

**BASE DOCUMENT - DB 171  
VERSION 1**

**MAY 25, 2007**

**DB Section 171 – Workforce Protection**

**DB171.10 Supplemental Required Contract Provisions Federal-Aid Projects**

**On-Site Workforce Affirmative Action Requirements for Women and Minorities -**

Pursuant to 41 CFR 60-4.6 (see also 41 CFR 60-4.2(a)): The following notice concerning Affirmative Action Requirements for Women and Minorities shall be included in, and shall be a part of, all solicitations for offers and bids on all Federal and federally-assisted construction contracts or subcontracts in excess of \$10,000 to be performed in geographical areas designated by the United States Department of Labor (USDOL) Director. The USDOL, Office of Federal Contract Compliance Programs (OFFCCP), has made the following statement concerning Goals, Timetables and Good Faith Efforts:

“Numerical goals are established based on the availability of qualified applicants in the job market or qualified candidates in the employer’s work force. Executive Order [E.O. 11246] numerical goals do not create set-asides for specific groups, nor are they designed to achieve proportional representation or equal results. Rather, the goal-setting process in affirmative action planning is used to target and measure the effectiveness of affirmative action efforts to eradicate and prevent discrimination. The Executive Order and its supporting regulations do not authorize OFCCP to penalize contractors for not meeting goals. The regulations at 41 CFR 60-2.12(e), 60-2.30 and 60-2.15, specifically prohibit quota and preferential hiring and promotions under the guise of affirmative action numerical goals. In other words, discrimination in the selection decision is prohibited.”

For purposes of these Supplemental Required Contract Provisions, “Good Faith Effort” means affirmative action measures designed to implement the established objectives of an Affirmative Action Plan 23 CFR 230.407(o).

**A. AFFIRMATIVE ACTION REQUIREMENTS**

**Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246)**

1. Design-Builder’s attention is called to the “Equal Opportunity Clause” and the “Standard Federal Equal Employment Specifications” set forth herein.
2. The goals and timetables for minority and female participation, expressed in percentage terms for Design-Builder’s aggregate workforce in each trade on all construction work in the covered area, are as follows:

**Goal and Timetable for Female Utilization Statewide**

Timetable	Goal (Percent)
From Apr. 1, 1980 until further notice	6.9

**Goals for Minority Utilization by County**

	Goal (Percent)
Clackamas, Multnomah, and Washington Counties	4.5
Marion and Polk Counties	2.9
Benton, Clatsop, Columbia, Crook, Deschutes, Hood River, Jefferson, Lincoln, Linn, Sherman, Tillamook, Wasco, and Yamhill Counties	3.8
Lane, Coos, Curry, Douglas, Jackson, Josephine, Klamath, and Lake Counties	2.4
Baker, Gilliam, Grant, Morrow, Umatilla, Union, Wallowa, and Wheeler Counties	3.6
Harney and Malheur Counties	4.4

These goals are applicable to all Design-Builder’s construction work (whether or not it is Federal or federally assisted) performed in the covered area. If Design-Builder performs construction work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, Design-Builder also is subject to the goals for both its federally involved and non-federally involved construction.

Design-Builder’s compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and Design-Builder shall make a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Design-Builder to Design-Builder or from project to project for the sole purpose of meeting Design-Builder’s goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

**3.** Design-Builder shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

**4.** As used in this Notice, and in the contract resulting from this solicitation, the “covered area” is the county or counties shown in the Solicitation Documents. In cases

where the work is in two or more counties covered by different percentage goals, the highest percentage will govern.

**B. STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)**

1. As used in these specifications:

a. "Covered area" means the geographical area, described in the solicitation from which this contract resulted;

b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;

c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.

d. "Minority" includes:

(i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

(ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);

(iii) Asian American and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and

(iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).

2. Whenever Design-Builder, or any subcontractor at any tier, subcontracts a portion of the work involving any construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitation from which this contract resulted.

3. A Design-Builder participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the plan; provided, that each Design-Builder or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good performance by other Design-Builders or subcontractors toward a goal in

an approved plan does not excuse any covered Design-Builder's or subcontractor's failure to take good faith efforts to achieve the plan's goals and timetables.

**4.** Design-Builder shall implement the specific affirmative action standards provided in paragraphs 7a through 7p of these specifications. The goals set forth in the solicitation from which this contract resulted are expressed as percentages of the total hours of employment and training of minorities and female utilization Design-Builder should reasonably be able to achieve in each construction trade in which it has employees in the covered area. Covered construction contractors performing construction work in geographical areas where they do not have a Federal or federally assisted construction contract shall apply the minority and female goals established for the geographical area where the work is performed. Goals are published periodically in the Federal Register in notice form, and such notices maybe obtained from any Federal Contract Compliance Programs office or from Federal procurement contracting officers. Design-Builder is expected to make substantially uniform progress toward its goals in each craft during the period specified.

**5.** Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Design-Builder has a collective bargaining agreement, to refer either minorities or women shall excuse Design-Builder's obligations under these specifications, Executive Order 11246, or the regulations promulgated pursuant thereto.

**6.** In order for the non-working training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by Design-Builder during the training period, and Design-Builder must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

**7.** Design-Builder shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of Design-Builder's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. Design-Builder shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:

**a.** Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which Design-Builder's employees are assigned to work. Design-Builder, where possible, will assign two or more women to each construction project. Design-Builder shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out Design-Builder's obligation to maintain such a working environment, with specific attention to minorities and female individuals working at such sites or in such facilities.

**b.** Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when Design-Builder or its unions have employment opportunities available, and maintain a record of the organization's responses.

- c.** Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source, or a community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to Design-Builder by the union or, if referred, not employed by Design-Builder, this shall be documented in the file with the reason therefore, along with whatever additional actions Design-Builder may have taken.
- d.** Provide immediate written notification to the Director when the union or unions with which Design-Builder has a collective bargaining agreement has not referred to Design-Builder a minority person or woman sent by Design-Builder, or when Design-Builder has other information that the union referral process has impeded Design-Builder's efforts to meet its obligations.
- e.** Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to Design-Builder's employment needs, especially those programs funded or approved by the Department of Labor. Design-Builder shall provide notice of these programs to the sources compiled under 7b above.
- f.** Disseminate Design-Builder's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting Design-Builder in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc., by specific review of the policy with all management personnel and with all minority and female employees at least once a year, and by posting Design-Builder's EEO policy on bulletin boards accessible to all employees at each location where construction work is performed.
- g.** Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of construction work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.
- h.** Disseminate Design-Builder's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing Design-Builder's EEO policy with other Contractors and Subcontractors with whom Design-Builder does or anticipates doing business.
- i.** Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving Design-Builder's recruitment area and employment needs. Not later than one month prior to the date

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for the acceptance of applications for apprenticeship or other training by any recruitment source, Design-Builder shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.

