

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
AIRPORT AUTHORITY OF THE CITY OF LINCOLN, NEBRASKA  
LINCOLN MUNICIPAL AIRPORT, LINCOLN, NEBRASKA**

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**I. Definitions of Terms**

The terms used in this program have the meanings defined in 49 CFR 26.5.

**II. Policy**

The Lincoln Airport Authority (LAA) has established a Disadvantage Business Enterprise (DBE) program in accordance with the regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The LAA has received Federal financial assistance from the Department of Transportation and as a condition of receiving this assistance, the LAA has signed an assurance that it will comply with 49 CFR Part 26.

The following appendixes are an integral part of this program and will be renewed and updated as required:

- Appendix A – Organizational Chart
- Appendix B – Monitoring and Enforcement Mechanisms
- Appendix C – Nebraska Department of Roads (NDOR) Disadvantaged Business Enterprise (DBE) Program
- Appendix D – Small Business Element

It is the policy of the LAA to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
- To create a level of playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The Deputy Director-Engineering, Jon L. Large, P.E., has been delegated as the DBE Liaison Officer. In that capacity, the Deputy Director-Engineering, Jon L. Large, P.E., is responsible for implementing all aspects of the DBE Program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the LAA in its financial assistance agreement with the Department of Transportation.

The LAA has disseminated this policy statement to the Lincoln Airport Authority Board and all components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Distribution is included in bid specifications.

Date: \_\_\_\_\_

By: \_\_\_\_\_

David Haring, Executive Director

**III. Nondiscrimination (26.7)**

The LAA 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 contracts covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the LAA 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.

**IV. DBE Program Updates (26.21)**

We will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

**V. Quotas (26.43)**

We do not use quotas in any way in the administration of this DBE Program.

**VI. DBE Liaison Officer (DBELO) (26.25)**

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

Mr. Jon L. Large, P.E.  
Deputy Director-Engineering  
PO Box 80407  
2400 W Adams Street, Suite 200  
Lincoln, Nebraska 68501  
(402) 458-2400  
[j.large@lincolnairport.com](mailto:j.large@lincolnairport.com)

In that capacity, Mr. Large complies with all provisions of 49 CFR Part 26. Mr. Large is responsible for implementing all aspects of the DBE Program and ensuring that the LAA complies with all provisions of 49 CFR Part 26. There is no dedicated civil rights department. Mr. Large has direct, independent access to the Executive Director of the LAA concerning DBE program matters. Two other Deputy Directors are available to assist if necessary. The organization chart displaying the DBELO's position is found in Appendix A.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. Duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT;
- Works to set overall annual goals;
- Identified contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results;
- Analyzes LAA's progress toward goal attainment and identifies ways to improve progress;
- Participates in pre-bid meetings;
- Advises governing body on DBE matters and achievement;
- Participates with the legal counsel and project director to determine contractor compliance with good faith efforts;
- Acts or will act as liaison to the Uniform Certification process in Nebraska; and
- Maintains the LAA's updated directory on certified DBEs as published by Nebraska Department of Roads.

**VII. Federal Financial Assistance Agreement Assurance (26.13)**

LAA has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

Lincoln Airport Authority shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Lincoln Airport Authority 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.)

**VIII. DBE Financial Institutions**

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

We have made the following efforts to identify and use such institutions:

We have contacted the City of Lincoln's Commission on Human Rights and requested their assistance in identifying financial institutions owned and controlled by socially and economically disadvantaged individuals. They have advised us that there are none.

To date we have identified the following such institutions: None

Information on the availability of such institutions can be obtained from the DBELO.

**IX. Directory (26.31)**

The LAA provides a directory, maintained and furnished by our Nebraska Uniform Certification Program (NUCP) partner, the Nebraska Department of Roads (NDOR), identifying all firms eligible to participate as DBEs. The NDOR directory lists the firm's name, address, phone number and the type of work the firm has been certified to perform as a DBE. The directory is revised annually and is available through the DBELO, the Lincoln Airport Authority website [www.lincolnairport.com](http://www.lincolnairport.com) and the NUCP website, (<http://www.transportation.nebraska.gov/letting/certified-dbes.htm>).

**X. Required Contract Clauses (26.13, 26.29)**

*Contract Assurance*

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

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

**XI. Prompt Payment**

We will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Lincoln Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 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 the Lincoln Airport Authority. This clause applies to both DBE and non-DBE subcontractors. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as the recipient deems appropriate.

**XII. Monitoring and Enforcement Mechanisms (26.37)**

We will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalty rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determination in future contracts.

Appendix B lists the regulations, provisions and contract remedies available to the LAA in the event of non-compliance with the DBE regulation by a participant in LAA procurement activities.

### **XIII. Overall Goals (26.45)**

#### *Amount of Goal*

LAA's overall goal for FY 2016-2018 is the following: 4.36% of the Federal financial assistance we will expend in DOT-assisted contracts. Based on anticipated FY 2016-2018 prime contracts of \$5,344,000, (Federal assistance of \$4,809,600) our goal equates to approximately \$232,998 of DBE participation on our federally funded projects.

### **XIV. Method**

The following is a summary of the method we used to calculate this goal:

FY2016 work consists of one major project and two prime contracts:

- A project to rehabilitate the lighting system on Runway 18/36 will require both a professional services contract to design, specify, bid and observe the work; and a construction contract to accomplish the work.

FY2017 work consists of one major project, requiring two prime contracts:

- A project to rehabilitate the asphaltic pavements on Runway 17/35 will require both a professional services contract to design, specify, bid and observe the work; and a construction contract to accomplish the work.

FY2018 work consists of two projects, requiring two prime contracts:

- A project to update the Master Plan and Airport Layout Plan for the Lincoln Airport will require a professional services contract.
- A project to acquire a replacement runway snow blower will require a purchase contract.

These projects are anticipated to require 6 prime contracts with an estimated total value of approximately \$5,344,000.

Before defining the yearly goal, research was done to define the market area we could reasonably expect ready, willing and able bidders to come from. Our bidders list, developed over the last several years, consists of 186 unique respondents to requests for both consulting services and for basic construction work. Of those 186 respondents, a total of 93 or 52%, are from within the Lincoln metropolitan area. 33, or 17%, come from the Omaha metropolitan area. The remaining respondents come from well outside the Lincoln/Omaha metro. Considering that the majority of respondents come from the Lincoln area, and that over the last several years there has only been interest from 33 Omaha firms, our market area was defined as the Lincoln metropolitan area.

**FY2016** work consists of one major project and two prime contracts:

- A project to rehabilitate the lighting system on Runway 18/36 will require both a professional services contract and a construction contract.

*Professional services for project design, bid and construction services*

Using 2013 business patterns for the Lincoln, Nebraska Metropolitan Statistical Area (MSA) from the U.S. Census Bureau, we find the NAICS code 54, Professional, Scientific and Technical Services, shows a total of 883 establishments. Since this project involved professional engineering services, we looked further down the line to code 54133, which shows a total of 65 firms offering engineering services firms in the statistical area.

A review of the NDOR certified DBE list shows 1 certified DBE engineering firm in this market area. Based on these numbers, this portion of the final goal formula will be:

$$(1 \text{ DBE firm} / 65 \text{ total firms}) * \$265,000 = \$4,077$$

*Construction*

The second prime contract for this major work item is for the construction work involved in the rehabilitation of the lighting system on Runway 18/36. This work could be accomplished by a number of electrical contractors in the area, although has greatest potential for those familiar with street/highway/interstate lighting systems.

Again, using 2013 business patterns for the Lincoln MSA, we looked at NAICS code 23000, Construction. Census Bureau data says there are 1,023 construction companies located in the Lincoln MSA. NAICS code 23713 shows that there are 8 power, communication line and related structures firms in the market area.

A review of the NDOR certified DBE list shows there are 0 DBE certified as electrical contractor (NDOR category D9) in our market area. Based on these numbers, this portion of the final goal formula will be:

$$(0 \text{ DBE firm} / 8 \text{ total firms}) * \$1,061,000 = \$0$$

**FY2017** work consists of one major project, requiring two prime contracts:

- A project to rehabilitate the asphaltic portions of Runway 17/35 will require both a professional services contract and a construction contract.

*Runway 17/35 Rehabilitation*

*Professional Services for Construction*

The first prime contract required for our FY2017 project is for the professional services (Design, Bid, Construction Observation and Testing Services) required for the construction of a heavy maintenance project to improve the pavement condition and improve the safety of Runway 17/35 at the Lincoln Airport.

Using 2013 business patterns for the Lincoln, Nebraska Metropolitan Statistical Area (MSA) from the U.S. Census Bureau, we find that NAICS code 54, Professional, Scientific and Technical Services, shows a total of 883 establishments. Since this project involves professional engineering services, we looked further down the line to code 54133, which shows a total of 65 firms offering engineering services in the statistical area.

A review of the NDOR certified DBE list shows 1 certified DBE engineering firm in this market area. Based on these numbers, this portion of the final goal formula will be:

$$(1 \text{ DBE firm} / 65 \text{ total firms}) * \$503,000 = \$7,738$$

### *Construction*

The second prime contract for this major work item is for the construction work involved in asphalt paving and associated work. This work could be accomplished by a number of heavy/civil general contractors in the area.

Again, using 2013 business patterns for the Lincoln MSA, we looked at NAICS code 23000, Construction. Census Bureau data says there are 1,023 construction companies located in the Lincoln MSA. NAICS code 23731 shows that there are 16 highway, street and bridge construction firms in the market area.

A review of the NDOR certified DBE list shows there is 1 DBE certified as a paving contractor (NDOR category D9) in our market area. Based on these numbers, this portion of the final goal formula will be:  
 $(1 \text{ DBE firm} / 16 \text{ total firms}) * \$2,515,000 = \$157,187$

**FY2018** work consists of two projects, requiring two prime contracts:

- A project to update the Master Plan and Airport Layout Plan for the Lincoln Airport will require a professional services contract.
- A project to acquire a replacement runway snow blower will require a purchase contract.

### *Master Plan update*

The prime contract required for our FY2018 project to update our 2007 Master Plan is for professional services.

Using 2013 business patterns for the Lincoln, Nebraska Metropolitan Statistical Area (MSA) from the U.S. Census Bureau, we find the NAICS code 54, Professional, Scientific and Technical Services, shows a total of 883 establishments. Since this project involves professional engineering services, we looked further down the line to code 54133, which shows a total of 65 firms offering engineering services firms in the statistical area.

A review of the NDOR certified DBE list shows 1 certified DBE engineering firm in this market area. Based on these numbers, this portion of the final goal formula will be:

$$(1 \text{ DBE firm} / 65 \text{ total firms}) * \$250,000 = \$3,846$$

### *Acquire new SRE – Runway Broom*

The second prime contract for this fiscal year will be for the acquisition of a new runway broom. With 3 runway brooms in the fleet, and being eligible for up to 8 brooms, it is our intent to add to our fleet with a new broom. Considering the work, we expect that this acquisition would be through a local equipment supplier.

While trying to determine the most applicable code, we looked at the 2013 business patterns for the Lincoln MSA and landed on NAICS code 42000, Wholesale Trade. We considered 44000, Retail Trade but that seemed more focused on lighter duty, consumer grade sales. We considered 53000, but those groups were focused on the leasing of construction equipment. We also considered 81000, but that code is centered around the maintenance and repair of equipment. Census Bureau data says there are 373 businesses in the Wholesale Trade group 42000. Digging deeper, NAICS 423810 shows that there are 11 construction and mining machinery and equipment merchant wholesalers in the Lincoln MSA.



A review of the NDOR certified DBE list shows 0 certified DBE equipment wholesaler firms in this market area. Based on these numbers, this portion of the final goal formula will be:

$$(0 \text{ DBE firms} / 11 \text{ total firms}) * \$750,000 = \$0$$

Step 1:

In summary, the formula for the FY 2016-2018 period is as follows:

<b>2016</b>	<b>Total</b>	<b>DBE</b>
(1 DBE firm / 65 total firms) *	\$265,000 =	\$4,077
(0 DBE firms / 8 total firms) *	\$1,061,000 =	\$0
<b>2017</b>		
(1 DBE firm / 65 total firms) *	\$503,000 =	\$7,738
(1 DBE firm / 16 total firms) *	\$2,515,000 =	\$157,187
<b>2018</b>		
(1 DBE firm / 66 total firms) *	\$250,000 =	\$3,846
(1 DBE firm / 11 total firms) *	\$750,000 =	\$0
<b>Total</b>	<b>\$5,344,000</b>	<b>\$172,848</b>

On a percentage basis for the total FY 2016-2018 period, the three year DBE goal equals \$172,848 / \$5,344,000 = 0.03234 or **3.23%**

Step 2:

In order to more finely tune the Step 1 goal above, past participation of DBEs on federally funded project was reviewed. The following table shows recent years' goals, the actual DBE percentage achieved and the difference between the goal and achievement:

<u>Year</u>	<u>Goal</u>	<u>Achieved</u>	<u>%difference</u>
2000	7%	12.6%	+5.6%
2001	7%	7.5%	<b>+0.5%</b>
2002	7%	1.55%	-5.45%
2003	4.35%	1.70%	-2.65%
2004	4.89%	2.98%	-1.91%
2005	4.69%	8.10%	+3.41%
2006	5.39%	1.37%	-4.02%
2007	4.60%	*	*
2008	2.11%	9.11%	+7.00%
2009	3.87%	4.45%	+0.58%
2010	4.45%	12.33%	+7.88%
2011	5.22%	<b>5.49%</b>	+0.27%
2012	6.40%	0.00%	-6.40%
2013	5.17%	0.00%	-5.17%
2014	5.17%	30.5%	+25.33%
2015	5.17%	14.8%	+9.96%

\*No grant was offered or accepted in 2007.

Using data from the above table for completed years ('00 through '15) the Step 1 figure was adjusted. An average of the Step 1 figure (**3.23%**) and the median of past participation (**5.49%**) was calculated. This defined our Step 1 base figure, adjusted for past participation, as **4.36%**

Taking 4.36% as the final goal value, adjusted for past participation, and applying it to the original dollar amount of contracted work (\$5,344,000), yields a final DBE participation goal of \$232,998 for FY 2016-2018.

Referring again to the table above, the median '%difference' is **0.50%**. This is the amount of participation we would expect in a race-neutral goal.

Ultimately Step 2 left us with **4.36%** adjusted goal, with a **0.50%** race-neutral component.

Finally, for 'Step 2' (see 26.45 (d)), we contacted the NDOR DBE office, requesting information on disparity studies. They have not done a disparity study, nor are they aware of any disparity studies done in the state of Nebraska. Based on that information, we have not made any further adjustments to our Step 2 goal.

#### *Process*

The Sponsor submits its overall goal to DOT/FAA on a tri-annual basis.

