NEBRASKA DEPARTMENT OF ROADS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

REVISED MAY 2006

Dave Heineman,
Governor

John Craig,
Director

STATEMENT OF POLICY

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

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

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

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

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

RECOMMENDED:	APPROVED:
_____	_____
Joe Kisicki, Highway Civil Rights Coordinator	John Craig, Director
_____	_____
Date	Date
_____	_____
Claude Oie, Construction Engineer	William Brownell, FHWA Division Administrator
_____	_____
Date	Date

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

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

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

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

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

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

(a) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
(b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it. (See 49 CFR part 26.67)

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

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

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

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

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

II. General:

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

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

Nondiscrimination (26.7):

NDOR will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR part 26, on the basis of race, color, national origin, sex, age or disability. In administering its DBE Program NDOR will not directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the DBE Program with respect to individuals of a particular race, color, national origin, sex, age or disability.

DBE Program Updates (26.21):

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

Quotas (26.43):

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

Federal Financial Assistance Agreement Assurance (26.13):

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

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

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

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

III. Organization and Structure (26.25):

DBE Liaison Officer (NDOR Highway Civil Rights Coordinator):

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

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

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

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

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

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

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

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

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

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

Room 107
1500 Highway 2
Lincoln, Nebraska 68509-4759

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

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

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

Fax: (402) 479-3728

IV. Implementation of the DBE Program:

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

Solicitation Time Schedule:

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

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

Communication Program:

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

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

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

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

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

Technical Assistance and Training:

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

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

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

DBE Financial Institutions (26.27):

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

Contract Assurance (26.13):

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

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

Prompt Payment Clause (26.29):

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

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

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

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

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

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

DBE Directory (26.31):

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

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

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

Business Development Program (26.35):

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

Mentor-Protégé Program (26.35):

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

Procedure to Ascertain Eligibility:

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

Certification and Contract Compliance Procedures:

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

Goal Commitment and Good Faith Effort Procedures (26.53):

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

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

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

Demonstration of Good Faith Effort:

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

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

Administrative Reconsideration:

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

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

Overall DBE Program Goal (26.45):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Project/Contract Goals (26.51):

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

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

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

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

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

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

V. Monitoring Goal Achievement (26.37)

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

Monitoring DBE Performance and Crediting DBE Participation (26.37):

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

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

Counting DBE Participation (26.55):

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

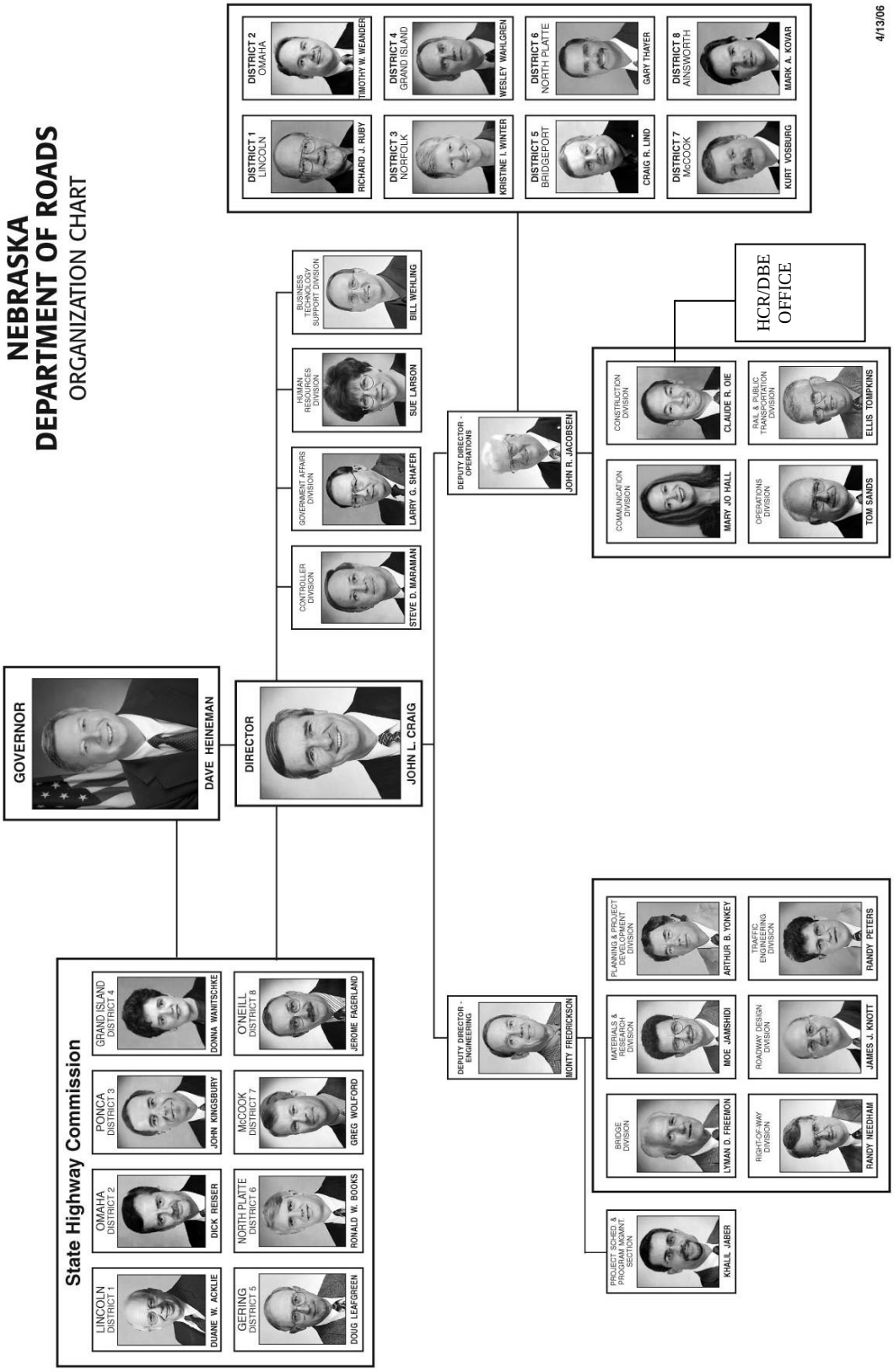
If the materials or supplies are purchased from a DBE regular dealer (supplier), count 60 percent of the cost of the materials or supplies toward DBE goals.

