



Disadvantaged Business Enterprise Program
Under 49 CFR Part 26

Federal Fiscal Years 2023-2025

Updated March 2025

TABLE OF CONTENTS

I.	SUBPART A – GENERAL REQUIREMENTS	3
	A. Section 26.1 Objectives.....	3
	B. Section 26.3 Applicability	3
	C. Section 26.5 Definition of Terms	3
	D. Section 26.7 Nondiscrimination Requirements.....	4
	E. Section 26.11 Recordkeeping Requirements	5
	F. Section 26.13 Federal Financial Assistance Agreement	5
II.	SUBPART B - ADMINISTRATIVE REQUIREMENTS.....	6
	A. Section 26.21 DBE Program Requirement; Updates.....	6
	B. Section 26.23 Policy Statement.....	6
	C. Section 26.25 DBE Liaison Officer	6
	D. Section 26.27 DBE Financial Institutions.....	7
	E. Section 26.29 Prompt Payment Mechanisms.....	7
	F. Section 26.31 DBE Directory.....	8
	G. Section 26.33 Overconcentration of DBEs	8
	H. Section 26.35 Business Development Programs and Mentor-Protégé Programs	9
	I. Section 26.37 Monitoring and Enforcement Mechanisms	9
	J. Section 26.39 Fostering Small Business Participation	10
III.	SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING.....	10
	A. Section 26.43 Set-asides or Quotas.....	10
	B. Section 26.45 Overall Goals.....	11
	C. Section 26.47 Failure to Meet Overall Goals	11
	D. Section 26.49 Transit Vehicle Manufacturers	11
	E. Section 26.51 Means Used to Meet Overall Goal.....	12
	F. Section 26.53 Good Faith Efforts Procedures	12
	G. Section 26.55 Counting DBE Participation	15
IV.	SUBPART D – CERTIFICATION STANDARDS	16
	A. Section 26.61 – 26.73 Certification Process.....	16
V.	SUBPART E – CERTIFICATION PROCEDURES	16
	A. Section 26.81 Unified Certification Program.....	16
VI.	SUBPART F – COMPLIANCE AND ENFORCEMENT	16
	A. Section 26.109 Information, Confidentiality, Cooperation, Intimidation, Retaliation	16
I.	ATTACHMENTS	
	A. Bidders List Collection Process	18
	B. DBE Regular Dealer/ Distributor Affirmation form	19
	C. TriMet's DBE Program Policy Statement.....	20
	D. DBE Monitoring and Enforcement Mechanisms	22
	E. Small Business Element of the DBE Program.....	23
	F. Overall DBE Three-Year Goal Methodology	26

SUBPART A – GENERAL REQUIREMENTS

Section 26.1 Objectives

TriMet has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT) at 49 Code of Federal Regulations (CFR) Part 26. The objectives are to:

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

Section 26.3 Applicability

TriMet is the recipient of Federal transit funds.

Section 26.5 Definition of Terms

Terms in this Program are used as defined in 49 CFR § 26.5. The terms provided below are an excerpt of a few of the terms and meanings applicable to this policy, for a comprehensive list of terms see 49 CFR § 26.5.

- **Disadvantaged business enterprise or DBE** means a for-profit small business concern:
 - (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
 - (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own the business.
- **Small business concern** means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- **Socially and economically disadvantaged** individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member(s) of group(s) and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Section 26.7 Nondiscrimination Requirements

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

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

Section 26.11 Recordkeeping Requirements

Section 26.11(a,b) -- Reporting to the Department of Transportation (DOT):

Semi-annually on June 1 and December 1, TriMet will transmit the “Uniform Report of DBE Awards or Commitments and Payments” at the intervals required by, and in the format acceptable to the FTA.

TriMet will transmit the completed form electronically using the FACES electronic reporting system accessible at this link: <https://faces.fta.dot.gov>

TriMet will continue to provide data about TriMet's DBE Program to the Federal Transportation Administration (FTA) as directed by DOT operating administrations.

Section 26.11(c) -- Bidders List:

TriMet will create and maintain a bidders list to provide the most accurate data possible about DBE and non-DBE contractors and subcontractors who seek to work on TriMet's DOT- assisted contracts, and to aid in setting overall goals. TriMet will obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts:

- firm's name;
- address including zip code;
- status as a DBE or non-DBE;
- NAICS code applicable to each scope of work the firm sought to perform in its bid;
- age of firm; and
- annual gross receipts by bracket.

TriMet will collect this data from all bidders for our federally assisted contracts by requiring the information in [paragraph \(c\)\(2\)](#) of this section to be submitted with their bids or initial responses to negotiated procurements. TriMet will collect this data and submit it to the department's designated system. In the case of a "design-build" contracting situation where subcontracts will be solicited throughout the contract period as defined in a DBE Performance Plan pursuant to [§ 26.53\(e\)](#), the data must be entered no later than December 1 following the fiscal year in which the design-build contractor awards the relevant subcontract(s).

See attachment A for Bidders list document.

Section 26.13 Federal Financial Assistance Agreement

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

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

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

Section 26.13(b) - Contractor Assurance:

Each contract TriMet signs with a contractor will include the following assurance, and TriMet will ensure that it is included in each subcontract the prime contractor signs with a subcontractor:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor, sub recipient or

subcontractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor, sub recipient or subcontractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as TriMet deems appropriate, which may include, but is not limited to the following:

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

Section 26.13(a) – Recipient Exemptions/ Waiver requests:

(a) TriMet can apply for an exemption from any provision of this part. To apply, recipient must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that makes recipient compliance with a specific provision of this part impractical. Recipient must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Requirement; Updates

TriMet is a FTA Tier 1 recipient receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year and let DOT-assisted contracts. TriMet will submit significant changes in TriMet's DBE Program for approval. TriMet acknowledges that it is not eligible to receive DOT financial assistance unless DOT has approved its DBE Program and TriMet is in compliance with it and with 49 CFR Part 26. TriMet will continue to carry out its DBE Program until all funds from DOT financial assistance have been expended.