Before establishing the overall goal for each triennium, Sponsor will consult with the Nebraska Department of Aeronautics (NDA) and the NDOR to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs and the Sponsor's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that the Sponsor and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in general circulation media. The notice will include addresses to which comments may be sent and addresses (including offices and websites, if applicable) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal by the time of the first solicitation for a DOT-assisted contract for the project.

#### **XV. Process**

As a means to accomplish the commitments of this program, the procedures set out hereinafter shall be followed:

- The LAA will set overall goals for participation of DBE firms in contracts to be awarded by the LAA. A periodic review of these goals will be made to analyze projected versus actual participation.
- Bidding specifications for work to which this program is applicable will include a provision listing the required DBE goal information and a format for its presentation. This goal information will

be used by the successful bidder to determine the level of DBE participation in the construction work to be performed.

- Construction contracts under this Program may be awarded singly to a prime contractor as a total package, or the project may be split into several individual contracts, as determined by the LAA. In either case, the DBE goals will be met, unless waived by the LAA with sufficient reasonable effort having been shown.
- A directory of DBEs published by NDOR stating their capabilities in the various aspects of construction work shall be available from LAA or NDOR. Such directory shall contain a complete and current listing of eligible DBEs as certified by the NDOR.
- Binding language shall be included in contract specifications which will require contractors to accomplish the following:
  - Submit the names and addresses of DBE subcontractors, a description of the work each is to perform and the dollar value and percentage of DBE participation of each proposed DBE subcontract on the DBE information form.
  - Submit written assurances that agreements with DBEs shall not contain requirements whereby such DBEs would be prohibited from providing subcontracting quotations to other bidders or proposers.
  - Submit written assurances of meeting DBE utilization goals in their bids or proposals. If goals are not met, adequate documentation shall be included in their bids or proposals which will demonstrate that sufficient reasonable efforts have been made to meet DBE utilization goals. Such documentation shall include, but not be limited to, the following:
    - Attendance at a pre-bid meeting, if any, scheduled by the LAA to inform DBEs of subcontracting opportunities under a given solicitation;
    - Advertising in general circulation media, trade association, and other media in accordance with standard State of Nebraska requirements for the same; and
    - Efforts made to select portions of the work proposed to be performed by DBEs to increase the probability of achieving the goals.
  - Make good faith efforts to replace a DBE subcontractor who is unable to perform successfully, with another DBE contractor.

#### **XVI. Breakout of Estimated Race-Neutral and Race-Conscious Participation**

LAA will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

We estimate that, in meeting our overall goal of 4.36% we will obtain 0.50% from race-neutral participation and 3.86% through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation: Historical data indicated there have not been any race-neutral accomplishments to date and we expect this to continue.

We will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51 (f)) and we will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a

contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

**XVII. Contract Goals (26.51)**

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

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular work).

We will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

**XVIII. Good Faith Efforts (26.53)**

*Information to be submitted*

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

Each solicitation for which a contract goal has been established will require the bidders/offersors to submit the following information after contract award within 5 working days:

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

**XIX. Demonstration of Good Faith Efforts**

The obligation of the bidder/offersor is to make good faith efforts. The bidder/offersor can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26.

The following personnel are responsible for determining whether a bidder/offersor who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: DBELO/Deputy Director-Engineering, Jon L. Large, P.E.

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

**XX. Administrative Reconsideration**

Within 3 days of being informed by LAA that it is not responsive because it had not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mr. David Haring, Executive Director  
Lincoln Airport Authority  
PO Box 80407  
2400 W Adams Street, Suite 200  
Lincoln, NE 68501  
(402)-458-2400  
[dharing@lincolnaairport.com](mailto:dharing@lincolnaairport.com)

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

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

**XXI. Good Faith Efforts when a DBE is Replaced on a Contract**

We will require a contractor to make good faith efforts to replace a DBE that is terminated or had otherwise failed to complete its work on a contract with other certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBEs inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

**XXII. Counting DBE Participation (26.55)**

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

**XXIII. Certification (26.61-26.91)**

LAA accepts the certification procedures adopted by the NDOR for DBE contractors. The NDOR certification standards and procedures conform to Subpart D of 49 CFR Part 26. The certification procedures used by NDOR are attached as Appendix C. If a contractor is certified on NDOR's current list, that contractor will be acceptable to LAA.

LAA further accepts those DBE firms certified by other states and/or cities that use 49 CFR Part 26 certification criteria. Firms certified by the SBA may be utilized if they meet the size standard established by the U.S. DOT. LAA will require a copy of the certification for each contractor so certified before acceptance. LAA will verify the contractor's certification. Final acceptance will rest with LAA. If LAA receives a written challenge to the disadvantaged status of a firm certified by another agency, LAA will refer the challenge to the appropriate certifying agency.

**XXIV. Information Collection and Reporting**

The LAA will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT/FAA-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

We will collect this information from bidders that are awarded DOT/FAA-assisted contracts by LAA.

**XXV. Monitoring Payment to DBEs**

We will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the LAA or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The prime contractor will submit final payment verification to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

**XXVI. Reporting to DOT**

We will report DBE participation to DOT as follows:

We will submit annually DOT Form 4630, as modified for use by FAA recipients.

**XXVII. Confidentiality**

We will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

DBE INFORMATION FORM

Project No. \_\_\_\_\_

Project Sections \_\_\_\_\_

Prime Contractor \_\_\_\_\_

DBE Proposed (If not prime contractor)

Name \_\_\_\_\_

Principal Owners:

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone \_\_\_\_\_

\_\_\_\_\_

Work to be performed \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Sub-Contract Amount \_\_\_\_\_

Percentage \_\_\_\_\_

DBE Classification:

Women \_\_\_\_\_

Native Americans \_\_\_\_\_

Black American \_\_\_\_\_

Asian-Pacific American \_\_\_\_\_

Hispanic American \_\_\_\_\_

Asian-Indian American \_\_\_\_\_

Other (Please give details) \_\_\_\_\_

Where certified as DBE \_\_\_\_\_

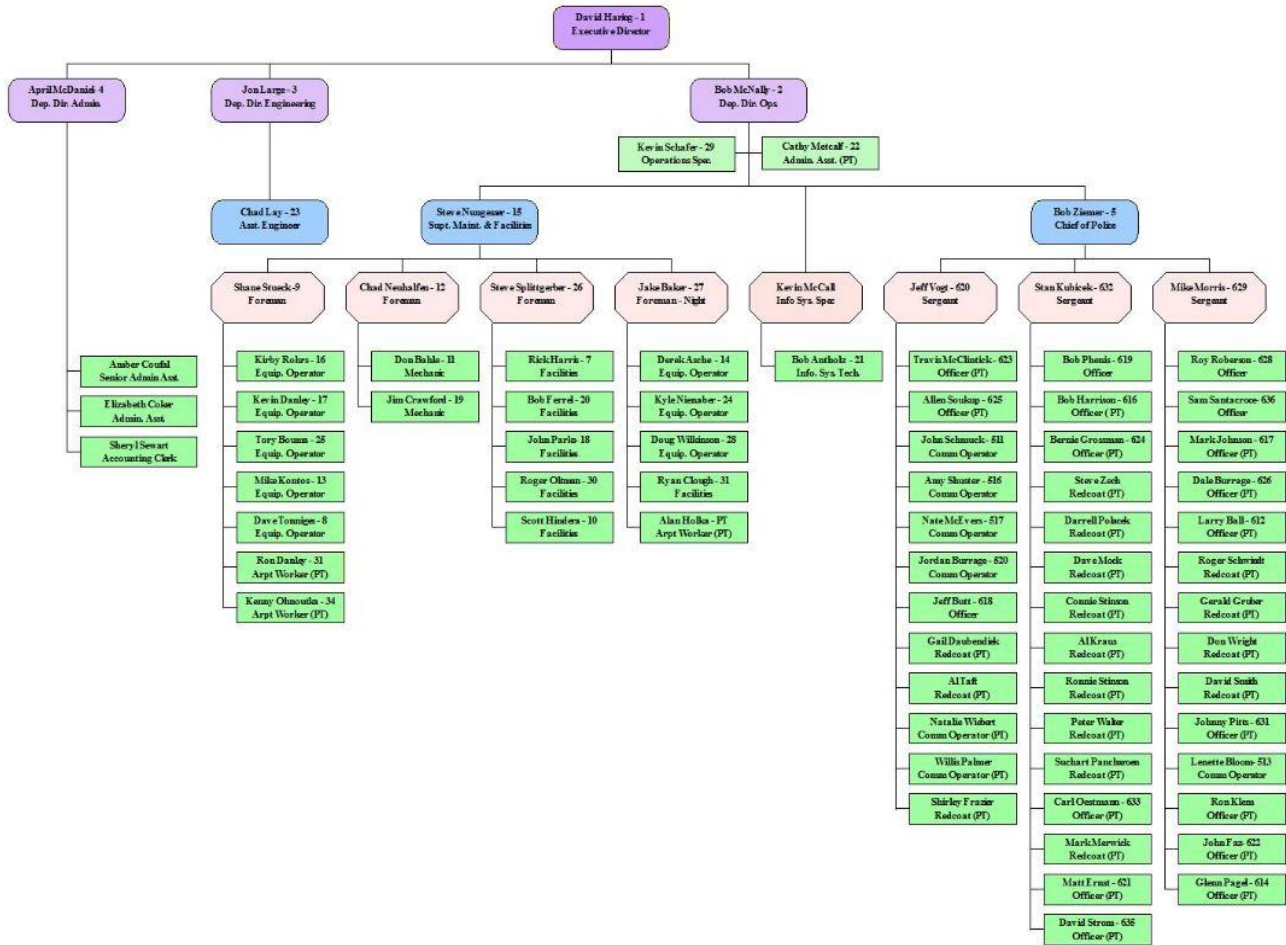
*(If other than Nebraska Department of Roads listing, submit proof from source acceptable to the Federal Aviation Administration)*

\_\_\_\_\_  
Date

\_\_\_\_\_  
Contractor Signature

APPENDIX A  
LINCOLN AIRPORT AUTHORITY  
ORGANIZATIONAL CHART

LINCOLN AIRPORT AUTHORITY  
ORGANIZATIONAL CHART  
8-29-2014





APPENDIX B  
MONITORING AND ENFORCEMENT MECHANISMS

The Lincoln Airport Authority has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

- Breach of contract action, pursuant to the terms of the contract;
- Breach of contract action, pursuant to Nebraska Statute § 3-504;
- Other sections of Nebraska Statutes which may be applicable and could be used to enforce DBE requirements include unemployment compensation fund contributors and interest due under the provision of Nebraska Statute § 48-601 to § 48-669 on wages paid to individuals employed. Conditions regarding fair employment practices as contained in Nebraska Statutes § 48-1101 through § 48-225 and to comply with minimum wage scale and nondiscrimination as defined in Nebraska Statutes § 48-1201 through § 48-1277.

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

- Suspension or debarment proceedings pursuant to 49 CFR Part 26
- Enforcement action pursuant to 49 CFR Part 31
- Prosecution pursuant to 8 USC 1001

APPENDIX C  
NEBRASKA DEPARTMENT OF ROADS  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)

# NEBRASKA DEPARTMENT OF ROADS

## DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

REVISED MAY 2006



**Dave Heineman,  
Governor**

**John Craig,  
Director**

## STATEMENT OF POLICY

It is the policy of the Nebraska Department of Roads (NDOR) that Disadvantaged Business Enterprises (DBE) as described in 49 CFR part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, will have a level playing field on which to participate in Federal-Aid contracts for highway construction work.

All Departments and Divisions of NDOR and its DBE Certification Review Committee will adhere to all of the rules and regulations promulgated by the U.S. Department of Transportation, as outlined in 49 CFR part 26. To assure that this policy is implemented NDOR has established a DBE Program that is narrowly tailored in accordance with applicable law. Through the use of its DBE Program, NDOR will ensure that only applicants that fully meet all of the DBE eligibility standards are certified as DBEs. The NDOR DBE Program will help remove barriers that may exist to the participation of all eligible firms through the use of its Supportive Services Program. NDOR will also assist in the development of eligible firms to help make them more competitive both within and outside of the DBE Program.

NDOR assures that its contractors and subcontractors that are recipients of Federal-Aid funds, comply with the provisions of 49 CFR part 26 and the DBE Program. NDOR will advise every contractor through contract specifications, that discrimination on the basis of race, color, national origin, sex, age or disability in the award and performance of Federal-aid contracts is prohibited. Failure by a contractor to carry out these nondiscrimination requirements shall constitute a breach of contract and may result in termination of the contract or other such remedy as NDOR deems appropriate.

The NDOR Director maintains overall responsibility for the administration of the DBE Program. In order to carry out these responsibilities, the NDOR Director has designated a DBE Liaison Officer (Highway Civil Rights Coordinator).

NDOR will submit its overall DBE participation goal to the Federal Highway Administration annually. The DBE participation goal will be for a period of one year and will be reviewed at the end of each year using pertinent information to determine the goal for the following year.

RECOMMENDED:

APPROVED:

\_\_\_\_\_  
Joe Kisicki, Highway Civil Rights Coordinator

\_\_\_\_\_  
John Craig, Director

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

\_\_\_\_\_  
Claude Oie, Construction Engineer

\_\_\_\_\_  
William Brownell, FHWA Division Administrator

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

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**I. Definitions:** (For Additional Definitions, See 49 CFR part 26.5)

**Affiliation** – Affiliation has the same meaning as in the Small Business Administration regulations, 13 CFR part 121. Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (a) One concern controls or has the power to control the other;
- (b) A third party controls or has the power to control the other; or
- (c) An identity of interest among parties exists such that affiliation may be found.

In determining whether affiliation exists it is necessary to consider all appropriate factors including common ownership, management and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.

**Commercially Useful Function** – A DBE contractor performs a commercially useful function when it is responsible for execution of the work of a contract and carries out its responsibility by actually performing, managing and supervising the work involved. A DBE contractor must be responsible for materials and supplies used on the contract; for negotiating price, determining quality and quantity, ordering, installing (where applicable) and paying for the material.

**Disadvantaged Business Enterprise or DBE** – A for-profit small business concern:

- (a) 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
- (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. (See 49 CFR part 26.67)

**Good Faith Efforts** – Efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity and appropriateness to the objective, can be reasonably expected to fulfill the program requirement.

**Personal Net Worth** – The net value of the assets of an individual after his/her total liabilities are deducted. An individual's personal net worth does not include the individual's interest in an applicant or certified DBE firm, or the equity in his or her primary place of residence. An individual's personal net worth includes only his or her share of assets held jointly or as community property with the individual's spouse. An individual's personal net worth may not exceed \$750,000.

**Small Business Concern** – With respect to firms seeking to participate as DBEs on DOT-assisted contracts; a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations (13 CFR part 121) that also does not exceed the cap on annual gross receipts as specified in 26.65(b).

