



Disadvantaged Business Enterprise Program Plan

December 2017

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Policy Statement

Nebraska Department of Transportation Disadvantaged Business Enterprise Program

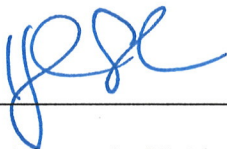
The Nebraska Department of Transportation (NDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with the requirements of the U.S. Department of Transportation (DOT) and the *Code of Federal Regulations, Title 49, Subtitle A, Part 26* (49 CFR Part 26). NDOT has received Federal financial assistance from the U.S. Department of Transportation (DOT), and as a condition of receiving this assistance, NDOT has signed an assurance that it will comply with the requirements of 49 CFR Part 26.

It is the policy of NDOT to ensure that DBEs, as defined in 49 CFR 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 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 federal and state law;
- To ensure that only firms that 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;
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

The DBE program is accorded the same priority as compliance with other legal obligations incurred by NDOT in its financial assistance agreements. In accordance with 49 CFR Part 26.25, NDOT has a designated DBE Liaison Officer (DBELO) within the NDOT Highway Civil Rights Office (HCRO). The DBELO is responsible for implementing all aspects of the NDOT DBE program and is given direct, independent access to the agency Director for matters regarding the NDOT DBE program.

NDOT has disseminated this policy statement to components of its organization, and has distributed it to DBE and non-DBE business communities that perform work for NDOT on DOT-assisted contracts.



Kyle Schneweis, PE, Director

9/19/17

Date

Statement of Assurance

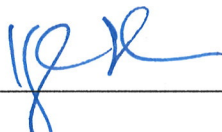
Nebraska Department of Transportation Disadvantaged Business Enterprise Program

NDOT states the following assurance, applicable to all USDOT-assisted contracts and their administration:


The Nebraska Department of Transportation shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its NDOT DBE program or the requirements of Code of Federal Regulations, Title 49, Subtitle A, Part 26 (49 CFR Part 26). The NDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts.

The NDOT DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this assurance. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this assurance. Upon notification to the Nebraska Department of Transportation of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 USC 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 USC 3801 et seq.).

Agreements and USDOT- assisted contracts with subrecipients and/or contractors will also include this assurance.



Kyle Schneweis, PE, Director



Date

INTRODUCTION

As a recipient of Federal funds, the Nebraska Department of Transportation (NDOT) is required to administer a DBE program in compliance with applicable laws, regulations, Executive Orders, and guidance. NDOT is committed to ensuring that certified Disadvantaged Business Enterprise (DBE) firms have equal opportunity to participate in the performance of U.S. Department of Transportation-assisted (USDOT) contracts and subcontracts administered by NDOT. To that end, the NDOT DBE program has been developed in adherence to the requirements and guidance contained in *Code of Federal Regulations, Title 49, Subtitle A, Part 26* (49 CFR Part 26).

This NDOT DBE Program Plan provides NDOT personnel, DBEs, and all other contractors and vendors guidance on meeting the requirements of 49 CFR Part 26 and on NDOT's policies and procedures for implementing its DBE program in compliance with 49 CFR Part 26. It further stands as assurance to USDOT that NDOT will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone on the basis of race, color, sex, or national origin in connection with the award and performance of any contract covered by 49 CFR Part 26.

This NDOT DBE Program Plan has been reviewed and approved by the USDOT's Federal Highway Administration (FHWA).

Program Objectives

The NDOT DBE program, in accordance with 49 CFR Part 26, seeks to achieve the following objectives:

- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in the USDOT's highway, transit, and airport financial assistance programs;

- To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;

- To ensure that the NDOT's DBE program is narrowly tailored in accordance with applicable law;

- To ensure that only firms that meet this part's eligibility standards are permitted to participate as DBEs;

- To help remove barriers to the participation of DBEs in USDOT-assisted contracts;

- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

- To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

- To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

Program Authority

The NDOT DBE program operates under the authority of the USDOT in compliance with the Disadvantaged Business Enterprise Program as set forth under 49 CFR Part 26. NDOT, as a recipient of DOT funding, is required under 49 CFR Part 26.21 to have a DBE program that meets the requirements of 49 CFR Part 26.

The NDOT DBE program is applicable to all DOT-assisted contracts administered by NDOT. No clause or provision may be included in any DOT-assisted NDOT contract or subcontract that attempts to circumvent or undermine the provisions or intent of the NDOT DBE program, 49 CFR Part 26 and any applicable Federal or State laws and regulations.

The NDOT DBE program is not intended nor should be construed to limit any contractual, administrative, or legal remedies otherwise available to any party.

Complaints of NDOT Noncompliance

Any person who believes that NDOT has failed to comply with its obligations under 49 CFR Part 26 may, as provided for under 49 CFR Part 26.103(a), file a written complaint with the Office of Civil Rights for the Federal Highway Administration (FHWA). A person wanting to file a complaint must do so no later than 180 days after the date of the alleged violation or the date on which the person learned of a continuing course of conduct in violation of this part. In response to the person's written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. Complaints under this part are limited to allegations of violation of the provisions of 49 CFR Part 26.

Notwithstanding the provisions of the Federal Freedom of Information and Privacy Acts (see 49 CFR Part 26.109(a)), the identity of complainants shall, as provided for under 49 CFR Part 26.109(b), be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

NDOT, its contractors, and the participants in the DBE program, will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26 or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 49 CFR Part 26. Per 49 CFR 26.109(d), violation of this prohibition places NDOT in noncompliance with 49 CFR Part 26.

Appendix B: DOT Contacts of this NDOT DBE Program Plan provides the contact information for the Office of Civil Rights for FHWA, FAA, and FTA.

Terms and Definitions

Appendix A: Terms and Definitions contains the definitions for terms related to the NDOT DBE program, as used in this NDOT DBE Program Plan.

PROGRAM ADMINISTRATION

Organization

The NDOT has sixteen divisions in headquarters, eight field districts, and the Office of Legal Counsel (Attorney General). While the overall responsibility for the NDOT's DBE program lies with the Director of the agency, daily operations are coordinated through the DBELO, who reports programmatically to the Director and administratively to the Highway Civil Rights Coordinator of the NDOT HCRO. The Highway Civil Rights Coordinator administratively reports to the Program Management Administrator/Division Head.

On matters of importance and need relating to the DBE program, the DBELO and the Highway Civil Rights Coordinator have immediate and direct access to the NDOT Director.

Roles and Responsibilities

Director, Deputy Directors:

- Sign statement of non-discrimination, assurances and policy;

- Responsible for implementation of NDOT civil rights programs by providing leadership, guidance, direction, support, and resources for the civil rights programs.

Division Heads/District Engineers:

- Incorporate the requirements of the NDOT civil rights programs into the appropriate manuals, directives, and policies relating to their respective areas of operations;

- Designate staff to work closely with the Highway Civil Rights Coordinator (as needed) in the development or execution of the procedures to ensure non-discrimination in NDOT program areas.

Highway Civil Rights Coordinator:

- Incorporate the requirements of the NDOT civil rights programs into the appropriate manuals, directives, and policies relating to their respective areas of operations;

- Designate staff to work closely with the Highway Civil Rights Coordinator (as needed) in the development or execution of the procedures to ensure non-discrimination in NDOT program areas;

- Develop or oversee development of NDOT civil rights program information for dissemination to the general public, and ensuring, where required under the NDOT Limited English Proficiency Plan, that information is properly translated into languages other than English.

Implement or oversee implementation of the NDOT Limited English Proficiency Program. Collect or oversee collection of statistical data (race, color, sex and national origin) of participants in and beneficiaries of state highway programs (i.e. relocatees, impacted citizens, and affected communities).

Conduct or oversee annual internal civil rights reviews of program areas to determine the effectiveness of NDOT civil rights activities.

Conduct or oversee training programs on civil rights and related statutes for state program personnel, NDOT District Engineers/Division Heads, employees and sub-recipients.

Investigate, identify, and eliminate discrimination when found to exist in NDOT programs and projects.

Highway Civil Rights Manager/DBELO:

Implement all aspects of the NDOT DBE program in compliance with 49 CFR Part 26.

Designate staff to work closely with the Highway Civil Rights Manager (as needed) in the development or execution of the NDOT DBE program to ensure compliance with 49 CFR Part 26;

Incorporate the requirements of the NDOT DBE program into the appropriate manuals, directives, and policies relating to their respective areas of operations;

Assist the agency divisions, contractors and other DOT sub-recipients in understanding, implementing and complying with the requirements of the NDOT DBE program and 49 CFR Part 26;

Monitor and enforce agency, sub-recipient and contractor compliance with the NDOT DBE program and 49 CFR Part 26;

Assist firms in applying for DBE certification in the State of Nebraska;

Ensure that only firms fully meeting the certification requirements and standards of the NDOT DBE program and 49 CFR Part 26 are certified in the State of Nebraska;

Maintain an accurate and up to date directory of certified DBE firms in the State of Nebraska.

Highway Civil Rights Specialist:

Work closely with the Highway Civil Rights Coordinator to develop and implement policies and procedures to monitor and ensure compliance in all of NDOT's civil rights programs and activities;

Review NDOT federal-aid projects for civil rights concerns;

Work with the NDOT Public Involvement Unit to ensure proper and effective outreach to Environmental Justice and/or Limited English Proficiency communities;

Conduct civil rights training and provide technical assistance to NDOT divisions and sub-recipients;

Assist sub-recipients, contractors, universities, colleges, planning agencies, cities, counties, and all of NDOT's divisions in devising and implementing civil rights programs;

Review NDOT divisions' and sub-recipients' procedures for compliance and make recommendations on corrective action(s);

Review public meeting transcripts for civil rights issues;

Conduct initial sub-recipient plan reviews and desk reviews; identify deficiencies and remedies in sub-recipients' civil rights programs;

Conduct onsite reviews;

Maintain correspondence for the NDOT civil rights programs;

Maintain civil rights files and databases.

Organizational Chart and Directory

An organizational chart of NDOT and a directory providing contact information for NDOT and USDOT offices and individuals involved in or related to the DBE program are provided in *Appendix B: Organizational Directory*.

Records and Reporting

NDOT DBE Directory

NDOT will maintain a unified DBE directory containing, for all firms (including those from other states) certified by the Nebraska UCP (see *Nebraska Unified Certification Program*) under the provisions 49 CFR Part 26, the information required by 49 CFR Part 26.31. NDOT will make the directory available to the public electronically, on the internet, as well as in print. NDOT shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

The NDOT DBE directory is the official directory of firms certified as DBEs in the State of Nebraska. A firm's inclusion in the current NDOT DBE directory, as published on the NDOT website, may be taken as confirmation of its certification status. No other documentation or statement may be taken as confirmation of a firm's DBE status in the State of Nebraska.

The NDOT DBE directory may be downloaded from the NDOT website at <http://dot.nebraska.gov/business-center/civil-rights/> or obtained from the NDOT Highway Civil Rights Office (see *Appendix B* for contact information) in either electronic or print format upon request.

Bidders List

NDOT HCRO will, in conjunction with the NDOT Contracts Section, create and maintain a bidders list to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on NDOT federally-assisted contracts for use in setting the overall goals of the NDOT DBE program.

Uniform Report of DBE Awards or Commitments and Payments

NDOT will submit to FHWA a completed *Uniform Report of DBE Awards or Commitments and Payments* form each year by the biannual due dates of June 1 and December 1. The form reports on the NDOT contracting opportunities made available to firms paid with USDOT dollars. The dollar values listed on the form will represent the USDOT share attributable to FHWA.

The submitted form of June 1 will cover the reporting period of the preceding six (6) months, October 1 thru March 31. The submitted form of December 1 will cover the reporting period of the preceding six (6) months, April 1 thru September 30.

Reporting of DBE Directory

NDOT will submit to FHWA Nebraska Division by December 1 of each year, for submittal to DOT's Departmental Office of Civil Rights (DOCR) by January 1 of the following year, a report providing the percentage and location of certified DBE firms in the DBE directory controlled by the following:

Women;

Socially and economically disadvantaged individuals (other than women); and

Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Record Retention and Confidentiality

For each DBE certified firm, NDOT will retain a record of the firm's complete application package and all affidavits of no-change, change notices, on-site reviews, and records documenting the firm's compliance with the requirements of 49 CFR Part 26 during the time the firm is certified and for three (3) years following the firm's withdrawal, decertification, or other removal from the program.

Other certification or compliance related records will be retained for a minimum of three (3) years or as required by the *Records Retention and Disposition Schedules* of the State of Nebraska, whichever is longer. These records will be filed and archived utilizing means acceptable under State law and policy. NDOT will safe guard from disclosure to third parties personal information and information that may be regarded as confidential business information in a manner consistent with federal and state law. Notwithstanding any contrary provisions of state law, NDOT will not release personal information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Contract Provisions and Sanctions

Each financial assistance agreement NDOT signs with a USDOT operating administration (or a primary recipient) will include the following assurance:

The recipient 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 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 recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR 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.).

Each contract NDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

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

Withholding of progress payments;

Assessing sanctions;

Liquidated damages; and/or

Disqualifying the contractor from future bidding as non-responsible.

Updates to the NDOT DBE Program Plan

The NDOT DBE Program Plan conforms to the requirements of 49 CFR Part 26 and has been approved by the DOT's Federal Highway Administration (FHWA). This approval counts for all NDOT DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for NDOT DOT-assisted contracts).

The NDOT DBE Program Plan will be reviewed in the fourth quarter of each calendar year. Updates and revisions to the program plan will be made as required or deemed necessary for compliance with and the effective implementation, monitoring and enforcement of the requirements of 49 CFR Part 26. NDOT will submit to FHWA for approval any significant changes made to this DBE program plan.

CERTIFICATION AS A DISADVANTAGED BUSINESS ENTERPRISE

NDOT Certification Contact

DBE certification applications, questions or concerns may be directed to Troy Larsen, the NDOT DBE Liaison Officer. The DBELO is located in the NDOT Highway Civil Rights Office (HCRO) and may be reached by phone, e-mail, fax or mail at:

Troy Larsen, DBELO
NDOT HCRO
1500 Hwy 2
PO Box 94759
Lincoln, NE 68509-4759
Phone: 402-479-4531
Fax: 402-479-3728
E-mail: troy.larsen@nebraska.gov

A complete staff directory of the NDOT HCRO may be found in *Appendix B: Organization Charts and Directory* of this DBE Program Plan.

Certification Standards

The NDOT, in determining whether to certify a firm as eligible to participate as a DBE will apply the standards set forth in 49 CFR Part 26, Subpart D, and Appendix E to Part 26.

How are burdens of proof allocated in the certification process?

The firm seeking certification has the burden of demonstrating to NDOT, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

NDOT will rebuttably presume that members of the designated groups identified in 49 CFR Part 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to NDOT that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement (see *Appendix C: Certification Forms*) that they are a member of one of the groups in 49 CFR 26.67(a). Applicants do have the obligation to provide NDOT information concerning their economic disadvantage.

Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to NDOT, by a preponderance of the evidence, that they are socially and economically disadvantaged (see *Individual Determinations of Social and Economic Disadvantage*).

NDOT will make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

What rules govern business size determinations?

- a. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, NDOT will apply current SBA business size standard(s) found in 13 CFR 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.
- b. Even if it meets the requirements of part (a.) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including 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 \$23.98 million.
- c. USDOT adjusts the number in part (b.) of this section annually using the Department of Commerce price deflators for purchases by state and local governments as the basis for this adjustment.

What rules determine social and economic disadvantage?

- a. *Presumption of disadvantage.* NDOT will rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. NDOT will require applicants to submit a signed, notarized certification (see *Appendix C: Certification Forms* of this NDOT DBE Program Plan) that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

NDOT will require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

NDOT will require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, NDOT will use the USDOT *Personal Net Worth Statement for DBE/ACDBE Program Eligibility* form provided in 49 CFR Part 26, Appendix G, without change or revision (see *Appendix C: Certification Forms* of the NDOT DBE Program Plan). Where necessary to accurately determine an individual's personal net worth, NDOT may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been

transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

In determining an individual's net worth, NDOT will observe the following requirements:

Exclude an individual's ownership interest in the applicant firm;

Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. NDOT will ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

Do not use a contingent liability to reduce an individual's net worth.

With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

Unless compelled by state or federal law, NDOT will not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that NDOT will transmit this information to USDOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85.

- b. *Rebuttal of presumption of disadvantage.* An individual's presumption of economic disadvantage may be rebutted in two ways.

If the statement of personal net worth and supporting documentation that an individual submits under part (a.) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. NDOT is not required, as per 49 CFR Part 26.67(b)(2), to hold a proceeding in order to rebut the presumption of economic disadvantage in this case.

Example: An individual with very high assets and significant liabilities may, in accounting terms, have a personal net worth (PNW) of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. NDOT may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

If the statement of personal net worth and supporting documentation that an individual submits under part (a.) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, NDOT may consider factors that include, but are not limited to, the following:

Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;

Whether the income was unusual and not likely to occur in the future;

Whether the earnings were offset by losses;

Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

Other evidence that income is not indicative of lack of economic disadvantage; and

Whether the total fair market value of the owner's assets exceed \$6 million.

NDOT will have a proceeding under part (c.) of this section in order to rebut the presumption of economic disadvantage in this case.

- c. If NDOT has a reasonable basis to believe that an individual who is a member of one of the presumptively disadvantaged groups is not, in fact, socially and/or economically disadvantaged NDOT may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. NDOT's proceeding will follow the procedures of 49 CFR Part 26.87 (see the *Certification Procedures* section).

