

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

Contents

I. Definitions of Terms	2
II. Policy.....	2
III. Nondiscrimination (26.7)	3
IV. DBE Program Updates (26.21)	3
V. Quotas (26.43)	3
VI. DBE Liaison Officer (DBELO) (26.25)	3
VII. Federal Financial Assistance Agreement Assurance (26.13)	4
VIII. DBE Financial Institutions	4
IX. Directory (26.31).....	5
X. Required Contract Clauses (26.13, 26.29)	5
XI. Prompt Payment.....	5
XII. Monitoring and Enforcement Mechanisms (26.37).....	5
XIII. Overall Goals (26.45)	6
XIV. Method	6
XV. Process.....	11
XVI. Breakout of Estimated Race-Neutral and Race-Conscious Participation.....	12
XVII. Contract Goals (26.51)	13
XVIII. Good Faith Efforts (26.53)	13
XIX. Demonstration of Good Faith Efforts	13
XX. Administrative Reconsideration	14
XXI. Good Faith Efforts when a DBE is Replaced on a Contract	14
XXII. Counting DBE Participation (26.55)	15
XXIII. Certification (26.61-26.91)	15
XXIV. Information Collection and Reporting	15
XXV. Monitoring Payment to DBEs	15
XXVI. Reporting to DOT	15
XXVII. Confidentiality	15
APPENDIX A – LAA Organizational Chart	18
APPENDIX B – Monitoring and Enforcement Mechanisms	19
APPENDIX C – Nebraska DOT DBE Program	20
APPENDIX D – Small Business Element	21

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

I. Definitions of Terms

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

II. Policy

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

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

Appendix A – Organizational Chart

Appendix B – Monitoring and Enforcement Mechanisms

Appendix C – Nebraska Department of Roads (NDOR) Disadvantaged Business Enterprise (DBE) Program

Appendix D – Small Business Element

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

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

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

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

Date: _____

By: _____

David Haring, Executive Director

III. Nondiscrimination (26.7)

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

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

IV. DBE Program Updates (26.21)

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

V. Quotas (26.43)

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

VI. DBE Liaison Officer (DBELO) (26.25)

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

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

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

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

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

VII. Federal Financial Assistance Agreement Assurance (26.13)

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

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

VIII. DBE Financial Institutions

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

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

We have reviewed the City of Lincoln's Commission on Human Rights website and analyzed their information to identify financial institutions owned and controlled by socially and economically disadvantaged individuals. There are none.

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

IX. Directory (26.31)

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

X. Required Contract Clauses (26.13, 26.29)

Contract Assurance

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

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

XI. Prompt Payment

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days from the receipt of each payment the prime contractor receives from Lincoln Airport Authority. The prime contractor agrees further to return retainage payments to each subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the Lincoln Airport Authority. This clause applies to both DBE and non-DBE subcontractors. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract, or such other remedy as the recipient deems appropriate.

XII. Monitoring and Enforcement Mechanisms (26.37)

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

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

XIII. Overall Goals (26.45)

Amount of Goal

LAA's overall goal for FY 2019-2021 is the following: **7.68 %** of the Federal financial assistance we will expend in DOT-assisted contracts. Based on anticipated FY 2019-2021 prime contracts of \$3,485,000, (Federal assistance of \$3,136,500) our goal equates to approximately \$267,648 of DBE participation on our federally funded projects.

XIV. Method

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

FY 2019 work consists of four major projects and five prime contracts:

- Project 1 proposes a project to update the Lincoln Airport Master Plan will require a professional services contract to provide the long range airfield planning effort.
- Project 2 proposes acquisition of a new Continuous Friction Measuring Equipment (CFME), a highly specialized piece of equipment required to obtain runway friction measurements on a regular basis will require a purchase contract.
- Project 3 proposes the rehabilitation of an existing Omni Directional Approach Lighting system for Runway 17/35 will require a professional services contract to specify the work; and a construction contract to procure and install the equipment.
- Project 4 proposes the acquisition of a new piece of Snow Removal Equipment (SRE), in this case a rubber tired wheel loader. This will require a purchase contract.

FY2020 work consists of one major project, requiring two prime contracts:

- This project, proposing an initial development phase of a general aviation expansion, will require both a professional services contract to design, specify, bid and observe the work; and a construction contract to accomplish the work.

FY2021 work consists of a single project requiring one prime contracts:

- This project proposes the acquisition of a new piece of Snow Removal Equipment (SRE), in this case a runway sweeper. This will require a purchase contract.

These projects are anticipated to require 8 prime contracts with an estimated total value of approximately \$3,485,000.