**General Contractor** – Even if a firm meets the requirements of paragraphs (a) and (b) above, it is not an eligible DBE if the firm (including its affiliates) had average annual gross receipts over the firm's previous three fiscal years in excess of \$19.57 million. The Secretary adjusts this amount for inflation from time to time.

**Engineering Consultant Firms and Specialty Contractors** - The maximum average annual gross receipts over the previous three fiscal years are \$6.5 million and \$13 million respectively. Firms in these categories should check the most recent Small Business Administration Regulations.

## **II. General:**

The Nebraska Department of Roads (NDOR) Disadvantaged Business Enterprise (DBE) Program was drafted in 1999 to comply with the U.S. Department of Transportation (DOT) Disadvantaged Business Enterprise Program Final Rule, 49 CFR part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Programs*, effective March 4, 1999. The NDOR DBE Program is intended to remedy past discrimination against disadvantaged business enterprises, ensure a “level playing field” and foster equal opportunity in DOT-assisted contracts, improve the flexibility and efficiency of the DBE Program and reduce burdens on small businesses. The NDOR DBE Program meets the “strict scrutiny” and “narrow tailoring” requirements defined in recent case law. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by NDOR in its financial assistance agreements with DOT.

Each year NDOR and the Federal Highway Administration (FHWA) execute an agreement for funding to be used to assist NDOR in providing supportive services to DBEs, and potential DBEs. The agreement contains nondiscrimination clauses applicable to all Federal-Aid contracts and agreements to which NDOR may be a party. The DBE Program applies to all Federal Funds received by NDOR from DOT, that are used for highway construction and public transportation projects in areas other than urbanized areas.

### **Nondiscrimination (26.7):**

NDOR 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, national origin, sex, age or disability. In administering its DBE Program NDOR 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 DBE Program with respect to individuals of a particular race, color, national origin, sex, age or disability.

### **DBE Program Updates (26.21):**

NDOR will provide DOT updates representing significant changes in the DBE Program.

### **Quotas (26.43):**

NDOR does not use quotas in any way in the administration of the DBE Program.

### **Federal Financial Assistance Agreement Assurance (26.13):**

NDOR has signed the following assurance applicable to all DOT-assisted contracts and their administration:

NDOR shall not discriminate on the basis of race, color, national origin, sex, age or disability 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. NDOR shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The NDOR DBE Program as required by 49 CFR part 26 and approved by DOT is incorporated by reference in this agreement. Implementation of the DBE Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to NDOR of its failure to carry out its approved DBE Program, DOT 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.).



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

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

### **III. Organization and Structure (26.25):**

#### **DBE Liaison Officer (NDOR Highway Civil Rights Coordinator):**

The NDOR Director maintains overall responsibility for the NDOR DBE Program. The direct administration of the DBE and External EEO Programs is assigned to the Construction Division, Highway Civil Rights/Disadvantaged Business Enterprise (HCR/DBE) Office. The Manager of the HCR/DBE Office, the Highway Civil Rights Coordinator, is designated as the DBE Liaison Officer and serves as the EEO/AA Liaison between NDOR and the FHWA. The Highway Civil Rights Coordinator has direct, independent access to the NDOR Construction Engineer concerning DBE Program matters. The Highway Civil Rights Coordinator is responsible for carrying out the objectives of the Policy Statement and for developing, managing and implementing all aspects of the DBE Program, including setting the annual DBE participation goals. The Highway Civil Rights Coordinator is also responsible for ensuring that NDOR complies with all provisions of 49 CFR part 26, Title VI, and the ADA Title I requirements to secure Federal highway funding. The Highway Civil Rights Coordinator is responsible for the assignment of necessary and appropriate duties to the staff of the HCR/DBE Office.

NDOR will provide sufficient staff and resources to the HCR/DBE Office so it can carry out the administration of the DBE Program and External EEO Programs. The Highway Civil Rights Coordinator has a staff of two professional employees, an Assistant Coordinator and an External EEO Contract Compliance Officer. An organizational chart displaying the Highway Civil Rights Coordinator's position in the organization is found in **Attachment 1**.

#### **Highway Civil Rights/Disadvantaged Business Enterprise Office Staff and Their Duties:**

**The Highway Civil Rights Assistant Coordinator** is primarily responsible for administrative work in implementing the DBE Program. Duties of the Assistant Coordinator include:

- Acting as a liaison with minority groups, community agencies and minority or female owned companies to solicit their participation in the DBE Program.
- Identifying the need for, and assisting in implementing training courses for DBEs.
- Providing information and technical assistance to DBEs, potential DBEs, and others.
- Processing DBE certification applications and making recommendations on eligibility status.
- Participating in the on-site investigations of applicants for DBE certification.
- Preparing agendas, schedules, attending meetings of the NDOR DBE Certification Review Committee and providing information at the meetings as needed.
- Monitoring DBE performance on projects.
- Assisting with drafting and revising all documents used by the HCR/DBE Office.

- Administering the DBE portion of the contract finaling process.
- Assisting with the publication of newsletters and/or other informational documents.
- Investigating complaints concerning DBE eligibility status and preparing investigation reports.
- Maintaining files and electronic databases on civil rights programs.
- Providing other assistance to the Highway Civil Rights Coordinator as needed.

**The External EEO Contract Compliance Officer** is primarily responsible for assuring contractors' compliance with EEO contract provisions, monitoring on-the-job training and disseminating information to contractors on the hiring of minorities and women. The duties of the Contract Compliance Officer include:

- Inspecting project work sites or contractors' home offices to ensure contractors are complying with the EEO provisions of their contracts.
- Documenting contract compliance reviews and preparing FHWA contract compliance reports.
- Monitoring the NDOR On-the-Job Training Program and preparing FHWA annual reports.
- Receiving the Form 1391s and prepare the 1392 annual report for FHWA.
- Monitoring all contractors on Federal-aid projects to assure they have current Contractor Self Analysis forms on file.
- Providing information and technical assistance on EEO requirements to contractors, subcontractors, and NDOR personnel.
- Providing other assistance to the Highway Civil Rights Coordinator and Assistant Coordinator as needed.

**Location of the Highway Civil Rights/Disadvantaged Business Enterprise Office:**

The Highway Civil Rights/Disadvantaged Business Enterprise Office is located in the NDOR Central Complex Headquarters:

Room 107  
 1500 Highway 2  
 Lincoln, Nebraska 68509-4759

Office hours are Monday through Friday, 8 A.M. to 5 P.M.

The telephone numbers of the HCR/DBE Office staff are:

Highway Civil Rights Coordinator	(402) 479-4531
Highway Civil Rights Assistant Coordinator	(402) 479-4844
External EEO Contract Compliance Officer	(402) 479-4514

Fax: (402) 479-3728

#### **IV. Implementation of the DBE Program:**

NDOR will ensure that DBEs have a level playing field and an equitable opportunity to compete for and participate in Federal-Aid contracts and subcontracts.

##### **Solicitation Time Schedule:**

NDOR usually has ten (10) lettings a year. The letting schedule is posted on the NDOR website.

The NDOR bid advertisement procedures assure fairness in soliciting bids. A list of projects being let is posted on the NDOR website four weeks before each letting.

##### **Communication Program:**

The HCR/DBE Office staff is normally available to provide information or technical assistance either by telephone or in person.

NDOR will further develop its informational and communication programs to reach current and potential DBE contractors.

The "Notice to Contractors" posted on the NDOR website contains a directory of all certified DBE firms eligible to participate in specific DBE goals on Federal-Aid projects.

The HCR/DBE Office staff is available as needed prior to each letting to offer assistance to DBEs and other contractors.

NDOR will annually publish its proposed DBE participation goal no later than August 1. The notice of the proposed DBE goal will be published in the Omaha World-Herald, the Lincoln Journal Star, the Omaha Star and Nuestro Mundo. The proposed goal and its methodology will be available for review by the public at the HCR/DBE Office in the NDOR Central Complex for thirty (30) days after publication. Written comments on the proposed goal will be accepted for forty-five (45) days after publication.

##### **Technical Assistance and Training:**

The HCR/DBE Office will periodically assess the needs of DBEs and potential DBEs and offer training courses or technical assistance to improve their ability to compete for and participate in contracts. NDOR staff or consultants may be used to provide technical assistance and training. Training courses and technical assistance may be by group or individual sessions.

The HCR/DBE Office will maintain contacts with agencies offering bonding and financial assistance if possible, and will provide information to DBEs concerning the use of these agencies.

The HCR/DBE Office will assist DBEs in working with NDOR Departments/Divisions, NDOR District Offices, NDOR personnel and prime contractors.

##### **DBE Financial Institutions (26.27):**

NDOR policy is to review services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community if available, and make reasonable efforts to use these institutions. NDOR will encourage prime contractors on DOT-assisted contracts to make use of these institutions.

### **Contract Assurance (26.13):**

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

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

### **Prompt Payment Clause (26.29):**

As part of its DBE Program, NDOR requires prime contractors to include as a part of every subcontract (including second tier subcontracts) for work and material a *Prompt Payment Clause*. The *Prompt Payment Clause* will require payment to all subcontractors, not only DBEs, for all labor and material, for work completed, within twenty (20) days of receipt of progress payments from NDOR for said work. The *Prompt Payment Clause* will also stipulate the return of retainage within thirty (30) days after the subcontractor achieves the specified work as verified by payment from NDOR. NDOR will include the following clauses in each DOT-assisted prime contract:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 20-days from receipt of each payment the prime contractor receives from the Nebraska Department of Roads. The prime contractor agrees further to return retainage, withheld to insure satisfactory completion of the work, to each subcontractor within 30-days after the subcontractor achieves the specified work as verified by payment from NDOR.”

“Any disputes that arise regarding the satisfactory completion of work by a subcontractor may be brought to the attention of NDOR, which will make a determination. Any delay of payment from the above-referenced time frame may occur only for good cause following written approval of the NDOR HCR/DBE Office. This clause applies to both DBE and non-DBE subcontractors.”

“Failure by the prime contractor to carry out the requirements of the *Prompt Payment Clause* or the timely return of retainage without just cause is a material breach of this contract, which may result in NDOR withholding the amount of payment from the prime contractor that should have been paid to the subcontractor, termination of this contract or other such remedy as NDOR deems appropriate.”

**Note:** A prime contractor may withhold payment only for just cause, and the contractor must notify NDOR in writing of its intent to withhold payment prior to withholding payment. The contractor shall not withhold, delay or postpone payment without first receiving written approval from NDOR.

Prime contractors' compliance with the *Prompt Payment Clause* and return of retainage will be monitored by the NDOR EEO Contract Compliance Officer; however, it will be required that NDOR Project Managers in the field cooperate with the HCR/DBE Office, and provide up to date records on the payments made to all subcontractors. All subcontractors will be notified of the provisions of the *Prompt Payment Clause* and will be instructed to promptly notify the HCR/DBE Office or the EEO Contract Compliance Officer if a prime contractor fails to comply with the *Prompt Payment Clause* or the return of retainage.

### **DBE Directory (26.31):**

The HCR/DBE Office maintains a directory listing certified DBEs, the firms' addresses, phone numbers, fax numbers and the types of work the firms are certified to do. This list is not meant as a statement or representation by NDOR of the competency or the capacity of a DBE contractor to perform a given type of work. The list is updated monthly and is part of the "Notice to Contractors" which is posted on the NDOR website. A printed list is also available.

### **DBE Over-Concentration in Certain Fields of Work (26.33):**

NDOR will continue to monitor the utilization of DBEs, and If NDOR finds over-concentration of DBEs it will develop a process to be used to address the over-concentration. Any means NDOR may use to address over-concentration will be submitted to the DOT for approval.

### **Business Development Program (26.35):**

NDOR does not utilize a Business Development Program at this time. However, NDOR may elect to develop and implement such a program at a later date.

### **Mentor-Protégé Program (26.35):**

NDOR does not utilize a Mentor-Protégé Program at this time. However, NDOR may elect to develop and implement such a program at a later date.

### **Procedure to Ascertain Eligibility:**

NDOR has developed certification procedures and contract special provisions to ensure that Only those firms that are eligible benefit from the DBE Program.

### **Certification and Contract Compliance Procedures:**

The procedures and policies for DBE certification and monitoring are in **Attachment 2**.

### **Goal Commitment and Good Faith Effort Procedures (26.53):**

NDOR treats bidders' compliance with good faith effort requirements as a responsibility.

NDOR requires bidders to submit proposed DBE participation with their bids for all projects on which DBE participation goals have been set. Contractors may only use DBE firms certified by NDOR to meet DBE goals. Information that must be submitted includes:

- (a) The names and addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE firm will perform;
- (c) The dollar amount of the participation of each DBE firm;
- (d) Written and signed documentation of commitment to use a DBE firm whose participation it submits to meet a project/contract goal;
- (e) Written and signed confirmation from the DBE firm that it is participating in the contract as provided in the prime contractor's commitment; and
- (f) If the contract goal is not met, evidence of good faith effort.

### **Demonstration of Good Faith Effort:**

The obligation of the bidder/offer is to make a good faith effort to meet DBE goals, and clearly demonstrate that it has done so, either by meeting the goals or documenting their good faith efforts. (Examples of good faith efforts are found in Appendix A to 49 CFR part 26.)

The decision as to whether or not good faith efforts are acceptable will be made by a committee comprised of the NDOR Highway Civil Rights Coordinator, NDOR Contracts Lettings Manager and an at-large NDOR staff member.

### **Administrative Reconsideration:**

If a contractor elects to appeal a NDOR good faith effort decision he/she must file a written request for reconsideration within three (3) days of the decision. The contractor can choose to submit a written narrative supporting the good faith effort submittal or appear in person. The appeal will be heard by a Hearing Officer appointed by the NDOR Director. The Hearing Officer will be an individual who is knowledgeable of the DBE Program and its good faith effort provisions, but had no part in the initial decision.

The Hearing Officer will hear a contractor's appeal of a good faith effort decision within five (5) days of receipt of a written request, and will issue a written decision within three (3) days of the date of the appeal. The Hearing Officer's decision is administratively final.

### **Overall DBE Program Goal (26.45):**

The statutes authorizing the DBE Program provide that, except to the extent the Secretary of DOT determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs. This 10 percent goal is an aspirational goal at the national level, which DOT uses as a tool in evaluating and monitoring DBE's opportunities to participate in DOT-assisted contracts. The national 10 percent goal does not authorize nor require NDOR to set DBE participation goals at the 10 percent level or any particular level, or to take any special administrative steps if their goals are above or below 10 percent.

49 CFR part 26.45 requires that NDOR set an overall goal for DBE participation in DOT-assisted contracts. The overall DBE goal must 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 DOT-assisted contracts." The NDOR overall DBE goal must reflect the NDOR determination of the level of DBE participation that would be expected absent the effects of discrimination. NDOR cannot simply rely on either the 10 percent national goal, its previous overall goal or past DBE participation in its program without reference to the relative availability of DBEs in the NDOR market area.