In such a proceeding, NDOT has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. NDOT may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

- d. *Transfers within two years.* Except as set forth in this part, NDOT will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of NDOT's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer

is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

NDOT will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

- e. *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. NDOT will make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to NDOT, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. NDOT will require that applicants provide sufficient information to permit determinations under the guidance of 49 CFR Part 26, Appendix E.

What rules govern group membership determinations?

- a. If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR Part 26.61(c)), NDOT has a well-founded reason to question the individual's claim of membership in that group, NDOT will require the individual to present additional evidence that he or she is a member of the group.

The HCRO will provide the individual a written explanation of NDOT's reasons for questioning his or her group membership and a written request for additional evidence as outlined in part (b.) of this section.

In implementing this section, NDOT will take special care to ensure that they do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate 49 CFR Part 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

- b. In making such a determination, NDOT will consider whether the person has held themselves out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. NDOT may require the applicant to produce appropriate documentation of group membership.

If NDOT determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis (see *Individual Determinations of Social and Economic Disadvantage* below).

NDOT's decisions concerning membership in a designated group are subject to the certification appeals procedure of 49 CFR Part 26.89 (see *What is the process for certification appeals to the Department of Transportation?* in the *Certification Procedures* section).

What rules govern determinations of ownership?

- a. In determining whether the socially and economically disadvantaged participants in a firm own the firm, NDOT will consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.
- b. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

- c. The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Example 1: An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.

Example 2: A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of this part.

Example 3: The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

- d. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this part, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

- e. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- f. 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:

In a specialized field;

Of outstanding quality;

In areas critical to the firm's operations;

Indispensable to the firm's potential success;

Specific to the type of work the firm performs; and

Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

The individual whose expertise is relied upon must have a significant financial investment in the firm.

- g. NDOT will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

Through inheritance, or otherwise because of the death of the former owner.

- h. NDOT will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

Involved in the same or a similar line of business; or

Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to NDOT, by clear and convincing evidence, that—

The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

- i. NDOT will apply the following rules in situations in which marital assets form a basis for ownership of a firm:

When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, NDOT will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. NDOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

- j. NDOT may consider the following factors in determining the ownership of a firm. However, NDOT will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:

A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in part (h.) of this section;

There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, NDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

What rules govern determinations concerning control?

- a. In determining whether socially and economically disadvantaged owners control a firm, NDOT will consider all the facts in the record, viewed as a whole.
- b. 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, NDOT will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

NDOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

NDOT will 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, NDOT will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

- c. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR Part 26.69(j)(2) (see also *What rules govern determinations of ownership?*, above).
- d. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

In a corporation, disadvantaged owners must control the board of directors.

In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

- e. Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- f. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that NDOT can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.
- g. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers

or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- h. If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, NDOT will not deny certification solely on the ground that the person lacks the license or credential. However, NDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm. (A directory of resources with information on obtaining professional or occupational licenses in Nebraska may be found online at <http://nebraskaccess.ne.gov/professionalloccupationallicenses.asp>.)
- i. NDOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. NDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, NDOT may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

- j. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests 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 example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- k. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this part, NDOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as NDOT does in other situations, without regard to whether or not the other persons are immediate family members.

If NDOT cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

- I. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to NDOT, by clear and convincing evidence, that:

The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

- m. In determining whether a firm is controlled by its socially and economically disadvantaged owners, NDOT may consider whether the firm owns equipment necessary to perform its work. However, NDOT will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- n. NDOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to NDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. NDOT will not require that the firm be recertified or submit a new application for certification, but NDOT will verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) will be described in terms of the most specific available North American Industry Classification System (NAICS) code for that type of work. The selected NAICS code will be one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. NDOT will rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If the NDOT maintained DBE directory does not list types of work for any firm in a manner consistent with this paragraph, NDOT will update the directory entry for that firm to meet the requirements of this paragraph.

Firms and NDOT will check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the NDOT has determined the firm's

owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that NDOT, in its certification documentation and DBE directory, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

NDOT is not precluded from changing a certification classification or description if there is a factual basis in the record. However, NDOT will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

In addition to assigning a firm appropriate NAICS code(s), NDOT may also assign to a firm one or more codified descriptor(s) from the *Nature of Business* classification scheme developed by NDOT for internal use in categorizing construction and professional services contractors (see *Appendix G: NDOT Nature of Business Classification Codes* for a list of *Nature of Business* work types). Assigned *Nature of Business* descriptor(s) will be included for reference in a firm's entry in the NDOT maintained DBE directory. NDOT *Nature of Business* classifications do not replace, supersede or substitute for assigned NAICS codes in determining or identifying the types of work a firm is certified to perform as a DBE.

- o. A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, NDOT will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- p. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- q. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

What are other rules affecting certification?

- a. Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in this part, NDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

NDOT may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

- b. NDOT will evaluate the eligibility of a firm on the basis of present circumstances. NDOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of the program.

NDOT will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged status, size, ownership, and control requirements of the program, the firm is eligible for certification.

- c. DBE firms and firms seeking DBE certification shall cooperate fully with NDOT requests (and USDOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification (see 49 CFR Part 26.73(c)).
- d. Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- e. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this part, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, NDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

NDOT may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so NDOT may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, NDOT cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so NDOT cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of 49 CFR Part 26.65(b) (see item (b.) under *What rules govern business size determinations?*). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- f. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- g. NDOT will not require a DBE firm to be prequalified as a condition for certification.
- h. A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR Part 26.65 (see the section *What rules govern business size determinations?*). Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR Part 26.71 (see the section *What rules govern determinations concerning control?*).
- i. The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs):

Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

As a recipient to whom an ANC-related entity applies for certification, NDOT does not use the USDOT uniform application form (see 49 CFR Part 26, Appendix F, and also found in *Appendix C: Certification Forms* of this NDOT DBE Program Plan). NDOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of this part. NDOT will also obtain sufficient information about the firm to allow NDOT to administer its program (e.g., information that would appear in NDOT-maintained DBE directory).

Individual Determinations of Social and Economic Disadvantage

The following policy is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage:

Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

Negative impact on entry into or advancement in the business world because of the disadvantage. NDOT will consider any relevant evidence in assessing this element. In every case, however, NDOT will consider education, employment and business history, where applicable, to

see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

Education. NDOT will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

Employment. NDOT will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

Business history. The NDOT will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

The USDOT notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, NDOT will look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As a public entity subject to Title II of the ADA, NDOT will also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage:

Economically disadvantaged individuals are socially disadvantaged individuals whose 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 disadvantaged.

Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

In considering diminished capital and credit opportunities, NDOT will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income

for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. NDOT will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that NDOT will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

Except as set forth below in this part, NDOT will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

NDOT will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

In determining an individual's access to capital and credit, NDOT may consider any assets that the individual transferred within the two-year period described above that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

Certification Procedures

NDOT, in making DBE certification determinations, will adhere to the rules and procedures set forth in *Code of Federal Regulations, Title 49, Subtitle A, Part 26, Subpart E* (49 CFR Part 26, Subpart E).

As per the NUCP agreement (see the *Nebraska Unified Certification Program* section, below), NDOT is the sole certifying agency for DBEs in Nebraska, responsible for reviewing and making a certification determination on all applications for DBE and/or ACDBE certification. This section details the certification procedures followed by NDOT in making these certification decisions. Applications for DBE certification may be submitted to the DBE Liaison Officer (DBELO) of NDOT's Highway Civil Rights Office (HCRO). The DBELO's contact information can be found in the *NDOT Certification Contact* section, above, or in *Appendix B: Organizational Charts and Directory* of this NDOT DBE Program Plan.

What procedures does NDOT follow in making certification decisions?

- a. NDOT will ensure that only firms certified as eligible DBEs under this section participate in the DBE program.
- b. NDOT will determine the eligibility of firms as DBEs consistent with the standards of 49 CFR Part 26, Subpart D (see section *Certification Standards* of this NDOT DBE Program Plan).
- c. NDOT will take all the following steps in determining whether a DBE firm meets the standards of 49 CFR Part 26, Subpart D (see section *Certification Standards* of this NDOT DBE Program Plan):

Perform an on-site visit to the firm's principal place of business. NDOT will interview the principal officers and review their résumés and/or work histories. NDOT may interview key personnel of the firm if necessary. NDOT will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation within its jurisdiction or local area. NDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to: Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;

Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service (IRS); and

Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in 49 CFR Part 26.85 (see *Interstate Certification* below).

NDOT will use the application form provided in 49 CFR Part 26, Appendix F (also found in *Appendix C: Certifications Forms* of this NDOT DBE Program Plan), without change or revision. However, NDOT may, on a case-by-case basis as needed to ensure certification eligibility and compliance, with the written approval of the concerned DOT operating administration, supplement the form by requesting specified additional information not inconsistent with this part.

NDOT will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States (see the *Uniform Certification Application* form in *Appendix C: Certification Forms* of this NDOT DBE Program Plan).

NDOT will review all information on the form prior to making a decision about the eligibility of the firm. NDOT may request clarification of information contained in the application at any time in the application process.

- d. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information NDOT has obtained about that firm (e.g., including application materials or the report of a site visit, if NDOT has made one to the firm), NDOT will promptly make the information available to the other recipient.
- e. NDOT does not charge a DBE certification application fee. However, NDOT may at a future date, pursuant to 49 CFR Part 26.83(f), and upon approval of the concerned USDOT operating administration, impose a reasonable application fee for certification. Should NDOT impose an application fee as part of its DBE program, fee waivers shall be made in appropriate cases.
- f. NDOT will safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.
- g. Once NDOT has certified a DBE, it shall remain certified until and unless NDOT has removed its certification, in whole or in part, through the procedures of 49 CFR Part 26.87 (see *What procedures does NDOT use to remove a DBE's eligibility?* below), except as provided in 49 CFR Part 26.67(b)(1) (see *What rules determine social and economic disadvantage?* under the section *Certification Standards*).
- h. NDOT will not require DBEs to reapply for certification or undergo a recertification process. However, NDOT may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under this part or relating to suspension of certification under 49 CFR Part 26.88 (see *Summary suspension of certification*, below), a complaint, or other information concerning the firm's eligibility. If information comes to NDOT's attention that leads NDOT to question the firm's eligibility, NDOT may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

A DBE must inform NDOT in writing of any change in circumstances affecting the DBE's ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in the firm's application form. Changes in management responsibility among members of a limited liability company are covered by this requirement. The DBE must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE will provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, it will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

- i. A DBE must provide to NDOT, every year on the anniversary of the date of the firm's certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States (see the *Nebraska Department of Transportation Annual Affidavit*

of No Change found in *Appendix C: Certification Forms* of this NDOT DBE Program Plan). This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the DBE has notified NDOT under paragraph (h.) of this section. The affidavit shall specifically affirm that the DBE continues to meet SBA business size criteria and the overall gross receipts cap, documenting this affirmation with supporting documentation of the firm's size and gross receipts (e.g., submission of Federal tax returns). If a DBE fails to provide this affidavit in a timely manner, it will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

- j. NDOT will make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. NDOT may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. NDOT may establish a different time frame for its DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. NDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?*, below).
- k. As a recipient, NDOT will advise each applicant within 30 days from its receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- l. Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before NDOT has issued a decision on the application, the applicant can resubmit the application at any time. As a recipient, NDOT will not apply the waiting period provided under 49 CFR Part 26.86(c) (see *What rules govern NDOT's denials of initial requests for certification?* below) before allowing the applicant to resubmit its application. However, NDOT may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. NDOT may also apply the waiting period provided under 49 CFR Part 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before NDOT makes a decision.

Interstate Certification

- a. This section applies with respect to any firm that is currently certified in its home state.
- b. When a firm currently certified in its home state (State A) applies to NDOT for DBE certification, NDOT may, at its discretion, accept State A's certification and certify the firm, without further procedures. To obtain certification in this manner, the firm must provide to NDOT a copy of its certification notice from State A. Before certifying the firm, NDOT will confirm that the firm has a current valid certification from State A. NDOT can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

- c. In any situation in which NDOT chooses not to accept State A's certification of a firm as described in part (b.) of this section, the applicant firm NDOT will provide the following information to NDOT:

The applicant firm will provide to NDOT a complete copy of the application form, all supporting documents, and any other information the firm has submitted to State A or any other state related to the firm's certification. This includes affidavits of no change and any notices of changes (see *What procedures does NDOT follow in making certification decisions?* above) that the firm may have submitted to State A, as well as any correspondence applicant has had with State A's UCP (Unified Certification Program) or any other recipient concerning the firm's application or status as a DBE firm.

The applicant will also provide to NDOT any notices or correspondence from states other than State A relating to the firm's status as an applicant or certified DBE in those states. For example, if a firm has been denied certification or decertified in State C (a state other than State A), or subject to a decertification action there, the applicant must inform NDOT of this fact and provide all documentation concerning this action to NDOT.

If the applicant has filed a certification appeal with USDOT, the applicant will inform NDOT of the fact and provide the letter of appeal and USDOT's response.

The applicant must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States (see the *NDOT DBE Interstate Certification Affidavit* form in *Appendix C: Certification Forms* of this NDOT DBE Program Plan). This affidavit must affirm that the firm has submitted all the information required by 49 CFR Part 26.85(c); the information is complete; and, in the case of the information required by 49 CFR Part 26.85(c)(1), is an identical copy of the information submitted to State A.

If the on-site report from State A supporting the applicant's certification in State A is more than three years old, as of the date of their application to NDOT, NDOT may require that applicant's affidavit also affirm that the facts in the on-site report remain true and correct.

- d. When NDOT has received from an applicant firm all the information required by part (c.) of this section, NDOT will take the following actions:

Within seven (7) days contact State A and request a copy of the site visit review report for the firm, any updates to the site visit review, and any evaluation of the firm based on the site visit. State A, as per 49 CFR Part 26.85(d)(1), is required to transmit this information to NDOT within seven (7) days of receiving the request. A pattern by NDOT of not making such requests in a timely manner, or by "State A" or any other State of not complying with such requests in a timely manner, is noncompliance with 49 CFR Part 26.

Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in Nebraska. Reasons for making such a determination may include the following:

Evidence that State A's certification was obtained by fraud;

New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

State A's certification was factually erroneous or was inconsistent with the requirements of this part;

State law of Nebraska requires a result different from that of the State law of State A;

The information provided by the applicant firm did not meet the requirements of part (c.) of this section.

Unless NDOT has determined that there is good cause to believe that State A's certification is erroneous or should not apply in Nebraska, NDOT will, no later than 60 days from the date on which it received from the interstate applicant firm all the information required by part (c.) of this section, send to the applicant firm a notice that it is certified and place the firm on the NDOT directory of certified DBE firms.

If NDOT has determined that there is good cause to believe that State A's certification is erroneous or should not apply in Nebraska, NDOT will, no later than 60 days from the date on which it received from the applicant firm all the information required by part (c.) of this section, send to the applicant firm a notice stating the reasons for its determination. This notice will state with particularity the specific reasons why NDOT believes that the firm does not meet the requirements of DBE eligibility under 49 CFR Part 26 and will offer the firm an opportunity to respond to NDOT with respect to these reasons.

The firm may elect to respond in writing, to request an in-person meeting with NDOT's decision maker to discuss NDOT's objections to the firm's eligibility, or both. If the firm requests a meeting, NDOT will schedule the meeting to take place within 30 days of receiving the firm's request.

The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of DBE eligibility under 49 CFR Part 26 with respect to the particularized issues raised by NDOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to NDOT.

The decisionmaker for NDOT will be the DBE Liaison Officer (DBELO), an individual thoroughly familiar with the provisions of 49 CFR Part 26 concerning certification (see *Appendix B: Organizational Charts and Directory* of this NDOT DBE Program Plan for the name and contact information of the DBELO).

NDOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

The firm's application for certification is stayed pending the outcome of this process.

A decision under this part may be appealed to the USDOT Departmental Office of Civil Rights (DOCR) under 49 CFR Part 26.89 (see the section *What is the process for certification appeals to the U.S. Department of Transportation?* below).

- e. If NDOT has not received from State A a copy of the site visit review report by a date 14 days after having made a timely request for it, NDOT may hold actions required by part (d.) of this section in abeyance pending receipt of the site visit review report. In this event, NDOT will, no later than 30 days from the date on which it received from an applicant firm all the information required by part (c.) of this section, notify the firm in writing of the delay in the process and the reason for it.
- f. When NDOT denies a firm's application, rejects the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of part (d.) of this section, or decertifies a firm, in whole or in part, NDOT will make an entry in the U.S. Department of Transportation Office of Civil Rights' Ineligibility Determination Online Database. NDOT will enter the following information:

The name of the firm;

The name(s) of the firm's owner(s);

The type and date of the action;

The reason for the action.

NDOT will check the DOCR web site at least once every month to determine whether any firm that is applying for certification or that is already certified in Nebraska is on the list.

For any such firm that is on the list, NDOT will promptly request a copy of the listed decision from the Unified Certification Program (UCP) that made it. The UCP receiving such a request is required under 49 CFR Part 26.85(f)(3) to provide a copy of the decision to NDOT within seven (7) days of receiving the request. Upon receiving the decision, NDOT will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

What rules govern NDOT's denials of initial requests for certification?

- a. When NDOT denies a request by a firm, which is not currently certified with the NUCP, to be certified as a DBE, NDOT will provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.

- b. When a firm is denied certification, NDOT will establish a time period of twelve (12) months that must elapse before the firm may reapply to NDOT for certification. The time period for reapplication begins to run on the date the explanation required by part (a.) of this section is received by the firm. An applicant's appeal of NDOT's decision to USDOT pursuant to 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below) does not extend this period.
- c. When NDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to USDOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below).

