

Nebraska Department of Roads Disadvantaged Business Enterprise (DBE)



P R O G R A M

REVISED MARCH 2000

Mike Johanns,
Governor

John Craig,
Director

STATEMENT OF POLICY

It is the policy of the Nebraska Department of Roads (NDOR) 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 Federal-Aid contracts; particularly highway construction work.

The NDOR and its DBE Certification Review Board will adhere to all of the rules and regulations promulgated by the US Department of Transportation (DOT), as outlined in 49 CFR part 26. To assure that this policy is implemented; the NDOR has established a DBE Program that is narrowly tailored in accordance with applicable law. Through the use of its DBE Program, the NDOR will ensure that only applicants that fully meet all of the 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. The NDOR will also assist in the development of eligible firms to help make them competitive both within and outside of the DBE Program.

The 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. The NDOR will advise every contractor, through contract specifications, that discrimination on the basis of race, color, national origin, or sex, 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 such remedy, as the NDOR deems appropriate.

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

The NDOR will submit its overall goal for the participation of DBE firms to the FHWA annually. These DBE participation goals will be for a period of one year, and will be reviewed at the end of each year using the relevant information to determine the goal for the next year.

RECOMMENDED:

APPROVED:

Joe Kisicki, Highway Civil Rights Coordinator

John Craig, Director

Date

Date

Claude Oie, Construction Engineer

Bruce Lind, FHWA Division Administrator

Date

Date

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

1. Affiliation - Affiliation has the same meaning the term has in the Small Business Administration (SBA) 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,
 - (c) An identity of interest between or 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, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE Program.

2. Commercially Useful Function - A DBE contractor performs a *commercially useful function* when it is responsible for execution of the work of a contract and is carrying out its responsibility by actually performing, managing, and supervising the work involved. The DBE contractor must also be responsible, for materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material.
3. 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)
4. 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 be expected to fulfill the program requirement.
5. Personal Net Worth - The net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's 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.
6. Small Business Concern - With respect to firms seeking to participate as DBEs in

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

- (a) General Contractor - Even if a firm meets the requirements of paragraph (15.) above, it is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts over the firm's previous three fiscal years in excess of \$16.6 million. The Secretary adjusts this amount for inflation from time to time.
- (b), (c), Engineering Consultant Firms and Specialty Contractors - The maximum average annual gross receipts over the previous three fiscal years are \$4 million and \$7 million respectively; however, firms in these categories should check the most recent Small Business Administration Regulations.

II. General

The Nebraska Department of Roads (NDOR) originally established its Disadvantaged Business Enterprise (DBE) Program to comply with 49 CFR part 23. The NDOR DBE Program has now been revised in order to comply with the provisions of the U. S. Department of Transportation's (DOT) "Disadvantaged Business Enterprise Program Final Rule" contained in 49 CFR part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Programs*, that became effective March 4, 1999. The 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 the burdens on small businesses. The DBE Program is intended to meet the "strict scrutiny" and "narrow tailoring" requirements as defined in recent case law. It is also intended to respond to Congressional debate concerning the DBE Program, and to respond to comments on the DOT's 1992 notice of proposed rulemaking (NPRM) and its 1997 supplemental notice of proposed rulemaking (SNPRM). Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the NDOR in its financial assistance agreements with the DOT.

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

A. Nondiscrimination (26.7)

The 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, sex, or national origin.

In administering its DBE Program, the 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, sex, or national origin.

B. DBE Program Updates (26.21)

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

C. Quotas (26.43)

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

D. Federal Financial Assistance Agreement Assurance (26.13)

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

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

The NDOR will ensure that 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, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate."

III. Organization and Structure (26.25)

A. DBE Liaison Officer (NDOR Highway Civil Rights Coordinator)

The NDOR Director maintains overall responsibility for the DBE Program. The direct administration of the NDOR DBE Program and External EEO Programs is assigned to the NDOR Construction Division, Highway Civil Rights/Disadvantaged Business Enterprise (HCR/DBE) Office. The Manager of the NDOR HCR/DBE Office, the Highway Civil Rights Coordinator, is designated as the DBE Liaison Officer, and serves as the EEO/AA liaison between the NDOR and the FHWA. The Highway Civil Rights Coordinator has direct, independent access to the NDOR Director 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 assisting with the setting of overall, and project/contract DBE participation goals. The Highway Civil Rights Coordinator is also responsible for ensuring that the 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 all necessary and appropriate duties to the staff of the NDOR HCR/DBE Office.

The NDOR will provide sufficient staff and resources to the NDOR 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 a Contract Compliance Officer. (An organization chart displaying the Highway Civil Rights Coordinator's position in the organization is found in **Attachment 1.**)

B. Highway Civil Rights/Disadvantaged Business Enterprise Office Staff & Their Duties

The NDOR HCR/DBE Office staff includes a Highway Civil Rights Assistant Coordinator, and a Contract Compliance/External EEO Officer. Other staff may be assigned if needed and other NDOR Departments/Divisions will provide assistance as needed.

1. The NDOR Highway Civil Rights Assistant Coordinator is primarily responsible for administrative work in the implementation of the DBE Program.

The duties of the Highway Civil Rights 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 assists in the implementation of training courses for DBEs and potential DBEs.
- Providing information and technical assistance to DBEs, potential DBEs, and others.
- Processing DBE certification applications and documents, and makes recommendations regarding eligibility status.

- Participating in the on-site investigations of applicants for DBE certification.
 - Preparing agendas, schedules, and attends meetings of the DBE Certification Review Board. Provides information at the Board 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 other informational documents.
 - Investigating complaints concerning DBE status and prepares investigation reports.
 - Maintaining files and electronic databases on civil rights programs.
 - Providing other assistance to the Highway Civil Rights Coordinator as needed.
2. The NDOR Contract Compliance/External EEO Officer is primarily responsible for assuring contractor compliance with EEO and DBE contract provisions; setting goals for on-the-job training and monitoring its progress; and disseminating information to contractors for the hiring of minorities and women.

The duties- of the Contract Compliance/External EEO Officer include:

- Inspecting project work sites or home offices to ensure that contractors are complying with the EEO and DBE provisions of their contracts.
- Documenting all of the on-site contract compliance inspection reviews and preparing the contract compliance reports for the FHWA.
- Updating the NDOR on-the-job training program yearly to get FHWA approval.
- Coordinating the involvement of DBE firms as contractor's or subcontractors with the NDOR.
- Monitoring the performance of DBEs on projects.
- Maintaining a running tally of actual DBE attainments (e.g., payments made to DBE firms).
- Providing information and technical assistance to DBEs, potential DBEs, and others.
- Providing other assistance to the Highway Civil Rights Coordinator and Assistant Coordinator as needed.

C. Location of the NDOR Highway Civil Rights/Disadvantaged Business Enterprise Office

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

Room 107
1500 Highway 2
Lincoln, Nebraska

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

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

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

Messages can also be left at - (402) 479-4533 or 4534

IV. Implementation of the DBE Program

A. The 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.

1. Solicitation Time Schedule

The NDOR usually has 10 lettings during the year. The lettings schedule is widely distributed through news media and direct mailing.