Section 26.23 Policy Statement

TriMet's DBE Program Policy Statement is set forth on Attachment C

Section 26.25 DBE Liaison Officer

TriMet has designated the following individual as our DBE Liaison Officer (DBELO):

John Gardner
Office of Public Access and Innovation
101 SW Main St #700
Portland, Oregon 97204
Phone: 503-238-7433
E-mail: DBE@trimet.org

In that capacity, DBELO is responsible for implementing all aspects of the DBE Program and ensuring that TriMet complies with all provisions of 49 CFR Part 26. DBELO has direct,

independent access to TriMet's General Manager concerning DBE Program matters. DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with the DBE Program Manager and program team. TriMet's Procurement & Contracts, Finance, Engineering & Construction, and Legal personnel will support the DBELO in the administration of TriMet's DBE Program. DBELO will have adequate staff to administer program as outlined in 49 CFR Part 26. Other Support Personnel will include staff from the procurement and contracts department.

Section 26.27 DBE Financial Institutions

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

TriMet has made the following efforts to identify and use such institutions: TriMet has contacted the office of State of Oregon's Certification Office for Business Inclusion and Diversity (COBID), Oregon Association of Minority Enterprises (OAME), the Associated General Contractors of America (AGC) and other alliances in the community.

- A. Oregon Association of Minority Entrepreneurs Credit Corporation (OAMECC) 731 N. Hayden Meadows Drive
Portland, OR 97217
503-249-7744

OAMECC is a § 501(c)(3) corporation (operated for charitable purposes and exempt from Federal income taxes) wholly owned by Oregon Association of Minority Entrepreneurs, working in partnership with public and private lending institutions in the State of Oregon, major corporations, and grant institutions, to make capital accessible to socially and economically disadvantaged businesses in Oregon. OAMECC manages its own loan fund.

- B. Micro Enterprise Services of Oregon (MESO) 4008 NE Martin Luther King Jr Blvd
Portland, OR 97212
503-841-3351

MESO's financing program, CapitalLink, provides financing for owners of small businesses who are unable to access capital through traditional banking institutions. Financing is provided to expand, stabilize, and/or create additional business opportunities.

Section 26.29 Prompt Payment Mechanisms

TriMet has established, as part of its DBE Program, the following clause for use in DOT-assisted prime contracts to (a) require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from receipt of each payment TriMet makes to the prime contractor; and (b) ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 10 days after the subcontractor's work is satisfactorily completed:

The Contractor agrees to pay each subcontractor under this Contract for satisfactory performance of its subcontract no later than ten (10) days from the receipt of each payment the Contractor receives from TriMet, and strictly in accordance with ORS 279C.580. The Contractor agrees further to return retainage payments to each subcontractor within ten (10) 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 approval of TriMet. This clause applies to both DBE and non-DBE subcontractors.

Clause language may be slightly altered for non-construction related contracts.

"Good cause" must be documented by the prime contractor and submitted to TriMet for review. Contractors must use the specified forms for payment request and for DBE compliance. All such forms are provided in initial bid packages on federally-funded projects.

Working with the Prime Contractor, the DBELO or authorized designee will schedule monthly and/or quarterly compliance meetings to review all prompt payment contract requirements.

The contractor 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. Records must be maintained in TriMet's compliance reporting system.

The contractor must also submit monthly audits to the compliance reporting system for progress payments made to all tiers of subcontractors (DBE and non DBE) and must require all tiers to report payments to their sub tiers in the system and confirm payments made to them. Monthly sub tier contract reports must be sent to TriMet's DBELO or authorized designee to update all tier subcontract values.

TriMet will collect the return of retainage spreadsheet from Prime contractor during compliance reviews.

The participation of a DBE Subcontractor will not be credited towards the prime contractor's DBE achievements or the overall aspirational goal until the amount being counted toward the aspirational goal and any retainage held by the prime contractor has been paid to the DBE.

TriMet's DBE Program provides for the enforcement of the requirements of this section. Each DOT-assisted TriMet contract includes a clause allowing TriMet to take action against a contractor for its failure to fulfill the contract obligations, including termination of the contract in whole or part.

Section 26.31 DBE Directory

TriMet uses the State of Oregon's DBE directory, maintained by the Certification Office for Business Inclusion and Diversity (COBID). The directory, as required under §26.81(g), lists all firms eligible to participate as DBEs in TriMet's DBE Program. The directory lists the firm's name address, phone number, and the types of work the firm has been certified to perform as a DBE by using the most specific NAICS code available to describe each type of work. The State of Oregon updates the directory daily. A website link to the directory is set forth below.

State of Oregon
Certification Office for Business Inclusion and Diversity (COBID) 775 Summer Street NE,
Suite 200
Salem, Oregon 97301
503-986-0123
Website: www.oregon4biz.com/How-We-Can-Help/COBID/

Section 26.33 Overconcentration of DBEs

TriMet has not determined that over-concentration exists in the types of work that DBEs perform

on TriMet's DOT-assisted contracts.

Section 26.35 Business Development Programs and Mentor-Protégé Programs

TriMet has not established a DBE business development program or mentor-protégé program as contemplated under Section 26.35. TriMet will however, contingent upon availability of Federal Transit Administration funds, provide supportive services through consultant contractors to DBEs who are interested in participating in construction projects. The purpose of supportive services is to increase the number of socially and economically disadvantaged firms participating in construction projects and to contribute to the growth and eventual self-sufficiency of the DBE firms.

Each year the DBELO and the Director of Procurement will facilitate at least two small business events, which may be coordinated with other U.S.DOT recipients and open to all small businesses. Small businesses will be invited to meet with TriMet's Office of Public Access and Innovation, Procurement and Contracts, Engineering & Construction, and other TriMet departments, to learn about TriMet's contracting opportunities and how to do business with TriMet. TriMet staff will have an opportunity to become acquainted with qualified business owners who are interested in supplying services and products to TriMet. In addition, the DBELO will provide information on DBE certification and DBE program requirements and procedures. These events will include procedures explaining how to do business with TriMet and explore best business practices, which may be used to market small businesses to TriMet.

Section 26.37 Monitoring and Enforcement Mechanisms

TriMet has implemented the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. TriMet will bring to the attention of the DOT any false, fraudulent, or deceitful conduct in connection with the Program so that DOT can take the steps provided in Section 26.107 such as: referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, or action under suspension and debarment or Program Fraud and Civil Penalties rules.
2. TriMet will implement similar action under our own legal authorities, including when making responsibility determinations in future contract awards. Attachment D lists regulatory remedies available to TriMet in the event of a Program participant's non-compliance with 49 CFR Part 26.
3. TriMet will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism will include a written certification that we have reviewed contracting records and monitored work sites for this purpose. This will be accomplished by site visits and CUF reviews, contract monitoring and payment reporting monitoring and close-out reviews.
4. TriMet will implement a mechanism that will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) including a means of comparing these attainments to commitments. In reports of DBE participation to the DOT, TriMet will show both commitments and attainment.
5. For each DBE commitment, TriMet will use a running tally that provides for a frequent comparison of payments made to each listed DBE relative to the progress of work, including payments for such work to the prime contractor to determine whether the contractor is on track with meeting its DBE commitment and whether any projected shortfall

exists that requires the prime contractor's good faith efforts to address to meet the contract goal pursuant to [§ 26.53\(g\)](#).