**j.** Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Design-Builder's workforce.

**k.** Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.

**l.** Conduct, at least annually, an inventory and evaluation at least of all minority and female employees for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.

**m.** Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and Design-Builder's obligations under these specifications are being carried out.

**n.** Ensure that all facilities and Design-Builder's activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.

**o.** Document and maintain a record of all solicitations of offers for subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

**p.** Conduct a review, at least annually, of all supervisors' adherence to and performance under Design-Builder's EEO policies and affirmative action obligations.

**8.** Design-Builders are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through 7p). The efforts of a contractor association, joint contractor union, contractor-community; or other similar group of which Design-Builder is a member and participant, may be asserted as fulfilling any one or more of its obligations under 7a through 7p of these specifications provided that Design-Builder actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the program are reflected in Design-Builder's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of Design-Builder. The obligation to comply, however, is Design-Builder's and failure of such a group to fulfill an obligation shall not be a defense for Design-Builder's noncompliance.

**9.** A single goal for minorities and a separate single goal for women have been established. Design-Builder, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, Design-Builder may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though Design-Builder has achieved its goals for women generally, Design-Builder may be in violation of the Executive Order if a specific minority group of women is underutilized).

**10.** Design-Builder shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex or national origin.

**11.** Design-Builder shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

**12.** Design-Builder shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Design-Builder who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.

**13.** Design-Builder, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If Design-Builder fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.

**14.** Design-Builder will designate an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active Design-Build program of EEO and who must be assigned adequate authority and responsibility to do so. Additionally, the Design-Build EEO Officer shall ensure that the company EEO policy is being carried out, to submit reports relating to the specifications hereof as may be required by the Agency and to keep records. Records shall at least include for each employee the name, address, telephone numbers, construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice, trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Design-Builders shall not be required to maintain separate records.

**15.** Nothing herein provided shall be construed as a limitation upon the application of other laws, which establish different standards of compliance, or upon the application of requirements for the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

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**16.** The Office of Federal Contract Compliance Programs (OFCCP) may conduct compliance evaluations to determine if the contractor maintains nondiscriminatory hiring and employment practices and is taking affirmative action to ensure that applicants are employed and that employees are placed, trained, upgraded, promoted, and otherwise treated during employment without regard to race, color, religion, sex, or national origin. In the event of Design-Builder's non-compliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, this Contract may be canceled, terminated or suspended in whole or in part and the contractor may be declared ineligible for further Government contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

## **DB171.20 Disadvantaged Business Enterprise Program Provisions (DBE)**

### **Section 1: Disadvantaged Business Enterprise Policy and Authorities**

**A. Disadvantaged Business Enterprise Policy, Obligation, and Applicability** - According to Part 26, Title 49, Code of Federal Regulations (49 CFR 26), Design-Builder shall agree to abide by and take all necessary and reasonable steps to comply with the following statement:

**1. DISADVANTAGED BUSINESS ENTERPRISE POLICY** - It is the policy of the United States Department of Transportation (USDOT) to practice nondiscrimination on the basis of race, color, sex and/or national origin in the award and administration of USDOT assisted contracts. Consequently, the DBE requirements of 49 CFR 26 apply to this Project.

**2. DISADVANTAGED BUSINESS ENTERPRISE OBLIGATION** - The Oregon Department of Transportation (Agency) and its Design-Builder agree to ensure that disadvantaged business enterprises as defined in 49 CFR 26 have the opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with federal funds provided by Federal Highway Administration (FHWA), Federal Transit Administration (FTA), and Federal Aviation Administration (FAA) under this Project. Agency and its Design-Builder shall take all necessary and reasonable steps in accordance with 49 CFR 26 to ensure that disadvantaged business enterprises have the opportunity to compete for and perform contracts. Neither Agency nor its Design-Builder shall discriminate on the basis of race, color, national origin, or sex in the award and performance on this Federal-Aid Contract.

**3. DISADVANTAGED BUSINESS ENTERPRISE APPLICABILITY** - This applies to all personal services, trade services, and public improvement projects financed in whole or in part with federal funds received from Federal Highway Administration (FHWA), Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) through the Agency. Agency and its Design-Builder shall conform to all applicable civil rights laws, orders, and regulations. Agency and its Design-Builder shall not discriminate on the basis of race, age, sex, color, religion, national origin, mental or physical disability, political affiliation, or marital status in the award and performance of this Contract.

**B. Authorities** - These Disadvantaged Business Enterprise (DBE) Commitment Requirements are authorized by the following laws, rules, regulations, and guidelines, which, in conjunction with any pertinent policy memoranda or procedures issued by the FHWA, all of which are incorporated by reference into the provisions, govern the Agency's administration of the DBE Program:

- a) Intermodal Surface Transportation Efficiency Act of 1991.
- b) STURAA - The Surface Transportation and Uniform Relocation Assistance Act of 1987.
- c) STAA - The Surface Transportation Assistance Act of 1982.
- d) Executive Order 11625 - Issued October 13, 1971, this order required that federal executive agencies develop comprehensive plans and programs to encourage minority business participation. USDOT requires Agency to establish a DBE Program as a condition for receiving USDOT federal funds.
- e) Civil Rights Act of 1964, Title VI - This Act prohibits denial of contracting opportunities on the basis of discrimination.
- f) Code of Federal Regulations (CFR) 49 Part 26 - The general and permanent rules published in the Federal Register that cover the USDOT Disadvantaged Business Enterprise program requirements.

The Disadvantaged Business Enterprise (DBE) Commitment Requirements (including references therein) shall be incorporated by reference into all subcontracts (regardless of tier) describing the Work to be performed by DBEs on projects financed in whole or in part with federal funds.

## **Section 2: Eligibility for Disadvantaged Business Enterprise Participation on Projects**

Participation shall be accomplished by including certified DBEs in any part of the Contract Work that is necessary to complete the Contract obligation. A certified DBE may participate as a Design-Builder, subcontractor, joint venture member, material supplier, material manufacturer, and professional service provider.

Only those firms certified as DBEs by the State of Oregon Office of Minority, Women, and Emerging Small Business (OMWESB) shall be eligible to fulfill required DBE participation Contract obligations. Firms listed in documents that must be submitted as part of the Proposal must be certified by the time of Proposal submission.

