.0120
Expressed as a % (*100)						1.20%
Rounded, Weighted Base Figure:						1%

Attachment 4

Regulations: 49 CFR Part 26

http://www.fta.dot.gov/legislation_law/12316_3304.html