Section 26.39 Fostering Small Business Participation

TriMet's DBE Program includes a small business "element" which is intended to structure contracting requirements to facilitate competition by small business concerns taking all reasonable steps to eliminate obstacles to their participation. Such obstacles include unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

The small business element of TriMet's DBE Program is set forth below in Attachment E. TriMet will actively implement the small business element of the DBE Program to foster small business participation.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

TriMet does not use quotas or set-aside contracts for DBEs on DOT-assisted contracts subject to 49 CFR Part 26.

Section 26.45 Overall Goals

TriMet is an FTA recipient and will establish an overall goal for DBE participation in our DOT-assisted contracts covering a three-year federal fiscal year period. DBE goals will be established for those fiscal years we anticipate awarding (excluding transit vehicle purchases) DOT-assisted prime contracts exceeding \$250,000 during the three-year period. The overall goal will be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts. The DBE goals will be established in accordance with the two-step process specified in Section 26.45(c) and 26.45(d). If TriMet does not anticipate awarding more than \$250,000 in DOT-assisted prime contracts during any of the years within the three-year reporting period, we will not develop an overall goal; however this DBE Program will remain in effect and TriMet will seek to fulfill the objectives outlined in Section 26.1.

The first step is to determine the relative availability of DBEs in the market area, referred to in Section 26.45(c) as the "base figure." The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation TriMet would expect in the absence of discrimination based on past participation, a disparity study and/or information about barriers to entry to past competitiveness of DBEs on projects.

In establishing the overall goal, TriMet will consult with community organizations that focus on small business development for DBE's, general contractor groups, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TriMet's efforts to establish a "level playing field" for DBE participation.

We will publish a notice of the proposed overall goal and methodology, for 30 days following the date of the notice. TriMet and DOT/FTA will accept comments on the proposed goal for 30 days from the date of the notice. Notice will be issued in general circulation media and in available minority-focused media and trade publications and websites. Normally, we will issue this notice by June 1 of the reporting period of the goal. The notice will include addresses to which comments may be sent.

TriMet advertised this public notice in media published by the following organizations:

- The Skanner (minority news publication)
- The Asian Reporter (minority news publication)
- The Daily Journal of Commerce (trade publication)
- The Portland Business Tribune (trade publication)
- The Oregonian (general circulation publication)

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

We will begin using our overall goal on October 1 of the reporting period unless we have received other instructions from the DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

The goal calculations and a description of the methodology used to calculate the overall goal are found in Attachment F. The goal calculations and a description of the methodology will be posted on TriMet's Disadvantaged Business Enterprise Program webpage before the public meeting date.

Section 26.47 Failure to Meet Overall Goals

TriMet will administer its DBE Program in good faith, and will maintain an approved DBE Program and overall DBE goal, if applicable.

If the awards and commitments shown on TriMet's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will do the following to reflect the implementation of TriMet's DBE Program in good faith:

1. Analyze in detail the reasons for the difference between the overall goal and our awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems we have identified in our analysis and to enable us to fully meet our goal for the new fiscal year; and
3. Retain records of analysis and corrective actions for three years and make such records available to the FTA upon request.

Section 26.49 Transit Vehicle Manufacturers

TriMet will require each Transit Vehicle Manufacturer (TVM), as a condition of being authorized to bid or propose on DOT-assisted transit vehicle procurements, to certify that it has complied with the requirements of transit vehicle manufacturers of this section. FTA assistance used in transit vehicle procurements is not included in the base amount from which TriMet's overall goal is calculated. Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation are eligible to bid. TriMet will submit to the FTA within 30 days of making an award the name of the successful bidder and the total dollar value of the contract in the manner prescribed in the grant agreement.

A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance resulting in removal from FTA's certified TVMs list; rendering the manufacturer ineligible to bid. FTA recipient's failure to comply with the requirements set forth above may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

Section 26.51 Means Used to Meet Overall Goal

Section 26.51(a)–(c) Projected Race-Neutral Participation toward Overall Goal

TriMet will strive to meet our overall goal by using race-neutral means of facilitating race-neutral DBE participation.

Section 26.51(d-g) Contract Goals

TriMet will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We acknowledge that we need not establish a contract goal on every such contract. Contract goals will vary depending on the circumstances such as the type and location of the work, and the availability of DBEs to perform the particular type of work. TriMet will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

TriMet will arrange solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses. TriMet will make contracts more accessible to small businesses by means such as the strategies set forth under Section 26.39.

If TriMet's approved projection under Section 26.51(c) estimates that we can meet our entire overall goal for a given year through race-neutral means, we will implement our program without setting contract goals during that year.

Section 26.53 Good Faith Efforts Procedures

Section 26.53(a) & (c) -- Demonstration of Good Faith Efforts

For DOT-assisted contracts with contract goals, TriMet will only award the contract to bidders that make good faith efforts to meet the goal. A bidder can demonstrate that it has done so by either meeting the contract goal or documenting its good faith efforts to meet the goal. Examples of types of actions TriMet will consider to be good faith efforts are found in Appendix A to 49 CFR Part 26.

TriMet treats compliance with good faith efforts requirements as a matter of bidder responsibility. TriMet's DBELO is responsible for determining whether a bidder that has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible. The DBELO will ensure that all information is complete and accurate and adequately documents the bidder's good faith efforts before TriMet commits to the performance of the contract by the bidder.

Section 26.53(b) -- Information to be Submitted

26.53(b)(2). Each solicitation for which a contract goal has been established will require the bidder to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

26.53(b)(3). TriMet requires bidders to present the information required by Section 26.53(b)(2) before TriMet commits itself to the performance of the contract, as a matter of responsibility. Within two working hours of the time bids are due, bidders must submit a “DBE Documentation Form” on which bidders indicate whether they believe the contract goal has been met. If the lowest apparent responsive and otherwise responsible bidder does not meet the contract goal such bidder must submit, within 24 hours of TriMet’s request, adequate documentation to establish good faith efforts. For large projects, TriMet requires Proposers designate a qualified individual to manage all DBE matters on the project and submit a Project Subcontracting Plan.