## **Section 3: Crediting of Disadvantaged Business Enterprise Participation toward Meeting the Assigned Disadvantaged Business Enterprise Participation Goal**

**A. Crediting of Disadvantaged Business Enterprise Participation** - Credit toward meeting the assigned DBE participation goal shall be granted only when the listed firms are currently certified by State of Oregon OMWESB as a disadvantaged business enterprise. Design-Builder should not assume that a minority-owned (MBE) or a woman-owned (WBE)

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firm is currently certified by OMWESB as a DBE firm. Design-Builder is encouraged to verify the DBE firms' certification by:

1. Requesting a copy of the DBE certification letter from the committed DBE firm; or
2. Contacting OMWESB at (503) 947-7976. Design-Builder may also access the updated certification list by dialing into OMWESB's Internet Web Page address at <http://www.cbs.state.or.us/omwesb>

For joint ventures, the percentage of DBE participation to be credited toward the goal will be determined or approved by the Agency prior to Proposal opening on the basis of information submitted in the joint venture application referenced in DB General Provision Section 120.85(e) - DBE Participation through Joint Venture.

**B. Crediting of Disadvantaged Business Enterprise Participation Subsequent to Contract Award** - The total dollar value of and the scope of Work for the DBE commitment as shown on the Committed DBE Breakdown Form shall be credited toward meeting the assigned goal, provided the DBE performs a Commercially Useful Function as defined under 49 CFR 26.55(c)(1).

**C. Crediting of Disadvantaged Business Enterprise Participation through the Use of Disadvantaged Business Enterprise Manufacturers** - Design-Builder may count one hundred percent (100%) of its expenditure to a DBE manufacturer. Pursuant to 49 CFR 26.55(e)(1)(I), a DBE manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by Design-Builder.

Design-Builder may count towards its DBE goal compliance one hundred percent (100 %) of its expenditures for a DBE firm that furnishes and places these materials *only if* the DBE firm is carrying out its responsibilities by actually performing, managing, and supervising the Work involved. The DBE shall negotiate the cost, arrange delivery of, and pay for the materials and supplies required for the Work of the Contract. Invoices for materials will be invoiced to the DBE firm and not to Design-Builder.

**D. Crediting of Disadvantaged Business Enterprise Participation through Use of Disadvantaged Business Enterprise Regular Dealers** - Design-Builder can apply only 60 percent of the committed amount for the cost of supplies and materials from regular dealers toward meeting the DBE goal. A DBE regular dealer owns, operates, or maintains a store, warehouse, or other establishment in which the Materials or supplies required for the performance of the Contract are bought, kept in stock, and regularly sold to the public in the usual course of business. (CFR 26.55(e)(2)(i))

No credit will be granted if Design-Builder makes a direct payment to a Material supplier. However, it will be permissible for a Material supplier to invoice Design-Builder and the DBE jointly and be paid by Design-Builder making remittance to the DBE firm and Material supplier jointly, provided such joint payment arrangements received prior written approval from the Agency PM.

No credit will be granted if Design-Builder deducts from the amounts owed to DBE firms for Work performed the costs for: (1) materials and service ordered by the DBE firm and used

by the DBE in performing its Work, (2) purchase price of supplies/Materials acquired from Design-Builder by the DBE firm and used by the DBE in performing its Work, and (3) cost of equipment leased or rented from Design-Builder by the DBE firm and used by the DBE in performing its Work. Credit shall be withheld where such costs have been deducted from dollar amounts paid to DBE firms for Work performed.

**E. Crediting of Disadvantaged Business Enterprise Participation through Use of Disadvantaged Business Enterprise Service Providers** - Credit toward meeting the goal through use of DBE service providers shall be granted for:

- 1) The fees or commissions charged for providing a BONA FIDE service, such as professional, technical, consultant, or managerial services and assistance in the procurement of essential personnel, facilities, equipment, materials, or supplies required for performance of the Contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 2) The fees charged for delivery of Materials and supplies required on a job site (but not the cost of Materials and supplies themselves) when the hauler, trucker, or delivery service is not also the manufacturer of or a regular dealer in the materials or supplies. The fee must be reasonable and not excessive as compared with fees customarily allowed for similar services.
- 3) The fees or commissions charged for providing any bonds or insurance specifically required for the performance of the Contract, provided that the fee or commission is determined by the Agency to be reasonable and not excessive as compared with fees customarily allowed for similar services.

The total dollar value of payments to the DBE for which a Commercially Useful Function (CMF) was performed in delivering a professional, technical and/or expert service.

**Section 4: Documentation of Design-Builders' Proposed Disadvantaged Business Enterprise Participation**

**A. Committed Disadvantaged Business Enterprise Breakdown Form** - This certification and utilization form shall be used to determine Design-Builder's responsiveness to the DBE requirements.

Design-Builder shall complete and submit the Committed DBE Breakdown Form for construction as part of the Readiness for Construction Design Review (See **DB General Provisions**, Section 155). Design-Builder shall fill in each committed DBE firm, its capacity, description of Work, subcontract amount or expenditure, and amount to be applied toward the DBE goal. At the end of the listing, Design-Builder shall total the amount to be applied to the DBE goal, divide it by the total Proposal amount, and indicate the DBE commitment in percent format to the nearest one-hundredth (0.01).

All of the requested information above Part I of the Committed DBE Breakdown Form must be completed and signed by Design-Builder.

**B. Disadvantaged Business Enterprises as Design-Builder** - The requirements of Section 4(a) will apply to DBE Design-Builders for prime contracts. In determining whether a DBE Design-Builder for a prime contract has met a contract goal, only the Work the DBE has committed with its own forces as well as the Work that it has committed to be performed by DBE subcontractors or suppliers will be counted.

DBEs proposing as Design-Builders shall complete the Committed DBE Breakdown Form indicating the percentage of Work to be performed by its own forces as well as the Work to be performed by other committed DBEs to meet the DBE goal.

**C. Form GF - Good Faith Efforts** - It is the intent of Agency that all Design-Builders meet the assigned DBE participation goal. It is recognized that in rare exceptions it may not be possible for all Design-Builders to meet the goal. Efforts that are merely superficial are not good faith efforts to meet the goal.