What procedures does NDOT use to remove a DBE's eligibility?

- a. *Ineligibility complaints.* Any person may file with NDOT a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. NDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint (49 CFR Part 26.87(a)). The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities will be protected as provided in 49 CFR Part 26.109(b).

NDOT will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. NDOT may request additional information from the firm or conduct any other investigation that it deems necessary.

If NDOT determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, it will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If NDOT determines that such reasonable cause does not exist, it will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based.

- b. *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to NDOT's attention, NDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, it will provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based.
- c. *USDOT directive to initiate proceeding.* If the concerned operating administration determines that information in NDOT certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm NDOT certified does not meet the eligibility criteria of this part, the concerned operating administration may direct NDOT to initiate a proceeding to remove the firm's certification.

The concerned operating administration will provide NDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. NDOT will immediately commence and prosecute a proceeding to remove eligibility.

- d. *Hearing.* When NDOT notifies a firm that there is reasonable cause to remove its eligibility, as provided in parts (a.), (b.), or (c.) of this section, NDOT will give the firm 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 concerning why it should remain certified.

In such a proceeding, NDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

NDOT will maintain a complete audio recording of the hearing. If there is an appeal to DOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below), NDOT will provide a transcript of the recorded hearing to USDOT and, on request, to the firm, in either electronic or printed form. NDOT will not charge the firm for the cost of providing a copy of the transcript. NDOT will retain the original record of the hearing for a period of five (5) years.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, NDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as it would during a hearing.

The firm has 15 days from receipt of written notice that NDOT proposes to find the firm ineligible for DBE certification to request in writing an informal hearing from NDOT. If the firm does not make a request for a hearing within this time, the decision becomes administratively final with NDOT.

- e. *Separation of functions.* NDOT will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision-maker will be an individual who is knowledgeable about the certification requirements of 49 CFR Part 26.

The decision-maker in a proceeding to remove a firm's eligibility will be a DBE officer from another member of the NUCP. (See *Signatory Partners* in the *Nebraska Unified Certification Program* section below for a list of NUCP members.)

- f. *Grounds for decision.* NDOT may base a decision to remove a firm's eligibility only on one or more of the following grounds:

Changes in the firm's circumstances since the certification of the firm by NDOT that render the firm unable to meet the eligibility standards of this part;

Information or evidence not available to NDOT at the time the firm was certified;

Information relevant to eligibility that has been concealed or misrepresented by the firm;

A change in the certification standards or requirements of the DOT since NDOT certified the firm;

NDOT's decision to certify the firm was clearly erroneous;

The firm has failed to cooperate with NDOT as required under 49 CFR Part 26.109;

The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program as per 49 CFR Part 26.73(a)(2)) (see *What are other rules affecting certification?* in the section *Certification Standards*); or

The firm has been suspended or debarred for conduct related to the DBE program. The notice required by part (g.) of this section will include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in part (d.) of this section.

- g. *Notice of decision.* Following its decision, NDOT will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of NDOT's decision and of the availability of an appeal to USDOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below). NDOT will send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed NDOT to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a USDOT operating administration, NDOT will not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.
- h. *Status of firm during proceeding.* A firm remains an eligible DBE during the pendency of NDOT's proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice provided for in part (g.) of this section.
- i. *Effects of removal of eligibility.* When NDOT remove a firm's eligibility, it will take the following action:

When a prime contractor has made a commitment to using the ineligible firm, or NDOT has made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before NDOT issued the decertification notice provided for in part (g.) of this section, the ineligible firm will not count toward the contract goal or overall goal. NDOT will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to NDOT that it has made a good faith effort to do so.

If a prime contractor has executed a subcontract with the firm before NDOT has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In

this case, or in a case where NDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after NDOT issued the notice of its ineligibility shall not count toward NDOT's overall DBE goal, but may count toward the contract goal.

Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, NDOT will continue to count its participation on that contract toward overall and contract goals.

- j. *Availability of appeal.* When NDOT makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the USDOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below).

Summary suspension of certification

- a. NDOT will immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d) (see *What procedures does NDOT use to remove a DBE's eligibility?* above) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- b. NDOT may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d) (see *What procedures does NDOT use to remove a DBE's eligibility?* above) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify NDOT in writing of any material change in circumstances as required by 49 CFR Part 26.83(i) (see *What procedures does NDOT use to remove a DBE's eligibility?* above) or fails to timely file an affidavit of no change under 49 CFR Part 26.83(j) (see *What procedures does NDOT use to remove a DBE's eligibility?* above).

In determining the adequacy of the evidence to issue a suspension under this part, NDOT shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

- c. The concerned USDOT operating administration may direct NDOT to take action pursuant to part (a.) or (b.) of this section (see 49 CFR Part 26.88(a) and (b)) if it determines that information available to it is sufficient to warrant immediate suspension.
- d. When a firm is suspended pursuant to parts (a.) or (b.) of this section, NDOT will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- e. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part 26.87 (see *What procedures does NDOT use to remove a DBE's eligibility?* above) to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

- f. While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward NDOT's overall DBE goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- g. Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to NDOT information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, NDOT will either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR Part 26.87 (see *What procedures does NDOT use to remove a DBE's eligibility?* above). If NDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.
- h. The decision to immediately suspend a DBE under part (a.) or (b.) of this section is not appealable to the US Department of Transportation (see 49 CFR Part 26.88(h)). The failure of NDOT to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to USDOT under 49 CFR Part 26.89 (see *What is the process for certification appeals to the U.S. Department of Transportation?* below), as a constructive decertification.

What is the process for certification appeals to the U.S. Department of Transportation?

- a. A firm that is denied certification or whose eligibility is removed by NDOT, including SBA-certified firms, may make an administrative appeal to the U.S Department of Transportation (USDOT). A complainant in an ineligibility complaint to NDOT, including the concerned operating administration in the circumstances provided in 49 CFR Part 26.87(c) (see *What procedures does NDOT use to remove a DBE's eligibility?* above), may appeal to the USDOT if NDOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

Send appeals to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue SE
Washington, DC 20590-0001.

- b. Pending USDOT's decision in the matter, NDOT's decision remains in effect. USDOT will not stay the effect of NDOT's decision while it is considering an appeal (see 49 CFR Part 26.89(b)).
- c. A firm or complainant wishing to file an appeal must send a letter to USDOT within 90 days of the date of the NDOT's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that NDOT failed to

consider, or what provisions of 49 CFR Part 26 NDOT did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if it determines that there was good cause for the late filing of the appeal or in the interest of justice.

- d. When it receives an appeal, USDOT requests a copy of NDOT's complete administrative record in the matter. NDOT will provide the administrative record, including a hearing transcript, within 20 days of the USDOT's request. USDOT may extend this time period on the basis of a NDOT's showing of good cause. To facilitate USDOT's review of NDOT's decision, NDOT will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements will not be acceptable and will be returned to NDOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- e. USDOT makes its decision based solely on the entire administrative record as supplemented by the appeal. USDOT does not make a de novo review of the matter and does not conduct a hearing. USDOT may also supplement the administrative record by adding relevant information made available by the USDOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a USDOT operating administration or other appropriate USDOT office; a recipient; or a firm or other private party.
- f. When NDOT provides supplementary information to USDOT, it shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT will make available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

USDOT affirms NDOT's decision unless it determines, based on the entire administrative record, that NDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of 49 CFR Part 26 concerning certification.

If USDOT determines, after reviewing the entire administrative record, that NDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of 49 CFR Part 26 concerning certification, USDOT reverses NDOT's decision and directs NDOT to certify the firm or remove its eligibility, as appropriate. NDOT will take the action directed by USDOT's decision immediately upon receiving written notice of it.

USDOT is not required to reverse NDOT's decision if USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, DOT may remand the record to NDOT with instructions seeking clarification or augmentation of the record before making a finding. DOT may also remand a case to NDOT for further proceedings consistent with DOT instructions concerning the proper application of the provisions of 49 CFR Part 26.

USDOT does not uphold NDOT's decision based on grounds not specified in NDOT's decision.

USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT provides written notice of its decision to NDOT, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see part (d.) of this section). USDOT will also notify the SBA in writing when USDOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for USDOT's decision, including specific references to the evidence in the record that supports each reason for the decision.

USDOT's policy is to make its decision within 180 days of receiving the complete administrative record. If USDOT does not make its decision within this period, USDOT provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

- g. All decisions under this section are administratively final, and are not subject to petitions for reconsideration (see 49 CFR Part 26(g)).

What actions does NDOT take following USDOT certification appeal decisions?

- a. If NDOT is the recipient from whose action an appeal under 49 CFR Part 26.89 (see *What is the process for certification appeals to the Department of Transportation?* above) is taken, the decision is binding. It is not binding on other recipients.
- b. If NDOT is the recipient to which a USDOT determination under 26.89 (see *What is the process for certification appeals to the Department of Transportation?* above) is applicable, NDOT will take the following action:

If USDOT determines that NDOT erroneously certified a firm, NDOT will remove the firm's eligibility on receipt of the determination, without further proceedings on NDOT's part. Effective on the date of NDOT's receipt of USDOT's determination, the consequences of a removal of eligibility set forth in 49 CFR Part 26.87(i) (see *What procedures does NDOT use to remove a DBE's eligibility?* above) take effect.

If USDOT determines that NDOT erroneously failed to find reasonable cause to remove the firm's eligibility, NDOT will expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in 49 CFR Part 26.87 (see *What procedures does NDOT use to remove a DBE's eligibility?* above).

If USDOT determines that NDOT erroneously declined to certify or removed the eligibility of the firm, NDOT will certify the firm, effective on the date of its receipt of the written notice of USDOT's determination.

If USDOT determines that NDOT erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, NDOT will take appropriate corrective action as determined by USDOT.

If USDOT affirms NDOT's determination, no further action is necessary.

- c. Where USDOT has upheld NDOT's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR Part 26.87 (see *What procedures does NDOT use to remove a DBE's eligibility?* above). Such recipients will not remove the firm's eligibility absent such a proceeding. Where USDOT has reversed NDOT's denial of certification to or removal of eligibility from a firm, other recipients will take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision. (See 49 CFR Part 26.91.)

Nebraska Unified Certification Program

It is the policy of all Nebraska recipients of United States Department of Transportation (USDOT) financial assistance that firms certified as a Disadvantaged Business Enterprise (DBE), as described in *Code of Federal Regulations, Title 49, Subtitle A, Part 26* (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 USDOT-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 26.81, the USDOT 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 with recipients of USDOT financial assistance in the State of Nebraska. This includes recipients of DOT financial assistance from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), and the Federal Transit Administration (FTA). The NUCP will have one application, one certification process, and one certification 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 DBE certification procedures and standards of 49 CFR Part 26, on the same basis as the USDOT recipients. The NUCP will cooperate fully with all oversight, review, and monitoring activities of the USDOT and its operating administrations. The NUCP will implement all USDOT directives and guidance concerning DBE certification matters. The USDOT recipients agree to commit sufficient resources and expertise to the NUCP to ensure the NUCP is capable of carrying out the requirements of 49 CFR Part 26.

For the full text of the Nebraska Unified Certification Program Agreement, see Appendix D of this document.

DBE GOAL SETTING

Overall Goal Setting

The NDOT must set an overall goal for DBE participation in its federally-assisted contracts, as required by 49 CFR 26.45. NDOT must submit an updated overall DBE goal to the FHWA Nebraska Division for review by August 1 at three-year intervals. The coming years in which NDOT must submit this updated overall DBE goal are 2017, 2020, 2023, and 2026, and every three years thereafter.

NDOT may adjust its three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. NDOT will submit such an adjustment to the FHWA Nebraska Division for review and approval.

NDOT's overall 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 federally-assisted contracts. The goal must reflect the NDOT's determination of the level of DBE participation expected absent the effects of discrimination. The NDOT will use the following methodology for setting its overall DBE participation goal:

First in the goal setting process is to determine a base figure for the relative availability of DBEs. NDOT will use one of the following methods:

NDOT will determine the number of ready, willing and able DBEs in the market by using the Nebraska DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, NDOT will determine the number of all ready, willing and able businesses available in the market that perform work in the same NAICS codes. The number of DBEs will be divided by the number of all businesses to derive a base figure for the relative availability of DBEs in the market; OR

NDOT will determine the number of DBEs that have bid or quoted (successful and unsuccessful) on federally-assisted prime contracts or subcontracts in the past three years. NDOT will determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. The number of DBE bidders and quoters is divided by the number of all businesses to derive a base figure for the relative availability of DBEs in the market.

Once a base figure has been calculated, NDOT must examine all of the evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at NDOT's overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made. The following factors will be considered:

The current capacity of DBEs to perform work in NDOT's federally-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

Evidence from disparity studies conducted anywhere within Nebraska, to the extent it is not already accounted for in the base figure;

Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the NDOT DBE program; AND/OR

Data on employment, self-employment, education, training and union apprenticeship programs, to the extent it relates to the opportunities for DBEs to perform in the NDOT DBE program.

The NDOT overall DBE participation goal will be expressed as a percentage of all Federal-aid highway funds that NDOT will expend in federally-assisted contracts in the forthcoming three fiscal years.

In establishing an overall goal, NDOT must provide for consultation and publication. NDOT must consult with minority, women's, and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and NDOT's efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, and teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before NDOT is required to submit its methodology to FHWA Nebraska Division for review.

NDOT must document in its goal submission the consultation process that was engaged in. NDOT may not implement its proposed goal until it has complied with this requirement.

NDOT must publish notice announcing the proposed overall goal before submission to the FHWA Nebraska Division on August 1st. The notice must be posted on the NDOT website and may be posted in any other sources (e.g., minority-focused media, trade association publications).

Bidders List

The NDOT will maintain a bidders list, as required by 49 CFR 26.11(c). Information for the bidders list will be compiled by asking prime contractors, by way of a question on the pre-bid DBE information form, to list all subcontractors that submitted bids, whether successful or unsuccessful. The bidders list will be compiled by the NDOT Civil Rights Office and will record the following information:

Firm name;

Firm address;

Firm's status as a DBE or non-DBE;

Age of the firm; and

The annual gross receipts of the firm by bracket (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

“Race Neutral” Outreach

To obtain the maximum feasible portion of its overall annual DBE goal through race neutral means, NDOT may use some or all of the following methods:

Publicize construction project notices and consulting requests in order to encourage DBE firms and other small businesses to participate;

Implement, as approved by FHWA, a supportive services program for DBE firms and other small businesses that is designed to facilitate the development of business management skills, the development of project management skills, and the use of supporting technologies (see Appendix I: Supportive Services);

Provide other technical assistance to DBE firms and other small businesses as needed;

Identify and promote projects that can be unbundled in order to promote DBEs and other small businesses to perform as a prime;

Identify and promote joint venture opportunities to allow DBE firms and other small businesses to perform prime contracts in cooperation; and

Ensure that a reasonable number of prime contracts are of a size that DBE firms and other small businesses can reasonably perform.

“Race Conscious” Contract Goal Setting

Contract goals will be used to meet that portion of the overall goal not projected to be met by race-neutral means, and will be expressed as a percentage of the federal portion of federally-assisted contracts.

Before soliciting bids, members of the NDOT Contracts Section along with the DBE Liaison Officer (DBELO) will review a contract to determine the percentage goal, if any, that will be assigned to that contract. Those contracts with limited or no subcontracting potential will have a zero goal. Factors considered when deciding whether or not to place goals on a contract include:

Location of the project, and the availability of certified DBEs to perform work in that location (based on what locations the DBE has expressed willingness to perform work in);

Type of project; Whether or not the project type allows it to be broken down into units able to be performed by certified Nebraska DBEs;

Number of contract line items with the most DBE subcontracting, service, or supplier potential, and the availability of certified DBEs to perform the work items in the contract (based on the work items attached to the DBE in the Nebraska DBE List);

Estimated total cost of the project, or portions of the project; whether or not the project is of a size that certified DBEs could be expected to perform work on, and then also the amount of work expected to be performed by DBEs (based on self-reported business size information).

Contract DBE goals can be met by any and all certified DBEs; contract DBE goals will not be subdivided into goals based on specific race, gender, or other qualifying factor.

During the course of the year, if it becomes apparent that NDOT will exceed its overall goal, NDOT will reduce or cease to place DBE goals on new contracts at the time of letting, and then continue to monitor DBE participation. If it becomes apparent that NDOT is at risk of falling short of the overall goal, NDOT will either increase the number of new contracts with DBE goals or increase the DBE participation goal amounts on new contracts at the time of letting. NDOT will be able to make these judgments because of the “running tally” of DBE participation discussed in the next section.

Running Tally

NDOT will keep a “running tally” of annual DBE goal attainment, as required by 49 CFR 26.37(c). NDOT will accomplish this through the same mechanism used to track prompt payments to all subcontractors. Within seven (7) calendar days after disbursing subcontractor payments apportioned from a received progress payment, each prime contractor will submit to NDOT a record of such payments via the “Prompt Payment Portal” on the NDOT website. The NDOT Civil Rights Office will determine the present progress toward the overall DBE goal simply by using this reporting portal to generate a report on only DBE subcontractors that have received payments.

This reporting system, combined with other reports able to be run using AASHTOWare Project, will give NDOT the ability to track payments to both DBE prime and subcontractors. NDOT will run these reports on at least a monthly basis to determine overall goal attainment. If the overall goal is close to being met, NDOT will run the reports more frequently (frequency to be determined by the circumstances) in order to have as precise as possible a tally on DBE participation.