The NDOR bid advertisement procedures assure fairness in soliciting bids. A list of projects being let is sent to all certified DBEs four weeks before each letting. The projects are also advertised in local and statewide newspapers.

2. Communication Program

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

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

Community agencies, minority groups, and certified DBEs receive notice of all projects being let at least four weeks before the bid letting.

The "Notice to Contractors", that is sent to prequalified contractors, DBEs, and other interested parties, contains a directory of all certified DBE firms eligible to participate in specific project goals on Federal-Aid projects.

The NDOR HCR/DBE Office is available as needed prior to each letting to offer assistance to DBEs and other contractors in meeting project goals.

Notices of all DBE Liaison meetings will be included in the "Notice to Contractors" which is distributed as described above.

The NDOR HCR/DBE Office will periodically publish a newsletter, that will be distributed to all DBEs, minority groups, and other interested parties. The newsletter will list bid letting dates, all scheduled DBE Liaison meetings, and will provide other pertinent information concerning the DBE Program.

The NDOR will annually publish its proposed DBE participation goal no later than June 1. The notice of the proposed goal will be published in the Omaha World-Herald, the Lincoln Journal Star, and will also be sent to approximately fifty (50) minority and female based community organizations and publications. The proposed goal and its rationale will be made available for review by the public at the HC/DBE Office located in the NDOR Central Complex for a period of thirty (30) days after publication. Written comments about the proposed goal will be accepted for a period of forty-five (45) days after publication.

B. Technical Assistance and Training

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

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

The NDOR HCR/DBE Office will assist DBEs in working with other NDOR Departments/Divisions, NDOR field offices, and prime contractors.

C. DBE Financial Institutions (26.27)

It is the policy of the NDOR to investigate the full extent of services offered by financial Institutions owned and controlled by socially and economically disadvantaged individuals in the community, and to make reasonable efforts to use these institutions. The NDOR will provide prime contractors a list of financial institutions in the community know to be owned and controlled by socially and economically disadvantaged individuals, and will encourage prime contractors on DOT-assisted contracts to make use of these institutions.

D. Contract Assurance (26.13)

The NDOR will ensure that 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, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such remedy as the recipient deems appropriate."

E. Prompt Payment Clause (26.29)

As part of its DBE Program, the NDOR requires that prime contractors 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 for all labor and material, for work completed, within twenty (20) days of receipt of progress payments from the 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 the NDOR.

The *Prompt Payment Clause* will apply to contracts with all subcontractors, not only DBEs.

The 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 the NDOR.

Any disputes that arise regarding the satisfactory completion of work by a subcontractor may be brought to the attention of the 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. This clause applies to both DBE and non-DBE subcontractors."

"The failure by the prime contractor to carry out the requirements of the *Prompt Payment Clause* and/or the timely return of retainage, without just cause, is a material breach of this contract, which may result in the 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 the NDOR deems appropriate."

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

Prime contractors' compliance with the *Prompt Payment Clause* and the return of retainage will be monitored by the NDOR Contract Compliance Officer; however it will be required that the 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 NDOR DBE/HCR Office and/or the Contract Compliance Officer if a prime contractor fails to comply with the *Prompt Payment Clause*, or the return of retainage.

F. DBE Directory (26.31)

The NDOR HCR/DBE Office maintains a directory listing certified DBEs, the firms' addresses, phone numbers, date of the most recent certification, and the type of work the firm has been certified to do. This list is not meant as a statement or representation by the 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 sent to prequalified contractors, certified DBEs and other interested parties. The list is also available from the NDOR HCR/DBE Office, and is posted on the NDOR Internet website.

G. DBE Overconcentration in Certain Fields of Work (26.33)

The NDOR has not identified the overconcentration of DBEs in any field of work. If the NDOR does identify the overconcentration of DBEs in any field of work, it will develop a process to be used to address the overconcentration. Any means that the NDOR may use to address overconcentration if it is identified, will first be submitted to the DOT for approval.

H. Business Development Program (26.35)

The NDOR will not be implementing a "Business Development Program" at this time. The NDOR will; however, conduct a study to determine the feasibility of developing a Business Development Program, and may elect to develop and implement such a program at a later date.

I. Mentor-Protege Program (26.35)

The NDOR will not be implementing a "Mentor Protege Program" at this time. The NDOR will; however, conduct a study to determine the feasibility of developing a Mentor-Protege Program, and may elect to develop and implement such a program at a later date.

J. Procedure to Ascertain Eligibility

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

1. Certification and Contract Compliance Procedures

The NDOR DBE certification procedures, including policies for DBE monitoring, are attached. **(See Attachment 2.)**

2. Goal Commitment and Good Faith Effort Procedures (26.53)

The NDOR treats bidders/offers' compliance with good faith efforts requirements as a matter of responsibility.

The NDOR requires bidders to submit proposed DBE participation with their bids for all projects on which project/contract goals have been set. They may only use DBE firms certified by the NDOR to meet DBE participation goals. The information that must be submitted shall include the following:

- (a) The names and addresses of DBE firms that will participate in the contract;
- (b) A description of the work that each DBE will perform;
- (c) The dollar amount of the participation of each DBE firm;
- (d) Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a project/contract goal;
- (e) Written and signed confirmation from the DBE 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 efforts.

Demonstration of Good Faith Efforts:

The obligation of the bidder/offer is to make good faith efforts the bidder/offer can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. (Examples of good faith efforts are found in Appendix A to CFR 49 part 26.)

The decision as to whether or not the good faith efforts are acceptable will be made jointly by a committee comprised of the Highway Civil Rights Coordinator, the Contracts Lettings Manager, and the NDOR Legal Counsel.

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 his/her 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 about the DBE Program and its good faith efforts provisions, but who had no part in the initial decision.

The Hearing Officer will hear the appeal within five (5) days of receipt of the written complaint, and will issue a written decision within three (3) days after the appeal. The reconsideration process is administrative final and has no further appeal.

K. Overall DBE Program Goal (26.45)

1. The statutes authorizing the DBE Program provide that, except to the extent the Secretary of the 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 the 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 or require the NDOR (or any other state transportation agencies) to set or contract 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.

CFR 49 part 26.45 requires that the 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. The NDOR cannot simply rely on either the 10 percent national goal, its previous overall goal or past DBE participation rates in its program without reference to the relative availability of DBEs in the NDOR market area.

The NDOR will set an annual overall DBE goal using criteria approved by the FHWA in accordance with CFR 49 part 26.45. The annual goal period will coincide with the Federal fiscal year (Oct. 1 to Sept. 1).

The Highway Civil Rights Coordinator will have the overall responsibility of 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 business ready, willing and able to perform work in the same SIC codes.
- (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 intended to be a count of all firms that are participating, or attempting to participate, on DOT-assisted projects. Prime contractors must provide to the NDOR the identity of *all firms* who bid or quote subcontracts on DOT-assisted projects, including both DBEs and non-DBEs. 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 the 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.
2. Once a base figure has been calculated, the 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:

- (a) 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.
 - (b) Evidence from disparity studies conducted anywhere within the NDOR jurisdiction that has not already been accounted for in establishing the base figure.
3. The NDOR is required to provide for public participation in the establishment of an annual overall DBE goal. This public participation will include:
- (a) Consultation with minority, women's and general contractor groups.
 - (b) Publishing a notice statewide announcing the NDOR proposed annual overall goal for DBE participation in publications including The Daily Record (Omaha, Nebraska), the Lincoln Journal Star (Lincoln, Nebraska), available minority-focused media and trade association publications.