NDOR will set an annual overall DBE goal using criteria approved by the FHWA in accordance with 49 CFR part 26.45. The goal period coincides with the Federal fiscal year. The Highway Civil Rights Coordinator will have the overall responsibility for establishing the annual overall DBE goal by using a predetermined goal setting process. The goal setting process will first determine a base figure using pertinent information and data that is available. Such information may include any or all of the following:

(a) The use of *DBE Directories and Census Bureau Data* to determine the number of ready, willing and able DBEs relative to all businesses ready, willing and able to perform work of the same type.

(b) The use of a *Bidders List* and comparing data on DBE bidders to all bidders for prime contracts and subcontracts on DOT-assisted projects. The *Bidders List* is a count of all firms participating, or attempting to participate, on DOT-assisted projects. Prime contractors must provide NDOR the identity of all firms who bid or quote subcontracts on DOT-assisted projects, including both DBE and non-DBE. This information must be provided prior to the time of each letting on a form provided to the contractors by the NDOR Contracts Office.

(c) The use of a valid, applicable *Disparity Study* to derive a percentage figure.

(d) The use of alternative methods as deemed appropriate by NDOR, and approved by the DOT operating administration. Any alternative methodology must be based on demonstrable evidence of local market conditions and be designed to attain a goal that is rationally related to the relative availability of DBEs in the NDOR market area.

(e) Once a base figure is calculated, NDOR will examine other available evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at its overall DBE goal. Some of the types of evidence to be considered when adjusting the base figure include:

(1) The current capacity of DBEs to perform work in the NDOR DOT-assisted highway construction program as measured by the volume of work DBEs have performed in recent years.

(2) Evidence from disparity studies conducted anywhere within NDOR jurisdiction that has not already been accounted for in establishing the base figure.

(f) NDOR is required to provide for public participation in the establishment of an annual overall DBE goal. This public participation will include:

(1) Consultation with minority, women's and general contractor groups, and

(2) Publishing a notice statewide announcing the NDOR proposed annual overall goal for DBE participation in publications including the Omaha World-Herald, Lincoln Journal Star, and available minority-focused media and trade association publications.

For 30 days after publication, the NDOR proposed annual overall DBE participation goal and its rationale will be available for public inspection during normal business hours at the NDOR Central Complex Headquarters and all NDOR District Offices. Comments will be accepted from the public for 45 days after publication. NDOR will review and consider all comments before making its final decision on what the annual overall DBE goal will be.

The NDOR DBE Program's annual overall goal will be assessed annually for potential DBE participation and may change annually. The overall annual goal will be based upon the availability of certified DBEs capable of performing work being let to contract by NDOR. The HCR/DBE Office will maintain and review a listing of the DBEs and the work they perform. Realistic goals will then be set to provide a maximum opportunity for participation by all NDOR certified DBEs.

**SEE ADDENDUM 1** for the DBE annual goal and methodology used in establishing the goal.

### **Project/Contract Goals (26.51):**

NDOR encourages minority and/or female participation on all contracts. The Contracts Lettings Manager and the Highway Civil Rights Coordinator will work together to set specific project/contract goals, which assure a level playing field for DBE participation. All Federal-Aid projects will be reviewed prior to each letting to determine the potential for DBE participation.

Specific percentage goals will be set on projects based on factors including geographic location, suitable variety of work items, degree of difficulty and the capacity of available DBEs. Contract/project goals will be established so that over the period to which the overall goal applies, they will cumulatively result in meeting the overall goal.

#### **FTA-Assisted Vehicle and Specialized Equipment Procurements (26.49):**

NDOR requires that each transit vehicle or specialized equipment manufacture, as a condition to bid or propose on FTA-assisted transit vehicles or specialized equipment procurements, certify that it has complied with the requirements of 49 CFR part 26.49.

As part of the requirements of this section transit vehicle or specialized equipment manufactures must establish and submit for FTA's approval an annual DBE participation goal guided, to the extent possible, by the principles underlying 49 CFR part 26.45.

NDOR does not include FTA assistance used in transit vehicle or specialized equipment procurements in the base amount from which its overall DBE participation goal is calculated.

#### **V. Monitoring Goal Achievement (26.37)**

The HCR/DBE Office will maintain records and prepare required reports of DBE goals and annual overall DBE Program goal achievement. Specific project/contract goals will also be monitored.

#### **Monitoring DBE Performance and Crediting DBE Participation (26.37):**

NDOR will monitor the work performed on DOT-assisted projects to verify that the work committed to DBEs at contract award is actually performed by the DBEs. NDOR will maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and will ensure that DBE participation is credited toward overall or project/contract goals only when payments are actually made to DBE firms.

Even though a DBE participation goal may be set on a project in the current fiscal year, that goal may not be credited toward the overall annual DBE participation goal until the work has actually been performed by the DBE and the DBE has been paid for the work.

#### **Counting DBE Participation (26.55):**

NDOR will count DBE participation toward overall and project/contract goals as provided in 49 CFR part 26.55 as amended.

(a) When a DBE participates in a contract, count only the value of the work actually performed by the DBE toward DBE goals.

Count the entire amount of the portion of a construction contract performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE purchases or leases from the prime contractor or its affiliate).



When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE's subcontractor is also a DBE.

(b) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a *commercially useful function* on that contract.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is actually performing, managing and supervising the work. To perform a commercially useful function with respect to materials and supplies used on the contract, the DBE must be responsible for negotiating price, determining quality and quantity, ordering the material and paying for the material itself.

A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation.

(c) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

The DBE must be responsible for management and supervision of the entire trucking operation for which it is responsible on the contract. There cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract.

The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.

The DBE may lease trucks from another DBE firm, including an owner-operator. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of the transportation services provided by non-DBE lessees, not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

**Example:** DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by DBE Firm X and DBE Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by non-DBE Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by non-DBE Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks that Firm X receives as a result of its lease with Firm Z.

A lease must indicate that the DBE has exclusive use of and control over the leased truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(d) Count purchases from DBEs for materials or supplies toward DBE goals as follows:

If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

A *manufacturer* is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles or equipment of the general character described by the specifications and required by the contract.

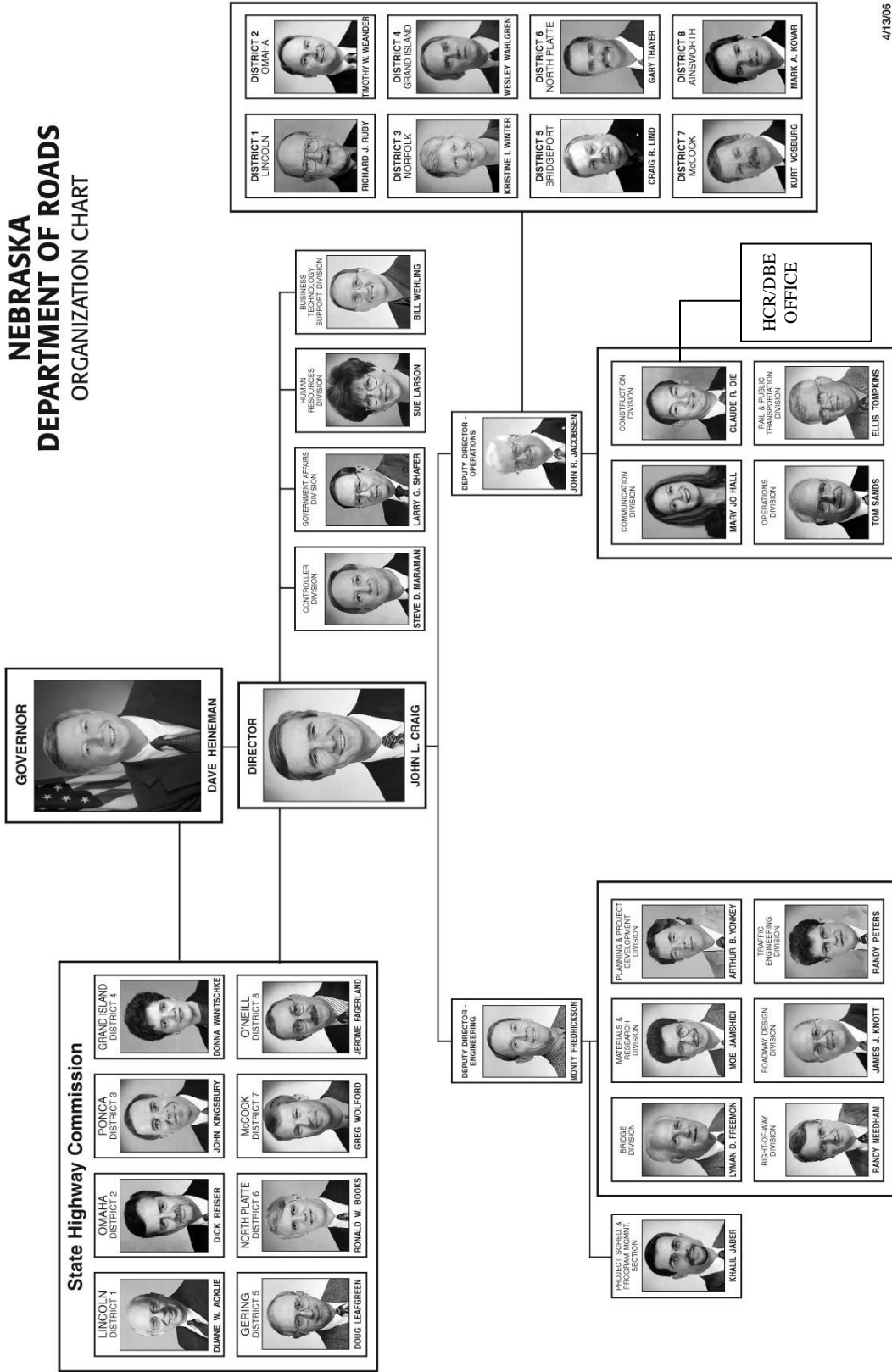
If the materials or supplies are purchased from a DBE regular dealer (supplier), count 60 percent of the cost of the materials or supplies toward DBE goals.

A *regular dealer* is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business if the person both owns and operates distribution equipment for the products.

**SEE ATTACHMENT 3** for a list of the regulations, provisions and contract remedies available to use in the event of non-compliance with the DBE regulations by a participant in NDOR procurement activities.

**NEBRASKA  
DEPARTMENT OF ROADS  
ORGANIZATION CHART**



## **ATTACHMENT 2**

# **NEBRASKA DEPARTMENT OF ROADS DISADVANTAGED BUSINESS ENTERPRISES CERTIFICATION PROCEDURES**

### **Initial Certification:**

NDOR will use the certification standards of Subpart D of 49 CFR part 26, and the certification procedures of Subpart E of 49 CFR part 26 to determine the eligibility of firms to participate as Disadvantaged Business Enterprises (DBE) in DOT-assisted contracts. To be certified as a DBE a firm must meet all certification eligibility standards. NDOR will make its certification decisions based on the facts as a whole.

NDOR will make decisions on applications for DBE certification within 90 days of receiving from the applicant firm all of the information required under this part. NDOR may extend this period once, for no more than an additional 60 days, upon written notice to the applicant firm explaining fully the reasons for the extension. If NDOR fails to make a decision by the applicable deadline under this paragraph, it may be deemed a constructive denial of the firm's application for DBE certification on the basis of which the firm may appeal to the DOT under 49 CFR part 26.89.

An applicant firm denied certification as a DBE by NDOR may not submit a new application for certification sooner than one (1) year after the effective date of the denial.

An applicant firm denied certification as a DBE by NDOR may appeal the decision to the DOT. (See page 21 of this Attachment)

### **Application:**

Applicants seeking certification as a DBE with NDOR must complete a Nebraska Unified Certification Program (NUCP) Uniform Certification Application and provide all of the supporting documentation required to establish the applicant's eligibility to be certified as a DBE. The supporting documentation must include a sworn, notarized *Personal Financial Statement* attesting to the firm's owner's personal net worth and a sworn, notarized statement attesting to the firm's owner's social and economic disadvantage. All information must be filed with the NDOR Highway Civil Rights/Disadvantaged Business Enterprise Office (HCR/DBE Office), Construction Division, Nebraska Department of Roads. (See **Attachments 4 and 5** for the Uniform Certification Application and Personal Financial Statement.)

Firms seeking certification as a DBE may obtain an application from the NDOR website, <http://www.dor.state.ne.us> or by contacting the HCR/DBE Office between 8:00 a.m. and 5:00 p.m., Monday through Friday, or by written request to the following address:

Nebraska Department of Roads  
Disadvantaged Business Enterprise Office  
1500 Highway 2, Room 107  
P.O. Box 94759  
Lincoln, Nebraska 68509-4759

Telephone: (402) 479-4531  
Fax: (402) 479-3728

## **Review:**

The HCR/DBE Office will review DBE certification applications and supporting documentation for compliance with the eligibility standards of 49 CFR part 26. A firm seeking DBE certification has the burden of demonstrating by a preponderance of the evidence that it meets the requirements of 49 CFR part 26, Subpart D – “Certification Standards” including but not limited to the following:

### **Group Membership (26.63):**

A firm seeking DBE certification must prove by a preponderance of the evidence that its owner(s) meet the requirements concerning socially disadvantaged group membership or individual social and economic disadvantage.

It is rebuttably presumed that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans or other minorities found to be disadvantaged by the Small Business Administration (SBA), are socially and economically disadvantaged individuals.

In making such a determination NDOR will consider whether the person has held himself out to be a member of the disadvantaged group over a long period of time prior to application for DBE certification, and whether the person is regarded as a member of the group by the relevant community. The applicant may be required to produce appropriate documentation of group membership.

If it is determined that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of the designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

### **Business Size (26.65):**

To be an eligible DBE, a firm (including all of its affiliates) must be an existing small business as defined by SBA standards found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

Even if a firm meets the requirements of the paragraph above, a firm is not an eligible DBE if the firm (including all of its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm’s previous three fiscal years in excess of \$19.57 million.

If a firm’s owner’s personal net worth exceeds \$750,000 excluding the owner’s ownership interest in the applicant firm and the equity in his or her primary residence, the individual’s presumption of economic disadvantage is rebutted.

### **Ownership (26.69):**

In determining whether the socially and economically disadvantaged participants in a firm actually own the firm; NDOR must consider all of the facts in the record viewed as a whole. To be an eligible DBE a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. The ownership must be real, substantial and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The contributions of capital or expertise to acquire ownership must be real and substantial.

(a) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership. The owner's expertise must be --

- (1) In a specialized field;
- (2) Of outstanding quality;
- (3) In areas critical to the firm's operations;
- (4) Indispensable to the firm's potential success;
- (5) Specific to the type of work the firm performs; and
- (6) Documented in the records of the firm.