Section 26.53(d) -- Administrative Reconsideration

Within 5 business days of being informed by TriMet that it is not responsive because it has not documented sufficient good faith efforts, a bidder may request administrative reconsideration of that determination. Bidders make this request by submitting a bid protest in writing to the following reconsideration official:

Attn: Jeff Rogers
Director, Procurement & Supply Chain Management TriMet
Procurement and Contracts Department
101 SW Main St #700
Portland, OR 97204
Rogersje@TriMet.org

The reconsideration official does not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.

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

Section 26.53(f) -- DBE Replacement, Substitution or Termination

TriMet will require that prime contractors not replace, substitute or terminate a DBE subcontractor (or an approved substitute DBE firm) without TriMet’s prior written consent unless TriMet causes the termination or reduction. A termination includes any reduction or underrun in work listed for a DBE not caused by a material change to the prime contract by the recipient. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

TriMet will include in each prime contract a provision stating that:

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

(B) Unless your consent is provided under this paragraph (f), the prime contractor must not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

TriMet will require the prime contractor to notify the DBELO immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. We will only provide written consent to the prime contractor's replacement, substitution, or termination of a DBE subcontractor if we agree, for reasons stated in our concurrence document, that the prime contractor has good cause to replace, substitute or terminate the DBE firm.

Good cause does not exist if the prime contractor seeks to terminate a DBE or any portion of its work that it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged, or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award. For purposes of this [paragraph \(f\)\(3\)](#), good cause includes the following circumstances:

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

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

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

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

Each DOT-assisted prime contract will contain a provision allowing TriMet to impose appropriate administrative remedies on prime contractors that fail to comply with the requirements of this section, including without limitation the suspension or termination of the contract or such other action that may be necessary to enforce TriMet's rights under the agreement.

Section 26.55 Counting DBE Participation

TriMet will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved (c)(1).

CUF relates to the independent performance of work by a DBE according to the contracting functions described in 49 CFR § 26.55. These functions may include construction contractor, service provider, manufacturer, regular dealer, broker, and trucking. A DBE must pass a CUF in order to be counted for participation.

TriMet will not count the participation of a DBE subcontractor toward a prime contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE subcontractor.

To be counted as a material supplier, Prime contractor must first fill out the DBE regular dealer/distributor affirmation form (See attachment B) and submit via email to the Compliance Project Manager 26.55(e)(2)(iv)(A),(B),(C), and (3).

If a firm is not currently certified as a DBE in accordance with the standards of [subpart D of this part](#) at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in [§ 26.87\(j\)](#).

SUBPART D – CERTIFICATION STANDARDS

Section 26.61 – 26.73 Certification Process

TriMet is a member of a Unified Certification Program (UCP) administered by the State of Oregon's Certification Office of Business Inclusion and Diversity (COBID).

COBID uses the certification standards of Subpart D of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. COBID makes certification decisions based on the facts as a whole.

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

State of Oregon
Certification Office for Business Inclusion and Diversity (COBID) 775 Summer Street NE,
Suite 200
Salem, Oregon 97301
503-986-0123
www.oregon4biz.com/How-We-Can-Help/COBID/

A website link to COBID's DBE certification application forms is set forth above.

SUBPART E – CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Program

TriMet participates in a Unified Certification Program (UCP) administered by the State of Oregon Department of Transportation and Business Oregon. The State of Oregon administering agencies represent that the UCP meets all of the requirements of Section 26.81.

SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation, Intimidation, Retaliation

26.109(a) & (b) – Information and Confidentiality

Notwithstanding any provision of Federal or state law, TriMet will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information.

Under the Oregon Public Records Law (ORS 192.410 - 192.505) every person has a right to inspect any nonexempt public record of TriMet. A 'public record' includes any writing that contains information relating to the conduct of the public's business, including but not limited to a document, book, paper, photograph, file, audio, magnetic or optical recording, prepared, owned, used or retained by a public body regardless of physical form or characteristics. The DBE Program Manager will engage TriMet's legal counsel to review records that are responsive to a public records request to ensure that the records are disclosed in a manner that avoids disclosure of exempt information, including proprietary, confidential or trade secret information if an exemption applies.

26.109(c) – Cooperation

TriMet will cooperate fully and promptly with DOT compliance reviews, certification reviews, investigations, and other requests for information. TriMet acknowledges that failure to do so shall be a ground for appropriate action, such as a finding of noncompliance.

26.109(d) – Intimidation and Retaliation

TriMet will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under Part 26. TriMet acknowledges that violation of this prohibition represents noncompliance with Part 26.

Bidders List Collection Process

Offerors List Collection Form: TriMet is required by CFR Title 49, Subtitle A, Part 26, Subpart A, Section 26.11 to collect the following information from all offerors. As such, it is the responsibility of the offeror to complete the following information as a condition of submitting a proposal for this project. Offeror shall provide the information below for itself, all subcontractors at any tier, and all firms contacted for participation on the contract. Columns C, E, and F contain drop down menus. TriMet will consider incomplete information as an unresponsive offer.

[illegible]

Attachment B

DBE Regular Dealer/ Distributor Affirmation form

149 CFR 26.55(e)(2)(iv)(A),(B),(C), and (3)

OMB Approval Pending 04/1 //2024



U.S. Department of
Transportation

DBE Regular Dealer/Distributor Affirmation Form

Bidder Name:

Contract Name/Number:

Sections 26.53(c)(1) of Title 49 Code of Federal Regulations requires recipients to make a preliminary counting determination for each DBE listed as a regular dealer or distributor to assess its eligibility for 60 or 40 percent credit, respectively, of the cost of materials and supplies based on its demonstrated capacity and intent to perform as a regular dealer or distributor, as defined in section 26.55(e)(2)(iv)(A),(B),(C), and (3) under the contract at issue. The regulation requires the recipient's preliminary determination to be made based on the DBE's written responses to relevant questions and its affirmation that its subsequent performance of a commercially useful function will be consistent with the preliminary counting of such participation. The U.S. Department of Transportation is providing this form as a tool for recipients, prime contractors, regular dealers, and distributors to use to carry out their respective responsibilities under this regulation. The form may be used by each DBE supplier whose participation is submitted by a bidder for regular dealer or distributor credit on a federally-assisted contract with a DBE participation goal. The form may also be used by prime contractors in connection with DBE regular dealer or distributor participation submitted after a contract has been awarded provided such participation is subject to the recipient's prior evaluation and approval. If this form is used, it should be accompanied by the bidder's commitment, contract, or purchase order showing the materials the DBE regular dealer or distributor is supplying. Use of this tool is not mandatory. If a recipient chooses a different method for complying with Section 26.53(c)(1), it must include that method in its DBE Program Plan.