For 30 days after publication, the NDOR DBE Program's proposed annual overall goal and its rationale will be available for public inspection during normal business hours at the Department of Roads' Central Complex Headquarters Building and all NDOR District Offices. Comments will be accepted from the public for 45 days After publication. The 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 the NDOR. The NDOR HCR/DBE Office will maintain and review a listing of the DBEs and the work they perform. A realistic goal will then be set to provide the maximum opportunity for participation by all NDOR certified DBEs.

SEE ADDENDUM 1 for the DBE annual goal and the method used by the NDOR in establishing the goal.

L. Project/Contract Goals (26.51)

The 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 dollar or percentage goals will be set on projects based on factors including desirable 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.

Consultant firms are not excluded from participation in the NDOR DBE Program, however; due to the very limited pool of consultant firms certified as DBEs in Nebraska, any work they are awarded will be counted as 'race neutral'.

FTA-ASSISTED VEHICLE and SPECIALIZED EQUIPMENT PROCUREMENTS (26.49):

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

The 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 NDOR HCR/DBE Office will maintain records and prepare required reports of DBE project/contract 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)

The 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. The 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.

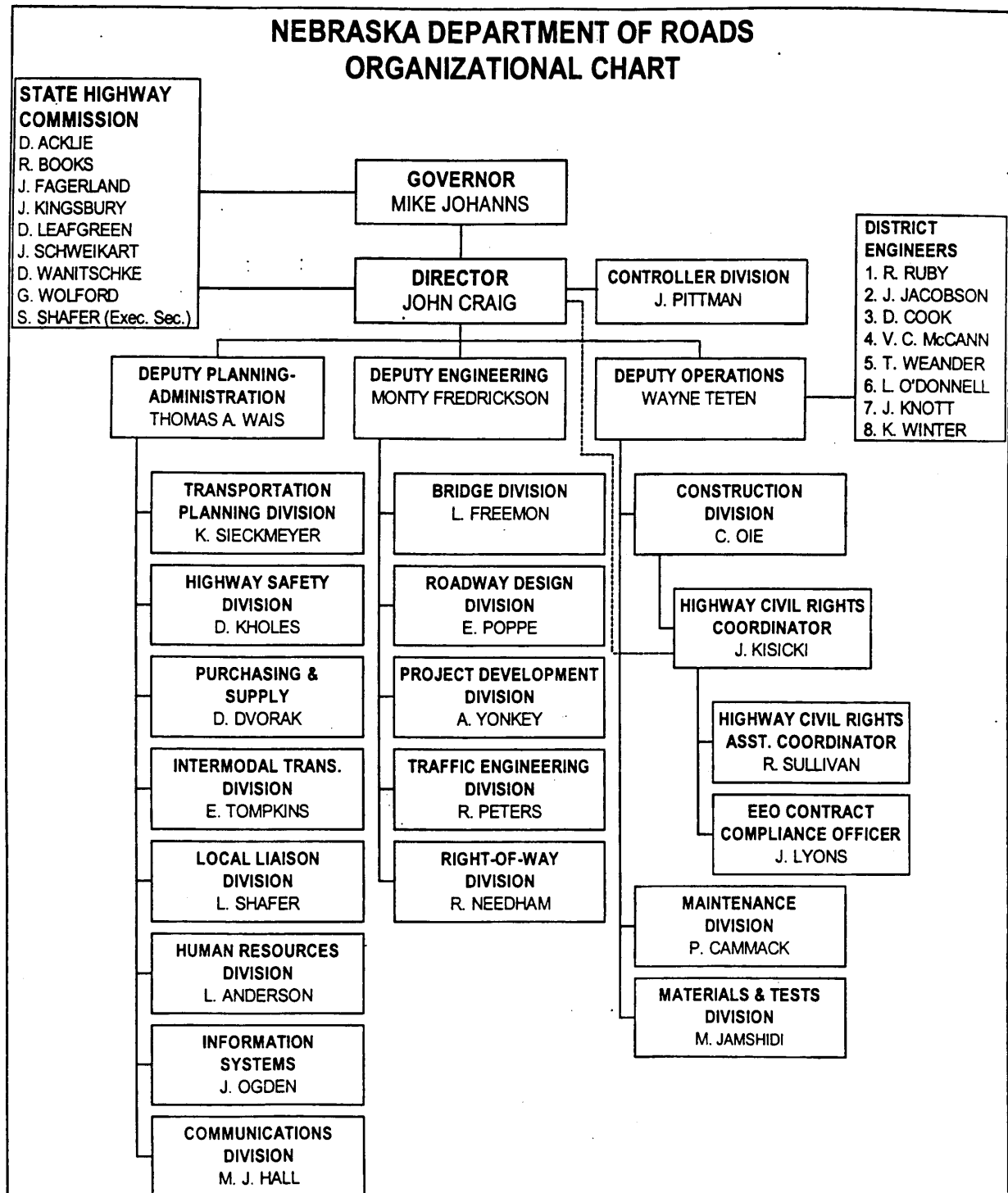
Even though a DBE participation goal may be set on a project in the current fiscal year, that goal may not be credited toward the overall annual DBE participation goal until the work has actually been performed by the DBE, and the DBE has been paid for the work.

Counting DBE Participation (26.55)

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

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 the NDOR procurement activities

Attachment 1.



ATTACHMENT 2

NEBRASKA DEPARTMENT OF ROADS DISADVANTAGED BUSINESS ENTERPRISES CERTIFICATION PROCEDURES

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

The 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. The NDOR may extend this period once, for no more than an additional 60 days, upon written notice to the applicant firm, explaining fully and specifically the reasons for the extension. If the 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 the NDOR Certification Review Board 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 the NDOR Certification Review Board may appeal the decision to the DOT. (See Section E of this Attachment)

A. Application

Applicants seeking certification as a Disadvantaged Business Enterprise (DBE) with the NDOR must complete an application, DR Form 161, and provide all other supporting documentation required to establish the applicant's eligibility to be certified as a DBE. The supporting documentation must include an *Addendum to Certification Application* that includes a sworn, notarized statement attesting to the firm's owner's social and/or economic disadvantage. The *Addendum to Certification Application* also includes a statement of the firm's owner's net worth. All information must be filed with the NDOR Highway Civil Rights/Disadvantaged Business Enterprise Office (NDOR HCR/DBE Office), Construction Division, Nebraska Department of Roads. **(See Attachments 4 and 5** for Personal Net Worth Form, and Certification Application.)

Firms seeking certification as a DBE may obtain an application by contacting the NDOR 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
Highway Civil Rights/Disadvantaged Business Enterprise Office
1500 Highway 2, Room 107
P.O. Box 94759
Lincoln, Nebraska 68509-4759
Telephone: (402) 479-4531

B. Review

The NDOR HCR/DBE Office will review completed DBE certification applications and the supporting documentation for compliance with eligibility standards set forth in 49 CFR part 26, *Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*. The firm seeking DBE certification has the burden of demonstrating to the NDOR, 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:

(1) Group Membership (26.63):

The firm seeking DBE certification must prove by a preponderance of the evidence that its owner(s) meet the requirements concerning socially disadvantaged group membership or individual social or 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. (26.67)

- (a) In making such a determination, the 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 by the NDOR 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.