Overconcentration

If NDOT determines that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, NDOT will take one or both of the following measures to address the overconcentration:

The use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which NDOT has determined that non-DBEs are unduly burdened;

Varying the use of contract goals, to the extent consistent with 49 CFR Part 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

NDOT will obtain the approval of the concerned USDOT operating administration for its determination of overconcentration and the measures taken to address it.

MONITORING AND ENFORCING OF PROGRAM REQUIREMENTS

Award of Contract

The apparent successful bidder is the bidder (DBE or non-DBE) who submits the lowest bid, is qualified and responsible, and who signs the proposal document accompanying the bid stating that the firm will perform the work of the contract and comply with the various regulations and special provisions, including the appropriate DBE special provisions and the DBE goal, when applicable. These provisions further require the contractor to identify, no later than 5 days after bid opening as a matter of responsibility, the DBE(s) that will be used in commitment of meeting any DBE goal requirement, or in providing documentation of its good faith efforts to meet the DBE goal requirement if it was unable to do so.

After bids are opened and analyzed, NDOT sends notice of intent to award to the apparent low bidder contingent on completion of all pre-award conditions. These conditions include, but are not limited to, completion and submission of the *NDOT Required DBE Participation Form*, which provides the following information:

The names and addresses of all subcontractors that bid, successfully or unsuccessfully, on subcontracts on the project;

The names and addresses of the DBE subcontractors that will actually participate in meeting the contract goal;

A complete description (by item number or group, etc.) of the work each named DBE subcontractor will perform;

The dollar amount of participation by each named DBE subcontractor;

Written and signed documentation from the bidder of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

The apparent low bidder must submit written and signed confirmation from each DBE that it is participating in the contract as provided in the prime contractor's commitment, by 5:00 p.m. on the fifth (5th) calendar day following the letting;

If the contract goal is not met, evidence of good faith efforts.

The submitted bid and completed *Required DBE Participation Form* (See *Appendix H* for an example copy) is reviewed by the NDOT Civil Rights Office to determine whether the apparent low bidder has committed to meet the DBE contract goal by using certified DBEs who will be performing or supplying specific contract items for which they are licensed and certified to perform and will be performing commercially useful functions (see section on Commercially Useful Function reviews). Then, if the DBE

goal requirement is met, and all other requirements set forth in the contract are met, NDOT issues the *Notice to Proceed* to the contractor.

Note that once a contract has been awarded the winning contractor is responsible for achieving the dollar amount of DBE participation committed to, both as a whole and for each individual DBE identified as part of the bid commitment, even if that amount exceeds the original DBE goal of the contract.

Good Faith Efforts

Good faith efforts (“GFE”) are those demonstrated efforts taken by a contractor in compliance with 49 CFR Part 26.53 to achieve a DBE goal on a federally-assisted contract, and which, by their scope, intensity, and appropriateness to the objective, can be reasonably expected to achieve the goal. Guidance concerning the standards of GFE may be found in 49 CFR Part 26, Appendix A.

It is the obligation of every contractor to demonstrate that it has made a good faith effort to retain a DBE to complete work on projects with DBE goals. The bidder/contractor can demonstrate that it has done so either by fulfilling the goal or providing documented evidence of GFE to do so.

The NDOT Highway Civil Rights Office examines and evaluates bids, and monitors contract performance using the “running tally” process, to determine if a contractor has achieved or is likely to achieve the contract DBE goal. If not, the Highway Civil Rights Office determines, in accordance with 49 CFR Part 26.53 and 49 CFR Part 26, Appendix A, if the contractor made good faith effort to achieve the DBE goal and then issues a written notice of its determination to the contractor.

When evaluating documented GFE, the NDOT Civil Rights Office will examine what efforts were made by the contractor, when they were made, and how intensely those efforts were undertaken. Considerations in making the determination will include, but are not limited to:

Whether the contractor solicited DBEs through all reasonable and available means, allowing adequate time for response, and following up on initial solicitations;

Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);

Whether the contractor provided interested DBEs with information about the plans, specifications, and requirements of the contract in a timely manner. What is timely may vary, but timeliness is directly related to the size of the contract, the complexity in preparing bids or quotes, and the urgency of project circumstance. Larger contracts that require greater complexity in creating bids or quotes will demand more time to complete than smaller or simpler contracts. An urgent project timeline during a replacement of a DBE on an existing contract will increase the expectancy of rapid response to solicitations;

Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough evaluation of their current capabilities and previous work;

Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by NDOT or the bidder;

Whether the contractor took into consideration all relevant factors in negotiating with and selecting subcontractors and suppliers, DBE and non-DBE, including but not limited to, each firm's price and capabilities, as well as subcontract and overall project goals;

Whether the contractor, in not selecting a DBE subcontractor for reason of costs alone, demonstrated such costs were out of line with comparative costs observed in the current competitive marketplace;

Whether the contractor, in not achieving the DBE goal, selected to self-perform work for which a qualified DBE firm was available and willing to perform that work;

Whether the contractor made efforts to assist interested DBEs in obtaining equipment, supplies, materials, or related assistance or services;

Whether the contractor effectively used the services of available community organizations, contractors groups, government business assistance offices, or other resources that might assist in identifying DBE firms.

If a contractor is attempting to prove good faith efforts at the time of a bid, documentation of GFE shall be provided by a contractor to the NDOT Civil Rights Office by the close of business on the fifth business day following the letting (not counting the day of the letting). Extensions to this timeframe may be granted at the discretion of the NDOT Civil Rights Office, but requests for extension must be received in writing by the NDOT Civil Rights Office within the original five business days.

The NDOT Civil Rights Coordinator and the NDOT Civil Rights Manager for the DBE Program will carefully examine and weigh the good faith effort documentation submitted by the contractor. The NDOT Civil Rights Coordinator and the NDOT Civil Rights Manager for the DBE Program will make a determination on whether or not the GFE submittal was sufficient to prove that the contractor made a good faith effort to retain and utilize DBE subcontractors. The determination on whether or not the GFE submittal was sufficient will be made by the close of business on the second business day following receipt of the GFE documentation (not counting the day of receipt). The Civil Rights Office will prepare a document which will include the analysis of GFE factors, the application of those factors to the facts at hand, and all evidence submitted by the contractor. This document will serve as the record of decision. The determination on whether or not the GFE submittal was sufficient will be made by the close of business on the second business day following receipt of the GFE documentation (not counting the day of receipt). The record of decision will then be sent to the contractor both electronically and by mail.

In the context of good faith efforts at the time of letting, if the NDOT Civil Rights Office determines that the contractor has demonstrated GFE, the bid will be accepted. If the NDOT Civil Rights Office determines the contractor failed to demonstrate GFE, NDOT will refuse the bid.

In the context of good faith efforts during the execution of a contract, if a contractor fails to achieve their DBE commitment, but the NDOT Civil Rights Office determines that the contractor demonstrated a good faith effort in attempting to achieve the goal, the contractor will not be found in breach of

contract. However, if a contractor fails to achieve the contract DBE commitment and the NDOT Civil Rights Office determines that the contractor failed to demonstrate GFE, NDOT may find the contractor in breach of contract. See section titled *Termination and Replacement of a DBE Subcontractor*.

If the NDOT Civil Rights Office determines that the contractor failed to demonstrate GFE, either at the time of the bid or during the performance of a contract, the contractor may request administrative reconsideration in accordance with 49 CFR 26.53(d). The request by the contractor for administrative reconsideration must be made in writing and received by the NDOT Civil Rights Office by the close of business on the fifth business day after the contractor has received notice of the determination (not counting the day that the notice was received). If the contractor fails to make such request, they will be deemed to have waived their right to request administrative reconsideration and the determination of the NDOT Civil Rights Office will stand.

In an administrative reconsideration of a determination of GFE, the final decision is made by an office and personnel that did not take part in the original finding and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. In fulfillment of this requirement, the final decision in the administrative reconsideration will be made by an attorney with the Nebraska Attorney General's office at the Nebraska Department of Transportation or by an NDOT executive with guidance from the Attorney General's office. The selection of an executive will depend on availability at the time of the administrative reconsideration. When available, the administrator will be the NDOT Construction Engineer, who has a familiarity with the DBE Program and has served in the capacity of 'hearing officer' for prior GFE administrative reconsiderations. The Attorney General's Office at NDOT is familiar with the DBE Program, has a long history of experience with various DBE issues, and are experts in the interpretation and application of facts and laws.

The contractor 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 contractor will also have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

The NDOT HCRO will provide to the reconsideration official all evidence relating to the contractor's good faith efforts, as well as a written memorandum of analysis and conclusions. The HCRO will also meet with the reconsideration official to answer questions and discuss issues pertaining to the findings of the HCRO.

The reconsideration official will prepare and send to the contractor and the HCRO a record of decision, explaining the basis for the finding that the contractor did or did not meet the goal or make adequate good faith efforts to do so.

The result of the administrative reconsideration process is not administratively appealable to USDOT.

DBE Subcontracts

All subcontracts are on file in the Construction Division of the NDOT. The NDOT HCRO, along with NDOT Project Managers, have electronic access to every subcontract, DBE or non-DBE. NDOT Project

Managers are responsible for making sure that any subcontractor performs the work identified in the subcontract for that project (NDOT Construction Manual, Section 102.15(B)).

In the days following a contract award, once subcontracts are executed and available for inspection, the HCRO will review each subcontract to ensure that necessary contract provisions concerning prompt payment and DBE activities have been included, and that, as contracted, the DBE firm is performing a commercially useful function in a NAICS indicated work area for which they have been DBE certified. A list of subcontracts reviewed will be created and retained so that a record of reviewed subcontracts exists.

When monitoring and reviewing the work of a DBE, the HCRO and PMs will reference the relevant subcontract in determining whether the DBE is performing a commercially useful function. DBEs found to be not performing work as contracted and as committed towards the DBE goal may be considered to not be performing a commercially useful function, and their participation in the contract may not be counted towards attainment of the DBE goal as committed to by the prime.

Counting of DBE Participation and Commercially Useful Function - General

NDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a *commercially useful function* on that contract. NDOT evaluates commercial useful function on a project by project basis.

A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a DBE is performing a commercially useful function, NDOT will evaluate the amount of work subcontracted, accepted industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors as may be applied in the circumstances. Accepted industry practices will be determined by NDOT project managers, engineers, planners, purchasing agents, and other staff having knowledge and expertise related to the area in question.

When a DBE participates in a contract, NDOT counts only the value of the work actually performed by the DBE toward DBE goals. NDOT will count the entire amount of that portion of a contract that is performed by the DBE's own forces. If the prime contractor is a DBE, NDOT will count the work the DBE prime has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

NDOT will 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 subcontractor purchases or leases from the prime contractor or any affiliate of the prime as defined by the Small Business Administration standards of affiliation found in *Code of Federal Regulations Title 13, Part 121*).

In addition, NDOT will count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a federally-assisted contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

If a firm is not currently certified as a DBE in Nebraska at the time of the execution of the contract, NDOT will not count the firm's participation toward any DBE goals, except as may be provided for under the section *Counting and Commercially Useful Function – Trucking*.

NDOT will not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE. This will be determined by use of the online reporting portal described in the "Prompt Payment" section of this document.

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. In determining whether a DBE is such an extra participant, NDOT will examine similar transactions, particularly those in which DBEs do not participate.

DBE subcontracts at all tiers are to be submitted by the prime contractor to NDOT for review and approval. The NDOT Project Managers and HCRO will monitor and review the performance of these DBE subcontracts, through the on-site monitoring and reporting of daily work activity and through the review of the NDOT payment of estimates. If a DBE is found to have not performed or exercised responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, NDOT will presume that it is not performing a commercially useful function.

Counting and Commercially Useful Function - Trucking

NDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and 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 who is certified as a DBE. 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 from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.

The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

A lease must indicate that the DBE has exclusive use of and control over the 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.

Counting and Commercially Useful Function – Materials and Suppliers

NDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

If the materials or supplies are obtained from a DBE *manufacturer*, NDOT will count 100 percent of the cost of the materials or supplies toward DBE goals. A DBE *manufacturer* is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications. To be counted the *manufacturer* must be DBE certified for the types of material or supplies provided.

If the materials or supplies are purchased from a DBE *regular dealer*, 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. To be counted the *regular dealer* must be DBE certified for the types of material or supplies provided.

To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question. 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. Any supplementing of regular dealers' own

distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, NDOT will count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided NDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. NDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

Counting - Joint Ventures

When a DBE performs as a participant in a joint venture, NDOT will count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

Monitoring of Commercially Useful Function and Counting

Monitoring of commercially useful function is a duty performed by both NDOT Civil Rights Office staff and NDOT District/Field personnel. Commercially useful function will be monitored in the following ways.

In the weeks following a letting, the NDOT Civil Rights Office will contact DBEs who have successfully bid on projects in order to ask questions about the work that the DBEs intend to perform on the contract. Questions will include:

Does the DBE intend to further subcontract out any of the work?

Will the DBE have employees and supervisors on-site to complete and monitor the work?

If a trucking firm, does the firm own and operate at least one truck?

If a trucking firm, is the firm leasing trucks? If so, is the lessor a DBE firm, and will the trucking firm be using their own employees as drivers of the leased trucks?

Additional questions may be asked depending on the circumstances. For example, if a DBE firm is acting as a supplier, NDOT will ask questions about the source of the materials, the payments for the materials, and the overall circumstances of the supplying activities.

NDOT will note non-countable activities and advise both the DBEs and the Prime contractors on corrections. All responses will be recorded on NDOT Form 136A, *Commercially Useful Function Review – Office Form*, and retained with the other project files in NDOT's electronic document storage system.

When the DBE is on the project site, actually performing their duties under the contract, NDOT Project Managers will, at the completion of the DBE's contract work, complete NDOT Form 136B, *Commercially Useful Function Review – Field Form*. This form requires the Project Manager to answer several questions which relate to the actual activities performed by the DBE on the project site, as well as questions about supervision and control of the DBEs work. This aspect of a Project Manager's on-site responsibility is also listed in the *NDOT Construction Manual* as a duty of an NDOT Project Manager. Questions concerning commercially useful function will include:

Does the DBE have employees on-site performing the work?

Do the DBE's employees only work for the DBE?

Is the DBE working without assistance from the prime contractor or another subcontractor?

Is the DBE supervising its employees and their work?

Is the supervisor a full-time employee of the DBE?

Is the DBE only using equipment it owns, rents, or leases?

If a trucking firm, does the DBE own or lease the trucks?

NDOT Form 136B will be routed to the NDOT Civil Rights Office upon completion.

At the conclusion of the DBE's work on the project, The NDOT Civil Rights Office will review Form 136B, compare the information on the form to the information on Form 136A, and collect and review other documentation (for example, Project Manager daily logbooks, haul tickets, or certified payrolls) in order to look for irregularities.

Commercially useful function decisions and proper accounting of DBE participation will be recorded once reviews are completed. NDOT Forms 136A and 136B will be combined, along with any additional evidence, correspondence, and decisions by the NDOT Civil Rights Office, into a single electronic document which will be signed by the DBE Liaison Officer (or designee). This document will serve as written certification that NDOT has reviewed contracting records and monitored work sites in Nebraska for the purpose of ensuring that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed.

NDOT Forms 136A and 136B are both contained in the appendix to this document.

Joint Checks

NDOT recognizes that the use of joint checks/two-party checks is a method of increasing participation opportunities for DBEs and other small businesses. However, NDOT must ensure that the use of joint checks does not undermine the commercially useful function of any DBE and thereby negatively impact

the counting of their participation towards a DBE goal. Therefore, while NDOT does permit a contractor to issue a check jointly with a DBE subcontractor to a dealer/supplier to the DBE, the following conditions must be met:

The contractor must, for each transaction, obtain approval from the NDOT Highway Civil Rights Office prior to issuing a joint check with a DBE subcontractor. To obtain approval the contractor must complete and submit to the NDOT DBE Liaison Officer (see *Appendix B* for contact information) an *NDOT Application to Use Joint Check* form. A copy of the form may be downloaded from the NDOT website at <http://dot.nebraska.gov/business-center/civil-rights/> or obtained from the Highway Civil Rights Office. A copy may also be found in *Appendix I* of this document.

The use of a joint check in the given circumstance must be considered accepted industry practice.

The contractor must act solely as a guarantor. The DBE subcontractor must remain responsible for selecting the dealer/supplier, negotiating price, determining quality and quantity, ordering the material, installing, and paying for the material with DBE firm funds.

The DBE subcontractor must be the party that releases the check to the dealer/supplier.

NDOT must not be able to clearly determine by reason and given circumstance that the use of joint checks does not represent an exclusive arrangement between one contractor and one DBE that may bring into question the independence of the DBE, and does not represent an attempt by a contractor to artificially inflate DBE participation.

If a contractor issues a joint check to a DBE subcontractor and a dealer without the above conditions having been met, the DBE will be considered to have not performed a commercially useful function for that portion of the contract utilizing the purchased materials/supplies, and that portion will not be counted towards the DBE goal.

Termination, Replacement, or Reduction of Commitment of a DBE Subcontractor

A prime contractor may not, without good cause and without prior written consent of the NDOT Civil Rights Office, terminate or replace a DBE subcontractor on a federally-assisted contract having a DBE goal. A contractor that does so may be found in breach of contract and subject to sanction.