In the event a Design-Builder is unable to meet the assigned DBE participation goal, Design-Builder shall provide additional information regarding good faith efforts per the requirements on Form GF. Design-Builder must document the steps taken to obtain participation, which demonstrate good faith efforts, such as those outlined below:

- 1) Evidence that Design-Builder attended any pre solicitation or pre-Proposal meetings (if applicable) that were scheduled by Agency to inform DBEs of contracting and subcontracting or material supply opportunities available on the project;
- 2) Evidence that Design-Builder identified and selected specific economically feasible units of the project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- 3) Evidence that Design-Builder advertised in general circulation, trade association, minority and trade oriented, women-focus publication, concerning the subcontracting or supply opportunities;
- 4) Evidence that Design-Builder provided written notice to a reasonable number of specific DBEs, identified from the Oregon DBE Directory of Certified Firms for the selected subcontracting of material supply Work, in sufficient time to allow the enterprises to participate effectively;
- 5) Evidence that Design-Builder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. This may include the information outlined below:
  - a) The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - b) A description of the information provided to the DBEs regarding the Plans and Project Specifications and estimated quantities for portions of the Work to be performed;

- c) Documentation of each DBE contacted but rejected and the reasons for the rejection.
- 6) Evidence that Design-Builder provided interested DBEs with adequate information about the Plans, Project Specifications and requirements for the selected subcontracting or Material supply Work;
- 7) Evidence that Design-Builder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory Proposals prepared by any DBE;
- 8) Evidence that Design-Builder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by Agency or Design-Builder;
- 9) Evidence that Design-Builder's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of Agency;
- 10) Evidence that Design-Builder used the services of minority community organizations, minority contractor groups, local, state and federal minority business assistance offices and other organizations identified by the State of Oregon Advocate for Minority, Women, and Emerging Small Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- 11) Evidence that Design-Builder used the services of Agency's DBE Supportive Services contractor(s).

**Section 5: Disadvantaged Business Enterprise Participation through Joint Venture**

If Design-Builder is participating through a joint venture, the requirements of 49 CFR 26.55(b) will apply and there is a specific DBE Joint Venture Application Form. This form must be completed in order for the Agency to determine DBE participation in the joint venture. Certification of DBE joint ventures shall be completed for and granted for each individual project. The DBE Joint Venture Application forms are available on the Agency Civil Rights web page at:

<http://www.odot.state.or.us/civilrightspub/forms.html>.

**Section 6: Commercially Useful Function**

Design-Builder is responsible for ensuring that DBEs working on the Project perform a commercially useful function (CUF). Design-Builder shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed Work only.

An on-site review will be used to ascertain whether the DBE is actively performing, managing, and supervising the Work. It must employ a labor force which is separate and apart from that employed by the prime, and which is independently recruited by the DBE in accordance with standard industry practice. The DBE must supervise and manage the Work or independently hire a supervisor, who may not be a supervisor employed by the prime or any other Subcontractor on the Project.

With regard to the Federal-aid share, if an investigation reveals that there has been a violation of the CUF provisions, that portion of the Work found to be in violation would not be counted toward goal achievement for either Design-Builder or the Agency.

When a DBE is presumed not to be performing a CUF as described in this section, the DBE may present evidence through Design-Builder to the Agency to rebut that presumption.

**a) The DBE (and Not Some Other Business Entity) Must Actually Perform the Subcontract** - The DBE's utilization of labor, supervisory personnel, equipment and Material in the performance of the subcontract must be consistent with industry standards and must demonstrate that the DBE and not some other business entity is actually performing the subcontract. For example, if a DBE associates itself too closely with another business entity or entities, in acquiring a labor force, supervisors, equipment or materials to an extent inconsistent with industry standards, the DBE can no longer be said to be actually performing the subcontract - rather a partnership or joint venture of which the DBE is a member is the actual performer of the subcontract.

**b) DBE's Work Force** - The DBE must solicit, hire, place on its payroll, direct, and control all workers performing Work under its contract. The DBE owner or its superintendent must, on a full-time basis, supervise and control the Work of the contract.

The DBE may with the prior written consent of the Agency PM augment its work force with personnel of another firm. The Agency PM shall approve the request only when:

- 1) specialized skills are required, and
- 2) the use of such personnel is for a limited time period.

**c) DBE Equipment** - The DBE is expected to perform the Work with equipment that is owned, being purchased, or leased by the DBE under a written lease agreement that has been consented to by the Agency PM prior to the DBE starting Work.

No credit will be given, nor payment made for the cost of equipment leased or rented and used in the DBE firm's Work when payment for those costs is made by a deduction from Design-Builder's payment(s) to the DBE firm.

Specialized equipment and operator leased from Design-Builder: The DBE may lease specialized equipment, provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by the Agency PM prior to the DBE starting Work.

The Agency PM shall consent to the lease agreement only when:

- 1) the equipment is of a specialized nature,
- 2) the equipment is readily available at the job site,
- 3) the operation of the equipment is under the full control of the DBE,

- 4) the lease arrangement is for a short term, and
- 5) the lease arrangement for the specialized equipment in question is a normal industry practice.

The DBE must hire, direct, supervise, control and carry the operator of the equipment on the DBE payroll.

**d) DBE Flagging Firms** - DBE flagging firms will be credited at 100% if the DBE furnishes 100% of the equipment (in this case, paddles and radios) to perform the committed Work. If the DBE uses employees' equipment for any part of the Work, the DBE will be credited as a broker. This credit will equal the DBE labor broker's commission for supplying personnel to the job.

### **Section 7: Termination and Substitution of DBE**

Design-Builder shall notify the Agency in writing and shall obtain written consent before terminating and/or replacing the DBE that was committed as a condition of Contract award or otherwise being used or represented to fulfill DBE Contract obligations during the Contract performance period. Written consent for terminating the performance of any DBE will be granted only where Design-Builder can demonstrate that the DBE is unable, unwilling or ineligible to perform. Such written consent to terminate any DBE shall concurrently constitute written consent to substitute or replace the terminated DBE. Termination or replacement of a DBE will not be consented to based solely on a Design-Builder's ability to negotiate a more advantageous contract with another subcontractor.

**A) Design-Builder Written Request to Terminate DBE** - All Design-Builder requests to terminate, substitute or replace a DBE shall be in writing and shall include the following information:

- 1) Date Design-Builder determined the DBE to be unwilling, unable or ineligible to perform.
- 2) Projected date Design-Builder will require substitution or replacement DBE to commence Work if consent is granted to the request.
- 3) Brief statement of facts describing and citing specific actions or inaction by the DBE giving rise to Design-Builder's assertion that the DBE is unwilling, unable or ineligible to perform.
- 4) Brief statement of the affected DBE's capacity and ability to perform the Work as determined by Design-Builder.
- 5) Brief statement of facts regarding actions taken by Design-Builder that are believed to constitute good faith efforts toward enabling the DBE to perform.
- 6) To date percentage of Work completed on Work item by the DBE.
- 7) The total dollar amount paid, per Work item, to date for Work performed by the DBE.

