

Misc. Contracts and Agreements
No. 32421

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

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

RECITALS

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

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

TERMS OF AGREEMENT

1. Under such authority, ODOT, OBDD and Agencies agree to cooperate and coordinate the administration of DBE certification services as required under the Code of Federal Regulations 49 Part 26.
2. The term of this Agreement shall begin upon the signatures of ODOT, OBDD and the first Party to execute this Agreement and shall terminate five (5) years from that date.

MUTUAL PARTIES OBLIGATIONS

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

AGENCIES OBLIGATIONS

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

ODOT OBLIGATIONS

1. As Lead Agency, ODOT shall do the following:
 - a. Notify and advise COBID and Agencies of any change in federal law, USDOT regulation, and or changes to ODOT's DBE Program Plan document.
 - b. Notify COBID and Agencies of training programs relevant to DBE Certification function and procedures.
 - c. Review a COBID determination in a third party complaint that challenges a DBE firm's certification status and or eligibility.
 - d. Provide ongoing DBE Certification expertise, oversight, as well as conduct process reviews when required, including an annual audit of DBE Certification files.
 - e. Assist COBID in conducting appeals of firms challenging DBE certification decisions.
2. ODOT shall notify COBID of any DBE certification issues affecting DBE eligibility for participation on federally-assisted projects.
3. ODOT shall promptly notify COBID of complaints received relating to DBE certification or program administration.
4. ODOT's Project Manager for this Project is Daniel Jackson, Small Business Programs Manager, ODOT – Office of Civil Rights, MS-23, 3930 Fairview Industrial Dr SE, Salem, OR 97302, 503-986-3016, daniel.jackson@odot.state.or.us, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

OBDD OBLIGATIONS

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

13. OBDD shall coordinate participation in DBE Certification workshops with Agencies.

14. OBDD shall provide technical assistance to firms seeking DBE Certification.

15. DISPUTE RESOLUTION BETWEEN ODOT and OBDD

- a. ODOT and OBDD agree that any tort liability claim, suit, or loss resulting from or arising out of ODOT's or OBDD's performance of and activities under this Agreement shall be allocated, as between the state agencies, in accordance with law by the Oregon Department of Administrative Services' (DAS) Risk Management, for purposes of their respective loss experiences and subsequent allocation of self-insurance assessments under ORS 278.435. ODOT and OBDD agree to notify the DAS Risk Management Division and the other state agency in the event it receives notice or knowledge of any claims arising out of the performance of, or the state agencies' activities under this Agreement.
- b. ODOT and OBDD understand that each is insured with respect to tort liability by the State of Oregon Insurance Fund, a statutory system of self-insurance established by ORS 278, and subject to the Oregon Tort Claims Act (ORS 30.260-30.300). ODOT and OBDD agree to accept that coverage as adequate insurance of the other state agency with respect to personal injury and property damage.

16. OBDD's Project Manager for this Project is Carrie L. Hulse, Program Manager, COBID, 775 Summer Street SE, Suite 200, Salem, OR. 97301, 971-301-1271, carrie.l.hulse@oregon.gov, or assigned designee upon individual's absence. ODOT shall notify the other Parties in writing of any contact information changes during the term of this Agreement.

GENERAL PROVISIONS

1. Any Party may terminate its participation by providing at least thirty (30) days written notice to the other Parties.
2. This Agreement may be terminated by mutual consent of all current Parties upon thirty (30) days' notice, in writing and delivered by certified mail or in person.
3. ODOT or OBDD may terminate this Agreement effective upon delivery of written notice to Agencies, or at such later date as may be established by ODOT or OBDD, under any of the following conditions:
 - a. If Agencies fail to perform any of the other provisions of this Agreement, in accordance with its terms, and after receipt of written notice from ODOT or OBDD fails to correct such failures within ten (10) days or such longer period as ODOT or OBDD may authorize.
 - b. If federal or state laws, regulations or guidelines are modified or interpreted in such a way that either the work under this Agreement is prohibited or ODOT

or OBDD are prohibited from paying for such work from the planned funding source.