Good cause for terminating, replacing, or reducing the commitment of a DBE subcontractor includes the following circumstances:

The listed DBE subcontractor fails or refuses to execute a written contract;

The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215, and 1200 or applicable state law;

It has been determined that the listed DBE subcontractor is not a responsible contractor;

The listed DBE subcontractor voluntarily withdraws from the project and provides written notice of its withdrawal;

The listed DBE is ineligible to receive DBE credit for the type of work required;

A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

A change of or reduction in scope of work or materials by NDOT;

Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Procedures for Termination/Replacement of a DBE

The contractor shall submit to NDOT Civil Rights Office, in writing, the request to terminate or replace the DBE subcontractor. The request must state the good cause for the action and provide supporting documentation as applicable. The contractor shall at the same time submit a copy of the request to the DBE subcontractor as notice of intent.

The DBE contractor shall have 3 business days from receipt of the contractor's notification to submit a written response with documentation to NDOT Civil Rights Office addressing the stated reasons and need for the termination or replacement. This time frame may, with good cause, be extended by the NDOT Civil Rights Office's discretion upon written request of the DBE, but such request must be received by NDOT Civil Rights Office within the original time frame.

In the course of review, NDOT Civil Rights Office may request, in writing, additional information from either party as deemed necessary to making an informed determination. The party receiving a request for information shall have 3 days from receipt of the request to respond. This time frame may be extended at NDOT Civil Rights Office's discretion upon written request of the party, but such request must be received by NDOT Civil Rights Office within the original time frame.

After receiving the DBE subcontractor's response and any additional information NDOT Civil Rights Office has requested, or if the DBE contractor has failed to respond within the allotted time, or if either party has failed to respond to a request for information, NDOT Civil Rights Office will review the information that is available and make a determination to either approve or deny the contractor's request to terminate or replace the DBE.

If the contractor's request to terminate or replace the DBE subcontractor is denied, it is the expectation of NDOT that the DBE shall perform for DBE goal credit as subcontracted.

If the request is approved, the contractor may proceed to terminate or replace the DBE subcontractor. The contractor shall then make a good faith effort to find one or more qualifying DBE firms to perform the remainder of the originally subcontracted work, or break out and subcontract to DBEs other work items in the contract.

If unable to obtain substitute DBEs, the contractor must submit to NDOT Civil Rights Office documentation of good faith efforts (see "Good Faith Efforts" section of this document for details on acceptable forms of good faith effort documentation) in obtaining substitute DBE participation.

If NDOT Civil Rights Office finds the contractor has made a good faith effort to find replacement DBE participation but was unable to do so, the contractor may, upon written request and with written approval from NDOT, subcontract the work items in question to a non DBE firm or elect to self-perform.

The decisions and determination made by NDOT Civil Rights Office on the contractor's request to terminate or replace a DBE subcontractor is administratively final and not appealable to USDOT.

FOSTERING SMALL BUSINESS PARTICIPATION

Pursuant to 49 CFR 26.39, the DBE Program of the Nebraska Department of Transportation must include an element that considers the structuring of contract requirements to facilitate competition by small business concerns in federally-assisted contracts. The Nebraska Department of Transportation must take all reasonable steps to eliminate obstacles to participation by small business concerns, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

Since the 'fostering small business participation' element is a requirement of the DBE Program, it is appropriate to use the definition of *small business* concern as set out in the DBE program regulations at 49 CFR 26.5. Therefore, the Nebraska Department of Transportation defines "small business concern," for the purposes of both fostering small business participation and DBE certification, in the same way as it is defined at 49 CFR Part 26.5:

Small business concern means 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).

At present, the 'cap' on average annual gross receipts specified in 49 CFR 26.65(b) is if the firm (including 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 \$23.98 million.

The NDOT currently requires all firms (prime and subcontractors) that participate on NDOT projects to provide information on their average annual gross receipts in January of each year, by way of a question on the required EEO Self-analysis Form. This reporting allows NDOT to maintain data on the business sizes of firms that participate on NDOT projects.

In order to foster participation by small businesses, it is the goal of NDOT to structure its contracts so that a minimum of 25 percent of the contracts are for \$1 million or less. NDOT has determined that the scope of work involved in projects of this size can normally be performed by small business concerns.

In 2017, the NDOT analyzed the prime contracts (both state-funded and federally-assisted) that were let during the 3-year period of January 1, 2015 through November 30, 2017 to determine the level of participation by small business concerns. The results of the study are as follows:

NDOT Prime Contracts Awarded from January 1 2015 through November 30 2017:

79 prime contractors were awarded 496 prime contracts totaling \$1,381,062,453.30.

25 of the 79 prime contractors (or 31.6%) reported average annual gross receipts of greater than the business size limit that applied at the time of data collection. These 25 large prime contractors were awarded 298 prime contracts (or 60.1%) totaling \$1,204,845,828.60 (or 87.2%). Of those 298 contracts, 80 (or 26.8%) were for \$1 million or less.

54 of the 79 prime contractors (or 68.4%) were considered *small business concerns* because the firms reported average annual gross receipts that were under the regulatory cap. These 54

contractors were awarded 198 prime contracts (or 39.9%) totaling \$176,216,624.70 (or 12.8%). Of those 198 contracts, 147 were for \$1 million or less.

227 (or 45.8%) of the 496 prime contracts awarded during the reporting period were for \$1 million or less. 64.8% of all prime contracts that were for \$1 million or less went to small business concerns.

Of the work awarded to the 25 non-small business contractors, \$384,778,654.56 (or 31.9%) was subcontracted out. Of the amount subcontracted out, \$267,577,974.36 (or 69.5%) of it went to small business concerns.

Of the \$1,381,062,453.30 awarded between 1/1/2015 and 11/30/2017, the above data indicates that \$443,794,599.06, or 32.1%, was ultimately awarded to small business concerns.

The data indicates that the procedures used to structure contracting requirements have enabled small business concerns to be successful in securing work both as prime and subcontractors. Because of the proportions of contract dollars secured by small business concerns, NDOT believes that its current structuring of contracting requirements is fulfilling the intent of the USDOT policy to foster small business participation.

NDOT commits to conducting an assessment of small business participation each time the NDOT submits its triannual DBE participation overall goal. The next assessment of small business participation will therefore be performed in 2020. If an assessment shows that the total level of participation by small businesses has declined below 25% of all contract dollars expended, the NDOT Civil Rights Office will work with the NDOT Contracting Section and with the FHWA-NE Division to take reasonable steps to try to increase the level of participation.

NDOT will continue to actively conduct outreach to organizations and agencies whose missions are to increase opportunities for small businesses.

Socially and Economically Disadvantaged Financial Institutions

The NDOT Civil Rights Office investigated the availability of socially and economically disadvantaged financial institutions in Nebraska and in the states adjacent to Nebraska using the following two reports:

Federal Deposit Insurance Corporation 2016 report to congress "Preservation and Promotion of Minority Depository Institutions"

Office of the Comptroller of the Currency 2016 list of Minority and Women-Owned Depository Institutions

NDOT has placed a list of these institutions on its website and will update the list annually, as new data becomes available. NDOT will notify prime contractors of the availability of these institutions and will encourage the use of these institutions by way of a statement included in the letting notice. NDOT believes this notice provides reasonable encouragement, given the already vigorous efforts of the FDIC and OCC MDI programs.

NUCP certified financial institutions are listed in the NDOT DBE directory. A list of nationwide current MDIs may be found on the FDIC website at [fdic.gov/regulations/resources/minority/mdi.html](https://www.fdic.gov/regulations/resources/minority/mdi.html).

PROMPT PAYMENT

Prompt Payment Clause

In accordance with 49 CFR Part 26.29, NDOT requires all contractors at every tier to include the following Prompt Payment Clause in every subcontract:

"The Prime contractor, in accordance with Code of Federal Regulations Title 49, Subtitle A, Subpart B, §26.29, agrees to and shall pay each subcontractor under this contract for any satisfactorily completed portion of the subcontract no later than twenty (20) days from when the contractor has received payment from the Nebraska Department of Transportation ("NDOT") covering that portion of the subcontracted work.

"The Prime contractor will return any retainage within 30 calendar days after the satisfactory completion of the work by the subcontractor as evidenced by inclusion of the work on a progress payment.

"A subcontractor shall be deemed to have satisfactorily completed a portion of a subcontract when all tasks called for in the subcontract have been accomplished and documented. The process of documentation of satisfactory work involves input from multiple units within NDOT. When this documentation is complete, NDOT issues payment covering the work items in question. Therefore, the 20 days for prompt payment purposes will begin when NDOT issues payment covering that portion of the work items.

"The contractor agrees to and shall certify and submit a record of payments to each subcontractor using the Prompt Payment reporting portal on the NDOT website.

"The contractor understands and agrees that any delay of payment from the above-referenced time frame may occur only for good cause and only following written approval from NDOT Highway Civil Rights Office ("HCRO").

"The failure by the Prime Contractor to carry out the requirements of the "Prompt Payment Clause" and/or timely return of retainage, without just cause, is a material breach of this contract, which may result in the NDOT withholding payment from the Prime Contractor until all delinquent payments have been made (no interest will be paid for the period that payment was withheld), termination of this contract, or other such remedy as the NDOT deems appropriate.

"This Prompt Payment Clause shall not be intended or construed to limit any contractual, administrative, or legal remedy otherwise available to any party.

"No other clause or provision of this contract shall circumvent or alter this Prompt Payment Clause.

"NDOT will bring to the attention of the U.S. Department of Transportation ("USDOT") any false, fraudulent, or dishonest conduct found in connection with this Prompt Payment Clause."

Retainage

NDOT does not hold retainage from prime contractors. NDOT requires prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

Monitoring of Prompt Payment

Within seven (7) calendar days after disbursing subcontractor payments apportioned from a received progress payment, each prime contractor will submit to NDOT a record of such payments via the "Prompt Payment Portal" on the NDOT website. The NDOT Civil Rights Office will regularly use reports generated from the online portal to determine whether or not prime contractors are making payments to subcontractors in a timely manner.

In addition, the NDOT Civil Rights Office will, in the fourth week of each calendar quarter, conduct a survey of all subcontractors who were to have received a share of a progress payment issued by NDOT to a contractor during the previous quarter. Subcontractors will be required to confirm whether or not they received such payment from the contractor in full within the twenty (20) day time period required by the Prompt Payment Clause.

Together, the online reporting by prime contractors and the survey responses by subcontractors will give the NDOT Civil Rights Office a timely, and thus proactive, method of monitoring for potential violations of prompt payment requirements.

Procedure for Withholding of Payment

A contractor shall not withhold payment or retainage from a subcontractor without cause and without receiving prior written approval from NDOT HCRO. A contractor withholding payment without prior approval may be found in breach of their contract with NDOT.

To receive approval to withhold payment, a contractor must submit, within seven (7) calendar days of receipt of an applicable progress payment, a written request, along with supporting documentation, to NDOT HCRO demonstrating good cause (e.g. deficiencies in performance of work) for not making a payment to a subcontractor as required under the Prompt Payment Clause. The contractor shall at the same time submit a copy of the request and supporting documentation to the subcontractor, as notice of the contractor's intent to withhold payment.

The subcontractor shall have 5 business days from receipt of such notice to submit a response, in writing, along with supporting documentation, to NDOT HCRO demonstrating why the contractor's request to withhold payment should not be approved.

Within 5 business days of receipt of the subcontractor's response, or after there being no response from the subcontractor within the allotted time, NDOT HCRO shall determine to approve or deny, based upon

the facts and information available at the time of determination, the contractor's request to withhold payment and/or retainage. The determination will be issued by the NDOT HCRO, in writing, to both the contractor and subcontractor.

The determination by NDOT HCRO shall be final and not administratively appealable to the USDOT, but shall not be intended or construed to limit any contractual, administrative, or legal remedy otherwise available to any party.

Prompt Payment Complaints

Complaints of non-payment shall be submitted by a subcontractor in writing, along with supporting documentation, to the NDOT. The subcontractor shall at the same time submit a copy of the complaint and any supporting documentation to the prime contractor, as notice of the registered non-payment complaint.

The prime contractor shall have 5 business days from receipt of such notice to submit a response in writing, along with supporting documentation, to the NDOT Civil Rights Office demonstrating why the subcontractor's complaint of non-payment is not valid and the contractor has not violated the Prompt Payment Clause of their contract with NDOT. The time to provide this response may, upon request written request from the contractor, be extended for cause and at the discretion of the NDOT Civil Rights Office, but such a request must be made within the original time frame.

Within seven (7) calendar days of receipt of the prime contractor's response (or after there being no response from the contractor), NDOT shall determine, based upon the facts and information available at the time of determination, whether a violation of the terms of the Prompt Payment Clause has occurred. The determination will be issued by NDOT Civil Rights Office in writing to both the contractor and subcontractor.

The determination by the NDOT Civil Rights Office shall be final and not administratively appealable to the USDOT, but shall not be intended or construed to limit any contractual, administrative, or legal remedy otherwise available to any party.

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APPENDIX A: TERMS AND DEFINITIONS

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common 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.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

Compliance means that a recipient has correctly implemented the requirements of this part (49 CFR Part 26).

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part (49 CFR Part 26), a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Days mean calendar days. In computing any period of time described in this part (49 CFR Part 26), the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Director means the Director of the Nebraska Department of Roads.

Disadvantaged business enterprise or *DBE* means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Disadvantaged Business Enterprise Liaison Officer or *DBELO* is the person within the Nebraska Department of Labor responsible for implementing all aspects of the NDOR DBE program. The DBELO is located within the NDOR Highway Civil Rights Office.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

Good faith efforts or *GFE* means efforts to achieve a DBE goal or other requirement of this part (49 CFR Part 26) which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Highway Civil Rights Office or *HCRO* is the office within the Nebraska Department of Roads that administers NDOR's civil rights programs as established and required by Federal and State law. This includes the NDOR DBE program.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Nebraska Department of Roads or *NDOR* means the Nebraska Department of Roads, the state government agency charged with building and maintaining the state and federal highways in the State of Nebraska. NDOR is a recipient of DOT funding.

Nebraska Unified Certification Program or *Nebraska UCP* or *NUCP* means the Nebraska Unified Certification Program, a consortium of DOT recipients in the State of Nebraska in which the members of signed an agreement to provide “one stop shopping” to applicants for DBE certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state. NDOR is a signatory member of the NUCP.

Noncompliance means that a recipient has not correctly implemented the requirements of this part (49 CFR Part 26).

Operating Administration or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or

her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part (49 CFR Part 26) applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part (49 CFR Part 26), *race-neutral* includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to

racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if required.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part (49 CFR Part 26) or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

APPENDIX B: ORGANIZATIONAL CHARTS AND CONTACT DIRECTORY

State DBE Contacts

Nebraska Department of Roads

Location: 1500 Nebraska 2, Lincoln, NE 68502-5480
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 471-4567
TTY: (402) 479-3834
Fax: (402) 479-4325
Website: <http://roads.nebraska.gov/>

Highway Civil Rights Office

Location: Nebraska Department of Roads
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 471-4567
Fax: (402) 479-3728
Website: <http://www.transportation.nebraska.gov/humanres/title6.html>

Chris Hassler

Highway Civil Rights Coordinator

Location: NDOR Highway Civil Rights Office
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 479-3553
Fax: (402) 479-3728
E-mail: christopher.hassler@nebraska.gov
Areas: Americans with Disabilities Act; Title VI Compliance; Environmental Justice; Limited English Proficiency; Disadvantaged Business Enterprise; On-the-Job Training Program.

Troy Larsen

Highway Civil Rights Manager – DBE, OJT, EEO

Location: NDOR Highway Civil Rights Office
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 479-4531
Fax: (402) 479-3728
E-mail: troy.larsen@nebraska.gov
Areas: Disadvantaged Business Enterprise (DBE Liaison Officer); On-The-Job Training Program; Contractor Equal Employment Opportunity Compliance.

Milijana Ilic**Highway Civil Rights Specialist – OJT, DBE, EEO**

Location: NDOR Highway Civil Rights Office
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 479-4514
Fax: (402) 479-3728
E-mail: milijana.ilic@nebraska.gov
Areas: On-The-Job Training Program; Disadvantaged Business Enterprise; Contractor Equal Employment Opportunity Compliance.

Karen Mosier**Highway Civil Rights Specialist – Internal EEO**

Location: NDOR Highway Civil Rights Office
Mail: P.O. Box 94759, Lincoln NE 68509-4759
Phone: (402) 479-3661
Fax: (402) 479-3728
E-mail: karen.mosier@nebraska.gov
Areas: Internal Equal Employment Opportunity Compliance.