8) The total dollar amount, per Work item, remaining to be paid to the committed DBE for Work completed, but for which the DBE has not received payment and with which Design-Builder has no dispute.

9) The total dollar amount, per Work item, remaining to be paid to the DBE for Work completed, but for which the DBE has not received payment and over which Design-Builder and/or the DBE have dispute.

10) A written, signed statement from the DBE, provided the DBE concurs with request to terminate, indicating its unwillingness or inability to perform.

**B) Design-Builder Written Notice to DBE of Pending Request to Terminate and Substitute with Another DBE** - Design-Builder shall send a copy of the request to terminate and substitute letter to the affected committed DBE firm, in conjunction to submitting the request to the Agency PM. The affected DBE firm may submit a response letter to the Agency PM within five Calendar Days of receiving the notice from Design-Builder. The affected DBE firm may explain its position concerning performance on the committed Work. The Agency PM will consider both Design-Builder's request and DBE's response and explanation before approving Design-Builder's termination and substitution request.

If Design-Builder is unsuccessful in notifying the affected DBE firm, after trying its best to deliver a copy of its request letter, the Agency may determine that the affected (committed) DBE firm is unable or unwilling to continue the contract and a substitution will be immediately approved by the Agency PM.

**C) Proposed Substitution of Another Certified DBE** - When a DBE substitution shall occur, Design-Builder may submit another certified DBE firm to replace the original committed firm in writing. Design-Builder shall submit the name of the DBE firm, the proposed Work to be performed, and the dollar amount of the Work. Design-Builder shall give pertinent information including Work item, item description, Work item price, and total price. In addition, Design-Builder shall submit a written DBE Work Plan for the requested substitute DBE as described in Section 4.

The dollar value of Work to be performed by the substitute DBE shall be in an amount at least equal to the dollar value of the terminated DBE, minus the value of Work performed to date by the DBE, prior to the request for substitution.

Should Design-Builder be unable to commit the required dollar value to the substitute DBE, Design-Builder shall provide written evidence of good faith efforts made to obtain the substitute value requirement. The Agency will review the quality and intensity of those efforts. Efforts that are merely superficial are not good faith efforts to meet the goal. Design-Builder must document the steps taken to obtain participation which demonstrate the good faith efforts outlined below:

1) Evidence that Design-Builder attended any pre-solicitation or prebid meetings that were scheduled by the Agency to inform DBEs of contracting and subcontracting or Material supply opportunities available on the Project;

- 2)** Evidence that Design-Builder identified and selected specific economically feasible units of the Project to be performed by DBEs in order to increase the likelihood of participation by DBEs;
- 3)** Evidence that Design-Builder advertised in general circulation, trade association, minority and trade oriented, women-focus publications, concerning the subcontracting or supply opportunities;
- 4)** Evidence that Design-Builder provided written notice to a reasonable number of specific DBEs, identified from the DBE Directory of Certified Firms for the selected subcontracting or Material supply Work, in sufficient time to allow the enterprises to participate effectively;
- 5)** Evidence that Design-Builder followed up initial solicitations of interest by contacting the enterprises to determine with certainty whether the enterprises were interested. Provide the following information:
  - a)** The names, addresses, and telephone numbers of DBEs who were contacted, the dates of initial contact and whether initial solicitations of interest were followed up by contacting the DBEs to determine with certainty whether the DBEs were interested;
  - b)** A description of the information provided to the DBEs regarding the Plans and Specifications and estimated quantities for portions of the Work to be performed;
  - c)** Documentation of each DBE contacted, but rejected and the reasons for the rejection.
- 6)** Evidence that Design-Builder provided interested DBEs with adequate information about the Plans, Specifications and requirements for the selected subcontracting or Material supply Work;
- 7)** Evidence that Design-Builder negotiated in good faith with the enterprises, and did not without justifiable reason reject as unsatisfactory bids prepared by any DBE;
- 8)** Evidence that Design-Builder advised and made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the Agency or Design-Builder;
- 9)** Evidence that Design-Builder's efforts to obtain DBE participation were reasonably expected to produce a level of participation sufficient to meet the goal or requirements of the Agency;
- 10)** Evidence that Design-Builder used the services of minority community organizations, minority organizations identified by the Advocate for Minority and Women Business that provide assistance in the recruitment and placement of disadvantaged, minority, or women business enterprises; and
- 11)** Evidence that Design-Builder used the services of the Agency's Supportive Services Contractor(s).

### **Section 8: Changes in Work Committed to DBE**

The Agency will consider the impact on DBE participation in instances where the Agency changes, reduces, or deletes Work committed to the DBE at the time of Contract award. In such instances, Design-Builder shall not be required to replace the Work but is encouraged to do so.

If Design-Builder proposes any changes that involve a committed DBE, Design-Builder shall notify the DBE of the proposed change, reduction, or deletion of any Work committed at the time of Contract award prior to executing the Change Order. Design-Builder shall enable the affected DBE to participate in the Change Order request and will make every effort to maintain the committed DBE percentage that was the condition of Contract award. Documentation of this effort and a letter from the DBE agreeing to the change shall be included with the request.

### **Section 9: Design-Builder Payments to Subcontractors**

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

Design-Builder must pay each subcontractor for satisfactory performance of its contract no later than 10 Calendar Days from receipt of each payment Design-Builder receives from the Agency. Design-Builder must also return retainage payments to each subcontractor within 10 Calendar Days after the subcontractor's Work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written authorization of the Agency PM. This policy applies to both DBE and non-DBE Design-Builders.

Design-Builder shall submit a completed, signed original "Subcontractors Paid - Summary Report" form 734-2536, available from the Office of Civil Rights at (503) 986-4350, to the Agency PM certifying that payment was made to each subcontractor or supplier. Submit the form when a progress or final payment has been made to each subcontractor or supplier or when any held retainage is returned to a subcontractor or supplier. Submit the form no later than the fifth day of the month following the date that payment was made to a subcontractor or supplier. At the completion of the Project, submit a final form indicating the total amounts paid to all subcontractors and suppliers.