(b) Examples of insufficient contributions include:

- (1) A promise to contribute capital;
- (2) An unsecured note payable to the firm;
- (3) A gift or transfer without adequate consideration from any non-disadvantaged individual or non-DBE firm who is –
  - (i) Involved in the same firm for which the individual is seeking certification;
  - (ii) Involved in the same or similar line of business; or
  - (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm for which the individual is seeking certification.

### **Control and Independence (26.71):**

The socially and economically disadvantaged owner must possess the power to control daily operations and long-term destiny. The owner must hold the highest office, control the board of directors or be the controlling partner. The disadvantaged owner must have technical competence and experience in the field of the firm's operations as well as managerial expertise. Office management, bookkeeping or clerical expertise is not sufficient to demonstrate control. The owner cannot have other employment or businesses that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.

For firms where other family members are owners or employees, the disadvantaged owner must demonstrate clear control. In determining whether socially and economically disadvantaged owners actually control a firm; NDOR must consider all of the facts in the record as a whole.

Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

In determining whether a potential DBE is an independent business, NDOR must scrutinize relationships with non-DBE firms in such areas as personnel, facilities, equipment, financial and/or bonding support and other resources.

NDOR must consider whether present or recent employer/employee relationships between the disadvantaged owner of the potential DBE firm and non-DBE firms compromise the independence of the potential DBE firm.

NDOR must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

In considering factors related to the independence of a potential DBE firm, NDOR must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

### **Other Rules Affecting DBE Certification (26.73):**

The eligibility of a firm seeking DBE certification must be evaluated on the basis of present circumstances (at the time the application for certification was submitted).

DBE firms and firms seeking DBE certification shall cooperate fully and promptly with NDOR requests (and DOT requests) for information relevant to the certification process.

Failure or refusal by a DBE firm or a firm seeking DBE certification to provide such information in a timely manner is a ground for a denial or removal of certification.

Only firms organized for profit may be eligible for DBE certification.

Applications for DBE certification will be denied without conducting an on-site review if –

- (a) The Personal Financial Statement shows the owner's personal net worth exceeds \$750,000;
- (b) The firm exceeds the \$19.57 million cap on average annual gross receipts;
- (c) It is clear from the application that disadvantaged individuals do not own or control the firm.

If it is determined after reviewing a firm's application for DBE certification that information is missing, the HCR/DBE Office will notify the applicant that he or she has a maximum of 30 days to provide the needed information.

If there is no timely response to the request for additional information, the firm's application for DBE certification will be submitted to the NDOR Certification Review Committee with a recommendation for denial based on the firm's refusal or failure to cooperate.

### **Investigation/On-site Reviews:**

The HCR/DBE Office staff will conduct an on-site review at the applicant firm's premises after a complete application has been received, except in the circumstances as cited above. The purpose of the on-site review is to verify information submitted, assess the firm's capabilities and capacity, determine the independence of the firm and the control or management of the firm demonstrated by the disadvantaged owner. Applicant firms will allow the Office staff to examine and review all books, records, documents and files of the firm and its affiliates, inspect its place of business and equipment, and permit interviews of its principals, agents and employees. Refusal to permit such inquiries shall be a ground for denial of certification. The Office staff may contact firms or individuals associated with or having direct knowledge of the firm applying for certification as a normal part of its investigation.

The HCR/DBE Office will make every reasonable effort to schedule the on-site review within 30 days of receipt of a completed application and all necessary supporting documentation from the firm applying for DBE certification.

The on-site review conducted for firms headquartered or having their principle place of business in Nebraska will include:

- (a) A visit to the firm's home office.
- (b) A review of any of the firm's records as deemed necessary.
- (c) Personal interviews with the firm's principal owners, managers and other individuals as deemed necessary.

- (d) On-site visits to the firm's active Nebraska construction projects (if applicable).
- (e) Review of information from other states if the firm is or has been certified as a DBE in another state.
- (f) Review of any information deemed necessary and obtained from other sources.

The following applies for all applications for DBE certification from firms not headquartered or having their principle place of business in Nebraska:

- (a) If a firm applying for DBE certification is from a state other than Nebraska, the firm must be certified as a DBE under 49 CFR part 26 in its home state before applying for certification in Nebraska.
- (b) If the firm is from another state, an on-site visit report will be requested from the firm's home state certifying agency. If the firm's home state has never conducted an on-site review, NDOR will not process the firm's application until such time as an on-site has been conducted by the home state and the on-site review has been received by NDOR.

The findings of the investigation will be compiled and presented to the NDOR DBE Certification Review Committee for a determination of eligibility as soon as possible following the completed review.

#### **NDOR Certification Review Committee:**

##### **Membership:**

The NDOR DBE Certification Review Committee (Committee) members shall be appointed by the NDOR Director. A majority of the total number of Committee members present at a Committee meeting shall constitute a quorum authorized to act on behalf of the entire Committee.

##### **Certification Procedures:**

The Committee shall meet as required to assure timely processing of applications for DBE certification, but normally no more often than once each month. The Committee will meet at a mutually agreeable date and time at the NDOR Central Office. Committee meetings may also be conducted by means of a conference telephone call. The Committee meetings are informal and are not open to the public.

Matters for the Committee to consider include, but are not limited to, certifying or decertifying a firm using the eligibility standards as set forth in 49 CFR part 26.

The Committee shall consider applications for certification using eligibility standards set forth in 49 CFR part 26 to determine whether or not the applicant firm is eligible for certification as a DBE. Nothing in this document shall be construed in a way that would be inconsistent with the Federal Statutes and Regulations or Opinions of the U.S. DOT.

The Committee may render its decision immediately or if necessary, defer the decision until the Committee has had a full opportunity to consider the information provided.

If the Committee determines it needs more information in order to reach a decision, the applicant firm will be notified in writing by the HCR/DBE Office and given 30 days from the date of the requesting letter to respond. If additional information has been requested the matter will be addressed by the Committee as soon as possible following receipt of the information.



The applicant firm will be notified in writing of the Committee's findings within 5 days of the Committee meeting.

If the Committee's determination is for certification of the applicant firm as a DBE the HCR/DBE Office will issue a *Certificate of Eligibility* effective for three (3) years from the date of the determination.

If the Committee's determination is against certification of the applicant firm as a DBE the HCR/DBE Office will issue a *Denial of DBE Certification* letter by certified mail to the firm. The *Denial of DBE Certification* letter will summarize the grounds upon which the Committee relied in making its decision.

The Committee's decision to deny a firm DBE certification is administratively final on the day of the decision. There are no provisions for the appeal of a decision to deny DBE certification to NDOR. A firm denied DBE certification by NDOR may make a formal appeal of the decision to DOT.

### **Federal Formal Appeal Procedures:**

An applicant firm that was denied DBE certification by NDOR may appeal that decision to the United States Department of Transportation.

The appeal must be filed in writing to:

U.S. Department of Transportation  
Office of Civil Rights  
400 7<sup>th</sup> Street, S.W., Room 5414  
Washington, DC 20590

The appeal must be made within 90 days of NDOR's administratively final decision. Pending The DOT decision in the matter, the NDOR decision remains in effect.

The appeal from the applicant firm that was denied DBE certification must contain information and arguments concerning why the NDOR decision should be reversed. DOT makes its decision based solely on the entire administrative record. DOT does not make a de novo review of the matter and does not conduct a hearing. It is DOT policy to attempt to make its decision within 180 days of receiving the complete administrative record.

### **Period of Certification:**

Once a firm has been certified as a DBE, it shall remain certified for a period of three (3) years, unless and until its certification has been removed through the procedures as set forth in 49 CFR part 26.87. DBE firms will not be required to reapply for certification during this three-year period, unless the factual basis on which the certification was made changes.

DBE firms must inform the HCR/DBE Office in writing within 30 days of any change in the circumstances affecting their ability to meet size, disadvantaged status, ownership or control requirements of 49 CFR part 26, or any material change in the information provided in the DBE firm's application.

## **Annual Affidavits and Recertification Applications:**

DBE firms must provide the HCR/DBE Office, 45 days prior to the first and second year anniversary date of their original certification, a sworn and notarized affidavit (on a form provided) affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership or control eligibility requirements of 49 CFR part 26, or any material changes in the information provided in its application form, except for changes of which the firm has already informed the Office. The disadvantaged owners of DBE firms are also required to provide a Personal Financial Statement and copies of their most recent personal and company Federal Income Tax Returns.

If the firm is up for a fourth year review, the HCR/DBE Office will notify the firm approximately 90 days before the expiration of its three-year certification. The firm must then submit a full application for recertification at least 45 days prior to the expiration of the firm's certification.

NDOR has the authority to extend the DBE certification of any firm for up to 90 days.

## **DBE Monitoring Procedures:**

The HCR/DBE Office will conduct on-site visits to projects with DBE participation goals and may audit/review a DBE firm's certification at anytime.

The NDOR contract specifications contain guidelines regarding DBE participation. Contract violations will be dealt with as specified therein.

The HCR/DBE Office will investigate alleged DBE Program violations to determine if:

- (a) The DBE's application on file remains accurate or if the DBE's certification should be reinvestigated.
- (b) If an investigation is needed, it may include any or all of the steps outlined above and any additional steps required to determine the validity of the alleged violation.

Cases of possible fraud or abuse of the DBE Program may be referred to the Nebraska Attorney General's Office and/or the U.S. Department of Transportation, Office of the Inspector General.

## **Challenge of DBE Certification:**

### **Challenge by NDOR:**

If an investigation or audit by the HCR/DBE Office reveals previously undisclosed or erroneous information which affects a firm's DBE eligibility status, the firm will be notified in writing by certified mail. The notice will cite the undisclosed or erroneous information, and the firm will be given 15 days from the date of the notice to respond in writing. The response must contain information sufficient to permit an evaluation of eligibility.

The HCR/DBE Office will investigate and evaluate all available information. If the firm's eligibility status remains in question; the Office will present their recommendation to the Committee. The Committee will then evaluate the available information and make a determination.

If the Committee's determination is that the firm should be decertified, the HCR/DBE Office will send the firm an *Intent to Decertify Letter* within 5 days of the Committee's determination stating the reason(s) for the determination.

After a firm is notified of the Intent to Decertify, the firm has the opportunity to request an informal hearing. A request for a hearing must be made within 15 days of the date of the Intent to Decertify Letter. If no timely request for a hearing is made, the DBE firm's certification will be revoked the day the decision is administratively final on the 16<sup>th</sup> day after the date of the letter.

If an informal hearing is requested, the NDOR Director will appoint a Hearing Officer who is knowledgeable about the DBE Program to hear the matter. The Hearing Officer will be someone who was not involved in the decision on the Intent to Decertify. The firm may respond to the determination in writing to the Hearing Officer or in person at the informal hearing. The Hearing Officer's decision is effective and administratively final the day it is issued. The Hearing Officer's decision may be appealed in writing within 90 days of the date that the decision was issued to:

U.S. Department of Transportation  
Office of Civil Rights  
400 7<sup>th</sup> Street, S.W., Room 5414  
Washington, D.C. 20590

A firm will remain eligible as a DBE during the pendency of the proceeding to remove its eligibility and until the date of the issuance of the notice provided for above.

If necessary, the case may be referred to the Nebraska Attorney General's Office and/or the U.S. Department of Transportation for possible administrative, civil or criminal prosecution.

### **Challenge by a Third Party**

Any third party may challenge the eligibility status of a firm that is certified as a Disadvantaged Business Enterprise.

The challenge must be in writing and must contain all information relevant to the eligibility criteria of the DBE firm being challenged.

The identity of the third party that initiated the challenge will be kept confidential by NDOR.

During a challenge procedure the presumption of DBE eligibility will remain. If a firm's DBE certification expires during a challenge, the challenged DBE firm must comply with all of the recertification procedures to retain DBE certification during the challenge.

All challenges will be referred to the HCR/DBE Office for prompt investigation.

If the HCR/DBE Office determines the challenge is clearly unfounded and there is no basis for pursuing the matter the proceedings will be terminated, and the complaining party and the DBE firm whose eligibility is being challenged will be notified.

If the HCR/DBE Office determines the challenge may be substantiated and warrants further investigation, the Office will notify the challenged DBE firm in writing by certified mail identifying the grounds for the challenge.

The challenged firm will be given 15 days from the date of the notice to respond in writing. The firm's response must contain information sufficient to permit an evaluation of the firm's eligibility status.

The HCR/DBE Office will investigate and evaluate all available information including that provided by the challenged firm. The Office will then make a recommendation to the Certification Review Committee that may include remedial actions to be taken by the challenged firm. The Committee will evaluate all of the available information and make a determination.

The HCR/DBE Office will notify the complaining party and the DBE firm whose eligibility is being challenged in writing by certified mail, of the Committee's determination and reasons therefore. Each party will have 15 days from the date of the notice to request that an informal hearing be held. If neither party makes a timely request for an informal hearing, the decision becomes administratively final 16 days from the date of the notice.

If an informal hearing is requested, the NDOR Director will appoint a Hearing Officer who is knowledgeable about the DBE Program to hear the matter. The Hearing Officer will be someone who was not involved in the decision on the third party challenge. Either party may respond to the determination in writing to the Hearing Officer, or in person at the informal hearing. The Hearing Officer's decision is effective and administratively final the day it is issued. The Hearing Officer's decision may be appealed in writing within 90 days of the date that the decision was issued to:

U.S. Department of Transportation  
Office of Civil Rights  
400 7<sup>th</sup> Street, S.W., Room 5414  
Washington, D.C. 20590

### **Uniform Certification Program (UCP):**

The Nebraska Unified Certification Program Agreement was approved by DOT on June 30, 2004. A copy of the NUCP Agreement is included as **Attachment 7**.

### **Suspension and Debarment Procedures:**

#### **By Department of Transportation (26.107):**

If a firm that does not meet the eligibility criteria of 49 CFR part 26, subpart D, attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the DOT may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.

If a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D; the DOT may initiate suspension or debarment proceedings against the firm under 49 CFR part 29.

#### **By NDOR:**

Any certified DBE firm found to be in violation of the NDOR DBE Program may either be suspended from participation or debarred by the NDOR Director.

Debarment action will be taken for violations covered in the NDOR Standard Specifications.

A suspension imposed by the Director may be for as long as two years. In determining the period of a suspension, the Director will consider relevant factors including, but not limited to:

- The severity of the violation, and degree of culpability of the contractor.
- Cooperation by the suspended firm to remedy the cause of the suspension or to otherwise cooperate in the investigation.

Suspension may be considered for, but not limited to, the following violations of the NDOR DBE Program's rules and regulations:

- Failure to submit information requested in accordance with certification procedures or contract provisions upon proper request by NDOR officials, or knowingly submitting incorrect or false information.
- Entering into a contract to “front” for another contractor.
- "Brokering" DBE contract work or subcontracting DBE work to non-DBE firms.
- Refusal to offer bid quotations to all known potential bidders without adequate justification.
- Default or failure to perform contract requirements on DBE contract work.