Before defining the yearly goal, research was done to define the market area we could reasonably expect ready, willing and able bidders to come from. Our bidders list, developed over the last several years, consists of 191 unique respondents to requests for both consulting services and for basic construction work. Of those 191 respondents, a total of 98 or 51%, are from within the Lincoln metropolitan area. 34, or 18%, come from the Omaha metropolitan area. The remaining respondents come from well outside the Lincoln/Omaha metro. Considering that the majority of respondents come from the Lincoln area, and that over the last several years there has only been interest from 33 Omaha firms, our market area was defined as the Lincoln metropolitan area.

FY2019

Project 1, which proposes to update the **Lincoln Airport Master Plan**, will require a professional services contract to provide the long range airfield planning effort.

Using 2015 business patterns for the Lancaster County, Nebraska from the U.S. Census Bureau, we find the NAICS code 54, Professional, Scientific and Technical Services, shows a total of 888 establishments. Since this project involved professional planning services, we looked further down the line to code 54132. This NAICS code, titled Landscape architectural services, includes "...establishments primarily engaged in planning and designing the development of land areas for projects, such as... airports...". Continued review of the 2015 County Business Patterns for Lancaster County, Nebraska showed that 3 firms are identified as offering planning services in this NAICS code.

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

$$(1 \text{ DBE firm} / 3 \text{ total firms}) * \$500,000 = \$166,666$$

Project 2 for the 2019 fiscal year will be for the acquisition of critical **Continuous Friction Measuring Equipment (CFME)**. This self-contained equipment measures the friction characteristics of runway surfaces, providing critical information to pilots and airport staff. Considering the equipment based nature of the acquisition, we expect that this acquisition would be through a local equipment supplier.

While trying to determine the most applicable code, we looked at the 2015 business patterns for Lancaster County, Nebraska and found that descriptions in NAICS code 42000, Wholesale Trade, seemed most appropriate. We considered 44000, Retail Trade but that seemed more focused on lighter duty, consumer grade sales. We considered 53000, but those groups were focused on the leasing of construction equipment. We also considered 81000, but that code is centered on the maintenance and repair of equipment. Back to code 42000, NAICS 423810 shows that there are 11 construction and mining machinery and equipment merchant wholesalers in the Lincoln MSA.

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

$$(0 \text{ DBE firms} / 11 \text{ total firms}) * \$250,000 = \$0$$

Project 3 for 2019 proposes the rehabilitation of the **Omni Directional Approach Lighting** system on Runway 17/35.

The first prime contract required for our FY2019 project is for the professional services (Design, Bid, Construction Observation and Testing Services) required for the construction of a rehabilitation project to extend the useful life of the existing ODAL system on Runway 35. This project proposes to replace flash heads, controls and wiring while re-using the existing LIRs, foundations and conduit system to rehabilitate the system. This will require professional services to specify, bid and observe construction of the improvements.

Using 2015 business patterns for Lancaster County, Nebraska from the U.S. Census Bureau, we find that NAICS code 54, Professional, Scientific and Technical Services, shows a total of 888 establishments. Since this project involves professional engineering services, we looked further down the line to code 54133, which shows a total of 62 firms offering engineering services in the statistical area.

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

$$(0 \text{ DBE firm} / 62 \text{ total firms}) * \$20,000 = \$0$$

Construction

The second prime contract for this major work item is for the construction work involving electrical contractors and other wiring installation contractors. This work could be accomplished by a number of electrical contractors in the area.

Again, using 2015 business patterns for the Lancaster County, Nebraska, we looked at NAICS code 23000, Construction. Digging down to NAICS code 238210, electrical contractors and other wiring installation contractors, shows that there are 93 electrical contractors in the market area.

A review of the NDOR certified DBE list shows there are 0 DBE's certified in NAICS code 238210 in our market area. Based on these numbers, this portion of the final goal formula will be:

$$(0 \text{ DBE firms} / 93 \text{ total firms}) * \$165,000 = \$0$$

Project 4 for the 2019 fiscal year will be for the acquisition of a **rubber tired wheel loader**, to support snow removal efforts. Lincoln's current inventory of snow removal equipment includes 2 wheel loaders, neither of which was procured with AIP funds. According to the FAA Snow Removal Equipment Calculations spreadsheet, the Lincoln Airport is eligible for up to 2 wheel loaders of this type. Supplementing the existing fleet with this loader will allow the Lincoln Airport to maintain overall snow removal times and provide regular commercial air service during inclement weather. Considering the equipment based nature of the acquisition, we expect that this acquisition would be through a local equipment supplier.