The participation of a DBE subcontractor will not be credited towards Design-Builder's DBE achievements, or the overall goal, until the amount being counted toward the goal, and any retainage held by Design-Builder has been paid to the DBE.

### **Section 10: Remedies**

Failure of any Design-Builder to meet the DBE Commitment Requirements and program authorities cited in Section 1(b) of this Section constitutes a breach of Contract for which the imposition of the following sanctions could occur:

- Temporarily withholding progress payments until Design-Builder complies with this Section through future performance.
- Permanently withholding payment for Work already performed in a manner that constitutes a breach of Contract.
- Suspension of Work for cause as provided under the **DB General Provisions**, Section 150 and Subsection 180.70.

Any Design-Builder or subcontractor on a public contract that violates the provisions of ORS 200.075 shall have its right to bid on or participate in any public contract suspended for up to 90 days for a first violation, up to one (1) year for a second violation and up to five (5) years for a third violation. Each violation shall remain on record for five (5) years. After five (5) years, the violation shall no longer be considered in reviewing future violations.

Failure of a Proposer, Design-Builder, or subcontractor to comply with the DBE Commitment Requirements and other authorities cited in Section 1(b) of this Section wherein there appears to be evidence of criminal conduct shall be referred to the Oregon Department of Justice and/or the FHWA Inspector General for criminal investigation, and if warranted, prosecution.

### **Section 11: Records and Reports**

Design-Builder must keep such Project Records as are necessary to determine compliance with this Section. Such records must include written reports from the DBE Liaison Officer to Design-Builder as to the performance of the committed DBE and its performance of a commercially useful function.

### **Section 12: Information Relating to the Disadvantaged Business Enterprise Requirements on this Project**

For further information or clarification concerning the DBE requirements, contact:

Office of Civil Rights  
Oregon Department of Transportation  
800 Airport Rd. SE  
Salem, Oregon 97310  
Phone No: (503) 986-4350.

### **DB171.30 Disadvantaged Business Enterprise (DBE) Supplemental DBE and MWESB Aspirational Target Contract Provisions**

**A. ODOT Policies and Actions** - It is the policy of the Agency that Design-Builders shall take reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) have the opportunity to participate on highway construction projects.

#### **B. Definitions:**

**Aspirational Target** - A target of intended utilization of DBE firms that Design-Builder has no contractual obligation to meet.

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**Aspirational DBE Participation Targets** - The aspirational DBE participation target, expressed as a percentage of total contract amount.

**Assigned Contract Aspirational Goals and Targets:** Refer to **DB Special Provisions, SP171.30.**

Design-Builder is directed to respond to the DBE goals in compliance with the Federal requirements listed in Section 171.20, and respond with the required forms.

Design-Builder is directed to the DBE Targets specifications listed in Section 171.50, available at: [http://www.oregon.gov/ODOT/HWY/SPECS/special\\_provisions.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/special_provisions.shtml)

Design-Builder is directed to the MWESB Targets specifications listed in Section 171.50, available at: [http://www.oregon.gov/ODOT/HWY/SPECS/special\\_provisions.shtml](http://www.oregon.gov/ODOT/HWY/SPECS/special_provisions.shtml)

A DBE directory and a directory listing certified MBE, WBE, and ESB firms are available from the Office of Minority, Women and Emerging Small Business (OMWESB) web site at: <http://imd10.cbs.state.or.us/ex/dir/omwesb> or by telephone at 503-947-7976.

## **DB171.40 Equal Employment Opportunity Contract Provisions**

### **DESIGN-BUILD EQUAL EMPLOYMENT OPPORTUNITY**

As used in these provisions, "Engineer" means the State Highway Engineer of the State of Oregon acting through the Agency PM. And "Good Faith Effort" means "affirmative action measures designed to implement the established objectives of an Affirmative Action Plan" 23 CFR 230.407(o).

Section 140 of Title 23, United States Code, EQUAL EMPLOYMENT OPPORTUNITY, as in effect on May 1, 1982, is incorporated by this reference and made a part of these provisions.

#### **A. WRITTEN NOTIFICATION**

Design-Builder shall provide written notification to the Engineer within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

In addition to the notification required in item Section B (7-d) in Section 171.10, Supplemental Required Contract Provisions Federal-Aid Project, On-Site Workforce Affirmative Action Requirements for Women and Minorities, Design-Builder shall provide immediate written notification to the Engineer when the union or unions with which Design-Builder has a collective bargaining agreement has not referred to Design-Builder minorities or women sent by Design-Builder, or when Design-Builder has other information that the union referral process has impeded Design-Builder's efforts to meet its equal opportunity obligations.

## **B. MONTHLY REPORTS**

Design-Builder and each Subcontractor (\$10,000 or more) shall submit to the Engineer the following reports:

Monthly, a "Monthly Employment Utilization Report" (MEUR), Form 731-0394, by the 5<sup>th</sup> of each month.

## **C. ANNUAL REPORTS**

Each July for the duration of the project, contracts in the amount of \$10,000 or more and on each subcontract, not including Material suppliers, in the amount of \$10,000 or more, Design-Builder and each subcontractor shall submit Form PR-1391. These reports shall be sent directly to ODOT Office of Civil Rights.

PURSUANT TO 23 CFR PART 230, SUBPART D, THE STATE HIGHWAY AGENCY HAS A RESPONSIBILITY TO ASSURE COMPLIANCE BY CONTRACTORS WITH THE REQUIREMENTS OF FEDERAL-AID CONSTRUCTION CONTRACTS, 23 CFR 230.405(b). THEREFORE, THE STATE HIGHWAY AGENCY HAS THE FOLLOWING OBLIGATIONS CONCERNING MONITORING AND COMPLIANCE, INCLUDING SHOW CAUSE NOTICE REQUIREMENTS.

## **D. MONITORING AND COMPLIANCE**

The Agency will maintain a vigorous monitoring process to ensure nondiscrimination and affirmative action in federal-aid and federally-assisted highway construction projects. Monitoring shall include, at a minimum, monthly meetings to review MEUR submittals with Design-Builder's EEO Officer and quarterly reviews of Design-Builder's good faith efforts as outlined in FHWA 1273.