Upon determination that a violation has occurred, NDOR will send a *Show Cause Notice* by certified mail to the offending DBE firm. The offending DBE firm must respond in writing within 15 days of the date of the *Show Cause Notice* with reasons why the suspension should not be immediately imposed.

If the DBE firm responds timely to the *Show Cause Notice*, the NDOR Director will review the response to determine if the explanation of the circumstances is sufficient to eliminate the need for a suspension. The firm will be notified by certified mail of such determination.

If the DBE firm does not appeal the suspension, the Director's decision will become effective and final on the 16<sup>th</sup> day following the date of the *Show Cause Notice*.

The NDOR Director may lift the suspension if it is in the public interest to do so, and if the causes giving rise to the suspension have been corrected to the Director's satisfaction.

#### **Information Collection and Reporting:**

NDOR will maintain a Bidders List consisting of information about DBE and non-DBE firms that bid on DOT-assisted contracts. The purpose is to allow for the use of the Bidders List approach for calculating overall DBE participation goals. The Bidders List will include the name, address, DBE status, age, and annual gross receipts of firms. NDOR will collect this information by requiring prime contractors to submit a list of all firms that bid as subcontractors or suppliers.

#### **Monitoring Payments to DBEs:**

NDOR will require prime contractors to maintain records and documents of payment to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of NDOR or DOT.

#### **Reporting to DOT:**

NDOR will report DBE participation to DOT on a semi-annual basis, using the Uniform Report of DBE Awards or Commitments and Payments form as required by DOT.

#### **Confidentiality:**

NDOR will safe guard from disclosure to third parties information that may be regarded as confidential business information consistent with Federal, state and local law. Notwithstanding any contrary provisions of state or local law, NDOR will not release personal information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

## **ATTACHMENT 3**

### **MONITORING and ENFORCEMENT MECHANISMS (26.37)**

NDOR will bring to the attention of the Department of Transportation (DOT) any false, fraudulent, or dishonest conduct in connection with the DBE Program, so that the DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. NDOR will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

The following are regulations, provisions, and contract remedies available to the NDOR to use in the events of non-compliance with 49 CFR part 26, and the NDOR DBE Program regulations by a participant in the Program:

1. TITLE 29 Part 5 – Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction.

Subpart A – Davis-Bacon and Related Acts, Provisions, and Procedures, Section 5.1  
(See *Code of Federal Regulations – Title 29, Volume 1, Part 5*)

2. 49 CFR Part 31 – Program Fraud and Civil Remedies.
3. 18 U.S.C. 1001 – Chapter 47, Fraud and False Statements.
4. NDOR Suspension and Debarment Procedures – Attachment 2, J.

# **NEBRASKA UNIFIED CERTIFICATION PROGRAM**

## **DISADVANTAGED BUSINESS ENTERPRISE PROGRAM 49 C.F.R. PART 26**

### ***UNIFORM CERTIFICATION APPLICATION***

#### **ROADMAP FOR APPLICANTS**

##### **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$19.57 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

##### **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) or SDB firm, you may be eligible for a streamlined certification application process whereby your current SBA application package is accepted in lieu of requiring you to fill out and submit this form. Contact the NUCP to find out if you are required to complete this application. **You will be required to undergo an on-site review (Nebraska firms) or provide a copy of your Home State UCP on-site review report (out-of-state firms).**

**Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

##### **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (This site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information.)
- NDOR – <http://www.dor.state.ne.us/> (This site provides a listing of certified DBEs, NUCP regulatory information, forms, and much highway construction related information.)
- 49 CFR Part 26 (The rules and regulations governing the DBE program.)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

**Section 1: CERTIFICATION INFORMATION**

**A. Prior/Other Certifications**

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<b>DBE</b>	Name of certifying agency:
		Has your firm's Home State UCP conducted an on-site review?  <input type="checkbox"/> Yes, on ___/___/___ State: _____ <input type="checkbox"/> No
	<b>8(a)</b> <b>SDB</b>	<b>⊗ NOTE!</b> The NUCP requires all out of state firms to provide a copy of the onsite review conducted by their home state UCP, and their DBE, SBA 8(a) or SDB certification if applicable.

**B. Prior/Other Applications and Privileges**

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel ever withdrawn an application for any of the programs listed above or ever been denied certification, decertified, debarred, suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

Yes, on \_\_\_/\_\_\_/\_\_\_  No

If Yes, identify State and name of state, local or Federal agency and explain the nature of the action:

**Section 2: GENERAL INFORMATION**

**A. Contact Information**

(1) Contact person (disadvantaged owner) and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:		(5) Fax #:		
(6) E-mail:		(7) Website <i>(If have one.)</i> :			
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State:	Zip:	
(9) Mailing address of firm <i>(If different)</i> :	City:	County/Parish:	State:	Zip:	

**B. Business Profile**

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any) or owner's social security number:	
(3) This firm was established on ___/___/___		(4) I/We have owned this firm since: ___/___/___	
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i> _____			



(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No	<b>⊗ STOP!</b> If your firm is <u>NOT</u> for-profit, then you do <u>NOT</u> qualify for this program and do <u>NOT</u> need to fill out this application.
(7) Type of firm ( <i>check all that apply</i> ): <input type="checkbox"/> Sole Proprietorship <input type="checkbox"/> Partnership <input type="checkbox"/> Corporation <input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____	
(8) Has your firm ever existed under different ownership, a different type of ownership or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, explain: _____	
(9) Number of employees: Full-time _____ Part-time _____ Total _____	
(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____ Year _____ Total receipts \$ _____ Year _____ Total receipts \$ _____	

**C. Relationships with Other Businesses**

(1) Does your firm, at any of its business locations, share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment or office staff with any other business, organization or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No  If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities, etc.: _____									
(2) At present or at any time in the past, has your firm:	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">(a) Been a subsidiary of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(b) Consisted of a partnership in which one or more of the partners are other firms?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(c) Owned any percentage of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(d) Had any subsidiaries?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes      <input type="checkbox"/> No</td> </tr> </table>	(a) Been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(b) Consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(c) Owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(d) Had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No
(a) Been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No								
(b) Consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No								
(c) Owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No								
(d) Had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No								
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No									
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each ( <i>attach extra sheets, if needed</i> ):									
	<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 33%; text-align: center;"><u>Name</u></td> <td style="width: 33%; text-align: center;"><u>Address</u></td> <td style="width: 33%; text-align: center;"><u>Type of Business</u></td> </tr> </table>	<u>Name</u>	<u>Address</u>	<u>Type of Business</u>					
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>							
1.									
2.									
3.									
4.									

**D. Immediate Family Member Businesses**

Do any of your immediate family members own or manage another company?  Yes  No  
 If Yes, then list (*attach extra sheets, if needed*):

<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

**Section 3: OWNERSHIP**

**Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below** (*If more than one owner, attach separate sheets for each additional owner*):

**A. Background Information**

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address ( <i>street and number</i> ):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership ( <i>Check all that apply</i> ):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other ( <i>specify</i> ) _____	

**B. Ownership Interest**

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:	<u>Number</u>	<u>Percentage</u>	<u>Class</u> <u>Date Acquired</u> <u>Method Acquired</u>
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm ( <i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i> )? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
Nature of Business Relationship:			

**C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged).**

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)*

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(2) Has any trust been created for the benefit of this disadvantaged owner(s)?  Yes  No  
 If Yes, explain *(attach additional sheets if needed)*:

**Section 4: CONTROL**

**A. Identify your firm’s Officers & Board of Directors** *(If additional space is required, attach a separate sheet):*

	Name	Title	Date Appointed	Ethnicity	Gender
<b>(1) Officers of the Company</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
<b>(2) Board of Directors</b>	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business?  Yes  No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*?  
 Yes  No

If Yes, identify for each: Firm Name: \_\_\_\_\_  
 Person: \_\_\_\_\_

Nature of Business Relationship: \_\_\_\_\_

**B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):**

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and Bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/Firing of Management Personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office Management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of Major Equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business?  Yes  No

If Yes, identify for each: Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (*ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)?  Yes  No

If Yes, identify for each: Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

**C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):**

**(1) Equipment**

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(2) Vehicles**

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

**(3) Office Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**(4) Storage Space**

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

**D. Does your firm rely on any other firm for management functions or employee payroll?** Yes No

If Yes, explain:

**E. Financial Information**

**(1) Banking Information:**

(a) Name of Bank: \_\_\_\_\_ (b) Phone No: ( ) \_\_\_\_\_  
(c) Address of Bank: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

**(2) Bonding Information:** If you have bonding capacity, identify: (a) Binder No: \_\_\_\_\_  
(b) Name of Agent/Broker \_\_\_\_\_ (c) Phone No: ( ) \_\_\_\_\_  
(d) Address of Agent/Broker: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
(e) Bonding Limit: Aggregate Limit \$ \_\_\_\_\_ Project Limit \$ \_\_\_\_\_

**F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:**

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

**G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (Attach additional sheets if needed.):**

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

**H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(Attach additional sheets if needed.):**

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

**I. List the three largest contracts completed by your firm in the past three years, if any:**

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

**J. List the three largest active jobs on which your firm is currently working:**

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

## **AFFIDAVIT OF CERTIFICATION**

*This form must be signed and notarized for each owner upon which disadvantaged status is relied.*

**A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PEALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.**

I \_\_\_\_\_ (full name printed), swear or affirm under penalty of law that I am \_\_\_\_\_ (title) of applicant firm \_\_\_\_\_ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control and affiliations thereof. I understand that the recipient agency or the Nebraska Uniform Certification Program (NUCP) may request other relevant information at any time.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, the named firm's bonding companies, banking institutions, credit agencies, contractors, clients and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its places(s) of business and equipment, and to permit interviews of its principals, agents and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or the NUCP of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I hereby certify that I am a (*circle all that apply*):

Female    Black American    Hispanic American    Native American  
Asian- Pacific American    Subcontinent Asian American    Other (specify) \_\_\_\_\_.

I certify that I have held myself out as a member and have acted as a member of that group. I certify that I am an owner of the company seeking DBE certification and that I have been subjected to racial or ethnic prejudice or cultural bias within American society because of my identity as a member of the above circled group.

I further certify that my personal net worth does not exceed \$750,000 and that my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I \_\_\_\_\_ certify, under penalty of perjury under the laws of the United States and the State of Nebraska, that the information provided in this Nebraska Uniform Certification Program Disadvantaged Business Enterprise Certification Application and all supporting documents relating to my disadvantaged status and to myself are true and correct.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

County of \_\_\_\_\_ State of \_\_\_\_\_

Subscribed and sworn before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.  
Date Month Year

Signed \_\_\_\_\_ My Commission expires \_\_\_\_\_.  
Notary Signature Date

**15 United States Code § 645, as amended April 7, 1986 and November 15, 1988. Offenses and Penalties:**

- (d) **Misrepresentation as a small business concern.**
  - (1) Whoever misrepresents the status of any concern or person as a “small business concern owned and controlled by socially and economically disadvantaged individuals”, in order to obtain for oneself or another any---
    - (A) prime contract to be awarded pursuant to section 9 or 15 [15 USCS § 638 or 644];
    - (B) subcontract to be awarded pursuant to section 8(a) [15 USCS § 637(a)];
    - (C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) {15 USCS § 637(d)}; or
    - (D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) [15 USCS § 637(d)] for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).
  - (2) Any person who violates paragraph (1) shall---
    - (A) be punished by a fine of not more than \$500,000 or by imprisonment for not more than 10 years, or both;
    - (B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);
    - (C) be subjected to suspension and debarment as specified in subpart 9.4 of Title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and
    - (D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.



**NEBRASKA UNIFORM CERTIFICATION PROGRAM DBE APPLICATION  
SUPPORTING DOCUMENTS CHECKLIST**

**In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.**

**All Applicants**

- Copy of home state UCP onsite review (*for all out of state firms*)
- Copy of disadvantaged owner's driver's license and birth certificate or proof of U.S. citizenship or permanent residence
- Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement for all disadvantaged owners (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Your firm's W-2 Forms for the past three years
- Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*), etc.
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Three most recent bank statements (owner and firm's)
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation/ remuneration) paid to all officers, managers, owners, and directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

**Partnership or Joint Venture**

- Original and any amended Partnership or Joint Venture Agreements

**Corporation or LLC**

- Official Articles of Incorporation (*signed by the state official*)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

**Trucking Company**

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

**Regular Dealer**

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

**ATTACHMENT 5**

**PERSONAL FINANCIAL STATEMENT**

**NEBRASKA UNIFIED CERTIFICATION PROGRAM**

As of \_\_\_\_\_, \_\_\_\_\_

Complete this form for: (1) each socially and economically disadvantaged owner of the firm applying for DBE Certification.

Name	Business Phone
Residence Address	Residence Phone
City, State, & Zip Code	
Business Name of Applicant	

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks .....	\$ _____	Accounts Payable .....	\$ _____
Savings Accounts .....	\$ _____	Notes Payable to Banks and Others .....	\$ _____
IRA or Other Retirement Account .....	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable .....	\$ _____	Installment Account (Auto) .....	\$ _____
Life Insurance-Cash Surrender Value Only .....	\$ _____	Mo. Payments \$ _____	
(Complete Section 8)		Installment Account (Other) .....	\$ _____
Stocks and Bonds .....	\$ _____	Mo. Payments \$ _____	
(Describe in Section 3)		Loan on Life Insurance .....	\$ _____
Real Estate .....	\$ _____	Mortgages on Real Estate .....	\$ _____
(Describe in Section 4)		(Describe in Section 4)	
Automobile-Present Value .....	\$ _____	Unpaid Taxes .....	\$ _____
Other Personal Property .....	\$ _____	(Describe in Section 6)	
(Describe in Section 5)		Other Liabilities .....	\$ _____
Other Assets .....	\$ _____	(Describe in Section 7)	
(Describe in Section 5)		Total Liabilities .....	\$ _____
<b>Total</b>	\$ _____	Net Worth .....	\$ _____
		<b>Total</b>	\$ _____

Section 1. Source of Income	Contingent Liabilities
Salary .....	As Endorser or Co-Maker .....
Net Investment Income .....	Legal Claims & Judgments .....
Real Estate Income .....	Provision for Federal Income Tax .....
Other Income (Describe below)* .....	Other Special Debt .....

Description of Other Income in Section 1.