While trying to determine the most applicable code, we looked at the 2015 business patterns for Lancaster County, Nebraska and found that descriptions in NAICS code 42000, Wholesale Trade, seemed most appropriate. We considered 44000, Retail Trade but that seemed more focused on lighter duty, consumer grade sales. We considered 53000, but those groups were focused on the leasing of construction equipment. We also considered 81000, but that code is centered on the maintenance and repair of equipment. Leaning towards code 42000, NAICS 423810 shows that there are 11 construction and mining machinery and equipment merchant wholesalers in the Lincoln MSA.

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

$$(0 \text{ DBE firms} / 11 \text{ total firms}) * \$400,000 = \$0$$

FY2020

FY2020 work consists of one major project, requiring two prime contracts:

- This project, proposing an initial development phase of a general aviation expansion, will require both a professional services contract to design, specify, bid and observe the work; and a construction contract to accomplish the work.

Using 2015 business patterns for the Lancaster County, Nebraska from the U.S. Census Bureau, we find that NAICS code 54, Professional, Scientific and Technical Services, shows a total of 888 establishments. Since this project involves professional engineering services, we looked further down the line to code 54133, which shows a total of 62 firms offering engineering services in the statistical area.

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

$$(0 \text{ DBE firm} / 62 \text{ total firms}) * \$100,000 = \$0$$

Construction

The second prime contract for this major work item is for the construction work site development. This work could be accomplished by a number of dirt moving contractors in the area.

Again, using 2015 business patterns for Lancaster County, Nebraska, we looked at NAICS code 23000, Construction. Narrowing our search to NAICS code 238910, Site preparation contractors shows that there are 39 of these contractors in the market area.

A review of the NDOR certified DBE list shows there are 3 DBE certified in the 238910 code in our market area. Based on these numbers, this portion of the final goal formula will be:

$$(3 \text{ DBE firm} / 39 \text{ total firms}) * \$1,400,000 = \$107,692$$

FY2021

FY2021 work consists of a single project to acquire another piece of Snow Removal Equipment (SRE), in this case a runway sweeper. This will require a purchase contract. Considering the work, we expect that this acquisition would be through a local equipment supplier.

While trying to determine the most applicable code, we looked at the 2015 business patterns for Lancaster County, Nebraska and considered 44000, Retail Trade but that seemed more focused on lighter duty, consumer grade equipment sales. We considered 53000, but those groups were focused on the leasing of construction equipment. We also considered 81000, but that code is centered on the maintenance and repair of equipment. Finally we decided that NAICS 42000, Wholesale Trade made the most sense. Census Bureau data says there are 373 businesses in the Wholesale Trade group 42000 in our area. Digging deeper, NAICS 423810 shows that there are 11 construction and mining machinery and equipment merchant wholesalers Lancaster County.

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

$$(0 \text{ DBE firms} / 11 \text{ total firms}) * \$650,000 = \$0$$

Step 1:

In summary, the formula for the FY 2019-2021 period is as follows:

<u>2019</u>		<u>Total</u>	<u>DBE</u>
1 DBE firm / 3 total firms	X	\$500,000 =	\$166,666
0 DBE firm / 11 total firms	X	\$250,000 =	\$0
0 DBE firms/62 total firms	X	\$20,000 =	\$0
0 DBE firm/93 total firms	X	\$165,000 =	\$0
0 DBE firm/11 total firms	X	\$400,000 =	\$0
<u>2020</u>			
0 DBE firm / 62 total firms		\$100,000 =	\$0
3 DBE firm / 39 total firms		\$1,400,000 =	\$107,692
<u>2021</u>			
0 DBE firm / 11 total firms		\$650,000 =	\$0
Total		\$3,485,000	\$274,358

On a percentage basis for the total FY 2019-2021 period, the three year DBE goal equals \$274,358 / \$3,485,000 = 0.0787 or **7.87%**

Step 2:

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

<u>Year</u>	<u>Goal</u>	<u>Achieved</u>	<u>%difference</u>
2000	7%	12.6%	+5.6%
2001	7%	7.5%	+0.5%
2002	7%	1.55%	-5.45%
2003	4.35%	1.70%	-2.65%
2004	4.89%	2.98%	-1.91%
2005	4.69%	8.10%	+3.41%
2006	5.39%	1.37%	-4.02%
2007	4.60%	*	*
2008	2.11%	9.11%	+7.00%
2009	3.87%	4.45%	+0.58%
2010	4.45%	12.33%	+7.88%
2011	5.22%	5.49%	+0.27%
2012	6.40%	0.00%	-6.40%
2013	5.17%	0.00%	-5.17%
2014	5.17%	30.5%	+25.33%
2015	5.17%	14.8%	+9.66%
2016	5.95%	12.35%	+6.4%
2017	1.0%	16.87%	+15.87%

*No grant was offered or accepted in 2007.