The Agency will determine Design-Builder's compliance with equal opportunity requirements including:

- Non-discrimination in selection and retention of subcontractors, material suppliers and vendors
- Maintenance of nonsegregated facilities
- Adequate representation and utilization of minorities an workforce (by craft/trade) in Design-Builder's workforce
- Good faith efforts (GFE) on meeting on-the-job training (OJT) and training special provisions (TSP) contained in FHWA 1273
- Fair treatment in all terms and conditions of employment
- Adherence (where applicable) to preference in Indian preference provisions

If the Agency or the FHWA becomes aware of any possible violations of EO 11246 or 41 CFR Chapter 60, each has the authority and the responsibility to notify the OFCCP. Design-Builder has the responsibility to meet all the craft goals set forth in the applicable "Covered Area" of Section 171.10 - Supplemental Required Contract Provisions Federal-Aid Project, On-Site Workforce Affirmative Action Requirements for Women and Minorities,

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or can demonstrate good faith efforts to meet these goals (as specified in paragraphs B (7-a) through (7-p) of Section 171.10).

#### **E. SHOW CAUSE NOTICE**

If an investigation or review reveals that a Design-Builder or Subcontractor has not complied with these provisions, the Agency will issue a show cause notice to initiate efforts to bring Design-Builder or Subcontractor into compliance. This written notice shall state the deficiencies found during the review, and shall advise Design-Builder or Subcontractor to show cause within 30 Calendar Days why the Agency will not impose administrative sanctions. Within 30 Calendar Days Design-Builder or Subcontractor must show good cause or must provide an acceptable agreement for corrective action.

If Design-Builder or Subcontractor does not provide this information by the end of the 30 Calendar Days, the Engineer shall withhold all project progress payments in process as of the date the show cause notice was issued and will continue to withhold project progress payments until Design-Builder or Subcontractor responds in an acceptable manner. If Design-Builder or Subcontractor fails to meet the conditions of the corrective action agreement, no further show cause notice is required; the Agency will immediately initiate enforcement proceedings.

If a Contractor's prequalification certification is revoked and/or disqualified because the Contractor has been found on at least two (2) occasions to be in breach of the EEO provisions of Federal-Aid highway construction contracts, the Contractor must be determined to be in compliance with contract EEO provisions prior to the Contractor's prequalification certificate being reinstated.

#### **DB171.50 Supplemental Diversity Aspirational Target Contract Provisions**

##### **EQUAL EMPLOYMENT OPPORTUNITY SUPPLEMENTAL ASPIRATIONAL CONTRACT PROVISIONS**

As used in these provisions, "Engineer" means the State Highway Engineer of the State of Oregon acting either directly or through his authorized representatives.

Section 140 of Title 23, United States Code, EQUAL EMPLOYMENT OPPORTUNITY, as in effect on May 1, 1982, is incorporated by this reference and made a part of these provisions.

**A. WRITTEN NOTIFICATION** - The Contractor shall provide written notification to the Engineer within 10 working days of award of any construction subcontract in excess of \$10,000 at any tier for construction work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.

In addition to the notification required in item B(7-d) in the "Supplemental Required Contract Provisions Federal-Aid Project, On-Site Workforce Affirmative Action Requirements for Women and Minorities," the Contractor shall provide immediate written notification to the

Engineer when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor minorities or women sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its equal opportunity obligations.

**B. ASPIRATIONAL DIVERSITY TARGETS** - ODOT Aspirational Diversity Targets: While Aspirational Diversity Targets are not requirements for this Contract and are not binding on the contractor, ODOT desires to encourage the highest possible participation of minorities and women in the work force. Therefore, ODOT has established aspirational targets on OTIA III contracts statewide and all ODOT construction contracts in Multnomah, Clackamas, and Washington counties as follows:

**C. COVERED AREAS**

Area	Aspirational
ODOT Region 1	Women 14% - Minority 20%
ODOT Region 2, 3, 4, & 5	Women 14% - Minority 14%

Neither Contractor nor its subcontractors are under any obligation to meet any aspirational targets.

**D. MONTHLY REPORTS** - The Contractor and each Subcontractor (\$10,000 or more) shall submit to the Engineer the following reports:

Monthly, a "Monthly Employment and Apprenticeship Utilization Report" (MEaur), Form 731-0505, by the 5<sup>th</sup> of each month.

**E. ANNUAL REPORTS** - Each July for the duration of the project, contracts in the amount of \$10,000 or more and on each subcontract, not including material suppliers, in the amount of \$10,000 or more, the contractor and each subcontractor shall submit Form PR-1391. These reports shall be sent directly to ODOT Office of Civil Rights.

**DB171.60 Federal on-the-Job / Apprenticeship Training Contract Provisions**

**FEDERAL ON-THE-JOB / APPRENTICESHIP TRAINING**

This Section for On-the-Job Training/Apprenticeship supersedes subparagraph B(7-e) of the supplemental required Contract provisions entitled "On-Site Workforce Affirmative Action Requirements for Women and Minorities," and is in implementation of 23 U.S.C. 140(a). All other provisions apply.

**Section 1: On-the-Job Training Policy Statement**

Design-Builder shall take all necessary and reasonable steps to ensure that, without discrimination, minorities and women have the opportunity to compete for and participate as trainees or apprentices and to develop as journey-level workers in the type of trade or job classification employed. Design-Builders may use either a Bureau of Labor & Industries (BOLI) apprenticeship program, or adopt a standard On-the-Job Training (OJT) program approved by the Agency and Federal Highway Administration (FHWA).

## **Section 2: Affirmative Action Requirement**

Training and upgrading minorities and women in Highway construction trades is the primary objective of these provisions. This shall be accomplished by making systematic and direct recruitment efforts through public and private sources that are likely to yield minorities and women available for training on the Work under this Contract.

When filling training positions, Design-Builders and Subcontractors are encouraged to hire women and minorities who have previously been approved to participate in the OJT Program and have not yet completed their training, or who are currently registered in a BOLI-approved apprenticeship program.

Whenever minorities or women are not placed in training positions, Design-Builder shall provide documented evidence of affirmative action recruitment efforts. The Agency will review Design-Builder's recruitment efforts to determine whether Design-Builder has satisfied the Good Faith Effort (GFE) criteria specified in the FHWA 1273.

Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom Design-Builder has a collective bargaining agreement, nor any agreement Design-Builder has with a joint apprenticeship and training committee, shall excuse Design-Builder's obligations under these provisions.

This training commitment is not intended, and shall not be used, to discriminate against any applicant for training, whether members of a minority group or not.

## **Section 3: Assigned On-the-Job/Apprenticeship Training**

The OJT/apprenticeship goal established by the Agency, expressed as a percentage of the total hours worked in each of the qualified crafts listed in Section 4 employed on this Project, is set forth in **DB Special Provisions**, SP171.60.