DISCLAIMER: This form has not yet received OMB/PRA approval and is subject to change. We are making it available for your voluntary use.

DBE Name:	Total Subcontract/Purchase Order Amount:
Authorized DBE Representative (Name and Title):	NAICS Code(s) Related to the Items to be Sold/Leased:

1. Will all items sold or leased be provided from the on-hand inventory at your establishment? ☐ YES ☐ NO

(If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.** If "NO" Continue.)

- a) Are you selling bulk items (e.g., petroleum products, steel, concrete, concrete products, sand, gravel, asphalt, etc.) or items not typically stocked due to their unique characteristics (aka specialty items)? ☐ YES ☐ NO (If "YES," Go to Question 2. If "NO" Continue.)
- b) Will at least 51% of the items you are selling be provided from the inventory maintained at your establishment, and will the minor quantities of items delivered from and by other sources be of the general character as those provided from your inventory? ☐ YES ☐ NO* (If "YES," you have indicated that your performance will satisfy the regular dealer requirements and may be counted at 60%. **STOP here. Read and sign the affirmation below.**

*If 1., 1.a., and 1. b) above are "NO," your performance on the whole will not satisfy the regular dealer requirements; therefore, only the value of items to be sold or leased from inventory can be counted at 60%. (Go to Question 3. to determine if the items delivered from and by other sources are eligible for Distributor credit.)

2. Will you deliver all bulk or specialty items using distribution equipment you own (or under a long-term lease) and operate? ☐ YES ☐ NO¹

(If "YES," you have indicated that your performance will satisfy the requirements for a regular dealer of bulk items and may be counted at 60%. **STOP here. Read and sign the affirmation below.**)

¹ If "NO," your performance will not satisfy the requirements for a regular dealer of bulk items; the value of items to be sold or leased cannot be counted at 60%. (Go to Question 3.)

3. Will the written terms of your purchase order or bill of lading from a third party transfer responsibility, including risk for loss or damage, to your company at the point of origin (e.g. a manufacturer's facility)? ☐ YES² ☐ NO³
- a) Will you be using sources other than the manufacturer (or other seller) to deliver or arrange delivery of the items sold or leased? ☐ YES² ☐ NO³

² If your responses to 3 and 3.a) are "YES," you have indicated that your performance will satisfy the requirements of a distributor; therefore, the value of items sold or leased may be counted at 40%.

³ If you responded "NO" to either 3 or 3.a), counting of your participation is limited to the reasonable cost of fees or commissions charged, including transportation charges for the delivery of materials or supplies; the cost of materials or supplies may not be counted.

I affirm that the information that I provided above is true and correct and that my company's subsequent performance of a commercially useful function will be consistent with the above responses. I further affirm that my company will independently negotiate price, order specified quantities, and pay for the items listed in the bidder's commitment. This includes my company's responsibility for the quality of such items in terms of necessary repairs, exchanges, or processing of any warranty claims for damaged or defective materials.

Printed Name and Signature of DBE Owner/Authorized Representative:

The bidder acknowledges its responsibility for verifying the information provided by the DBE named above and ensuring that the counting of the DBE's participation is accurate. Any shortfall caused by errors in counting are the responsibility of the bidder.

Printed Name and Signature of Bidder's Authorized Representative:



POLICY

STATEMENT

TriMet's Disadvantaged Business Enterprise Program

**April 2025 Restatement
[49 CFR 26.23]**

The Tri-County Metropolitan Transportation District of Oregon (TriMet) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (DOT) at 49 CFR Part 26. TriMet has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance TriMet has signed an assurance that it will comply with 49 CFR Part 26.

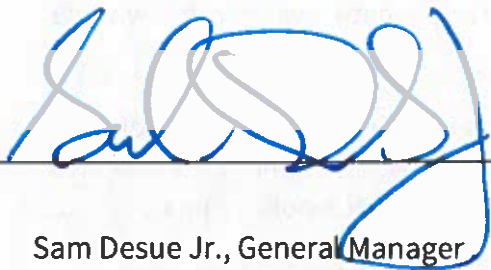
By virtue of such assurance and commitment to TriMet's DBE Program, it is the policy of TriMet to ensure that DBEs, as defined in CFR 49 Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also TriMet's policy objectives to:

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

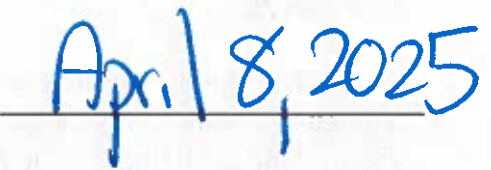
John Gardner has been designated as TriMet's Disadvantaged Business Enterprise Liaison Officer (DBELO). In that capacity the DBELO is responsible for implementing all aspects of TriMet's DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by TriMet in its financial assistance agreements with the DOT.

Upon approval of TriMet's January 2025 restatement of its DBE Program TriMet will: (i) circulate this policy statement to TriMet's Board of Directors and to employees in all components of TriMet;

(ii) distribute this policy statement to DBE and non-DBE business communities that perform work on TriMet DOT-assisted contracts; and (iii) send copies of TriMet's DBE Program to small business advocacy groups by e-mail, US mail, or direction to the program online at the following link: <https://trimet.org/business/dbe/index.htm>



Sam Desue Jr., General Manager



Date

Attachment D

DBE Monitoring and Enforcement Mechanisms

[49 CFR 26.37]

Some of the regulatory remedies available to TriMet in the event of a Program participant's non-compliance with 49 CFR Part 26 are set forth below.