Using data from the above table for completed years ('00 through '17) the Step 1 figure was adjusted. An average of the Step 1 figure (**7.87%**) and the median of past participation (**7.50%**) was calculated. This defined our Step 1 base figure, adjusted for past participation, as **7.68%**

Taking **7.68%** as the final goal value, adjusted for past participation, and applying it to the original dollar amount of contracted work (\$3,485,000), yields a final DBE participation goal of \$267,648 for FY 2019-2021.

Referring again to the table above, the median '% difference' is **0.27%**. This is the amount of participation we would expect in a race-neutral goal.

Ultimately Step 2 left us with **7.68%** adjusted goal, with a **0.27%** race-neutral component.

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

Process

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

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

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

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

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

XV. Process

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

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

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

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

We estimate that, in meeting our overall goal of **7.68%** we will obtain **0.27%** from race-neutral participation and **7.41%** through race-conscious measures.

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

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

XVII. Contract Goals (26.51)

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

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

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

XVIII. Good Faith Efforts (26.53)

Information to be submitted

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

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

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

XIX. Demonstration of Good Faith Efforts

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

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

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

XX. Administrative Reconsideration

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

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

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

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

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

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

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

XXII. Counting DBE Participation (26.55)

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

XXIII. Certification (26.61-26.91)

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

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

XXIV. Information Collection and Reporting

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

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

XXV. Monitoring Payment to DBEs

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

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

XXVI. Reporting to DOT

We will report DBE participation to DOT as follows:

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

XXVII. Confidentiality

We will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law. Notwithstanding any contrary provisions of state or local law, we will not release personal financial information submitted in

response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

DBE INFORMATION FORM

Project No. _____

Project Sections _____

Prime Contractor _____

DBE Proposed (If not prime contractor)

Name _____

Principal Owners:

Address _____

Phone _____

Work to be performed _____

Sub-Contract Amount _____

Percentage _____

DBE Classification:

Women _____

Native Americans _____

Black American _____

Asian-Pacific American _____

Hispanic American _____

Asian-Indian American _____

Other (Please give details) _____

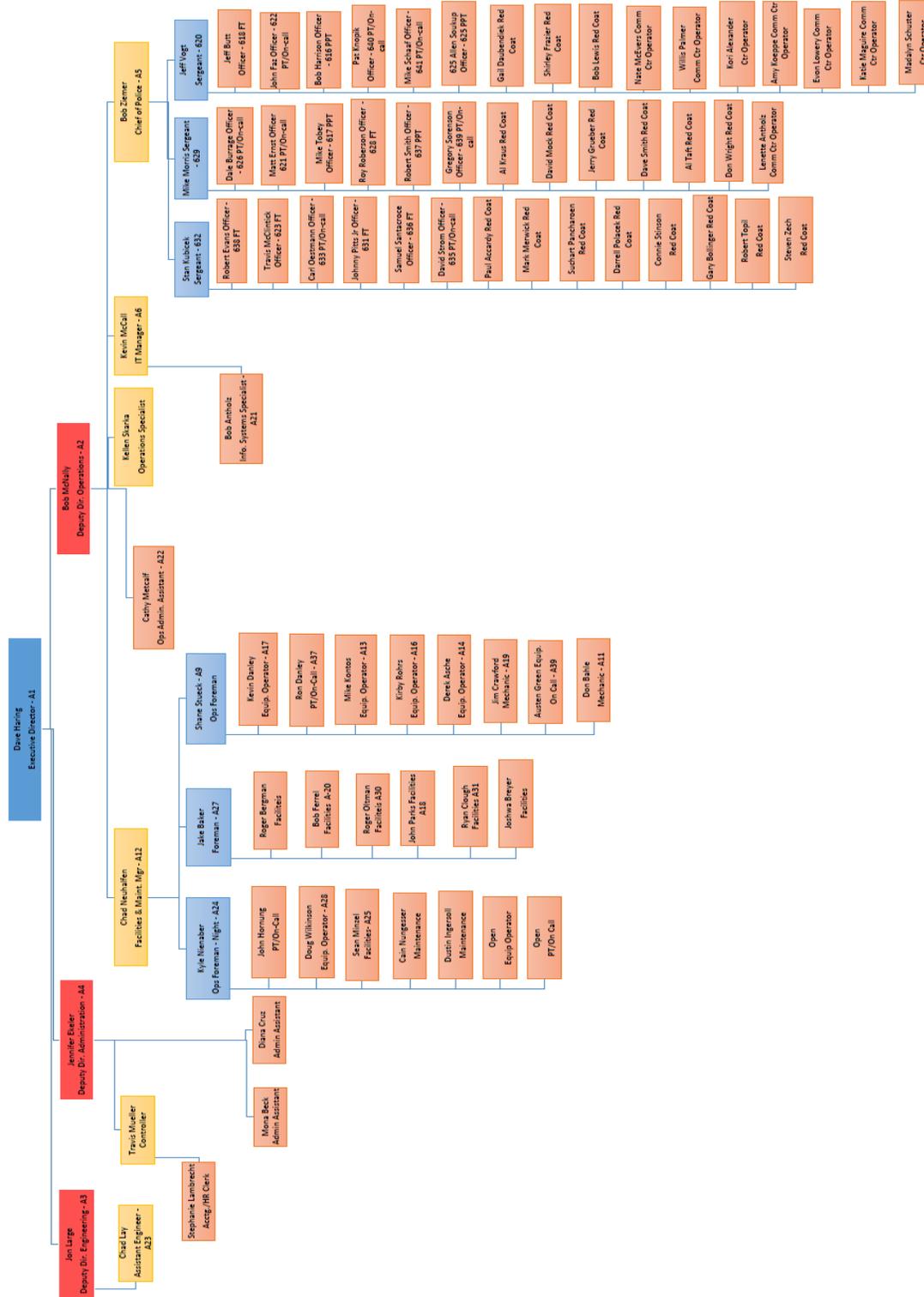
Where certified as DBE _____

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

Date

Contractor Signature

APPENDIX A LINCOLN AIRPORT AUTHORITY ORGANIZATIONAL CHART



APPENDIX B
MONITORING AND ENFORCEMENT MECHANISMS

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

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

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

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

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

Due to its size, the Nebraska Department of Transportation Disadvantaged Business Enterprise (DBE) program is not reproduced in this document. It can found on the Department's web presence at:

<https://dot.nebraska.gov/media/10735/ndot-dbe-program-plan.pdf>

The document can also be produced by the Lincoln Airport Authority upon request.

Appendix D Small Business Element

Fostering Small Business Participation

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

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

49 CFR §26.5 states "*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in 26.65(b).".

49 CFR §26.65(b) specifies that a firm is not eligible to participate in the DBE Program in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.

Since the small business element is part of LAA's DBE program, it has been determined that it would be appropriate to use the definition of *small business concern* as set out in 49 CFR §26.5. Therefore, a firm will not be considered a small business if the firm's average annual gross receipts in each of the firm's previous three (3) fiscal years exceed \$23.98 million. This will ensure that all small businesses participating in the LAA small business program element are subject to the same size standards and consequently, compete with similarly-sized businesses.

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

LAA conducted a study and thoroughly analyzed the prime contracts (federally funded or assisted) that were let during the five (5) year period of October 2012 thru September 2017 to determine the level of participation by small business concerns. The study showed that small businesses actually achieved a very significant level of participation as prime contractors. The following is a breakdown of the prime contract data.

LAA Prime Contracts Awarded from October 2012 thru September 2017

- 7 different contractors were awarded 10 separate prime contracts totaling \$9,815,908.
- For consulting contracts, 2 different contractors were awarded 5 separate prime contracts totaling \$1,089,100.
- For construction contracts, 4 different contractors were awarded 4 separate prime contracts totaling \$8,088,608.
- For equipment acquisition contracts, 1 contractor was awarded 1 contract totaling \$638,200.
- All (100%) of the prime contractors are considered small business concerns based on the firms' average annual gross receipts being under \$23.98 million*.
- 1 Nebraska Uniform Certification Program (UCP) certified DBE firm was awarded 1 prime contracts, totaling \$1,073,636.

(*For the purposes of this Program, LAA has relied on its UCP partner, the Nebraska Department of Roads, for information concerning firm's average annual gross receipts in order to determine whether particular contractors are meeting the small business program element standard of \$23.98 million.)

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

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

This assessment will be based on contracts awarded annually as compared to business average annual gross receipts as reported to the Nebraska Department of Transportation. Tracking trends in this data from year to year will help assist the LAA to determine whether or not developing set-asides or unbundling contracts in the future would lead to any meaningful growth in the awarding of contracts to small business concerns.

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

NOTE: The implementation date for this proposed small business element amendment is August 1, 2018.