4. Any termination of this Agreement shall not prejudice any rights or obligations accrued to the Parties prior to termination.
5. If any third party makes any claim or brings any action, suit or proceeding alleging a tort as now or hereafter defined in ORS 30.260 ("Third Party Claim") against ODOT, OBDD or any other Party or Parties with respect to which the other Party may have liability, the notified Party must promptly notify the other Party in writing of the Third Party Claim and deliver to the other Party a copy of the claim, process, and all legal pleadings with respect to the Third Party Claim. Each Party is entitled to participate in the defense of a Third Party Claim, and to defend a Third Party Claim with counsel of its own choosing. Receipt by a Party of the notice, copies required in this paragraph and meaningful opportunity for the Party to participate in the investigation, defense and settlement of the Third Party Claim with counsel of its own choosing are conditions precedent to that Party's liability with respect to the Third Party Claim.
6. With respect to a Third Party Claim for which ODOT or OBDD is jointly liable with any other Party or Parties (or would be if joined in the Third Party Claim), ODOT or OBDD shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by the Party or Parties in such proportion as is appropriate to reflect the relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of ODOT or OBDD on the one hand and of the Party or Parties on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. ODOT's or OBDD's contribution amount in any instance is capped to the same extent it would have been capped under Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if ODOT or OBDD had sole liability in the proceeding.
7. With respect to a Third Party Claim for which any other Party or Parties is jointly liable with ODOT or OBDD (or would be if joined in the Third Party Claim), the Party or Parties shall contribute to the amount of expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred and paid or payable by ODOT or OBDD in such proportion as is appropriate to reflect the relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand in connection with the events which resulted in such expenses, judgments, fines or settlement amounts, as well as any other relevant equitable considerations. The relative fault of the Party or Parties on the one hand and of ODOT or OBDD on the other hand shall be determined by reference to, among other things, the Parties' relative intent, knowledge, access to information and opportunity to correct or prevent the circumstances resulting in such expenses, judgments, fines or settlement amounts. The Party or Parties contribution amount in any instance is capped to the same extent it would have been capped under

Oregon law, including the Oregon Tort Claims Act, ORS 30.260 to 30.300, if it had sole liability in the proceeding.

8. The Parties shall attempt in good faith to resolve any dispute arising out of this Agreement. In addition, the Parties may agree to utilize a jointly selected mediator or arbitrator (for non-binding arbitration) to resolve the dispute short of litigation.
9. The Parties acknowledge and agree that the Oregon Secretary of State's Office, the federal government, and their duly authorized representatives shall have access to the books, documents, papers, and records of the Parties which are directly pertinent to this Agreement for the purpose of making audit, examination, excerpts, and transcripts for a period of six (6) years after final payment. Copies of applicable records will be made available upon request. Payment for costs of copies is reimbursable by the requesting Party.
10. The Parties shall comply with all federal, state, and local laws, regulations, executive orders and ordinances applicable to the work under this Agreement, including, without limitation, the provisions of ORS 279B.220, 279B.225, 279B.230, 279B.235 and 279B.270 incorporated herein by reference and made a part hereof; Without limiting the generality of the foregoing, the Parties expressly agree to comply with (i) Title VI of Civil Rights Act of 1964; (ii) Title V and Section 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142; (iv) all regulations and administrative rules established pursuant to the foregoing laws; and (v) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations.
11. All employers, including the Parties, that employ subject workers who work under this Agreement in the State of Oregon shall comply with ORS 656.017 and provide the required Workers' Compensation coverage unless such employers are exempt under ORS 656.126. Employers Liability insurance with coverage limits of not less than \$500,000 must be included. The Parties shall ensure that each of its subcontractors complies with these requirements.
12. This Agreement may be executed in several counterparts (facsimile or otherwise) all of which when taken together shall constitute one agreement binding on all Parties, notwithstanding that all Parties are not signatories to the same counterpart. Each copy of this Agreement so executed shall constitute an original.
13. This Agreement constitutes the entire agreement between the Parties on the subject matter hereof. There are no understandings, agreements, or representations, oral or written, not specified herein regarding this Agreement. No waiver, consent, modification or change of terms of this Agreement shall bind any Party unless in writing and signed by all Parties and all necessary approvals have been obtained. Such waiver, consent, modification or change, if made, shall be effective only in the specific instance and for the specific purpose given. The failure of ODOT or OBDD to enforce any provision of this Agreement shall not constitute a waiver by ODOT or OBDD of that or any other provision.

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

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

By Chris Cummings
Chris Cummings, Assistant Director

Date October 29, 2017

OBDD/OMWESB Contact:

Carrie L. Hulse, Program Manager
OBDD – COBID Section
775 Summer Street SE, Suite 200,
Salem, OR. 97301
971-301-1271
carrie.l.hulse@oregon.gov

STATE OF OREGON, by and through
its Department of Transportation

By Angela Crain
Angela Crain, Office of Civil Rights
Manager

Date 10/30/17

ODOT Contact:

Daniel Jackson, Small Business Programs
Manager
ODOT Office of Civil Rights, MS-23
3930 Fairview Industrial Dr SE
Salem, OR 97302
503-986-3016
daniel.jackson@odot.state.or.us

Unified Certification Function Agreement Signature Page

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

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

_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Signature	Date	Title
_____	_____	_____
Agency Counsel	Date	Counsel's title

Name and title of Agency Contact Representative: _____
Address: _____ _____
Phone: _____ Fax: _____
E-mail: _____

Send the **Unified Certification Function Agreement Signature Page** (this page) to: Nameun House, Procurement and Contracts Specialist via e-mail at: Nameun.House@odot.state.or.us and cc' Daniel Jackson, Small Business Programs Manager at: daniel.jackson@odot.state.or.us.