(2) Business Size (26-65):

- (a) 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.
- (b) Even if a firm meets the requirements of paragraph (a) 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 \$16.6 million.
- (c) If a firm's owner's statement of personal net worth shows that the individual's net worth exceeds \$750,000, excluding the individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence, the individual's presumption of economic disadvantage is rebutted.

(3) Ownership (26.69):

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. The contributions of capital or expertise to acquire ownership must be real and substantial.

- (a) In determining whether the socially and economically disadvantaged participants in a firm actually own the firm, the NDOR must consider all of the facts in the record.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
- (c) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
 - (i) In a specialized field;
 - (ii) Of outstanding quality;
 - (iii) In areas critical to the firm's operations;
 - (iv) Indispensable to the firm's potential success;
 - (v) Specific to the type of work the firm performs; and
 - (vi) The owner's contribution of expertise and value to the firm must be documented.
- (d) Examples of unqualified contributions are:
 - (i) A promise to contribute or an unsecured note.
 - (ii) A gift.
 - (iii) Unrenounced joint assets.
 - (iv) Transfers from non-disadvantaged individuals.
- (e) Examples of qualified contributions are:
 - (i) A legal settlement, with court documents.
 - (ii) Inheritance after a death.
 - (iii) Legally transferred assets from a spouse, with court documents.
 - (iv) Personally held assets.

- .(4) Control and Independence (26.71): The socially and economically disadvantaged owner(s) must possess the power to control daily operations and long-term destiny. The owner(s) must hold the highest office, must control the board of directors or be the controlling partner. The disadvantaged owner must have technical competence and experience in the field of operations as well as managerial expertise. Office management bookkeeping, or clerical expertise are not sufficient to demonstrate control. The owner cannot have other employment or businesses that conflict or require attention during normal business hours. 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, the NDOR must consider all of the facts in the record, viewed as a whole.

- (a) 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(s).
 - (i) In determining whether a potential DBE is an independent business, the NDOR must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and /or bonding support, and other resources.
 - (ii) The NDOR must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE firm and non-DBE firm(s) compromise the independence of the potential DBE firm.
 - (iii) The NDOR must examine the firm's relationship 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.
 - (iv) In considering factors related to the independence of a potential DBE firm, the NDOR must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- (5) Other Rules Affecting DBE Certification (26.73):
 - (a) 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).
 - (b) DBE firms and firms seeking DBE certification shall cooperate fully with the NDOR requests (and DOT requests) for information relevant to the certification process.
 - (c) Failure or refusal by a DBE firm or a firm seeking DBE certification to provide such information is a ground for a denial or removal of certification.
 - (d) Only firms organized for profit may be eligible DBE

If the application of the firm applying for DBE certification shows that the firm does not Comply with DBE group membership, business size, ownership, or control standards, the firm's application will be referred to the NDOR DBE Certification Review Board (Board) with a recommendation from the NDOR HCR/DBE Office for denial of DBE certification.

If after reviewing a firm's application for DBE certification, the NDOR HCR/DBE Office determines that information is missing or incomplete, the NDOR HCR/DBE Office will so notify the applicant that he or she has 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 Board with a recommendation from the NDOR HCR/DBE Office for denial of DBE certification for the firm.

C. Investigation

The NDOR HCR/DBE Office will conduct an investigation (on-site review) at the applicant firm's premises if a complete application has been submitted timely. The purpose of the review will be to verify the information submitted, to assess the firm's capabilities and financial capacity, to determine the independence of the firm and to determine the control or management of the firm demonstrated (by the disadvantaged owner(s)). The NDOR HCR/DBE Office may contact firms or individuals that are associated with, or have direct knowledge of the firm applying for DBE certification, as a normal part of its investigation.

1. The NDOR HCR/DBE Office will make every reasonable effort to schedule the on-site review within 30 days of submission of a completed application and receipt of all necessary supporting documentation from the firm applying for DBE certification.
2. The on-site review/investigation, conducted by NDOR HCR/DBE Office staff, for firms that are headquartered or have their principle place of business in the State of Nebraska, will include:
 - (a) A visit to the firm's home office.
 - (b) Personal interviews with the firm's principal owners, managers, and other individuals as deemed necessary by the NDOR HCR/DBE Office staff.
 - (c) On-site visits to the firm's active Nebraska construction projects (if applicable).
 - (d) Review of information from other states if the firm is or has been certified as a DBE in another state.
 - (e) Review of any information deemed necessary and obtained from other sources.
3. The investigation of applications for DBE certification from firms not headquartered or having their principle place of business in the State of Nebraska will include:
 - (a) If a firm applying for DBE certification by the NDOR is from a state other than Nebraska, the firm must be certified in its home state before applying for certification in Nebraska.
 - (b) If the firm is from a state other than Nebraska, a site visit report will be requested from the firm's home state certifying agency. Information gathered by that agency may be used in lieu of Items (1.) and (2.) of Section C (above).
 - (i) The findings of the investigation by the NDOR HCR/DBE Office will be compiled and presented to the DBE Certification Review Board for a determination of eligibility no later than the second scheduled meeting of the Board following the completed review by the HCR/DBE Office.

D. NDOR Certification Review Board

1. Membership:

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

2. Certification Procedure:

- (a) The Board shall normally meet once each month at a mutually agreeable time and date at the NDOR Central Office. Matters for the Board to consider include, but are not limited to certifying or decertifying a firm using the eligibility standards as set forth in CFR 49 part 26. If the only items on the agenda for a monthly Board meeting are of a nature other than new applications for DBE certification, the Board, by a majority vote, may postpone action on those items until the next scheduled Board meeting.
- (b) The public shall be given reasonable advance notice of the time and place of each Board meeting by publication of notices in the Lincoln Journal Star and Omaha World-Herald.
- (e) The Board shall have the right to modify the agenda to include items of an emergency nature only at such public meeting.
- (d) When it is necessary to hold an emergency Board meeting without reasonable advance public notice, the nature of the emergency shall be stated in the transcript of the meeting, and any formal action taken in such meeting shall pertain only to the emergency.
- (e) Complete transcripts of such emergency Board meetings shall be made available to the public.
- (f) The Board will consider matters on an agenda set no later than 10 days before the scheduled meeting. The NDOR HCR/DBE Office will provide the Board with a written synopsis and recommendation for each application for a firm's DBE certification, decertification, or other action that the Board may be required to act on. The Board meeting, the HCR/DBE Office staff will present the facts gathered from their investigations as needed.
- (g) The Board shall consider applications for certification using eligibility standards set forth in 49 CFR part 26 - Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs 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.