\*Alimony or child support payments need not be disclosed in "Other Income" unless it is desired to have such payments counted toward total income.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

Name and Address of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

This form was created for NDOR - DBE Section August 2003

<b>Section 3. Stocks and Bonds.</b> (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).					
Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

<b>Section 4. Real Estate Owned.</b> (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)			
	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

**Section 5. Other Personal Property and Other Assets.** (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

**Section 6. Unpaid Taxes.** (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

**Section 7. Other Liabilities.** (Describe in detail.)

**Section 8. Life Insurance Held.** (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I authorize the Nebraska Unified Certification Program to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness. I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of obtaining certification as a Disadvantaged Business Enterprise. I understand FALSE statements may forfeiture of benefits and possible prosecution by the Nebraska Attorney General and/or the U.S. Attorney General.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Social Security Number: \_\_\_\_\_

Notary Public: \_\_\_\_\_ Date: \_\_\_\_\_

# Affidavit

## Request for DBE Recertification

Name of Firm:		Address:	
Contact Person:			
Business Telephone No.:			
Email Address:	Cell Phone No.:	Fax No.:	

**Please update the following company information:**

Report gross receipts for the past calendar year: \$	Report average number of employees employed by firm:
---	--

Please check the appropriate box:  
 The company's nature of business remains the same.   
 A revised nature of business form with capability statement is enclosed.

Identify any management changes that have occurred in the past year:

**Identify all current owners of firm and the percentage of ownership by each:**

Name	Ethnic Group/Sex	Percent Owned	Date Acquired

**If the firm is a corporation, identify all current stockholders.**

Name of Shareholder	Percent of Stock Owned	Date Acquired

-----  
*Signature*

-----  
*Title*

-----  
*Date*

-----  
*Notary Public*

## ATTACHMENT 7

# **NEBRASKA DISADVANTAGED BUSINESS ENTERPRISE UNIFIED CERTIFICATION PROGRAM**

### A. STATEMENT OF POLICY

It is the policy of all Nebraska recipients of United States Department of Transportation financial assistance (US DOT recipients), that Disadvantaged Business Enterprises (DBEs), as described in 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*, will have a level playing field on which to participate in US DOT-assisted contracts. In an effort to help remove barriers that may exist to the participation of all eligible DBE firms, and in accordance with 49 CFR Part 26, §26.81, the US DOT recipients have entered into this Agreement establishing a DBE Unified Certification Program (UCP).

The name of the UCP shall be the Nebraska Unified Certification Program (NUCP). The purpose of the NUCP is to simplify and create a more efficient DBE certification process. The NUCP will provide “one-stop shopping” for firms applying for DBE certification by recipients of US DOT financial assistance. This includes recipients of US DOT financial assistance from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or the Federal Transit Administration (FTA). The NUCP will have one application, one certification process, and one decision, which will allow eligible firms to participate as DBEs anywhere in the state in the respective categories of work for which the firms are certified.

The NUCP will follow all certification procedures and standards of 49 CFR Part 26, §26.81 on the same basis as the US DOT recipients. The NUCP will cooperate fully with all oversight, review, and monitoring activities of the US DOT and its operating administrations. The NUCP will implement all US DOT directives and guidance concerning certification matters.

The US DOT recipients agree to commit sufficient resources and expertise to the NUCP to ensure the NUCP is capable of carrying out all of the requirements of 49 CFR 26.81. The NDOR currently maintains an up to date DBE directory on its website listing all NDOR certified DBE firms, and will also provide a printed version of the directory if requested to do so. The NDOR has the required expertise, and will provide any additional resources required to include all NUCP certified DBEs in the directory and keep it current once the NUCP Agreement is approved.

The NUCP shall be fully implemented and operational no later than eighteen (18) months following the approval of this agreement by the Secretary, as required by 49 CFR part 26, §26.81 (a)(2). (See Section H, “IMPLEMENTATION SCHEDULE”)

## B. SIGNATORY PARTNERS:

The Signatory Partners to the NUCP include the Nebraska Department of Roads (NDOR), the Omaha Airport Authority (OAA), the Lincoln Airport Authority (LAA), Kearney Municipal Airport (KMA), the Nebraska Department of Aeronautics (NDA), Omaha Metro Area Transit (MAT), Lincoln StarTran, and the Lincoln Commission on Human Rights (LCHR). The Signatory Partners agree to the terms and conditions of the NUCP Agreement.

(a) The NDA will be the representative for all recipients of funds from the Federal Aviation Administration (other than the Omaha Airport Authority, Lincoln Airport Authority, and Kearney Municipal Airport) who must sign an Agency Agreement with the NDA that evidences their agreement to be bound by the terms and conditions of the NUCP.

(b) The Signatory Partners to the NUCP will ensure through subgrant agreements that subrecipients comply with all provisions of the NUCP (e.g., that they accept as DBEs firms that the NUCP has certified).

(c) In the event any additional entities in Nebraska become recipients of US DOT funds and are required to meet the DBE program requirements of 49 CFR Part 26, the NUCP will ensure that they become signatories to the NUCP agreement or indicate in writing their intent to be bound by the terms of the NUCP.

## C. CERTIFICATION DETERMINATION PROCESS:

(a) The NUCP shall make all certification decisions on behalf of all US DOT recipients in the state with respect to participation in the DBE Program. All NUCP certification decisions will be based on the eligibility requirements contained in 49 CFR Part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The NUCP will ensure that only applicants that fully meet all of the eligibility standards are certified as DBEs.

(1) Certification decisions by the NUCP shall be binding on all US DOT Recipients within the state limited to the nature of work the firms are certified to perform.

(2) The NUCP shall provide “one-stop shopping” to applicants for DBE certification, such that an applicant will be required to apply only once for certification that will be honored by all US DOT recipients in the state.

(3) All obligations of US DOT recipients with respect to certification and nondiscrimination as required by 49 CFR Part 26 will be carried out by the NUCP.

(4) All certifications made by the NUCP 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.

(b) The NUCP will provide to applicants the Uniform Certification Application approved by US DOT pursuant to 49 CFR 26.83, which may be obtained directly from the Nebraska Department of Roads (NDOR), or downloaded from the NDOR website, [www.dor.state.ne.us](http://www.dor.state.ne.us).

(c) If the applicant is certified by the US Small Business Administration (SBA), the application will be processed in accordance with 49 CFR 26.84.

(d) All applications for certification may be submitted directly to the NDOR (as the “one-stop shop”) or may be submitted directly to the appropriate NUCP Subcommittee. If the Aviation or Transit Subcommittee receives an application from a firm that is not primarily engaged in their respective specialized area (i.e. aviation concessionaire or transit concessionaire), the Subcommittee shall forward the application to the NDOR within 5 days of receipt. For applications submitted to the NDOR, the NDOR will conduct an initial review within 10 days of receipt of the application and:

(1) If the applications are from firms primarily providing construction orientated services and/or supplies, then the NDOR DBE Office staff will complete the application review, and the NDOR DBE Certification Review Board will make a certification determination using the process described in the NDOR DBE Program.

The NDOR DBE Certification Review Board shall consist of members appointed by the NDOR Director for a term to be determined by the Director. The Board currently has three members; however, the NDOR reserves the right of the Director to change the number of Board members if he/she determines it would be beneficial to do so.

(2) If the applications are from firms applying as aviation concessionaires, the NDOR will forward the applications to the Chair of the NUCP Aviation Subcommittee. The Chair will forward the application to the appropriate Aviation Subcommittee member who will review the application, investigate the applicant and make a recommendation to the other members of the Subcommittee regarding the certification. Upon receipt of a recommendation, the Subcommittee will consider the application and related information, and will make a certification determination by a majority vote of all members.

The Chair will advise the NDOR of the Subcommittee’s decision and provide a copy of the application and other related documents for appropriate recording.

The Aviation Subcommittee shall consist of one staff member each from the Nebraska Department of Aeronautics, the Omaha Airport Authority, Lincoln Airport Authority, and Kearney Municipal Airport. The Aviation Subcommittee was created by the NUCP, and its role is to certify aviation concessionaires.

(3) If the applications are from firms that are primarily transit concessionaires, vendors, or providers of other needed services; the NDOR will forward the applications to the Chair of the NUCP Transit Subcommittee. The Transit Subcommittee will then complete the application review and make a certification determination. The Chair will advise the NDOR of the Subcommittee's decision and provide a copy of the application and other related documents for appropriate recording.

The Transit Subcommittee shall consist of one staff member each from the Lincoln Commission on Human Rights, Metro Area Transit and one other transit representative as may be appointed by the NUCP. The Transit Subcommittee was created by the NUCP, and its role is to certify transit concessionaires.

(4) On-site reviews of firms applying for DBE certification whose home state is Nebraska will be conducted by the NDOR DBE Office staff or the appropriate NUCP Subcommittee that is responsible for processing the firms' application for certification. Any firm applying for DBE certification whose home state is other than Nebraska must first be certified in its home state. The NDOR or appropriate NUCP Subcommittee will obtain a copy of the firm's on-site review from its home state transportation agency.

(5) If an applicant firm indicates an interest in doing work that falls under the jurisdiction of more than one NUCP Subcommittee, the firm's dollar values of work it performs in the various jurisdictions will determine which Subcommittee will process the firm's application. As an example, if the firm performs more construction work than aviation or transit concessionaire work, the NDOR would process the firm's application.

(e) All applicants will be notified in writing by the NDOR or the appropriate Subcommittee as to who will be completing their application review and DBE certification process.

(f) The NUCP will not process an application for DBE certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which the firm maintains its principal place of business. The NUCP will share its information and documents concerning certified firms whose home state is Nebraska with other UCPs that are considering the firms' applications.

(g) Decisions on applications for DBE certification will be made by the NUCP within 90 days of receipt from the applicant firm all information required. The 90-day time period may be extended once, for no more than an additional 60 days, upon written notice to the firm explaining fully and specifically the reasons for the extension. If the NUCP fails to make a decision by the applicable timeline it is deemed a constructive denial of the application, on the basis of which the applicant firm may appeal to the US DOT under 49 CFR 26.89.



(h) Once the NUCP has certified a firm as a DBE, the firm shall remain certified for a period of three (3) years unless its certification has been removed through the procedures of 49 CFR 26.87. (A firm may have its DBE certification removed only by the NDOR or respective Subcommittee that certified the firm in the first instance.) DBE firms will not be required to reapply for certification as a condition of continuing to participate in the Program during this three-year period, unless the factual basis on which the certification was made changes. However, certified DBE firms shall annually submit to the NDOR a No Change Affidavit and Personal Net Worth (PNW) Statement, if required by 49 CFR Part 26. Currently, aviation concessionaires are not required to submit PNW Statements.

(i) All firms that are currently certified as DBEs under 49 CFR Part 26 on the date the NUCP is implemented and becomes operational shall be included in the Program. No action on the part of those currently certified firms shall be required to be included in the Program. The period of certification for those firms shall be three (3) years from the date of their most recent certification by the respective US DOT recipient.

(j) A unified DBE Directory listing will be maintained on the NDOR website, [www.dor.state.ne.us/lettings/certified-dbes.htm](http://www.dor.state.ne.us/lettings/certified-dbes.htm), listing all NUCP certified firms, whether the firms are construction related or aviation or transit concessionaires, and the nature of work they are eligible to perform. The DBE Directory will also include the firm's addresses, telephone numbers, fax numbers, and the names of each firm's contact person. A printed version of the unified DBE Directory will also be maintained, and will be provided by the NUCP upon request.

The unified DBE Directory, electronic and printed version, will be updated by the NDOR as soon as possible after any changes occur. The NDOR will update the unified DBE Directory to reflect all changes no less than ten (10) days prior to any contract letting date.

The NDOR Construction Division Information Technology personnel and the DBE Office staff under the direction of the Highway Civil Rights Coordinator will be responsible for maintaining and updating the unified DBE Directory on the NDOR website. The NDOR DBE Office will be responsible for the preparation of the printed version of the unified DBE Directory. The NDOR will be responsible for the expense of maintaining the unified DBE Directory on the NDOR website and for the preparation of the printed version of the unified DBE Directory.

#### D. APPEALS OF DENIALS:

(a) Any firm denied DBE certification by the NUCP shall be eligible to reapply for certification one year after the date the denial became administratively final.

(b) If DBE certification is denied to a firm that is certified by the SBA, written notice will be provided to the SBA that includes the reasons for the denials, as required by 49 CFR 26.86(b).

(c) In the event an applicant is denied DBE certification by the NDOR or a NUCP Subcommittee, there will be no appeal process directly to the NUCP. Firms denied certification by the NDOR or a NUCP Subcommittee may appeal the decision to the US DOT within 90 days of the NDOR' or NUCP Subcommittee's decision. The appeal must be filed in writing to:

U. S. Department of Transportation  
Office of Civil Rights  
400 7<sup>th</sup> Street, S.W., Room 5414  
Washington, DC 20590

#### E. REMOVAL OF DBE ELIGIBILITY

(a) Any person may file with the NUCP a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. The confidentiality of complainants' identities will be protected as provided in 49 CFR 26.109(b).

(b) A third party complaint may be submitted directly to the NDOR or may be submitted directly to the appropriate NUCP Subcommittee. If the NDOR receives a third party complaint on a firm certified as an aviation or transit concessionaire, the NDOR will forward the complaint to the appropriate NUCP Subcommittee. If the Aviation or Transit Subcommittee receives a third party complaint on a firm certified by the NDOR, the Subcommittee will forward the complaint to the NDOR.

(c) Third party complaints will be processed by the NDOR or by the appropriate NUCP Subcommittee in accordance with the provisions of 49 CFR 26.87. The NDOR or the appropriate NUCP Subcommittee will provide written notice to the firm against which the third party complaint has been filed.

(d) Following a decision on a third party complaint, the decision maker will provide the firm and the complainant written notice of its decision setting forth the reasons for its decision. If the decision maker found there was no reasonable cause to believe the firm was ineligible for DBE certification, the complainant may appeal to the US DOT as provided in 49 CFR 26.89.

(e) NUCP-initiated proceedings. If, based on notification by a firm of a change in its circumstances or other information that comes to the NUCP's attention, it is determined that there is reasonable cause to believe that a currently certified firm is ineligible, the NUCP must provide written notice to the firm that the NUCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(f) US DOT directive to initiate proceedings.

(1) If the concerned operating administration determines that information in the NUCP's certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a currently certified firm does not meet the DBE eligibility criteria, the concerned operating administration may direct the NUCP to initiate a proceeding to remove the firm's DBE certification as required by 49 CFR 26.87.

(2) The concerned operating administration will provide the NUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information as required by 49 CFR 26.87.

(3) The NUCP (the NDOR or the appropriate NUCP Subcommittee) will immediately commence and prosecute a proceeding to remove the firm's DBE eligibility as provided by 49 CFR 26.87.

(g) Hearing. When the NUCP notifies a firm that there is reasonable cause to remove its eligibility as provided in paragraphs (a), (e), or (f) of this section, the firm will be given an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments why it should remain certified.

(h) The firm has 15 days from receipt of the proposed decision to request in writing an informal hearing from the decision maker. If the firm does not make a timely request for a hearing, the decision becomes administratively final 16 days from the date of the decision.