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

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

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

ATTACHMENT 1



ATTACHMENT 2

NEBRASKA DEPARTMENT OF ROADS
DISADVANTAGED BUSINESS ENTERPRISES
CERTIFICATION PROCEDURES

Initial Certification:

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

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

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

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

Application:

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

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

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

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

Review:

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

Group Membership (26.63):

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

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

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

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

Business Size (26.65):

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

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

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

Ownership (26.69):

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

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

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

(b) Examples of insufficient contributions include:

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

Control and Independence (26.71):

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

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

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

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

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

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

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

Other Rules Affecting DBE Certification (26.73):

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

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

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

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

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

(a) The Personal Financial Statement shows the owner's personal net worth exceeds $750,000;

(b) The firm exceeds the $19.57 million cap on average annual gross receipts;

(c) It is clear from the application that disadvantaged individuals do not own or control the firm.

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

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

Investigation/On-site Reviews:

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

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

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

(a) A visit to the firm's home office.

(b) A review of any of the firm's records as deemed necessary.

(c) Personal interviews with the firm's principal owners, managers and other individuals as deemed necessary.

(d) On-site visits to the firm's active Nebraska construction projects (if applicable).

(e) Review of information from other states if the firm is or has been certified as a DBE in another state.

(f) Review of any information deemed necessary and obtained from other sources.

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

(a) If a firm applying for DBE certification is from a state other than Nebraska, the firm must be certified as a DBE under 49 CFR part 26 in its home state before applying for certification in Nebraska.

(b) If the firm is from another state, an on-site visit report will be requested from the firm's home state certifying agency. If the firm's home state has never conducted an on-site review, NDOR will not process the firm's application until such time as an on-site has been conducted by the home state and the on-site review has been received by NDOR.

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

NDOR Certification Review Committee:

Membership:

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

Certification Procedures:

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

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

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

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

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

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

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

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

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

Federal Formal Appeal Procedures:

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

The appeal must be filed in writing to:

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

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

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

Period of Certification:

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

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

Annual Affidavits and Recertification Applications:

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

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

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

DBE Monitoring Procedures:

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

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

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

(a) The DBE's application on file remains accurate or if the DBE's certification should be reinvestigated.

(b) If an investigation is needed, it may include any or all of the steps outlined above and any additional steps required to determine the validity of the alleged violation.

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

Challenge of DBE Certification:

Challenge by NDOR:

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

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

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

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

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

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

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

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

Challenge by a Third Party

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

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

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

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

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

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

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

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

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

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

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

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

Uniform Certification Program (UCP):

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

Suspension and Debarment Procedures:

By Department of Transportation (26.107):

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

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

By NDOR:

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

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

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

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

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

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

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

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

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

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

Information Collection and Reporting:

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

Monitoring Payments to DBEs:

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

Reporting to DOT:

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

Confidentiality:

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

ATTACHMENT 3

MONITORING and ENFORCEMENT MECHANISMS (26.37)

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

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

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

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

2. 49 CFR Part 31 – Program Fraud and Civil Remedies.