- (h) The Board may render its decision immediately or if necessary, defer the decision until the Board has had a full opportunity to consider the information provided. If for any reason the decision is deferred, the matter will be placed on the next scheduled meeting agenda.
- (i) The Board may hold a closed session by the affirmative vote of a majority of its voting members if a closed session is clearly necessary for the protection of the public interest, or for the prevention of needless injury to the reputation of an individual.
 - (i) The vote to hold a closed session shall be taken in open session. The vote of each Board member, the reason for the closed session, and the time when the closed session commenced and concluded shall be recorded in the transcript.
 - (ii) The closed session shall be restricted to consideration of matters set forth in the transcript as being the reason for the closed session.
 - (iii) The meeting shall be reconvened in open session before any formal action may be taken.
 - (iv) If the Board determines it needs more information in order to reach a decision, the applicant firm will be notified in writing by the NDOR HCR/DBE Office as soon as possible and given 30 days, from the date of the requesting letter, to respond. If additional information has been requested, the matter will be placed on the Board meeting agenda as soon as possible following the receipt of the information.
 - (v) The applicant firm will be notified in writing within 15 days of the Board meeting of the Board's findings.
 - (vi) If the Board's determination is in favor of the certification of the applicant firm as a DBE, the Board will issue a Certificate of Eligibility effective for three (3) years beginning on the date of the determination.
 - (vii) If the Board's initial determination is against certification of the applicant firm as a DBE, the NDOR 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 Board relied in making its decision.
 - (viii) The Board's decision to deny a firm DBE certification is administratively final on the day of the decision.
 - (ix) There are no provisions for the appeal of a decision to deny certification.
 - (x) A firm that has been denied DBE certification may make a formal appeal of that decision to the DOT.

E. Federal Formal Appeal-Procedures

The applicant firm that was denied DBE certification by the NDOR DBE Certification Review Board (Board) 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 2401
Washington, DC 20590

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

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

F. 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 NDOR 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 form.

1. DBE firms must provide the NDOR HCR/DBE Office, 45 days prior to the first and second year anniversary date of their certification, a sworn and notarized affidavit (on a form provided by the NDOR HCR/DBE Office), affirming that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of CFR 49 part 26, or any material changes in the information provided in its application form, except for changes of which the DBE firm has already informed the NDOR HCR/DBE Office.
 - (a) The required information for continued DBE certification will normally be an affidavit completed by the firm for the second and third year reviews as stated above.
 - (b) If the firm is up for a fourth year review, the NDOR 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 to the NDOR HCR/DBE Office at least 45 days prior to the expiration of the firm's certification.
 - (c) The NDOR HCR/DBE Office has the authority to extend the certification of any DBE firm for one month for any reason.

G. DBE Monitoring Procedures

- 1 The NDOR HCR/DBE Office will conduct on-site visits to projects in progress and may audit (review) a DBE's certification at anytime.
2. The NDOR contract specifications contain guidelines regarding DBE participation. Contract violations will be dealt with as specified therein.
3. The NDOR HCR/DBE Office will investigate all alleged violations of the DBE Program to determine if:
 - (a) The DBE's application on file with the HCR/DBE Office remains accurate, or if the DBE's certification should be reinvestigated.
 - (i) If an investigation is needed, it may include any or all of the steps outlined in Section C.2. and C.3. above and any additional steps required to determine the validity of the alleged violation.
4. Cases of possible fraud and/or abuse of the Disadvantaged Business Enterprise Program may be referred to the Nebraska State Attorney General's Office and/or the U.S. Department of Transportation, Office of the Inspector General.

H. DBE Certification

CHALLENGE BY THE NEBRASKA DEPARTMENT OF ROADS' HIGHWAY CIVIL RIGHTS/DISADVANTAGED BUSINESS ENTERPRISE OFFICE

1. If an investigation or audit by the NDOR HCR/DBE Office reveals previously undisclosed or erroneous information which affects a firm's DBE eligibility status, the NDOR HCR/DBE Office shall issue a recommendation to the NDOR DBE Certification Review Board that the firm be decertified.
2. The DBE firm will be notified in writing, by certified mail, of an impending action to decertify. The notice will state the reason(s) for the action.
3. The DBE firm will be given 15 days from the date of receipt of the notice to respond in writing. The response must contain information sufficient to permit an evaluation of eligibility.
4. The NDOR HCR/DBE Office will investigate and evaluate the available information. If their recommendation includes proposed remedial actions, they will present their recommendation to the Board. The Board will then evaluate the available information and make a determination.
5. The NDOR HCR/DBE Office will send the firm an *Intent to Decertify Letter* within 15 days of the Board's findings. The notice will be sent by certified mail and will state the reason(s) for the Board's decision.
6. The DBE firm may appeal the Board's decision in accordance with the certification appeal procedures in Section E. 'Federal Formal Appeal Procedures' above.
7. If no timely appeal is made, the DBE firm's certification will be revoked the day the decision is administratively final (16 days after the date of the notice.)
8. If a DBE firm is determined by the U.S. Department of Transportation to not meet the eligibility requirements as set forth in 49 CFR part 26 to be certified as a DBE, the U.S. DOT's determination will be reviewed by the Nebraska Department of Roads. If the NDOR determines that there is sufficient reason to decertify the firm, the notification and appeal procedures as cited in paragraphs (5) and (6) above, shall apply to this paragraph in order to guarantee the firm its right to due process.
9. If deemed necessary, the case may be referred to the Nebraska State Attorney General's Office and/or the U.S. Department of Transportation for possible administrative, civil, or criminal prosecution.

I. Challenge of DBE Certification by any Third party

1. Any third party may challenge the eligibility status of a firm that is certified or seeking certification as a Disadvantaged Business Enterprise (DBE).

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 the NDOR.

2. 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.

DBE recertification may be granted upon satisfactory resolution of the third party's challenge.

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

- (a) If the NDOR HCR/DBE Office determines the challenge is clearly unfounded and there is no basis for pursuing the matter, the Office will terminate the proceedings. The Office will notify the complaining party, and the DBE firm whose eligibility is being challenged, of its decision to terminate the proceedings.
- (b) If the NDOR 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 receipt 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 NDOR HCR/DBE Office will investigate and evaluate all available information provided by the challenged firm. The Office will then make a recommendation to the Board that may include remedial actions to be taken by the challenged firm.

Upon receipt of a timely response from the challenged DBE firm, and after the investigation by the NDOR HCR/DBE Office, the matter will be placed on the agenda of the next scheduled Board meeting. The Board will evaluate all of the available information and make a determination.

The Board will notify both parties in writing by certified mail of the determination and reasons therefore. Each party will have 15 days from the date of their receipt of the notice of the Board's determination to request that an informal hearing be held. If neither party makes a timely request for an informal hearing, the Board's decision becomes administratively final 16 days from the date of the determination. 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 Board's 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 decision rendered by the Hearing Officer becomes effective, and is administratively final the day it is issued.

- (c) The NDOR Certification Review Board's decision may be appealed in writing within 180 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 2401
Washington, D.C. 20590

J. Uniform Certification Program (UCP)

Within three (3) years the NDOR and the other DOT recipients in the State of Nebraska will sign an agreement establishing the UCP for the state and submit the agreement to the Secretary for approval. The agreement will provide for the establishment of a UCP meeting all of the requirements of Section 26.81.

K. Suspension and Debarment Procedures

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, the NDOR will send a *Show Cause Notice* by certified mail to the offending DBE certified firm.