(i) If a hearing is requested, such proceeding will be conducted in accordance with the provisions of 49 CFR 26.87. If an informal hearing is requested, the NDOR Director or the appropriate NUCP Subcommittee will appoint a Hearing Officer who is knowledgeable about the DBE Program to hear the appeal. The Hearing Officer will be someone who was not involved in the proposed decision to remove the firm's DBE eligibility. Following an informal hearing, the firm (and in the case of a third party complainant; the complainant) will be informed in writing of the final decision. A hearing decision becomes effective and is administratively final the day it is issued.

(j) If the firm is certified by the SBA, a written notice will be provided to the SBA that includes the reasons for the removal, as required by 49 CFR 26.87(h).

(k) The firm and/or the complainant may appeal the NDOR' or NUCP Subcommittee's final decision to the US DOT within 90 days of the date of the decision. The appeal must be in writing to:

Department of Transportation  
Office of Civil Rights  
400 7<sup>th</sup> Street, SW, Room 5414  
Washington, DC 20590

(l) Pending the US DOT's decision, the NDOR' or NUCP Subcommittee's decision remains in effect.

#### F. RECIPROCITY:

(a) The NUCP may elect to enter into a written reciprocity agreement with UCPs in other states. The decision to execute such an agreement shall be made by a unanimous vote of the NUCP Signatory Partners.

#### G. NON-DISCLOSURE/CONFIDENTIALITY:

(a) The NUCP will safeguard from disclosure to unauthorized persons all information gathered as part of the DBE certification process that may reasonably be regarded as confidential business information, consistent with applicable Federal, state, and local law. Notwithstanding any contrary provisions of Federal, state, or local law, the NUCP will not release personal information submitted in response to the personal net worth requirement of 49 CFR 26.67 to a third party (other than US DOT) without the written consent of the submitter.

#### H. IMPLEMENTATION SCHEDULE:

Within 12 months following approval of this Agreement by the Secretary, the NDOR Information Technology personnel will have a NUCP unified DBE Directory listing on the NDOR website, and the DBE Office staff will have a printed version of the unified DBE Directory available for distribution.

Within 16 months following approval of this Agreement by the Secretary, the NDOR, and the NUCP Aviation and Transit Subcommittees will communicate the specifics of the NUCP to the public by publishing notices in the appropriate media, posting notices on the NUCP Signatory Partners' websites, and mailing notices to all major organizations that would have an interest in the NUCP. The NUCP shall be fully implemented and operational no later than 18 months following the approval of this agreement by the Secretary.

**SIGNATURES**

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Nebraska Department of Roads

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Nebraska Department of Aeronautics

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Omaha Airport Authority

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Lincoln Airport Authority

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Kearney Municipal Airport

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Omaha Metro Area Transit

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Mayor, City of Lincoln

(For Lincoln StarTran and LCHR)

## ADDENDUM 1

### **Nebraska Department of Roads Disadvantaged Business Enterprise (DBE) Participation Goal**

**Federal Fiscal Year 2006 (October 1, 2005 to September 31, 2006)**

#### **Overall Goal for Fiscal Year 2006 (26.45)**

The Nebraska Department of Roads (NDOR) has established an overall DBE participation goal for FY 2006 as follows:

#### **FY 2006 Goal Setting Methodology - Section 26.45**

The regulations require recipients to set overall DBE participation goals based on demonstrated evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on NDOR federal-aid contracts.

#### **A. Step One: FY 2006 Base Figure - Section 26.45 (c)**

The regulations require that a recipient must begin the DBE goal setting process by determining a base figure for the relative availability of DBEs. For FY 2006, NDOR used the following data and methodology to calculate a base figure:

- 1. Method Selected** – NDOR extracted data from its TRANS\*PORT database and the NDOR Bidders List to determine the number of firms that had taken affirmative steps and shown an interest in working on NDOR contracts by actually providing quotes.
- 2. Data Used** – The data extracted from the TRANS\*PORT database and Bidders List, and used to determine a base figure consisted of firms that provided quotes on NDOR projects from July 1, 2002 - June 30, 2005. (Fiscal Years 2003, 2004, and 2005)
- 3. Calculation Performed** – In determining a base figure for FY 2006, NDOR first established the number of firms that provided quotes during the three-year period. A total of 41 DBEs and 538 non-DBE firms provided quotes on NDOR contracts.
- 4. Resulting Baseline** – NDOR concluded that the overall availability of DBE contractors was 7.08 percent (41 DBEs divided by the total of 579 contractors). NDOR determined that the figures were an accurate representation of the data retrieved from the TRANS\*PORT database and Bidders List. It was determined that the method for calculating the FY 2006 DBE goal baseline was logical and consistent with the DBE regulations.

## **B. FY 2006 Step Two Adjustment – Section 26.45(d)**

Once the FY 2006 base figure had been calculated, the regulations required other available evidence to be examined to determine if an adjustment was needed. In calculating the NDOR DBE participation goal for FY 2006, two other sources were considered to determine whether any adjustments were needed to the base figure: (1) the capacity of DBEs to perform work for NDOR, and (2) the over utilization and/or under utilization of DBEs.

**1. Capacity** – MGT of America (MGT) conducted an Availability and Goal Setting Study for NDOR in FY 2000, which was used to establish the NDOR DBE Goals for FY 2001. MGT took a sample of firms to determine how the size of a firm (as represented by average revenues) affected its ability to compete for contracts. It was determined that a firm was capable of doing work for NDOR if it had average annual revenue ranging from \$2,500 to \$42,000,000. In considering an adjustment to the base figure for the FY 2006 DBE participation goal, NDOR was confident that all of the DBE firms that provided quotes on NDOR contracts had average annual revenue of at least \$2,500. Therefore, no adjustment based on the capacity of the DBE firms was required.

**2. Over Utilization and Under Utilization** – NDOR did not find any indication of over utilization or under utilization to warrant any further adjustment to the FY 2006 baseline goal.

**NOTE: DBE Participation in Non-Federal Projects** – NDOR also reviewed the participation of DBE firms on non-federal projects during Fiscal Years 2003, 2004, and 2005. It was determined that .45 percent of the non-federal project dollars were awarded to DBE prime contractors. It was also determined that 2.93 percent of the non-federal project sub-contract dollars was awarded to DBE subcontractors. Since the federal regulation do not allow non-federal funds to be used in calculating DBE goals, the non-federal projects were reviewed for reference purposes only and were not included when calculating the proposed FY 2006 DBE participation goals.

### **FY 2006 OVERALL DBE GOAL:**

NDOR has determined it is appropriate and logical for the above stated reasons, to establish its overall DBE participation goal for FY 2006 as 7.08 percent.

The overall DBE participation goal achievement for Fiscal Years 2003, 2004, and 2005 through June 30, 2005, was 9.13 percent, 7.93 percent, and 7.48 percent respectively.

### **FY 2006 Race and Gender Neutral & Race and Gender Conscious Goals**

The DBE regulations require that recipients must achieve the maximum feasible portion of their overall DBE goals by using Race and Gender Neutral means of participation. NDOR calculated the Race and Gender Neutral and Race and Gender Conscious portions of the FY 2006 overall DBE goal as follows:

## **1. Race and Gender Neutral Goal:**

NDOR considered three factors in calculating the Race and Gender Neutral DBE goal for FY 2006. The first factor was the amount of participation achieved by DBE prime contractors on federal-aid projects. The second factor was the goal related participation achieved by DBE subcontractors on federal-aid projects in excess of the actual DBE subcontract commitments. The third factor was the non-goal related participation achieved by DBE subcontractors on federal-aid projects.

NDOR determined the three-year average participation for DBE prime contractors, DBE participation in excess of the goal commitments on federal-aid projects, and the non-goal related participation for DBE subcontractors on federal-aid projects was 2.76 percent. This was the percentage NDOR established as its Race and Gender Neutral goal for FY 2006.

The Race and Gender Neutral DBE participation goal achievement for Fiscal Years 2003, 2004, and 2005 through June 30, 2005, was 2.62 percent, 3.16 percent and 2.50 percent respectively.

## **2. Race and Gender Conscious Goal:**

The Race and Gender Neutral percentage of 2.76 percent was subtracted from the calculated Overall DBE goal of 7.08 percent resulting in a Race and Gender Conscious DBE participation goal for FY 2005 of 4.32 percent.

The NDOR DBE participation goals for FY 2006 are as follows:

**Overall DBE participation goal of 7.08 percent.**

**Race and Gender Conscious goal of 4.32 percent.**

**Race and Gender Neutral goal of 2.76 percent.**



APPENDIX D  
LINCOLN AIRPORT AUTHORITY SMALL BUSINESS ELEMENT

February 28, 2012

Ms. Patricia Wright, DBE Program Specialist  
Federal Aviation Administration  
Civil Rights Staff, AWP-9  
15000 Aviation Boulevard  
Lawndale, CA 90261

Subject: Lincoln Airport, Lincoln, NE  
Disadvantaged Business Enterprise  
Program Amendment: Fostering Small Business Participation

Dear Ms. Wright:

Attached is the Lincoln Airport Authority's proposed amendment to our Disadvantaged Business Enterprise (DBE) Program as required by 49CFR§26.39; Fostering Small Business Participation.

This amendment was developed with the coordination and cooperation of our Nebraska Uniform Certification Program (UCP) partners (Nebraska Department of Roads (NDOR), Nebraska Department of Aeronautics (NDA), Lincoln Airport Authority (LAA) and Omaha Airport Authority). On behalf of this group, the NDOR conducted a study concerning construction contracts over a five-year period. That study demonstrated that the construction contracting of like work by the NUCP participants has probably resulted in the award of a substantial amount of contract work to small businesses.

Following that UCP study model, LAA has combined the model with contracting data collected at the Lincoln Airport during a similar time period. This has resulted in the attached, site specific, Small Business Element amendment. Please note that, following the UCP model, 100% of our prime contracts through the study period have gone to small businesses.


Based on the results of our site specific review, as outlined in the proposed amendment, we believe that our current program is already meeting the intent of the DOT SBE policy. With that in mind, we do not propose any dramatic changes to our program. However, we will begin a more detailed data collection process,

Ms. Patricia Wright  
February 28, 2012  
Page 2

allowing us to specifically track the small business participation in our contracting efforts. If market factors change, and we begin to see reductions in small business participation, we will contact you about making appropriate changes to our program.

Sincerely,

AIRPORT AUTHORITY



Jon L. Large, P.E.  
Deputy Director of Engineering

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Attachment

#### **49 CFR §26.39: Fostering Small Business Participation**

49 CFR §26.39 requires the Lincoln Airport Authority (LAA) Disadvantaged Business Enterprise (DBE) Program to include an element to address the structuring of contracting requirements to facilitate competition by small business concerns. This includes taking all reasonable steps necessary to eliminate obstacles to the participation of small businesses, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation as prime contractors or subcontractors. The DBE Program elements structured to foster small business participation must be actively implemented.

Guidance recently provided by the United States Department of Transportation addressing the development of small business element amendments for DBE Programs states, "Since the small business element developed by a recipient will be a part of the recipient's approved DBE program plan, recipients should use the definition of small business concerns set out in 49 CFR §26.5".

49 CFR §26.5 states "*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)".

49 CFR §26.65(b) specifies that a firm is not eligible to participate in the DBE Program in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

Since the small business element is part of LAA's DBE program, it has been determined that it would be appropriate to use the definition of *small business concern* as set out in 49 CFR §26.5. Therefore, a firm will not be considered a small business if the firm's average annual gross receipts in each of the firm's previous three (3) fiscal years exceed \$22.41 million. This will ensure that all small businesses participating in the LAA small business program element are subject to the same size standards and consequently, compete with similarly-sized businesses.

Establishing a personal net worth (PNW) threshold as an eligibility criterion for participation in the LAA small business program element is optional. LAA has chosen not to establish a PNW threshold at this time. Once the small business program element has been approved and officially implemented, the possible need for establishing a PNW threshold will be assessed and addressed according to the annual review process established by the LAA's small business element of the DBE program.

LAA conducted a study and thoroughly analyzed the prime contracts (federally funded or assisted) that were let during the five (5) year period of October 2006 thru September 2011 to determine the level of participation by small business concerns. The study showed that small businesses actually achieved a very significant level of participation as prime contractors. The following is a breakdown of the prime contract data.

### **LAA Prime Contracts Awarded from October 2006 thru September 2011**

- 18 different contractors were awarded 34 separate prime contracts totaling \$10,174,886.92.
- For consulting contracts, 6 different contractors were awarded 17 separate prime contracts totaling \$1,551,182.12.
- For construction contracts, 8 different contractors were awarded 13 separate prime contracts totaling \$8,397,182.41.
- For equipment acquisition contracts, 4 different contractors were awarded 4 separate contracts totaling \$226,522.39.
- All (100%) of the prime contractors are considered small business concerns based on the firms' average annual gross receipts being under \$22.41 million\*.
- 1 Nebraska Uniform Certification Program(UCP) certified DBE firm was awarded 2 prime contracts, totaling \$1,732,379.96.

(\*For the purposes of this Program, LAA has relied on its UCP partner, the Nebraska Department of Roads, for information concerning firm's average annual gross receipts in order to determine whether particular contractors are meeting the small business program element standard of \$22.41 million.)

The data clearly shows that small business concerns have an exceptionally high level of participation at LAA as prime contractors. This is due to the economic conditions encompassing the Lincoln Airport. The smaller size of the airport, and its associated projects, coupled with the relatively modest size of the Lincoln Metropolitan Service Area economy, create an environment where small businesses thrive as prime contractors. Because of the high level of success small businesses have had in competing for and performing prime contracts, LAA does not feel it is necessary at this time to alter or restructure its contracting requirements in order to foster small business participation.

LAA will continue to ensure that a reasonable number of prime contracts are available for small businesses by conducting a yearly assessment of all contracts awarded. The assessment will be conducted by personnel from the LAA Engineering Division. If an assessment shows that the level of participation by small businesses has decreased significantly, LAA will promptly take reasonable steps to actively increase the level of participation.

On January 1, 2013, LAA will begin requiring primary contractors to indicate on their bid proposal forms if their average annual gross receipts exceed \$22.41 million to better verify that only eligible firms are identified as small businesses. LAA will also begin requiring prime contractors to not only list tentative subcontractors included in their bids but also to list the amounts of the tentative subcontracts and whether the subcontractors average annual gross receipts exceed the \$22.41 million limit. Tracking trends in this data from year to year will help assist the LAA to determine whether or not developing set-asides or unbundling contracts in the

future would lead to any meaningful growth in the awarding of contracts to small business concerns.

LAA will actively conduct outreach with local organizations and agencies including the Asian Community Center, El Centro de las Americas, Indian Center, Inc., Nebraska Commission on Indian Affairs, Nebraska Latino American Commission, Nebraska office of the Small Business Administration, and the Nebraska Chapter of the Associated General Contractors of America to encourage small businesses to compete for prime and subcontract work on LAA projects.

NOTE: The implementation date for this proposed small business element amendment is January 1, 2013