Federal DBE Contacts**U.S. Department of Transportation**

Mail: **1200 New Jersey Ave SE, Washington, DC 20590**
Phone: (202) 366-4000
TTY/Relay: (800) 877-8339 / <https://www.federalrelay.us/>
Contact Form: <https://ntl.custhelp.com/app/ask>

DOT Departmental Office of Civil Rights

Mail: **1200 New Jersey Ave SE, Washington, DC 20590**
Phone: (202) 366-44648
Fax: (202) 366-5575
Directory: <https://www.transportation.gov/civil-rights/about-docr/directory>

Federal Highway Administration

Mail: **1200 New Jersey Ave SE, Washington, DC 20590**
Phone: (202) 366-4000
Directory: <http://www.fhwa.dot.gov/about/staff.cfm>

Federal Highway Administration – Nebraska Division

Mail: **100 Centennial Mall North, Rm 220, Lincoln, NE 68508**

Phone: (402) 742-8460

Fax: (402) 742-8480

E-mail: nebraska.fhwa@fhwa.dot.gov

Federal Transit Administration

Mail: **1200 New Jersey Ave SE, Washington, DC 20590**

Phone: (202) 366-4043

Contact Form: <https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx>

Federal Aviation Administration

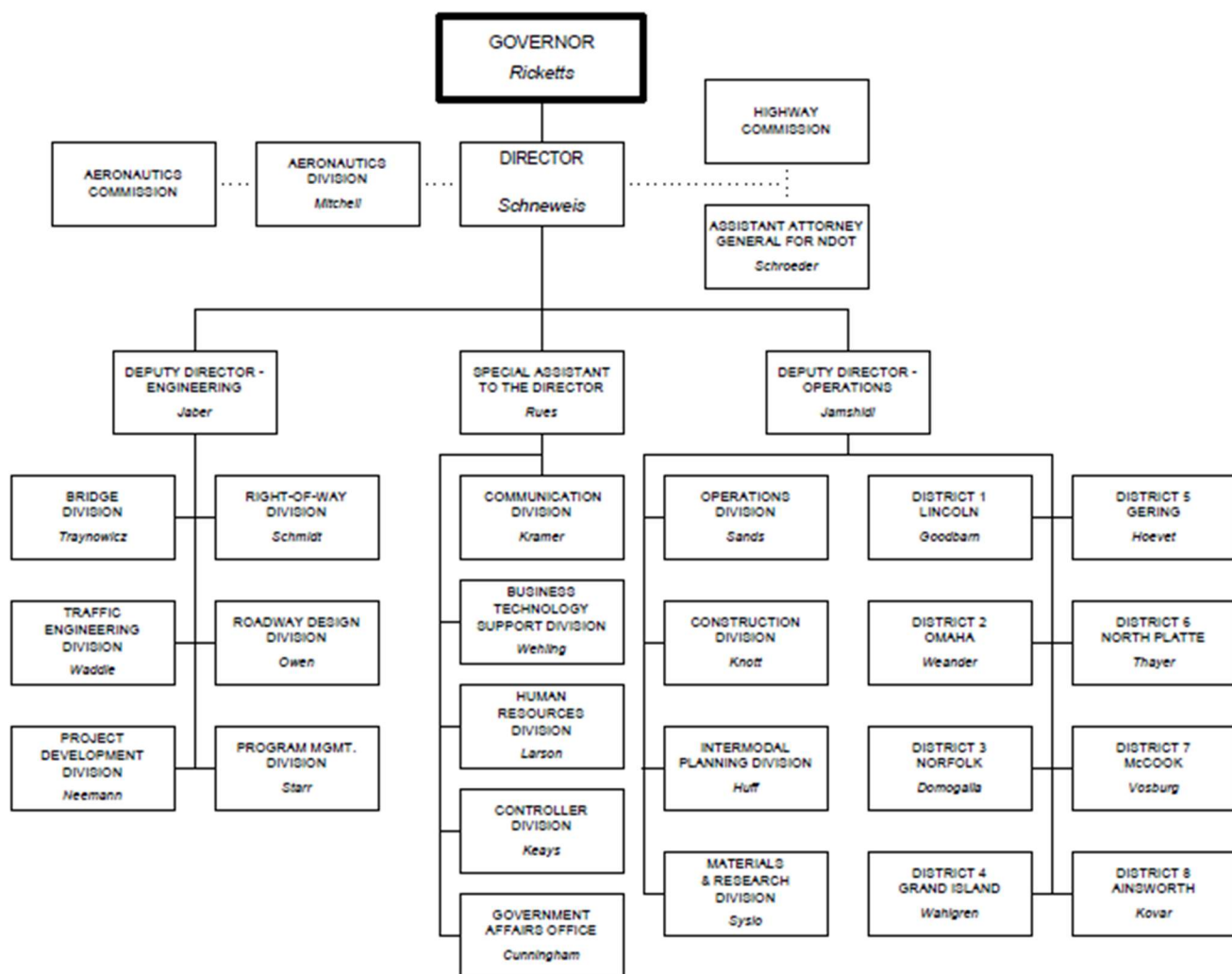
Mail: **1200 New Jersey Ave SE, Washington, DC 20590**

Phone: (202) 366-4043

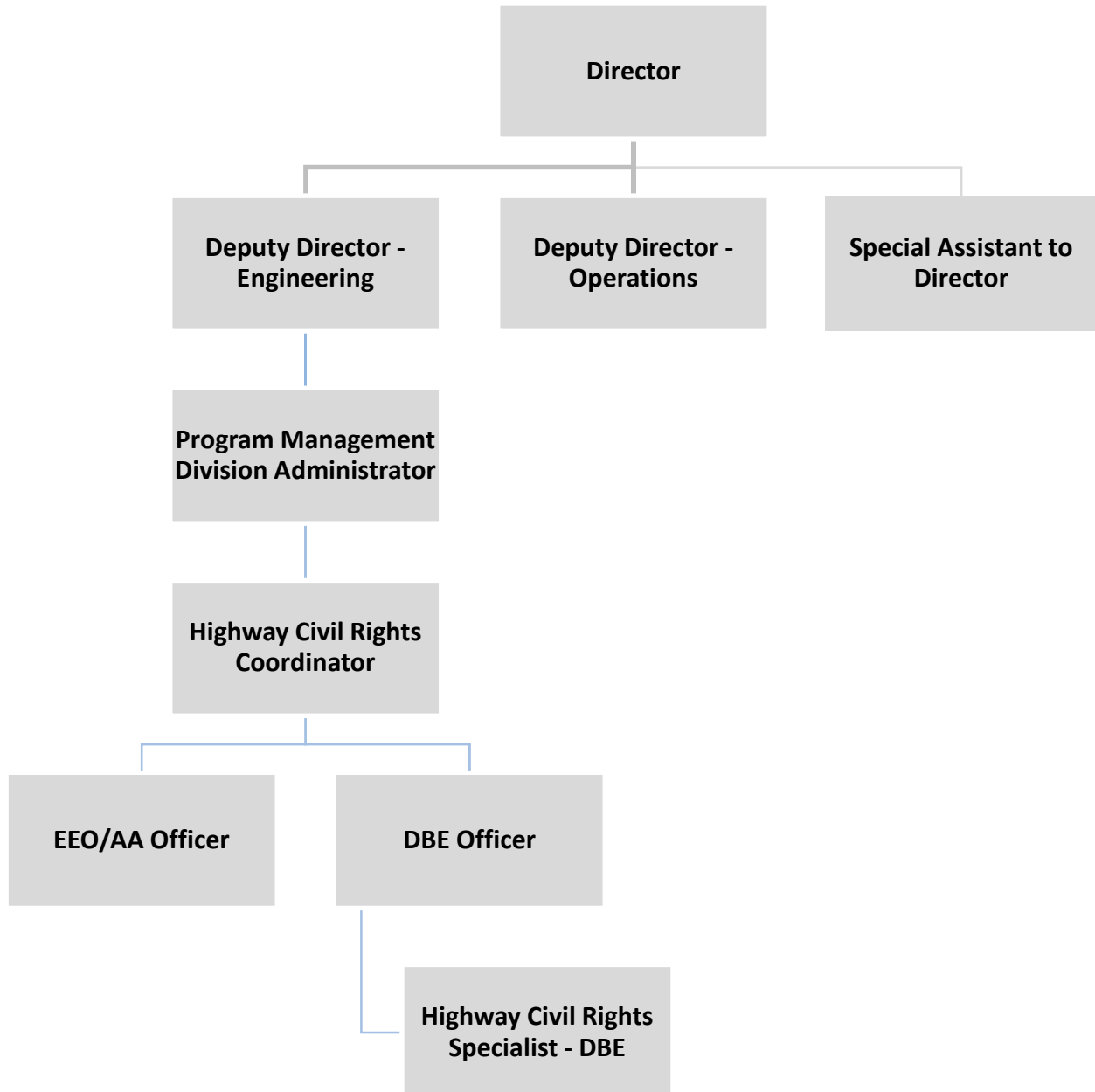
Contact Form: <https://ftawebprod.fta.dot.gov/ContactUsTool/Public/NewRequest.aspx>

NDOT Organizational Chart

State of Nebraska
Department of Transportation
Organizational Chart
Lincoln Headquarters



Location of Civil Rights Unit within NDOT



APPENDIX C: DBE CERTIFICATION FORMS

Begin next page.



UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? Neb. Dept. of Trans., Hwy. Civil Rights, 1500 Highway 2, Lincoln, NE 68509-4759

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, 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 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. 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.



**INSTRUCTIONS FOR COMPLETING THE
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
UNIFORM CERTIFICATION APPLICATION**

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website addresses, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

- (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or



oral agreement. Provide an explanation of any items shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
 - (a) ever existed under different ownership, a different type of ownership, or a different name;
 - (b) existed as a subsidiary of any other firm;
 - (c) existed as a partnership in which one or more of the partners are/were other firms;
 - (d) owned any percentage of any other firm; and
 - (e) had any subsidiaries of its own.
- (f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
- (8) Enter the number of years during which this owner has been an owner of your firm.
- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
- (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," state the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
 - (b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.
- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
- (b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.
- (5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles

State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION



A. Basic Contact Information

(1) Contact person and Title: _____ (2) Legal name of firm: _____

(3) Phone #: (____) _____ - _____ (4) Other Phone #: (____) _____ - _____ (5) Fax #: (____) _____ - _____

(6) E-mail: _____ (7) Firm Websites: _____

(8) Street address of firm (No P.O. Box): _____ City: _____ County/Parish: _____ State: _____ Zip: _____ - _____

(9) Mailing address of firm (if different): _____ City: _____ County/Parish: _____ State: _____ Zip: _____ - _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?

☐ DBE ☐ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ____/____/____ State/UCP Member: _____ Date ____/____/____ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ☐ Yes ☐ No

(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ☐ Yes ☐ No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision)

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____

(3) This firm was established on ____/____/____ (4) I/We have owned this firm since: ____/____/____

(5) Method of acquisition (Check all that apply):

☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession

☐ Merger or consolidation ☐ Other (explain) _____



(6) Is your firm "for profit"? ☐ Yes ☐ No → **⊗ STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.
Federal Tax ID# _____

(7) Type of Legal Business Structure: (check all that apply):

- ☐ Sole Proprietorship ☐ Limited Liability Partnership
☐ Partnership ☐ Corporation
☐ Limited Liability Company ☐ Joint Venture (Identify all JV partners _____)
☐ Applying as an ACDBE ☐ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____ Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. (Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ☐ Yes ☐ No

If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?

☐ Yes ☐ No If Yes, explain _____

(3) At present, or at any time in the past, has your firm:

- (a) Ever existed under different ownership, a different type of ownership, or a different name? ☐ Yes ☐ No
(b) Existed as a subsidiary of any other firm? ☐ Yes ☐ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ☐ Yes ☐ No
(d) Owned any percentage of any other firm? ☐ Yes ☐ No
(e) Had any subsidiaries? ☐ Yes ☐ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ☐ Yes ☐ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).



Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____	(2) Title: _____	(3) Home Phone #: () _____ - _____															
(4) Home Address (Street and Number): _____	City: _____	State: _____															
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female																	
(6) Ethnic group membership (Check all that apply): <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Native American <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify) _____																	
(7) U.S. Citizenship: <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Lawfully Admitted Permanent Resident																	
(8) Number of years as owner: _____ (9) Percentage owned: _____ % Class of stock owned: _____ Date acquired _____																	
<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%;">(10) Initial investment to acquire ownership interest in firm:</td><td style="width: 20%; text-align: center;"><u>Type</u></td><td style="width: 20%; text-align: center;"><u>Dollar Value</u></td></tr><tr><td></td><td style="text-align: center;">Cash</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Real Estate</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Equipment</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Other</td><td style="text-align: center;">\$</td></tr></table> <p>Describe how you acquired your business:</p> <p><input type="checkbox"/> Started business myself</p> <p><input type="checkbox"/> It was a gift from: _____</p> <p><input type="checkbox"/> I bought it from: _____</p> <p><input type="checkbox"/> I inherited it from: _____</p> <p><input type="checkbox"/> Other _____</p> <p><i>(Attach documentation substantiating your investment)</i></p>			(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>		Cash	\$		Real Estate	\$		Equipment	\$		Other	\$
(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>															
	Cash	\$															
	Real Estate	\$															
	Equipment	\$															
	Other	\$															

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner 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

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification ? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: *(Please attach extra sheets, if needed):* _____



Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (*Attach separate sheets for each additional owner*)

(1) Full Name: _____	(2) Title: _____	(3) Home Phone #: () _____ - _____															
(4) Home Address (<i>Street and Number</i>): _____	City: _____	State: _____															
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female																	
(6) Ethnic group membership (<i>Check all that apply</i>) <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Native American <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (<i>specify</i>) _____																	
(7) U.S. Citizenship: <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Lawfully Admitted Permanent Resident																	
(8) Number of years as owner: _____																	
(9) Percentage owned: _____ % Class of stock owned: _____ Date acquired _____																	
<table style="width: 100%; border-collapse: collapse;"><tr><td style="width: 60%;">(10) Initial investment to acquire ownership interest in firm:</td><td style="width: 20%; text-align: center;"><u>Type</u></td><td style="width: 20%; text-align: center;"><u>Dollar Value</u></td></tr><tr><td></td><td style="text-align: center;">Cash</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Real Estate</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Equipment</td><td style="text-align: center;">\$</td></tr><tr><td></td><td style="text-align: center;">Other</td><td style="text-align: center;">\$</td></tr></table>			(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>		Cash	\$		Real Estate	\$		Equipment	\$		Other	\$
(10) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>															
	Cash	\$															
	Real Estate	\$															
	Equipment	\$															
	Other	\$															
Describe how you acquired your business: <input type="checkbox"/> Started business myself <input type="checkbox"/> It was a gift from: _____ <input type="checkbox"/> I bought it from: _____ <input type="checkbox"/> I inherited it from: _____ <input type="checkbox"/> Other _____ <i>(Attach documentation substantiating your investment)</i>																	

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner 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

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(*If Yes, you may be asked to provide a copy of the trust instrument*).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (*Please attach extra sheets, if needed*): _____

Section 4: CONTROL



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

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

(3) Do any of the persons listed above perform a management or supervisory function for any other business?

☐ Yes ☐ No If Yes, identify for each:

Person: _____ Title: _____
 Business: _____ Function: _____

Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed in section A 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. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. (Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).)

A= Always F = Frequently	S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
		Name:	Title:	Percent Owned:		Name:	Title:	Percent Owned:	
Sets policy for company direction/scope of operations		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Bidding and estimating		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Major purchasing decisions		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Marketing and sales		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Supervises field operations		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Attend bid opening and lettings		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hires and fires management staff		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hire and fire field staff or crew		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Designates profits spending or investment		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Obligates business by contract/credit		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Purchase equipment		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Signs business checks		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

A = Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/ Key Personnel			
	Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Bidding and estimating	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Major purchasing decisions	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Marketing and sales	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Supervises field operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Attend bid opening and lettings	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hires and fires management staff	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hire and fire field staff or crew	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Designates profits spending or investment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Obligates business by contract/credit	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Purchase equipment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Signs business checks	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

Do any of the persons listed 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.) If Yes, describe the nature of the business relationship: _____

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

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease



3. Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address

**Owned or Leased by
Firm or Owner?**

Current Value of Property or Lease

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

E. Financial/Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:

Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner.
(Provide copies of signed loan agreements and security agreements).

Name of Source	Address of Source	Name of Person Guaranteeing 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 or another individual 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	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. _____	_____	_____	_____	_____	_____

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

<u>Concession Space</u>	<u>Address / Location at Airport</u>	<u>Value of Property or Lease</u>	<u>Fees/Lease Payments Paid to the Airport</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

<u>Name of Concession</u>	<u>Location</u>	<u>Type of Concession</u>	<u>Start Date of Concession</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



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 PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed),
swear or affirm under penalty of law that I am
_____ (title) of the applicant firm

_____ 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 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, and
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, subcontract, concession lease or
sublease, 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
Unified Certification Program of any material change in the
information contained in the original application within 30
calendar days of such change (e.g., ownership changes,
address/telephone number, personal net worth exceeding \$1.32
million, 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 certify that I am a socially and economically disadvantaged
individual who is an owner of the above-referenced firm seeking
certification as a Disadvantaged Business Enterprise or Airport
Concession Disadvantaged Business Enterprise. In support of my
application, I certify that I am a member of one or more of the
following groups, and that I have held myself out as a member of
the group(s): (Check all that apply):

- ☐ Female ☐ Black American ☐ Hispanic American
☐ Native American ☐ Asian-Pacific American
☐ Subcontinent Asian American ☐ Other (specify)

I certify that I am socially disadvantaged because I have been
subjected to racial or ethnic prejudice or cultural bias, or have
suffered the effects of discrimination, because of my identity
as a member of one or more of the groups identified above,
without regard to my individual qualities.

I further certify that my personal net worth does not exceed
\$1.32 million, and that I am economically disadvantaged
because 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 declare under penalty of perjury that the information
provided in this application and supporting documents is true
and correct.