The offending DBE firm must respond in writing within 15 days of the date of its receipt 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 DBE firm's receipt 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.

L. Information Collection and Reporting

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

The NDOR will collect this information by requiring prime contractors to submit a list of all firms, DBE and non-DBE, that bid as subcontractors. The NDOR HCR/DBE Office will contact all of the firms that have bid as subcontractors in order to obtain the other information required.

Monitoring Payments to DBEs

The 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 the Nebraska Department of Roads or DOT.

Reporting to DOT

The NDOR will report DBE participation to the DOT on a quarterly basis, using DOT Form 4630.

Confidentiality

The 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, we 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)

The 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 of Program Fraud and Civil Penalties rules) provided in 26.109. The 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 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 Federal Financed and Assisted Construction.

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

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

Addendum to Certification Application

Complete this form for (1) each socially disadvantaged proprietor, or (2) each socially disadvantaged limited and general partner whose combined interest totals 51% or more, or (3) each socially disadvantaged stockholder making up 51% or more of voting stock. If the manager of the company is a socially disadvantaged individual separate and apart from the owner, this individual must complete a copy of this form as well.

Name:	Business Phone: (include Area Code)	E-mail Address:
Residence Address:	Home Phone:	
City, State, and Zip Code:		
Business Name of Applicant:		

Determination of Social Disadvantage

“In considering whether an owner has experienced social disadvantage, based upon the effects of discrimination, the applicant for DBE status shall take into account whether the owner has held himself or herself out to be a member of a disadvantaged group, has acted as a manager of a community of disadvantaged persons, and would be identified by persons in the population at large as belonging to the disadvantaged group.”

I certify that I have read and understand the above statement. I further certify that an owner or owners of this company (owning at least 51% of this company) experienced social disadvantage due to the effects of discrimination based on: (mark all that apply)

☐ Race ☐ Ethnicity ☐ Gender ☐ Other (Please explain on separate sheet.)

Signature:	Title:
------------	--------

Personal Financial Statement

Assets	(Omit Cents)	Liabilities	(Omit Cents)
Cash on hand in Banks	\$	Accounts Payable	\$
Savings Account	\$	Notes Payable to Banks and Others (Describe in Section 1)	\$
IRA or Other Retirement Account	\$	Installment Account (Auto)	\$
Accounts and Notes Receivable	\$	Installment Account (Other)	\$
Life Insurance-Cash Surrender Value Only (Complete Section 7)	\$	Loan on Life Insurance	\$
Stocks and Bonds (Describe in Section 2)	\$	Mortgages on Real Estate (Describe in Section 5)	\$
Real Estate (Describe in Section 3)	\$	Unpaid Taxes (Describe in Section 5)	\$
Automobile(s) – Present Value	\$	Other Liabilities (Describe in Section 6)	\$
Other Personal Property (Describe in Section 4)	\$	Total Liabilities	\$
Other Assets	\$	Net Worth (Total Assets minus Total Liabilities)	\$
Total Assets	\$		

Section 1. Notes payable to Banks and others (use attachments, if needed. Attachments must be identified as part of this statement and signed.)

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

Section 2. 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 Quotation/Exchange	Total Value

Section 3. Real Estate Owned. *(List each parcel separately. Use attachments, 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			
Name and Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Amount of Payment per Month/Yr.			

Section 4. 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.)*

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Section 5. Unpaid Taxes. *(Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien is attached.)*

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Section 6. Other Liabilities. *(Describe in detail.)*

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Section 7. Life Insurance Held. *(Give face amount and cash surrender value of policies, name of insurance company, and beneficiaries.)*

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I authorize the Disadvantaged Business Office of the Nebraska Department of Roads to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantaged for participation in the DBE Program with the Nebraska Department of Roads. These statements are true and correct to the best of my belief.

Signature:	Title:	Social Security No.:	Date:
Notary Public:			Date:

Nebraska Department of Roads

Application for Certification of Disadvantaged Business Enterprise

Return to the Department of Roads, Disadvantaged Business Enterprise Office, 1500 Hwy. 2, P.O. Box 94759, Lincoln, NE 68509-4759.

Section A**Company Identification**

1	Federal Employer Identification Number:	2	Date of Application:
3	Name of Firm:		
4	Address: (No. and Street, City, Zip Code) Must Be Provided	5	Mailing Address:
			E-Mail Address:
6	Business Telephone No.:	7	Contact Person: (Name, Title, and Residence Telephone)
	Fax Telephone No.:		
8	Type of Business:		

CONFIDENTIAL

Information for Determining Disadvantaged Business Enterprise (DBE) Eligibility
as required by 49 CFR Part 26

Response must be given to all questions and requests for documentation. Incomplete submissions will be returned. If an item does not apply, mark "N/A" (not applicable).

The affidavit certifying the validity of information given must be signed by the principal owner and notarized.

False statements are a violation of State and Federal laws and subject to criminal prosecution.

Section B**Social and Economic Disadvantage**

1	IS FIRM CERTIFIED UNDER THE SMALL BUSINESS ADMINISTRATION SECTION 8(A) PROGRAM? (If "YES", provide a copy.)	<input type="checkbox"/> Yes <input type="checkbox"/> No	2	IS FIRM CURRENTLY CERTIFIED IN HOME STATE? (If "YES", provide a copy of current certification.)	<input type="checkbox"/> Yes <input type="checkbox"/> No
3	Has your firm ever been denied certification or decertified as a DBE or as a Women Business Enterprise? (If "Yes", indicate by whom, date, and reason.)				
4	List all states in which your firm is certified:				
5	Attach a copy of disadvantaged owners' driver's license and birth certificate or proof of U.S. citizenship or permanent residence.				
6	Indicate Eligibility Status: <input type="checkbox"/> African American <input type="checkbox"/> Asian/Pacific Islander <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian Indian <input type="checkbox"/> Native American <input type="checkbox"/> Female <input type="checkbox"/> Other.....				

Section C**Business Size and Legal Structure**

1	What is the primary business activity:				
2	Gross receipts of the firm and affiliates for each of the last 3 years and average number of employees. Show your firm's fiscal year or calendar year receipts.				
	Year Ending		Year Ending		Year Ending
	Receipts		Receipts		Receipts
	Avg. # Emp.		Avg. # Emp.		Avg. # Emp.
The remaining questions in Section C need not be answered if this information has not changed since submittal of your last application.					
3	Date firm was established:	4	Has this firm been known by another name in the past 3 years? <input type="checkbox"/> Yes <input type="checkbox"/> No If "Yes", by what name?.....		
5	Do the owner(s) of this firm also have ownership in any other business?				6
				List all contributions and their contributions made to acquire or found the company. Provide proof of contribution. (Example: cancelled checks, equipment titles or proof of ownership, formal agreements, etc.) Please use an additional sheet for this listing.	