## **Section 4: Training Requirements**

The intent of these provisions is to provide real and meaningful training in the construction crafts. Off-site training is permissible only when it is an integral part of an approved training program and does not comprise a significant part of the overall training.

Apprenticeships and OJT are permissible in the following crafts: Equipment operator, carpenter, cement mason, ironworker, truck driver, electrician and laborer. Apprenticeships and OJT are also permissible in lower level management positions such as office engineers and estimators where the training is oriented toward construction applications. Apprenticeships and OJT in classifications such as flagger, bookkeeper, clerk/typist or secretary are not permissible.

Design-Builders not registered as a training agent with a Joint Apprenticeship and Training Committee, may choose to adopt an existing Agency training program to satisfy these requirements. Adoption of an existing training program will ensure the trainee who has completed 2000 hours of training is eligible for entry into the apprenticeship program.

Design-Builder shall assist the trainee in applying for entry into an appropriate apprenticeship program.

Design-Builder shall estimate the total number of hours that each qualified craft is expected to work on the entire Project to complete it. Using the percent goal, establish the number of apprentice/trainee hours for each qualified craft to the nearest hour. Design-Builder shall complete and submit the Federal OJT/Apprenticeship Program Form (ODOT Form 731-0502) to the Agency PM at the pre-construction conference.

Prior to starting Work, Subcontractors with contracts of \$300,000 and over shall complete and submit to Design-Builder the Federal OJT/Apprenticeship Program Form (ODOT Form 731-0502) showing the estimated number of hours for each qualified craft for its workforce for this Project. Design-Builder shall review, sign, and submit to the Agency PM. Design-Builder may request an exception to the OJT/Apprenticeship goal at the time of pre-construction conference. The ODOT Apprenticeship Exception Process is located at the following web site:

<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/forms.shtml>

Design-Builders shall maintain sufficient Equipment and fully trained journey level workers at all times to train apprentices or OJT trainees in the Work processes. A valid certification by an appropriate apprenticeship committee that Design-Builder is an approved training agent shall be prima facie proof of compliance with this requirement. The ratio of apprentices to journey level workers shall be in accordance with the accepted standards for the particular craft or occupation. For OJT programs adopted by Design-Builder, the ratio of apprentices to journey level workers shall be in accordance with the adopted training program.

Design-Builders and Subcontractors on contracts of three hundred thousand dollars (\$300,000) and over must use apprenticeship programs approved and registered with the Oregon Bureau of Labor and Industries or adopt a standard OJT program approved by the Agency and FHWA to fulfill training requirements under these provisions. Design-Builder shall retain the responsibility for meeting the training requirements of these provisions and shall ensure that these provisions apply to each subcontract of \$300,000 and over.

Design-Builders shall conduct training according to the appropriate apprenticeship program or the OJT training program submitted by Design-Builder and approved by the ODOT Office of Civil Rights and the FHWA. OJT programs for which Design-Builder has obtained approval of BOLI's Oregon State Apprenticeship and Training Council are acceptable under these provisions.

For OJT trainees, submit an In-House Trainee Approval Request (Form 731-0503) to the Agency PM for review and approval by the ODOT Office of Civil Rights prior to the OJT trainee beginning work. Attach a copy of the OJT Training Program, signed by the trainee and Design-Builder, to the In-House Trainee Approval Request. Design-Builder shall provide certification to the trainee upon completion of the training program and submit a copy to the ODOT Office of Civil Rights.

The Agency will track training activities provided by Design-Builder to trainees working under an approved OJT program. By the fifth (5<sup>th</sup>) of each month, Design-Builder shall

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provide the Agency with an ODOT Trainee Monthly Progress Record (Form 731-0503) for each trainee working under an approved training program.

Trainees shall be paid the journey level rate specified in the contract for the training period. Apprentices enrolled in a BOLI-registered program shall be paid the appropriate rates approved by the Department of Labor in connection with the apprenticeship program.

Whenever apprentices/trainees are terminated, transferred, or otherwise removed from this project, Design-Builder shall provide documented evidence to the Agency PM that shows cause for the termination or voluntary separation.

### **Section 5: Reports**

Each Design-Builder and subcontractor with an OJT or apprenticeship program shall complete and submit the following reports to the appropriate Agency PM:

- At the pre-construction conference, the Federal OJT/Apprenticeship Program (Form 731-0502) signed by Design-Builder stating the total craft hours and total training hours to be provided on the entire contract.
- Prior to a trainee beginning work, a completed In-House Trainee Approval Request (Form 731-0503) signed by Design-Builder with an attached copy of the OJT Training Program signed by the trainee and Design-Builder.
- By the fifth (5<sup>th</sup>) of each month, an ODOT Trainee Monthly Progress Record (Form 731-0504) for each person participating in the OJT Program, signed by the trainee.
- Design-Builder shall submit employee Gender and Ethnicity attached to certified payrolls or submit a Monthly Employment and Apprenticeship Utilization Report, MEAUR (Form 731-0505) by the fifth (5<sup>th</sup>) of each month. This report reflects work hours by employee, craft, race and gender. This report is required of all Design-Builders and subcontractors on contracts valued \$10,000 and above, regardless of their participation in the apprenticeship or OJT Program.

These forms are published on the Office of Civil Rights website at:  
<http://www.oregon.gov/ODOT/CS/CIVILRIGHTS/forms.shtml>

Forms may also be obtained from the Office of Civil Rights by calling (503) 986-4350.

Submit all project records electronically through the electronic document management system (EDMS) provided by Agency, if directed by the Agency PM. Documents that do not require signatures may be uploaded directly to EDMS. Scan documents that require signatures at a minimum of 300dpi with black text on a white background before submitting to EDMS.

### **Section 6: Monitoring and Compliance**

The Agency will monitor Design-Builder's actions for compliance. Monitored actions shall include:

- Employment of trainees/apprentices as required

- Documentation of Good Faith Efforts when OJT positions are not filled with affirmative action candidates
- Total hours, total apprenticeship hours, and total trainee hours
- Maintenance of the records and submission of the reports

Design-Builder OJT/Apprenticeship compliance and monitoring shall be determined through submittal of weekly-certified payrolls in accordance with 29 CFR 3.3.

If Design-Builder is found in non-compliance with these provisions, the Agency may withhold progress payments until compliance is achieved, or impose other lawful remedies, including holding Design-Builder in breach or terminating the Contract.

If subcontractors participate in the OJT/Apprenticeship Program, Design-Builder shall be responsible for the subcontractor's compliance according to **DB General Provisions**, Subsection 180.10.