Signature _____
(DBE/ACDBE Applicant) (Date)

NOTARY CERTIFICATE



UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

- ☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- ☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
- ☐ Signed loan and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ Licenses, license renewal forms, permits, and haul authority forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment.
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

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(s)
- ☐ 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)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers

- ☐ List of product lines carried and list of distribution equipment owned and/or leased



U.S. Department of
Transportation

**Personal Net Worth Statement
For DBE/ACDBE Program Eligibility**

As of _____

OMB APPROVAL NO:

EXPIRATION DATE:

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. **Return form to appropriate UCP certifying member, not U.S. DOT.**

Name		Business Phone
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone
Business Name of Applicant Firm		
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)		

ASSETS		LIABILITIES	
	(Omit Cents)		(Omit Cents)
Cash and Cash Equivalents	\$	Loan on Life Insurance (Complete Section 5)	\$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	\$
Brokerage, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)	\$
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	\$
Loans to Shareholders & Other Receivables (Complete section 6)	\$	Other Liabilities (Complete Section 8)	\$
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 8)	\$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$		
Other Personal Property and Assets (Complete Section 6)	\$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$		
Total Assets	\$	Total Liabilities	\$
		NET WORTH	

Section 2. Notes Payable to Banks and Others

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

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).				
Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).			
	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).				
Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)

Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)

Section 9. Transfer of Assets: Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes ☐ No ☒ If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. 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 this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names 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 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.

NOTARY CERTIFICATE:

(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner)	Date
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Signature (DBE/ACDBE Owner)	Date
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In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).



General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. ***Assessor's assessed value for real estate, for example, is not acceptable.*** Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you

have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized

NDOT DBE INTERSTATE CERTIFICATION AFFIDAVIT

49 CFR § 26.85, INTERSTATE CERTIFICATION

Nebraska Department of Transportation (NDOT) chooses to review all out-of-state applications as provided in § 26.85(c). The following applies with respect to any firm that is currently certified in its home state and wishes to become certified by the NDOT Disadvantaged Business Enterprise (DBE) Program. All such firms:

- (1) Must provide to NDOT a complete copy of your home state application form, all supporting documents and any other information related to your firm's certification that you have submitted to your home state or any other state. This includes affidavits of no change and any notices of changes that you have submitted to your home state, as well as any correspondence you have had with your home state UCP or any other recipient concerning your application or status as a DBE firm.
- (2) Must provide to NDOT any notices or correspondence from states other than your home state relating to your status as an applicant or certified DBE in those states. If you have been denied certification or were decertified in another state, or are subject to a decertification action there, you must inform NDOT of this fact and provide all documentation concerning this action to NDOT.
- (3) Must submit the below affidavit sworn to by all of the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
- (4) If you have filed a certification appeal with USDOT, you must inform NDOT of the fact and provide your letter of appeal and USDOT's response to NDOT.

AFFIDAVIT OF CERTIFICATION FOR OUT-OF-STATE APPLICANTS

This form must be signed and sworn to be each owner of the applicant firm. Use additional forms if necessary.

ANY MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION OR AFFIDAVIT 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 PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (print full name), declare under penalty of law that I have submitted all of the information required by 49 CFR 26.85(c). This information is complete and, in the case of the requirements of § 26.85(c)(1), is identical to the information which served as the basis for my home state certification. Further, I declare under penalty of perjury that all facts in my most recent on-site report remain true and correct.

Executed _____
(Date)

Signature _____
(Applicant Owner)

NOTARY CERTIFICATE

Instructions for Completing the Nebraska Department of Transportation DBE Annual Affidavit of No Change

Completion and submission of the Nebraska Department of Transportation's (NDOT) Disadvantaged Business Enterprise (DBE) Annual Affidavit of No Change (Annual Affidavit) is required each year within 30 days prior to a DBE firm's certification anniversary date. By signing the Annual Affidavit the firm's owner declares, under penalty of perjury, that there have been no unreported changes in the firm's circumstances affecting its business size, disadvantaged status, ownership or control.

If there have been changes in your firm's circumstances that may affect its DBE eligibility, you are required to notify the NDOT Highway Civil Rights Office (HCRO) in writing within 30 days of the change. Failure to do so may result in the removal of the firm's DBE eligibility. Events that may affect your firm's DBE eligibility include: change in ownership or ownership structure; a change in your personal net worth; the firm's acquisition of or acquisition by another firm; or an action of decertification, certification suspension, or certification denial taken by another state in which your firm has been or has attempted to be DBE certified. If there have been unreported changes in your firm's circumstances, submit notice of them with the completed Annual Affidavit.

The Annual Affidavit affirms that your firm continues to meet the Small Business Administration's (SBA) business size standards for small businesses and does not exceed the U.S. Department of Transportation's (USDOT) DBE business size cap of \$23.98 million. Firms having average annual gross receipts in excess of the \$23.98 million over the previous three (3) fiscal years do not qualify as a DBE regardless of the SBA's business size standards.

The following are instructions for completing the Affidavit:

- First field: Name of the DBE-qualifying majority owner (owns 51% or more)
- Second field: Name of DBE firm
- Third field: Name of DBE firm
- Fourth field: Name of DBE firm
- List SBA's business size standard for firm's primary NAICS code (e.g. 238120 = \$15 million)

In addition to the signed and notarized Affidavit, include the most recent federal business tax return, including all schedules and attachments, for the DBE firm and any of its affiliates and subsidiaries. If you are a sole proprietor or your firm is a LLC and you report the firm's income on Schedule C of your personal federal tax return, submit your most recent federal personal tax return, including all schedules and attachments.

If you fail to provide a completed Affidavit along with the required tax return and any other applicable documentation in a timely manner, you may be deemed to have failed to cooperate under § 26.109(c) of the federal DBE program regulations, and NDOT will be required to take steps to remove your firm's eligibility.

If you have any questions regarding the Affidavit, please contact the NDOT HCRO at:

NDOT HCRO – Annual Affidavit
1500 Hwy 2
PO Box 94759
Lincoln, NE 68509-4759
Phone: 402-479-4531 / Fax: 402-479-3728 / E-mail: troy.larsen@nebraska.gov

NDOT DBE ANNUAL AFFIDAVIT OF NO CHANGE

I _____, as the DBE-qualifying owner of record of the certified DBE firm _____, do hereby swear and affirm there have been no unreported changes in circumstance or information which affect or may affect the firm's ability to meet the business size, ownership, control, disadvantaged status, or other eligibility requirements for continued DBE certification as set forth under 49 CFR Part 26 and 13 CFR Part 121 of the federal regulations governing the DBE program.

I swear and affirm that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination because of my identity as a member of one or more of the groups identified in 49 CFR Part 26, without regard to my individual qualities. I further swear and affirm that my personal net worth does not exceed \$1.32 million and that my adjusted gross income as averaged over the previous three (3) tax years does not exceed \$350 thousand, and that I am economically disadvantaged because 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 industry who are not socially and economically disadvantaged.

I swear and affirm that the firm continues to meet the Small Business Administration's (SBA) size criteria for small businesses in my industry, as measured by the firm's annual gross receipts as averaged over the previous three (3) fiscal years. I further swear and affirm that the firm's three-year averaged annual gross receipts do not exceed \$23.98 million. In evidence, I have provided complete copies of the applicable business tax return(s) as required.

DBE Owner

Name / Title	Signature	Date
Phone:	Email:	

Notary Public

County of	State of	{Seal}
Subscribed and sworn before me on this _____ day of _____, 20____.		
Notary Public:		
Commission expires on:		

Submit the completed form, along with any other required or applicable documents to: NDOT HCRO – Annual Affidavit, 1500 Highway 2, P.O. Box 94759, Lincoln, NE 68509-4759. Phone: 402-479-4531. Fax: 402-479-3728. Email: troylarsen@nebraska.gov.

APPENDIX D: NEBRASKA UNIFIED CERTIFICATION PROGRAM AGREEMENT

Begin next page.

Nebraska Unified Certification Program For Disadvantaged Business Enterprises

A. Statement of Policy

It is the policy of all State of Nebraska (Nebraska) recipients of United States Department of Transportation (USDOT) financial assistance (Recipients)—including assistance from the Federal Highway Administration (FHWA), Federal Aviation Administration (FAA), or the Federal Transit Administration (FTA)—that eligible Disadvantaged Business Enterprise (DBE) and Airport Concession Disadvantaged Business Enterprise (ACDBE) firms, as described in [Code of Federal Regulations, Title 49, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs](#) (49 CFR Part 26) and [Code of Federal Regulations Title 49, Part 23, Participation of Disadvantaged Business Enterprise in Airport Concessions](#) (49 CFR Part 23), will have a level playing field on which to participate in USDOT-assisted contracts.

In an effort to help remove barriers that may exist to the participation of all eligible DBE/ACDBE firms the Recipients enter into this agreement (Agreement) establishing a DBE/ACDBE Unified Certification Program (UCP) in accordance with the requirements of [49 CFR Part 26.81, “What are the requirements for Unified Certification Programs?”](#), [49 CFR Part 23.31, “What certification standards and procedures do recipients use to certify ACDBEs?”](#), and [49 CFR Part 23.39, “What other certification requirements apply in the case of ACDBEs?”](#).

The name of the UCP shall be the Nebraska Unified Certification Program (NUCP). The purpose of the NUCP is to create a simplified and efficient “one-stop shopping” DBE/ACDBE certification process for firms applying for status in Nebraska. To this end the NUCP will utilize one standardized application and will follow and abide by a uniform application process, such that an applicant is required to apply only once for certification that will be honored by all Recipients.

The NUCP will follow all certification procedures and standards of 49 CFR Part 26 and 49 CFR Part 23 on the same basis as the Recipients. The NUCP will cooperate fully with all oversight, review, and monitoring activities of the USDOT and its operating administrations. The NUCP will implement all USDOT directives and guidance concerning certification matters.

The Recipients agree to commit sufficient resources and expertise to the NUCP to ensure it is capable of carrying out all of the requirements of a UCP program as set forth under 49 CFR Part 26.81, 49 CFR Part 23.31 and 49 CFR Part 23.39.

The Nebraska Department of Transportation (NDOT), as a member and the designated sole certifying agency of the NUCP, will create and maintain an official directory of all

currently certified and active DBE/ACDBE firms in Nebraska. The NDOT will publish the directory on its website (<http://dot.nebraska.gov/business-center/civil-rights/>) and will also provide a printed version upon request.

The NUCP shall be fully implemented and operational no later than eighteen (18) months following the approval of the Agreement by the U.S. Secretary of Transportation or their designee, as required by 49 CFR Part 26.81(a)(2).

B. Signatories

The following entities, as Recipients identified as being subject to the requirements of [49 CFR Part 26.21, “Who must have a DBE program?”](#) and [49 CFR Part 23.21, “Who must submit an ACDBE program to FAA, and when?”](#), are signatories to the Agreement (Signatories):

- City of Grand Island (Grand Island);
 - Lincoln Airport Authority (LAA);
 - Lincoln Area Metropolitan Planning Organization (LAMPO);
 - Lincoln StarTran (StarTran);
 - Omaha Airport Authority (OAA);
 - Omaha Metro Area Transit (Metro);
 - Omaha-Council Bluffs Metropolitan Area Planning Agency (MAPA); and
 - Nebraska Department of Transportation (NDOT).
- (a) The Signatories agree to accept and comply with the terms and conditions of the Agreement and accept as a DBE/ACDBE any firm the NUCP has certified.
- (b) The Signatories will ensure through subgrant agreements that subrecipients accept and comply with all provisions of the Agreement and accept as a DBE/ACDBE those firms the NUCP has certified.
- (c) Any additional entity in Nebraska becoming subject to the requirements of 49 CFR Part 26.21 and 49 CFR Part 23.21 will be made a Signatory to the Agreement.
- (d) The Signatories agree to designate the NDOT Highway Civil Rights Office (HCRO) as the sole certifying agency of the NUCP.

C. Certification Determination Process

- (a) The NUCP shall make all DBE/ACDBE certification decisions on behalf of all Signatories. All certification decisions will be based on the eligibility requirements set

forth in 49 CFR Part 26 and 49 CFR Part 23. The NUCP will ensure that only applicants that fully meet those eligibility standards are certified as a DBE/ACDBE.

- (1) Certification decisions by the NUCP shall be binding on all Signatories within the state.
 - (2) The NUCP shall provide “one-stop shopping” to applicants for DBE/ACDBE certification, such that an applicant will be required to apply only once for certification that will be honored by all Signatories.
 - (3) 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/ACDBE.
- (b) The NUCP will provide to applicants the DBE/ACDBE *Uniform Certification Application* form approved by USDOT pursuant to 49 CFR 26.83 and as published in Appendix F to 49 CFR Part 26. The application may be obtained from the NDOT HCRO upon request or downloaded directly from the NDOT [website](#).
- (c) All applications for DBE/ACDBE certification and all matters pertaining to DBE/ACDBE certifications in Nebraska will be reviewed and processed by the NDOT HCRO as the “one stop shop” and sole certifying agency of the NUCP. Any determination made by the NDOT HCRO will be the determination of the NUCP.
- (1) All applications for DBE/ACDBE certification and all matters pertaining to the certification of firms may be submitted directly to the NDOT HCRO. Other signatories receiving documentation or information related to the DBE/ACDBE certification of a firm will forward it to the NDOT HCRO within seven (7) days of receipt.
 - (2) The NDOT HCRO DBE/ACDBE program staff will conduct all application reviews and make a certification determination in accordance with the requirements of 49 CFR Part 26 and 49 CFR Part 23 using the process described in the [NDOT DBE/ACDBE Program Plan](#).
- (d) The NUCP will not process an application for DBE/ACDBE certification from a firm having its principal place of business outside Nebraska if the firm is not certified by the UCP in its home state.
- (e) The NUCP will share its information and documents concerning any certified firm whose home state is Nebraska with another UCP that is reviewing an interstate DBE/ACDBE application from the firm.
- (f) Determinations on in-state applications for DBE/ACDBE certification will be made by the NUCP within 90 days of receipt from the applicant firm all the information required

under 49 CFR Part 26 and 49 CFR Part 23. 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 USDOT under the provisions of [49 CFR 26.89](#), “[What is the process for certification appeals to the Department of Transportation?](#)”.

- (g) Determinations on interstate applications for DBE/ACDBE certification will be made by the NUCP within 60 days of receipt from the applicant firm all the information required and allowed for under 49 CFR Part 26 and 49 CFR Part 23. 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 USDOT under 49 CFR 26.89.
- (h) The DBE/ACDBE Directory will be maintained on the NDOT [website](#) for viewing and download. The directory will provide an up-to-date list of NUCP-certified firms; will indicate whether a firm is a DBE or ACDBE; and will indicate the type of work each firm is eligible to perform as a DBE/ACDBE. The directory will also include each firm’s address, telephone number and fax number, and the name of its contact person. Printed versions of the DBE/ACDBE Directory will be provided by the NDOT HCRO upon request.
- (i) The DBE/ACDBE Directory, electronic and printed version, will be updated by the NDOT on an as-needed basis.

D. Appeals of Denials of Certification

- (a) In the event a firm is denied DBE/ACDBE certification by NUCP, the firm may appeal the decision to the USDOT under the provisions of 49 CFR Part 26.89 within 90 days of the date of the final decision by the NUCP. The appeal must be filed in writing to:

U. S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave. SE
Washington, DC 20590-0001

- (b) Any firm denied DBE/ACDBE certification by the NUCP shall be eligible to reapply for certification one year after the date the firm received a written explanation of the reasons for denial.

E. Removal of DBE/ACDBE Eligibility

- (a) All matters of DBE/ACDBE certification eligibility and decertification in Nebraska will be reviewed and processed by the NDOT HCRO as the sole certifying agency of

the NUCP. Any determination made by the NDOT HCRO will be the determination of the NUCP.

- (b) Once the NUCP has certified a DBE/ACDBE, it shall remain certified until and unless the NUCP has removed its certification, in whole or in part, through the procedures of [49 CFR Part 26.87, “What procedures does a recipient use to remove a DBE’s eligibility?”](#), except as provided under [49 CFR Part 26.67, “What rules determine social and economic disadvantage?”](#), specifically 49 CFR Part 26.67(b)(1).
- (c) Third-party complaints: A third party may file with the NUCP a written complaint alleging that a currently certified DBE/ACDBE firm is ineligible for certification and specifying the alleged reasons why the firm is ineligible.
 - (1) The confidentiality of a complainant’s identity will be protected as provided in 49 CFR 26.109(b).
 - (2) A third-party complaint may be submitted directly to the NDOT HCRO. Other Signatories receiving a third-party complaint will forward it to the NDOT HCRO within five (5) business days of receipt
 - (3) Third-party complaints will be reviewed and processed by the NUCP in accordance with the provisions of 49 CFR 26.87. The NUCP will provide written notice to the firm against which the third-party complaint has been filed.
 - (4) If the NUCP determines, based on its review, that there is reasonable cause to believe that the firm is ineligible, the NUCP will provide written notice to the firm of its intent to find the firm ineligible and decertify it, setting forth the reasons for the proposed determination. If the NUCP determines that such reasonable cause does not exist, the NUCP will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based. The complainant or firm may appeal the determination of the NUCP as provided in 49 CFR Part 26.89.
- (d) NUCP-initiated proceedings: If, based on notification by a firm of a change in its circumstances or other information that comes to the attention of the NUCP, it is determined there is reasonable cause to believe a currently certified firm is no longer eligible for certification, the NUCP will provide written notice to the firm of the intent to decertify it, setting forth the reasons for the proposed determination and referencing with specificity the evidence in the record on which each reason is based.
- (e) USDOT directive to initiate proceedings:
 - (1) If the concerned operating administration of the USDOT determines that information in the certification records of the NUCP, or other information available to the concerned operating administration, provides reasonable cause to believe that

a currently certified firm does not meet DBE/ACDBE eligibility criteria, the concerned operating administration may direct the NUCP to initiate a proceeding to remove the firm's DBE/ACDBE 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 will immediately commence and prosecute a proceeding to remove the firm's DBE/ACDBE eligibility as provided by 49 CFR 26.87.
- (f) Informal Hearing: When the NUCP notifies a firm that there is reasonable cause to remove its DBE/ACDBE eligibility, 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.
- (1) The hearing will be conducted in accordance with the provisions of 49 CFR 26.87.
 - (2) The firm has 15 days from receipt of the notice of proposed removal of DBE/ACDBE eligibility to make the request for an informal hear in writing to the NUCP. If the firm does not make a request for a hearing within this time, the decision by the NUCP to decertify the firm becomes administratively final.
- (g) Appeal to USDOT: The firm and/or the complainant may appeal the NUCP final decision to the USDOT within 90 days of the date of the decision as provided in 49 CFR Part 26.89. The appeal must be made in writing to:

U. S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave. SE
Washington, DC 20590-0001

Pending a decision by the USDOT on the appeal, the decision by the NUCP remains in effect.