- ORS 279B.130 and ORS 279C.440 allow TriMet to disqualify a business from award of TriMet contracts for up to three years for the violation of a contract provision that is regarded by TriMet to be so serious as to justify disqualification, provided the violation was not caused by acts beyond the business's control.
- ORS 279B.110 and ORS 279C.375 require TriMet to reject a bidder based upon an unsatisfactory record of performance. A bidder that has failed to comply with 49 CFR Part 26 requirements under a prior contract would have an unsatisfactory record of performance for the purposes of ORS 279B.110(2)(b) and 279C.375(3)(b)(F). This defines "lowest responsible bidder" for the purposes of ORS 279C.375(b).
- ORS 200.065(1) and (2) prohibit fraud in DBE certification and false claims regarding certification for the purpose of obtaining a contract, subcontract, or other benefit.
- ORS 200.065(3) authorizes TriMet to withhold payment, suspend or terminate the contract, and impose a civil penalty of 10 percent of the contract or subcontractor price, but not more than \$5,000.
- ORS 200.065(4) requires TriMet to investigate and confers the power to subpoena witnesses, records, etc.
- ORS 200.065(5) authorizes TriMet to disqualify a person or entity for up to three years for violation of subsection (1) or (2), and also allows TriMet to disqualify based upon a fraudulent DBE certification.
- ORS 200.075(1) authorizes TriMet to suspend a contractor's or subcontractor's right to participate in a TriMet contract if the contractor or subcontractor: (1) enters into a public improvement contract with TriMet representing without the DBE's knowledge and consent that the DBE will be performing work or supplying materials; (2) exercises management control and decision making control over the internal operations of a DBE; or (3) using a DBE to satisfy a contract goal when the DBE does not perform a commercially useful function.
- The Federal government may apply several enforcement mechanisms to firms participating in the DBE Program, including without limitation the following:
 1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
 2. Enforcement action pursuant to 49 CFR Part 31
 3. Prosecution pursuant to 18 USC §1001

Attachment E

Small Business Element of the DBE Program

[49 CFR 26.39]

Overview

TriMet administers an existing DBE program as required under 49 CFR Part 26 for Federal Transportation Administration (FTA) DOT-assisted projects. TriMet's DBE Program includes an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

Another element of TriMet fostering small business participation is by increasing contract awards to small business concerns for projects that are not DOT-assisted. For example, on some construction contracts that are not DOT-assisted, TriMet sets small business subcontracting participation goals. TriMet's existing small business contracting program also includes outreach, mentoring, and educational elements. TriMet is committed to providing equal and open access for all small business enterprises (SBE) to participate in TriMet's contracting opportunities.

Specific Program Elements Under 49 CFR 26.39

TriMet will incorporate the following additional, non-discriminatory elements into its existing 49 CFR Part 26 DBE Program, in order to facilitate competition on DOT-assisted TriMet contracts by small business concerns (both DBEs and non-DBE small businesses).

Definition of Small Business

For purposes of this program, "small business" or "small business concern" will be defined as set forth in 49 CFR 26.5, which as of March 2025 is:

"... a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b)."

TriMet will presume that a business is a "small business" or "small business concern" for purposes of this program if the business is a for-profit enterprise that is either:

- a. certified by the State of Oregon Office of Certification Office of Business Inclusion and Diversity (COBID).; All certification listed by COBID would be included in this program. Currently ESB, VSB, MBE, WBE and DBE.
- b. an eligible participant of federal Small Business Administration (SBA) programs, which may include businesses certified as disadvantaged, minority-owned, women-owned, or emerging small businesses, Section 8(a) Business Development, Small Disadvantaged, and HUBZone. The SBA maintains an online listing of eligible, participating small businesses; or

Contracts for Construction, Personal Services, and Goods & Services

TriMet will employ the following methods intended to improve participation by small business concerns on DOT-assisted TriMet contracts for construction, personal services, and goods & services. TriMet will establish a race-neutral small business set aside for prime contracts. When the estimated contract amount is equal to or less than \$25,000, TriMet will solicit to small businesses first. TriMet's project managers and buyers are strongly encouraged to direct negotiation with COBID certified firms in the category of work being solicited. Projects with a value of more than \$25,000 and less than \$250,000 (\$100,000 for Construction Projects), TriMet's project managers and buyers are required to directly solicit written quotes or proposals from COBID certified firms, including at least one minority-owned business, one woman-owned business, one business that a veteran owns and one emerging small business in the category of work being solicited. TriMet will also consider one or more of the following options for projects equal to or more than \$250,000 (\$100,000 for Construction Projects):

- Dividing prime contracts into smaller-sized packages that are within the financial resources and capacity of small business concerns;
- Requiring the prime contractor/consultant to identify business opportunities within the contract's scope of work that small business subcontractors can reasonably perform, rather than self-performing all the work involved; and
- Identify alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts

Solicitation documents will clearly identify these contract opportunities and requirements. Contracts for Professional Services

To improve participation by small business concerns on DOT-assisted TriMet contracts for professional services, TriMet will establish a race-neutral small business set aside for prime contracts. When the estimated contract amount is equal to or less than \$25,000, TriMet will attempt to solicit to small businesses first. TriMet's project managers and buyers are strongly encouraged to direct negotiation with COBID certified firms in the category of work being solicited. Projects with a value of more than \$25,000 and less than \$100,000, TriMet's project managers and buyers are required to directly solicit written quotes or proposals from COBID certified firms, including at least one minority-owned business, one woman-owned business, one business that a veteran owns and one emerging small business in the category of work being solicited.

TriMet will also consider for projects equal to or more than \$100,000, awarding additional points for small business participation when evaluating proposals, to encourage proposers to give equal opportunity to small businesses to compete for portions of the work. In such solicitations, proposers may be required to respond to requirements and questions similar to the following:

- Provide a narrative description of your firm's experience in promoting small business participation as partners, subcontractors, or suppliers on previous projects. Discuss any innovative or successful measures that your firm has undertaken to increase small business participation in operations. Include a list of small business with which your firm has had a contractual relationship during the last 12 months.
- Is your business a "small business" as defined under 49 CFR 26.5, or as provided under TriMet's small business program?

- Describe the actions and strategies your firm will take to increase small local business participation in this work.

On such contracts, proposers will be required to submit Small Business Goal Compliance Reports via TriMet's Compliance reporting system.

Outreach Efforts

TriMet will also take affirmative steps to encourage firms that may be eligible for small business certification to become certified as "small businesses" in accordance with 49 CFR Part 26. This will be accomplished through outreach efforts, educational and informational programs, and direct contact.