3. 18 U.S.C. 1001 – Chapter 47, Fraud and False Statements.

4. NDOR Suspension and Debarrment Procedures – Attachment 2, J.

ATTACHMENT 4

NEBRASKA UNIFIED CERTIFICATION PROGRAM

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

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

Should I apply?

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

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

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

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

Where can I find more information?

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

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

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

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

B. Prior/Other Applications and Privileges

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

☐ Yes, on ____/____/____ ☐ No

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

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person (disadvantaged owner) and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:		(5) Fax #:	
(6) E-mail:		(7) Website *(If have one.):*		
(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. Business Profile

(1) Describe the primary activities of your firm:	(2) Federal Tax ID (if any) or owner's social security number:
(3) This firm was established on ____/____/____	(4) I/We have owned this firm since: ____/____/____
(5) Method of acquisition *(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 do NOT need to fill out this application.

(7) Type of firm *(check all that apply)*:

☐ Sole Proprietorship ☐ Partnership ☐ Corporation ☐ Limited Liability Partnership

☐ Limited Liability Corporation ☐ Joint Venture

☐ Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership or a different name?

☐ Yes ☐ No

If Yes, explain:

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts $ _____
Year _____ Total receipts $ _____
Year _____ Total receipts $ _____

C. Relationships with Other Businesses

(1) Does your firm, at any of its business locations, share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment or office staff with any other business, organization or entity?

☐ Yes ☐ No

If Yes, identify: Other Firm's name: _____

Explain nature of shared facilities, etc.:

(2) At present or at any time in the past, has your firm:	(a) Been a subsidiary of any other firm?	☐ Yes ☐ No
	(b) Consisted of a partnership in which one or more of the partners are other firms?	☐ Yes ☐ No
	(c) Owned any percentage of any other firm?	☐ Yes ☐ No
	(d) Had any subsidiaries?	☐ Yes ☐ No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? ☐ Yes ☐ No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each *(attach extra sheets, if needed)*:

	Name	Address	Type of Business
1.			
2.			
3.			
4.			

D. Immediate Family Member Businesses

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

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

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

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (*street and number*):	City:	State: Zip:

(5) Gender: ☐ Male ☐ Female	(6) Ethnic group membership *(Check all that apply)*: ☐ Black ☐ Hispanic ☐ Native American ☐ Asian Pacific ☐ Subcontinent Asian ☐ Other (*specify*) _____
(7) U.S. Citizen: ☐ Yes ☐ No	
(8) Lawfully Admitted Permanent Resident: ☐ Yes ☐ No	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm: Type / Dollar Value: Cash $; Real Estate $; Equipment $; Other $
(3) Percentage owned:	
(4) Familial relationship to other owners:	

(5) Shares of Stock:

Number	Percentage	Class	Date Acquired	Method Acquired

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

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

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?* ☐ Yes ☐ No

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

Nature of Business Relationship:

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

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)*
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No If Yes, explain (*attach additional sheets if needed*):

Section 4: CONTROL

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

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

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ☐ Yes ☐ No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____
(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?* ☐ Yes ☐ No If Yes, identify for each: Firm Name: _____Person:_____ Nature of Business Relationship:

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

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

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

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

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

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship:

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

(1) Equipment

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

(2) Vehicles

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

(3) Office Space

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

(4) Storage Space

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

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

If Yes, explain:

E. Financial Information

(1) **Banking Information**:
(a) Name of Bank: _____ (b) Phone No: ( ) _____
(c) Address of Bank: _____ City: _____ State: _____ Zip: _____

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

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

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

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

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

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

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

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

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

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

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

AFFIDAVIT OF CERTIFICATION

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

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

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

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

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

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

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

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

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

Female Black American Hispanic American Native American

Asian- Pacific American Subcontinent Asian American Other (specify) _____.

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

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

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

Signature: _____ Date: _____

County of _____ State of _____

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

Signed _____ My Commission expires _____.
Notary Signature Date

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

(d) **Misrepresentation as a small business concern.**

(1) Whoever misrepresents the status of any concern or person as a "small business concern owned and controlled by socially and economically disadvantaged individuals", in order to obtain for oneself or another any----
(A) prime contract to be awarded pursuant to section 9 or 15 [15 USCS § 638 or 644];
(B) subcontract to be awarded pursuant to section 8(a) [15 USCS § 637(a)];
(C) subcontract that is to be included as part or all of a goal contained in a subcontracting plan required pursuant to section 8(d) {15 USCS § 637(d)]; or
(D) prime or subcontract to be awarded as a result, or in furtherance, of any other provision of Federal law that specifically references section 8(d) [15 USCS § 637(d)] for a definition of program eligibility, shall be subject to the penalties and remedies described in paragraph (2).