F. Reciprocity

- (a) The NUCP may elect to enter into a written reciprocity agreement with a UCP in other state. The decision to execute such an agreement shall be made by a unanimous vote of the Signatories.

G. Non-disclosure/Confidentiality

- (a) The NUCP will safeguard from disclosure to unauthorized persons all information gathered as part of the DBE/ACDBE 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 requirements of [49 CFR Part 26.67, “What rules determine social and economic disadvantage?”](#) and [49 CFR Part 23.35, “What is the personal net worth standard for disadvantaged owners of ACDBEs?”](#) to a third party (other than USDOT) without the written consent of the submitter.

H. NUCP Contact Information

Any documents, information or questions regarding the NUCP and the DBE/ACDBE certification of or eligibility of a firm doing business in Nebraska may be submitted to the contact below.

NUCP Contact Information

NDOT HCRO

Troy Larsen, HCR Mgr.

1500 Hwy 2

P.O. Box 94759

Lincoln NE 68509-4759

Phone: (402) 479-4531

Fax: (402) 479-3728

E-mail: troy.larsen@nebraska.gov

Nebraska UCP Signatory Partners

City of Grand Island

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln Airport Authority

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln Area Metropolitan Planning Organization

Name: _____ Title: _____

Signature: _____ Date: _____

Lincoln StarTran

Name: _____ Title: _____

Signature: _____ Date: _____

Omaha Airport Authority

Name: _____ Title: _____

Signature: _____ Date: _____

Omaha Metro Area Transit

Name: _____ Title: _____

Signature: _____ Date: _____

Omaha-Council Bluffs Metropolitan Area Planning Agency

Name: _____ Title: _____

Signature: _____ Date: _____

Nebraska Department of Transportation

Name: _____ Title: _____

Signature: _____ Date: _____

APPENDIX E: COMMERICIALLY USEFUL FUNCTION FORMS

Begin next page.

NDOT Form 136A
Commercially Useful Function Review – Office Form

Date: _____

Project Number: _____

Prime Contractor: _____

Subcontractor: _____

Second Tier Subcontractor: _____

Reviewer: _____

Section 1

To be completed for every project with a DBE goal, between the time of contract award and the start date of the DBE's work on the project.

Is there a subcontract executed between the Prime and the DBE to perform a distinct element of work?

What work items is the DBE performing? Do these items fall within the work types that the DBE is certified to perform?

Who will be supervising the DBE's work on the jobsite? If the on-site supervisor is not the DBE owner, does the on-site DBE representative report to the DBE owner?

Do any of the DBE's employees work for any other contractor?

Will the DBE be leasing any equipment for this project? If leased, is there an agreement identifying the terms and parties? Is it signed by the DBE owner?

Is the work to be performed by a DBE a "furnish and install" item of work?

Who makes arrangements for delivery of materials?

Who are the material invoices made out to?

Who scheduled delivery of materials?

In whose name are materials shipped?

If two party checks are used, who are the parties identified as payable to?

Second-Tier Subcontracts

Will any work be subcontracted to a second-tier subcontractor?

Is there a subcontract executed between the subcontractor and the second-tier contractor to perform a distinct element of work?

What work items is the second-tier subcontractor performing?

Is the second-tier subcontractor a certified DBE in the State of Nebraska?

Trucking

Do the trucks used on the project belong to the DBE?

If leased, is there a formal lease identifying the terms and parties? Are the rates appropriate?

Regular Dealer

Does the regular dealer have an established storage facility and inventory?

Does the dealer have a business that sells to the public on a routine basis in the product being supplied?

Does the business stock the product for use on the project as a normal stock item?

Who is delivering and unloading the material?

Is distribution equipment owned or leased, long term by the DBE, used in delivering the product?

For bulk items, where does the material come from? Does the DBE have a distribution agreement?

Manufacturer

Is the business's primary function to manufacture construction products?

Does the business stock the product altered for this project as a normal stock item?

Is the quality of the materials controlled by the DBE?

Does the DBE purchase the raw material used in its plant?

Section 2

To be completed by NDOT Civil Rights Office staff at the conclusion of a project with a DBE goal.

Collect and review the following documents to ensure that the responses recorded in Section 1 were actually executed during the course of the project:

NDOT Form 136B – Commercially Useful Function Review – Field Form

All subcontracts and second-tier subcontracts

Invoices for materials used in the execution of the project

PM diaries and inspection reports

Certified payrolls

Leases

Copies of cancelled checks (for joint check situations)

Delivery tickets

Follow up with the DBE and the prime on any areas of concern. Record any inconsistencies below. Attach a separate page if necessary.

Date: _____

Reviewer: _____

This image shows a single sheet of white paper with horizontal ruling lines. The lines are evenly spaced and run across the width of the page. There are no margins or other markings on the paper.

NDOT Form 136B
Commercially Useful Function Review – Field Form

Date: _____

Project Number: _____

Prime Contractor: _____

Subcontractor: _____

Second Tier Subcontractor: _____

Reviewer: _____

This form must be completed for each DBE on a project. If the DBE is a subcontractor and has subcontracted work to a second-tier subcontractor, this form must be filled out for the second-tier contractor as well.

Please forward this form to the NDOT Civil Rights Office upon completion.

What items of work is the DBE under contract to perform?

Is the DBE performing the work items that the firm is under contract to perform?

Is the DBE performing any additional work items?

Who is supervising the DBE's work on the jobsite?

Has the DBE owner been present on the jobsite?

Is the DBE performing work with its own workforce?

Are employees of the prime contractor performing any of the DBE's work?

Does the DBE on-site representative effectively manage the job site without any interference from the prime contractor?

List the major self-propelled (engine) equipment used by the DBE:

Is the equipment used by the DBE owned by the DBE firm, or leased?

Does the equipment have the DBE's markings or emblems?

Is the equipment under the direct supervision of the DBE?

Is the operator of the leased equipment the DBE's employee?

Who actually delivered the materials?

If the DBE is contracted for hauling, do the trucks used on the project belong to the DBE?

APPENDIX F: GOOD FAITH EFFORT DOCUMENTATION FORM

Begin next page.

**NEBRASKA DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORT DOCUMENTATION**

The intent of this form is to document the good faith effort attempts made by the apparent low bidder in soliciting DBE firms to meet the DBE goal on Nebraska Department of Transportation (NDOT) projects. Please note that the project goal will not be waived and the contractor must make efforts to achieve the goal throughout the life of the contract.

Every work type where there is a certified DBE, the apparent low bidder must submit the form as follows:

- 1 available DBE – must contact 1 DBE
- 2-5 available DBEs – must contact 3 DBEs minimum
- 6-7 available DBEs – must contact 4 DBEs minimum
- 8-9 available DBEs – must contact 5 DBEs minimum
- 10 or more available DBEs – must contact 6 DBEs minimum

All information submitted on this form is subject to audit by the DBE Goal Committee

Date Submitted: _____ State: _____

Project Number: _____ County: _____

Contractor Name: _____

Address: _____

City: _____ State: _____ Zip Code: _____

Contact Person: _____ Telephone Number: _____

Email Address: _____

Project Goal Percentage: _____

Commitment Percentage: _____

Unattained Percentage: _____

I certify that the information contained in this good faith effort documentation form is true and correct to the best of my knowledge. I further understand that any willful falsification, fraudulent statement or misrepresentation will result in appropriate sanctions which may involve debarment and/or prosecution under applicable State and Federal laws.

Bidder/Authorized Representative Signature: _____

Title: _____ Date: _____

**NEBRASKA DEPARTMENT OF TRANSPORTATION
DBE GOOD FAITH EFFORT DOCUMENTATION**

Work Type Number	Description of Work, Service or Material	DBE Firm Name			
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					
Work Type Number	Description of Work, Service or Material	DBE Firm Name			
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					
Work Type Number	Description of Work, Service or Material	DBE Firm Name			
Contact Name (First and Last)	Contact Date	Contact Method	Contact Results	Bid Amount	
1.					
2.					
3.					
Comments:					

EXAMPLES OF GOOD FAITH EFFORT DOCUMENTATION

The following is a list of types of actions a bidder should take when documenting good faith efforts. This list is not intended to be exclusive or exhaustive, nor are all the actions mandatory. Other factors or types of efforts may be relevant in appropriate cases.

SOLICITATION /ADVERTISEMENT EFFORTS - should include your efforts to solicit quotes, through all reasonable and available means, the interest of all certified firms who have the capability to perform the work of the contract. The bidder should ensure that the requests are made within sufficient time to allow DBE firms to respond. The contractor should take the initiative to contact firms which have indicated an interest in participating as a subcontractor/supplier.

NEGOTIATION EFFORTS - should include your efforts to make a portion of the project work available consistent with the availability and capabilities of our DBE firms in order to facilitate DBE participation. You are encouraged to break out contract work items into smaller economically feasible subcontracts to ensure DBE participation. As a part of your negotiation you should make plans/specifications available to the DBE firms which have shown an interest in participating. When negotiating with DBE firms a contractor should use good business judgment by considering price and capability, as well as, project goals. A contractor is not expected to accept a price that is not reasonable and is excessive. Comparison figures should accompany your good faith effort submittal which supports the price differential.

ASSISTANCE EFFORTS - should include your efforts to assist DBE firms in obtaining bonding, lines of credit, insurance, equipment, materials, supplies or other project related assistance. Contractors are encouraged to assist firms with independently securing/obtaining these resources. A contractor may not provide these resources to the DBE firm, except in certain instances where joint checks are permissible with NDOT's prior approval. The level of assistance should be limited to referral sources, introductions, and making initial contacts with industry representatives on the DBE firm's behalf.

ADDITIONAL EFFORTS - could include any additional efforts to utilize the services of minority/women organizations, groups; local, state and federal business offices which provides assistance in the recruitment and placement of DBE firms. Utilizing the services offered by the department's DBE supportive services consultant for assistance with advertisement and recruitment efforts. Contractors are encouraged to undertake and document any other efforts taken in their attempt to fulfill the project goal.

APPENDIX G: NDOT NATURE OF BUSINESS CLASSIFICATION CODES

D1 - GRADING AND EARTH WORK

D2 - AGGREGATES

D3 - CONCRETE FLATWORK

D4 - CULVERTS

D5 - LANDSCAPING

D6 - BRIDGES

D6A - REBAR SUPPLY AND INSTALL

D6B - REBAR INSTALL ONLY

D7 - GUARDRAIL AND FENCE

D7A - RETAINING WALLS

D8 - SPECIALTY

D8A - BUILDING CONSTRUCTION

D8B - ELECTRICAL

D8C - SIGNING

D8D - PAINTING

D8E - DEMOLITION

D9 - MAINLINE PAVING

D10 - CRUSHING, AGGREGATES

D11 - TRUCKING AND HAULING

D12 - TRAFFIC CONTROL

D13 - PAVEMENT PATCHING

D14 - CONCRETE PUMPING/PLACEMENT

D15 - CONSULTING SERVICES

D16 - SUPPLIER / MANUFACTURER

D17 - BROKER

D18 - GENERAL

APPENDIX H: REQUIRED DBE PARTICIPATION FORM (Example)

Begin Next Page.

NEBRASKA DEPARTMENT OF TRANSPORTATION

REQUIRED DBE PARTICIPATION FORM

LINE NO.	ITEM NO.	ITEM DESC.	UNIT TYPE	SUBCONTRACTOR QUANTITY	SUBCONTRACTOR UNIT PRICE	EXTENDED AMOUNT
----------	----------	------------	-----------	------------------------	--------------------------	-----------------

Contract ID: 123ABC

Page: xx

Letting Date: 01-01-2017

Project No. ABC-00-0(000)

Call Order: xxx

Bidder: xxxx ABC Hard Working Company, Inc.

DBE NAME: TODAYS CONSTRUCTION, INC.

ADDRESS: LINCOLN, NE 55555

ID: 0000

BID QUOTE: 99,999.99

USED AS: Supplier

(\$99,999.29) SUPPLIER COUNT 60%

SPECIFIC SUBONTRACT WORK OR MATERIALS:

DXX SUPPLIER/MANUFACTURER

- Overhead costs are NOT applicable to DBE Credit. Show only the amount that will paid to the DBE
- Only 60% of the amount paid to a DBE supplier, for materials, may be credited toward the goal

DBE Subcontractors will be required to furnish a bond? No

Today Construction, Inc, agrees to accept a purchase order from ABC Hard Working Company, Inc. for the project listed above:

Sign: T. Larsen

Date: 01/01/2017

APPENDIX I: APPLICATION TO USE JOINT CHECKS

Begin Next Page.

NDOT APPLICATION TO USE JOINT CHECKS

Prior to issuing a joint check/two-party check, this form must be completed and signed by the contractor and DBE subcontractor, and the request then approved by the Highway Civil Rights Office (HCRO) of the Nebraska Department of Transportation (NDOT). Submitted the completed form to **NDOT HCRO, ATTN: DBELO, 1500 Hwy 2, P.O. Box 94759, Lincoln, NE 68509**; or fax it to **(402) 479-3728**; or e-mail to: troy.larsen@nebraska.gov.

PROJECT NUMBER	PROJECT LOCATION
CONTRACTOR	TELEPHONE
FAX	EMAIL
DBE SUBCONTRACTOR	TELEPHONE
FAX	EMAIL

REASON FOR USE OF JOINT CHECK

DEALER/SUPPLIER NAME	MATERIAL(S) AND QUANTITIES TO BE SUPPLIED
ADDRESS	
CITY, STATE, ZIP CODE	
DEALER/SUPPLIER NAME	MATERIAL(S) AND QUANTITIES TO BE SUPPLIED
ADDRESS	
CITY, STATE, ZIP CODE	

(Attach additional pages as needed for dealers/suppliers)

The undersigned certify the information provided to be accurate and true.

CONTRACTOR AUTHORIZED SIGNATURE	TITLE	DATE
DBE SUBCONTRACTOR AUTHORIZED SIGNATURE	TITLE	DATE
NDOT AUTHORIZED SIGNATURE	TITLE	DATE

NEBRASKA DEPARTMENT OF TRANSPORTATION

Important Information Regarding Joint Checks

NDOT recognizes that the use of joint checks/two-party checks is a method of increasing participation opportunities for DBEs and other small businesses. However, NDOT must ensure that the use of joint checks does not undermine the commercially useful function (CUF) of any DBE and thereby negatively impact the counting of their participation towards a DBE goal. Therefore, while NDOT does permit a prime contractor to issue a check jointly to a DBE subcontractor and a dealer/supplier to the DBE, the following conditions must be met:

- The contractor must, for each transaction, obtain approval from the NDOT Highway Civil Rights Office prior to issuing a joint check involving a DBE subcontractor. To obtain approval the contractor must complete and submit to the NDOT DBE Liaison Officer (see *Appendix B* for contact information) an *NDOT Application to Use Joint Check* form. A copy of the form may be downloaded from the NDOT website at <http://dot.nebraska.gov/business-center/civil-rights/> or obtained from the Highway Civil Rights Office. A copy may also be found in *Appendix H* of this document.
- The use of a joint check in the given circumstance must be considered accepted industry practice.
- The prime contractor must act solely as a guarantor. The DBE subcontractor must remain responsible for selecting the dealer/supplier, negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material.
- The DBE subcontractor must be the party that releases the check to the dealer/supplier.
- NDOT must be able to clearly determine by reason and given circumstance that the use of a joint check does not represent an exclusive arrangement between the prime contractor and the DBE subcontractor; does not bring into question the independence of the DBE; and does not represent an attempt by the prime contractor to artificially inflate DBE participation.

If a contractor issues a joint check to a DBE subcontractor and a dealer without the above conditions having been met, the DBE will be considered to have not performed a commercially useful function for that portion of the contracted work utilizing the purchased materials/supplies, and that work will not be counted towards the DBE goal.

APPENDIX J: WORK CODE ADD/CHANGE FORM

Begin Next Page.

Work/NAICS Code Add or Change Request Form

Business Name:		DBE Owner on Record:	
Mailing Address:			
City:		State:	Zip:
Business Phone:	Cell Phone:		Fax:
Email Address:		Primary Contact:	

Work code(s) to be changed:

Work code(s) to be added:

Work code(s) to be removed:

Please provide proof that your firm has previously done the type of work that you wish to add (invoices, purchase orders, payment checks, etc.). Attach separate pages if necessary.

Please list experience, qualifications, and/or licensures for the persons in your firm who will be performing the work type you wish to add. Attach separate pages if necessary.

Provide a list of equipment your firm possesses that enables it to perform the work type you wish to add. Attach separate pages if necessary.

If your firm leases equipment to perform the work type you wish to add, please provide the names and locations of any businesses from whom the firm leases equipment. Attach separate pages if necessary.

Owner's Signature _____

Date _____