Attachment F

Overall DBE Three-Year Goal Methodology

[49 CFR 26.37]



Tri-County Metropolitan Transportation District of Oregon (TriMet) Proposed FFY 2023 - 2025 Disadvantaged Business Enterprise (DBE) Goal

TriMet proposes an overall DBE goal for its Federal Transportation Administration (FTA) funded contracting of 14.85% for federal fiscal years (FFYs) 2023 through 2025; this 14.85% will be a completely race neutral goal.

DBE Utilization with Federal Funds

TriMet operates the Federal DBE Program to assist Disadvantaged Business Enterprises (DBEs) on contracts that use U.S. Department of Transportation (USDOT) funds. Federal regulations 49 CFR 26.45 seeks to ensure nondiscrimination in the award and administration of USDOT-funded contracts in the FTA's transit programs and to create equal opportunities for which DBEs can compete fairly for USDOT-funded contracts.

Overall DBE Goal Setting Methodology

Federal regulations 49 CFR 26.45 direct how TriMet sets its overall FFY 2023-2025 DBE goal. The process includes two steps:

1. Determine a base figure for the relative availability of DBEs
2. Adjust the base figure, if necessary

The base figure is intended to be a measurement of the current ready, willing, and able DBEs as a percentage of all businesses ready, willing, and able to perform the recipient's anticipated FTA-funded contracts in its geographic market area. As defined by the USDOT Goal Setting Tips, the local market area is the area in which the substantial majority of the contractors and subcontractors with which TriMet and its grant partners do 75% of their annualized business are located, and the area in which TriMet and its grant partners spend the substantial majority of its contracting dollars.

The vast majority of contracts awarded by TriMet were to contractors and service providers located within Oregon. These contractors primarily use our federal funds to procure goods and services from providers in our local area. Therefore, TriMet determined that the relevant market is the state of Oregon

The external data we used for these calculations were:

- North American Industry Classification System (NAICS) from the United States Census Bureau.
- Certification Office for Business Inclusion and Diversity (COBID) from the State of Oregon.
- County Business Pattern (CBP) data from the United States Census Bureau.

1. Step One- Determination of Base Figure

Pursuant to 49 CFR 26.45(c), to determine the baseline figure for its FFY 2023-2025 DBE goal TriMet used the most recent data available in the State of Oregon's Certification Office for Business Inclusion and Diversity (COBID) and the Census Bureau's County Business Pattern data (CENSUS) to determine the percentage of ready, willing, and able DBEs in TriMet's market area. These sources provide for analysis of labor concentration in specific business categories as designated by 6 digit North American Industrial Classification System code (NAICS). TriMet has made preliminary assumptions regarding which NAICS codes will have relevance to the projects receiving FTA funding in the next three federal fiscal years.

Table 1: Relative Base Figure

NAICS CODE 2020	TRADE SCOPE OF WORK	COBID DBE FIRMS	CENSUS DATA ALL FIRMS	DBE AVAILABILITY %
236220	Commercial and Institutional Building Construction	81	489	16.56%
237110	Water and Sewer Line and Related Structures Construction	47	154	30.52%
237130	Power and Communication Line and Related Structures Construction	13	76	17.11%
237310	Highway, Street, and Bridge Construction	57	198	28.79%
237990	Other Heavy and Civil Engineering Construction	19	62	30.65%
238110	Poured Concrete Foundation and Structure Contractors	51	295	17.29%
238120	Structural Steel and Precast Concrete Contractors	22	45	48.89%
238210	Electrical Contractors and Other Wiring Installation Contractors	42	932	4.51%
238220	Plumbing, Heating, and Air-Conditioning Contractors	21	1,238	1.70%
238320	Painting and Wall Covering Contractors	54	972	5.56%
238910	Site Preparation Contractors	116	770	15.06%
238990	All Other Specialty Trade Contractors	115	528	21.78%
332312	Fabricated Structural Metal Manufacturing	5	53	9.43%
333921	Elevator and Moving Stairway Manufacturing	0	0	0.00%
334290	Other Communications Equipment Manufacturing	0	0	0.00%
336999	All Other Transportation Equipment Manufacturing	0	7	0.00%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	0	153	0.00%
423130	Tire and Tube Merchant Wholesalers	0	15	0.00%
457210	Fuel Dealers	1	62	1.61%
485991	Special Needs Transportation	1	100	1.00%
488210	Support Activities for Rail Transportation	0	20	0.00%
541310	Architectural Services	66	357	18.49%
541330	Engineering Services	100	806	12.41%
541370	Surveying and Mapping (except Geophysical) Services	33	123	26.83%
541611	Administrative Management and General Management Consulting Services	313	872	35.89%
561210	Facilities Support Services	3	50	6.00%
561612	Security Guards and Patrol Services	12	115	10.43%
561720	Janitorial Services	24	1,195	2.01%
561730	Landscaping Services	64	1,730	3.70%
561990	All Other Support Services	24	161	14.91%
811111	General Automotive Repair	3	1,076	0.28%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	6	304	1.97%
812320	Drycleaning and Laundry Services (except Coin-Operated)	0	143	0.00%
TOTALS		1,293	13,101	9.87%

*Census CBP data uses 2017 NAICS codes. The code was different only for Fuel Dealers. The Census data NAICS codes for Fuel Dealers is 454310.

Divide the total number of DBEs by the total number of all firms = Relative Base Figure

$$\frac{\text{DBE Firms Ready Willing \& Able } 1,293}{\text{All Firms Ready Willing \& Able } 13,101} = \text{Relative Base Figure } 9.87\%$$

TriMet believes this relative base figure calculation under counts the number of available DBEs as it assumes that every DBE has an equal opportunity and equal weight to perform on TriMet's contracts. However, in the practical application, not all DBEs have equal opportunity for participation, as opportunity is dependent on the amount of dollars spent in each NAICS code. Therefore, to reflect the relative availability of DBE firms more accurately, as recommended by U.S. DOT, TriMet performed a weighted calculation of availability. This calculation is based on an estimation of TriMet's future projects with FTA-funded expenditures in each NAICS code.