7	Legal Structure <i>(Check One)</i>	<input type="checkbox"/> Corporation <input type="checkbox"/> Proprietorship <input type="checkbox"/> Limited Partnership <input type="checkbox"/> Partnership	Other: <i>(Describe)</i>					
8	Corporation <i>(Complete in full and provide attachments as requested)</i>							
A	Ownership of Firm	Identify all stockholders by name, sex, ethnic group status, percentage of ownership and date shares acquired.						
		Name	Sex	Racial/Ethnic Group	Percent Owned	Date Acquired		
Attach a brief description of the qualifications and previous business-related experience of each stockholder.								
B	List all current members of the Board of Directors below:							
		Name	Racial or Ethnic Group	Sex	Title	Length of Service	Currently Employed By	Annual Dir. Fees
C	List all current Officers below:							
		Name	Racial or Ethnic Group	Sex	Title	Length of Service	Currently Employed By	Annual Dir. Fees
D	Identify any owner, officer, or director of the firm who is an employee of another firm and maintains a business relationship with that firm. Explain the business relationship: <i>(Business relationship may include shared space, equipment, financing, employees, or both firms may have one or more of the same owners.)</i>							
E	Identify any owner, officer, or director of the firm who has an ownership interest in another firm: <i>(Ownership interest may include shared space, equipment, financing, employees or both firms may have one or more of the same owners.)</i>							
F	Is any stock of the corporation pledged, subject to any lien agreement or beneficially owned by anyone other than the person whose name it stands? <i>(If "YES", attach all such ownership documentation.)</i>				<input type="checkbox"/> YES <input type="checkbox"/> NO	G	Is any holder of stock in the corporation a party to any agreement relating to the management or control of the corporation, the rights of the holders of any class of stock of the corporation or the sale, transfer, or transferability of any stock of the corporation? <i>(If "YES", attach all such agreements.)</i>	
				<input type="checkbox"/> YES <input type="checkbox"/> NO				
H	Attach one copy of the firm's Articles of Incorporation and Bylaws.				I	Attach one copy of all the firm's issued shares of stock certificates.		
J	Please complete the following statement. ▶ The firm has issued shares of stock, and are common stock, and are preferred stock.							
K	You are requested to furnish a copy of the following stipulations if they are not in the corporate documents. <div style="display: flex; justify-content: space-between; margin-top: 10px;"> <div> ➤ STOCK OPTIONS ➤ OWNERSHIP OPTIONS ➤ STOCKHOLDER AGREEMENTS </div> <div> ➤ BUY-OUT RIGHTS ➤ STOCKHOLDER VOTING RIGHTS ➤ RESTRICTIONS ON THE DISPOSAL OF STOCK AGREEMENTS </div> <div> ➤ OWNERSHIP OF VOTING SECURITIES </div> </div>							
L	Identify the firm's Board of Directors prior to January 1, 1990 as specified below:							
		Name	Racial/Ethnic Group	Sex	Title/Position	Length of Service		

9	Partnership				
A	List the name of each partner and describe the interest of each:				
	Name	Sex	Racial/Ethnic Group	Percent Owned	Date Acquired
B	Attach any and all such agreements to show partnership as described above <i>(including buy-out rights)</i> .			C	Attach a brief description of the qualifications and previous business experience of each owner.
D	Identify each partner active in management of the firm.				
	Name	Position		Length of Service	Salary
E	Identify any partner not active in management who is employed by another company:				
	Name	Currently Employed By		Position	
10	Proprietorship				
A	List the name of the proprietor(s) and attach any and all documentation to show proprietorship as stated.				
	Name	Sex	Racial/Ethnic Group	Date Acquired	
B	Attach a brief description of the qualifications and previous business-related experience of each owner.				
Section D Control of Firm					
1	Identify any management official not previously listed:				
	Name	Racial or Ethnic Group	Sex	Position	Length of Service
2	Attach a brief description of previous business-related experience and employment of those listed in Item No. 1 of this section.				
3	Identify any owner or management official of the firm who is an employee of another firm or maintains a business relationship with another firm: <i>(Business relationship may include shared space, equipment, financing, employees or ownership interest.)</i>				
4	Explain the relationship. Identify percentage of ownership interest, if any: <i>(Use an additional sheet if necessary.)</i>				
5	Does the firm have any agreement <i>(written or oral)</i>, or regular working agreement with any other firm? <i>(If "YES", describe the agreement or working arrangement.)</i>				

6	Who are the individuals responsible for the following:	Name	% of Time
a.	Financial decisions		
b.	Office work		
c.	Management decisions		
1.	Solicitations (<i>decisions to bid</i>)		
2.	Estimating		
3.	Marketing/Sales		
4.	Hiring & firing of management personnel		
5.	Hiring & firing of non-management personnel		
6.	Purchasing of major items or supplies		
d.	Negotiating for surety bonds, loans		
e.	Supervision of field operations		
f.	Signing of insurance and payrolls		
g.	Contract & negotiations		
7	The following items are to be submitted with this application:		
A	Copy of the past two years W-2 Forms issued by the Company.	C	Copy of third-party agreement (<i>such as rental agreements, management service</i>).
B	Copy of license to do business (<i>if required</i>).	D	Profit sharing agreements.

Section E Financial Capacity and Capability

1	Identify the firm's current bank or other financial institution and sources of letters of credit.				
	Institution	Address	Type of Account		
2	Provide a copy of the two most recent bank statements and bank signature card.				
3	Identify all sources and amount of money loaned to the firm. (<i>Use additional sheet if necessary.</i>)				
	Source (<i>Name and Address</i>)	Dollar Amount	Purpose		
4	Specify the major items of equipment owned and/or leased by the firm. (<i>Use additional sheet if necessary.</i>)				
	Equipment Owned		Equipment Leased		
	Qty.	Type	Qty.	Type	
5	Attach one copy of the purchase and/or lease agreements for each of the items listed above.	6	(Attach a current financial statement of the firm and principal owners.)	7	Attach a copy of the Federal Tax Return of the firm and principal owners for the past two years.
8	Attach a Capability Statement	A	Complete the Nature of Business Form attached.	B	Describe how your firm will perform the work items checked.
		C	Describe the services and/or capabilities of your firm in detail.		
The Nebraska Department of Roads will determine whether your company may perform selected work items for Disadvantaged Business Enterprise goal credit on Nebraska projects. The Nature of Business form may be updated at any time after certification.					
9	Contractors	A	Maximum Bonding Capacity \$	C	Job Preference \$..... to \$.....
B	Name of Bonding Company:				
D	Have you ever failed to complete any contract awarded to you? <input type="checkbox"/> Yes <input type="checkbox"/> No (<i>If "YES", please state where, when, and why.</i>)				

E	List all projects you have under contract or completed within the last two (2) years. (Use additional sheet if necessary.)			
	Contracted To	Project No.	Describe Work Performed	Date of Contract
10	Consultants			
A	Is DR Form 497 on file with the Nebraska Department of Roads? <input type="checkbox"/> YES <input type="checkbox"/> NO			
11	Vendor/Supplier or Manufacturer: <i>(If supplier, indicate type.)</i>			
A	<input type="checkbox"/> Broker <input type="checkbox"/> Distributor <input type="checkbox"/> Factory Representative	<input type="checkbox"/> Franchise <input type="checkbox"/> Dealership <input type="checkbox"/> Wholesaler	Other: <i>(Specify)</i>	
B	What oral arrangement/written agreement regarding distribution line credit, etc. exists between your firm and your source(s) of supplies?			
C	Will your firm obtain supplies on his or her own credit? <input type="checkbox"/> YES <input type="checkbox"/> NO			
D	Where do you store your inventory?			
E	Approximately what percentage of items you supply will not come from your inventory/			
F	What method is used to deliver the project?			