(2) Any person who violates paragraph (1) shall----
(A) be punished by a fine of not more than $500,000 or by imprisonment for not more than 10 years, or both;
(B) be subject to the administrative remedies prescribed by the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801-3812);
(C) be subjected to suspension and debarment as specified in subpart 9.4 of Title 48, Code of Federal Regulations (or any successor regulation) on the basis that such misrepresentation indicates a lack of business integrity that seriously and directly affects the present responsibility to perform any contract awarded by the Federal Government or a subcontract under such a contract; and
(D) be ineligible for participation in any program or activity conducted under the authority of this Act or the Small Business Investment Act of 1958 (15 U.S.C. 661 et seq.) for a period not to exceed 3 years.

NEBRASKA UNIFORM CERTIFICATION PROGRAM DBE APPLICATION SUPPORTING DOCUMENTS CHECKLIST

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

All Applicants

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

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

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

Trucking Company

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

Regular Dealer

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

ATTACHMENT 5

PERSONAL FINANCIAL STATEMENT

NEBRASKA UNIFIED CERTIFICATION PROGRAM **As of** _____ , _____

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

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

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

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

Description of Other Income in Section 1.

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

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

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

This form was created for NDOR - DBE Section August 2003

Section 3. Stocks and Bonds. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed).

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned. (List each parcel separately. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

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

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

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

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

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

Signature: Date: Social Security Number:

Notary Public: Date:

ATTACHMENT 6

Affidavit

Request for DBE Recertification

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

Please update the following company information:

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

Please check the appropriate box:

☐ The company's nature of business remains the same. ☐ A revised nature of business form with capability statement is enclosed.

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

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

Name	Ethnic Group/Sex	Percent Owned	Date Acquired

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

Name of Shareholder	Percent of Stock Owned	Date Acquired

Signature *Title*

Date *Notary Public*

ATTACHMENT 7

NEBRASKA DISADVANTAGED BUSINESS ENTERPRISE UNIFIED CERTIFICATION PROGRAM

A. STATEMENT OF POLICY

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

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

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

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

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

B. SIGNATORY PARTNERS:

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

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

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

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

C. CERTIFICATION DETERMINATION PROCESS:

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

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

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

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

(4) All certifications made by the NUCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

D. APPEALS OF DENIALS:

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

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

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

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

E. REMOVAL OF DBE ELIGIBILITY

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

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

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

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

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

(f) US DOT directive to initiate proceedings.

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

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

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

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

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

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

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

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

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

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

F. RECIPROCITY:

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

G. NON-DISCLOSURE/CONFIDENTIALITY:

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

H. IMPLEMENTATION SCHEDULE:

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

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

SIGNATURES

_____
Nebraska Department of Roads

_____
Nebraska Department of Aeronautics

_____
Omaha Airport Authority

_____
Lincoln Airport Authority

_____
Kearney Municipal Airport

_____
Omaha Metro Area Transit

_____
Mayor, City of Lincoln

(For Lincoln StarTran and LCHR)

ADDENDUM 1

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

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

Overall Goal for Fiscal Year 2006 (26.45)

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

FY 2006 Goal Setting Methodology - Section 26.45

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

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

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

1. Method Selected – NDOR extracted data from its TRANS*PORT database and the NDOR Bidders List to determine the number of firms that had taken affirmative steps and shown an interest in working on NDOR contracts by actually providing quotes.

2. Data Used – The data extracted from the TRANS*PORT database and Bidders List, and used to determine a base figure consisted of firms that provided quotes on NDOR projects from July 1, 2002 - June 30, 2005. (Fiscal Years 2003, 2004, and 2005)

3. Calculation Performed – In determining a base figure for FY 2006, NDOR first established the number of firms that provided quotes during the three-year period. A total of 41 DBEs and 538 non-DBE firms provided quotes on NDOR contracts.

4. Resulting Baseline – NDOR concluded that the overall availability of DBE contractors was 7.08 percent (41 DBEs divided by the total of 579 contractors). NDOR determined that the figures were an accurate representation of the data retrieved from the TRANS*PORT database and Bidders List. It was determined that the method for calculating the FY 2006 DBE goal baseline was logical and consistent with the DBE regulations.

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

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

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

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

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

FY 2006 OVERALL DBE GOAL:

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

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

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

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

1. Race and Gender Neutral Goal:

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

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

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

2. Race and Gender Conscious Goal:

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

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

Overall DBE participation goal of 7.08 percent.

Race and Gender Conscious goal of 4.32 percent.

Race and Gender Neutral goal of 2.76 percent.