Better Red (Max Redline)	\$148,934,899
Powell-Division Corridor Safety & Access to Transit Project	\$1,938,168
Division Transit Project	\$17,422,752
82nd Ave BRT	\$1,100,000
TV Highway BRT	\$650,000
PMLR Park Ave Garage Expansion	\$12,500,000
Beaverton Transit Center	\$6,250,000
Columbia Bus Base	\$30,000,000
Willamette Shore Line Trestles	\$1,800,000
Operations & Prevention Maintenance	\$378,090,386
TOTAL	\$598,686,205

Table 2: Weighted Base Figure

NAICS CODE 2020	TRADE SCOPE OF WORK	FTA ASSISTED CONTRACT FUNDS	% OF TOTAL FTA FUNDS	COBID DBE FIRMS	CENSUS DATA ALL FIRMS	DBE AVAILABILITY %	WEIGHTED BASE FIGURE
236220	Commercial and Institutional Building Construction	\$4,460,600	0.75%	81	489	16.56%	0.12%
237110	Water and Sewer Line and Related Structures Construction	\$5,300,000	0.89%	47	154	30.52%	0.27%
237130	Power and Communication Line and Related Structures Construction	\$11,000,000	1.84%	13	76	17.11%	0.31%
237310	Highway, Street, and Bridge Construction	\$51,000,000	8.52%	57	198	28.79%	2.45%
237990	Other Heavy and Civil Engineering Construction	\$92,030,000	15.37%	19	62	30.65%	4.71%
238110	Poured Concrete Foundation and Structure Contractors	\$11,234,550	1.88%	51	295	17.29%	0.32%
238120	Structural Steel and Precast Concrete Contractors	\$3,459,000	0.58%	22	45	48.89%	0.28%
238210	Electrical Contractors and Other Wiring Installation Contractors	\$1,798,800	0.30%	42	932	4.51%	0.01%
238220	Plumbing, Heating, and Air-Conditioning Contractors	\$503,245	0.08%	21	1,238	1.70%	0.00%
238320	Painting and Wall Covering Contractors	\$128,000	0.02%	54	972	5.56%	0.00%
238910	Site Preparation Contractors	\$1,355,890	0.23%	116	770	15.06%	0.03%
238990	All Other Specialty Trade Contractors	\$1,980,078	0.33%	115	528	21.78%	0.07%
332312	Fabricated Structural Metal Manufacturing	\$475,600	0.08%	5	53	9.43%	0.01%
333921	Elevator and Moving Stairway Manufacturing	\$3,454,500	0.58%	0	0	0.00%	0.00%
334290	Other Communications Equipment Manufacturing	\$2,460,000	0.41%	0	0	0.00%	0.00%
336999	All Other Transportation Equipment Manufacturing	\$23,540,000	3.93%	0	7	0.00%	0.00%
423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers	\$1,084,434	0.18%	0	153	0.00%	0.00%
423130	Tire and Tube Merchant Wholesalers	\$3,484,434	0.58%	0	15	0.00%	0.00%
457210	Fuel Dealers	\$94,097,957	15.72%	1	62	1.61%	0.25%
485991	Special Needs Transportation	\$43,700,000	7.30%	1	100	1.00%	0.07%
488210	Support Activities for Rail Transportation	\$38,909,000	6.50%	0	20	0.00%	0.00%
541310	Architectural Services	\$2,544,148	0.42%	66	357	18.49%	0.08%
541330	Engineering Services	\$37,898,498	6.33%	100	806	12.41%	0.79%
541370	Surveying and Mapping (except Geophysical) Services	\$537,605	0.09%	33	123	26.83%	0.02%
541611	Administrative Management and General Management Consulting Services	\$38,420,000	6.42%	313	872	35.89%	2.30%
561210	Facilities Support Services	\$2,780,152	0.46%	3	50	6.00%	0.03%
561612	Security Guards and Patrol Services	\$12,198,000	2.04%	12	115	10.43%	0.21%
561720	Janitorial Services	\$3,695,812	0.62%	24	1,195	2.01%	0.01%
561730	Landscaping Services	\$3,125,826	0.52%	64	1,730	3.70%	0.02%
561990	All Other Support Services	\$1,496,614	0.25%	24	161	14.91%	0.04%
811111	General Automotive Repair	\$96,068,562	16.05%	3	1,076	0.28%	0.04%
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance	\$3,406,360	0.57%	6	304	1.97%	0.01%
812320	Drycleaning and Laundry Services (except Coin-Operated)	\$1,058,540	0.18%	0	143	0.00%	0.00%
TOTALS		\$598,686,205		1,293	13,101	9.87%	12.49%

*Census CBP data uses 2017 NAICS codes. The code was different only for Fuel Dealers. The Census data NAICS codes for Fuel Dealers is 454310.

(Total FTA Funds Weight % x Relative Availability %) Sum = Weighted Base Figure 12.49%

2. Step Two- Adjustment of Base Figure

DBE regulation 49 CFR 26.45 (d) requires an examination of available evidence in the local market to determine what adjustment to the base figure is needed, if any, to establish the overall goal.

TriMet considered the capacity of DBEs to perform work as measured by the median past participation of DBEs on FTA-funded contracts from FFY 2018 through FFY 2021. The achieved DBE participation was 7.14%, 16.24%, 19.57%, and 27.26%. This participation was achieved using only race neutral program initiatives. The median number for these amounts is 17.20%.

Table 3: Median Past Participation of DBEs

FFY	FTA \$	DBE \$	DBE %
2018	\$37,549,355.00	\$2,682,890.00	7.14%
2019	\$44,790,553.00	\$7,273,230.00	16.24%
2020	\$29,322,279.00	\$5,739,727.00	19.57%
2021	\$27,012,630.00	\$7,364,897.00	27.26%
		MEDIAN	17.20%

To arrive at an overall goal, we averaged our Step 1 weighted base figure 12.49% with our Step 2 past participation median accomplishment of 17.20% to further refine our goal to arrive at an overall goal of 14.85%. We feel this adjusted goal will accurately reflect DBE participation that can be achieved for the type of project work that will be awarded during FFY 2023 - 2025.

Weighted Base Figure 12.49% + Median Past Participation 17.20%

$$\frac{\quad}{2} = \text{Adjusted Base Fig. 14.85\%}$$

From these calculations TriMet establishes a 100% race neutral goal for FY2023-2025 of 14.85%

Public Review and Comments

TriMet will post the 2023-2025 DBE Program Goal update on its website and solicit feedback from Contractors participating in the Oregon Association of Minority Entrepreneurs (OAME), LatinoBuilt, NAMC of Oregon, and host a question and answer session in person with the Professional Builders Development Group.

Public Comments will be accepted through December 15, 2022.

To submit written comments:

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