Affidavit

The undersigned swears that the foregoing statements and all attachments hereto are true and correct and include all material information necessary to identify and explain the operations of

.....

 (Name of Firm)

as well as the ownership thereof. Further, the undersigned agrees to permit the audit and examination of books, records, and files of the named firm and affiliates. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements.

This affidavit must be signed and dated in the presence of a Notary Public.

.....
 (Name)

 (Title)

 (Signature)

 (Date)

Notary Public

State of Nebraska.....)
 ss.
 County)

On this day of, 19.....,
 before me appeared
 (Name)

to be personally known, who being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by
 (Name of Firm)

to execute the affidavit and did so as his or her free act and deed.

SEAL

.....
 (Notary Public)

My commission expires the day of,
 19.....

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

ADDENDUM 1

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

Federal Fiscal Year 2000 (October 1, 1999 to September 31, 2000)

Overall Goal for Fiscal Year 2000 (26.45)

The Nebraska Department of Roads (NDOR) has established an overall DBE participation goal for FY-2000 as follows: **11 percent** of the Federal financial assistance the NDOR receives in DOT-assisted contracts will be expended on certified DBE firms. This goal is based on the information that the NDOR had available as of August 1999, to use in the calculation of the overall goal. The NDOR may use additional sources of information in the calculation of the overall goals for FY-2001, and subsequent years.

Method of Calculating the Overall Goal

STEP 1:

The NDOR used the U.S. Department of Transportation's method as cited in CFR 49 part 26.45 (c) (2) *Use of a bidders list*. The NDOR examined data compiled on subcontractors that have participated in NDOR projects from July 1, 1998, through June 30, 1999, which was a total of 225. This included DBE and non-DBE firms. Fourteen (14) prequalified prime contractors that do not do subcontract work were added to the 225 subcontractors. This resulted in a total of 239 contractors that were awarded contracts with the NDOR during fiscal year 1998. This number was compared to the number of certified DBE construction firms (26) that were awarded subcontracts during the same time period.

The number of DBE construction firms awarded subcontracts (26) was divided by the total number of subcontractors (225), and contractors that do not do subcontract work (14). The number of DBE firms was divided by the total number of contractors (26 / 239) which resulted in a figure of **.1087**. This figure was rounded off to **10.9 percent**, which is the base figure used in establishing the overall DBE participation goal for Federal Fiscal Year 2000.

STEP 2 ADJUSTMENT:

The base figure of **10.9 percent** was adjusted according to the requirements of the DOT Regulations (26.45 d). The method used to adjust the base figure involved computing the portions of the NDOR DBE overall goal achievement for fiscal year 1998 that were achieved both within the DBE Program and outside of the Program.

The percentage of the NDOR 1998 overall DBE goal that was achieved within the DBE Program was computed to be **8.67 percent**. This figure was arrived at by comparing the total amount of Federal assistance received by the NDOR in fiscal year 1998 with the total DBE goal commitment for the same time period.

The total amount of Federal assistance received by the NDOR in fiscal year 1998 was **\$203,276,743.14**.

The total amount of DBE goal commitment in fiscal year 1998 was **\$17,625,289.53**.

\$17,625,289.53 was divided by **\$203,276,743.14** this resulted in the figure of **8.67 percent**.

The NDOR next computed the amount of work (in dollars) that DBE firms received in fiscal year 1998 outside of the NDOR DBE Program. This amount included "over runs" on DOT-assisted highway construction projects that had DBE participation goals, subcontracts on DOT-assisted projects that did not have DBE participation goals, prime contracts that DBE firms received, and subcontracts that DBE firms received on non-DOT-assisted projects.

The amount of work (in dollars) from "over runs" DBE firms received on DOT-assisted NDOR highway projects with DBE participation goals was **\$2,960,360.96**.

The amount of work (in dollars) received by DBE firms as subcontractors on DOT-assisted projects that did not have DBE participation goals was **\$1,885,350.39**.

The amount of work (in dollars) received by DBE firms as prime contractors was **\$2,403,944.30**.

The amount of work (in dollars) received by DBE firms as contractors on non-DOT-assisted projects was **\$920,635.52**.

These four (4) figures were totaled showing DBE firms received **\$8,170,291.17** outside of the DBE Program in fiscal year 1998.

The figure **\$8,170,291.17** was divided by the total amount (in dollars) of all NDOR highway construction projects in fiscal year 1998, which was **\$297,566,987.98**.

This calculation resulted in a figure of **.02745**. This figure was converted to a percentage of **2.75 percent**. The **2.75 percent** represents the total amount of work DBE firms received outside of the DBE Program.

The figures of **8.67 percent**, and **2.75 percent** were added resulting in a total of **11.42 percent**.

The second part of the Step 2 goal setting process requires the base figure (**10.9 percent**) arrived at in Step 1 be adjusted using the figure (**11.42 percent**) arrived at in Step 2.

After thoroughly reviewing the data gathered in Steps 1 and 2, the NDOR adjusted the base figure up to **11 percent**. The rationale for making this adjustment was based on the fact that the amount of work DBE firms receive outside of the DBE Program could vary considerably from one year to the next depending on the market.

The NDOR felt that adjusting the base figure up slightly from **10.9 percent** to **11 percent** was reasonable and was in line with its overall DBE goal achievement over the past years.

PUBLIC PARTICIPATION:

The NDOR's proposed annual overall DBE participation goal was presented to the DBEs at two meetings, one in Scottsbluff and one in Lincoln. There were also two meetings held in Lincoln with the Association of General Contractors to discuss the goal. Notices of the proposed overall DBE participation goal were published in the Omaha World-Herald and the Lincoln Journal Star on July 15, 1999. Notices were also sent to the Omaha Star, Netro Mundo, USA Asian, and 47 other minority, female, and community organizations throughout the state.

Only one formal comment was received. This comment was from the owner of a DBE firm who felt the annual overall goal should not be lowered below **10 percent**. The owner felt a lowered goal would negatively impact his business. The lack of any additional formal comments was viewed by the NDOR as general acceptance of the NDOR DBE Program and proposed goal. The NDOR believes the **11 percent** goal will not negatively impact a DBE firm's ability to compete for work.

RACE NEUTRAL and RACE CONSCIOUS COMPONENTS of the OVERALL GOAL:

Utilizing the figures above, the percentage that was achieved during Fiscal Year 1999 from within the NDOR DBE Program is considered to be "race conscious". The portion of the goal that was achieved outside of the DBE Program is considered to be "race neutral". Therefore, the race conscious portion of the goal is **8.67 percent**. The race neutral portion of the goal, is the total goal of **11 percent** minus the **8.67 percent** race conscious portion. This equals **2.33 percent**.

The ANNUAL OVERALL GOAL:

The NDOR's annual overall DBE participation goal for Federal fiscal year 2000 has been established as **11 percent**. The NDOR will endeavor to achieve this goal through "race neutral" means equaling **2.33 percent**, and "race conscious" means equaling **8.67 percent**.

DBE Program